ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5921 HOUSE LABOR & COMMERCE

325

6025AC AMENDATORY ENDORSEMENT

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy if issued with it. If issued at a later date the name, policy number and effective date must be shown.

Issued by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as shown by the company's name on the policy of which this endorsement is a part.

Named Insured _____

Policy Number _____ Countersigned _____, 19 __

Effective Date _____ By _____

12:01 A.M. Standard Time Authorized Representative

In consideration of the premium charged it is agreed that the following changes are made in *your* policy:

1. **DEFINED WORDS**

The definition of *non-owned recreational vehicle* is changed to read:

Non-Owned Recreational Vehicle – as used in sections I and II means a *recreational vehicle* of the same type as *your recreational vehicle* not owned by or registered or leased in the name of:

1. *you, your spouse;*
2. any *relative* unless at the time of the accident or *loss:*
   a. the *recreational vehicle* is or has been described on the declarations page of a liability policy within the preceding 30 days; and
   b. *you, your spouse* or a *relative* who does not own or lease such *recreational vehicle* is the driver.
3. any other *person* residing in the same household as *you, your spouse* or any *relative;* or
4. an employer of *you, your spouse* or any *relative.*

Non-owned recreational vehicle does not include a *recreational vehicle:*

1. which is not in the lawful possession of the *person* operating it; or
2. which has been operated by, rented by or in the possession of an *insured* during any part of each of the preceding 21 days; or
3. operated by an *insured* who has operated or rented any *recreational vehicle* otherwise qualifying as a *non-owned recreational vehicle* during any part of more than 45 days in the 365 days preceding the date of the accident.

2. **MEDICAL PAYMENTS – COVERAGE C**

a. The paragraph titled **MEDICAL EXPENSES** is changed to read:

MEDICAL EXPENSES

We will pay reasonable medical expenses, for *bodily injury* caused by accident, for services furnished within three years of the date of the accident. These expenses are for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, eyeglasses, hearing aids and prosthetic devices. The *bodily injury* must be discovered and

treated within one year of the date of the accident.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

1. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:
   a. EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
   b. NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE ***BODILY INJURY***; OR
2. INCURRED FOR:
   a. THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF SIMILAR NATURE; OR
   b. THE USE OF ACUPUNCTURE OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
   c. THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

b. The provisions titled **If There Are Other Medical Payments Coverages** are changed to read:

If There Are Other Medical Payments Coverages.

1. Non-Duplication

   No ***person*** for whom medical expenses are payable under this coverage shall recover more than once for the same medical expense under this or similar vehicle insurance.

2. Policies Issued by Us to You, Your Spouse or Relatives.

   If two or more policies issued by us to ***you***, ***your spouse*** or ***your relatives*** provide vehicle medical payments coverage and apply to the same ***bodily injury*** sustained:

   a. while ***occupying*** a ***non-owned recreational vehicle***; or

   b. as a ***pedestrian***

   the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

3. Subject to items 1 and 2 above:

   a. if a ***non-owned recreational vehicle*** or a trailer has other vehicle medical payments coverage on it; or

   b. if other vehicle medical payments coverage applies to ***bodily injury*** sustained by a ***pedestrian***

   this coverage is excess.

4. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE MEDICAL PAYMENTS COVERAGE ON A ***NEWLY ACQUIRED RECREATIONAL VEHICLE.***

c. The following is added to **SECTION II – MEDICAL PAYMENTS – COVERAGE C:**

When Someone May Be Legally Liable For the Bodily Injury

1. If the injured ***person*** has been paid damages for the ***bodily injury*** by or on behalf of the liable party in an amount:

   a. less than the injured ***person's*** total medical expenses, the most we will

pay under this coverage is the lesser of:

(1) the limit of liability of this coverage, or

(2) the amount by which the total reasonable and necessary medical expenses exceed the total amount paid by or on behalf of all parties liable for the ***bodily injury;***

b. equal to or greater than the total reasonable and necessary medical expenses incurred by the injured ***person***, we owe nothing under this coverage.

2. When we pay medical expenses under this coverage, we are entitled to be paid out of any subsequent recovery for ***bodily injury*** from a liable party or such party's insurer the lesser of:

a. what we have paid; or

b. the amount by which the sum of the recovery for ***bodily injury*** from all liable parties and what we have paid under this coverage exceeds the total amount of reasonable and necessary medical expenses the injured ***person*** incurred.

The injured ***person*** shall:

a. execute any legal papers we need;

b. when we ask, take action through our representative to seek a recovery;

c. not hurt our rights to recover;

d. not make claim to that portion of the recovery that we are entitled to be paid; and

e. answer truthfully all questions that we may ask.

We will not seek reimbursement from payments received from a liable party or such party's insurer by a ***person*** who has complied with all of these requirements.

3. The liability, uninsured motor vehicle and underinsured motor vehicle coverages shall be excess over and shall not pay again any medical expenses paid under this coverage.

3. CONDITIONS

Item a. of condition 3., **Our Right to Recover Our Payments**, is changed to read:

a. Payments under medical payments coverage are recoverable by us as described in the **Medical Payments – Coverage C** provision **When Someone May Be Legally Liable For the Bodily Injury.**

Edward B Rust, Jr

President

November 13, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed Legislation - Automobile insurance "anti-stacking" provisions and subrogation of claims

Two bill drafts are enclosed for your review.

BILL DRAFT #1

The first bill draft (Work Order No. 6-1394A, by Ford, dated 5/4/89) has two sections. Section 1 amends current statute to require that automobile insurers must offer under and uninsured motorist coverage up to the policy limits including "excess" or "umbrella" policies.

Section 2 amends the "anti-stacking" provision under current law governing automobile liability insurance. In order to understand what Section 2 does, an explanation of "stacking" may be helpful.

> Example: Under current law, if driver "A" has underinsured motorist coverage up to $50,000 and is struck by driver "B" who has coverage up to $30,000 and driver "A" sustains $80,000 in damages, the amount "A" recovers from "B" would be deducted from "A's" own coverage because state law prohibits "stacking" policies. Therefore, driver "A" could receive $20,000 from their own policy and $30,000 from driver "B", for a total of $50,000 even though their damages were $80,000.

Under the language in Section 2 an insured is entitled to collect up to the limits of any policies that apply to their accident, up to the amount needed to compensate them for their injuries. (Other provisions of law would prevent insureds from "stacking" policies in such a manner as to be entitled to more than the amount necessary to fully compensate them).

Bill Draft #2

The second draft (Work Order No. 6-1677A, by Finley, dated 11/2/89) takes the "stacking" issue a step further to apply to the subrogation of claims for all insurance, not just automobile liability insurance. The enclosed

article from the Alaska Bar Rag, by Michael J. Schneider, outlines the issues the bill draft seeks to address. Briefly they are:

1. Under current law an insurance carrier may require subrogation of claims even when an insured has not been adequately compensated.

   Example: Driver "A", insured by State Farm with medical payments coverage limits of $100,000, is struck by driver "b" who is insured by Nationwide with a liability policy with a $100,000 limit. Driver "A", the plaintiff, incurs $500,000 in medical costs. The insurer for driver "B", the defendant, pays plaintiff $100,000. Plaintiff's insurer pays nothing because of subrogation, even though the plaintiff paid a premium for medical coverage and even though they have not been adequately compensated for their injuries.

2. State law should prohibit the subrogation of claims until an injured party has been fully compensated.

3. Full compensation should include any costs a plaintiff incurred to gain that compensation, including legal expenses.

Jim Jordan, Acting Director of the Division of Insurance, has been asked to comment on these bill drafts at our November 28 hearing. We will include any written response in your bill files.

dd/gb

Representative Dave Donley, Chair
House Labor & Commerce Committee

DATE: November 28, 1989

PLACE: Groundfloor Conf. Rm.
Anchorage LIO

SUBJECT OF MEETING:

HB 309 - Amendments to Alaska's Landlord/ Tenant Act
HB 355 - Uniform Premium Tax
Proposed Legislation - "Revolving Door"
" " - "Auto Insurance Issues"

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?	
Charles McKee		2201 W 36th Ave	99503			(Y)	N	HB 355	
Jim Jordan	Div of Ins.	3601 C St Suite 740	99503			(Y)	N	HB 355; auto issues	
Michael [illegible]	State Farm/Allstate	One Sealaska Plaza Suite 303 Juneau, AK 99801				Y	(N)		1:45 pm
Dylan Buchholdt	AK Academy of Trial Lawyers		99501		258-4040	Y	(N)		
Michael F. Schneider	AK Academy "	" 880 N St #202 Anch, AK 99501	99501		277-4551	(Y)	N	Insurance Subro and stacking	1:55 pm
						Y	N		
						Y	N		
						Y	N		
						Y	N		
						Y	N		
						Y	N		

Page ___ of ___

HB

430

HB 430

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE P.O. BOX Y, JUNEAU 99811
(907) 465-3892

February 6, 1990

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for HB 430 (L&C)
Work Order #6-1754H, by Cramer, dated 2/6/90

The proposed CS for HB 430 (L&C) contains the following changes to current law:

1. Includes licensed guides and their employees who are engaged in providing or assisting to provide commercial services to big game hunters under the list of exemptions from minimum wage provisions.

2. Closes the "loophole" caused by the conflict in the definition of work schedule and workweek to provide that employees must be paid overtime for the sixth and seventh day after five consecutive days of work.

3. Exempts certain line haul truck drivers from the "standard" overtime wage requirements so long as the method of determining their wages results in substantially similar overtime provisions.

4. Removes the exemption from paying overtime for persons who employ four or less employees when those employees are working on publically funded projects.

5. Requires employers to provide food and housing for construction workers at remote construction sites.

dd/gbs90
b/hb430-1

GOOD AFTERNOON

MY NAME IS RANDALL KOWALKE
I AM VICE PRESIDENT - CORPORATE DEVELOPMENT FOR COLD WEATHER CONTRACTORS, AN ANCHORAGE BASED NORTH SLOPE CONTRACTOR.

IT IS WITH NO SMALL AMOUNT OF IRONY THAT THIS HEARING IS TAKING PLACE BEFORE THE LABOR AND COMMERCE COMMITTEE. IF THIS BILL WERE ALLOWED TO BECOME LAW I SUBMIT THAT IT WOULD DO MORE TO HARM LABOR AND COMMERCE IN ALASKA THEN ANYTHING I HAVE SEEN SINCE THE LAST TIME THIS BILL SURFACED SEVERAL YEARS AGO. (I MIGHT ADD THAT THE BILL WAS SCUTTLED AT THAT TIME.)

IF I AM TRULY TO BELIEVE THAT THIS BILL SURFACED AS A RESULT OF THE ACTIONS OF A FEW UNSCRUPULOUS BUSINESS OPERATORS - (NAMELY IN WOOD PULP AND FAST FOOD CHAINS) - THEN I CAN ONLY SAY THAT I FEEL THAT THIS "SOLUTION" IS TOTALLY IRRESPONSIBLE. IN AN EFFORT TO ADDRESS WHAT I BELIEVE IS A GENUINE CONCERN FOR THE AFOREMENTIONED WORKERS. IT APPEARS THAT RATHER THAN ADDRESS THE SPECIFIC PROBLEMS IDENTIFIED THAT IT WAS EASIER TO

REVISIT A MOSTLY UNRELATED IDEA THAT WAS DISMISSED WITH GOOD CAUSE SEVERAL YEARS AGO. THIS SOLUTION'S ONLY BENEFICIARY IS POSSIBLY THE ECONOMY OF JUNEAU - FROM THE INFUSION OF CASH BY THOSE OF US WHO ACTUALLY CREATE JOBS BEING FORCED TO COME HERE IN AN ATTEMPT TO PROTECT OUR WORKERS AND THE EMPLOYMENT THEY CURRENTLY ENJOY, FROM WHAT I BELIEVE IS AN EFFORT THAT COULD VERY WELL COST THEM THEIR JOBS. ALTHOUGH I AM ALSO CERTAIN THAT THIS IS NOT THE INTENT.

LEGISLATION THAT DOUBLES OR TRIPLES THE COST TO DO BUSINESS IN ALASKA - LEGISLATION THAT COULD PRICE ALASKA'S LEAD/ZINC OUT OF THE WORLD MARKET - LEGISLATION THAT CAUSES CONSTRUCTION CAMPS TO BE BUILT THAT ARE NOT OCCUPIED, IS NOT GOING TO HELP ALASKA WORKERS - MOST SPECIFICALLY THOSE IN THE MOST NEED OF PROTECTION.

I ALSO HAVE VERY GRAVE CONCERNS AS TO WHAT THIS PROPOSED LEGISLATION WOULD DO TO OUR MOST BASIC INDUSTRY - OIL - CAN ALASKAN WORKERS/CITIZENS OR GOVERNMENT AFFORD LEGISLATION THAT WILL SURELY SEND THE MESSAGE TO THE INDUSTRY THAT ALASKA HAS

TAKEN ANOTHER STEP TO REMOVE ITSELF FROM THE WORLD COMPETITION FOR OIL EXPLORATION AND DEVELOPMENT. WITH THIS PARTING THOUGHT I STRONGLY URGE THIS COMMITTEE TO ABANDON THIS BILL IN ITS ENTIRETY.

I WOULD ALSO LIKE TO SUBMIT LETTERS FROM:

NIKISKI WOODWORKS
OIL GAS & SUPPLY CO. - KENAI
DAN ROBERTS - KENAI
DARNELLE GABRIEL - KENAI
SHERRY METTLER - KENAI
PEAK OILFIELD SERVICE CO.
COMPASS AHTNA
BARIOD DRILLING FLUIDS

ALL OF WHICH SHARE THE POINT OF VIEW THAT I AM REPRESENTING HERE TODAY, AND HAVE ASKED THAT THESE LETTERS BE ENTERED INTO THE RECORD OF THIS HEARING.

THANK YOU.

Department of Transportation and Public Facilities

POSITION PAPER

Bill No: HB 430

Approved: Mark S. Hickey MSH
Commissioner

Title: An Act requiring that overtime wages at twice the regular rate of pay be paid for certain work days and work ... ... and relating to food and housing for construction workers at remote construction sites."

Date: 2/6/90

The department is concerned that the cost of complying with this proposed legislation will significantly increase the cost of constructing highway, aviation and other public facilities in remote areas of the state.

Section 2 of the bill provides that contractors shall furnish food and housing to an employee working at sites inaccessible by two-wheel drive vehicles or 50 road miles or more from commercially available food and housing. The department is concerned that all construction workers, be they employed by the state or the contractors, have reasonable and adequate living circumstances while working on department construction projects. Toward this end, we have prepared a new standard for remote projects (though accessible by road). It requires that the contractor provide, at no cost to employees, full-service campgrounds including water, power, showers, laundry and waste disposal. We believe this new standard would save a substantial amount of money compared to "camps" and result in other benefits when compared to the standard proposed in the bill.

The campground standard contemplated by the department was one of four possible solutions to correct the problems associated with workers living in unsanctioned campgrounds (see "Policy Proposal for Accommodations on Remote Projects, October 1989," attached). Notably, the selected standard solves all health and sanitary conditions raised as a concern, and was well received by the Department of Environmental Conservation. It has three additional attributes worth mentioning when compared to the solution proposed in this bill.

- It requires that a worker provide a vehicle or trailer for his/her housing. This serves to hinder out-of-state workers from flying into the state with only their luggage and working for extended periods. Notably, this bill would largely affect federally funded projects to which no in-state hiring preferences can be applied.

- By coordinating with other agencies, the campgrounds created by the department's new standard could become permanent facilities adding to the state's tourism and recreational base.

For More Information Contact Catherine McHugh at 465-3900

- The department's standard results in significant savings when compared to the requirements of the bill. For DOT&PF highway and aviation projects the requirements set forth in this bill are estimated to cost 5 times the cost of the campground standard (2.4% vs. 12% of the aggregate construction cost). The consequences of the higher standard would be to raise the overhead cost of capital projects and subtract from the buying power of capital funds.

The department intends to implement the campground policy discussed. It is contemplated to be in force on the following projects in the coming year.

Glenn Highway, MP 135 North (Nelchina Slide)
Richardson Highway, MP 79 North

As substitute language we would encourage the following language for consideration to be inserted at line (10), page 5.:

(c) An employer or contractor, at sites accessible by two-wheel drive vehicle, but more than 50 road miles from a place that has adequate, commercially-available food and housing, shall be considered as satisfying the requirements to provide food and housing under (a) of this section by providing a full-service campground. A full-service campground is adequate under this section if it

(1) has gravel, well drained surfacing at each camp space;
(2) provides power and potable water connections at each camp space;
(3) has common toilets, lavatories, showers, laundry with hot and cold water; and
(4) trash containers and holding tank discharge system is provided.

Proposed paragraphs (c) thru (f) to be re-lettered to (d) thru (g).

We would also comment that the bill as written would all but eliminate the ability to use small contracts on remote locations without very large transportation or camp costs. This would impact trail and wilderness recreational facilities, hatchery renovation projects and similar smaller undertakings. We would propose that a dollar threshold be included below which projects would be exempt.

DRAFT

Policy Proposal for Accommodations on Remote State-Sponsored Construction Projects
Department of Transportation and Public Facilities
Draft - November 1989

In the Spring of 1989 the department was asked by a number of parties to investigate the allegation of unsanitary living conditions on remote construction projects being performed for the department. The general nature of the allegations was that in remote areas, where commercial lodging or private campgrounds were unavailable or otherwise fully occupied, workers were forced into make-shift camping arrangements without the benefit of potable water, sanitation facilities or trash disposal and with possible trespass implications. In other cases, concerns were expressed that the work force would occupy public campgrounds displacing the recreational visitors for which those facilities were intended.

In reviewing remote construction projects, we found that while many general contractors were providing sanitary campgrounds for their employees, others were marginally so, and some provided no facilities. Consequently, on some rural projects, there were circumstances warranting contract provisions requiring sanitary living accommodations for the work force.

We reviewed the type and nature of projects which this department has scheduled over the next six years to see which projects might warrant the requirement for housing provisions. We then described the threshold criteria which should trigger these special contract provisions.

Our proposed policy is that the following criteria must all exist before the requirement for mandatory accommodations would be invoked:

1. The project is located more than 50 road miles or 15 nautical miles from an established community. A community would have to have a restaurant, and hotel, motel or lodge services with sufficient capacity to provide services to the contract work force.

2. The construction project is estimated to last a minimum duration of 60 continuous calendar days.

3. The construction staff consists of 15 or more workers who would likely require accommodations, including any sub-contractor's work forces.

4. The estimated amount of the contract exceeds $500,000.

5. The project is accessible to the highway network, including segments connected by the Alaska Marine Highway System.

DRAFT

The form and nature of the accommodations to be required was also evaluated. In reviewing options we considered four alternatives:

1. Provide basic campground services (gravel-surfaced space, potable water, portable toilets, and trash disposal).

2. Provide full-service campgrounds (gravel-surfaced space, potable water, toilets, lavatories, showers, laundry, power, trash disposal, and septic system).

3. Provide self-service camps including rooms and kitchen facilities (no housekeeping or cooking services; employees do own cooking and housekeeping).

4. Provide full-service camps (complete housekeeping and cooking services provided).

A review was made of the department's six year plan to determine how many projects scheduled for construction would meet the threshold criteria and their collective dollar amount. During the next six years $160 million of construction is expected to occur in remote locations likely to invoke the proposed accommodations policy.

From discussions with a number of construction estimators in the state we estimate the following surcharge costs for the four alternatives:

	Alternative	Surcharge	Six-year Cost
1.	Basic campground:	1.0%	$1,600,000
2.	Full-service campground:	2.4%	$3,840,000
3.	Self-service camps:	4.4%	$7,040,000
4.	Full-service camps:	12%	$19,200,000

The additional cost for any of the above alternatives would come from existing capital budgets. It would, therefore, subtract from the highway and aviation facilities that could be built. Accordingly, cost is an important criterion, for the accommodations policy becomes another overhead cost subtracting from the purchasing power of state capital budgets.

The department believes that option #2 would best address the problems, while minimizing the cost. Construction employees would be responsible for their own lodging, whether that is as simple as a tent or pick-up truck canopy,

DRAF

or as elaborate as a recreational vehicle or camping trailer. They would also be responsible for their own meals. The contractor would provide a clean, sanitary campground, complete with central showers, lavatories, and laundry, as well as flush toilets, potable water connections and power connections, or an equivalent alternative approved by the department.

The selected policy would address all the fundamental concerns that have been raised. Workers would have sanitary, non-polluting facilities. They would would further be provided the practical necessities of hot showers, laundry facilities and the benefits of electricity for lights and small appliances (refrigerators, cooking appliances) which would make long-term stays much more comfortable. Equally important, the policy is not extravagant, it would raise cost of those individual construction projects by about 2.4% but the cost as a percentage of all capital project costs would be much less than 1%.

Participation of federal-aid would be required before the department could invoke the requirement for a camp on federally funded projects. Our discussions with federal agencies has been encouraging, but in instances where they would not participate in these costs, there is no general fund source to cover the cost of this policy.

Finally, the policy would not rule out the use of full-service camps on truly remote (off-road system) projects such as the Bradley Lake power project or airport projects located off the connected highway system.

DRAFT

Policy Statement for Full Service Campground

Full service campgrounds as outlined in section 644-2.07 of the specifications shall be required if all of the following criteria are met.

1. The project is located more than 50 road miles or 15 nautical miles from an established community. A community is assumed to have a post office, a restaurant, and hotel, motel or lodge services.

2. The project is scheduled to last a minimum duration of 60 days.

3. The contractor's construction staff (excluding clerical) is comprised of 15 or more employees.

4. The value of the contract exceeds $750,000.

SECTION 644
SERVICES TO BE FURNISHED BY THE CONTRACTOR

ADD THE FOLLOWING:

DRAFT

644-2.07 Full Service Campground

When Item 644(7) appears in the bid schedule, the Contractor shall furnish and maintain a full service campground for use by the Contractor's employees. A full service campground is interpreted to include the campsite or trailer parking area as well as:

1. Electrical power
2. Water
3. Dumping station
4. Trash disposal
5. Central shower/laundry/lavatory facility

If a designated site for the campground is not shown on the plans, it is the Contractor's responsibility to locate a suitable site for the campground.

The Contractor must establish a campground within five miles of the project. The campground shall conform to all applicable federal, state, and local regulations. No campground development shall begin until a plan for development, occupation, and cleanup is submitted and approved by the Department. This plan should contain the following information:

1. Location and size of the proposed site (map).
2. Sewage disposal system approved by the Alaska Department of Environmental Conservation.
3. Number of people who will use the site and proposed dates of occupancy.
4. Power supply system conforming to the National Electrical Code.
5. Potable water supply system approved by the Alaska Department of Environmental Conservation.
6. Road and trail site layout.
7. Clearing limits and slash disposal locations.
8. Sanitary landfill site approved by the Alaska Department of Environmental Conservation.
9. Equipment and fuel storage area.

The Department shall review the plan as submitted for completeness and applicability. Proposed modifications to the Contractor's plans shall be discussed with the Contractor prior to approval. Any modifications agreed upon shall be incorporated in a revised set of plans.

Campground facilities shall be provided for the Contractor's work force and other authorized personnel during the time that the Contractor is actively engaged in work at the project site. State employees may be provided for in the same installation and shall be permitted to use any and all facilities for a reasonable daily rate. The Contractor's employees shall not be charged. The campground shall be a private facility not open for public use.

644-4.01 Basis of Payment

Full Service Campground. Payment for furnishing and maintaining the full service campground will be made at the lump sum price.

Pay Item No.	Pay Item	Pay Unit
644(7)	Full Service Campground	Lump Sum

FORMERLY GRANDMET AHTNA

COMPASS AHTNA

February 5, 1990

The Honorable Dave Donley
Representative
Alaska State House of Representatives
Box V MS 3100
Juneau, AK 99811

Dear Representative Donley:

We are in receipt of a copy of House Bill 430, modifying wages, hours, food and housing conditions of contracts within the State if Alaska.

Our firm is an union affiliated, remote site catering company having projects throughout the State of Alaska; employing approximately 140 persons. The legislation in its current form would create several major problems for our company.

A. Section 23.10.060(b) of your bill indicates that we must pay double time for all hours worked over 60 hours per week or 10 hours per day.

   Our existing union agreements through 1993, provide for time and one half for the above hours. Since people eat seven days a week, the weekly cost of one food service employee working a standard 12 hour day in a remote location would escalate 11%. We cannot afford that additional cost.

   To maintain our existing costs we would have to provide three people at 8 hours per day, rather than two people at 12 hours per day. That is the equivalent of a 60% reduction in weekly take home pay for an employee now working 12 hours a day. This would not be a popular legislative action.

B. Section 23.10.060(c) of your bill indicates that we must pay time and one half for all employees working over five consecutive days.

   Our current union agreements provide for a four week at work and two week off schedule. The cost for one food service employee working 12 hours per day, seven days a week for four weeks would escalate 16%, and this presumes the section of your bill addressed in Section A above.

2525 Gambell, Suite 303, Anchorage, Alaska 99503
(907) 276-1310 FAX (907) 272-6688

To maintain our existing costs, we would schedule our crews so that they would have one day per week off at their remote work site. That, in itself, is a lousy idea.

By passing this section of the proposed bill the legislature would be effectively cutting the weekly wage of each of our employees working 12 hours per day by 16%.

C. Section 23.10.440, of your proposed legislation has many problems, a few of which are mentioned below.

1. We have worked locations where travel time from housing to work site was longer than the 30 minutes provided for in your bill because is was environmentally unsound to construct the facilities closer to the work locations.

2. If we cannot require an employee to live at remote site housing of our selection, we may not be able to control the drug and alcohol free living environment required in some U.S. Government contracts. In addition, in a facility of his own choosing may cause environmental damage which we may potentially be responsible for, but unable to control.

3. By requiring that remote site housing meet OSHA codes, you effectively eliminate the option of allowing us to rent vacant housing in villages for our crews. This will remove welcome income at the village level.

To summarize, the proposed legislation creates practical problems for our company, reduction in take home pay for our employees, and decreases our ability to pay local residents for housing rental.

We strongly advise and recommend that you bury the bill forever.

Very truly yours,

N. Roy Goodman
Regional Director

NRG:clm

PEAK
OILFIELD
SERVICE CO.

General Office
4300 B Street, Suite 603
Anchorage, Alaska 99503
(907) 561-3200

February 05, 1990

Representative Dave Donley
District 11-A
P.O. Box V(MS-3100)
Juneau, Alaska 99811

Dear Representative Donley,

This letter is written to express concern in regards to House Bill 430 as it relates to double time and overtime for hours worked in excess of 60 hours a week and days worked in excess of five consecutive days. This bill is anti business, restrictive to new business development and this company cannot support such legislation.

This bill would make it extremely difficult for some of the small businesses to survive. You are urged to reconsider this bill and the effects it would have on all Alaska businesses.

If you have any questions in regards to this letter, please advise.

Sincerely,

PEAK OILFIELD SERVICE CO.

M. R. O'Connor
President/C.O.O

File: R-213

Legislature Committee on HB-430 2-5-90

Re. overtime changes - HB-430

Gentlemen:

It is absolutely absurd, ridiculous, untimely and uncalled for to even consider making the changes of the overtime you have contemplated. To put such information into a legislative bill is a complete waste of everyones time and energies. This does mean we are definitely against such changes

Sincerely yours,

Dan Roberts
Box 1913 - Kenai, 99611

Danielle Dabrio
Box 3754 - Kenai, AK 99611

Sherry Mattes
PO Box 2114, Kenai 996

Oil & Gas Supply Co.
P.O. Box 1552 Kenai, Alaska 99611
(907) 283-4452

February 5, 1990

Labor Commerce Commitee
Juneau, AK

ATTN: Members of the Labor Commerce Committee
RE: HB 430

If House Bill 430 is allowed to pass, this will adversely affect the service companies' share because of the fact that construction jobs will be too expensive. The very people that they are trying to protect are the ones that will be hurt the most because jobs will not be started.

Sincerely,

Jack Chosvig

JC/nr

NIKISKI WOODWORKS

BOX 2626 KENAI, ALASKA. 99611

To: Rep. Mike Sczymanski

Re: House bill no. 430

Dear Mike,

I would like to express my deep concerns over the possible passage of House Bill No. 430.

As you know, the special construction restrictions in Alaska due to seasonal restraints require long hours over short periods of time to effectively complete the task at hand. Alaskans have always accepted this as part of the frontier lifestyle. I believe that is the reason the Alaska Legislature had in mind when it first created the State Wage Requirements we currently have. This is not out of line, to my knowledge, with any other State in the Union.

One of the reasons the construction labor force is never short of "volunteers" is because of the high rate of pay possible when the current law of time and one half (over eight and after forty) is paid. This becomes increasingly attractive at remote locations for the laborer due to the high cost of transportation to and from these sites.

I believe, if House Bill No. 430 is passed, the cost of transportation will become a "bargain" for construction companies in the face of "double time" alternatives. The only purpose this bill will serve is to reduce the number of hours worked by the individual laborers. It may increase the number of people employed but it will not benefit the people for whom this bill is written. In effect, this bill reduces the moneys that currently go into private hands (because nobody will be working over forty hours in any given pay period) and places additional profit in the hands of companies that provide the transportation.

Please vote against this bill and stop this madness. The State of Alaska has no business being involved in "Union" activities.

Sincerely,

Michael L. Dyer

Baroid Drilling Fluids, Inc.

February 1, 1990

Representative Dave Donley
Capital 13-C
P.O. Box V (MS3100)
Juneau, Alaska 99811

Re: House Bill 430

Dear Representative Donley:

It has been recently brought to my attention that HB430 is being considered for legislation during the 1990 calendar year. Although this legislation is intended to clean up unscrupulous employers who take advantage of employees least able to defend themselves, the effect on our oil industry could be devastating. The Elf legislation past in 1989 has already impacted the oil industry in a very negative way. It is my sincere hope that before HP430 is considered, modifications be adapted to protect our industry from any further damage.

Based on the current wording of HB430, it is my belief, if past we would realize the following consequences:

1. A slow down of development and exploration drilling throughout the state.

2. An across the board pay cut for workers who are compensated by the hour.

3. A further weakening of real estate values in most communities throughout the state.

2000 West Int'l. Airport Rd., Suite A-10 (99502) • P.O. Box 1[illegible]2492 • Anchorage, Alaska 99510
(907) 248-3511 • Fax (907) 248-5390

I urge you to rethink your strategy and look at the whole picture before unwanted, short sighted legislation such as HB430 is seriously considered.

Sincerely,

Bob Stave

Bob Stave
District Manager
Baroid Drilling Fluids/Baroid Corporation

cc: Rep. Max Gruenberg, Jr.
Rep. "Red" Boucher
Rep. Mark Boyer
Rep. David Finklestein
Rep. Virginia Collins
Rep. Loren Leman
Rep. Lyman Hoffman
Rep. Roanld Larson
Rep. C.E. Swackhammer
Rep. Kay Brown
Rep. Niilo Koponen
Rep. Fran Ulmer
Rep. F. Kay Wallis
Rep. Ramona Barnes
Rep. Randy Phillips
Rep. Steve Rieger
Rep. Richard Shultz

Cold Weather Contractors, Inc.

4797 Business Park Blvd., Building I, Suite 4
Anchorage, Alaska 99503-7143
(907) 561-1289 Fax 561-6104

January 31, 1990

Representative Dave Donley
Capital 13-C
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Ref: [redacted]

Dear Representative Donley,

After reviewing the proposed legislation contained in HB 430, I believe we have finally accomplished the unimaginable. That is to say, we now have within our grasp the ability to generate legislation that will benefit absolutely no one.

It is not without merit that you are attempting, as your staff assistant explained to me, to redress the grievances brought upon the Alaskan worker by unscrupulous pulp mill owners and hamburger chain operators.

In the latter case, it is all the more tragic that industry tends to employ our youngest and oldest workers; specifically those least able to defend themselves.

While I applaud your intentions, I believe the legislation as prepared will result in:

1) Loss of earning opportunities on Alaska's North Slope

2) Wage reductions by employers operating with fixed revenues

3) Possible review of the financial feasibility of the Cominco/Nana Lead/Zinc Mine

4) More lower-paying jobs with a higher proportion of income leaving the state in the form of income and social security taxes

5) An additional cutback in oil industry activity, particularly when coupled with the negative impact of the ELF revision

There are many more probable negative outcomes from this bill that I would be happy to discuss with you at greater length. I further sumbit that this legislation be withdrawn until a vehicle more compatible with your goal can be developed.

Sincerely,

Randall D. Kowalke

cc: Rep. Max Gruenberg, Jr.
Rep. "Red" Boucher
Rep. Mark Boyer
Rep. David Finklestein
Rep. Virginia Collins
Rep. Loren Leman
Rep. Lyman Hoffman
Rep. Ronald Larson
Rep. C.E. Swackhammer
Rep. Kay Brown
Rep. Niilo Koponen
Rep. Fran Ulmer
Rep. F. Kay Wallis
Rep. Ramona Barnes
Rep. Randy Phillips
Rep. Steve Rieger
Rep. Richard Shultz

POSITION PAPER

AGC OF ALASKA

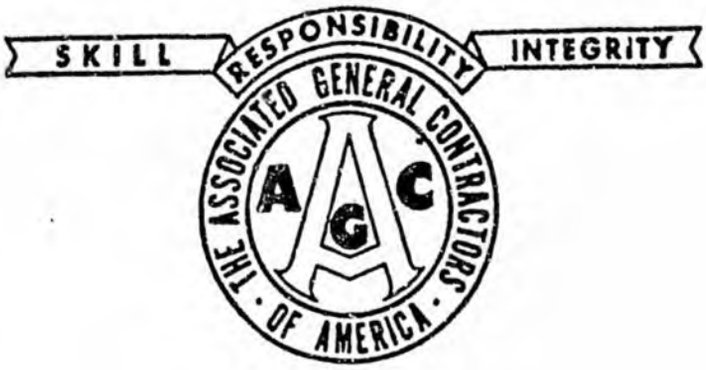
PRESENTED TO THE

HOUSE LABOR AND COMMERCE COMMITTEE

ON

HB 430

AN ACT REQUIRING THAT OVERTIME WAGES AT TWICE THE REGULAR RATE OF PAY BE PAID FOR CERTAIN WORK DAYS AND WORK WEEKS; REQUIRING THAT OVERTIME WAGES AT ONE AND ONE-HALF TIMES THE REGULAR RATE OF PAY BE PAID FOR CERTAIN WORK FOLLOWING THE FIFTH CONSECUTIVE DAY OF WORK; DEFINING 'DAY' AND 'WEEK' FOR OVERTIME WAGES; AND RELATING TO FOOD AND HOUSING FOR CONSTRUCTION WORKERS AT REMOTE CONSTRUCTION SITES.



THANK YOU MR. CHAIRMAN. FOR THE RECORD I AM RESA JERREL, DIRECTOR OF GOVERNMENTAL RELATIONS, FOR AGC OF ALASKA REPRESENTING OVER 600 MEMBER FIRMS.

THE FIRST PART OF HB 430 DEALS WITH THE PAYING OF OVERTIME WAGES. WE HAVE A CONCERN ABOUT THIS PORTION OF THE BILL. A FEW YEARS AGO THE FEDERAL HIGHWAY ADMINISTRATION CIRCULATED DRAFT REGULATIONS. THE PROPOSED REGULATIONS WERE TO "ENSURE THAT FEDERAL DOLLARS ARE NO USED TO PAY INFLATED WAGE RATES" UNDER DAVIS-BACON-TYPE STATE LAWS. ALASKA WAS ONE OF 19 STATES IDENTIFIED AS HAVING HIGHER WAGE RATES ON FEDERAL AID ROAD PROJECTS THAN THOSE DETERMINED BY THE SECRETARY OF LABOR. THE FHWA WANTED TO HALT PAYMENT OF THE HIGHER RATES BY DENYING FEDERAL AID ON THE GROUNDS THAT THEY WERE "EXCESS COSTS." WE WOULD HATE TO SEE THE FHWA REINSTITUTE SUCH A PROPOSAL.

THE SECOND PORTION OF THE BILL ADDRESSES REMOTE CAMPS. IN CONVERSATION WITH DEPARTMENT OF TRANSPORTATION PERSONNEL THEY HAVE INFORMED ME THAT, THEY HAVE REVIEWED THE TYPE AND NATURE OF PROJECTS WHICH ARE SCHEDULED OVER THE NEXT SIX YEARS TO SEE WHICH PROJECTS MIGHT WARRANT REQUIRING HOUSING. THEY ANTICIPATE DURING THE NEXT SIX YEARS $160 MILLION WORTH OF CONSTRUCTION WILL OCCUR IN REMOTE LOCATIONS. THEY HAVE CALCULATED THE COST FOR FULL-SERVICE CAMPS OVER SIX YEARS TO BE $19.2 MILLION. THIS INCREASED OVERHEAD COST WOULD BE SUBTRACTED FROM THE PURCHASING POWER OF HARD CONSTRUCTION DOLLARS. OVER THE YEARS WE HAVE SEEN AN INCREASE IN THEIR OVERHEAD COST DUE TO INCREASED RIGHT-OF-WAY PROBLEMS, LEAKING FUEL STORAGE FACILITIES, ETC. WE DO NOT WANT TO SEE THE OVERHEAD COST INCREASED FURTHER. IF A PROJECT HAS

FEDERAL-AID PARTICIPATION THEY WOULD NEED THEIR APPROVAL AND IF THEY DID NOT OBTAIN FEDERAL FUNDING THEY WOULD HAVE TO COME TO THE LEGISLATURE FOR THE ADDITIONAL FUNDING.

WE APPRECIATE THE OPPORTUNITY TO COMMENT ON HB 430, AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

FHWA may resist wage rates imposed by some states

The Federal Highway Administration is considering regulations "to ensure that federal dollars are not used to pay inflated wage rates" under Davis-Bacon-type state laws. About 37 states and the District of Columbia now have such laws. In 19 of them the effect is higher wage rates on federal-aid road projects than those determined by the Secretary of Labor. FHWA wants to halt payment of the higher rates by denying federal aid on grounds that they are "excess costs."

FHWA notes that the states determine prevailing wages in widely different ways. Some specify the mean, some the median and some the modal rate, the rate that appears most often in the wage distribution. "Use of the modal rate is tantamount to adopting the union wage rate," FHWA says, "since a union contract is the mostly likely reason that a significant number of workers in a given classification are paid at exactly the same rate." Five states, the agency says, simply adopt collectively bargained rates as prevailing.

Environmental and labor issues prominent on high-court docket

The U.S. Supreme Court will deal with a number of issues important to construction in the session opening Oct. 1. It has already picked 87 of about 175 cases it will hear during the term, and the perennial issue of where to draw the line between federal and local government power looms larger than ever.

On the docket, for instance, is the dispute over how much leeway the Superfund Act has left states to impose their own taxes for hazardous-waste cleanup. The justices are reviewing a New Jersey Supreme Court decision allowing continued imposition of a levy in that state as long as the money goes to pay for cleanups not actually paid for out of the federal fund. But major petrochemical companies want a total ban against state taxes paying for the kind of activity Superfund might cover, whether or not the federal money goes into a particular removal operation. The administration is urging a middle view that the state may tax to pay for its own removal of hazardous substances but not to pay others to do it.

The states and the federal government are on the same side, however, in the argument over how much power the Corps of Engineers should have in regulating development in wetlands. Seventeen states are backing the Corps in trying to overturn an appellate-court ruling that limits the reach of the fill-permit provisions of the Clean Water Act to actual navigable waters. The Corps insists that its authority also reaches to adjacent wetlands that are subject to flooding.

In the labor area, the justices must decide whether Washington has the sole authority to enforce bargaining rules. San Francisco refused to renew a cab company's franchise until it settled a strike, and Wisconsin refused to do business with companies that had violated the National Labor Relations Act at least three times in the previous five years. The high court is looking into both matters. The justices will also decide the constitutionality of the withdrawal-liability provisions of the Multiemployer Pension Plan Amendment Act.

New infrastructure council gets ready to start work

A newly appointed National Council on Public Works Improvement is getting organized in Washington under the chairmanship of Robert E. Farris, commissioner of the Tennessee Department of Transportation. It was established by Congress under the Public Works and Improvement Act of 1984 to study infrastructure needs and problems.

The council is to prepare three infrastructure reports. They are to analyze the age and condition of public works, the methods that could be used to finance improvements and new trends in the methods. The reports also are to assess the current and anticipated economic outlook for public-works improvements, the maintenance needs involved and sort out infrastructure program priorities.

The council will soon name an executive director. It will receive logistical support from the Corps of Engineers.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 85-11]

Labor and Employment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on a proposal to amend its regulation prescribing the inclusion of prevailing wage rates determined by the Secretary of Labor in advertisements and contracts for Federal-aid highway projects. The proposed amendment would preclude the payment of Federal-aid funds for excess costs due to State prevailing wage rates on such projects higher than that determined by the Secretary of Labor.

DATE: Written comments are due on or before November 12, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-11, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET., Monday through Friday. Those desiring notification of receipt of comment must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Paul E. Cunningham, Office of Highway Operations, 202-426-0392, or Hugh T. O'Reilly, Office of the Chief Counsel, 202-426-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal statute commonly known as the Davis-Bacon Act (40 U.S.C. 276a-276a-7) requires that laborers and mechanics employed on Federal construction work be paid not less than a "prevailing wage" to be determined by the Secretary of Labor. Such wage rates are extended to Federal-aid highway construction projects by 23 U.S.C. 113, which provides (in part) that:

> the Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects on the Federal-aid systems, * * * shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of August 30, 1935, known as the Davis-Bacon Act (40 U.S.C. 267a).

According to a recent survey, Thieblot, "Prevailing Wage Laws of the States," *Government Union Review* (Fall 1983) there were thirty seven States plus the District of Columbia which had effective prevailing wage laws for State and some local public works as of 1983. Approximately nineteen of these statutes are so drafted and applied as to commonly result in the payment of wage rates in Federal-aid highway projects which are higher than the Davis-Bacon rates determined by the Secretary of Labor. The States which appear to fall into this category are: Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, Washington, West Virginia, Wisconsin, and Wyoming.

The method used to calculate a prevailing wage varies considerably from State to State. Prevailing wage statutes in many States fail to specify how the pevailing wage is to be calculated. Legislative guidance regarding the selection of a prevailing wage rate is provided in 20 States but there is little consistency among States in the type of guidance provided. Statutes in two States specify that the majority rate shall be selected, but provide no guidance for proceeding when a majority of workers in a classification are not paid at the same rate. Some States specify the mean wage rate, some the median, and some require selection of the modal rate in the wage distribution. Use of the modal rate (the wage rate that appears most frequently in the wage distribution) is tantamount to adopting the union wage rate, since a union contract is the most likely reason that a significant number of workers in a given classification are paid at exactly the same rate. Five States simply adopt collectively bargained rates as prevailing.

An important part of the Federal prevailing wage law is that a wage determination can be appealed to the Administrator of DOL's Wage and Hour Division, or, if necessary, to the DOL's Wage Appeals Board, but in several States there is little or no appeal mechanism available to contractors or other interested parties to challenge arbitrary wage determinations. The result of this difference between Federal and State statutes is that a contractor who believes that he is being forced to pay a wage rate that is higher than what actually prevails in a local area has an avenue to appeal the wage determination decision to a higher level if the Federal law has established the rate. If the wage rate has been established under State law, however, the contractor would, in several cases, have no official appeal mechanism available.

In 1983, the Labor Department amended its procedures for predetermination of wage rates (29 CFR Part 1), which will result in slightly lower wage rates. The major part of these amendments was upheld against court challenge in the case of *Building Construction Trades Department, AFL-CIO* v. *Donovan*, 712 F.2d. 611, decided in early 1984. It is too early to tell whether, and to what extent, States with their own prevailing wage laws will follow suit. The result could be even more States than the 19 mentioned with labor provisions inconsistent with Federal requirements.

While it is true that the Davis-Bacon Act and 23 U.S.C. 113 provide for a minimum wage rate on Federal-aid

projects, a floor not a ceiling. It is also evident that this is not solely a question of minimum wages as such. Rather, it is a question of both the Federal Government and the State Government determining the "prevailing wage rates in a locality" which must be paid as a minimum. There is nothing in 23 U.S.C. 113 which requires the Secretary to accede to higher (State) prevailing wage rate determinations than those established by the Secretary of Labor.

In addition, some of the State prevailing wage laws contain labor classification rules, employment preferences and other requirements more restrictive and costly than those provided under 23 U.S.C. 113 and the Labor Department regulations covering Davis-Bacon job classifications and wage rate determinations. These inconsistent requirements, which contribute to the problem of high labor costs, are only partially addressed by existing regulation, 23 CFR 635.124(b), which prohibits discrimination against labor from other States, and assures a contractor's free choice of his or her own labor. A rule denying Federal-aid participation in excessive labor costs due to State prevailing wage laws would remove much of the incentive for maintaining such inconsistent requirements or over-generous rate determinations.

Excess wage payments as outlined above are now seen as being an unwarranted drain on limited Federal-aid funds and counterproductive to full and open competition. Small and minority owned businesses are discouraged from bidding on Federal-aid projects with such high rates, since many are relatively new firms which could not practically jump their wage scale for one job, then attempt to return to a regular scale.

In those cases where the State-determined prevailing wage rate is higher than the wage determined to be prevailing rate under provisions of the Federal Davis-Bacon Act, the use of the wage rates established by State prevailing wage laws adds to the cost of Federal-aid highway construction in two ways. First, use of State-determined wage rates can add directly to project's wage costs by the amount of the difference between the higher prevailing wage established under State law and the Davis-Bacon wage (multiplied by the number of labor hours involved). Second, including the higher State-determined wage rate in Federal-aid contracts adds indirectly to future wage costs by ensuring that the higher wage rate will have greater influence in future wage surveys, and perpetuate higher rates regardless of true market conditions.

Since the Federal-aid highway projects are funded jointly by Federal and State governments with, in the instance of Interstate construction and rehabilitation, the Federal government paying at least 90% of all costs, and States paying only 10% or less of those costs, the FHMA has an obligation to ensure that Federal dollars are not used to pay inflated wage rates imposed by State law. Stated another way, only 10 to 25 percent of project costs are paid from local or State funds. Thus, there is often only minimal incentive for those governments to avoid inflated wage levels, especially since high wages are politically attractive and the major portion of the cost is paid from Federal funds.

For example, for a recent project in one State, the Federal Davis-Bacon rate (combined wage/fringe benefit rate) for unskilled labor was $15.01, while the State's "little Davis-Bacon" rate was $19.08 (27 percent higher). For another project, the Federal Davis-Bacon rate for unskilled labor was $12.58, while the State-determined rate was $16.74 (33 percent difference). On still another project, the unskilled labor prevailing wage rate determined by the Federal Government was $13.74 while the State-determined rate was $14.89 (8 percent higher). State rates for unskilled labor have been set as high as $20.67 per hour, substantially higher than for comparable non-federally funded projects.

While its not possible to precisely reconstruct the amount of excess payments which have resulted from the application of these laws over the years, the payment of any amount in excess of that required by Federal law is not consistent with sound fiscal stewardship of Federal funds. All Federal agencies have a duty to analyze expenditures to determine if public money is being used and expended economically and efficiently. Certainly, it is unarguable that the payment of any element of excess cost will necessarily result in the building of fewer miles of highway or other necessary improvements within the States affected.

It thus becomes apparent that action to preclude Federal-aid in such excess costs will aid the program. Therefore, this proposal makes such excess costs ineligible for Federal-aid, without affecting the validity of any State law. No State's apportionment of funds is affected by this proposal.

The proposal, if promulgated as a final rule, would operate in the following manner. States would continue to publish Federal Davis-Bacon minimum wage rates in the advertisement or call for bids on any contract for a Federal-aid project, as now required by 23 U.S.C. 635.124(d). Likewise, those States with their own minimum wage rate laws may also continue to publish state rates in the advertisement or call, since the proposal does not prohibit their use. This proposal would not affect any contract already awarded. Upon award of new contracts and commencement of work, however, those States will be required to compute the difference between Federal and State wage rates actually paid out using the contractors' weekly payrolls, which are already required to be submitted by 40 U.S.C. 276c.

It is this difference which would be ineligible for Federal-aid participation. The amount of wages paid *above* the level of State-imposed minimums by contractors, whether due to market pressure or union agreements, would be unaffected by the proposal and would continue to be eligible. The burden on the affected States is expected to be in two parts. The first, a short-term task, consists of establishing a method of review of weekly payrolls to determine the ineligible differential. The second consist of long-term use of that review method as part of the already required State review of weekly payrolls for compliance with other labor laws. It is estimated that this computation would cost a State with an average size program about $50,000 per year. Comment is specifically requested on the amount of lead time the States might need to implement this provision.

Although neither the Davis-Bacon Act nor 23 U.S.C. 113 preempts State law in this regard, the Federal Highway Administrator has broad discretionary power under statute, 23 U.S.C. 106, to approve Federal-aid projects proposed by the States. This statutory power necessarily includes the power to disapprove projects which are too costly from whatever standpoint, whether in design, materials, or labor costs. This is demonstrated not only by the extensive legislative history of the provision in the Federal-aid Road Act of 1916, 39 Stat. 355, which became 23 U.S.C. 106, but by numerous court decisions such as *Mahler v. United States*, 306 F.2d. 713 (1962) which drew heavily on this legislative history in ruling that "The concern of Congress was to make sure that federal funds were effectively employed and not wasted."

The statutory discretionary power of the Administrator to disapprove projects for excessive cost is buttressed by other

enactments. The first section of the Department of Transportation Act, codified as 49 U.S.C. 101, begins:

(a) The national objective of general welfare, economic growth and stability, and security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

Further, 23 U.S.C. 101(e), expressing a Congressional policy of preventing waste in the Federal-aid programs, states:

It is the national policy that * * * the Secretary and all other affected heads of Federal departments * * * shall encourage * * * the best use of available manpower and funds.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. The proposed rulemaking is considered significant under the Department of Transportation's regulatory policies and procedures because of the public interest and controversy that the proposed rulemaking is likely to generate.

To the extent that the proposed regulation reduces wage costs on Federal-aid highway construction projects, an important impact of the proposed change will be to make funds available for additional highway construction purposes. The regulatory and economic impacts are addressed in more detail in a Draft Regulatory Evaluation/Initial Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. Paul E. Cunningham at the address provided under the heading "For Further Information Contact."

The Regulatory Evaluation suggests, based on a number of assumptions, that this proposal may save up to $60,000,000 per year in Federal-aid funds. These assumptions may bear public examination and comment. Public comment is also requested regarding the size of and reasons for the differences in prevailing wage determinations as set by the 19 States and the DOL, and how this proposal is likely to affect those differences. The FHWA is also interested in how this proposal might practically affect the operation of highway construction programs in the States concerned, particularly with regard to whether any delays or hindrance might be involved.

With regard to the assessment of the impact this proposed rulemaking would have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96-354), the reasons for, objectives, and legal basis for this action have been previously explained in this notice. This rulemaking would not impose any additional reporting, recordkeeping or other compliance requirements on small entities and does not duplicate, overlap, or conflict with any other Federal rules. The proposal is not expected to have a significant economic impact on a substantial number of small entities. In fact, the proposed regulation should promote a competitive environment in which small and economically disadvantaged businesses may have greater opportunity to compete for federally-funded highway contracts.

Because sufficient information was not available to allow more precise estimation of the impacts of the proposed change in those States where State-determined prevailing wage requirements have been applied to Federal-aid highway construction contracts, FHWA encourages all interested parties to comment on the preliminary assessment of impacts and to provide information that will assist in improving the initial assessment. Comments directed to the items listed below will be particularly helpful in preparation of a final assessment of impacts.

(1) Specific examples of Federal-aid highway projects where State level wage determinations resulted in the establishment of a prevailing wage requirement higher than that established under provision of the Federal Davis-Bacon Act (including project location, difference between Davis-Bacon minimum and State-determined minimum, job classifications affected).

(2) In which States do State prevailing wage determinations result in the establishment of higher prevailing wage rates on Federal-aid highway projects than those established according to the Davis-Bacon Act (the 19 listed above, or others)? In these States, by how much do the State determinations generally exceed the Federal determination, on a percentage basis? How often do State level wage determinations increase wage costs on Federal-aid projects (always, often, seldom, never)? Which job classifications are typically affected?

(3) To what extent do State level wage determinations applicable to Federal-aid projects limit competition from potential bidders? Will the proposed regulation improve the competitive environment for small and economically disadvantaged contractors?

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing and under the authority of 23 U.S.C. 113 and 315, and 49 CFR 1.48(b), the FHWA proposes to amend Part 635, Subpart A to Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: September 24, 1985.

Ray Barnhart,

Federal Highway Administrator.

PART 635—[AMENDED]

The FHWA proposes to amend Part 635, Subpart A to Chapter 1 of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128 and 315; 42 U.S.C. 3334, 4231–4233, 4601 *et seq.*; 49 CFR 1.48(b).

2. In § 635.124, paragraph (d) is revised to read as follows:

§ 635.124 Labor and employment.

* * * * *

(d) The advertisement or call for bids on any contract for the construction of a project on the Federal-aid system either shall include the minimum wage rates determined therefore by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are the minimum rates that must be paid under the contract covering the project. If any provision of State law, regulations, specification, or policy may operate in any manner to require the establishment of prevailing wage rates higher than those determined by the Secretary of Labor under the Davis-Bacon Act, and applied to Federal-aid work by 23 U.S.C. 113, Federal-aid funds shall not participate in any excess costs due to such provisions.

[FR Doc. 85-23185 Filed 9-26-85; 8:45 am]

BILLING CODE 4910-22-M

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE P.O. BOX Y, JUNEAU 99811

(907) 465-3892

November 27, 1989

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed wage and hour legislation

The enclosed proposed legislation, work order number 16-1754 by Cramer, clarifies the definition of workweek and requires double time wages for hours worked over ten hours a day or sixty hours a week.

Current state law requires overtime wages for hours worked over eight hours a day and both state and federal law require overtime wages for hours worked over 40 hours a week. There is a problem, as outlined by the attached correspondence from the Department of Labor, with the current definition of workweek.

A workweek is seven consecutive twenty-four hour periods and may start on any day or begin at any hour of the day. The workweek is used for the purpose of calculating overtime. If the workschedule, the assigned working times for any given employee, spans the workweek, it may result in the worker working in excess of eight hours a day or forty hours a week and not be entitled to overtime pay.

In addition to tightening the definition of workweek to assure payment of overtime wages intented under law, the proposed bill requires double time wages for hours worked in excess of ten a day or 60 a week. Concerns over the effect of such a provision on an employers and employees will be discussed during our November 30, 1989 public hearing.

dd/gbi89
b/over

Alaska State Legislature

WHILE IN SESSION
PO BOX V
JUNEAU, ALASKA 99811
907) 465-3779
SENATE MAJORITY LEADER

HOME ADDRESS
PO BOX 169
KENAI, ALASKA 99611
907) 262-9348
DISTRICT 9

Representative Mike Navarre

Date: March 23, 1989

MEMORANDUM

TO: Rep. Dave Donley, Chair
Labor & Commerce Committee

FROM: Rep. Mike Navarre Pres. for Rep. Navarre

SUBJECT: Computation of overtime hours under Alaska law.

Attached is a letter I received from a constituent regarding the computation of workers' overtime hours. It seems the person has some valid points, and it may well be something your committee may want to further investigate.

Please let me know if you take any action.

Thanks.

NIKISKI, JAN 18, 1989

TO: Representative Mike Navarre

RE: STATUTARY CHANGE FOR OVERTIME PROVISIONS

FROM: KURT KRISTENSEN
RR # 1, BX 945
KENAI, AK 99611
907-776-8591

Dear Legislator-

Please take a good look at the enclosed letter from Mr. Thomas E Stuart, Jr, Director of the State of Alaska's Division on Labor Standards & Safety.

No doubt you will appreciate that this state of affairs circumvents the intent of the law calling for 40 hour of straight pay and 44 hours of time and one half for a period of 7 days where a worker works 12 hours each day and works the 7 days in a row.

In my case it amounts to about a 10% pay-cut when the employer discovered that this loop hole existed.

Some employers are just beginning to utilize this avenue and relying increasingly on the ignorance of the law and the lack of enforcement. I have seen people with paychecks for 14 days with very few over time hours.

Please consider remedying this existence in Alaska and make it clear that a "workschedule" of 7 consequtive days is the same as a "workweek" for purposes of figuring out straight time and time and one half pay.

Respectfully,

Kurt Kristensen

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LABOR

LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
P.O. BOX 107021
ANCHORAGE, ALASKA 99510-7021
PHONE: (907) 264-2452

January 3, 1988

Mr. Kurt Kristensen
RR #1, Box 945
Kenai, AK 99611

Dear Mr. Kristensen:

In order to more clearly respond to your inquiry, it may be useful to define some terms.

WORKWEEK: Seven consecutive 24-hour periods. The workweek may start on any day or begin at any hour of the day. The workweek is the time period used for recording hours of work for the purpose of calculating overtime.

WORKSCHEDULE: The assigned working times for any given employee. The work schedule does not, by law, have to coincide with the workweek. That is, workers can legally be scheduled to begin their work midway through a workweek.

In your first letter you stated that it was your understanding that the law requires overtime be paid if a person worked 7 days in a row, 12 hours each day. This is not correct. The law requires overtime only if the hours worked exceed 8 straight time hours per day or 40 straight time hours per workweek. There is no overtime requirement for working 7 or more days in a row.

In the example you used, you indeed worked a scheduled 7 days straight, but those 7 days spanned two separate workweeks. You in fact worked 4 days in workweek number 1 and 3 days in workweek number 2. If all 7 days fell within one workweek, then the hours would compute to 40 straight time and 44 overtime. However, since they fall across two established workweeks, the computations are as follows:

Workweek #1 - 32 straight time, 16 overtime
Workweek #2 - 24 straight time, 12 overtime

Total 56 straight time, 28 overtime

This is the overtime payment required under state law. Under federal law, there is no daily overtime requirement, only overtime in excess of 40 hours per week. Therefore, under federal law the pay required for this schedule would be:

Workweek #1 - 40 straight time, 8 overtime
Workweek #2 - 36 straight time, 0 overtime

Total 76 straight time, 8 overtime

This practice is not a secret. Many employers have chose to utilize it. Many more have not. I will not debate its fairness; however, it is legal. Only a statutory change can alter that fact.

I hope this clarifies my earlier answer. If you have further questions, please contact me.

Sincerely,

Thomas E. Stuart, Jr.
Director
Labor Standards & Safety Division

0681s

crews and illustrates the distribution of regular and overtime hours for one of those crews ("A") as calculated by KPC:

Shift	Workweek 1 M T W Th F S Su	Workweek 2 M T W Th F S Su	Workweek 3 M T W Th F S Su	Workweek 4 M T W Th F S Su
11 PM - 7 AM (graveyard)	D D A A A A A	A A B B B B B	B B C C C C C	C C D D D D D
3 PM - 11 PM (swing)	C C C C D D D	D D D D A A A	A A A A B B B	B B B B C C C
7 AM - 3 PM (day)	B B B B B C C	C C C C C D D	D D D D D A A	A A A A A B B
Day Off	A A D D C B B	B B A A D C C	C C B B A D D	D D C C B A A
Calculation of Regular and Overtime Hours for "A" Crew				
Regular Hours	0 0 8 8 8 8 8	8 8 0 0 8 8 8	8 8 8 8 0 8 0	8 8 8 8 8 0 0
Overtime Hours	0 0 0 0 0 0 0	0 0 0 0 0 0 0	0 0 0 0 0 0 8	0 0 0 0 0 0 0

As Clyde Johnson, KPC's Industrial Relations Manger, testified without contradiction, the current tour schedule has remained essentially unchanged since the Pulp Mill commenced operations in 1954.[2] In addition, Mr. Johnson testified that in his 35 years employment at the Pulp Mill KPC's established "workweek" for payroll purposes has always been Monday - Sunday. Likewise, Johnson testified that the Monday - Sunday "workweek" has always formed the parameters for determining whether an employee is entitled to weekly overtime on the basis of having worked over 40 hcurs in any one week.

[2]During a brief period in the mid-1980's during which the shift rotation was reversed to a clockwise direction (days to swing to graveyard). In addition, there have been one or two minor changes in shift starting times.

HB430

International Brotherhood of Electrical Workers

2204 TONGASS
KETCHIKAN, ALASKA 99901
PHONE (907) 225-4020

P.O. BOX 7241
KETCHIKAN, ALASKA 99901
TELEX - 56376

UNIT - 1547-4

Local 1547

February 15, 1990

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Re: HB 430

Dear Representative Donley:

Scheduling employees to work six or seven consecutive days without overtime compensation is without question a violation of both State and Federal wage and hour laws. Yet certain employers in the State of Alaska are scheduling employees to work seven consecutive days without overtime compensation, and doing so within the means of the law, by artificially scheduling a "week" other than Sunday through Saturday for specific employees. Hence, employees work four days in one "week" and three days the following "week" for a total of seven consecutive days and do not receive overtime pay. This most certainly cannot be the intent of Congress when wage and hour laws were introduced and passed in the 1930's.

To remedy this paradoxical condition, legislation must be passed to require overtime for work performed on the sixth or seventh consecutive days of an employee's work schedule. Passage of HB 430, amending AS 23.10.060, will guarantee workers their right to overtime compensation when working a schedule consisting of six or seven consecutive days.

Your support of HB 430 will reinforce and affirm the purpose and intent of the Alaska Wage and Hour Act - an act which establishes an eight-hour day and forty-hour workweek for Alaskan workers.

Sincerely,

Vera Plumb
Assistant Business Manager

HB 430

Alaska State Legislature

Representative Mike Navarre

FILE

February 5, 1990

Representative Dave Donley, Chair
House Labor and Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Donley:

Attached is a letter I recently received from Mr. Kurt Kristensen, concerning a matter he brought to my attention last interim. At that time, I forwarded a copy of the information to your office.

I strongly feel this is a matter the committee should address this session.

Thanks for your consideration.

Sincerely,

Mike

Mike Navarre
State Representative

MN/pm

cc: Kurt Kristensen

Please replace the previously distributed copy of this document with this version.

[Note: The Jan. 15, 1990 letter to Kurt Kristin from Thomas E. Stuart that follows this page did not print out legibly on the previous copy.]

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LABOR

LABOR STANDARDS & SAFETY DIVISION

3301 EAGLE STREET
PO BOX 107021
ANCHORAGE, ALASKA 99510-7021
PHONE: (907) 264-2452

January 3, 1988

Mr. Kurt Kristensen
RR #1, Box 945
Kenai, AK 99611

Dear Mr. Kristensen:

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In your first letter you stated that it was your understanding that the law requires overtime be paid if a person worked 7 days in a row, 12 hours each day. This is not correct. The law requires overtime only if the hours worked exceed 8 straight time hours per day or 40 straight time hours per workweek. There is no overtime requirement for working 7 or more days in a row.

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This practice is not a secret. Many employers have chose to utilize it. Many more have not. I will not debate its fairness; however, it is legal. Only a statutory change can alter that fact.

I hope this clarifies my earlier answer. If you have further questions, please contact me.

Sincerely,

Thomas E. Stuart, Jr.
Director
Labor Standards & Safety Division

0681s

RECEIVED

JAN 2 0 1990

NIKISKI, JAN 22,1990

TO: The Hon. Rep. Mike Navarre

RE: STATE STATUTES/WORK WEEK/WORK SCHEDULE

FROM: Kurt Kristensen
RR # 1, BX 945
Kenai, AK 99611
Ph: 907-776-8591

To Whom it May Concern:

Since the legislature is getting ready to face another year's agenda, I would like to raise, once again, the flag on a perversion of the Alaska Wage Statutes that allow employers to schedule workers on weekly schedule that stays different from the week y period used for payroll application, read " overtime .

I sent letters covering this subject to:

1. Sen Kerttula, Feb 2, 1989
He forwarded a copy to Sen. Eliason.

2. Rep M. Navarre, Sept 25, 1989
He forwarded a copy to Rep. D. Donley

This letter is simply meant as a reminder that the issue is still out there and being abuse increasingly blatant.

Please Contact Thomas E Stuart Jr. Director of Labor Standards & Safety Refer to my letter from him Jan 3, 1988 and Dec 2, 1988).

The thrust of new legislation needs to be that no employer may carry a payperiod that differs from that of the regularly scheduled work period, typically this would mean that if you work any 7 days in a sequence and worked 12 hours each day, you would be paid at 40 hours of straight time remuneration and at 44 hours of at least time and one half.

I am sending this reminder of my concern to: Donley,Navarre, Eliason, Szymanski.

No correspondence has ever been received by the said chairpersons, Mr. Donley & Mr. Ellason, so I can but assume that so far this has not received anyn priority at all.

Respectfully,

Ken Christensen

IN THE MATTER OF THE ARBITRATION	ARBITRATOR'S
BETWEEN	OPINION
KETCHIKAN PULP COMPANY	AND
"THE COMPANY" OR "THE EMPLOYER"	AWARD
AND	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547	
"THE UNION" OR "LOCAL 1547"	Unit Grievance - Overtime AAA File 75 L300 0254 88

HEARING: October 6, 1989
Ketchikan, Alaska

BRIEFS: Union's Received: November 20, 1989
Employer's Received: November 17, 1989
Employer's reply brief: December 4, 1989
Union's reply brief: (Arbitrator informed on December 12, 1989 no reply brief)

HEARING CLOSED: December 12, 1989

ARBITRATOR: Timothy D.W. Williams
9 Monroe Parkway, Suite 280
Lake Oswego, Oregon 97035-1425

REPRESENTING THE EMPLOYER:

Chris Biencourt, Attorney at Law

REPRESENTING THE UNION:

Helene Antel, General Counsel
Vera Plumb, Assistant Business Manager

APPEARING AS WITNESSES FOR THE EMPLOYER:

Clyde L. Johnson, Industrial Relations Manager

At the hearing the parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make arguments in support of their positions. The Arbitrator made a tape of the hearing but notified the parties that it was not an official transcript, just a supplement to his notes.

At the close of the hearing, the parties were offered an opportunity to file closing arguments in the form of a post-hearing brief. Both parties accepted and the briefs were received in a timely fashion. An opportunity was also provided to file reply briefs. The Employer accepted that offer and the Union declined. Thus the award, in this case, is based on the evidence and arguments presented during the hearing, and the arguments presented in the post-hearing briefs and the reply brief.

STATEMENT OF THE FACTS

Ketchikan Pulp Company and International Brotherhood of Electrical Workers, Local 1547, are parties to a collective bargaining agreement effective July 4, 1988 to and including May 31, 1989 (Joint Exhibit #1, page 2). The grievance in the instant dispute arose under that agreement.

The grievance was filed by Tony Alenskis on behalf of the IBEW bargaining unit (Joint Exhibit #2). The labor agreement calls for a Monday through Sunday workweek (Joint Exhibit #1, page 12). Within that workweek, a substantial number of bargaining unit members work a rotating shift. In other words, the days that are worked within the workweek change from week to week. A complete review of this schedule is reproduced below:

	Workweek 1	Workweek 2	Workweek 3	Workweek 4
Shift	M T W Th F S Su	M T W Th F S Su	M T W Th F S Su	M T W Th F S Su
11 PM - 7 AM (graveyard)	D D A A A A A	A A B B B B B	B B C C C C C	C C D D D D D
3 PM - 11 PM (swing)	C C C C D D D	D D D D A A A	A A A A B B B	B B B B C C C
7 AM - 3 PM (day)	B B B B B C C	C C C C C D D	D D D D D A A	A A A A A B B
Day Off	A A D D C B B	B B A A D C C	C C B B A D D	D D C C B A A
Calculation of Regular and Overtime Hours for "A" Crew				
Regular Hours	0 0 8 8 8 8 8	8 8 0 0 0 8 8	8 8 8 8 0 8 0	8 8 8 8 8 0 0
Overtime Hours	0 0 0 0 0 0 0	0 0 0 0 0 0 0	0 0 0 0 0 0 8	0 0 0 0 0 0 0

(Joint Exhibit #3.B.)

With the exception of a couple minor changes in shift starting time and a brief period in the mid-1980's when shift rotation was reversed, KPC's Industrial Relations Manager Clyde Johnson testified that the above schedule has remained essentially unchanged since the pulp mill commenced operations in 1954. At various times since 1954 this work schedule has led to discussion between the parties with the last such discussion occurring as part of the negotiations over the 1988 agreement (Union Exhibit #1). The Union has never particularly liked this schedule, but no specific language has been negotiated to alter the Employer's practice. The language in the 1988-89 labor agreement covering workday and workweek remained unchanged from the prior agreement (Joint Exhibit #8, page 14).

The Union's grievance claims that the Employer's shift scheduling practice violates the existing labor agreement because it violates state and federal wage and hour laws. Specifically, the grievance states:

> Article VII, Section 5, Subsection 1-B and Article X -- State and Federal Laws are incorporated within the contract requiring the Company to comply with the Fair Labor Standards Act. Company is in violation by requiring employees to work seven consecutive days without paying overtime. Week defined in Article VI, Section 5.
>
> (Joint Exhibit #2)

The parties processed this grievance through the steps of the grievance procedure but were unable to resolve it. Thus it was set for arbitration.

STATEMENT OF THE ISSUE

The parties gave the Arbitrator two different statements of the issue. The Union framed the issue as follows:

1. Is the Employer violating the collective bargaining agreement by consistently scheduling bargaining unit employees to work other than a Monday through Friday workweek?

   (a) If so, what is the appropriate remedy?

2. Is the Employer violating the collective bargaining agreement by scheduling bargaining unit employees to work seven consecutive days without paying overtime?

   (a) If so, what is the appropriate remedy?

3. Is the Employer violating State or Federal Law by scheduling employees to work seven consecutive days without paying overtime?

   (a) If so, what is the appropriate remedy?

The Employer argues to state the issue as follows:

> Does the manner in which the Company calculates overtime for rotating shift employees violate the parties' labor agreement?

In the absence of agreement on the issue statement, the Arbitrator frames the issues as follows:

1. Is the Employer violating Article VII, Sections 4 and/or 5 of the collective bargaining agreement by scheduling bargaining unit employees to work a rotating shift during a Monday through Sunday workweek without paying overtime?

2. Is the Employer violating Article VII, Sections 4 and/or 5 of the collective bargaining agreement by scheduling bargaining unit employees to work seven consecutive days without paying overtime?

3. Is the Employer violating Article X of the collective bargaining agreement by assigning employees to work a rotating schedule within a Monday through Sunday workweek and/or to work seven consecutive days without paying overtime?

4. If any of the above three issues is answered in the affirmative, what is the appropriate remedy?

APPLICABLE CONTRACT LANGUAGE

PREAMBLE

* * * * *

The Company retains all rights except as those rights are limited by the subsequent Sections of this agreement. Nothing anywhere in this agreement (for example, but not limited to, the Recognition and/or Arbitration Sections) shall be construed to impair the right of the Company to conduct all its business in all particulars except as modified by the subsequent Sections of this agreement.

* * * * *

ARTICLE 1
Effective Date-Termination-Amendments-Arbitration

* * * * *

SECTION 4. ARBITRATION

* * * * *

5. The arbitrator shall not have the authority to modify, add to, alter or detract from the provisions of this agreement or to impose any obligation on the signatory union or signatory company not expressly agreed to by the terms of this agreement.

* * * * *

ARTICLE VII
Wages-Definitions-Overtime-Holidays

* * * * *

SECTION 4. DEFINITIONS

1. The word "Day" for the purpose of payroll computation means a period of twenty-four (24) hours beginning at 0701 or at the regular hour of changing shifts nearest to 0701.

2. The word "Week" means a period of seven (7) calendar days beginning at 0701 Monday morning or at the regular hour for changing shifts nearest to 0701 for the purpose of payroll computation.

SECTION 5. OVERTIME

1. Any employee paid on an hourly basis will, in addition to his straight time pay, receive overtime at one-half (1/2) the straight time hourly rate of the job for:

   A. All work performed in excess of eight (8) straight time hours in any one day or all work performed in excess of eight (8) consecutive hours when an employee works across the end of a day into the following day.

   B. All work performed in excess of forty (40) straight time hours in any one week.

* * * * *

ARTICLE X
Governmental Regulations

It is the intention of the parties hereto to comply with all applicable provisions of State or Federal Laws, and they believe that each and every part of this contract is lawful. All provisions of this contract shall be complied with unless any of such provisions are declared invalid or inoperative by any court of last resort and final jurisdiction. In the event any provisions are declared invalid as set forth in this ARTICLE, the Union may, at its option, require re-negotiation of said invalid provisions for the purpose of reaching an adequate replacement thereof.

POSITION OF THE UNION

The Union advanced four primary arguments in support of the grievance. First, the Union notes the language of Article X which pledges that the parties will "comply with all applicable provisions of state or federal laws,..." Alaska

Administrative Code, notes the Union, requires that the workweek not be artificially adjusted for the purpose of avoiding the payment of overtime. The sole purpose for implementing the rotating shift schedule was to avoid overtime. Thus the rotating schedule is in violation of Alaska Statute, and as a consequence is in violation of Article X of the parties' labor agreement.

Second, the Union turns to the definitions of the work day and workweek in the collective bargaining agreement and emphasizes that the parties have agreed on a standard workweek. However, bargaining unit members are not being assigned to a standard workweek, argues the Union. Rather their workweek is being constantly shuffled around. The Union asserts that its membership has the right to expect the Employer to abide by the terms of the collective bargaining agreement and those terms require either the standard workweek or the payment of overtime when the standard workweek is not used.

Third, the Union contends that the work schedule is a mandatory subject of bargaining and thus the Employer cannot unilaterally impose whatever schedule it wishes. Rather it must negotiate the schedule with the Union. Since the Union has a history of disagreeing with the rotating shift schedule, that schedule has never been properly put into place. As a consequence the Employer should rescind the schedule or pay overtime, and negotiate with the Union over this issue.

Finally, the Union takes exception to the Employer's claim of a past practice. The Union emphasizes that the practice which has never been agreed to by the Union, and has been frequently contested. Moreover, the Union strongly emphasizes that employees consistently receive work schedules that include active duty for seven days in a row. The Union believes that a schedule of seven days in a row, under Alaska Statute, becomes the workweek as opposed to any "paper" workweek. Therefore even under the Employer's practice, employees would be entitled to overtime compensation for the sixth and seventh day of their workweek.

In summary, based on the above four arguments the Union urges the Arbitrator to sustain the grievance and rule that the Employer's rotating work schedule is a violation of statute and consequently a violation of the collective bargaining agreement. As a remedy the Union urges the Arbitrator to direct the Employer to make, "all employees who have been denied overtime as a result of working the rotating shift should be made whole for all lost overtime and all lost wages and benefits" (Union's brief, page 17).

POSITION OF THE EMPLOYER

The Employer advanced three primary arguments in support of its position that the grievance was without merit and should be rejected by the Arbitrator. First, the Employer contends that its rotating shift schedule is consistent with the parties' collective bargaining agreement. Specifically

the agreement requires overtime payment of time and one-half if an employee works in excess of 40 straight-time hours in any one week. A week is defined in the contract as seven calendar days beginning on Monday morning. A close review, argues the Employer, of the 28 day work cycle shows there is only one week in which employees work greater than 40 hours within the Monday through Sunday cycle. The employee is compensated at the overtime rate for those hours. In each of the other three weeks employees work only 40 hours and therefore no overtime pay is owed.

Second, the Employer takes the position that the Arbitrator should not take upon himself the judicial role of interpreting state and federal statute. That is a role reserved for the legal system. Moreover, there is nothing in this case, insists the Employer, which requires the Arbitrator to assume this role. In fact, Article X of the labor agreement specifically indicates that a court of last resort should determine whether or not provisions of the labor agreement were consistent with external law. This arbitration proceeding is obviously not such a court and therefore should not assume that duty.

Third, the Employer indicates that if the Arbitrator should undertake a review of external law, he would find the Company's practice consistent with and not in violation of both state and federal statute. A workweek is defined in statute as a fixed, recurring seven day cycle. The Employer is prohibited from working its employees for more than forty

hours during that week unless overtime compensation is paid. The Employer contends that it has a fixed seven day cycle (Monday through Sunday) which has remained unchanged since 1954 and that it always pays overtime wages for any hours worked in excess of 40 during that fixed cycle. Therefore it is in full compliance with statute.

The Employer further emphasizes the fact that its rotating schedule of seven days active duty without overtime compensation has been declared by the courts to be legal under Fair Labor Standards Act (FLSA) if the seven days span two fixed weekly cycles. That is precisely what his current work schedule provides, insists the Employer, and therefore the seven continuous days of duty without overtime compensation does not violate the law.

In summary, based upon the above three arguments the Employer urges the Arbitrator to deny the grievance.

ANALYSIS

There are three different interrelated issues before the Arbitrator in this case. All of these issues focus on the bargaining unit members' workweek and the extent to which the workweek is in compliance with both the language of the labor agreement, and federal and state statute. Specifically the issues focus on: 1) whether the rotating schedule violates Article VII, Sections 4 and/or 5, 2) whether the work schedule that calls for seven continuous days of work without overtime compensation violates Article VII, Sections 4 and/or 5, and 3)

whether either the rotating schedule and/or the seven consecutive day schedule violates Article X of the collective bargaining agreement. The Arbitrator will discuss each of these issues separately.

Rotating Schedule

The work schedule that is in question is reproduced on page 4 of this award. It is clear from the schedule that if you track the work assignments for any given employee, the days of the week and the shift that is worked change from week-to-week. The schedule provides for a Monday through Sunday workweek, but the employee works seven continuous days. This rotating schedule is based on seven days on and two days off, seven days on and one day off, and seven days on and four days off. However, the seven days are worked in such a way that in most cases at least two of the seven are part of a separate workweek. With this schedule there is only one week out of four that an employee works a sixth day. For this week an employee is compensated for 48 hours with eight of the hours coming at overtime wages. The other three weeks an employee is given 40 hours of straight time pay.

The Union argues that this schedule violates the collective bargaining agreement because the parties agreed to a standard workweek. This rotating schedule which involves continuous periods of seven days active duty is not a standard workweek. A standard workweek is five days on and two days off.

The Employer argues to the contrary that the parties have negotiated a standard Monday through Sunday workweek and for 40 hours of work within that week. Anything over the 40 hours is to be compensated at time and one-half. The rotating schedule, asserts the Employer, fully complies with that agreement.

The Arbitrator carefully reviewed the language of the agreement and the above arguments of the parties and finds the position of the Employer the more persuasive. The labor agreement is silent as to the specifics of the employees' daily work schedule. The agreement does define a workweek as seven calendar days beginning on Monday morning (VII,4,2). The agreement also provides for overtime compensation for more than eight hours of work in a single day (VII,5,1,A) and for all work performed in excess of 40 straight-time hours (VII,5,1,B). Absolutely nothing in the agreement, however, places a restriction on the Employer's right of scheduling the eight hours in a day or the 40 hours in a week. The parties might have agreed to language such as, *an employees' workweek will consist of five consecutive days of work within the workweek*. However the parties did not place any such language in the agreement and the Arbitrator is prohibited by Article I,4,5 from modifying, altering or adding to the agreement.

Moreover, the Preamble to the labor agreement specifically reserves to the Employer all rights except as "are limited by the subsequent sections of this agreement" (Joint Exhibit #1, page 1). Since there is no language in the

agreement that places a limit on the right of the Employer to schedule workdays within the workweek, with the exception that a workday of longer than eight hours must be compensated at the overtime rate for all hours beyond the eight, then the Arbitrator concludes the Employer has the contractual right to schedule those hours as it determines.

The Arbitrator emphasizes that his conclusion that the rotating schedule does not violate the labor agreement is not intended as an endorsement of that schedule. In fact, the Arbitrator has some sympathy for the Union's position primarily because the rotating schedule clearly places a greater burden on individual employees than does the fixed, Monday-Friday schedule. But, in the Arbitrator's view, the language of the agreement is clear and thus the above conclusion evolves from an application of the language of the agreement to the facts of this case.

Seven Day Schedule

For most of the IBEW bargaining unit members, their work schedule involves three seven day periods within a 28 day cycle. For the 21 days they work, the employees are given only one day at the overtime rate. It is the Union's contention that seven consecutive days of work requires the payment of two days of overtime. Thus the employee should be receiving six days at the overtime rate rather than one day. The Employer argues to the contrary that the number of consecutive days of work are not addressed in the labor

agreement, the only issue is the number of days of work within the designated workweek. Since there is only one work week in the 28 day cycle that has more than five actual days of work then that is the only week in which overtime wages are owed.

Having reviewed the parties' evidence and arguments on this issue, again the Arbitrator finds the Employer's position the more convincing. His rationale with regard to the contract language is essentially similar to that under the prior issue. The labor agreement is clear as to when overtime is owed within the workweek-hours beyond eight in the workday and more than 40 hours in the workweek. The contract is completely silent as to the question of consecutive days of work beyond five which extend into a second workweek. Had the parties intended that the agreement be read such that a sixth or seventh consecutive day of work, or work on Saturday and Sunday be paid for at the overtime rate, language establishing that right ought to have been placed in the labor agreement. Article I, Section 4,5 clearly bars the Arbitrator from adding that language on his own authority.

As to the Union's contention that an employee's workweek starts with the first day in the seven consecutive days, the Arbitrator finds no support for this contention within the language of the agreement. There is nothing in the agreement that requires the first day of the designated workweek to be an actual workday. It is true that the standard workweek for most employees consists of a Monday through Friday work schedule. But the contract does not provide any overtime

penalties for a schedule that begins on other than a Monday. Overtime penalties occur only when the employee works more than eight hours in a workday or when the cumulative hours in a workweek are greater than 40.

As the Arbitrator has previously indicated, he is sympathetic with the Union's concern over this issue because the rotating work schedule, with repeated intervals of seven continuous days of work, is substantially more difficult than the standard five on two off schedule. However, the Arbitrator cannot place restrictions, that go beyond those found in the labor agreement, on the Employer's right to schedule employees. The Managements Rights' clause of the Preamble and the specific language of Article VII lead the Arbitrator to conclude that the Employer has the right to use a seven continuous day work schedule, which is divided between two designated workweeks, and not pay overtime.

Fair Labor Standards Act

Article X of the parties' labor agreement establishes that, "It is the intention of the parties hereto to comply with all applicable provisions of state and federal laws" (Joint Exhibit #1, page 18). It is the Union's contention that by failing to pay overtime wages for the sixth and seventh day of the seven day work schedule, the Employer is in violation of federal and state statute and therefore in violation of the above language from the labor agreement. The Employer argues first that the Arbitrator has no jurisdiction

to interpret federal and state statute but, second, if he did he would find that the existing work schedule is in full compliance with federal and state statute.

The Arbitrator begins his analysis[1] of this third and final issue by emphasizing that it is far more complex than the first two issues. What is at dispute are the federal and state versions of wage and hour legislation. Additionally, the Union raises the issue of whether the work schedule is a mandatory subject of bargaining under the National Labor Relations Act (NLRA) and not subject to the unilateral discretion of the Employer. The Arbitrator will continue his analysis by first looking at applicable wage and hour legislation and then examining the Union's claims with regard to the NLRA.

A basic claim of the Union is that the workweek is established by the days actually worked not by an artificial setting of a beginning and ending point (Union's Brief, page 13). Moreover, contends the Union, since bargaining unit

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[1]The Arbitrator considered the Employer's claim that he is without authority to review federal and state statute to determine compliance. The Arbitrator concludes that the Employer misread the language of Article X. The language pledges the parties to comply with applicable provisions of state or federal law and further provides that all parts of the contract will be complied with unless "declared invalid or inoperative by any court of last resort" (Joint Exhibit #1, page 18). The Arbitrator agrees with the Employer that he has no authority to declare any portion of the contract "invalid" or "inoperative." However, there is nothing in the language of Article X which indicates that the Arbitrator has no authority to provide a ruling on whether the Employer's practices with regard to work scheduling is in compliance with state or federal law. In making such a ruling, the Arbitrator is not out to invalidate any portion of the agreement but rather is attempting to determine whether the Employer's practice is appropriate. Thus it is the Employer's practice under scrutiny to determine compliance. The Arbitrator is not reviewing the agreement to see if it should be invalidated. Article I, Section 4 makes it clear that the Arbitrator has full authority to resolve any dispute "arising under the terms of this agreement" (Joint Exhibit #1, page 3). Article X is part of the agreement and there is a dispute over whether the Employer has violated this provision in the way that it schedules work assignments. Thus the Arbitrator has jurisdiction over this matter.

members do not work the workweek described in the collective bargaining agreement, that provision serves only a limited accounting or payroll purpose.

The Arbitrator can find no support in federal or state law for the above position. The Arbitrator finds nothing in statute which indicates that the days actually worked by the employee defines the workweek. If this were true then each employee could have a different workweek and the beginning and ending point of each workweek would constantly change.

In fact, the Arbitrator believes that it is the Union's interpretation of the work schedule that is inconsistent with both federal and state wage and hour legislation. The Arbitrator points specifically to the Wage and Hour Manual put out by the Department of Labor in which it sets out the following definition of a workweek:

> An employee's workweek is a fixed and regularly recurring period of 168 hours-seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act.
>
> Joint Exhibit #7, page 15

The Arbitrator takes special not of two specific portions of the above language. First is the phrase, "regularly recurring period of 168 hours. . . .once...established, it

remains fixed regardless of the schedule of hours worked by him." The Arbitrator believes this language requires that, whatever the start of the workweek, it must consist of seven full days and, once established, recurs over-and-over.

The second phrase of importance from the Wage and Hour Manual is the words "the beginning of the workwe· may be changed if the change is intended to be permanent." Under the Union's scenario, an employee's workweek begins with the first of the seven consecutive days of work. This means that the day an employees workweek starts would change for each new workweek. In the Arbitrator's view, this directly contradicts the language that permits change in the start of the workweek but only if that change is intended to be permanent. Moreover, the schedule for employees is a 7-2, 7-1, 7-4. Under the Union's analysis, the 2, 1 and 4 days off are never placed in a workweek. This is true because by statute the workweek is but seven days. Since there is a seven day workweek that proceeds each of the group of days off and a seven day workweek that follows; there is no place to put the days off. The Arbitrator knows of no ruling of federal or state wage and hour legislation that allows for the omission of calendar days from the work schedule. Moreover, as it should be, under the Employer's practice and the language of Article VII of the agreement, every calendar day of the month is accounted for.

The conclusion by the Arbitrator that a workweek under wage and hour legislation is not created by seven consecutive

days of work is made after carefully evaluating the court cases cited by the Union. The key case is one involving a dispute over whether an employee was in a position which would exempt him from overtime compensation. The Employer had taken the position that he was not and failed to provide overtime pay for work beyond 40 hours in the workweek. The courts ruled that he ought to have been given overtime compensation and thus was faced with the problem of determining which of the hours worked were overtime (Musaara, 602 P.2d 1240 (1719)).

The Arbitrator does not find the above case relevant in the instant dispute. In that case the court was not ruling on the makeup of the workweek. Rather the court was ruling on whether the damages awarded by a jury should have been doubled. Thus the courts off-handed reference to the workweek can hardly be considered a specific legal definition.

Moreover, the second case cited by the Union also does not involve a dispute over the definition of a workweek. In that case (Roland Electric Co. v Black 163 f.2d 417 (4th Cir. 1947)[2] is concerned with whether bonuses can be counted as overtime payment. As in the first case, the reference to a workweek is in an off-hand manner and can hardly be an attempt by the court to specifically define whether days worked is the equivalent of the workweek. As such, the Arbitrator finds no support for the Union's position in the cases cited.

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[2]Copies of both of the cases are attached as an appendix to the Union's brief.

In addition to its emphasis on the seven consecutive days of work as defining the workweek, the Union also notes the language of Alaska Administrative Code which emphasizes that "the workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime" (Union Brief page 10). The Union claims that the rotating shift schedule was put into place specifically for the purpose of avoiding overtime and therefore is in violation of the above provision.

The Arbitrator cannot agree. The Arbitrator finds that the word workweek as found in Alaska Administrative Code is not intended to be defined to include the work schedule within the workweek. Arbitral note is taken of the fact that employers regularly attempt to schedule work during the workweek to avoid overtime compensation. This is particularly true in organizations that require 24 hour operations such as hospitals, police departments, etc. While the days that employees work may get changed from week-to-week, overtime is owed only if the total hours in each designated week exceeds 40.

What the Employer is prohibited from doing by the above cited section of AAC is to set a designated workweek, such as a Monday through Sunday week, and then to alter the designation for the purposes of avoiding overtime payment. As was noted under the Federal Wage and Hour Manual quoted on page 19 of this award, change in the designated workweek is permitted only if the change is intended to be permanent and if it is not made simply to avoid overtime payment. But,

nothing within the cited Alaska Administrative Code or federal statute puts an overtime restriction on the manner in which the hours of work are scheduled within the designated workweek.

The second statutory claim raised by the Union involves the National Labor Relations Act. The Union argues that the work schedule is a mandatory subject of bargaining and thus the fact that the Employer has unilaterally implemented the rotating schedule violates the requirements of the National Labor Relations Act. Any work schedule must be negotiated with the Union before implementation.

The Arbitrator agrees with the Union that the work schedule is a mandatory subject of bargaining. However, he disagrees with the Union that the continued use of the rotating work schedule by the Employer, without the approval of the Union, in the instant case is a violation of statute. There are some unique dimensions of this case which, in the Arbitrator's view, permit the Employer to continue using the existing, rotating work schedule without subjecting it to mid-term negotiations. First is the fact that the existing schedule has been in place since 1954 (testimony of Clyde Johnson). During that time the IBEW and the Employer have negotiated numerous labor agreements. At each of those negotiations the Union had full opportunity to place a proposal on the table with regard to the work schedule and demand negotiations, but there is no evidence of any such negotiations or agreement based on these negotiations.

In this regard, the Arbitrator notes Union Exhibit #1 which demonstrates that discussions did occur over work schedules during the negotiations for the labor agreement which was in place at the time the instant grievance arose. The evidence indicates that the Union objected to the work schedule, the Employer defended the existing work schedule and the parties agreed to retain the language covering the workweek and overtime compensation as found in the prior agreement. No agreement was reached to incorporate any new language into the labor agreement on work schedules; and the Employer continued, without change or interruption, its established practice with regard to the work schedules.

Thus it appears to the Arbitrator that the Union had the opportunity to negotiate a new work schedule but failed to achieve its negotiation goals. Having failed in its objectives, the Union cannot now turn around and ask the Arbitrator to implement what it could not acquire at the bargaining table.

The above conclusion by the Arbitrator is made after carefully reviewing the National Labor Relations Board Rulings found in the Appendix to the Union's brief. The Arbitrator could not find any of those cases to be applicable to the instant dispute. In each of them the issue was not the continuation of a 25 year practice with regard to work schedules but rather the unilateral implementation of a new work schedule. Had the Employer, in the instant dispute, implemented a new work schedule after the parties had signed

the labor agreement, then the Union under the National Labor Relations Act would have the full right to demand to bargain the new schedule. It is the Arbitrator's conclusion that the right to a mid-term negotiation over a mandatory subject of bargaining is predicated on either a change in the Employer's practice with regard to that subject and/or the implementation of a new program involving a mandatory subject. However, where the Employer has a clearly established, long-term practice with regard to a mandatory subject of bargaining, where the Union has had repeated opportunities to negotiate over that practice during the time of regular negotiations of successor agreements, and where the Employer does not alter that practice; then there is no right for the Union to demand negotiations over the practice during the term of the agreement.

This conclusion by the Arbitrator clearly leaves it open to the instant Union to place proposals related to the work schedule before the Employer during the negotiations for the next successor agreement and demand that those proposals be negotiated. However, from the Arbitrator's prospective, the Employer did not violate the National Labor Relations Act by continuing, during the term of the existing labor agreement, its long-term practice of using rotating work schedules for members of the IBEW bargaining unit.

CONCLUSION

Based on the Arbitrator's finding that the rotating schedule does not violate Article VII, that a work schedule calling for seven continuous days of work over two designated workweeks without overtime compensation does not violate Article VII, and that the Employer's rotating shift schedule/seven continuous days of work does comply with applicable provisions of state and federal law; he denies the grievance and rules for the Employer in this dispute. An award consistent with these findings and conclusions will be entered.

IN THE MATTER OF THE ARBITRATION BETWEEN KETCHIKAN PULP COMPANY "THE COMPANY" OR "THE EMPLOYER" AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547 "THE UNION" OR "LOCAL 1547"	ARBITRATOR'S AWARD Unit Grievance - Overtime AAA File 75 L300 0254 88

After careful consideration of all arguments and evidence, it is awarded that:

1. The Employer did not violate Article VII, Sections 4 and/or 5 of the collective bargaining agreement by scheduling bargaining unit employees to work a rotating shift during a Monday through Sunday workweek.

2. The Employer did not violate Article VII, Sections 4 and/or 5 the collective bargaining agreement by scheduling bargaining unit employees to work seven consecutive days without paying overtime, as long as at least two of those days are in a separate Monday through Sunday workweek.

3. The Employer did not violate Article X of the collective bargaining agreement by assigning employees to work a rotating schedule within a Monday through Sunday workweek and/or to work seven consecutive days without paying overtime.

Respectfully submitted on this the 21st day of January, 1990 by,

Timothy D. W. Williams

Timothy D. W. Williams
Arbitrator

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February 7, 1990

Representative Dave Donely - Chairman
Alaska State Legislature
Labor and Commerce C-17
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donely,

I appreciate the opportunity to testify before your committee yesterday regarding HB 430.

The committee substitute that was presented at the opening of the hearing was certainly less onerous than the original bill presented.

However, I have some observations regarding the bill and the subsequent C.S.:

1) We have been presented with a wrecking ball when it appears that a tack hammer might be required.

2) It appears that Federal and Alaska law already deals with the wage issues HB 430 was addressing - enforce the laws we have - don't layer them

3) If the work week needs definition then define it - in a bill of its own!

4) The issues mixed in HB 430 are a real "fruit basket" approach to legislation. Arctic/remote camps should not be dealt with in the same bill as overtime pay, work week, etc.

5) The bill and CS both exclude well over 50% of Alaska's work force - as I stated in my testimony - if there is a problem (and I believe there may be a problem in fast food and a limited number of other work forces) then address the problem.

6) As the D.O.T. spokesperson pointed out they can solve the camp issue internally - allow them to - do not take $19 million in potential wages to Alaskan workers and give it to outside camp builders

I have additional thoughts regarding these issues but I should like to close by stating that I am individually deeply committed to the well being of all of Alaska's work force - this bill and its CS are not going to help Alaskan workers and carry a great potential for harm. Please withdraw this legislation.

Sincerely,

Randall D. Kowalke

cc: Max Gruenberg, Jr.
"Red" Boucher
Mark Boyer
David Finkelstein
Virginia Collins
Loren Leman

HOUSE COMMITTEE REPORT

(7)
Date Referred: January 19, 1990 FURTHER REFERRALS:

FINANCE

Date of Committee Action: 3/15/90

The LABOR & COMMERCE Committee considered: HB 430

HOUSE BILL NO. 430 OVERTIME WAGE REQUIREMENTS

"An Act requiring that overtime wages at twice the regular rate of pay be paid for certain work days and work weeks; requiring that overtime wages at one and one-half times the regular rate of pay be paid for certain work following the fifth consecutive day of work; defining 'day' and 'week' for overtime wages; and relating to food and housing for construction workers at remote construction sites."

RECOMMENDATIONS:

[✓] be replaced with CSHB430 (L+C) [ ] the same title [✓] a new title

[ ] have attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact_____ [ ] fiscal note(s) _____

[ ] zero fiscal note_____ [ ] zero fiscal note(s)_____

[ ] zero with analysis_____ [ ] zero fn/analysis _____

SIGNING DO PASS:

Gruenberg

Finkelstein

Donley

Boucher

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Collins	X		
Lemon	X		

David Donley

Chairman's Signature

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 430 (L&C)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act requiring that overtime wages...be paid..."
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce

Agency Affected: Labor
BRU: Labor Standards & Safety
Components: Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: there is no fiscal impact in FY 90

Prepared by: Tom Stuart, Director — Phone: 465-2712
Division: Labor Standards & Safety — Date: 2/6/90

Approved by Commissioner: Jim Sampson — Date: 2/6/90
Agency: Department of Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS HB 430 (L&C)
PUBLISH DATE: 2/6/90 (6-1754 H)

REQUEST: FISCAL NOTE

Revision Date:
Agency Affected: DOT&PF
Title: An Act exempting holders of certain permits of licenses relating to big game hunting from the Alaska Wage and Hour ... ... and relating to food and housing for construction workers at remote construction sites."
BRU: Design and Construction
Sponsor: Labor and Commerce Committee
Components:
Requestor: Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	60	60	60	60	60	60
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	60	60	60	60	60	60
CAPITAL	240	240	240	240	240	240
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	300	300	300	300	300	300
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: The fiscal note is based solely on the camp issue (Section 3). We assumed an average of $0.5 million per year of general fund dollars are spent on maintenance projects which would be affected and another $2.0 million in general fund capital projects. To these amounts an average camp cost of 12% was applied. In addition, on federal-aid highway and aviation work, based upon the proposed program for the next six years a cost of $4.0 million per year is anticipated. This would subtract from the buying power of our capital budget, but would not add new costs.

Prepared by: Jeffery C. Otteser, Director
Division: Engineering and Operations Standards
Phone: 465-2960
Date: February 8, 1990

Approved by Commissioner: _____
Date: 2/[illegible]/90
Agency: Department of Transportation and Public Facilities

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

6-1754J
Cramer
3/15/90

Original sponsor(s): Labor & Commerce Committee

IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

C3 FOR HOUSE BILL NO. 430 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring that overtime wages at one and one-half times the regular rate of pay be paid for certain work following the fifth consecutive day of work; exempting certain line haul truck drivers from the requirement for overtime wages; defining 'day' and 'week' for overtime wages; removing certain employees on public works projects from an exemption from overtime wage requirements; and relating to food and housing for certain workers on public works projects at remote sites."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.10.060 is amended to read:

Sec. 23.10.060. PAYMENT FOR OVERTIME. (a) Except as provided in (b) and (c) of this section, an [AN] employer who employs employees engaged in commerce [,] or other business, or in the production of goods or materials in the state [ALASKA] may not employ an employee [NOT ACTING IN A SUPERVISORY CAPACITY, EITHER MALE OR FEMALE,] for a workweek longer than 40 hours or for more than eight hours a day. This section does not apply to the employment of a person acting in a supervisory capacity.

(b) If an [, EXCEPT THAT IF THE] employer finds it necessary to employ an employee in excess of 40 hours a week or more than eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

(c) An employer who employs an employee for at least 40 hours of work at the regular rate of pay in more than five consecutive days without a day off shall pay compensation to the employee for the employee's hours of work on the sixth and seventh consecutive days at the rate of one and one-half times the regular rate of compensation. This subsection applies regardless of the number of weeks in which the consecutive days worked by the employee occur.

(d) This section [, AND THIS PROVISION] is considered included in all contracts of employment.

(e) This section does not apply with respect to

(1) an employee employed by an employer employing less than four employees in the regular course of business, as "regular course of business" is defined by regulations of the commissioner; however, this exemption does not apply to an employee who is employed on a public works project for any day on which the employee performs work on the project;

(2) [REPEALED

(3) REPEALED

(4)] an employee employed in handling, packing, storing, pasteurizing, drying, preparing in their raw or natural state, or canning agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products;

(3) [(5)] an employee of an employer engaged in small mining operations where not more than 12 employees are employed, if the employee is employed not in excess of 12 hours a day or 56 hours a week during a period or periods of not more than 14 workweeks in the aggregate in a calendar year during the mining season, as the season is defined by the commissioner;

(4) [(6) REPEALED

(7)] an employee engaged in agriculture;

(5) [(8)] an employee employed in connection with the publication of a weekly, semiweekly, or daily newspaper with a circulation of less than 1,000;

(6) [(9)] a switchboard operator employed in a public telephone exchange that [WHICH] has fewer than 750 stations;

(7) [(10)] an employee of an employer engaged in the business of operating taxicabs;

(8) [(11)] an employee in an otherwise exempted employment or proprietor in a retail or service establishment engaged in handling telegraphic, telephone, or radio messages for the public under an agency or contract arrangement with a telegraph or communications company where the telegraph message or communications revenue of the agency does not exceed $500 a month;

(9) [(12)] an employee employed as a seaman;

(10) [(13)] an employee employed in planting or tending trees, cruising, or surveying, or bucking, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employer in the forestry or lumbering operations does not exceed 12;

(11) [(14)] an individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(12) [(15)] casual employees as may be liberally defined by regulations of the commissioner;

(13) [(16)] an employee of a hospital whose employment includes the provision of medical services;

(14) [(17)] work performed by an employee under a flexible work hour plan if the plan is included as part of a collective

bargaining agreement;

(15) [(18)] work performed by an employee under a voluntary flexible work hour plan if

(A) the employee and the employer have signed a written agreement and the written agreement has been filed with the department; and

(B) the department has issued a certificate approving the plan which states the work is for 40 hours a week and not more than 10 hours a day; for work over 40 hours a week or 10 hours a day under a flexible work hour plan not included as part of a collective bargaining agreement, compensation at the rate of one and one-half times the regular rate of pay shall be paid for the overtime;

(16) an individual employed as a line haul truck driver for a trip that exceeds 100 road miles one way if the compensation system under which the truck driver is paid includes overtime pay for work in excess of 40 hours a week and for more than eight hours a day and the compensation system requires a rate of pay comparable to the rate of pay required by this section.

(f) In this section,

(1) "day" means 24 consecutive hours;

(2) "public works" has the meaning given in AS 36.95.010;

(3) "week" means the period of time from a Sunday at 12:01 in the morning to the following Saturday at 12:00 midnight.

* Sec. 2. AS 23.10 is amended by adding a new section to read:

Sec. 23.10.440. FOOD AND HOUSING AT REMOTE SITES. (a) Except as provided in (b) of this section, an employer shall provide food and housing to an employee working at a public works project remote site. The housing must meet safety and health standards for housing set out

in the Standards for Occupational and Industrial Structures adopted by the department. The employer may not consider the cost of the food and housing in setting wages for the employee or in meeting wage requirements under AS 23.10.065 or AS 36.05.

(b) An employer who provides adequate transportation to employees is exempt from the requirement to provide food and housing under (a) of this section. Transportation is adequate under this section if it

(1) is available daily at reasonable hours to and from the remote site to a location that provides access to adequate commercially-available housing;

(2) takes no more than 30 minutes to transport the employee from the departure point to the worksite; and

(3) meets applicable transportation safety standards.

(c) The requirements of this section are considered a part of every contract for hire for a public works project in the state. The advertised specifications for the public works project shall contain a provision stating the requirement for providing food and housing at remote sites.

(d) An employee may waive the employee's right to food and housing under this section. An employer may not require an employee to live in housing provided under this section.

(e) The department shall implement this section by regulation.

(f) In this section

(1) "employee" and "employer" have the meanings given in AS 23.10.430;

(2) "public works" has the meaning given in AS 36.95.010;

(3) "remote" means a work site that is either more than 50 road miles or inaccessible by two-wheel-drive vehicles from a place