

Mandatory bus Rides to Plant Deemed not Compensable work time Under FLSA

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An engineering and construction services contractor initially offered its laborers the option of parking at a plant parking lot or participating in a park and ride program which would take the laborers directly to the plant, but then later required all employees to participate in mandatory park and ride. Prior to boarding the buses, laborers scanned their plant badge. While on the buses, the laborers were subject to the contractor's rules regarding use of cell phones, tobacco, alcohol, weapons, etc. Once they arrived at the plant, laborers would scan their badges and proceed to their work station. At the end of their shift, they boarded the buses and returned to the lot. The daily total travel time varied from 40-60 minutes.

The journeyman electrician rode the buses to and from the plant each day. After ending his employment with the company, he filed a collective action claiming that the mandatory busing scheme violated the Fair Labor Standards Act (FLSA) since the laborers were not compensated during the bus rides, but they should have been because the rides were mandatory; the laborers were subject to the contractor's rules while on the bus; and the bus rides were integral and indispensable to their work at the plant.

The contractor successfully sought summary judgment, with the district court noting that the sole fact that the contractor had this mandatory busing scheme did not per se render the travel time to be compensable. The electrician appealed.

The Fifth Circuit Court of Appeals agreed with the district court. First, the Court found that the Portal to Portal Act exempts employee compensation for ordinary commuting to and from work. Next, the Court noted that no circuit has addressed whether a mandatory transportation scheme per se renders the travel time to be compensable under the FLSA. In finding the time to be not compensable, the Court stated that the mandatory busing scheme is "simply normal traveling time that laborers would also be required to undertake by the mere fact of working" at the plant. The laborers were permitted to engage in personal activities such as sleeping and reading during their bus rides, which further confirmed that the time was not compensable.

To back up their decision, the Court pointed to the persuasive interpretive statements of the Wage and Hour Division of the Department of Labor (29 C.F.R. section 790.7(f)), which provide that:

Examples of walking, riding, or traveling which may be performed outside the workday and would normally be considered “preliminary” or “postliminary” activities are (1) walking or riding by an employee between the plant gate and the employee’s lathe, workbench or other actual place of performance of his principal activity or activities; (2) riding on buses between a town and an outlying mine or factory where the employee is employed; and (3) riding on buses or trains from a logging camp to a particular site at which the logging operations are actually being conducted.

The district court’s grant of summary judgment was accordingly affirmed.

For more information read *Griffin v. S&B Engineers & Constructors, Ltd.*, No. 12-40382 (5th Cir., January 11, 2013).

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