

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

PATRICIA J. VIOLA)	
)	
Plaintiff,)	Civil Action No. 5:01cv00068
)	
v.)	<u>Memorandum Opinion</u>
)	
ROCKINGHAM CO-OPERATIVE FARM BUREAU, INC.)	By: Samuel G. Wilson
)	Chief United States District Judge
)	
Defendant.)	

Plaintiff, Patricia J. Viola (“Viola”), brings this action against Defendant, Rockingham Co-Operative Farm Bureau, Inc. (“Farm Bureau”), alleging that the Farm Bureau failed to pay her overtime compensation under the Fair Labor Standards Act (“FLSA”). The Farm Bureau claims that Viola was an administrative employee and exempt from the FLSA’s overtime provisions. The case is before the court on Viola’s motion for summary judgment. For the reasons stated below, the court will deny Viola’s motion for summary judgment.

I.

From 1998 to August 2000 Viola worked for the Farm Bureau as the Administrative Assistant to the Vice President of Sales and Marketing. The Farm Bureau classified Viola as a salaried exempt employee pursuant to the FLSA. The Farm Bureau paid Viola a salary ranging from \$450 per week to \$520 per week.

The Farm Bureau points out that Viola’s job description listed the following job duties: help manage the advertising budget; develop a vendor assistance program and the monthly filing of Farm Bureau claims; oversee computerized inventory maintenance; prepare for, attend and

purchase merchandise at trade shows; assist with purchasing of merchandise; offer support to store managers; and assist with product promotions and brochures. Viola, however, claims that she did not perform many of these duties.

The Farm Bureau produced evidence of the following job duties that Viola did perform during her two years as Administrative Assistant to the Vice President of Sales and Marketing. Viola regularly met with local radio and newspaper media personnel regarding the Farm Bureau's advertising. Viola handled the Farm Bureau's efforts to obtain advertising refunds or co-payments from national vendors whose products the Farm Bureau advertised and sold. The Farm Bureau created an incentive program for Viola to attempt to maximize these recoveries. Viola planned and coordinated special promotions by the Farm Bureau, such as visiting Santas and radio remote coverage. Viola prepared advertising and promotional materials, called "stuffers," which went into monthly statements to Farm Bureau customers. Viola attended trade shows, where she would work with other Farm Bureau employees evaluating new merchandise and purchasing discounted merchandise. Viola had authority to sign contracts on behalf of the Farm Bureau, and she signed an advertising contract and a contract for cellular phone service.

Viola, however, claims that most of her job duties were clerical, such as data entry, answering phone calls, typing, filing, copying, running errands, and compiling historical purchase records. According to Viola, most of her job duties involved routine tasks or pre-determined procedures, and since she acted pursuant to express instructions from management personnel, she did not exercise independent judgment and discretion in performing her job duties.

During her two years as Administrative Assistant to the Vice President of Sales and Marketing, Viola sometimes worked in excess of forty-hours per week. However, the Farm

Bureau considered Viola an exempt employee under the FLSA, and did not pay Viola overtime wages. On August 27, 2001, Viola filed this action alleging that she was a non-exempt employee under the FLSA and entitled to overtime pay for the overtime hours she worked at the Farm Bureau.

II.

The FLSA requires that covered employers pay their employees overtime wages, at the rate of time-and-a-half, for hours in excess of forty worked in a single week. However, the FLSA contains white-collar exemptions for workers who are “employed in a bona fide executive, administrative or professional capacity.” 29 U.S.C. § 213(a)(1). Such workers are not subject to the overtime provisions of the FLSA. The employer has the burden of proving that an employee is an exempt administrative employee. Yuen v. U.S. Asia Commercial Development Corp., 974 F. Supp. 515, 519 (E.D. Va. 1997).

Department of Labor regulations provide a “long test” and a “short test” to determine if an employee is an exempt administrative employee. Id. The “short test” applies where, as here, an employee is paid more than \$250 per week. 29 C.F.R. § 541.214. Under the “short test” an exempt administrative employee is an employee (1) “whose primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of the employer . . .” and (2) “the performance of primary duty includes work requiring the exercise of discretion and independent judgment.” Id.

The Farm Bureau argues that Viola meets these requirements and is an exempt administrative employee. To support their argument, the Farm Bureau pointed to several of Viola’s job duties that related to management or general business operations and included the

exercise of discretion and independent judgment. Additionally, Cecil Wright, Executive Vice President and General Manager of the Farm Bureau, stated in his deposition that Viola spent more than fifty percent of her work time performing administrative duties that involved the exercise of discretion and independent judgment.

Viola, however, argues that most of her job duties were clerical and did not relate to management policies or general business operations of the Farm Bureau. Furthermore, Viola argues that she performed these duties under heavy supervision and did not exercise independent judgment or discretion. Viola argues that there is no genuine issue of material fact as to her job duties and that since the Farm Bureau cannot meet its burden of proving that she was an exempt administrative employee, she is entitled to judgment as a matter of law.

The court, however, finds that the Farm Bureau has produced sufficient evidence demonstrating that Viola was an exempt administrative employee to create a genuine issue of material fact. Accordingly, the court will deny Viola's motion for summary judgment.

III.

For the reasons stated above, the court will deny Viola's motion for summary judgment. An appropriate order will be entered this day.

ENTER: This ____ day of March, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT

**FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

PATRICIA J. VIOLA)	
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Plaintiff,)	Civil Action No. 5:01cv00068
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v.)	<u>ORDER</u>
)	
ROCKINGHAM CO-OPERATIVE FARM BUREAU, INC.)	By: Samuel G. Wilson
)	Chief United States District Judge
)	
Defendant.)	

For the reasons stated in the court's Memorandum Opinion entered this day, it is
ORDERED and **ADJUDGED** that Plaintiff Patricia J. Viola's motion for summary judgment is
DENIED.

ENTER: This ____ day of March, 2002.

CHIEF UNITED STATES DISTRICT JUDGE