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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-198035

May 27, 1980

Mr. Stephen M. De Mare, President
International Association of
Fire Fighters
Local No. 91
Post Office Box 763
Silver Spring, Maryland 20901

Do not make available to public reading

Dear Mr. De Mare:

We refer to your undated letter, received here on February 29, 1980, requesting the Comptroller General to issue an opinion on whether the Federal Aviation Administration (FAA) is correctly figuring the rate of payment for firefighters performing overtime. While this is not a decision the following information is provided for your assistance.

The basic contention in your letter appears to be that the FAA is arbitrarily interpreting the provisions of the Fair Labor Standards Act (FLSA) and is not paying firefighters at an appropriate hourly rate for overtime. You indicate that your requests for an explanation from the Chief of Payroll as to the manner in which the overtime rate is determined have not produced any satisfactory explanations. Your belief is that firefighters are entitled to be paid the highest rate allowed by law and that the overtime rate under title 5, United States Code, exceeds the rate being paid firefighters presently under the provisions of the FLSA.

Under 29 U.S.C. § 204(f) (1976), the Office of Personnel Management (formerly Civil Service Commission) is the agency charged with administering the FLSA for most Government employees. Regarding Government employees engaged in firefighting, the Civil Service Commission recognized the need for explanatory material relevant to their overtime entitlements and issued Attachments 2, 3, and 4 to Federal Personnel Manual (FPM) Letter 551-5 (January 15, 1975). Attachment 2 explains the method for determining a firefighter's entitlement to overtime under FLSA. This method of computation was approved in 55 Comp. Gen. 908 (1976). Attachment 3 explains a firefighter's entitlement to overtime under title 5, United States Code. This explanation is consistent with previous interpretations of title 5 entitlements as exemplified in decision B-178613, July 6, 1973. Attachment 4 sets forth various examples comparing a firefighter's



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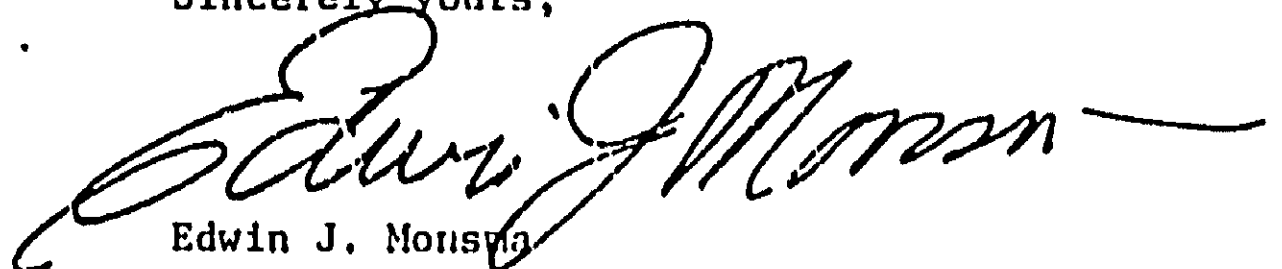
entitlements to overtime under both FLSA and title 5 to determine which system results in the greater entitlement. Copies of the referenced attachments and decisions as well as FPM Letter 551-16 (January 15, 1980) are enclosed.

The enclosed materials are quite detailed and should provide you with the information needed to verify the correctness of overtime payments made by the FAA to fire protection personnel. We cannot comment on the example provided on page 2 of your letter because, among other things, you will find after reading the enclosures that the example lacks required information (e.g., "tour of duty" as explained in Parts B and C of Attachment 2). We would point out to you, however, that a firefighter generally has a tour of duty in excess of 40 hours per week and earns premium pay under 5 U.S.C. § 5545c(1). It is only for irregular or unscheduled hours in excess of the maximum number of hours that can be scheduled (see Part B of Attachment) that a firefighter earns overtime under 5 U.S.C. § 5542(a).

We trust the information supplied will enable you to determine whether firefighters within your local have been properly compensated. If upon review of the enclosed materials any of the firefighters wish to file a claim, he should send it to:

U.S. General Accounting Office
Claims Group, Room 5451
FGMS
Washington, D.C. 20548

Sincerely yours,


Edwin J. Mouska
Assistant General Counsel

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