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Weekend shelter worker not covered by FLSA

A woman who worked a 48-hour weekend shift at a domestic abuse shelter is not entitled to the protection of the Fair Labor Standards Act because neither she nor the agency is engaged in interstate commerce, the 10th Circuit Court of Appeals has held.

The woman who worked for the Okmulgee County Family Resource Center in Oklahoma was paid for only 40 hours and claimed she was entitled to overtime pay for the additional time. She reported that the executive director of the agency had told the board that the agency had to comply with the FLSA.

The Court said that Congress intended to “regulate only activities constituting interstate commerce, not activities merely affecting commerce” and that a claimant had to show either that the claimant personally worked in interstate commerce or that the enterprise was engaged in interstate commerce.

On the individual coverage, the woman said she handled goods that traveled in interstate commerce, admitted women who had moved across state lines, used a telephone, helped clients upgrade their telephone plans, and secured prescription drugs distributed in interstate commerce for use by clients.

The Court said she did not herself engage in interstate commerce. The FLSA does not cover handling goods merely after they had been delivered into the possession of the ultimate consumer, it said. It found she was not responsible for obtaining clients who had crossed state lines and did not show she regularly used the telephone in interstate commerce. Her help in upgrading telephone plans was “part of the charitable activities of OCFRC, not as a competitor in the cellular telephone business.”

On the issue of enterprise coverage, the Court said that the statement of the executive director “was insufficient standing alone to plausibly indicate OCFRC was engaged in interstate commerce.”

It said that “generally, activities of nonprofits are not considered to be conducted for a common business purpose unless they engage in commercial activity. Nothing in the complaint suggests that OCFRC was engaged in a business purpose or in any type of competition.” (*Reagor v. Okmulgee County Family Resource Center*, 10th Cir., No. 11-7070, 11/14/12.)