



San Joaquin Public Employees Association

July 6, 1993

Mr. Robert Dalton
Attorney at Law
98 W. Stadium Drive
Stockton, California 95204-3116

Re: Mosquito Abatement District/Overtime

Dear Mr. Dalton:

This will confirm my telephone conversation with John Stroh and your request that I clarify SJPEA's position to you in writing regarding some overtime concerns I have on behalf of employees of the District.

I received information from the employees of the District that due to a type of work that they perform during this time of the year, they are being required to, on certain days, come into work and begin their work shift at a much earlier hour (i.e. 3:00 a.m.). They are then being asked to leave work after working eight hours that day instead of completing the end of their regularly scheduled work shift.

I have contacted Mr. Stroh and informed him that I believe this practice is a violation of the Fair Labor Standards Act (FLSA) in that in doing this he is attempting to change the employees' work schedule to avoid the payment of overtime. I informed him at that time that it would be my position that if people were given a choice to volunteer to leave for the day or to stay and finish their work shift, this may resolve the concerns that I had. My position is based on language under FLSA which specifically states that you cannot change the set times for the work week to begin and end to avoid the overtime provisions under the Act. I see no difference in a violation of the FLSA wherein you tell an employee they must work Saturday and take Monday off to avoid overtime and/or you do what is being done in this instance where you tell an employee to come in early and leave early to avoid overtime. It is my position that they are the same issue. I do know that I represented employees who went to the Labor Board regarding the working Saturday and taking Monday off issue and the Labor Board filed a claim on their behalf stating it was a violation of FLSA. My call to Mr. Stroh was to inform him that I felt that there may be a violation here and he may want to take steps to mitigate any damage that could come to the District as a result of this issue. As you know, FLSA violations do not have to be filed by the bargaining agent but can be filed by an individual employee directly with the Labor Board.

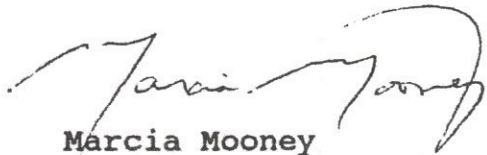
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In regards to your comments on whether it was a violation of the State law or Federal law, I understand that the FLSA is the minimum standard and that States may have a different standard but it must meet at least the minimum Federal standard. Therefore, I believe FLSA still applies in this instance. I am not familiar with any State provisions that affect this issue, although there may be some.

If you have any questions in regards to this matter, please feel free to contact me.

Sincerely,

SAN JOAQUIN PUBLIC EMPLOYEES ASSOCIATION



Marcia Mooney
Sr. Employee Relations Representative

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cc: Duane Bridgewater, Job Steward, Supervisory Unit
Larry Nolin, Job Steward, General Unit
Keith Nienhuis, Job Steward, General Unit