



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9024

PERSONNEL DEPARTMENT
MICHAEL P. GARDNER,
Director

December 10, 1985

TO: Robert W. Healy
City Manager

FROM: Michael P. Gardner
Personnel Director

SUBJECT: Impact of the Federal Fair Labor Standards Act on the City of Cambridge

In February, 1985, the U.S. Supreme Court decided there was no constitutional prohibition against the Federal Fair Labor Standards Act applying in its entirety to cities and towns. The effective date of this application was determined by the Department of Labor to be April 15, 1985, with enforcement beginning six months later. On November 13, 1985, however, the President signed new legislation (The Fair Labor Standards Act Amendments of 1985) that delayed the effective date of the applicability of the Act to cities and towns until April 15, 1986. This was legislation that you supported in order to soften the impact of the Act on the City (see correspondence attached).

The Act will not cover all City employees. Certain executive (including supervisory) administrative and professional positions are exempt (regardless of whether they are now eligible for overtime). Our office has reviewed our positions with department heads and made a preliminary determination that approximately 30% of the positions in the City are not covered. The City's determination is of course subject to challenges by individuals to the Federal Department of Labor.

For those employees who will be covered by the Act, the primary impacts are as follows:

- 1) Compensatory time, to the extent it is now allowed by collective bargaining, will have to be provided at time and a half hours worked over 40 in a particular work week (it is now provided hour for hour). There is a 240 hour limit on the cumulation of compensatory time (480 hours for public safety personnel). The current City policy of limiting cumulation to 37 1/2 hours should be reviewed to determine if it should perhaps be increased to 56.25 or 75 hours in light of the time and half rule.

Robert W. Healy
Page 2
December 10, 1985

2) All covered employees who do not receive compensatory time (the bulk of our unionized employees) must be paid time and a half their regular rate of pay for all hours worked over 40 during the regular work week. In general this regular rate of pay is higher than the rate on which we now base overtime. By collective bargaining agreements, we typically base overtime rates on one and a half times the regular weekly salary excluding, where applicable, additional compensation such as night differential, weekend differential, longevity payments, etc. FLSA requires that we include these payments in figuring the FLSA mandated rate. For many workers, particularly the most senior ones, the impact will be considerable, adding as much as (theoretically) \$2.40 to the hourly overtime rate of senior night workers. For workers who do not receive longevity or other differentials, this requirement will not effect overtime earnings or our obligations.

In addition to the extra dollar cost involved, this requirement will likely be administratively burdensome, as we are required to keep track of more (and shifting) overtime rates and meet certain federal recordkeeping requirements. The dollar impact of this change on the City will most likely be between 3% or 7% of our total overtime expenditure or \$60,000 - \$140,000 depending on the extent to which those with high differential rates are awarded overtime. This payment can be deferred until next fiscal year.

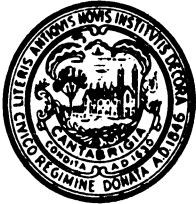
In terms of controlling this cost, the most effective method is probably to more rigorously screen and limit some of the discretionary overtime currently being authorized.

3. For employees covered by the Act, it is no longer permissible for the employee to work more than one City job without incurring the overtime penalty for total hours worked (counting both jobs) over 40 hours per week. I would recommend that all such dual employment arrangements end in an orderly phase out. This does not affect intermittent working, e.g. referees.

One of the most troubling aspects of the statute, prior to the 1985 amendment, was the probability that this dual or joint employment rule would have applied to paid details by police officers and subjected their detail hours to time and a half. The 1985 amendment adequately addressed that issue, so no additional liability will be incurred.

We will continue discussing the impact of FLSA with the City unions during the time prior to its implementation. To the extent permitted by law, its affect on compensation will be a significant topic for discussion during the next round of collective bargaining.

MPG:MBG



CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

December 16, 1985

To the Honorable, the City Council:

In response to Awaiting Report No. 28 regarding the financial impact on the City in view of the Supreme Court decision in the Garcia case (re: Fair Labor Standards Act), please see the attached response from Michael Gardner, Director of Personnel.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert W. Healy", is written over the typed name.

Robert W. Healy
City Manager

Agenda Item No. ⁶
F- 426

Re: response to Awaiting Report Item No. 28
on the financial impact on the City in view of
the Supreme Court decision in the Garcia Case
(Re: Fair Labor Standards Act).

In City Council,

December 16, 1985

Placed on File.