

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
(ORLANDO DIVISION)

ROBERT BALINT,)
 BRANDON BOWLING,)
 BRIAN CARROLL,)
 JOHN CRICHTON,)
 ANDREAS DELAY,)
 BRETT FORD,)
 ERIK JARVIS,)
 DOMINIC LYNN,)
 MATTHEW MCNAB,)
 PAUL MCCORKELL,)
 JOHN MURPHY,)
 ADAM SEITHEL,)
 BRIAN SHEETS,)
 JOHN TAYLOR, individually and)
 on behalf of themselves and all others)
 similarly situated)
)
 Plaintiffs,)
 v.)
)
 OSCEOLA COUNTY, FL)
)
 Defendant.)

C.A. No. _____

Jury Trial Demanded

COLLECTIVE ACTION COMPLAINT

Plaintiffs, on behalf of themselves and all others similarly situated, file this action pursuant to 29 U.S.C. § 216(b) for violations of the Fair Labor Standards Act (“FLSA”) committed by the County of Osceola, Florida.

PARTIES

1. Plaintiffs are current or former employees of Defendant, the County of Osceola, Florida (“Defendant” or “County”), who bring this action pursuant to the FLSA, on behalf of themselves (and other individuals who opt into this action) because of Defendant’s unlawful deprivation of Plaintiffs’ rights to overtime compensation.

2. Defendant is a political subdivision organized under the laws of the State of Florida, with its principal place of business located at 1 Courthouse Square, Kissimmee, Florida 34741. Defendant is a “public agency” and an “employer” within the meaning of the FLSA, 29 U.S.C. §§ 203(x) and 203(d).

3. Defendant operates Osceola County Fire Rescue & EMS (“OFR” or “Department”), which is the County Department responsible for providing fire suppression and first response and emergency medical services to the County of Osceola.

4. At all times material herein, Defendant employed Plaintiffs, and all similarly situated individuals, in the position of Battalion Chief. The exact dates of Plaintiffs’, and similarly situated employees’, employment is in the custody and control of the Defendant, and Defendant has knowledge of the dates on which each of the Plaintiffs, and similarly situated employees, have been a Battalion Chief during the relevant period of this dispute.

5. Plaintiffs bring this action for a declaratory judgment under 28 U.S.C. §§ 2201 and 2202, and for unpaid overtime compensation, liquidated damages, attorneys' fees and costs, and all other relief available under the FLSA.

6. The individuals who are identified in the caption of the Complaint have given their written consent to be Party-Plaintiffs in this action, pursuant to 29 U.S.C. § 216(b). Their written consents are attached hereto as Exhibit A.

7. At all times material herein, Plaintiffs have been "employees" within meaning of the FLSA. 29 U.S.C. § 203(e)(1).

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) in that Plaintiffs' claims arise under the laws of the United States and Plaintiff seeks redress for violations of federal laws.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as Defendant is located within the Middle District of Florida and a substantial part of the events and omissions giving rise to this action occurred within the Middle District of Florida.

COLLECTIVE ACTION ALLEGATIONS

Background

10. Plaintiffs, and all others similarly situated, work or have worked for Defendant in the position of Battalion Chief.

11. The Battalion Chiefs are represented by the Osceola Professional Fire Fighters, Local 3284, International Association of Firefighters (“Union” or “Local 3284”).

12. At all relevant times, the County and the Local 3284 have been parties to a series of collective bargaining agreements (“CBA”). The current CBA is effective for the period of October 1, 2022 through September 30, 2025.

13. The CBA covers “all full-time Firefighter/Paramedics, Firefighter/EMT, Engineers (Driver/Operators), Lieutenants, Captains and Battalion Chiefs, but excludes the Fire Chief, Division Chief(s), and Deputy Chief(s).”

14. Pursuant to the CBA, Battalion Chiefs are paid pursuant to the pay ranges set forth in Appendix K, plus yearly percentage increases as provide in the CBA.

15. Appendix K provides both an hourly and annualized rate of pay for each job classification. The hourly rate is determined by dividing the applicable annualized salary by 2,080 for employees assigned a forty (40) hour schedule and by 2,496 for those employees assigned to a forty-eight (48) hour schedule.

16. Prior to October 1, 2022, the County took the position Plaintiffs were paid on a salaried basis. Plaintiffs, however, did not receive a predetermined amount of compensation each pay period regardless of the hours they actually

worked. Rather, Plaintiffs paychecks fluctuated depending on the number of hours worked each pay period.

17. Nevertheless, pursuant to the terms of the current CBA, effective the first pay period after ratification of the current CBA, the County converted the Battalion Chiefs to hourly employees.

18. The CBA establishes work schedule for shift personnel and non-shift personnel. For shift personnel, the work period “will consist of twenty-four (24) hours on-duty followed by forty-eight (48) hours off-duty with one Kelly Day (24 hours off-duty) assigned every work period (at least one (1) every three weeks).” This results in a workweek consisting of an average of 48 hours.

19. For shift personnel, the CBA states that the “County and the Union agree to a 144-hour, twenty-one (21) day work period pursuant to Section 7(k) of the Fair Labor Standards Act.”

20. Non-shift personnel are scheduled to work forty (40) hours per week and may request to work either four-10-hour days or five-8-hour days.

21. Battalion Chiefs are employed both as shift personnel and non-shift personnel.

22. In addition to the Battalion Chiefs’ regularly scheduled hours, both shift personnel and non-shift personnel Battalion Chiefs regularly work additional unscheduled shifts, which results in Battalion Chiefs working more than 40 hours

in a week, as well as in excess of 53 hours per week, and in excess of 159 hours in a 21-day period.

23. For shift personnel, the CBA states “[f]or purposes of computing overtime pay under this Agreement, overtime eligible employees shall receive one and one-half times their regular rate of pay (including assignment pay and educational incentive) for all time worked beyond their regularly scheduled hours in any two (2) week work period.” The CBA further specifies that “[f]or purposes of computing overtime, Vacation, Kelly Day, Sick Leave and other approved paid leave shall not count as hours worked.”

24. The CBA further addresses overtime in Section 24.04, which states, in relevant part, that “[o]vertime hours and overtime compensation shall be defined and implemented as required by the Fair Labor Standards Act and U.S. Department of Labor Regulations, except as modified by this Agreement.”

25. Prior to August 26, 2023, Battalion Chiefs did not receive time and one-half overtime for hours worked outside their normal schedule or for hours in excess of 40 hours in a week, in excess of 53 hours per week, or in excess of 159 hours in a 21-day period. Instead, Battalion Chiefs received “Work Back Pay,” which provided Battalion Chiefs with their normal rate of pay when they worked any extra shift hours or were mandated to attend any meetings.

26. In the current CBA, the “Work Back Pay” section was removed and was replaced with a section labeled “Battalion Chief Overtime.” This section states: “[e]ffective the beginning the first pay period after ratification of this Agreement, Battalion Chiefs will be converted from overtime exempt to hourly employees and shall be eligible for overtime as provided in Article 24 of this Agreement.” The County began paying Battalion Chiefs overtime effective August 26, 2023.

Plaintiffs’ Primary Duty is that of a First Responder

27. Within the last three years, and continuing to date, while working as a Battalion Chief on a 24-shift, Plaintiffs’ primary job duties have been and remain, to respond to and protect and serve the public by engaging in fire suppression, emergency response, and related non-exempt activities.

28. Battalion Chiefs are required to, and have little to no discretion regarding whether to, respond to large number emergency calls. Specifically, Battalion Chiefs are automatically dispatched to approximately 70% of all calls classified by the County under the following categories: “accidents,” “mutual aid & joint response, “special operations & hazmat,” “fire structures,” and “fire vehicles.”

29. When these calls come in, they take priority over all other duties or obligations the Battalion Chiefs may have at the time, including any

administrative or managerial responsibilities. The Battalion Chiefs cannot make themselves unavailable for dispatch. If a call comes in, Battalion Chiefs must respond.

30. While on the scene of fire calls, Plaintiffs and all others similarly situated regularly work alongside the crew engaged in the control, suppression and extinguishment of fires and the rescue of fire and accident victims.

31. Typically, the first arriving Battalion Chief assumes the role of Incident Commander. When Battalion Chiefs act as the Incident Commander, they are typically positioned in or near the fireground, not in their vehicle away from the incident.

32. Additionally, for a number of calls, more than one Battalion Chief is automatically dispatched to the scene. In these instances, the second arriving Battalion Chief assumes the role of division or group supervisor. As division or group supervisors, Battalion Chiefs are often required to enter burning structures and stand side-by-side with other front-line fire fighters.

33. Battalion Chiefs are also required to wear the same protective gear as other frontline fire fighters, even when operating as Incident Commander.

34. Battalion Chiefs are required to participate in and complete all training and physical fitness programs as other frontline firefighters. In addition, Battalion Chiefs must maintain a paramedics license.

35. Battalion Chiefs also carry an Emergency Medical Services (“EMS”) bag and fire extinguisher in their vehicles. If a Battalion Chief is the first to arrive on the scene of an emergency or fire call, they have a duty to act and administer care. This includes rescuing victims and administering narcotics or other first aid.

Plaintiffs’ Limited Administrative and Managerial Role

36. Battalion Chiefs have no discretion with respect to staffing. They assign staff based on set policies and any decision made outside those set policies must be approved by the Shift Commander.

37. Battalion Chiefs are directly supervised by Shift Commanders who also work 24-hour shifts.

38. Battalion Chiefs do not have the authority to hire, fire, or transfer employees.

39. Battalion Chiefs do not provide performance reviews or advancement recommendations.

40. Battalion Chiefs have no independent authority to issue discipline.

41. Battalion Chiefs do not control budgeting, promotions, or rates of pay.

Defendant’s Failure to Pay Overtime

42. Prior to August 26, 2023, Defendant misclassified Plaintiffs as “exempt” employees under 29 C.F.R. § 541.3 and unlawfully failed to pay Plaintiffs overtime compensation at one and one-half time their regular rate of pay for all

hours worked in excess of 40 hours in a week, or in excess of 53 hours in a workweek, or 159 hours in a 21-day work period.

43. Instead, Defendant either compensated Plaintiffs for only their regularly scheduled hours or paid Battalion Chiefs straight time hours for additional hours worked pursuant to the Battalion Chief Work Back provisions of the CBA.

44. Defendant, prior to August 26, 2023, intentionally failed and to pay Plaintiffs overtime compensation at the rate of one and one-half times their regular rate of pay when it suffered or permitted Plaintiffs to work in excess of 40 hours per week, or in excess of 53 hours in a week, or 159 hours in a 21-day work period.

45. Defendant's actions in refusing to provide Battalion Chiefs the rights and protections provided under the FLSA are willful in that the Defendant knew or should have known that uncompensated overtime work was being performed by Plaintiffs and all others similarly situated, due to Defendant's established policies and procedures, work schedule, and observation of Plaintiffs.

STATEMENT OF CLAIMS

COUNT I

Violations of Section 207(a) of the FLSA

46. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 45, as if fully set forth herein.

47. Prior to August 26, 2023, for those Plaintiffs and those similarly situated who worked in excess of 40 hours in a workweek, Defendant has failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(a).

48. By failing to pay the Plaintiffs and similarly situated individuals overtime pay as required under the law, Defendant has violated the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, Plaintiffs and those similarly situated individuals have been unlawfully deprived of overtime compensation and other relief for the maximum, three-year period allowed under the law.

49. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, an amount (that has not yet been precisely determined) has become due and owing to Plaintiffs and others similarly situated an amount that has not yet been precisely determined. The employment and work records for Plaintiffs and others similarly situated (including time and attendance records) are in the exclusive possession, custody, and control of Defendant. Accordingly, Plaintiffs are unable to state the exact amount owed to them by Defendant at this time. Under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, Defendant has a duty to maintain and preserve payroll and

other employment records with respect to Plaintiffs and others similarly situated from which the amount of Defendant's liability can be ascertained.

50. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and others similarly situated are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

51. Plaintiffs and others similarly situated are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

COUNT II
Violations of Section 207(k) of the FLSA

52. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 51, as if fully set forth herein.

53. Plaintiffs are bringing these claims on behalf of themselves and those similarly situated for failure to make overtime payments under the FLSA's Section 7(k) exemption.

54. Under the U.S. Department of Labor's regulations applicable to fire fighters covered under 29 U.S.C. § 207(k), (29 C.F.R. § 553.230), an employer must pay overtime compensation to such employees at a rate not less than one and one-half times their regular rate of pay for hours of work in excess of 53 hours in a 7-day work period or in excess of 212 hours in a maximum 28-day work period (or in excess of a proportionate number of hours for work periods between 7 and 28 days).

55. Here, Defendant has adopted a 21-day work period for other frontline fire fighters. Thus, Section 7(k) of the FLSA requires Defendant to pay one and one-half times their regular rate of pay to all employees who work hours in excess of 159 hours in a 21-day period.

56. Prior to August 26, 2023, when Plaintiffs and others similarly situated have worked in excess of 159 hours in a 21-day period, Defendant has failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(k) and 29 C.F.R. § 553.230.

57. By failing to pay the Plaintiffs and others similarly situated the overtime pay required under the law, Defendant has violated the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, Plaintiffs and those similarly situated have been unlawfully deprived of overtime compensation and other relief for the maximum, three-year period allowed under the law.

58. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, an amount (that has not yet been precisely determined) has become due and owing to Plaintiffs and others similarly situated. The employment and work records for Plaintiffs (including time and attendance records) are in the

exclusive possession, custody, and control of Defendant. Accordingly, Plaintiffs are unable to state at this time the exact amount owed to them by Defendant at this time. Under the FLSA, 29 U.S.C. § 211(c), and other various statutory and regulatory provision, Defendant has a duty to maintain and preserve payroll and other employment records with respect to Plaintiffs and other employees similarly situated from which the amount of Defendant's liability can be ascertained.

59. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and others similarly situated are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

60. Plaintiffs and others similarly situated are entitled to recover attorney's fees and costs under 29 U.S.C. § 216(b).

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and applicable law, all Plaintiffs hereby demand that their claims be tried before a jury.

REQUESTS FOR RELIEF

Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, requests the following relief from this Court:

(a) Enter judgment declaring that Defendant has willfully and wrongfully violated its statutory obligations under federal law and deprived each of the Plaintiffs of their rights;

- (b) Enter judgement declaring Plaintiffs are not exempt employees under the FLSA;
- (c) Order a complete and accurate accounting of all the unpaid compensation to which the Plaintiffs are entitled;
- (d) Award Plaintiffs compensatory relief in the form of unpaid compensation and liquidated damages equal to their unpaid compensation;
- (e) Award Plaintiffs interest on their unpaid compensation;
- (f) Award Plaintiffs their reasonable attorneys' fees to be paid by the Defendant, and the costs and disbursements of this action; and
- (g) Award such other relief to which Plaintiffs are entitled and/or which this Court deems necessary and proper.

Respectfully submitted,

s/ Richard Siwica

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