

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EDMUND J. FARLEY, ROBERT J.)
COX, and HARRYJ. SCHERER)
individually and on behalf of others)
similarly situated,)

Plaintiffs,)

v.)

CITY OF PITTSBURGH)

Defendant.)

Civil Action No.:

COLLECTIVE ACTION

JURY TRIAL DEMANDED

COMPLAINT

Filed on behalf of:
Plaintiffs,

Joshua M. Bloom, Esquire
Joshua M. Bloom & Associates, P.C.
3204 Grant Building
310 Grant Street
Pittsburgh, PA 15219
412-288-6000
PA ID 78072

Plaintiffs, Edmund J. Farley, Robert J. Cox, and Harry Scherer, individually and on behalf of others similarly situated, by and through their attorneys, Joshua M. Bloom and Associates, P.C., and Joshua M. Bloom, Esquire, files the following Complaint:

I. INTRODUCTION

1. This is a collective action brought pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 ("FLSA") to recover unpaid overtime compensation owed to Plaintiffs Edmund J. Farley ("Captain Farley"), Robert J. Cox ("Battalion Chief Cox"), and Harry J. Scherer ("Deputy Chief Scherer") and all others similarly situated to them who were formally or are currently employed as firefighter captains ("Captains"), firefighter battalion chiefs ("Battalion Chiefs"), and firefighter deputy chiefs ("Deputy Chiefs") by the City of Pittsburgh (the "City") during the applicable liability period (3 years back from date of filing to date of judgment).

2. On or about April 23, 2004, the U.S. Department of Labor ("DOL") published amended FLSA regulations rendering the FLSA overtime exemptions inapplicable to the Captains, Battalion Chiefs, and Deputy Chiefs in the following ways, including but not limited to:

(a) excluding emergency responders from the FLSA exemptions, i.e., firefighters regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires; rescuing fire, crime, or accident victims; conducting investigations or inspections; and/or other similar work. 29 CFR § 541.3; and

(b) adding an additional requirement to the FLSA executive exemption that the relevant employees have the authority to hire or fire employees to whom they regularly

and customarily direct or that their recommendations regarding the same are given particular weight. 29 CFR § 541.100; 29 CFR § 541.105.

3. At all times relevant hereto, among other reasons excluding them from the FLSA exemptions, firefighter Captains, Battalion Chiefs, and Deputy Chiefs perform the type of work expressly excluded from the FLSA exemptions and do not maintain the authority to hire or fire employees to whom they direct or is their recommendation regarding the same given any particular weight.

4. Notwithstanding the DOL changes to the FLSA regulations as stated above, the City has continued to refuse to pay firefighter Captains, Battalion Chiefs, and Deputy Chiefs overtime compensation for hours worked in excess of the FLSA threshold as it applies to firefighters.¹

5. Pursuant to the FLSA, Captain Farley, Battalion Chief Cox, and Deputy Chief Scherer on behalf of themselves and all others similarly situated to him who were formerly or are currently employed as firefighter Captains, Battalion Chiefs, and Deputy Chiefs by the City during the applicable liability period, seek overtime compensation, liquidated damages, pre and post-judgment interest, and attorneys' fees and costs from the City.

6. Captain Farley, Battalion Chief Cox, and Deputy Chief Scherer will request, if necessary, the Court to authorize concurrent notice to all firefighter Captains, Battalion Chiefs, and Deputy Chiefs who are employed by the City or who were so employed during the liability period, informing them of the pendency of this action and their right to opt into this lawsuit pursuant to the FLSA, 29 U.S.C. § 216(b).

¹ The FLSA provides that a public agency complies with the FLSA overtime obligations by paying firefighters one and one-half times the regular rate for hours worked in excess of 212 during a 28 day work period. 29 U.S.C. § 207(k); 29 CFR 553.230(a).

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. § 216(b), and C. § 1981, et. seq., and thus, jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337.

8. Venue for this action properly lies in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) in that all of the claims herein arose within the Western District of Pennsylvania.

III. PARTIES

9. Plaintiff, Edmund Farley ("Captain Farley") is an adult individual who has been at all relevant times, a covered, non-exempt employee of the City within the meaning of the FLSA, 29 U.S.C. § 203(e) and (g) residing at 955 Gladys Avenue, Pittsburgh, PA 15216.

10. Plaintiff, Robert J. Cox ("Battalion Chief Cox") is an adult individual who has been at all relevant times, a covered, non-exempt employee of the City within the meaning of the FLSA, 29 U.S.C. § 203(e) and (g) residing at 2452 Hayson Avenue, Pittsburgh, PA 15220.

11. Plaintiff, Harry J. Scherer ("Deputy Chief Scherer") is an adult individual who has been at all relevant times, a covered, non-exempt employee of the City within the meaning of the FLSA, 29 U.S.C. § 203(e) and (g) residing at 4456 Cerise Place, Pittsburgh, PA 15214.

12. Defendant, City of Pittsburgh ("the City"), is a local governmental agency with its principal place of business at the City-County Building, Grant Street, Pittsburgh,

PA and has been at all relevant times an "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d).

IV. FACTUAL BACKGROUND

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. Since at least July 1, 2009, Captain Farley has been performing the emergency responder duties of a firefighter Captain wherein his primary duties are to prevent, control, and extinguish fires; rescue fire, crime, illness, and/or accident victims; conduct investigations or inspections; and/or other similar work.

15. Since at least July 1, 2009, Captain Farley has not maintained the primary duty of managing a customarily recognized department or subdivision of the Pittsburgh Bureau of Fire in any manner other than within the performance of his duties as an emergency responder firefighter.

16. Since at least July 1, 2009, Captain Farley has not maintained the duty of customarily or regularly directing the work of two (2) or more other full-time employees in any manner other than within the performance of his duties as an emergency responder firefighter.

17. Since at least July 1, 2009, Captain Farley has not maintained the authority to hire and fire and particular weight is not given to his suggestions or recommendations relating to hiring, firing, or advancement to any employees that he directs or any other employees.

18. Since at least July 1, 2009, Captain Farley has not maintained the primary duty of the performance of office or non-manual work directly related to management or general business operations of the City of Pittsburgh or the Fire Bureau.

19. Since at least July 1, 2009, Captain Farley has not maintained primary duties that included the exercise of discretion and independent judgment with respect to matters of significance.

20. Since at least July 1, 2009, Captain Farley has not maintained primary duties of work which require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

21. Since at least July 1, 2009, Captain Farley has not maintained the primary duty of work which requires invention, imagination, originality or talent in the field of artistic or creative endeavor.

22. Since at least July 1, 2009, Captain Farley has worked in excess of the threshold for FLSA overtime compensation to become applicable (hours worked in excess of 212 during the relevant 28 day work periods).

23. Since at least July 1, 2009, the City has been fully aware that Captain Farley has regularly worked hours in excess of 212 during the relevant 28 day work periods.

24. Since at least July 1, 2009, the City has not paid Captain Farley overtime compensation (1 1/2 times the regular rate) for hours worked in excess of 212 during the relevant 28 day work periods.

25. Since at least July 1, 2009, Captain Farley was not exempt from the maximum hour requirements of the FLSA pursuant to 29 U.S.C. § 213(a)(1).

26. Since at least July 1, 2009, Battalion Chief Cox has been performing the emergency responder duties of a firefighter Battalion Chief wherein his primary duties are to prevent, control, and extinguish fires; rescue fire, crime, illness, and/or accident victims; conduct investigations or inspections; and/or other similar work.

27. Since at least July 1, 2009, Battalion Chief Cox has not maintained the primary duty of managing a customarily recognized department or subdivision of the Pittsburgh Bureau of Fire in any manner other than within the performance of his duties as an emergency responder firefighter.

28. Since at least July 1, 2009, Battalion Chief Cox has not maintained the duty of customarily or regularly directing the work of two (2) or more other full-time employees in any manner other than within the performance of his duties as an emergency responder firefighter.

29. Since at least July 1, 2009, Battalion Chief Cox has not maintained the authority to hire and fire and particular weight is not given to his suggestions or recommendations relating to hiring, firing, or advancement to any employees that he directs or any other employees.

30. Since at least July 1, 2009, Battalion Chief Cox has not maintained the primary duty of the performance of office or non-manual work directly related to management or general business operations of the City of Pittsburgh or the Fire Bureau.

31. Since at least July 1, 2009, Battalion Chief Cox has not maintained primary duties that included the exercise of discretion and independent judgment with respect to matters of significance.

32. Since at least July 1, 2009, Battalion Chief Cox has not maintained primary duties of work which require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

33. Since at least July 1, 2009, Battalion Chief Cox has not maintained the primary duty of work which requires invention, imagination, originality or talent in the field of artistic or creative endeavor.

34. Since at least July 1, 2009, Battalion Chief Cox has worked in excess of the threshold for FLSA overtime compensation to become applicable (hours worked in excess of 212 during the relevant 28 day work periods).

35. Since at least July 1, 2009, the City has been fully aware that Battalion Chief Cox has regularly worked hours in excess of 212 during the relevant 28 day work periods.

36. Since at least July 1, 2009, the City has not paid Battalion Chief Cox overtime compensation (1 1/2 times the regular rate) for hours worked in excess of 212 during the relevant 28 day work periods.

37. Since at least July 1, 2009, Battalion Chief Cox was not exempt from the maximum hour requirements of the FLSA pursuant to 29 U.S.C. § 213(a)(1).

38. Since at least July 1, 2009, Deputy Chief Scherer has been performing the emergency responder duties of a firefighter Deputy Chief wherein his primary duties are to prevent, control, and extinguish fires; rescue fire, crime, illness, and/or accident victims; conduct investigations or inspections; and/or other similar work.

39. Since at least July 1, 2009, Deputy Chief Scherer has not maintained the primary duty of managing a customarily recognized department or subdivision of the Pittsburgh Bureau of Fire in any manner other than within the performance of his duties as an emergency responder firefighter.

40. Since at least July 1, 2009, Deputy Chief Scherer has not maintained the duty of customarily or regularly directing the work of two (2) or more other full-time employees in any manner other than within the performance of his duties as an emergency responder firefighter.

41. Since at least July 1, 2009, Deputy Chief Scherer has not maintained the authority to hire and fire and particular weight is not given to his suggestions or recommendations relating to hiring, firing, or advancement to any employees that he directs or any other employees.

42. Since at least July 1, 2009, Deputy Chief Scherer has not maintained the primary duty of the performance of office or non-manual work directly related to management or general business operations of the City of Pittsburgh or the Fire Bureau.

43. Since at least July 1, 2009, Deputy Chief Scherer has not maintained primary duties that included the exercise of discretion and independent judgment with respect to matters of significance.

44. Since at least July 1, 2009, Deputy Chief Scherer has not maintained primary duties of work which require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

45. Since at least July 1, 2009, Deputy Chief Scherer has not maintained the primary duty of work which requires invention, imagination, originality or talent in the field of artistic or creative endeavor.

46. Since at least July 1, 2009, Deputy Chief Scherer has worked in excess of the threshold for FLSA overtime compensation to become applicable (hours worked in excess of 212 during the relevant 28 day work periods).

47. Since at least July 1, 2009, the City has been fully aware that Deputy Chief Scherer has regularly worked hours in excess of 212 during the relevant 28 day work periods.

48. Since at least July 1, 2009, the City has not paid Deputy Chief Scherer overtime compensation (1 1/2 times the regular rate) for hours worked in excess of 212 during the relevant 28 day work periods.

49. Since at least July 1, 2009, Deputy Chief Scherer was not exempt from the maximum hour requirements of the FLSA pursuant to 29 U.S.C. § 213(a)(1).

50. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have been performing the emergency responder duties of a firefighter wherein their primary duties are to prevent, control, and extinguish fires; rescue fire, crime, illness, and/or accident victims; conduct investigations or inspections; and/or other similar work.

51. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained the primary duty of managing a customarily recognized department or subdivision of the Pittsburgh Bureau of Fire in any manner other than within the performance of their duties as emergency responder firefighters.

52. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained the duty of customarily or regularly directing the work of two

(2) or more other full-time employees in any manner other than within the performance of their duties as emergency responder firefighters.

53. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained the authority to hire and fire and particular weight is not given to their suggestions or recommendations relating to hiring, firing, or advancement to any employees that they direct or any other employees.

54. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained the primary duty of the performance of office or non-manual work directly related to management or general business operations of the City of Pittsburgh or the Fire Bureau.

55. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained primary duties that included the exercise of discretion and independent judgment with respect to matters of significance.

56. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained primary duties of work which require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

57. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have not maintained the primary duty of work which requires invention, imagination, originality or talent in the field of artistic or creative endeavor.

58. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs have worked in excess of the threshold for FLSA overtime compensation to

become applicable (hours worked in excess of 212 during the relevant 28 day work periods).

59. Since at least July 1, 2009, the City has been fully aware that firefighter Captains, Battalion Chiefs, and Deputy Chiefs have regularly worked hours in excess of 212 during the relevant 28 day work periods.

60. Since at least July 1, 2009, the City has not paid firefighter Captains, Battalion Chiefs, and Deputy Chiefs overtime compensation (1 1/2 times the regular rate) for hours worked in excess of 212 during the relevant 28 day work periods.

61. Since at least July 1, 2009, firefighter Captains, Battalion Chiefs, and Deputy Chiefs were not exempt from the maximum hour requirements of the FLSA pursuant to 29 U.S.C. § 213(a)(1).

V. CAUSE OF ACTION – FLSA 29 U.S.C. § 207

62. Paragraphs 1 through 61 are incorporated herein by reference.

63. The City's failure to provide Captain Farley, Battalion Chief Cox, and Deputy Chief Scherer, and other similarly situated as firefighter Captains, Battalion Chiefs, and Deputy Chiefs with overtime compensation (1 1/2 times the regular rate) for hours worked in excess of 212 hours during the relevant 29 day work periods constitutes a violation of the maximum hour provisions of the FLSA, 29 U.S.C. § 207.

65. The City's failure to provide Captain Farley, Battalion Chief Cox, and Deputy Chief Scherer and others similarly situated as firefighter Captains, Battalion Chiefs, and Deputy Chiefs was willful and deliberate.

WHEREFORE, Plaintiffs, individually and on behalf of others similarly situated, respectfully request an order and judgment providing the following legal and equitable

remedies:

a. Defendant be ordered to cease and desist from failing to provide overtime compensation to the Plaintiffs and all others similarly situated for all hours worked in excess of 212 during the relevant 28 day work period;

b. Defendant be ordered to compensate Plaintiffs and all others similarly situated for all unpaid overtime compensation accrued during the liability period (3 years prior to date of filing of Complaint to Defendant becoming FLSA compliant);

c. Defendant be ordered to pay liquidated damages in an amount equal to the overtime compensation owed pursuant to 29 U.S.C. § 216(b) to Plaintiffs and all others similarly situated, or in the alternative, prejudgment interest;

d. Defendant be ordered to pay post-judgment interest and the reasonable attorneys' fees and costs of Plaintiffs pursuant to 29 U.S.C. § 216(b);

e. that Plaintiff be awarded such further relief as this Court deems just, equitable, and proper.

JURY TRIAL DEMANDED

Respectfully Submitted,

Joshua Bloom & Associates, P.C.

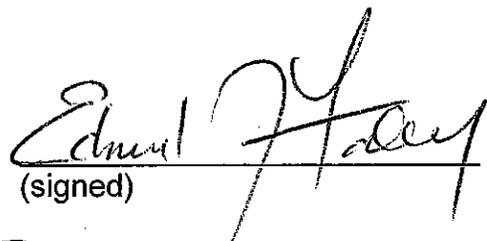
Dated: August 13, 2012

By/s/ Joshua M. Bloom
Joshua M. Bloom, Esquire
Attorney for Plaintiff(s),
PA ID # 78072
3204 Grant Building
310 Grant Street
Pittsburgh, PA 15219
412-288-6000

CONSENT

I, Edmund J. Farley, who has been employed by the City of Pittsburgh as a firefighter Captain during 28 day work periods where hours were worked in excess of 212 since on or after July, 1 2009, hereby consent to be a party plaintiff in the above-captioned lawsuit, which is an action to recover allegedly unpaid wages and liquidated damages. By my signature below, I designate Attorney Joshua M. Bloom, Esquire, and Joshua Bloom & Associates, P.C. as my agent to make decisions on my behalf concerning the lawsuit, the manner and method of conducting the lawsuit, any decisions regarding settlement, attorneys' fees and costs, and all other matters pertaining to the lawsuit. I also agree to be bound by the judgment of the Court including the fairness of any settlement.

Dated: 8/6/12


(signed)

955 GLADYS AVE
Address

ROH, PA 15216
City/State/Zip Code

CONSENT

I, Robert J. Cox, who has been employed by the City of Pittsburgh as a firefighter Battalion Chief during 28 day work periods where hours were worked in excess of 212 since on or after July, 1 2009, hereby consent to be a party plaintiff in the above-captioned lawsuit, which is an action to recover allegedly unpaid wages and liquidated damages. By my signature below, I designate Attorney Joshua M. Bloom, Esquire, and Joshua Bloom & Associates, P.C. as my agent to make decisions on my behalf concerning the lawsuit, the manner and method of conducting the lawsuit, any decisions regarding settlement, attorneys' fees and costs, and all other matters pertaining to the lawsuit. I also agree to be bound by the judgment of the Court including the fairness of any settlement.

Dated: 8-6-12



(signed)

2452 Hayson Ave
Address Pgh Pa 15220

Pgh Pa 15220

City/State/Zip Code

CONSENT

I, Harry J. Scherer, who has been employed by the City of Pittsburgh as a firefighter Deputy Chief during 28 day work period where hours were worked in excess of 212 since on or after July, 1 2009, hereby consent to be a party plaintiff in the above-captioned lawsuit, which is an action to recover allegedly unpaid wages and liquidated damages. By my signature below, I designate Attorney Joshua M. Bloom, Esquire, and Joshua Bloom & Associates, P.C. as my agent to make decisions on my behalf concerning the lawsuit, the manner and method of conducting the lawsuit, any decisions regarding settlement, attorneys' fees and costs, and all other matters pertaining to the lawsuit. I also agree to be bound by the judgment of the Court including the fairness of any settlement.

Dated: 8-6-12

Harry J. Scherer
(signed)

4456 cerise Pl.
Address

PGH, PA 15214
City/State/Zip Code