STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

ADDRESS REPLY TO:
P.O. BOX 603
San Francisco, CA 94102

November 25, 1983

IN REPLY REFER TO:
17-15476-067

Mr. James G. Lewis
Attorney at Law
2 Century Plaza, Suite 2790
2049 Century Park East
Los Angeles, CA 90067

Dear Mr. Lewis:

This is in reply to your letter of October 26, 1983, concerning the question whether mechanics being paid on a "flat rate hour" are entitled to overtime.

You have stated that Judge Cooper's decision in DLSE vs. Hal Watkins Chevrolet, Inc., and related cross actions (Ventura County Municipal Court), to the effect that defendant's mechanics are being paid on a commission basis and are not entitled to overtime, is being inconsistently applied by our deputies. You have asked that I reconsider our interpretations and applications of IWC Order No. 7 as it pertains to overtime compensation for mechanics, and, in the interests of uniformity, determine that mechanics who are paid on a flat rate are excluded from the overtime provisions of the Order.

I have reviewed the Trial Brief, kindly provided by you, which was submitted in that action on behalf of the defendant. I have also read Judge Cooper's Memorandum Opinion in that case and have discussed the matter at some length with the Division's counsel in the case and other members of our staff who are familiar with the history and purpose of Labor Code Section 204.1.

Based upon that review, I am compelled to conclude that mechanics, even those being paid on a "flat rate hour", are not exempt from the overtime provisions of Order 7, and are, therefore, entitled to overtime in accordance with the Order.

In my judgment, a commission is exactly what Labor Code Section 204.1 says it is: compensation paid for services rendered in selling an employer's property or services. In this context, the activity of selling is different from, and, in my opinion, should be distinguished from, the activity of repairing. A commission is payable with respect to a sale: when the sale has been consummated, the basis for the payment of a commission is extinguished.

It may be that one can be employed on a commission basis for the sale of a repair service, but I am not persuaded that your client's mechanics are employed for that purpose or compensated on that basis.

I am persuaded that it was not the intent of the legislature to establish, in Labor Code Section 204.1, a concept of commission selling different from that which I have posited above. In fact, the 204.1 definition of "commission wages" is, I believe, entirely consistent with the above-stated concept.

Judge Cooper's reading of 204.1 is, in my opinion, strained, and I simply do not agree with his conclusion.

I am assured that the intent of the IWC in Order No. 7 is consistent with the conclusion I have reached: i.e. it was never intended by the IWC to exempt mechanics of any kind from the payment of overtime under Order 7 or any other order--e.g. Order No. 9.

I am as concerned as you and your client about the anti-competitive impacts of governmental regulation. I wholeheartedly agree that incentives and impetus they give to productivity are the cornerstones of a free market economy. However, I cannot, in good conscience, come to a different conclusion about the meaning of the terms under discussion because of the hypothetical effects of such meaning of wage and hours. The solution to the problem you pose may be legislative, or quasi-legislative, not semantical.

Along that line, the IWC has recently undertaken an investigation of the "hours, working conditions and methods of computing pay for certain mechanics and other classifications of employees whose wages are based, at least in part, on a percentage of the price charged to the customer." I would urge you to submit your views on this subject to Margaret Miller, Executive Officer of the Industrial Welfare Commission, P.O. Box 603, San Francisco, California 94101, telephone (415) 557-2590.

Thank you for calling this matter to my attention and for your thorough exposition of your position.

Very truly yours,

C. Robert Simpson Jr.

C. Robert Simpson, Jr.
State Labor Commissioner

CRS/cb

cc: T. Band

1983.11.25