STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

GOLDEN GATE AVENUE

SAN FRANCISCO, CALIFORNIA 94102

August 31, 1988

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

IN REPLY REFER TO:

Samuel B. Casey, Esq.
Orrick, Herrington & Sutcliffe
555 Capitol Mall
Sacramento, CA 95814

Re: Advisory Opinion

Dear Mr. Casey:

In response to your letter of July 22, 1988, regarding the provisions of subdivision 3(B) of Order 4-80, it is the opinion of the Division that the exemption from the overtime requirements requires "a regulary scheduled week of work." The Division's interpretation of a "regularly scheduled week of work" requires that the schedule be fixed and certain.

While this doesn't mean that the schedule has to be the same each week, it does mean that there must be a predetermined schedule. For instance, the "regularly scheduled workweek" could be one that provided for alternating four-day and three-day weeks. The employee must, of course, receive at least two consecutive days off during each week.

However, it is not possible to determine from the proposed agreement you submitted whether the schedule your client intends to use would be constant. The agreement would appear to allow the employer to set the "regularly scheduled workweek" on a weekly basis. Such a schedule would not be allowed as it would not be "regularly scheduled."

It seems to me that this provision must be interpreted narrowly. Employees should have a definite idea what their schedules will be when they sign the petition giving up overtime after 8 hours per day. This appears to me to be the trade-off the IWC is allowing. The IWC is currently considering greater flexibility in scheduling and your client may wish to provide testimony on that issue.

In any case, if you will so word the agreement to preclude the use of a workweek which is not "regularly scheduled," the Division would have no problem with the concept.

I am sorry that I cannot be of more assistance to you at this time. If you have any questions concerning this matter please feel free to contact me.

Very truly yours,

Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA:rl