

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENNIS A. SZWEDA, JANELLE	:	CIVIL ACTION NO.:
SCHMECK, DAVID CIABATTONI, REED	:	
A. APOSTOL, DONALD HIRSCH	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
EXETER TOWNSHIP FIRE	:	
DEPARTMENT, d/b/a EXETER	:	
TOWNSHIP VOLUNTEER FIRE	:	
DEPARTMENT	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiffs, by undersigned counsel, seek all available relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”) and state law against Defendant as follows:

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiff’s FLSA claims is proper under 29 U.S.C. § 216(b), 28 U.S.C. § 1331. Any claims arising under state law are properly before this Court pursuant to 28 U.S.C. § 1367.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391. The events giving rise to Plaintiff’s claims occurred within this District, and Defendant conducts business in this District.

PARTIES

3. Plaintiff Dennis A. Szweda (“Szweda”) is an individual currently residing in Reading, Pennsylvania. He has been employed by Defendant Exeter Township Fire Department,

d/b/a Exeter Township Volunteer Fire Department (“Defendant”) as a Paramedic Firefighter from on or about August 2015 through on or about September 2017.

4. Plaintiff Janelle Schmeck (“Schmeck”) is an individual currently residing in Reading, Pennsylvania. She has been employed by Defendant as an EMT Firefighter from on or about August 2015 through on or about September 2017.

5. Plaintiff David Ciabattoni (“Ciabattoni”) is an individual currently residing in Reading, Pennsylvania. He has been employed by Defendant as a Paramedic Firefighter, and later as a Captain, from on or about September 2015 through on or about September 2017.

6. Plaintiff Reed A. Apostol (“Apostol”) is an individual currently residing in Reading, Pennsylvania. She has been employed by Defendant as an EMT Firefighter from on or about September 2015 through on or about September 2017.

7. Plaintiff Donald Hirsch (“Hirsch,” collectively with Szweda, Schmeck, Ciabattoni and Apostol, “Plaintiffs”) is an individual currently residing in Reading, Pennsylvania. He has been employed by Defendant as a Paramedic Firefighter and later as a Lieutenant, from on or about August 2015 through on or about September 2017.

8. Defendant “is a Pennsylvania nonprofit corporation and is classified by the Internal Revenue Service (IRS) as a 501(c)3 organization.” *See* Ex. A, The Township of Exeter, Berks County, Pennsylvania, An Overview of Fire and Emergency Medical Services, at pp. 3.

9. Defendant operates two fire stations and, during all periods of time relevant to this lawsuit, employed Plaintiffs as Paramedic Firefighters and EMT Firefighters (collectively “Firefighters”) in its EMS Division in this Judicial District.

10. Defendant employs individuals engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been

moved in or produced in commerce by any person, as required by 29 U.S.C. §§ 206-207.

11. Defendant's annual gross volume of business exceeds \$500,000.

### FACTS

12. Prior to on or about January 2017, Defendant purported to maintain an official policy of compensating its firefighters and other emergency response personnel at one and one half (1.5) times their regular hourly rate of pay ("Overtime Rate") only for hours worked in excess of 212 in a 28 day cycle.

13. Beginning on or about January 2017, Defendant purported to change its compensation practices applicable to its firefighters and other emergency response personnel, such that it would compensate such employees at an Overtime Rate for hours worked in excess of 40 in a work week.

14. In connection with the purported policy change referred to in the preceding paragraph, on or about December 2016 or January 2017, Defendant's Deputy Chief Chris Chamberlain stated at an employee meeting, that Defendant's purported policy of paying overtime only after Plaintiffs worked 212 hours in a 28-day cycle, rested on questionable legal ground, and that the policy change was intended to address the problem. Chamberlain also stated that the prior classification of employees was problematic, in part because Defendant was not a municipal entity.

15. On or about May 26, 2017, Paramedic Firefighter Kurt Reinert complained to Chamberlain about Defendant's failure to pay him all wages due. However, Defendant did not pay all overtime due to Mr. Reinert or otherwise actually implement a payroll policy to comply with 29 U.S.C. § 207.

16. During relevant time periods, Plaintiffs each regularly worked a minimum schedule of 24 hours on, 72 hours off.

17. Plaintiffs worked substantial additional shifts over and above the minimum schedule referred to in the preceding paragraph.

18. In total, Plaintiffs each often worked well in excess of 40 hours per workweek, ranging from approximately 48 hours to 70 hours or more in a work week.

19. Plaintiffs were each paid only straight-time wages for hours worked in excess of 40 in a workweek.

20. Defendant failed to compensate Plaintiffs at an Overtime Rate for all hours worked in excess of 40 hours in a work week.

21. Defendant, being a non-governmental entity was never a “public agency,” within the meaning of 29 U.S.C. § 203(x), and therefore was not entitled to benefit from a partial exemption under 29 U.S.C. § 207(k), from the obligation to pay wages at an Overtime Rate for hours worked over 40 in a work week. *See In re Lower Merion Tp. Fire Dept. Labor Standards Litigation*, 972 F.Supp. 315 (E.D. Pa. 1997).

22. Plaintiffs were entirely non-exempt from an entitlement to overtime pay under 29 U.S.C. § 207.

23. Defendant knew or should have known that Plaintiffs were not paid at Overtime Rate for all hours worked in excess of 40 in a workweek.

24. Defendant is a sophisticated fire and rescue department with access to knowledgeable human resource specialists and competent labor counsel.

25. Plaintiff Szweda repeatedly met with representatives of Defendant to complain that he and others did not receive all overtime pay due them under the FLSA and requested an itemization of overtime hours worked and overtime hours paid.

26. However, Defendant willfully refused to pay any of Plaintiffs their unpaid overtime

wages or even itemize overtime hours worked and overtime hours paid. Defendant also willfully refused to prospectively change its compensation practices.

27. Defendant acted willfully and with reckless disregard of clearly applicable FLSA and state law provisions by failing to compensate Plaintiffs at Overtime Rate for all hours worked in excess of 40 during the workweek.

**COUNT I – UNPAID OVERTIME – 40 HOURS PER WEEK**  
**Violations of the Fair Labor Standards Act**

28. All previous paragraphs are incorporated as though fully set forth herein.

29. The FLSA requires that covered employees be compensated at Overtime Rate for all hours worked in excess of forty (40) hours per week. *See* 29 U.S.C. § 207(a)(1).

30. Defendant is subject to the wage requirements of the FLSA because Defendant is an “employer” under 29 U.S.C. § 203(d).

31. During all relevant times, Defendant was and is an “employer” engaged in interstate commerce and/or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203.

32. During all relevant times, Plaintiffs were and are covered employees entitled to the above-described FLSA’s protections. *See* 29 U.S.C. § 203(e).

33. Plaintiffs are not exempt from the requirements of the FLSA. Plaintiffs are entitled to be paid at Overtime Rate for all hours worked over forty (40) in a workweek pursuant to 29 U.S.C. § 207(a)(1).

34. Defendant failed to comply with 29 U.S.C. § 207(a)(1) by failing to compensate Plaintiffs at Overtime Rate for all hours worked over forty (40) in a workweek.

35. Defendant knowingly failed to compensate Plaintiffs at Overtime Rate for all hours worked in excess of forty (40) hours per workweek, in violation of 29 U.S.C. § 207(a)(1).

36. Defendant also failed to make, keep, and preserve records with respect to Plaintiffs sufficient to determine their wages, hours, and other conditions of employment in violation of the FLSA. 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.5(a), 516.6(a)(1), 516.2(a)(5).

37. Defendant failed to maintain payroll records containing the time of day and day of week on which Plaintiffs' workweeks or work periods began.

38. Defendant failed to clearly communicate to Plaintiffs an established and regularly recurring work period of between 7 and 28 days, including starting and ending days and times for such work period.

39. In violating the FLSA, Defendant, acted willfully and with reckless disregard of clearly applicable FLSA provisions.

40. Pursuant to 29 U.S.C. § 216(b), employers such as Defendant, who fail to pay an employee wages in conformance with the FLSA shall be liable to the employee for unpaid wages, liquidated damages, court costs and attorneys' fees incurred in recovering the unpaid wages.

**COUNT II**  
**Violation of the Pennsylvania Minimum Wage Act**

41. Paragraphs 1 through 40 are incorporated as though fully set forth herein.

42. The Pennsylvania Minimum Wage Act of 1968 ("PMWA") requires that covered employees be compensated for all hours worked. *See* 43 P.S. § 333.104(a) and 34 PA. CODE § 231.21(b).

43. The PMWA also requires that covered employees be compensated for all hours worked in excess of forty (40) hours per week at Overtime Rate. *See* 43 P.S. § 333.104(c) and 34 PA. CODE § 231.41.

44. Defendant is subject to the overtime requirements of the PMWA because it is an employer under 43 P.S. § 333.103(g).

45. During all relevant times, Plaintiffs were covered employees entitled to the above-described PMWA's protections. *See* 43 P.S. § 333.103(h).

46. Defendant failed to compensate Plaintiffs at an Overtime Rate for hours worked in excess of forty (40) hours per week, in violation of 43 P.S. § 333.104(c) and 34 PA. CODE § 231.41.

47. Pursuant 43 P.S. § 333.113, employers, such as Defendant, who fail to pay an employee wages in conformance with the PMWA shall be liable to the employee for the wages or expenses that were not paid, interest, court costs and attorneys' fees incurred in recovering the unpaid wages.

**COUNT III**  
**Violation of the Pennsylvania Wage Payment and Collection Law**

48. All previous paragraphs are incorporated as though fully set forth herein.

49. The Pennsylvania Wage Payment and Collection Law ("WPCL") provides that an employer is obligated to pay all wages due to its employees. *See* 43 P.S. § 260.3.

50. At all relevant times as alleged herein, Plaintiffs were employed by Defendant within the meaning of the WPCL.

51. Defendant has intentionally failed to pay the wages, including overtime wages, due for all work performed as set forth in the preceding paragraphs of this Complaint, in violation of PA. CODE, 43 P.S. § 260.3.

52. Defendant is not permitted by state or federal law, or by an order of a court of competent jurisdiction, to withhold or divert any portion of Plaintiffs' wages that concern this lawsuit.

53. Defendant did not have written authorization from Plaintiffs to withhold, divert or deduct any portion of their wages that concern this lawsuit.

54. Pursuant to 43 P.S. §§ 260.9 and 260.10, employers such as Defendant, who intentionally fail to pay an employee wages in conformance with the WPCL shall be liable to the employee for the wages or expenses that were intentionally not paid, liquidated damages, court costs and attorney's fees incurred in recovering the unpaid wages.

55. Due to Defendant's violation of the WPCL, Plaintiffs are entitled to recover all unpaid wages, including overtime wages at the established rate, as well as liquidated damages, court costs and attorney's fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs seek the following relief:

- a. Back pay damages (including unpaid overtime compensation) and prejudgment interest to the fullest extent permitted under the law;
- b. Liquidated damages to the fullest extent permitted under the law;
- c. Pre-judgment and post-judgment interest to the fullest extent permitted under the law;
- d. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and
- e. Such other and further relief as this Court deems just and proper.



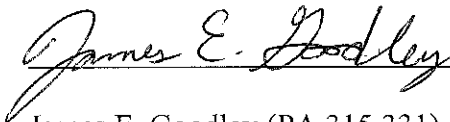
**JURY TRIAL DEMAND**

Plaintiffs demand a trial by jury for all issues of fact.

Dated: October 27, 2017

Respectfully Submitted,

JENNINGS SIGMOND, P.C.

by: \_\_\_\_\_

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