

**BEFORE THE DEPARTMENT OF INTERIOR
UNITED STATES PARK POLICE**

**FRATERNAL ORDER OF POLICE
UNITED STATES PARK POLICE
LABOR COMMITTEE**

vs.

**UNITED STATES PARK POLICE
DEPARTMENT OF INTERIOR**

Case No. 19-1

Institutional Union Grievance

January 10, 2019

**FRATERNAL ORDER OF POLICE
INSTITUTIONAL GRIEVANCE SEEKING LIQUIDATED DAMAGES
DUE TO NON-PAYMENT OF WAGES AND OVERTIME COMPENSATION**

COMES NOW the Fraternal Order of Police, United States Park Police Labor Committee (the “Fraternal Order of Police”) on behalf of all bargaining unit members and seeks liquidated damages for the failure to pay wages, including overtime, under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. in a timely manner. Should this matter not resolve, the Fraternal Order of Police will seek binding arbitration as soon as possible.

INTRODUCTION

1. The Fraternal Order of Police brings this grievance on behalf of the nearly 400 men and women that risk their safety and lives, every day, on behalf of those in the communities they are assigned to protect.
2. This grievance is brought pursuant to Article 8.13A of the Labor Management Agreement of 1999 (CBA) and applicable amendments.
3. The bargaining unit members of the United States Park Police (USPP) serve as federal law enforcement officers in several jurisdictions and have been cited for their bravery and public

service in many publicized law enforcement actions of note, including their involvement in the Navy Yard shooting in 2015 and in helping evacuate victims at the Congressional Baseball Game in 2017, along with many other acts to promote public safety every day. These federal law enforcement officers work tirelessly to protect the public in a significant range of functions, from helicopter evacuations, patrol duties, to the protection of the President of the United States.

4. The United States Park Police (USPP) is an entity that employs the federal law enforcement officers in the bargaining unit represented by the Fraternal Order of Police.

5. The USPP is a subdivision of the United States Department of Interior (DOI), which is funded by the United States Government (USG).

6. The USG, due to a lapse in appropriations, starting at 12:01 a.m., on December 22, 2018 began a partial government shutdown which directly impacted the DOI and the USPP, resulting in the furlough of all but “Excepted”¹ employees.

7. The vast majority of Fraternal Order of Police bargaining unit members were considered excepted and as a result have not received basic and overtime compensation due them on their scheduled pay date. Approximately 380 bargaining unit officers are believed to have been affected in this case and the claims are continuing in nature.

8. In many instances, bargaining unit members have had to work more than their regular hours of overtime due to the need to perform essential functions along with those that have been abandoned by furloughed National Park Service employees and others due to the government shutdown.

¹ An “excepted” employee is a federal employee who are funded through annual appropriations, but is nonetheless excepted from the furlough because they are “performing work that, by law, may continue to be performed during a lapse in appropriations.” See Office of Personnel Management Guidance for Government Furloughs, Section B.1. (Sept. 2015).

THE GOVERNING LAW

9. The Fair Labor Standards Act of 1938 (FLSA) requires that wages, including overtime compensation, be paid to the bargaining unit officers in a timely manner. A timely manner is considered to be on the regularly scheduled payday of the bargaining unit member. 29 USCS § 206 (a); 29 USCS § 207(a) 1; § 29 CFR 778.106; See Martin v. United States, 130 Fed. Cl. 578 (Ct. Cl. 2017); Biggs v. Wilson, 1 F.3d 1537 (9th Cir. 1993).
10. The Anti-Deficiency Act, 31 U.S. § 1341 (a)(1)(A) (ADA), bars payment of compensation to government employees when such payment exceeds appropriated funds.
11. An “excepted” employee is a federal employee who is funded through annual appropriations, but is nonetheless excepted from the furlough because they are “performing work that, by law, may continue to be performed during a lapse in appropriations.” See Office of Personnel Management Guidance for Government Furloughs, Section B.1. (Sept. 2015); 31 USCS § 1342.
12. The courts have held that the ADA does not operate to cancel a federal employer’s obligation to pay compensation governed by the FLSA. See Martin v. United States, 130 Fed. Cl. 578 (Ct. Cl. 2017).
13. Failure to pay wages, including overtime, is a violation of the FLSA that entitles the bargaining unit officers to liquidated damages, unless the USPP can demonstrate that the USPP acted in good faith and had reasonable grounds for believing that its act or omission was not in violation of the FLSA. Martin, 130 Fed. Cl. at 584.

14. The USPP bears the burden of establishing good faith, and subjective good faith includes taking action to ascertain the dictates of the FLSA; honest belief in the inability to comply is not sufficient to excuse liability for liquidated damages. Martin, 130 Fed. Cl., 585-6.

15. A violation of the FLSA is willful where the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute. See McLaughlin v. Richland Shoe Co., 486 U.S. 128, 133 (1988).

**ADDITIONAL FACTS RELEVANT
TO BARGAINING UNIT EMPLOYEES**

16. Upon information and belief, the USPP has not conducted an analysis to determine whether its failure to pay Excepted bargaining unit members on their regularly scheduled workday complies with the FLSA and can rely on no authorities showing that its failure to pay Excepted bargaining unit employees on their regularly scheduled payday complies with the FLSA and CBA.

17. The USPP has not paid FLSA compensation that is due to the affected bargaining unit members of the USPP.

18. The USPP and DOI and USG are required to pay bargaining unit members all FLSA compensation on their scheduled payday, which occurs normally on a bi-weekly basis;

19. Article 2 of the CBA requires that the USPP follow law, rule and regulation. The FLSA is implemented through Article 2 of the CBA.

20. Article 10.5 of the CBA also requires that “[a]n Officer required to perform any work or duty before or after his/her scheduled work hours will receive compensation for all such work or duty in accordance with law.”

21. For most of the bargaining unit members of the USPP affected, they have not received FLSA compensation as required by law and the CB

22. The USPP violation of the FLSA is willful and in conscious or reckless disregard of the requirements of the FLSA and the CBA. These violations, due to the government shutdown, are believed to be continuing in nature and this union grievance seeks damages on a continuing basis for as long as the government shutdown continues.

23. As a result, the USPP has not made timely payment, as required, and is responsible for liquidated damages and the other relief sought.

24. Unless the USPP intends to immediately comply and pay requisite damages, we request that the the parties move immediately to Article 9 (Arbitration) of the CBA for a ruling in this matter.

REQUEST FOR RELIEF

WHEREFORE, the Fraternal Order of Police asks that the USPP, DOI, USG grant the following relief:

(a) Publish a notice that the USPP has violated its statutory and legal obligations and deprived USPP bargaining unit members of their rights, privileges, protections and compensation under the law and collective bargaining agreement (CBA), that the violations were not in good faith and that USPP did not have reasonable grounds for believing that its acts complied with its obligations under the FLSA, and that the violations were willful;

(b) Provide a full accounting of all bargaining unit members affected by this action and the amount of FLSA overtime not provided in a timely manner;

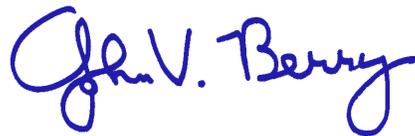
(c) Award USPP bargaining unit members, that are excepted from the furlough and classified as non-exempt from the FLSA's overtime provisions monetary damages in the form of liquidated damages under the FLSA and CBA equal to the amount of overtime compensation

that they should have been paid on the Scheduled Payday for work performed on or after December 22, 2018 (“double damages”);

(d) Award USPP bargaining unit members reasonable attorneys’ fees to be paid by Defendant, and the costs and disbursements of this action; and

(e) Grant such other legal and equitable relief as may be just and proper.

Respectfully submitted,



John V. Berry
Emily J.C. Maloney
*Counsel for the Fraternal Order of Police
in Grievance 19-1*

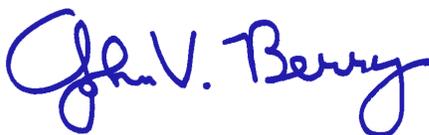
DATE: January 10, 2019

CERTIFICATE OF SERVICE

Pursuant to the Collective Bargaining Agreement, Article 8, service of this grievance has been sent to:

Robert MacLean
Chief of Police
United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

BY ELECTRONIC AND FIRST CLASS MAIL



1/10/19

John V. Berry, Esq.

Date

cc: Mike Shalton, Chairman, Fraternal Order of Police
Paul Knight, General Counsel, Fraternal Order of Police
Fraternal Order of Police, Executive Board
Gregory Monathan, Deputy Chief
Stephen Booker, Deputy Chief
Karlyn Payton, Chief, Labor Relations