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RECREATION AGENCIES CONCERNED ABOUT CHILD LABOR LAWS

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Members of the Great Lakes Regional Council of the NRPA recently expressed concerns about the impact of child labor laws on public park and recreation agencies. Specifically, Illinois was concerned about federal regulations which prohibit a child between the ages of 14 and 16 from working after 7:00 p.m. during the school term. According to the Council's Child Labor Law Task Force, these regulations prevent children in this age group from being "score keepers, concession attendants, etc. in activities that would not end before 7 p.m." Similarly, Minnesota expressed its concern that games in the spring time "begin at 6:00 or 6:30 p.m. and do not end until 7:30 or 8:00 p.m., thus precluding a child under 16 from being a youth official. In one instance, an Illinois park district noted that it was "looking at a possible fine from the Federal Government of $6,000-$10,000" for possible violation of the federal labor laws.

> On a recent audit, they found two concession workers had not clocked out until 7:15 p.m., 15 minutes past the school hour deadline and that three pool guards, on four occasions had worked 15 to 20 minutes past the 9:00 p.m. summer deadline.
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> To avoid the risk of "an even heftier fine" in the future, the park district had decided that it "will not hire children under the age of 16."

According to the task force, the Illinois Association of Park Districts and the Illinois Park and Recreation Association "are working with the Illinois Department of Labor to change some of the language in the present laws." Further, the task force recommended that the "Great Lakes Regional Council make the National Forum [of the National Recreation and Park Association] aware of the laws and how they affect the encouragement of youth working in recreational activities."

As described in the following paragraphs, it is unlikely that federal child labor regulations will be revised any time soon to permit increased employment of 14- and 15-year-olds beyond a narrow exception recently enacted for attendants employed by professional sports organizations.

CHILD LABOR REGULATIONS

The Fair Labor Standards Act (FLSA) prohibits "oppressive child labor." In pertinent part, section 203 of the Act defines "oppressive child labor" as "a condition of employment under which any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent...)." 29 U.S.C. § 203. The FLSA does, however, authorize the Secretary of Labor (Secretary) to regulate limited employment for children between the ages of fourteen and sixteen under the following conditions:

> The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

Pursuant to this authority under the FLSA, the Secretary has issued regulations which limit as follows the hours that 14- and 15-year-olds may work to:

> (1) Outside school hours;
> (2) Not more than 40 hours in any one week when school is not in session;
> (3) Not more than 18 hours in any one week when school is in session;
> (4) Not more than 8 hours in any day when school is not in session;
> (5) Not more than 3 hours in any day when school is in session; and
> (6) Between 7 a.m. and 7 p.m.; except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., non-school weeks. Further, these regulations permit work by 14- and 15-year-olds "in certain occupations in retail, food service, and gasoline service establishments." On the other hand, these regulations prohibit the employment of 14-and 15-year olds "in certain other work, including work prohibited by hazardous occupational orders."

PRO SPORTS EXCEPTION

On May 13, 1994, the Department of Labor (Department) proposed a rule "to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports."(e.g, batboys/girls, ballboys/girls, etc.). 59 FR 25164-01. The proposed rule was the product of a study by the Department "to determine whether a change in the permissible hours of employment for batboys and batgirls would be detrimental to their well-being and whether any changes to existing standards should be proposed."

In 1986, Congress had enacted legislation which directed the Department to conduct this particular study. See section 801, Public Law 99-425 (September 30, 1986). Accordingly, the Department conducted a study in 1986 and 1987 which concluded that "changes in permissible hours and time standards for batboy/girl work would not be detrimental to their health and well-being." The Department based its conclusion on surveys from 157 professional league baseball teams and "selected on-site interviews with parents, teachers, team owners, and batboys/girls." The Department found the "surveyed

youths genuinely enjoyed the experience." Moreover, the Department found "no evidence that school grades were adversely affected by such work."

In reaching this conclusion, the Department effectively rejected the recommendations of its own Child Labor Advisory Committee (CLAC). CLAC was established by the Department in 1987 "to provide advice and guidance in the development of possible proposals to change existing standards." CLAC recommended that "existing hours and time of work standards be retained for 14- and 15-year-olds employed as sports attendants, including batboys/girls." Further, CLAC recommended that "the work performed in such activity be limited to traditional duties, i.e., putting out and taking in field equipment, running errands for players, and supplying the umpire with balls."

YOUTH SPORTS INQUIRIES

In reaching its determination, the Department noted that it had considered other pertinent information, in addition to CLAC's recommendation. Specifically, the Department noted that it had considered the following inquiries "concerning the employment of youth in sports-related activities, such as score keepers, concession stand helpers, ball monitors and sideline officials"

> One inquiry concerned conforming the Federal child labor regulations to a State of Wisconsin provision which permits youths under age 14 to be employed by high schools as ball monitors and sideline officials at football games.
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> Another was received from the Grant County (Kansas) Recreation Commission concerning 14- and 15-year-olds employed as score keepers and concession stand helpers in summer softball, baseball, and other sports programs.

Rather than a change in the FLSA law, the Department advised the Congress that "regulatory modifications, rather than legislative change, would be the best vehicle to address the matter of permissible hours for batboys/girls."

PETITION FOR REVISION

In addition, the Department acknowledged that the National Association of Professional Baseball Leagues, Inc. (NAPBL) had petitioned the Department in June 1993 "to revise the regulation to permit the employment of 14- and 15-year-olds as batboys for professional baseball clubs." Federal regulations allow persons to petition the Secretary of Labor in writing to revise child labor restrictions:

> Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may

> either schedule hearings or make other provision for affording interested parties an opportunity to be heard.

In its petition, NAPBL asserted that "existing hours and time-of-day standards effectively preclude baseball teams from lawfully employing youth under the age of 16."

> The practice of providing sport-attendant experiences to America's youth is a longstanding tradition. As a consequence, many professional and semi-professional sports teams, i.e., baseball, basketball, etc., have violated Federal child labor regulations by employing underage youth, particularly 14- and 15-year olds, as sports-attendants.

Further, the NAPBL contended that "such employment is not adverse to the health and well-being of youth and that the denial of the batboy/girl experience is inconsistent with the intent of the FLSA's child labor provisions." The Department agreed with NAPBL's position:

> The Department believes that a change in the existing Federal hours and times standards to allow employment of 14- and 15-year-olds as batboys/girls, ballboys/girls, or in other sports-attendant capacities would not be inconsistent with FLSA's oppressive child labor provisions...

As a result, the Department proposed the following "narrow exception from the requirements of Child Labor Regulation 3 for such work." Specifically, the proposed exception was "limited to employment by professional sports organizations and would apply only if the duties performed are traditional in nature and the work is outside regular school hours."

> Thus, the current restrictions when school is in session, i.e, 3-hour daily limit, 18-hour weekly limit, and 7 p.m. end-of-day time restriction, and the current 9 p.m. end-of-day time restriction when school in not in session would not apply to 14- and 15-year-old sports-attendants.

In so doing, the Department recognized that "delicate balance exists between the value of jobs that provide positive, formative experiences, and the possible negative effects that excessive employment of youth can have on their academic performance and their health and well-being."

> The Department believes that the proposed change for 14- and 15-year-olds in sports attending activities will not have an adverse effect on their health, well-being, or educational development. Further, the Department believes that the employment opportunities for 14- and 15-year-olds as provided herein is consistent with the purpose of the FLSA to permit safe and healthy employment opportunities under conditions which protect the health, well-being, and schooling of such young workers.

NARROW FINAL RULE

On April 17, 1995, the Department issued its final role which adopted the proposed exception for permissible hours and times standards in the child labor regulations for 14- and 15-year olds employed as spots attendants. In so doing, the Department once again cited its study which had concluded that "changes in the permissible hours and time standards for the employment of spots attendants in baseball would not interfere with their schooling and their health and well-being." In this final role, the Secretary also expressed his belief that "the results of the study are equally applicable to other professional sports.

In taking this action, the Department noted that it had received 26 comments in response to the above described notice of proposed rulemaking published in the Federal Register on May 13, 1994.

> The Department received comments from eight minor league professional baseball teams supporting the Proposed Rule. These organizations stressed the unique and rewarding opportunity that the sports-attendant experience offers to young people. In addition, these commenters emphasized the benefits to young people of engaging in a healthy activity which can be a formative, character building experience.
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> As the Fort Myers Miracle Baseball Club stated "There is no other environment equal to professional sports where a young, man or woman has a chance to interact with local and national role models in a wholesome, family-oriented atmosphere while. also being exposed to practicalities of the business world."
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> The New York State Education Department concurred with the proposed exemption while emphasizing the importance of having the rule specify activities that are acceptable for a sports-attendant to perform, as well as those that are impermissible.

NO EVIDENCE TO SUPPORT OPPOSITION

The Department acknowledged that three advocacy groups (National Consumer League, Child Labor Coalition, and National PTA) and a labor organization (Food & Allied Service Trades) had opposed the proposed rule based on their concern that "the increased hours and late time of day would be deleterious to the young people's health, safety, and education."

> The National PTA opposed lifting the current 18-hour per week restriction, and suggested a case by case evaluation of a student's school attendance and academic record in determining whether a young person should work long hours. Two of the advocacy groups suggested that the proposed rule should be limited to professional baseball.

> Commenters representing the restaurant industry objected to the narrow exemption for sports-attendants, asserting it was unfair to exempt the sports industry from the hours and time restrictions while leaving the restrictions in place for all other employment.

In response, the Secretary stated that he was "sensitive to the concerns of commenters who expressed views that the minors' school work will be adversely affected." Despite such concerns, the Secretary found "an absence of evidence that sports attending work interferes with their schooling." Further, in the opinion of the Secretary, "end-of-day and weekly time restrictions add burdens on employers that would likely discourage the sports organizations from providing these employment experiences altogether." As a result, the Secretary concluded, "on balance, and in light of the lack of specific information to the contrary, working as sports-attendants will not interfere with the schooling and health and well-being of the 14- and 15-year old minors.

> The Secretary finds that this exemption from the existing hours and time of day restrictions to permit 14 and 15-year-olds to work as attendants in professional sports will not constitute oppressive child labor under the FLSA, provided that the employment is limited to traditional duties of typical sports attendants and that 14 and 15-year-old minors are not employed during school hours.
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> The employment of 14- and 15 year-olds as sports-attendants under the terms of the regulation will provide positive, formative experiences to the young people without interfering with their schooling or their health and well being. Such experiences are commonly regarded as opportunities to associate with individuals possessing attributes of success and achievement, i.e., mentors or role models, and in some cases, "heroes," and are genuinely enjoyed by participating youths...
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> Based on the comments, the Secretary believes that narrowly tailoring the exemption to 14- and 15 year-old minors working as attendants in professional sports will enable young people to participate in a memorable and unique work experience.

CONTACT WITH “ROLE MODELS”

In taking this action, the Secretary emphasized that "the work to be performed by sports attendants is strictly limited to those duties that would bring them into personal contact with the players and coaches, and in so doing, would provide the young people with role models."

> Permissible duties of the sports attendant include: Pre- and post-game or practice setup of balls, items, and equipment; supplying and retrieving balls, items, and equipment during a sporting event; clearing the field or court of debris, moisture, etc. during play; providing ice, drinks, towels, etc. to players during play; running errands for trainers,

> managers, coaches, and players before (pre-game set-up and player warm-up), during, and after (post-game activities) a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event.
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> For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or roiling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts, or similar facilities; loading and unloading balls, items, and equipment from team vehicles before anti after a sporting event; doing laundry and working in concession stands or other selling and promotional activities.

In adopting this "narrow" exception to child labor regulations, the Department acknowledged that it was limited to a very small population - 14 and 15-year-olds working as attendants in professional sports. As a result, the final rule failed to address inquiries cited in the proposed rule "concerning the employment of youth in sports-related activities, such as score keepers, concession stand helpers, ball monitors and sideline officials." The Department, however, expressed its intent to address this issue in a separate notice of proposed rulemaking in the Federal Register.

> With respect to comments seeking special treatment for work experiences beyond sports-attending, the Department published in the Federal Register (59 FR 25167) an advance notice of proposed rulemaking requesting the views of the public on any changes they felt were necessary in the child labor regulations (29 CFR part 570). The comment period ended October 11,1994, and the Department expects to publish a notice of proposed rulemaking during 1995. Interested parties will have an opportunity to offer comments on matters of-permissible employment of minors under 18 years of age at that time. In light of this separate rulemaking process, it would be inappropriate for the Department to address such issues in this limited final rule.

In response to a recent telephone inquiry, Department, however, advised NRPA that it has not published, nor does it intend to publish, a notice of proposed rulemaking which addresses public comments received in 1994 regarding an exception to child labor regulations for 14- and 15-year olds employed in recreation and sports programs.

On April 18, 1996, the Wage and Hour Division of the Department of Labor's Employment Standards responded to an inquiry from the NRPA Division of Public Policy regarding "the exemption from the child labor provisions of the Fair Labor Standards Act (FLSA) which permits the employment of certain 14- and 15-year-old minors beyond 7 p.m." In particular, the Office of Enforcement Policy of the Labor Department's Child Labor and Special Employment Team noted that the Departments's above described Final Rule of April 17, 1995 created a "narrow exemption from the hours standards of Child

Labor Regulations No. 3 for 14- and 15-year-olds." To avoid any misunderstanding on the part of NRPA and its affiliates, the Department emphasized that this narrow exception was limited to those 14- and 15- year olds "who are employed to perform *sports attending services* at professional sporting events, i.e., baseball, basketball, football, soccer, tennis, etc." (emphasis of Department)

> The exemption was created, in part, to allow these minors to fulfill their childhood dreams of being close to their sports heroes and should in no way be construed as a signal that the Department does not support the hours limitations established by Child Labor Regulation No. 3.
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> The exemption applies only if the minors are performing traditional sports attendant duties and does not include any other activities that may be performed at sports arenas or parks. Children employed by sports arenas, associations and clubs to perform such work as operating concession stands, selling tickets or other items, clean-up, or duties that are other than the traditional duties of sports attendants are not included in this exemption. The child labor provisions apply to these duties and will be enforced when there is covered employment.

In light of this response from the Department, it appears very unlikely that the Secretary of Labor would revise child labor restrictions in response to a written petition from NRPA or its affiliates to allow increased employment of 14- and 15-year olds in public recreation and sports programs.