

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THOMAS COLVIN, WILLIAM LUNDY and
ANDREW HIMAN,)

Plaintiffs,)

v.)

Case No.:

CITY OF PORTAGE, INDIANA,)
COMMON COUNCIL OF THE CITY OF)
PORTAGE, THE CITY OF PORTAGE BOARD)
OF PUBLIC WORKS & SAFETY, and THE)
PORTAGE FIRE DEPARTMENT,)

Defendants.)

COMPLAINT AND JURY DEMAND

Plaintiffs, THOMAS COLVIN, WILLIAM LUNDY and ANDREW HIMAN, (hereinafter collectively referred to as “Plaintiffs”) by and through counsel, Angela M. Jones of The Law Office of Angela M. Jones, LLC, and for their Complaint against Defendants, CITY OF PORTAGE, INDIANA (“the City”), COMMON COUNCIL OF THE CITY OF PORTAGE (“the Council”), THE CITY OF PORTAGE BOARD OF PUBLIC WORKS & SAFETY (“the Board”), AND THE PORTAGE FIRE DEPARTMENT (“the Fire Department”) (referred to collectively as “Defendants”), state as follows:

NATURE OF ACTION

1. The Plaintiffs bring this action to recover unpaid overtime compensation and other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, et. seq. (hereinafter sometimes referred to as “the Act”), and/or in violation of I.C. §22-2-2-4 and;
2. The Plaintiffs claims may include those under the Indiana Wage Claims Statute, violation of the due process and equal protective guaranties of the 5th and 14th Amendments to the United States Constitution, the Fair Labor Standards Act of 1938, as well as other laws or

causes of action that apply to activities of the City, the Council, the Board, and the Fire Department.

3. Plaintiffs properly served Tort Claim Notice to Defendants on or about March 23, 2022. Tort Claim Notice attached hereto as **Exhibit 1**.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to 29 U.S.C., §201, et. seq.; 29 U.S.C. §216; 28 U.S.C. §1331 and 28 U.S.C. §1337.
5. This Court has jurisdiction over the supplemental state law claims pursuant to 28 U.S.C. §1367.
6. Venue is proper pursuant to 28 U.S.C. §1391(b) and (c) because the Defendants have its place of business in this district, the Plaintiffs are employed by the Defendants in this district, and the actions complained of were conducted within this district.

PARTIES

7. At all relevant times, Plaintiffs are or were “employees” of Defendants within the meaning of Section 203(e) of the Act, 29 U.S.C. § 203(e). Copies of the consent forms are attached hereto and contemporaneously filed herewith as **Exhibit 2**.
8. The various Defendants are governmental entities and/or units of the State of Indiana, and located in the geographical territory subject to his Court’s jurisdiction and is a “public agency” as that term is defined in 29 U.S.C. §203(x).
9. Defendants are the “employer” as that term is defined by 29 U.S.C. §203(d) and, as such, is subject to the provisions of Section 7 of the Act, 29 U.S.C. § 207.
10. At all relevant times, Defendants have been the employer within the meaning of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et. seq. and is subject to the provisions of such Act.

11. At all relevant times, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce, and is a public agency engaged in public activities for purposes of 29 U.S.C. §203(s).
12. At all relevant times, Plaintiffs were non-exempt employees who worked hours in excess of the applicable overtime threshold under Section 7(k) of the Act and became entitled to receive one and one-half times their regular rates of pay for all such excess hours under the Act.
13. Plaintiffs bring their supplemental state law causes of action as alleged herein.

FACTS

14. At all times relevant herein, Plaintiffs were “Battalion Chiefs” of the Portage Fire Department until they were demoted from their positions on January 28, 2022.
15. At all times relevant herein, the Portage Fire Department operates within a twenty-seven (27) day work period for purposes of Section 7(k) of the Act and determining when overtime is owed.
16. At all times relevant herein, Battalion Chiefs worked the same twenty-four (24) hour shift as all other firefighters and had the same duties as firefighters.
17. Pursuant to the Act, Plaintiffs are owed overtime when their hours exceed 204 hours in the twenty-seven (27) day work period.
18. At all times relevant herein, and since 2018, Battalion Chiefs have never been provided the appropriate compensation for overtime worked. Defendants have improperly failed to compensate Plaintiffs for all the time they were at work discharging their work-related duties.
19. Defendants were on notice of their failure to appropriately compensate Battalion Chiefs as early as 2018.

COUNT I:
Fair Labor Standards Act

20. The foregoing paragraphs one through eighteen are included as though fully set forth herein.
21. Pursuant to 29 U.S.C. §219(b), Plaintiffs bring this action, as they earned, but did not receive compensation for time worked, including overtime pay from Defendants. Defendants have improperly failed to compensate Plaintiffs for all the time they were at work discharging their work-related duties.
22. The Fair Labor Standards Act requires an employer to pay its employees at a rate of at least one and one-half their regular rate for time.
23. At all times relevant, Plaintiffs worked hours in excess of the applicable overtime threshold under Section 7(k) of the Act and became entitled to receive one and one-half times their regular rates of pay for all such excess hours under the Act.
24. Despite working overtime, Plaintiffs were not paid time and one-half pay from Defendants for overtime worked.
25. At all relevant times herein, Defendants have knowingly, willingly, deliberately and intentionally refused to pay Plaintiffs for time actually worked and for time and one-half pay for overtime worked.
26. During all relevant times, Defendants knew or should have known that Plaintiffs were entitled to compensation of time and one-half overtime pay under the Act.
27. Additionally, Defendants had time records which documented the time and correct hours that Plaintiffs worked. Nonetheless, Defendants ignored these time records.
28. Defendants knew or should have known that Plaintiff were entitled to compensation for time actually worked and for time and one-half overtime pay under the Act during all relevant times.

29. Defendants' failure to properly compensate Plaintiffs for all compensable hours was a willful and knowing violation of the Act.

30. Pursuant to 29 U.S.C. §§207, 216, Defendants owe Plaintiffs compensation for the all time worked, overtime work, an additional equal amount as liquidated damages, together with an additional sum for attorney's fees and costs.

WHEREFORE, Plaintiffs seek judgment against Defendants as follows: (1) issue a declaratory judgment that Defendants' acts, policies, practices, and procedures complained of herein violated provisions of the Act; (2) that Plaintiffs recover compensatory damages and an equal amount of liquidated damages as provided under the law and 29 U.S.C. 216(b); (3) Plaintiffs recover an award of reasonable attorney's fees, costs, and expenses; (4) Plaintiffs further pray for such additional relieve as the interests of justice may require.

COUNT II
Violation of I.C. § 22-5-1

31. The foregoing paragraphs one through thirty are included as though fully set forth herein.

32. I.C. § 22-5-1(a) states:

Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee. The payment shall be made in lawful money of the United States, by negotiable check, draft, or money order, or by electronic transfer to the financial institution designated by the employee. Any contract in violation of this subsection is void. IC § 22-5-1(a)

33. Defendants continued deliberate and intentional refusal to pay all compensation owed to the Plaintiffs including the monetary value of the agreed upon four (4) 24-hr shifts of reduction time, constitutes a violation of IC § 22-5-1(a).

34. I.C. § 22-5-2 provides for damages to the Plaintiffs as follows:

Every such person, firm, corporation, limited liability company, or association who shall fail to make payment of wages to any such employee as provided in section 1 of this chapter shall be liable to the employee for the amount of unpaid

wages, and the amount may be recovered in any court having jurisdiction of a suit to recover the amount due to the employee. The court shall order as costs in the case a reasonable fee for the plaintiff's attorney and court costs. In addition, if the court in any such suit determines that the person, firm, corporation, limited liability company, or association that failed to pay the employee as provided in section 1 of this chapter was not acting in good faith, the court shall order, as liquidated damages for the failure to pay wages, that the employee be paid an amount equal to two (2) times the amount of wages due the employee.

WHEREFORE, Plaintiffs seek judgment against Defendants as follows: (1) issue a declaratory judgment that Defendants' acts, policies, practices, and procedures complained of herein violated provisions of the Act; (2) that Plaintiffs recover compensatory damages and an equal amount of liquidated damages as provided under the law and 29 U.S.C. 216(b); (3) Plaintiffs recover an award of reasonable attorney's fees, costs, and expenses; (4) Plaintiffs further pray for such additional relieve as the interests of justice may require.

COUNT III:
Unlawful Retaliation in Violation of FLSA

35. The foregoing paragraphs one through thirty-four are included as though fully set forth herein.

36. The FLSA applied to Plaintiffs' employment with Defendants at all times relevant herein.

37. Section 215(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), prohibits retaliation against an employee because he or she "has filed any complaint or instituted or caused to be instituted any proceeding under or related to" the rights contained in the FLSA.

38. Since the filing of this lawsuit, Defendants have discriminated against Plaintiffs in the form of, *inter alia*, various disciplinary actions including demotion, threat of disciplinary action, and by generally creating a hostile work environment

39. The aforementioned acts constituted a retaliatory action, undertaken in direct response to Plaintiffs' assertion of workplace rights protected by the FLSA.

40. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiffs have suffered and continue to suffer.

41. Defendants have committed the acts herein maliciously, fraudulently, and oppressively with the wrongful intent to injure Plaintiffs. Defendants acted with a conscious disregard for Plaintiffs' rights. The acts taken towards Plaintiffs were carried out by Defendants acting in deliberate, callous and intentional manner with a desire to injure and damage.

42. Pursuant to § 216(b) of the FLSA, 29 U.S.C. § 216 (b), Plaintiffs are entitled to legal and equitable relief including compensatory damages as well as reasonable attorney's fees and costs.

WHEREFORE, Plaintiffs seek judgment against Defendants as follows: (1) issue a declaratory judgment that Defendants' acts, policies, practices, and procedures complained of herein violated provisions of the Act; (2) that Plaintiffs recover compensatory damages and an equal amount of liquidated damages as provided under the law and 29 U.S.C. 216(b); (3) Plaintiffs recover an award of reasonable attorney's fees, costs, and expenses; (4) Plaintiffs further pray for such additional relieve as the interests of justice may require.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demands trial by jury on all issues so triable.

/s/ Angela M. Jones
Angela M. Jones, #30770-45
The Law Office of Angela M. Jones, LLC
Phone: (219) 595-3383
Fax: (219) 247-8969
Email: ajones@angelajoneslegal.com
Attorneys for Plaintiffs