

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

SPOKANE VALLEY FIRE DEPARTMENT

Plaintiff(s)

v.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3701

Defendant(s)

Civil Action No. 2:17-cv-00250-JLQ

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 3701
c/o Richard Llewellyn
2120 N. Wilbur
Spokane Valley, WA 99206

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael J. McMahon & Courtney A. Conklin
Etter, McMahon, Lamberson, Van Wert & Oreskovich, P.C.
618 West Riverside, Suite 210
Spokane, WA 99201

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Handwritten signature of Sean F. McAvoy

SEAN F. McAVOY, Clerk



Jul 11, 2017, 4:52 pm

Date

Civil Action No. 2:17-cv-00250-JLQ

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

1 Michael J. McMahon, WSBA #6896
2 Courtney A. Conklin, WSBA #41734
3 ETTER, McMAHON, LAMBERSON,
4 VAN WERT & ORESKOVICH, P.C.
5 618 WEST RIVERSIDE AVENUE, SUITE 210
6 SPOKANE, WA 99201
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10 Attorneys for Plaintiff

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12
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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF WASHINGTON

16
17 SPOKANE VALLEY FIRE
18 DEPARTMENT,
19 Plaintiff,

20 v.

21 INTERNATIONAL ASSOCIATION OF
22 FIRE FIGHTERS AFL-CIO, LOCAL
23 3701,

24 Defendants.

NO.

**COMPLAINT FOR
DECLARATORY RELIEF**

25 **COMES NOW** Spokane Valley Fire Department (“SVFD”), by and through its
26 attorneys, and seeks declaratory relief as follows:

27
28 **I. NATURE OF THIS ACTION**

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30 SVFD brings this action for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202
31 for relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201-219 (“FLSA”).
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II. JURISDICTION AND VENUE

- 2.1 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this suit arises under the FLSA, 29 U.S.C. § 201 *et. seq.*
- 2.2 Venue is proper in the Eastern District of Washington pursuant to 28 U.S.C. § 1391 because the controversy arises in the Eastern District of Washington and Plaintiff SVFD is an employer of workers in this District.
- 2.3 The Court is authorized to award the requested declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

III. PARTIES

- 3.1 Plaintiff SVFD is a Fire District located in the Eastern District of Washington and is an employer of fire department personnel, including battalion chiefs and fire marshals. SVFD is subject to the requirements of the FLSA.
- 3.2 Defendant International Association of Fire Fighters AFL-CIO, Local 3701 (“Local 3701”) is the exclusive bargaining agent for battalion chiefs and fire marshals employed by Plaintiff SVFD.

IV. FACTUAL ALLEGATIONS

- 4.1 Battalion chiefs and fire marshals are upper-level management within the SVFD.
- 4.2 Battalion chiefs and fire marshals are salaried employees, exempt from the FLSA’s wage and hour requirements.
- 4.3 Battalion chiefs’ and fire marshals’ primary duties are directing and supervising departmental divisions; organizing, managing, and maintaining SVFD’s training

1 programs; supervising the operations of all crews including the enforcement of rules,
2 directives and regulations; and participation in hiring, firing and disciplinary decisions
3 relating to other SVFD employees.
4

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6 4.4 Battalion chiefs and fire marshals regularly exercise discretion and independent
7 judgment with respect to matters of significance within the SVFD.
8

9 4.5 Battalion chiefs and fire marshals spend more than fifty (50) percent of their time
10 performing exempt work.
11

12 4.6 Plaintiff SVFD and Defendant Local 3701 have engaged in collective bargaining
13 relating to the employment status of SVFD battalion chiefs and fire marshals.
14

15 4.7 In 2007, Local 3701 petitioned the Public Employment Relationship Commission
16 (“PERC”) to certify their representation of “supervisory personnel” in the Spokane Fire
17 District for the purpose of collective bargaining with SVFD. PERC certified Local
18 3701 as representing “supervisory” fire department personnel for the purpose of
19 collective bargaining on February 1, 2007.
20
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22 4.8 In 2012 and again in 2015, SVFD and Local 3701 specifically bargained for and
23 entered into labor agreements defining battalion chiefs and fire marshals as exempt
24 employees.
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27 4.9 Specifically, the 2012-2014 agreement states, “[t]he Department recognizes the
28 Association as the exclusive bargaining agent for the exempt civil services positions
29 listed below: Battalion Chief; Fire Marshal.”
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1 4.10 The 2015-2017 labor agreement adopted the same language, stating “[t]he Department
2 recognizes the Association as the exclusive bargaining agent for the exempt civil
3 services positions listed below: Battalion Chief – Permanent Appointment; Fire
4 Marshal – Permanent Appointment.”
5

6
7 4.11 The 2015-2017 labor agreement between SVFD and Local 3701 expires on December
8 31, 2017. SVFD and Local 3701 have met to negotiate a new contract on October 13,
9 2016; November 9, 2016; February 6, 2017; and April 20, 2017.
10

11
12 4.12 Local 3701 now claims battalion chiefs and fire marshals are non-exempt employees
13 under the FLSA at 29 U.S.C. § 213.
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15 4.13 SVFD maintains the previously bargained classification of battalion chiefs and fire
16 marshals as exempt employees under the FLSA is binding, and that the battalion chiefs
17 and fire marshals are exempt executive and administrative employees. 29 U.S.C. §
18 213, 29 C.F.R. § 541.100, 29 C.F.R. § 541.200.
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21 4.14. Contract negotiations continue between the SVFD and Local 3071. An actual, ongoing
22 controversy exists between the parties regarding the rights and/or legal relationship
23 between SVFD and Local 3701, battalion chiefs and fire marshals under the FLSA.
24

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26 **V. CLAIM FOR RELIEF**

27 5.1 An actual, ongoing controversy exists between the parties as to whether the FLSA’s
28 “bona fide” executive or administrator exemption applies to battalion chiefs and fire
29 marshals employed by SVFD.
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1 5.2 Under the FLSA, battalion chiefs and fire marshals are bona fide executives and/or
2 administrators and are not entitled to the Act's wage and hour requirements.
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4 5.3 29 C.F.R. § 541.3, known as the "first responder" regulation, does not apply to
5 battalion chiefs or fire marshals.
6

7 5.4 Declaratory relief, pursuant to 28 U.S.C. § 2201, is appropriate because battalion chiefs
8 and fire marshals are exempt employees under the FLSA and are not subject to its wage
9 and hour requirements.
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12 VI. PRAYER

13 WHEREFORE, Plaintiff Spokane Valley Fire Department prays for the following
14 relief:
15

- 16 1. For a declaration, pursuant to 28 U.S.C. § 2201, that battalion chiefs and fire
17 marshals are bona fide executives and/or administrative employees under the FLSA
18 and are not subject to wage and hour requirements under the same.
19
- 20 2. For costs and attorneys' fees; and
- 21 3. For such other and further relief as this Court may deem just and equitable.
22
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24 Dated this 11th of July, 2017.
25

26 ETTER, McMAHON, LAMBERSON,
27 VAN WERT & ORESKOVICH, P.C.
28

29 /s/ Michael J. McMahon
30 Michael J. McMahon, WSBA #6895
31 Courtney A. Conklin, WSBA # 41734
32 Attorneys for Plaintiff