STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
455 Golden Gate Avenue, Room 3166
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(415) 703-4150

H. THOMAS CADELL, JR., *Chief Counsel*

November 3, 1993

Re: Application Of IWC Orders To Publishing

The Labor Commissioner has asked me to respond to your letter of November 1, 1993, asking for an opinion regarding the applicability of the IWC Orders to your client's activities.

It is your position, as I understand, that employees of are subject to the provisions of IWC Order 4-89 because , an "affiliated" firm has as its primary product a direct mail advertising circular known as the *Pennysaver*.

The Division of Labor Standards Enforcement has historically taken the position that the primary function of the employer is to be the determining factor in establishing the proper IWC Order applicable to the employees. For instance, employees of the Ford Motor Company would be covered by the Manufacturing Order because the primary function of Ford Motors is the manufacture of vehicles. Thus, even the employees of Ford Motors who are employed in marketing, sales or advertising endeavors with the company would still be covered by Order 1-89. On the other hand, employees of an affiliate of Ford Motors which had as its primary purpose the financing of purchases of Ford Motor Company products would be subject to the provisions of Order 4-89. This would be so because the primary purpose of the employing firm would be "financing", not manufacture. This would be so even though the financing operation is a captive of the Ford Motor Company.

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Likewise, employees of a large tire manufacturing firm would, of course, be covered by the manufacturing order. But if the firm had an affiliate which marketed the firm's tires and engaged in automotive repair, the employees of the marketing firm would be covered by Order 7-80 or 9-90, the orders covering the mercantile trade or the transportation industry. Again, the determination would depend on the primary function of the employing firm.

On the other hand, if the tire manufacturer operated the sales/repair operation directly, the employees would be subject to the manufacturing order, 1-89. Again, this would be the result even though the operation might be limited to sales of tires made by the tire manufacturer.

In the case of newspapers, modern developments have added an interesting feature to the applicability of the orders. In many cases while the newspaper itself is owned and operated by a publishing firm and the employees come under Order 4-89, the printing and distribution of the paper is handled by a separate entity whose employees are subject to Order 1. On the other hand, if the newspaper operates its own printing plant the workers who are employed by the newspaper in that plant would be subject to Order 4-89. This is so because the primary function of the employer is the publishing of the newspaper and not the printing. It is the selling of the advertising and the gathering of the news which is the primary function; the printing is simply a part of the process.

The primary function of the employing firm in the situation you present is not entirely clear. It would appear, however, that the printing firm, , is a separate entity. It may be that the firm is a subsidiary of or an affiliate of Inc., but the entity employing workers in the printing operation is and the workers would, presumably, look to that firm for their wages and benefits.

In view of this explanation of the Division's enforcement policy, you may wish to submit complete information regarding the corporate structure of the various entities to the Hearing Officer.

Since this is a fact-intensive issue it is best decided as part of the hearing process. We see no reason for further delay in the processing of the claim by .

I hope this adequately addresses the questions and issues you raised in your November 1st letter. Please excuse the delay in our reponse, we hope it has not inconvenienced you or your client.

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Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

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