

Action WORKS

November 10, 1994

Ms. Bea Gather
District Director
Department of Labor
P.O. Box 3505
Denver, CO 80294

RE: FLSA complaint regarding the use of 'volunteers' by Landmark Education, a for-profit company

Dear Ms. Gather:

Landmark Education Corporation is privately held, for-profit corporation that sells new-age, 'self-help' courses. In investigating Landmark Education and speaking with labor attorneys, Action Works has found that Landmark Education's use of unpaid workers, that it calls 'volunteers', appears to be in violation of the Federal Labor Standards Act (FLSA). With headquarters in San Francisco, Landmark has offices in 24 states, including Colorado. A company bulletin board boasted 9,000 'volunteers' last May.

The specifics that relate to the FLSA include:

- Landmark Education is estimated to have sales of \$30-\$40 million based on information for previous years provided to Dunn and Bradstreet.
- The duties performed by these unpaid workers or 'volunteers' include office, clerical, telephone work, enrolling people into courses and assisting with courses for the benefit of Landmark Education.
- 'Volunteers' are required to sign agreements committing to amount of time to be worked, a copy of which is enclosed.
- There is no compensation for enrolling others into courses but, according to a former participant in the organization, some 'volunteers' are given paid positions on staff and/or the opportunity to lead courses based on the number of people they enroll. Documents obtained by Action Works include forms that track enrollment by 'volunteers'.
- That the use of the unpaid workers is intentional is evidenced by Landmark's brochure on 'volunteering', a copy of which is enclosed.
- 'Volunteers' of Landmark Education do not fall under Executive, Administrative or Professional exemptions from the FLSA due to, among other things, being paid less than \$155 per week. They are not paid. They also cannot be construed to be Apprentices, Trainees or Independent Contractors.

A local labor attorney has offered to represent a class action on contingency. But Landmark Education has sensitive and personal information on many, if not all, of the 'volunteers'. Action Works believes this places any 'volunteer' that would bring a class action suit at risk. We must therefore ask that, at a minimum, the Labor Department determine the legality of what we believe to be the unethical exploitation of unpaid workers by a for-profit company.

P.O. Box 1775 Boulder, CO 80306-1775 303 444-9999

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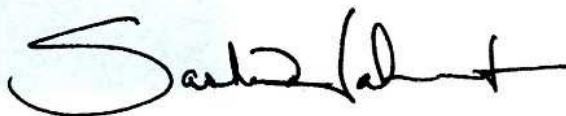
As you can see from the enclosed reading list, numerous publications have called the program and methods used cult or cult-like. There are those that would like to write legislation against the growing number of cult-like groups. However, Action Works believes that the exploitation can be stopped, at least for the larger for-profit groups, by enforcing the FLSA.

Action Works will likely issue a press release but would like to ensure that this complaint has been sent to the appropriate person. We would appreciate an acknowledgment at your earliest convenience. Please call or write if we can be of assistance. Thank you for your attention to this matter.

Sincerely,



Liz Sumerlin
President



Sasha Halenda
Secretary

Compliance Action Report

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division



1. Case Number
Year: **95** Area: **631** Serial No.: **00183**

2. Area Office Cross Reference File No. _____

3. CO ID: **43**

4. Area Office Location: **Denver**

5. Investigation Type: INV CONC OTH

6. Investigation Program: **S**

7. Special Investigation Code: **5**

8. Establishment
Trade Name: **LANDMARK EDUCATION**

Legal Name: _____

Street Address: **7306 SOUTH ALTON WAY SUITE A**

City: **ENGLEWOOD** State: **CO** ZIP: **80112** County Code: **08005** SIC Code: **8299**

9. Parent Co.
Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

10. Reinvestigation Yes No

11. Recurring Violation Yes No

12. BNPI: **0**

13. Number of Employees Under 10 10-49 50-99 100-249 250-499 500-1000 Over 1000

Compliance Action Results

14. Period Investigated From: **01/94** To: **01/96**

15. BW Installments Collected by AO Yes No

16. Other Action Yes No

17. Act	Findings		Agree To Pay		22. Computed Liquidated
	18. Employee	19. Amount	20. Employee	21. Amount	
A. FLSA MW					
OT					
Unduplicated					
B. PCA MW					
OT					
Unduplicated					
C. SCA MW					
FR					
OT (CWHSSA)	45				
Unduplicated					
D. DBRA MW					
OT (CWHSSA)		45	45		
Unduplicated				45	
E. SMW	Act	Program			
F. Other					45
G. Unduplicated Grand Total					

23. Auxiliary Act Employee Counts

Garnishment Exc. _____ Garnishment Ill. _____

Art and Humanities _____

Other Aux. Act _____ Count _____

Signature: **William Wyche** Date: **09/09/96**

Reviewed by: **Blampfel** Date: **10/11/96**

25. Trailer Forms Attached. CL SMW MSPA Other

26. Concl. & Recd. _____

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NARRATIVE REPORT

LANDMARK EDUCATION CORPORATION
7306 S Alton Way
Englewood, CO 80112
303-779-4774

EIN: unavailable

NATIONAL: 353 Sacramento St Suite 200
San Francisco, CA 94111
415-981-8850
Fax 415-616-4211

COVERAGE: Subject is a for profit corporation engaged in the presentation of a series of seminars on ontological conversation and inquiry, i.e., the series promotes self-help and self-improvement techniques for personal development.

Corporate structure is as follows:

Pres and CEO:	Harry Rosenberg
VP:	Vacant
Sec/Tre:	Art Schreiber, Esq.
RA:	Art Schreiber, Esq. 353 Sacramento #200, San Francisco, CA 94111

ADV for 1994 and 1995 amounted to some *244* annually. Subject conducts its seminars throughout the country.

The series includes a three day, one evening "Forum" (16 per year); a 10 evening, three hour "Forum in Action" (16 per year); a four day, one evening "Advanced Course" (10 per year), and series of specialized courses called collectively "SELP" (5 per year). Each course is fee paid by the attendee from \$150 - \$650. In order to accomplish this scheduling, subject engages five full and one part time employees who are salaried, two salaried "Forum Leaders" who teach the course, and five project personnel who are paid by the course.

In addition, subject has engaged hundreds of "assistants", which it deems volunteers, which provide a number of supporting activities. Through its outside counsel of Seyfarth, Shaw, Fairweather & Geraldson of Chicago, none of Subject's assistants are covered under FLSA, or, alternative, are trainees and not employees. *45*

The strongest supporting argument for the volunteer position appears, as borne out by the interviews almost exclusively, that none of the assistants have been promised or expect compensation but work solely for their personal purpose works in activities carried on by Subject

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for both their pleasure or profit.¹ ef 5

On the other hand, the strongest supporting argument for finding that the assistants are employees was ironically cited by outside counsel in *Marshall v. Baptist Hospital* which found that, if the assistants can be considered trainees, they displace regular employees that they would have to otherwise hire. Subject weakly counters that this, in fact, is not the case since the assistants are under direction by staff. Perhaps more importantly, the assistant activities is a common industry practice. In so stating, it should be noted that Subject is a for profit, and not a non-profit, enterprise.

EXEMPTIONS: 13(a)(1) denied:

ef 7c
Production/Finance Mgr II, salaried at \$423.08/week Exh. B-11
Advanced Course, SELP, salaried at \$461.54/week Exh. B-28
Registrar, salaried at \$469.23 Exh. B-10

13(a)(1) granted:

ef 7c
Participation Manager, salaried at \$471.15/week Exh. B-33
Enrollment Manager, salaried at \$415.38/week Exh. B-2
Center Manager, salaried at \$673.08/week. Exh. B-16

Those volunteers/assistants who teach are exempt under 541.314.

STATUS OF COMPLIANCE:

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PRIOR INVESTIGATIVE PERIOD: None according to 1/19/95 MODO contact.

Much of the facts of complainant's complaint is substantiated. Subject does engage

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volunteers which it styles "assistants" to perform a variety of functions which, among other things, does, in fact, aid it in performing its business. These activities include office, clerical, telephone solicitation and enrollment, as well as greeting customers, setting up chairs, handling microphones during the seminars and making coffee. Additionally, a number of volunteers actually teach the courses and provide testimonials during and after the courses.

The agreements which assistants are required to sign, however, do not comport with the one submitted in the complaint. The contemporary version is much simpler and does not include the number of promises of the agreement submitted with the complaint. Subject has not engaged the latter agreement within the past three years anywhere in the US *et 5*

It is true that Subject's paid employees had to have taken the course and volunteers before they became paid employees of Subject.

After the initial conference, Subject's counsel made it very clear that Subject's position was that its volunteers were not employees and that there was no employment relationship. *et 5*

et 5 et 7E

et 5 7E

During the time of the review, a meeting was held on April 12, 1996 at Subject's offices among HR Director Cahal, Counsel Schreiber, ADD Campbell and the undersigned. The majority of the discussion focused on the exempt status of certain paid employees--specifically the ones denied 13(a)(1) status which will be discussed hereinbelow. Additional time was spent discussing the non-employment status of the assistants.

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Furthermore, during the course of the April 12, 1996 discussion, Schreiber admitted that enrollment customer relations, performed, pursuant to the interviews, as a primary function by these employees, follows an involved application form which was originally constructed by Schreiber. This application form is used to weed out applicants who have had any mental or emotional problems from attending the seminars. Additionally, Schreiber admitted that he, and not the Registrar or any other enrollment personnel is the ultimate judge of whether or not a potential enrollee will be allowed to enroll in the seminars. Apparently, the employee is not permitted to make that independent judgment based on their own analysis of the situation. They are apparently limited to jawboning the applicant if there is an impasse between the firm and the applicant.

Sec 11: No records are kept of any hours worked by any employees.

45 Furthermore, the paid employees are in charge of assistants ranging from 20 - 50 volunteers depending on the employee's job classification.

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Sec 12: No violations.

DISPOSITION

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RECOMMENDATION:

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