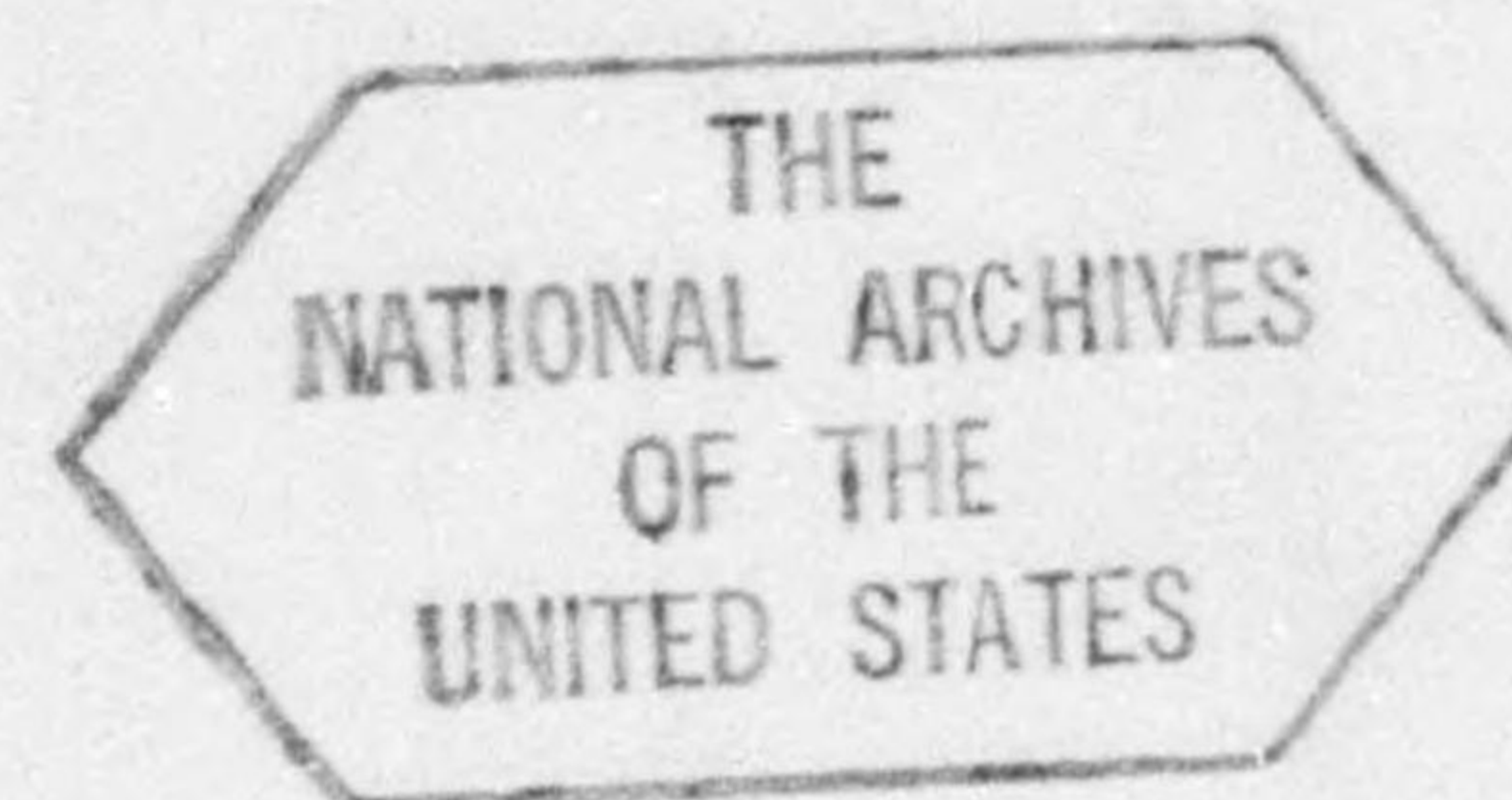


GHQ/SCAP Records(RG 331)
Description of contents



- (1) Box no. 2043
- (2) Folder title/number: (16)
Overtime, Night and Holiday Pay

(3) Date: **Dec. 1948 - June 1949**

(4) Subject:

Classification	Type of record
324	c, e

(5) Item description and comment:
With a List of Papers

(6) Reproduction: Yes No

(7) Film no. _____ Sheet no. _____

NO.	FROM	DATE	TO	SYNOPSIS
1.	M.Salter	Dec 27 '48	Memo for Rec.	Holiday and Overtime Pay for Year-end Leave December 29 to January 3, 1949
2.	J.B.Bettis	Dec 27 '48	Memo for Rec.	Holiday and Over-time Pay for Year end Leave December 29 to January 2.
3.	M.Salter	Dec 27 '48	Memo for Rec.	Holiday and Overtime Pay for Year-end Leave, December 29 to January 3, 1949
4.	J.B.Bettis	Jan 3 '49	J.R.Bell	Rules Governing Hours of work and Computation of Overtime and Holiday Pay
5.	J.B.Bettis	Jan 31 '49	Memo for Rec.	Opinions of ONPA Regarding Enforcement of the Law Administering the New Pay of Government Employees.
6.	J.B.Bettis	Feb 3 '49	Memo for Rec.	Hours of Work, Overtime and Holiday Pay
7.	J.B.Bettis	Feb 14 '49	Memo for Rec.	Computation of Overtime
8.	J.B.Bettis	Feb 15 '49	Memo for Rec.	Computation of Overtime
9.	M.Salter	Feb 17 '49	Memo for Rec.	Overtime Pay
10.	W.P.MacCoy	Feb 21 '49	Memo for Rec.	Repayment of 28-hours overtime--NPA
11.	J.B.Bettis	Feb 21 '49	Memo for Rec.	Technical Interpretations Covering the Treatment of Hours of Work and Overtime as Provided under Law No. 46 of 1948 as Amended
12.	J. B. Bettis	Feb 23 '49	Memo for Rec.	Hours of Work and Overtime Pay
13.	B.Hoover	Mar 1 '49	Memo for Rec.	Interpretations Governing Overtime
14.	J.B.Bettis	Mar 2 '49	Memo for Rec.	Computation of Overtime, Law No. 46 as Revised
15.	Y.Katsumata Acting Chair- man, Central Struggle Com.	May 16 '49	Union	Directive No. 6--ZENTEI (All Government Communication Workers' Union) on Table of Personnel Organization Bill
16.	M.Salter	May 18 '49	B.Hoover	Ministry of Communications Union Directive Concerning Overtime
17.	M.Salter	May 19 '49	Memo for Rec.	Ministry of Communications Union Directive Concerning Overtime
18.	M.Salter	May 20 '49	Memo for Rec.	Ministry of Communications Directive Concerning Overtime
19.	M.Salter	May 20 '49	Memo for Rec.	Ministry of Communications Directive Concerning Overtime
20.	M.Salter	May 23 '49	B.Hoover	Ministry of Communications Directive Concerning Overtime
21.	S Kawasaki, Chief, Inv. Dept., NPA	Jun 2 '49	M.Salter	Report concerning Payment of Over-time Allowance to employees of Chiba National Sanitarium
22.	DeAngelis	Jun 27 '49	Memo for Rec.	Overtime of Government Employees
23.	DeAngelis	Jun 28 '49	L.Stewart's Opinion	Employees working over-time

28 June 1949

Mr. Stewart says overtime is part of official duties of a position. When an employee accepts a position he accepts the obligation of working overtime when it is necessary to discharge the duties of the position.

Ordering an employee to work overtime is purely a matter of administration. Once ordered to work overtime, it is routine for the employee to comply. However, when the overtime work will severely inconvenience the employee, and the employee has sufficient reason for not working overtime, the supervisor will use discretion and not insist that such employee work.

Albert R. DeAngelis
ALBERT R. DeANGELIS
Compensation Specialist

*Concur
AB*

*only for
Compelling
Reason
or im-
pairment
of health
AB*

Salter

CIVIL SERVICE DIVISION
Government Section

27 June 1949

MEMORANDUM FOR: The Record

SUBJECT : Overtime of Government Employees.

1. Article 27 of the Constitution of Japan provides that standards for wages, hours, rest and other working conditions shall be fixed by law. The Labor Standard Law, Law No. 49, April 5, 1947, contains the standards mentioned in Article 27 of the Constitution.

2. Article 32 of the Labor Standard Law states the employer shall not employ the worker more than 8 hours a day, excluding recess or forty-eight hours a week. It defines the standard work day and work week.

Article 36 of the Labor Standard Law provides the employer may extend the working hours stipulated in Article 32 or employ workers on rest days if he makes an agreement with the trade union when there is a union composed of majority of workers, or with persons representing the majority when there is no such union, and submits the agreement to the administrative office. This provision authorizes the employer to work employees in excess of the standard work day or work week.

Article 37 of the Labor Standard Law provides that when the employer extends the working hours or employs the worker on rest days, the overtime rate shall be at least 25 percent more than the normal rate. This article sets the standard for overtime pay.

From the above, an employer has authority to work an employee overtime and he must pay the employee an overtime rate at least 25 percent

27 June 1949

more than the normal rate.

The question arises "Do government employees fall under the Labor Standard Law"?

3. Article 3 of the Supplementary Provisions to the First Revision of the National Public Service Law provides that with respect to personnel in the regular service, the provisions of the Labor Standard Law shall be applied correspondingly until such a time as a separate law is enacted and enforced as long as such provisions are not in conflict with the spirit of the N.P.S.L., and are not inconsistent with the matters provided by laws enacted pursuant to the N.P.S.L. or rules of the Authority issued thereunder. We must then look at the separate laws dealing with the overtime of government employees.

4. Article 3, Par. 3 of the National Public Service Law, as revised, delegates to the National Personnel Authority the duties of developing, coordinating, integrating, and ordering policies, standards, rules, and recommending legislative and other necessary action for personnel in regard to hours of work.

Article 65 of the National Public Service Law, as revised, provides that matters concerning compensation for overtime shall be provided in the pay plan.

Article 85 of the National Public Service Law, as revised, provides for disciplinary punishment when an employee has acted contrary to the N.P.S.L. or rules of the Authority, or when he has acted contrary to the duties of his position or has neglected his duties.

27 June 1949

Article 98 of the National Public Service Law, as revised, states that personnel of the service in the performance of their duties shall comply with laws and orders and faithfully observe the orders of their superiors pertaining to the performance of their official duties. Personnel shall not strike or engage in delaying acts or other acts of dispute against the public of Japan represented by the National Government as employer, or resort to delaying tactics which reduce the efficiency of government operations, nor shall personnel or other persons attempt, conspire to effect, instigate or incite such illegal actions.

Rule No. 15-0 of the National Personnel Authority, January 1, 1949, states: "Except as provided in Article 35 of the Law Administering the New Pay of Government Employees, the work hours of government employees shall be 48 hours per week."

Rule No. 15-1 of the National Personnel Authority, January 15, 1949, states: "Non-work periods, rest periods, and non-work days as used in these rules are those periods other than holidays outside of the regularly scheduled work hours. The employee may utilize such periods as he so desires. Except cases where the employee is actually ordered to work, no compensation is paid for such periods."

Article 21 of the Law Administering the New Pay of Government Employees, as amended, reads: "Employees ordered to work in excess of the regular work hours shall be paid the amount obtained by multiplying their hourly amount of compensation prescribed in Article 24 by the rates given below for all hours worked in excess of the regular hours.

(1) That portion in excess of the regular hours until it

- reaches the actual eight hours of work a day.....100%
- (2) That portion exceeding the actual eight hours of work a day.....125%

However, in case the work includes time between 10:00 p.m. and 5:00 a.m. on the following day.....150%

5. Par. 1, Cabinet Ordinance No. 6 of 1922 reads: "The office hours of a government office shall be from 8:30 a.m. to 5:00 p.m., excluding Sunday and holiday.

Par. 3, Cabinet Ordinance No. 6, 1922, reads: "In case of necessity on account of the work situation, work shall be performed even in excess of the regular work hours.

still in effect
8/10

6. It follows from paragraphs 4 and 5 above that overtime matters of government employees do not fall under the Labor Standard Law.

Standard work hours of government employees are set at 48 hours by NPA Rule 15-0.

Standard overtime rates of pay for government employees are prescribed in Article 21 of the Law Administering the New Pay of Government Employees.

Authority to work employees overtime can be inferred from Article 98 of the N.P.S.L. which provides that personnel of the service in the performance of their duties shall faithfully observe the orders of their superiors pertaining to the performance of their official duties. Personnel shall not engage in delaying acts or resort to delaying tactics which reduce the efficiency of government operations.

Authority to work employees overtime is further contained in

Paragraph 3 of Cabinet Ordinance No. 6, 1922, which provides that in case of necessity, on account of the work situation, work shall be performed even in excess of the regular work hours.

Although authority to work employees ^{overtime} can be inferred from Article 98 of N.P.S.L. and is specifically stated in Paragraph 3 of Cabinet Order No. 6, 1922, there is some doubt as to whether an employee is under obligation to work overtime when asked.

(Article 98) Employees shall faithfully observe the orders of their superiors pertaining to the performance of their official duties, and shall not engage in delaying acts or resort to delaying tactics. But this would seem to apply to the standard work week, at present 48 hours.

not limited to a work load of only 48 hours.

Article 85 of the N.P.S.L. provides for disciplinary punishment when an employee has acted contrary to the N.P.S.L. or rules of the Authority, or when he has acted contrary to the duties of his position, or has neglected his duties. There is nothing in the N.P.S.L. or rules of the Authority which states an employee is obliged to work overtime. However, if overtime can be interpreted as part of the duties of a position then an employee is obliged to work overtime and is subject to disciplinary punishment if he refuses to do so.

yes

An interpretation as to whether overtime is part of the official duties of a position is important. If overtime is not part of the official duties of a position, then Article 98 of the N.P.S.L. is not authority to work an employee overtime. There would then be no authority in the N.P.S.L. or rules of the Authority to work employees overtime. The

overtime is not a part of the off-duty but is covered by work load in performing off duties

27 June 1949

Authority would rest in C.O. No. 6 of 1922 which could be rescinded at any time.

7. Question: Is a person required to work overtime if ordered?

Answer: The opinion at NPA is YES. The basis for the opinion is Article 98 of N.P.S.L. and Paragraph 3 of C.O. No. 6, 1922. The Japanese version of these two citations may read an employee is required to work overtime if ordered.

My opinion based on the English version is NO. There is no provision at present requiring an employee to work in excess of 48 hours a week. An employee discharges his official duties during the official 48-hour work week.

*Do not
concur
MS*

Overtime work may be required in some agencies and not in others. Some employees will be working overtime and others will not. I can see no reason why an employee working in an agency which requires overtime work should receive disciplinary punishment for refusing to work overtime. He has worked 48 hours, the same number as the man employed in an agency not requiring overtime work. It does not seem fair to penalize one employee who has worked the standard number of work hours and not penalize another employee who has also worked the standard number of work hours.

*Same
pay is
provided
for this
reason
MS*

In my opinion that part of Article 98 of the N.P.S.L. which provides that employees shall faithfully observe the orders of their superiors pertaining to the performance of their official duties and shall not engage in delaying acts or delaying tactics, applies to official duties performed during the standard 48-hour week and not to work performed in excess of the 48 hours.

27 June 1949

Paragraph 3, Cabinet Order 6, 1922, is authority for the employing agency to work employees in excess of the regular work hours. It implies no obligation on the part of the employee to work in excess of the regular hours.

To require a person to work overtime when ordered would require an official interpretation of Article 98 of the N.P.S.L. or publication of an NPA rule.

Question: If a person works overtime, is it an absolute requirement that he be paid?

Answer: YES. Article 21 of the Law Administering the New Pay of Government Employees provides that employees ordered to work in excess of the regular work hours shall be paid certain specified rates.

yes
9/10

There is a presumption that supervisors will not order overtime work and will not incur obligations for overtime work unless funds are available for such purpose.

Question: If it is stated an employee will not be paid, can he refuse to work overtime?

Answer: It is stated that the employee shall be paid for overtime worked. Up to the present time, employees have worked overtime whether they were paid or not. See answer to first question.

Albert R. DeAngelis
ALBERT DeANGELIS
Compensation Specialist

National Personnel Authority

June 2, 1949

To:

Mr. MacDonald Salter,
Civil Service Division,
Government Section, GHQ, SCAP

I beg to enclose herewith for your reference a report on investigations made by the Investigation Division concerning the payment of over-time allowance for employees of the Chiba National Sanatorium.

Kawasaki Sanzo

Chief of Investigation Department

Sanzo Kawasaki

National Personnel Authority

June 2, 1949

Violations Investigation Section,
Investigation Division

Condition of Payment of Over-time

Allowance at Chiba National Sanatorium

Result of Investigation I:

1. In accordance with the direction of the Ministry, this sanatorium ordered over-time work within the limits of an average of 15 hours per capita per month.

2. Despite the direction of the Ministry referred to ^{in the} preceding paragraph, as the sanatorium ordered over-time work when there were emergency cases due to the special nature of its work, it was not able to issue the allowance afterwards.

3. When it received the final allocation of the budget for over-time allowance for the fiscal year 1948, it planned to liquidate all unpaid allowances referred to in the preceding paragraph.

4. But as it was not able to settle all outstanding accounts even by the final budget, it explained the circumstances to the Union under direction of the Ministry and obtained its understanding.

The above information was obtained by Mr. Shibata, Administration Section, Medical Affairs Bureau of the Ministry of Welfare, when he went to the sanatorium and made inquiries on the spot.

Result of Investigation II:

1. Documentary evidence of payment based on over-time records is in order and on file, and there is no trace of any improper payment having been made at all.

2. There are 14 nurses who received nothing as overtime allowance according to the payment slips, but this was due to the fact that, as income taxes had not been collected at the time of payment of an extra amount for special work, such taxes were deducted from the amount due for over-time allowance when as the latter was issued.

3. The circumstance referred to in the preceding paragraph had appeared in the "Akatsuki", the organ of the National Cellulation of the Japanese Communist Party formed by the patients of the sanatorium, and this publication had caused a variety of misunderstandings, but it was ascertained that it had been only the conjecture of persons who had not known the truth of the matter.

The facts stated above are based on the result of investigations into documents and reference materials.

The results of the investigation I and II were obtained by Mr. Shibata, Administration Section, Medical Affairs Bureau of the Ministry of Welfare, when he went to the sanatorium and investigated the case on the spot.

~~Chat~~
2) Files 6-6-49
Overtime

From: NOHIRA Kanion
688, Notona, Chiba-shi,
(Chiba-ken, Japan)

To: MATSUI Toshiko
c/o HOKURIKUSO (Hokurikuso Dormitory)
of KOKURITSU RYOYOSHO
(State Sanitarium)
Nobusue, Minamiyamada-mura,
Higashitonami-gun,
Toyama-ken, (Japan)

Dated: C-2 May 49
P-3 May 49

Prep. Date: 13 May 49

LABOR: DISCORD EXISTS BETWEEN CHIBA STATE SANATORIUM LOCAL OF
ALL JAPAN STATE MEDICAL WORKERS' UNION AND COMMUNIST

Writer states:

"Recently overtime payment for the previous year was made at the Chiba State Sanatorium. The Sanatorium Local of the ZEN NIPPON KOKURITSU IRYO RODOKUMIAI (List: H-31) (All Japan State Medical Workers' Union) appointed a special committee to take care of the distribution of overtime pay. Communists raised a question with regard to the method of distribution among nurses. This event has brought about discord, between the Union's Executive Committee and the Communists."

5/8/49 Advised Anai & Sato
will check to determine status of agency & then other facts.

6/2/49 WPA report of uni. - no action.
ms

1) Eliot
2) WT-IV
T.E.

CIVIL SERVICE DIVISION
Government Section

23 May 1949

Mr Hoover:

see top of second page.
ws.

5/29/49
discussed with
Mr. Whitney

no further action
ms 5/29/49

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Ministry of Communications Directive Concerning Overtime

A meeting was held this morning among Mr. Salter, Dr. Asai and Mr. Sato for the purpose of reviewing Directive No. 6 of the Dispute Committee of Zentei of 16 May 1949.

Dr. Asai pointed out that the intent and purpose of this directive was an attack on the Table of Personnel Bill now before the Diet and an effort to support arguments which would reject any proposed reduction in personnel for the Ministry of Communications. The first part of the document shows that there is not at the present a sufficient number of personnel to carry out the present workload without a substantial amount of overtime. The second part points out the danger to the service performed by the Ministry of Communications in view of the current budget reduction for overtime pay unless the existing force is left intact.

Dr. Asai generally agreed to the following two points raised by this directive:

1. That should it be proved the Ministry of Communications has ordered and authorized overtime and failed to pay for such overtime, it is at fault and subject to penalties under the provisions of Article 31 of the New Pay Law which states: "Article 31. A person who in violation of the provisions of this Law pays compensation or refuses its payment or who wilfully authorizes such acts shall be sentenced not to exceed one year in penal servitude or fined not to exceed ¥30,000."

2. The sentence in this directive which reads: "If an employee makes a legitimate demand for payment for overtime work and if the payment is not made he should refuse overtime work." raises the question as to whether this could not be construed as inciting employees against their supervisors.

Dr. Asai stated that the wording is rather strong but is used as a strong expression in connection with the whole document as opposition to reduction in personnel. It is also directed at a claim for overtime pay if the ministry has failed to pay such overtime after overtime has been performed.

23 May 1949

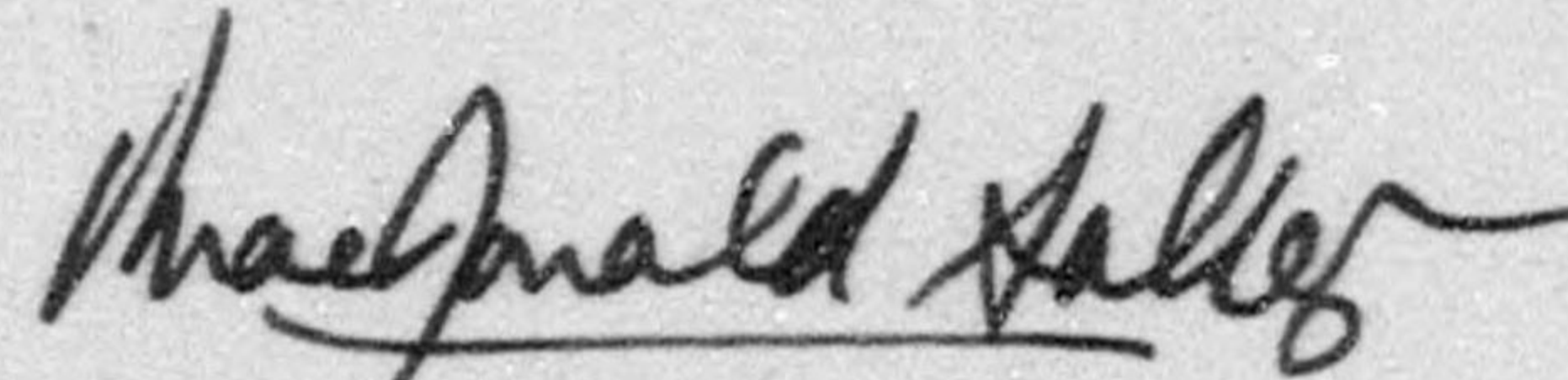
Dr. Asai does not feel that there is a strong legal case based on the above quoted sentence against the union for inciting its employees.]

NPA will continue to observe the situation carefully making further inquiries but not contacting directly Zentei. Should any situations occur which will indicate direct refusal to work the matter will be brought to our attention immediately.

I believe some employees of the Ministry of Communications have filed an appeal with the NPA stating that they have not received their appropriate overtime pay for work performed. I told Dr. Asai that should he have such appeals they should be carefully investigated to determine:

1. That the overtime had been properly authorized and ordered by management of the Ministry of Communications and was not just a voluntary activity on the part of employees to continue to get overtime pay as they have in the past year or more;

2. It should be clearly determined if this was properly authorized overtime, that the employees did not receive appropriate pay and that there were funds available.



MacDONALD SALTER
Chief, Classification
& Compensation Section

MS:jd

CIVIL SERVICE DIVISION
Government Section

20 May 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Ministry of Communications Directive Concerning
Overtime

There was received today the attached CCD intercept of a mimeographed statement from Zentai issued by the Acting Chairman of the Central Struggle Committee, Mr. Katsumata, Yasuo, entitled Directive #6.

An analysis of this particular directive of Zentai indicates that it is not too clearly an instruction to employees to refuse to work overtime. However, it is couched in such a way that it may be interpreted as a ^{inciting employees} "conspiracy" ~~to encourage~~ workers to act against the directions of their supervisors. The matter, however, will have to be reviewed by the Japanese to determine whether there is a legal question involved in this particular directive which could be prosecuted under the NPSL.

MS:jd

MacDONALD SALTER
Chief, Classification
& Compensation Branch

MS:jd

Att. 1

From: ZENTEI
Central Headquarters
Tokyo (Japan)

To: ZENTEI
Kagoshima District Hdqs.
Kagoshima, (Japan)

Dated: 16 May 49
Prep. Date: 20 May 49

"The Maximum Employment Law was introduced into the Diet on 12 May. However, ZENTEI, KOKUTETSU, ZENKANKOCHO, etc. carried out a joint struggle with the democratic power of the Diet by carrying out a demonstration and petition. On 16 April the national budget for 1949 was passed in the Diet but this budget will not cover the overtime pay which is already outstanding in the various districts.

"The overtime pay provided for in the 1948 budget amounted to 3 billion 400 million yen which is equivalent to fifteen (15) hours overtime per person per month. (Two hundred thousand (200,000) people worked one hour overtime per month). In order to abolish this overtime work it will be necessary to increase personnel by forty thousand (40,000). Regardless of this fact, the overtime pay budget was slashed to nineteen billion yen, causing non-payment of overtime allowance.

"The Central Committee cannot disregard this fact. Therefore, a strong negotiation is being made with the Communications Minister, but he takes no measures to take care of this matter. He bluntly states that he may refuse to allow overtime work. Under such circumstances, this will not only hamper the management of the enterprise but it will also force the discharge of forty-eight thousand (48,000) workers. In regard to this attitude of the government, we who protect the Communication enterprise, believe that now is the time for us to stand up and fight. The various organs, in accordance to their work-shop condition, should demand just overtime pay and in case the demand is not met, they should refuse to accept overtime work. In regard to the matter of non-payment of the past overtime pay, we should appeal to the personnel authorities, and to the Labor Standards Bureau, and also file suit with the respective district courts. At the same time, we should disclose the actual conditions of the enterprise to the public and carry out a struggle in opposition to discharge of workers and struggle for the protection of communications enterprise."

CIVIL SERVICE DIVISION
Government Section

20 May 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Ministry of Communications Directive Concerning Overtime

Mr. Tonomi of the NPA Investigation Section came in late this afternoon with a copy in Japanese, mimeographed, of Directive #6 of the Struggle Committee of Zentei. In the last paragraph of this directive the following sentence appears: "If an employee makes a legitimate demand for payment for overtime worked and if the payment is not made he should refuse overtime work." This sentence, particularly the latter part of it, may be a basis for further consideration of invoking the NPSL against the union for inciting its members against the management of the Ministry of Communications.

Mr. Tonomi states that the appropriated funds for overtime provided substantially the same average amount of overtime as previously reported. However, he indicates that the Ministry of Communications was continuing to pay overtime until its budget had been depleted. At this time the situation might occur where employees would be ordered to work and there would be no funds to make appropriate payments therefor.

Mr. Tonomi was informed by Mr. Suguyama of the Labor Affairs Section, Labor Affairs Bureau, Ministry of Communications, that the attitude of the workers in general was that they would work in order to preserve and maintain the service necessary in the Ministry of Communications. ~~There~~ was an indication that the Ministry itself would treat rather harshly any employees who refused to work. Directive #6 is considered an instruction to the members of the union.

MacDONALD

MacDONALD SALTER
Chief, Classification
& Compensation Branch

MS:jd

CIVIL SERVICE DIVISION
Government Section

19 May 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Ministry of ~~Communications~~^{Communications} Union Directive Concerning
Overtime

Mr. Wardell of CCS, who is in charge of advising on the Ministry of Telecommunications, was informed of the proposed action that might be taken against the Zentei should it be proven that they had issued a directive which in essence incited the employees against management. Mr. Wardell stated that he would do what he could to assist in obtaining information and that he would like to be kept advised of any activities that might be contemplated.

Mr. Wardell pointed out that Mr. Suzuki, Vice-Minister of Communications, was watching rather carefully the activities of the union and had the impression that a substantial number of the members were quite conservative. In fact they believe that the conservative members, together with those who are inactive, probably constitute a majority which in time will squeeze out those of a Leftist tendency. Already 300 locals of Zentei have broken away from the headquarters because of the attitudes and programs imposed upon them by headquarters.

Mr. Wardell made reference to an intercept, JP/TCS/4817 concerning Zentei's fight for overtime pay or increased personnel. This was an information statement released by Zentei by telephone on 2 May 1949, copy of which is attached.

W. Salter

MacDONALD SALTER
Chief, Classification
& Compensation Section

MS:jd
Att.

From: HASEBE
ZENTEI
Central Headquarters
Tokyo-to, Japan

To: TSUJIMURA
ZENTEI
Kyushu Regional Federation

Type: Telephone
Dated: 11 May 49
Language: Japanese
Disposition: Observed
Examiner: TOS
Prep. Date: 13 May 49

LABOR: ZENTEI (LIST: XH-76) TO FIGHT FOR OVERTIME PAY OR
INCREASED PERSONNEL

Speaker stated:

HASEBE: "Information No. 82 dated 2 May reads:

1. We have protected the communication industry even in the face of scarcity of materials and personnel and ever-increasing 'forced labor'. The government on the other hand has ignored our efforts and is attempting to lay off ten thousand (10,000) workers. Furthermore, the government contends that the extension of working hours made overtime work of field workers unnecessary even after personnel has been cut down. Also the payment of overtime pay would not be made in any case since the budget was trimmed down.

2. The Central Struggle Committee (of ZENTEI, List: XH-76) filed a demand with the Ministry on 10 May either for overtime pay or increased personnel and demanded a reply by 13 May. Depending upon the reply of the Ministry, the union will resort to refusing to work overtime after 16 May. In the meantime, the political parties in the Diet have been contacted to enlist their support of the union's demands and the contradiction in the government's contention has been pointed out.

3. The locals are urged to organize a campaign to inform all the union members on the issue and to rally the support of all the friendly organizations on the demand of the union."

Examiner's note: Information similar to the above was given in an intercepted call to:

ZENTEI (List: XH-76)
Okayama District Chapter
Okayama-shi, Okayama-ken, Japan

gap Govt - Hours of Work
(overtime)

File

CIVIL SERVICE DIVISION
Government Section

May 18, 1949

MEMORANDUM FOR: Mr. Blaine Hoover, Chief, Civil Service Division

SUBJECT : Ministry of Communications Union Directive Concerning
Overtime

1. A preliminary investigation was conducted today by Mr. Tonome, Chief of the Investigation Division, NPA, at the Ministry of Communications to determine the status and content and whether any action had been taken with respect to Directive No. 6 of the All-Japan Communications Workers Union. It was originally reported that this directive contained instructions to the union members "to refuse to work overtime".

2. Mr. Tonome reported that he interviewed Mr. Sugiyama, Chief of the Labor Affairs Section and Mr. Hashimoto, Chief of Salary and Wage Section of the Ministry of Communications. Mr. Sugiyama stated that all directives of this kind issued by the unions were conveyed by word of mouth or by telegram to points outside of Tokyo. Such telegram copies are usually destroyed and not available. Mr. Sugiyama understood this directive to imply that from 19 May onward, union members should not obey the orders of their supervisors to perform overtime.

3. Mr. Hashimoto and Mr. Sugiyama believed that the union assumed that since the appropriation for overtime for the ministry had been reduced some three and one-half billion yen to two billion yen, that there would be insufficient funds to pay for overtime performed this year. Mr. Hashimoto stated that the present appropriation for overtime represented approximately two hours of overtime per person per month for field workers, and five hours per person per month for administrative employees. Actually, with the forty-eight hour week now in effect, it is believed there is sufficient funds appropriated to cover all overtime that may be required. It is anticipated, however, that there may be some shortage of funds for those persons who deliver messages, and for this reason, the Ministry of Communications is now requesting permission of the Ministry of Finance to transfer funds from other accounts to their overtime account.

4. Mr. Tonome was requested to speak to Mr. Sato and make a request of the Ministry of Communications to immediately report tomorrow or on any other following day any specific cases where employees failed to perform overtime work when properly requested to do so. Mr. Tonome was also asked to investigate and see if he could obtain a written copy of Directive No. 6.

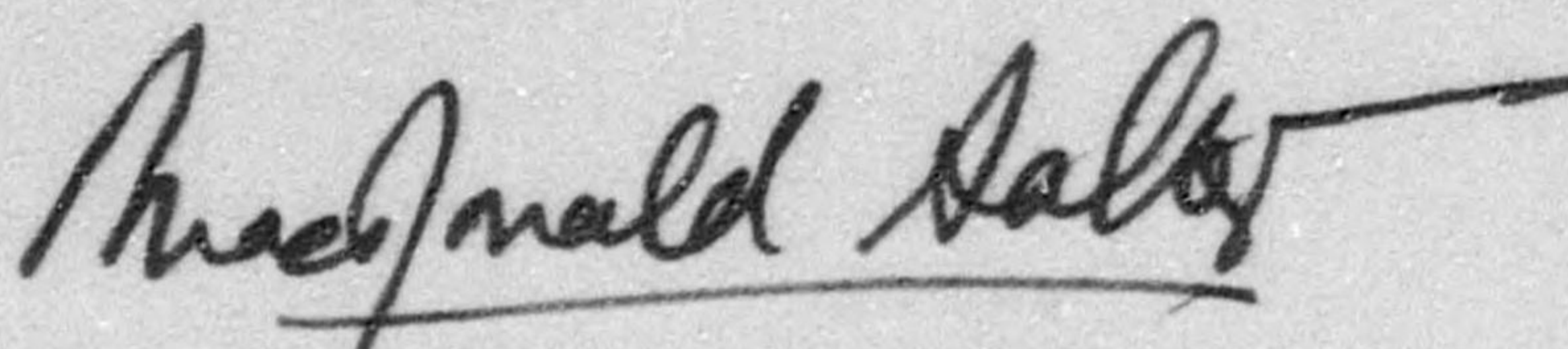
5. I will contact Mr. Wardel of Civil Communications tomorrow and discuss the matter with him. I believe NPA should call in union representatives and see if they can obtain any statement from them concerning this

MEMO FOR: Mr. Blaine Hoover

-2-

May 18, 1949

directive. Before doing so, I think it would be advisable, if possible, to obtain a written copy of the directive and to obtain certain other information from the Ministry of Communications concerning their method of controlling overtime.



MACDONALD SALTER
Chief, Classification and
Compensation Branch

MS:vr

May 16, 1949

Directive No. 6
ZENTEI (All Government Communication Workers' Union)

The Table of Personnel Organization Bill which slashes personnel and destroys industries was introduced to the Diet on 12 May. Resorting to every possible means such as demonstration to the Diet, sending petitions etc., and working in conjunction with the struggle of the democratic forces within the Diet, unions such as ZENTEI (All Government Communication Workers' Union), KOKUTETSU (Government Railroad Workers' Union), ZENKANKOCHO (ZENKANKO National Liaison Council for Government and Public Officer Workers' Union) etc are continuing their struggle against the reactionary government. Moreover, on the 16th of April, the budget for the fiscal year 1949 passed the Diet. Already the effect of this budget on industries is noticeable in various parts (of the country) and a situation in which over-time work is not compensated is taking place in places of employment (shokuba). An actual account of the non-payment for over-time work is as follows: In the budget for the fiscal year 1948, the total sum of 3.4 billion yen was appropriated. This is equivalent to 15 hours of over-time work per person per month. (Exactly 200,000 people were working 1 hour overtime per month) Although this necessitates an increase of 40,000 in personnel to do away with this overtime work, since the sum of overtime allowance was decreased to 1.9 billion yen in the budget (for the fiscal year 1949) the allowance for the overtime work are not being paid.

Because the Central Struggle Committee can not ignore this condition, it is carrying out strong negotiations with the Minister of Communication. However, without making any efforts to consider the matter concretely, the Minister of Communication is making such unreasonable remarks as, "How

about refusing to work overtime?" If these conditions are allowed to continue the operation of industry will be impossible. We firmly believe that now is the time for us to rise indignantly to protect the communication industry and to oppose the Government (lit. the attitude of the Government) which is trying to enforce the personnel slash numbering 48,000 by introducing the Table of Personnel Organization Bill.

In accordance with the actual conditions at the places of employment (shokuba) the various agencies should demand legitimate remuneration for overtime work, and if payments are not made then the overtime work should be refused. Moreover, at this time (T.N. to receive payments) for the unpaid overtime allowances of the past, carry out all possible means of struggle i.e. filing petitions of protest to NPA, submission of cases to the Labor Standard Bureau, bringing charges to competent courts, etc., and at the same time, by making appeals to the public in regard to actual conditions existing in the industry, carry out extensive campaigns to protect the communication industry and struggle to oppose the personnel slashing.

KATSUMATA YASUO
Acting Chairman, The Central Struggle Committee

CIVIL SERVICE DIVISION
Government Section

2 March 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Computation of Overtime, Law No. 46 as Revised

Conference was held in the office of the Chief of the Civil Service Division on 28 February 1949 in regard to interpretation of the law (Law No. 46 of 1948) regarding the computation of overtime.

Attending and taking part in this conference were Dr. Asai and Mr. Ueno, commissioners of the NPA, Mr. Sato, Director-General, and Mr. Hasumi of the Salary and Wage Section. Also in attendance were members of the staff of the Civil Service Division.

Statement of the problem was presented by Mr. Hoover, after which Mr. Bettis was requested to present his views and interpretations of the law. A brief oral opinion was presented by Mr. Bettis in support of his interpretation that overtime should be computed on a weekly basis. References were made to the Labor Standards Law and regulations of the Office of New Pay Administration regarding previous practices in the Japanese government in this respect.

The matter was then discussed and members of the NPA presented their opinions in support of their contention that overtime should be compiled on a daily basis.

Following the discussion Mr. Hoover stated that in order to follow prevailing practices in industry and in the Japanese government that the interpretation of NPA should be effective, but that the technical interpretation as presented by Mr. Bettis was entirely correct.

As a member of the technical staff of this office, and having drafted the original outline of the pay law amendments, having worked with the various agencies of the Japanese government over a period of several months in regard to the pay law, I would like to go on record and state that in my opinion this interpretation to some extent defeats the principle of a 48 hour week, it defeats the purposes and intent of the law as originally drafted, and as it is to be applied does not conform with the practices in industry insofar as the Labor Standards Law or other laws are concerned. In my opinion it is a perpetuation of practices in the Japanese government, their disrespect for law and the practice of making interpretations of laws to suit their own desires and wishes.


~~Hoover ms~~
2) File II 5

MEMO FOR THE RECORD

-2-

2 March 1949

It is believed that it will encourage them to continue previous practices rather than to cooperate in the installation of modern practices and procedures; also that it will make it difficult to secure their cooperation in the proposed amendments to the New Pay Law which are to be drafted and presented to the present session of the Diet.


JESSE B. BETTIS
Compensation Specialist

JBB:jd

WPA Compensation

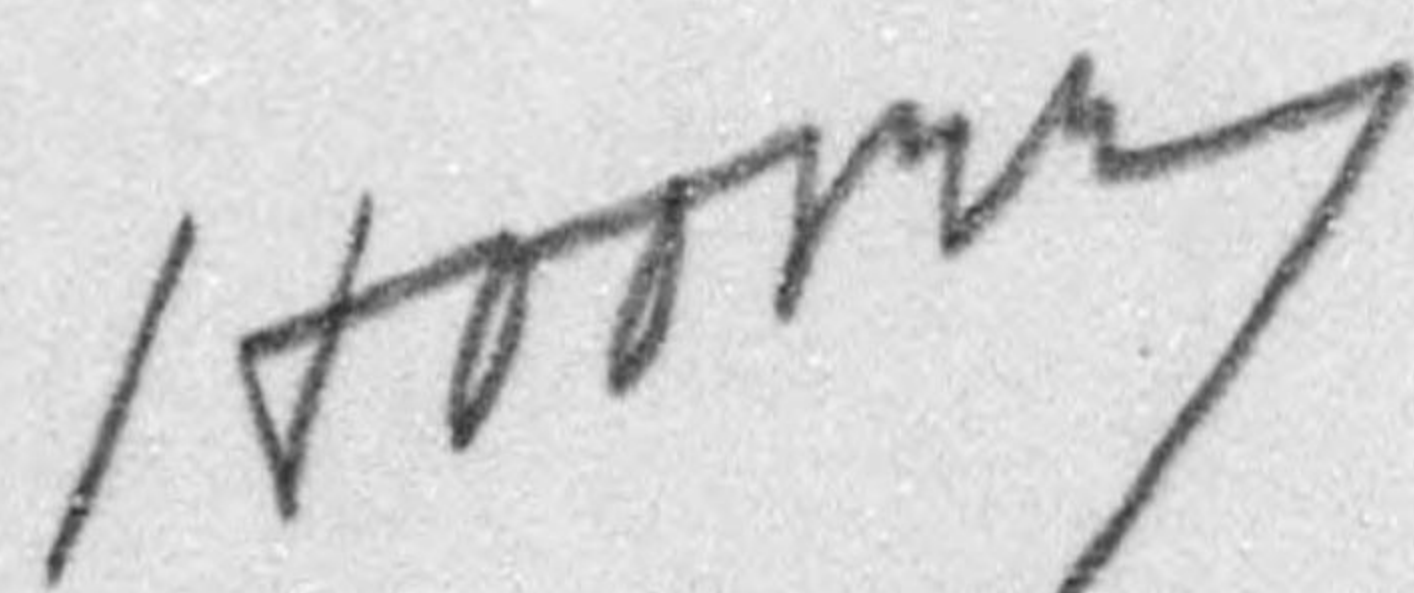
CIVIL SERVICE DIVISION
Government Section

1 March 1949

MEMORANDUM FOR : THE Record

SUBJECT : Interpretations Governing Overtime.

In brief, it is the practice of the Japanese government to pay overtime for any time worked above the hours scheduled. This does not necessarily mean 8 hours per day but rather the hours scheduled for the individual, which may run above that number. The New Pay Law is open to other interpretation ~~but~~ the Japanese text is strongly bent in the direction of their present practice. Neither ~~their~~ interpretation nor the flat interpretation based on 48 hours per week satisfies the requirements of overtime pay policy. In this situation it is deemed advisable not to attempt to reform their present practice as justified by the law by making interpretations which appear unreasonable to them, but rather to permit the present practice to continue for the time being and later attempt adequate and sound reform by legislation if necessary.



BLAINE HOOVER
Chief
Civil Service Division

BH;mw

CIVIL SERVICE DIVISION
Government Section

23 February 1949

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2) File
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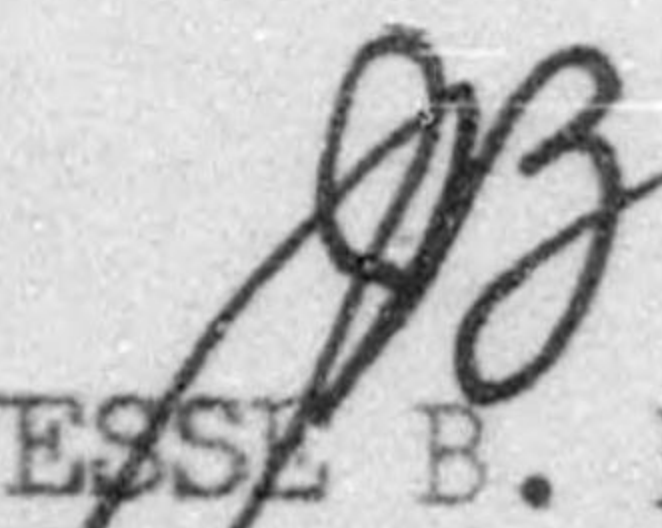
MEMORANDUM FOR THE RECORD

SUBJECT: Hours of Work and Overtime Pay

Conference was held with Mr. Hasumi of the Salary and Wage Section, NPA on 23 February 1949 in regard to technical interpretations of the Law concerning hours of work and overtime pay.

Mr. Hasumi was furnished with an outline prepared by this Branch covering suggested definitions of work hours, overtime, non-work day, holiday pay, computation of overtime, the effect of non-work status for which pay is due, and the effect of non-pay status in the computation of overtime.

Mr. Hasumi was requested to discuss this outline with the Commissioners at the earliest practicable date and to draft a proposed rule covering hours of work and computation of overtime and holiday pay.


JESSE B. BETTIS
Compensation Specialist

JBB:jd

CIVIL SERVICE DIVISION
Government Section

21 February 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Technical Interpretations Covering the Treatment of Hours of
Work and Overtime as Provided under Law No. 46 of 1948 as Amended

After numerous conferences with members of the staff of NPA it is believed that the following outline and explanations will clarify the points in question in regard to the computation of overtime:

I. Definitions

A. Work Hours

"Work hours" as referred to in Articles 19, 21 and 22, "regular work hours" as used in Articles 21 and 22, and "administrative work hours" as used in Article 19, paragraph 3, shall be interpreted to mean the total number of hours an employee is scheduled for work during a calendar week under the provisions of Article 19, paragraph 2 of the Law.

B. Overtime

"Overtime" shall be defined as time worked in excess of the regular work hours as established under the provisions of Article 19 of the Law.

C. Non-Work Day

"Non-work day" shall be defined as the day during the week on which an employee has no regularly scheduled work hours. The non-work day, generally speaking, is Sunday, except for those employees working an exceptional tour of duty, wherein other days may be scheduled as the "non-work day".

D. Holiday Pay

Holiday pay is payable for holidays falling within the regularly scheduled work hours as established under the provisions of Article 19. Where holidays fall on regularly scheduled non-work days no payment would be made for the holiday unless work was actually performed on that day, in which case it would be paid for at overtime rates if the hours worked were in excess of the scheduled 48 hours, and not as holiday pay.

21 February 1949

Overtime rates are payable for all authorized hours of work in excess of the regular work hours as established under the provisions of Article 19. Payment for overtime under the provisions of Article 21 should apply as follows:

Work up to and including 8 hours per day even though it includes overtime will be paid for at the regular hourly rate of pay. Work in excess of 8 hours will be paid for at the rate of 125 per cent of the regular hourly rate of pay provided that after 48 hours of work have been completed as established under the provisions of Article 19, all work performed in excess of 48 hours will be paid for at the overtime rate of 125 per cent of the regular hourly rate of pay. Where overtime falls within the period between 10 p.m. and 5 a.m. it will be paid for at the rate of 150 per cent times the regular hourly rate of pay. In order for an employee to receive payment for overtime work such overtime work must have been necessitated by an emergency situation and must have been ordered by competent authority.

Example: An employee's regular tour of duty is 7 hours per day on Monday, Wednesday and Friday and 9 hours per day on Tuesday, Thursday and Saturday, and the unit week is from midnight on Saturday to midnight the following Saturday. He worked as follows:

<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>
0	8	9	8	9	8	9
						51

The employee worked 8 hours each on Monday, Wednesday and Friday and 9 hours on Tuesday, Thursday and Saturday, which accounted for 1 hour of overtime on Monday, Wednesday and Friday respectively, resulting in 3 hours overtime for the week which is to be paid for at 125 per cent of his hourly rate of pay. Had the employee not reported for work on Saturday without authorized leave he would have received payment for all hours worked at the regular hourly rate of pay inasmuch as he did not exceed 48 hours of work during the week.

II. Effect of Non-Work Status for which Pay is Due

Annual, sick, and other authorized leave with pay, and holidays on which no work is performed, will be counted toward the 48 hours per week when determining the hours to be paid at overtime rates.

Example: An employee's regular tour of duty is 8 hours per day, Monday through Saturday and the unit week is from midnight on Saturday to midnight the following Saturday. The employee worked as follows:

<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>
0	8	8	S/L	A/L	8	12

21 February 1949

The employee worked 8 hours on Monday, 8 hours on Tuesday, was on authorized sick leave on Wednesday, on authorized annual leave on Thursday, worked 8 hours on Friday, and 12 hours on Saturday. The employee was in a pay status for 52 hours during the week and although he did not attend his duties on Wednesday and Thursday he would receive pay for 48 hours at the regular hourly rate of pay and for 4 hours at the overtime rate of pay of 125 per cent.

III. Effect of Non-Pay Status

If an employee works outside the scheduled 48 work hours, but is also in a non-pay status during the same work week for a part of the 48 hour tour, overtime is not payable until the employee has been in a pay status for 48 hours in the unit week. The time absent during the 48 hours of scheduled work would be "non-pay" status for all purposes, although the employee may receive straight time pay for 48 hours in the particular week.

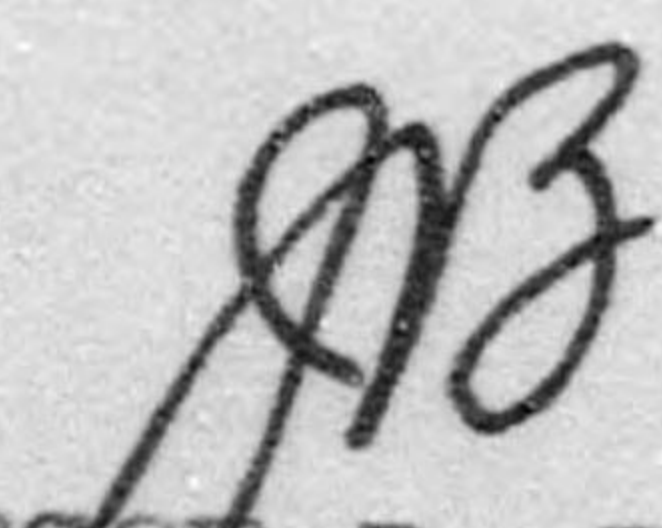
Example: An employee's regular tour of duty is 8 hours per day, Monday through Saturday and the unit week is from midnight Saturday to midnight the following Saturday. The employee worked as follows:

<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>
12	8	8	0	8	8	8

The employee worked 12 hours on Sunday, 8 hours on Monday, 8 hours on Tuesday, was absent without authorized leave on Wednesday, and worked 8 hours each on Thursday, Friday and Saturday. The employee would be entitled to 48 hours pay at the straight time rate and for 4 hours at the overtime rate for that week, inasmuch as he worked 52 hours during the week even though he was absent without leave on Wednesday.

Any hours worked on Sunday up to and including 8 hours, would be paid for at the regular hourly rate of pay unless the hours worked on that day, which is usually a non-work day, exceed the 48 hours in the week, in which case all hours in excess of the 48 hours during the week would be paid for at 125 per cent times the hourly rate of pay.

It is believed that a rule drafted along the lines mentioned above should be issued by the Commission.


 JESSE B. BETTIS
 Compensation Specialist

JBB:jd

GOVERNMENT SECTION
CIVIL SERVICE DIVISION

1 - Mr. ~~MacCoy~~ ^{Bettis}
2 - File
II. 5.

WPM

21 February 1949

MEMORANDUM FOR RECORD:

SUBJECT : Repayment of 28-hours overtime -- National Personnel Authority.


Mr. Sato, Executive Director of the National Personnel Authority called on Mr. MacCoy on Monday, 21 February 1949 at 1030 hours.

Mr. Sato stated that he had discussed with the Board of Audit, the repayment of 28-hours overtime by the employees of the National Personnel Authority. It was decided that those who were entitled to overtime for January and February will have such overtime figured on plus, minus or even basis, balanced against the 28-hours overtime payment. In other words, those who have earned overtime will not be paid for the first 28 hours of such overtime.

Where individuals will end in the minus column -- in other words, those employees who have not worked a total of 28 hours overtime during January and February -- the necessary amount to repay the government for the overpayment will be deducted from their salaries. It is expected that these accounts will be cleared by the end of March.

No overtime has been paid to any government employee during January and February by any government agency due to:

1. Lack of funds in the national treasury, and
2. Because it has not been settled as to how overtime is to be figured -- whether on an 8 hour day or a 48-hour week.


W. PIERCE MacCOY
Deputy Chief
Civil Service Division

WPM/hm

CIVIL SERVICE DIVISION
Government Section

Jules
II. 5.

17 February 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Overtime Pay

In a conference with Messrs. Sato and Yamashita of the NPA it was agreed that the NPA would issue a rule associated with the hours of work rule establishing a definition of overtime. This rule will develop the thought:

- a. That overtime does not occur unless it is work performed at the direction of a supervisor in excess of the regular work hours per week and the established schedule of hours for that particular employee.
- b. In the payment for overtime the provisions of the New Pay Law, Article 21, will have to apply; namely, work up to 8 hours per day even though it includes overtime will be paid on a 100 per cent basis - work in excess of 8 hours which is within the definition of overtime will be paid on a 125 per cent basis, and where overtime falls within the period 10 p.m. to 5 a.m. it will be paid on a 150 per cent basis.

It was understood that NPA would attempt to draft a rule by Friday, February 18 for presentation to this office.

The NPA has already delegated to the agencies the authority to establish regular work schedules. Many of these may result in employees working less than 8 hours on one day and many more than 8 hours on another day. However, overtime will not occur until the employee exceeds his regularly scheduled hours of work. Furthermore, these scheduled hours of work must at the present total 48 hours per week, or more if such practice was already in effect prior to the passage of the amendments to the New Pay Law, effective December 1, 1948.

MacDonal

MacDONALD SALTER
Chief, Classification
& Compensation Branch

MS:jd

CIVIL SERVICE DIVISION
Government Section

15 February 1949

MEMORANDUM FOR THE RECORD *WJ*

SUBJECT: Computation of Overtime

In conference with Mr. Hasumi, Chief of the Salary and Wage Section, NPA, this afternoon, Mr. Hasumi stated as follows:

"In a meeting at noon today the three commissioners and Director-General of the NPA came to the decision that overtime compensation will be computed on a daily basis and that a rule will be issued to this effect. This matter was discussed between Mr. Yamashita of NPA and Mr. Imai of the Allowance Bureau, Ministry of Finance, in a meeting at 1100 hours today".

JBB
JESSE B. BETTIS
Compensation Specialist

JBB:jd

Advised NPA in joint staff meeting.

advise Mr. Asai that Mr Hoover said that overtime compensation shall be computed on the 48 hr. week basis and not on the daily basis. The matter is to be brought up for discussion at the conference between the 3 Com. and Mr Hoover on 2/16 Wednesday at 1500.

WJB 2/15/49
-8-

CIVIL SERVICE DIVISION
Government Section

*Files
II.5.*

14 February 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Computation of Overtime

Messrs. Keitoku, Iimori, and Watanabe, of the Allowance Bureau, Ministry of Finance, called at this office on Saturday morning, 12 February 1949, to further discuss methods of computing overtime under the New Pay Law.

Mr. Keitoku stated that in a conference with the Attorney General and the personnel officers of the various government agencies, it had been decided to request the Civil Service Division for approval of computing overtime on a daily basis rather than on a weekly basis as had been previously determined. Mr. Keitoku stated that in the Japanese version of the law it was rather difficult to interpret the law to the effect that computation should be made on a weekly basis, that it would be very difficult to explain this interpretation to employees of the national government.

These gentlemen were informed that the principle of the 48 hour work week should be strictly adhered to, that to compute overtime on a daily basis rather than on a weekly basis would allow agencies and employees to violate this principle in that employees might be scheduled to work 48 hours in as few as four days, receiving pay at regular rates for 32 hours and for 16 hours at overtime rates. It was further explained to Mr. Keitoku that when employees are aware of the fact that they must work 48 hours before receiving payment for any overtime work in excess of 8 hours in a day or 48 hours in a week, it would be an incentive for them to attend their duties the full scheduled six days per week.

Mr. Keitoku stated that they were very insistent that this office reconsider the matter and he was informed that it would be further discussed on Monday, the 14th of February, and a final and definite decision would be reached.

JBB:jd

*Discussed with Mr. Hoover.
Protection of 48 hr. work week
& overtime rates must continue.
No computation in overtime band
on B. Bur. Only on 48 hour.
MRS.
7/14/49*

J.B.
JESSE B. BETTIS
Compensation Specialist

CIVIL SERVICE DIVISION
Government Section

3 February 1949

MEMORANDUM FOR THE RECORD

SUBJECT: Hours of Work, Overtime and Holiday Pay

Conference was held on 2 February 1949 with representatives of the Allowance Bureau, Ministry of Finance, in regard to interpretation of the law as to regular hours of work, and the computation of overtime and holiday pay.

The ONPA had submitted to this office on 27 January 1949 draft of their opinions regarding the enforcement of the Law Administering the New Pay of Government Employees. As a result of a conference of personnel officials in the various ministries and consultation with the Attorney-General's Office, decision had been reached to the effect that overtime allowance should be computed on a daily basis rather than on a weekly basis. Interpretation had also been made that where work was performed on Sunday payment should be made at the regular hourly rate of pay for the first 8 hours of work performed on that day and 125 per cent of the regular hourly rate of pay for work performed in excess of 8 hours. The law was further interpreted (Article 24) that in the computation of the hourly rate of pay for overtime, night differential and holiday purposes area allowance should be computed on base pay plus family allowance.

Articles 19, 20, 21, 22 and 24 of the law were carefully reviewed and an attempt was made to explain the basis for interpretations that have been made or are pending with the NPA. It was pointed out that Article 19 defined work hours to be established by rules of the NPA within the limitation of not less than 40 hours nor more than 48 hours per week; that NPA had subsequently by rule of the Authority established the work hours as 48 hours per week; and that Cabinet Order had been issued setting the work hours at 8 hours per day, Monday through Saturday, thereby leaving Sunday as a non-work day. It was further explained that "regular hours" as used in Article 21 (1) should therefore be interpreted to refer to the 48 hours in the week and that overtime should not be paid and any hours of work performed did not constitute overtime until the employee had been in a pay status for 48 hours during the week; also that inasmuch as Sunday is, generally speaking, a non-work day, all hours of work performed on that day (in excess of 48 hours) would be paid for at overtime rate of pay.

Regarding the computation of the hourly rate of overtime pay as provided in Article 24, it was explained that Article 37 of the Labor Standards Law specifically provides that in computing the overtime rate of pay area allowance computed on family allowance should not be included. It is believed that the same interpretation should be followed in regard to the computation of overtime under the New Pay Law.

Representatives of the Allowance Bureau were advised that amendments were presently being drafted to clarify the various points at issue in the law and would be presented to the Diet for enactment into law during the next regular session but that interim measures were necessary in order that the law might be applied and employees receive their pay in accordance therewith.

Att. 1

JBB:jd

-6-
JESSE B. BETTIS
Compensation Specialist

CIVIL SERVICE DIVISION
Government Section

31 January 1949

S. M.
File
II-5,

MEMORANDUM FOR THE RECORD

SUBJECT: Opinions of the ONPA Regarding the Enforcement of the Law
Administering the New Pay of Government Employees

Following discussions with Messrs. Keitoku and Hatoyama of the ONPA on 20 January 1949, there has been received in this office, dated 27 January 1949, recommendations of the ONPA in regard to interpretations below (see attachment).

Proposal is made that overtime allowance as provided in Article 21 of the New Pay Law be computed on a daily basis rather than on a weekly basis as has previously been interpreted. To compute overtime on a daily basis rather than on a weekly basis would:

1. Seriously affect the budget of the Japanese government for the balance of the fiscal year.

2. Permit employers and employees to evade the presently established work week as covered by Rule 15-0 of the NPA. It would permit an employee to put in his 48 hours in a period of 3-5 days by working in excess of 8 hours per day and at the same time provide him with overtime pay for all hours worked in excess of 8 hours a day, regardless of the fact that he had not worked in excess of 48 hours during the week. As previously interpreted, and as was the intent when the law was made, an employee should be required to complete his scheduled work hours as provided under Article 19 of the law before overtime payment is effective.

Interpretation has previously been made that all hours worked on Sunday which are in excess of the regularly scheduled hours for the week will be paid for at overtime rate of 125 per cent of their regular hourly rate of pay, except in the case of those employees working an irregular work week wherein their off duty day is designated on another day. Proposal is made by the ONPA that all hours worked on Sunday up to and including 8 hours, would be paid for at their regular hourly rate of pay and that hours worked in excess of 8 hours on Sunday would be paid for at 125 per cent of their regular hourly rate of pay.

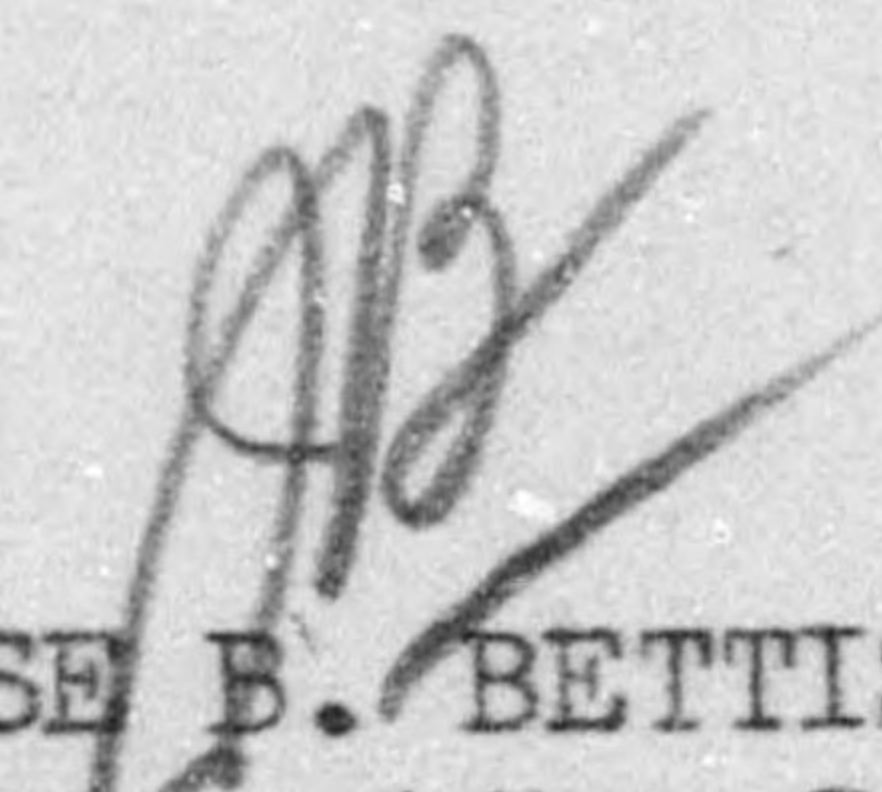
Recommendation is also made by the ONPA to the effect that area allowance computed on family allowance should be included in the payment of overtime and holiday work. Interpretation of Article 24 of the law has previously been made to the effect that area allowance computed on family allowance will not be included in computing the rate of overtime or holiday pay. Attention is also invited to the fact that the Labor Standards Law,

31 January 1949

Law No. 49 of 1947, Article 37, provides that in computing the hourly rate of overtime pay, night differential, and for work performed on holidays, "family allowance, commutation allowance and other wages, stipulated by ordinance, are excluded from the normal wage upon which the increased rate wages should be computed".

Insofar as the application of work hours and the computation of overtime for personnel coming under the provision of Article 35 of the law are concerned, the law provides that work hours shall follow the instances heretofore in force. Rule of the NPA should be provided covering the computation of overtime for this category of personnel and where their work hours are not the same for each week overtime should be computed over a period of two weeks or four weeks rather than for one week as in the case for other personnel in the government service.

Further conference will be held on Tuesday, 1 February, with personnel from the ONPA and the Salary and Wage Section of the NPA in order to clarify the points covered in this memorandum.


JESSE B. BETTIS
Compensation Specialist

JBB:jd

Att.

Opinions of New Pay Administration Office regarding the
Enforcement of the Law Administering the
New Pay of Government Employees

January 27th, 1949

1. As to the details on administering the Law Administering the New Pay of Government Employees as amended various advises were given by you, especially regarding to the Overtime Allowance considerable details were directed.

The Office of New Pay Administration has reached the conclusion after having conference of personnel officials in respective ministry or agency and the consultation with Attorney General's Office and National Personnel Authority, basing on these advises, and we desire to enforce the present Law under the following conclusion.

1. As to the Overtime Allowance, computation on weekly basis is hardly applicable to workers who are working on the work hours schedule as before under the provision of Article 35 of the Law, because the work hours for some employees are scheduled by term over or within one week which circulates periodically and their work hours are different by week.

2. So far as the legal interpretation of Article 21 of the Law is concerned, one fails to get the allowance on weekly basis from interpretation of item 1 and 2 of same Article specifying "actual eight hours per day". Also it is same with "regular work hours" provided for in Article 22 and 23.

3. And so we cannot help but interpreting "regular work hours" provided for in Article 21 of the Law as the work hours assigned for a day by the Rules of National Personnel Authority 15-0.

4. Furthermore, if we adopt the allowance on weekly basis, disadvantageous treatment will be given to the government employees comparing with workers of private concerns and it might produce many grievances among employees.

5. Administering all the rate of overtime allowance for the service on Sunday as 125 percent is illogical considering it from the provisions of Items 1 and 2 of Article 21 of the Law and the rate is to be interpreted as 100 percent and 125 percent.

6. "The monthly amount of area allowance" provided for in Article 24 of the Law is hardly interpreted as excluding the area allowance for the family allowance since the definition is clearly made in Article 17 Paragraph 2 specifying "The monthly amount of area allowance shall be computed by multiplying the monthly total of base pay and family allowance by certain established rate."

While the aforementioned interpretation and administration are contrary to idea of issuing compensation from the reasons mentioned below we reach the conclusion that such interpretation and administration is unavoidable.

- (1) This Law aims the extermination of unauthorized payment heretofore paid by the respective ministries and agencies.
- (2) Those who violated the provisions of this Law face ^{with} a strict penal clause.
- (3) At the conversion into new base pay, recomputation have been strictly observed; and
- (4) Other provisions of the present Law shall also be strictly interpreted following the example made in the recomputation.

It is to be avoided that interpreting one provisions strictly and another generously causes uncertainty in the observance of the Law.

However, adoption of above-mentioned conclusion does not mean that the reasonable point may be left as it is, but that it is unavoidable conclusion taken, as the temporary measures, until the amending Bill will be submitted to the following session of the Diet.

CIVIL SERVICE DIVISION
Government Section

3 January 1949

MEMORANDUM FOR: Mr. James R. Bell, Chief
Organization Branch, C.S.D.

SUBJECT : Rules Governing Hours of work and Computation of
Overtime and Holiday Pay.

It is suggested that technical interpretation and rules governing hours of work, and the computation of Overtime and Holiday pay, be issued by the National Personnel Authority, along the following lines:

Technical Interpretations Covering the Treatment of Hours of Work and Overtime as Provided under Law No. 46 of 1948 as Amended.

Definitions:

"Work hours" as used in Articles 19, 21 and 22, "regular work hours" as used in Articles 21 and 22, and "administrative work hours" as used in Article 19, paragraph 3, shall be interpreted to mean the total number of hours an employee is scheduled for work during a calendar week under the provisions of Article 19, paragraph 2 of this Law.

"Rest period" referred to in Article 19 shall be interpreted to mean a non-work period for the purpose of eating meals or otherwise to be utilized by the employee as he so desires.

Overtime - For the purpose of computing overtime under the provisions of Article 21, the following rule will govern: (1) for all work performed in excess of 8 hours per day within the prescribed hours for the calendar week, but not exceeding the weekly work hours prescribed for the particular agency, the regular hourly rate of pay as prescribed in Article 24 will be paid; (2) for all work performed in excess of the number of hours scheduled for work during a calendar week under the provisions of Article 19, paragraph 2, 125 per cent of the regular hourly rate of pay as prescribed in Article 24, will be paid.

Example; An employee working on a 48-hour scheduled work week has the following daily work schedule:

	M	T	W	T	F	S	S	Total
Scheduled Work hours	8.5	8.5	8.5	8.5	8.5	5.5	-	48
Hours Worked	9	9	9	10	10	6	-	53

The employee was scheduled to work 8-1/2 hours a day each day, Monday through Friday and 5-1/2 hours on Saturday; he actually worked 9 hours

3 January 1949

each on Monday, Tuesday and Wednesday, 10 hours on Thursday and Friday, and worked 6 hours on Saturday. He would receive his regular pay for 48 hours of work and overtime pay at the rate of 1.25 times his regular hourly rate of pay for 5 hours inasmuch as he exceeded his regular working hours for the week by 5 hours. Had the employee been absent without pay and performed no work on Saturday, he would have received pay for 47 hours of work at his regular hourly rate of pay inasmuch as he did not exceed his regular work hours for the week.

Had the employee performed work on Sunday, he would be paid for such hours of work at 1.25 times his regular hourly rate of pay for all hours of work performed on that day as Sunday is ordinarily a non-work day (except in the case of employees who have other designated non-work days). There are no regular work hours on that day and any hours worked on a designated non-work day would be paid for at overtime rates provided it exceeds the number of work hours in his established work week.

If an employee's regular work hours do not require him to work on Saturday afternoon, any work performed beyond his regular work hours on that day would be paid for at 1.25 times his regular hourly rate of pay provided he exceeded his regular work hours for the week.

Computation of the Hourly Amount of Compensation.

For the purpose of computing the hourly rate of compensation for overtime purposes as provided in Article 24, the following rule will govern:

The monthly amount of base pay plus area allowance times 12 divided by 52 times the number of established work hours in the week shall be the hourly rate of pay. Area allowance computed on family allowance will not be included.

Relationship Between Holiday Pay and Overtime Pay

Overtime allowance is payable for ^{work performed on} work performed outside of the regular work hours. Holiday pay is payable for holidays falling within the regular scheduled work hours. The holiday rate is 1.25 times the regular hourly rate of pay. In the case of a holiday falling on Sunday or on a scheduled non-work day, the overtime allowance would govern and not the holiday allowance.

In case of employees working on a holiday falling on Saturday, holiday pay of 1.25 times the hourly rate of pay is issuable for the regularly scheduled work hours and overtime rate of pay would govern for work performed in excess of the regular scheduled work hours for that day.

JESSE B. BETTIS
Compensation Specialist

JBB:rr

CIVIL SERVICE DIVISION
Government Section

file

~~Mr Hoover~~
Mr Hoover
B17

27 December 1948

MEMORANDUM FOR: The Record

SUBJECT : Holiday and Overtime Pay for Years--and Leave
December 29 to January 3, 1949

WPM
12/28/48

1. Contacted Sato of the Attorney General's Office and received the opinion that (a) the Daijokn of 1873 was still in effect (b) that this Notification provided Holidays for Government workers and did not declare a Legal Holiday.

2. Under such circumstances, National Personnel Authority was advised to refrain from any action on interpretation for the pay for this New Year's Holiday period. They were directed to allow the office of New Pay Administration to make its own interpretation and if contacted by that office, to point out the information they had obtained and to indicate further that the Diet, in passing Law 178 of 1948 and the Amendments to the New Pay Law, had expressed a lack of sympathy for the long New Year's Holiday. Only January 1 is recognized as a Legal Holiday by the above Law.

MSalter

MacDONALD SALTER,
Chief, Classification-Compensation Branch

MS:rnr

Noted
(B)

CIVIL SERVICE DIVISION
Government Section

27 December 1948

MEMORANDUM FOR: The Record

12.00

SUBJECT : Holiday and Over-time Pay for Years-end Leave
December 29 to January 2

1. Reference is made to attached memorandum of the National Personnel Authority. A copy of Dajokan Order No. 2 of 1873 is ~~not available in this office:~~ *attached*
2. Law No. 178 of 1948 designates legal holidays for employees of the Japanese government. Law No. 46 as amended, provides for over-time and holiday pay and that holidays for which holiday pay is authorized shall be those covered by Law No. 178 of 1948.
3. Under the provisions of these laws payment can not be made for December 29 and 30, 1948, as holiday pay, however payment could be made for these days under provisions of Dajokan Order No. 2 of 1873, in-as-much as the effective date of Law No. 46, as amended, is 1 January 1949.
4. All employees required to work on 1 January 1949, would receive payment at holiday rates for work performed during their regularly scheduled tour of duty. Employees not required to work would receive payment at their regular rate of pay. ✓
5. Employees working on 2 January 1949 (Sunday) would receive pay at the authorized over-time rate in-as-much as this would be work performed outside of their regularly scheduled tour of duty. Employees not working on this day would receive no additional pay. Employees working on Monday, 3 January, 1949, would receive their regular pay.
6. In-as-much as there is some question as to whether or not Dajokan Order No. 2 of 1873 would be effective after the effective date of Law 46 of 1948, as amended, it is suggested that a ruling should be made by the Attorney General's office on this point.

JBB:mvb

J. B. BETTIS,
Compensation Specialist.

Dir. - Sato of NPA. advised to allow Office of New Pay Administration to make decision regarding this. Diet action on #178 & subsequently mandates to New Pay saw indicated they were not in accord with long holiday. was

CIVIL SERVICE DIVISION
Government Section

27 December 1948

MEMORANDUM FOR: The Record

SUBJECT : Holiday and Overtime Pay for Years-end Leave
December 29 to January 3, 1949.

1. It has been the practise for the past 75 years for the government service to take a holiday from the period December 29 through January 3. This was originally provided by a Daijokan Notification No. 2 of 1873.
2. Law No. 178 of 1948 established the legal holidays which would be observed in Japan. It specifically included January 1 but did not include any other days before or after that date. The implication therefore is that these days were not considered in the status of legal holidays.
3. Law 46 of 1948 was recently amended. This is the New Pay Law and the amendments thereof go into effect January 1. In defining legal holidays Law 178 of 1948 was used as the basis of reference for such legal holidays. No recognition was given to other days before or after January 1.
4. It is the contention of the legal division of NPA that this Daijokan Notification No. 2 of 1873 is still in effect since no specific abrogation of this notification has been made. ~~Under such circumstances,~~ January 1, under the New Pay Law as amended, is a legal holiday. January 2 is a Sunday and in most instances will be a non-work day. Employees working on January 1 and January 2 would, therefore, be paid in accordance with the provisions of the New Pay Law. January 3, however, is a work day and absence must be officially authorized before an employee may be paid for that day. Furthermore, if this is considered a holiday, employees working on that day would get additional pay.
5. It is recommended that for the purpose of clarifying this situation now and in the future that a Cabinet Order be immediately issued abrogating the Daijokan Notification No. 2

Holiday +
overtime pay
file
12-28-48

MEMO FOR RECORD

- 2 -

27 December 1948

of 1873 and authorizing specifically December 29, 30 and 31 of 1948, together with January 2 and 3 of 1949 as legal holidays.

7. A review of this situation may be made at a later date and adjustment of Law 178 of 1948 may be made if it is felt necessary.

ms

MACDONALD SALTER,
Chief, Classification-Compensation Branch.

MS:mvb

Sat Sund. M

