

**JAC A. COTIGUALA & ASSOCIATES**

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August 24, 2012

**CONFIDENTIAL**  
**FOR SETTLEMENT PURPOSES ONLY**

*Circuit Clerk*  
*Delivered by Sheriff*  
**FILED**  
AUG 30 2012  
*[Signature]*  
EDGAR COUNTY CLERK

**VIA CERTIFIED MAIL RR and U.S. FIRST CLASS MAIL**

Sheriff Ed Motley  
Sheriff of Edgar County  
228 N. Central  
Paris, IL 61944

Re: Unpaid Wages and Unreimbursed Expenses  
of Dee Burgin

Dear Sheriff Motley:

I have the honor of representing Dee Burgin in the referenced matter. He informs me that he was a canine handler for your office for AJ, which was purchased by Sheriff Crippes on February 7, 2007. Mr. Burgin informs me that he was AJ's handler from the date of purchase by the Sheriff until AJ was retired in May of 2012. He further informs me that he was never compensated for the off shift time that he was required to spend on the care, maintenance and training of AJ. He also informs me that he was not reimbursed for the food, supplies and grooming of AJ or the twice monthly cleaning of the squad car that he used with AJ.

Mr. Burgin informs me that he spent in excess of one hour every day feeding, grooming, walking and training AJ for which for purposes of settlement he claims one hour a day pay. He further informs me that he was never reimbursed for the several items of out-of-pocket expenses he incurred while AJ was Sheriff's property. These expenses include as follows:

1. Dog food
2. Dog supplies
3. Dog grooming

Mr. Burgin also informs me that he had the squad that he and AJ used shampooed twice a month for which he was not reimbursed.

Enclosed is an analysis of his recognized and unrecognized (1hr. a day) work time from the weeks of August 1, 2009 to May 5, 2012. It concludes with a wage shortage of \$17,723.06. Also enclosed is an analysis of the expenses incurred for which Mr. Burgin has some records. The unreimbursed expenses total \$8,912.20.

The wage shortage is covered by the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* It provides for relief beyond simple wages not paid. The relief is liquidated damages in an amount equal to the wage shortage and reasonable attorney fees. 29 U.S.C. 216.

Sheriff Ed Motley  
August 24, 2012  
Page 2

My client would like to resolve this matter now without formal proceedings. As an incentive to resolve this matter now, he is willing to accept \$44,358.32, which is the total of the wage shortage, liquidated damages and unreimbursed expenses. He is foregoing legal fees. Please understand that the compromised settlement demand will be withdrawn if a lawsuit is filed.

The payment of wages for a police canine handler is well settled law in the FLSA. I have done FLSA work for decades including a few canine handler claims. The last one I did in central Illinois was in Champaign. The attorney who finalized that case for the Champaign County Sheriff was Keith E. Fruehling.

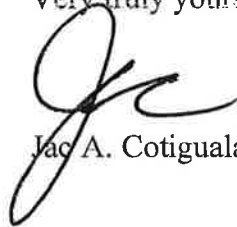
While I am willing to negotiate a resolution of this matter, please do not consider the \$44,358.32 demand to be an inflated number upon which to commence negotiations to settle. I am always willing to modify due to arithmetical or other error, however, I have already given you all credits that I would expect a knowledgeable practitioner to request such as no shortage for the uncompensated 7 hours in a week where Mr. Burgin worked recognized work hours of 33 or less, see for examples weeks 1 and 2.

Also enclosed is a copy of my attorney lien.

To speed review of this matter, I have taken the liberty of sending a copy of this letter with all enclosures to both the Edgar County State's Attorney and the Chairman of Edgar County.

I have diaried this matter to be brought to my attention on **Tuesday, September 4, 2012**, by which time I would expect a reply to this letter. If you have any questions or comments or need a later date to respond, please contact me.

Very truly yours,



Jac A. Cotiguala, Attorney at Law

JAC/mc  
Enclosures

cc via U.S. First Class Mail: Mark Isaf, Edgar County State's Attorney  
Jim Keller, Chairman, Edgar County Board

STATE OF ILLINOIS)  
COUNTY OF COOK )

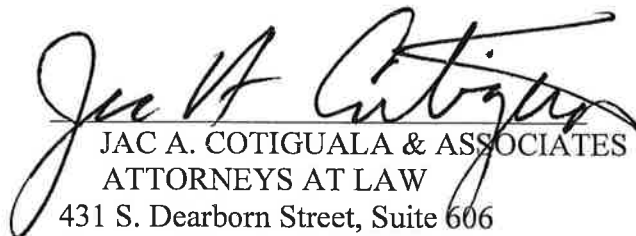
NOTICE OF ATTORNEYS' LIEN

To: Sheriff Ed Motley  
228 N. Central  
Paris, IL 61944

YOU ARE HEREBY NOTIFIED THAT the claimant, DEE BURGIN, has placed in our hands for suit or collection, a claim, demand or cause of action against you for violation of the wage and hour laws sustained by DEE BURGIN, arising out of employment with the SHERIFF OF EDGAR COUNTY, on or about the calendar year 2012 and prior years that he was employed.

The said claimant, DEE BURGIN, has agreed to pay us for our services an amount of money equal to 33.33% of whatever amount is recovered therefrom before trial, settlement or otherwise, 40% if trial is commenced, and 50% if notice of appeal is filed, plus expenses, and a lien is hereby claimed upon the said claim, demand or cause of action for such fee, pursuant to Chapter 770 Illinois Compiled Statutes, Section 5/0.01, amended by P.A. 87-425, effective September 10, 1991.

Dated: 8/24/12

  
JAC A. COTIGUALA & ASSOCIATES  
ATTORNEYS AT LAW  
431 S. Dearborn Street, Suite 606  
Chicago, Illinois 60605

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

KINDLY FORWARD THIS LIEN TO YOUR INSURANCE CARRIER IMMEDIATELY AND TELEPHONE OUR OFFICE GIVING US THE NAME OF YOUR INSURANCE COMPANY.

<b>Week of Employment</b>	<b>Start Date</b>	<b>End Date</b>	<b>Recognized Hours Actually wkd in Week</b>	<b>Unpaid Daily Maintenance &amp; Training of Dog per Week</b>	<b>Total Hrs Actually wkd in Week</b>
1	7/26/09	8/1/09	24.25	7.00	31.25
2	8/2/09	8/8/09	30.75	7.00	37.75
3	8/9/09	8/15/09	44	7.00	51.00
4	8/16/09	8/22/09	38	7.00	45.00
5	8/23/09	8/29/09	25.25	7.00	32.25
6	8/30/09	9/5/09	39.5	7.00	46.50
7	9/6/09	9/12/09	8	7.00	15.00
8	9/13/09	9/19/09	31.5	7.00	38.50
9	9/20/09	9/26/09	24	7.00	31.00
10	9/27/09	10/3/09	11.5	7.00	18.50
11	10/4/09	10/10/09	42	7.00	49.00
12	10/11/09	10/17/09	8	7.00	15.00
13	10/18/09	10/24/09	20.5	7.00	27.50
14	10/25/09	10/31/09	36.25	7.00	43.25
15	11/1/09	11/7/09	35.25	7.00	42.25
16	11/8/09	11/14/09	8	7.00	15.00
17	11/15/09	11/21/09	36	7.00	43.00
18	11/22/09	11/28/09	26	7.00	33.00
19	11/29/09	12/5/09	8	7.00	15.00
20	12/6/09	12/12/09	40	7.00	47.00
21	12/13/09	12/19/09	56	7.00	63.00
22	12/20/09	12/26/09	24	7.00	31.00
23	12/27/09	1/2/10	8	7.00	15.00
24	1/3/10	1/9/10	20.5	7.00	27.50
25	1/10/10	1/16/10	18.5	7.00	25.50
26	1/17/10	1/23/10	20	7.00	27.00
27	1/24/10	1/30/10	25	7.00	32.00
28	1/31/10	2/6/10	11.75	7.00	18.75
29	2/7/10	2/13/10	3.5	7.00	10.50
30	2/14/10	2/20/10	42.25	7.00	49.25
31	2/21/10	2/27/10	8	7.00	15.00
32	2/28/10	3/6/10	16	7.00	23.00
33	3/7/10	3/13/10	0	7.00	7.00
34	3/14/10	3/20/10	16	7.00	23.00
35	3/21/10	3/27/10	0	7.00	7.00
36	3/28/10	4/3/10	16.5	7.00	23.50
37	4/4/10	4/10/10	9	7.00	16.00
38	4/11/10	4/17/10	40	7.00	47.00
39	4/18/10	4/24/10	40	7.00	47.00
40	4/25/10	5/1/10	40	7.00	47.00
41	5/2/10	5/8/10	46	7.00	53.00
42	5/9/10	5/15/10	48	7.00	55.00
43	5/16/10	5/22/10	37.5	7.00	44.50
44	5/23/10	5/29/10	36	7.00	43.00
45	5/30/10	6/5/10	49	7.00	56.00
46	6/6/10	6/12/10	43.5	7.00	50.50
47	6/13/10	6/19/10	35	7.00	42.00
48	*6/20/2010	6/26/10	49	7.00	56.00
49	6/27/10	7/3/10	38	7.00	45.00

50	7/4/10	7/10/10	40.5	7.00	47.50
51	7/11/10	7/17/10	53.5	7.00	60.50
52	7/18/10	7/24/10	47.5	7.00	54.50
53	7/25/10	7/31/10	46	7.00	53.00
54	8/1/10	8/7/10	48	7.00	55.00
55	8/8/10	8/14/10	28	7.00	35.00
56	8/15/10	8/21/10	59	7.00	66.00
57	8/22/10	8/28/10	43	7.00	50.00
58	8/29/10	9/4/10	41	7.00	48.00
59	9/5/10	9/11/10	42	7.00	49.00
60	9/12/10	9/18/10	43	7.00	50.00
61	9/19/10	9/25/10	54.75	7.00	61.75
62	9/26/10	10/2/10	47.5	7.00	54.50
63	10/3/10	10/9/10	45	7.00	52.00
64	10/10/10	10/16/10	44.5	7.00	51.50
65	10/17/10	10/23/10	56	7.00	63.00
66	10/24/10	10/30/10	40.5	7.00	47.50
67	10/31/10	11/6/10	48	7.00	55.00
68	11/7/10	11/13/10	49	7.00	56.00
69	11/14/10	11/20/10	53.75	7.00	60.75
70	11/21/10	11/27/10	45.25	7.00	52.25
71	11/28/10	12/4/10	46.75	7.00	53.75
72	12/5/10	12/11/10	48	7.00	55.00
73	12/12/10	12/18/10	55.75	7.00	62.75
74	12/19/10	12/25/10	35.75	7.00	42.75
75	12/26/10	1/1/11	43	7.00	50.00
76	1/2/11	1/8/11	45.25	7.00	52.25
77	1/9/11	1/15/11	43	7.00	50.00
78	1/16/11	1/22/11	48	7.00	55.00
79	1/23/11	1/28/11	40	7.00	47.00
80	1/29/11	2/6/11	50.5	7.00	57.50
81	2/7/11	2/12/11	54.75	7.00	61.75
82	2/13/11	2/19/11	56	7.00	63.00
83	2/20/11	2/26/11	50	7.00	57.00
84	2/27/11	3/5/11	24.5	7.00	31.50
85	3/6/11	3/12/11	43	7.00	50.00
86	3/13/11	3/19/11	43	7.00	50.00
87	3/20/11	3/27/11	44	7.00	51.00
88	3/27/11	4/2/11	48	7.00	55.00
89	4/3/11	4/9/11	40	7.00	47.00
90	4/10/11	4/16/11	37	7.00	44.00
91	4/17/11	4/23/11	59	7.00	66.00
92	4/24/11	4/30/11	40	7.00	47.00
93	5/1/11	5/7/11	50	7.00	57.00
94	5/8/11	5/14/11	47	7.00	54.00
95	5/15/11	5/21/11	32	7.00	39.00
96	5/22/11	5/28/11	42	7.00	49.00
97	5/29/11	6/4/11	58	7.00	65.00
98	6/5/11	6/11/11	33	7.00	40.00
99	6/12/11	6/18/11	33	7.00	40.00
100	6/19/11	6/25/11	34.5	7.00	41.50
101	6/26/11	7/2/11	44.5	7.00	51.50
102	7/3/11	7/9/11	42	7.00	49.00
103	7/10/11	7/16/11	45	7.00	52.00
104	7/17/11	7/23/11	45.5	7.00	52.50

105	7/24/11	7/30/11	31.5	7.00	38.50
106	7/31/11	8/6/11	46	7.00	53.00
107	8/7/11	8/13/11	8	7.00	15.00
108	8/14/11	8/20/11	50	7.00	57.00
109	8/21/11	8/27/11	47	7.00	54.00
110	8/28/11	9/3/11	44	7.00	51.00
111	9/4/11	9/10/11	32	7.00	39.00
112	9/11/11	9/17/11	42	7.00	49.00
113	9/18/11	9/24/11	49	7.00	56.00
114	9/25/11	10/1/11	44	7.00	51.00
115	10/2/11	10/8/11	39	7.00	46.00
116	10/9/11	10/15/11	56	7.00	63.00
117	10/16/11	10/22/11	42	7.00	49.00
118	10/23/11	10/29/11	42	7.00	49.00
119	10/30/11	11/5/11	51.5	7.00	58.50
120	11/6/11	11/12/11	43	7.00	50.00
121	11/13/11	11/19/11	47	7.00	54.00
122	11/20/11	11/26/11	41.5	7.00	48.50
123	11/27/11	12/3/11	50	7.00	57.00
124	12/4/11	12/10/11	50.5	7.00	57.50
125	12/11/11	12/17/11	42	7.00	49.00
126	12/18/11	12/24/11	55	7.00	62.00
127	12/25/11	12/31/11	61.25	7.00	68.25
128	1/1/12	1/7/12	46.25	7.00	53.25
129	1/8/12	1/14/12	40	7.00	47.00
130	1/15/12	1/21/12	44.5	7.00	51.50
131	1/22/12	1/28/12	42	7.00	49.00
132	1/29/12	2/4/12	45	7.00	52.00
133	2/5/12	2/11/12	21	7.00	28.00
134	2/12/12	2/18/12	24	7.00	31.00
135	2/19/12	2/25/12	43	7.00	50.00
136	2/26/12	3/3/12	44	7.00	51.00
137	3/4/12	3/10/12	56	7.00	63.00
138	3/11/12	3/17/12	34	7.00	41.00
139	3/18/12	3/24/12	56	7.00	63.00
140	3/25/12	3/31/12	24	7.00	31.00
141	4/1/12	4/7/12	41	7.00	48.00
142	4/8/12	4/14/12	33	7.00	40.00
143	4/15/12	4/21/12	26	7.00	33.00
144	4/22/12	4/28/12	40	7.00	47.00
145	4/29/12	5/5/12	48	7.00	55.00

Hourly	Unpaid Straight-time Hrs	Straight-time	Unpaid OT Hrs	OT	Total
Pay Rate	Owed	Pay Owed	Owed	Pay Owed	Shortage
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	7	\$110.25	\$110.25
\$10.50	2	\$21.00	5	\$78.75	\$99.75
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0.5	\$5.25	6.5	\$102.38	\$107.63
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	7	\$110.25	\$110.25
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	3.75	\$39.38	3.25	\$51.19	\$90.56
\$10.50	4.75	\$49.88	2.25	\$35.44	\$85.31
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$10.50	4	\$42.00	3	\$47.25	\$89.25
\$10.50	0	\$0.00	0	\$0.00	\$0.00
\$15.00	0	\$0.00	0	\$0.00	\$0.00
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	0	\$0.00	\$0.00
\$15.00	0	\$0.00	0	\$0.00	\$0.00
\$15.00	0	\$0.00	0	\$0.00	\$0.00
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\$15.00	0	\$0.00	0	\$0.00	\$0.00
\$15.00	0	\$0.00	7	\$157.50	\$157.50
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\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	2.5	\$37.50	4.5	\$101.25	\$138.75
\$15.00	4	\$60.00	3	\$67.50	\$127.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	5	\$75.00	2	\$45.00	\$120.00
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	2	\$30.00	5	\$112.50	\$142.50

\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
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\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$15.00	0	\$0.00	7	\$157.50	\$157.50
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	4.25	\$75.23	2.75	\$73.01	\$148.24
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	3	\$53.10	4	\$106.20	\$159.30
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	5.5	\$97.35	1.5	\$39.83	\$137.18
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
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\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	1	\$17.70	6	\$159.30	\$177.00
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
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\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
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\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	6	\$106.20	1	\$26.55	\$132.75
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	0	\$0.00	\$0.00
\$17.70	0	\$0.00	7	\$185.85	\$185.85
\$17.70	0	\$0.00	7	\$185.85	\$185.85

**Total Straight-time Pay Owed**  
 (for Daily Maintenance of Dog):  
**\$709.58**

**Total OT Pay Owed** (for Daily Maintenance of Dog):  
**\$17,013.49**

**Total Shortage** (for Daily Maintenance of Dog):  
**\$17,723.06**

Total Owed with FLSA Damages:  
**\$35,446.13**

**DOG EXPENSES SUMMARY SHEET**

**Total SQUAD**

**Cleaning**

**Expense:**

\$960.00

**Total Dog**

**Food**

**Expense:**

\$1,618.41

**Total Dog**

**Supply**

**Expenses:**

\$333.79

**Total Dog**

**Grooming**

**Expenses:**

(2007-2012)

\$6,000.00

**TOTAL  
EXPENSES:  
\$8,912.20**

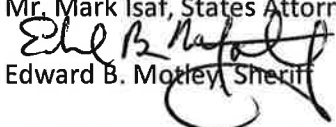
# EDGAR COUNTY SHERIFF DEPARTMENT

**EDWARD B. MOTLEY**  
**Sheriff**



228 N. Central Avenue  
Paris, Illinois 61944  
(217) 465-4166  
FAX (217) 463-2161

DATE: August 29, 2012

TO: Mr. Mark Isaf, States Attorney  
FROM:   
Edward B. Motley, Sheriff  
SUBJECT: Unpaid Wages and Unreimbursed Expenses/Dee Burgin

I received the attached letter which was c to you and Mr. Keller from Mr. Burgin's attorney regarding unpaid wages and expenses for his canine. I will request a meeting with you and Mr. Keller or Mr. Voight regarding the amount of the settlement requested from Mr. Burgin.

There is Statue of Limitations regarding his claims. I have attached information for your review before we meet. There were no agreements by the previous administration on the dollar amount, grooming etc. Also, he chose to not use the food that was offered by the sheriff's office as did the other canine units. There were times that he stated that he really didn't want to be compensated for the canine unit. Mr. Burgin and I did discuss his working a seven hour day and getting aid for eight because of kennel time when this was brought to my attention.

Since there are legal issues presented to the Sheriff's Office and time limits, I request this meeting to discuss what is to be a fair settlement if any.

## **CANINE CARE**

Police officers assigned to a department's canine unit usually bring "their" dogs home to live with them while off duty. This has several advantages: the department does not have the expense of maintaining its own or contracting out for a kennel for lodging and grooming the dogs, and the bonding process between dog and handler will be heightened, which should result in a more loyal and effective dog. While at home with the dog, an officer will inevitably engage in numerous activities on a daily basis taking care of the dog, such as feeding, exercising, training, cleaning and grooming. Additionally, the dog has to be transported back and forth between home and the police station.

The issue of whether the Fair Labor Standards Act ("FLSA") requires the payment of overtime compensation for the time spent taking care of the dog or transporting the dog should be of concern to police chiefs who are considering the establishment of canine units in their departments. The potential overtime liability under the FLSA is a significant cost factor to be taken into account when preparing a department's annual operating budget. Guidance on this issue has been provided by the United States District Court for Massachusetts in *Andrews, v. Dubois*.<sup>151</sup>

### **Facts**

The Plaintiffs in the *Andrews* case were correctional officers employed by the canine unit of the Massachusetts Department of Correction. As part of their responsibilities, they kept departmental dogs at their homes seven days a week including holidays and vacations, and they had to care for and train the dogs. Some officers were given departmental vehicles for transporting the dogs, and others used their own vehicles. Oftentimes, while at home, officers with their dogs would be called for unscheduled, emergency situations.

The officers alleged that they averaged three to four hours per day, beyond their regular eight hour shifts, taking care of and transporting the dogs, and they sued for overtime compensation for the "work" performed outside their regular scheduled shifts.

### **FLSA Requirements**

The Fair Labor Standards Act mandates the payment to an employee of overtime compensation, at a rate of one and one-half times the regular rate of pay, for all hours worked in excess of forty hours per week. (Longer work periods and hourly thresholds may be established for police officers and firefighters.) The FLSA also specifically provides, however, that an employer is not required to pay an employee for activities which occur before or after an employee's principal activity, i.e., for so-called "preliminary or postliminary" activities.

### **Time Spent Caring for Dogs**

The first question the Court addressed was whether the time spent by the officers in caring for the police dogs at home is a principal activity of their jobs or simply a preliminary or postliminary activity. The term “principal activity” has been interpreted to include any activity that is “an integral and indispensable part of the principal activities for which covered workmen are employed.” According to the Court, activities are “integral and indispensable” if they:

- • are made necessary by the nature of the work performed;
- • fulfill mutual obligations between employers and employees;
- • directly benefit employers in the operation of their business; and
- • are so closely related to other duties performed by employees as to be an integral part of those duties.

The court applied this test and concluded that time spent on canine activities at home by the canine officers was compensable “time spent working.” The court compared the dogs to “security equipment” necessary for the officers to perform their principal activities (i.e., canine assisted patrol and emergency response). Therefore, activities performed caring for the dogs are indispensable parts of maintaining the dogs as law enforcement tools and are closely related to the work duties of a canine officer. The Court also noted that time spent on activities such as feeding, grooming, and walking the dogs is time the officers do not have to themselves. The Court ruled, therefore, “that these activities are performed as part of the regular work of the canine officers in the ordinary course of business and are . . . not preliminary or postliminary activities.”

This conclusion is consistent with decisions from other jurisdictions. A 1995 decision involving the New York Transit Authority concluded that walking, feeding, grooming, training and cleaning up after police dogs are integral and indispensable parts of the officers’ principal activities and are compensable under the FLSA.<sup>ii[52]</sup> Attendance at canine training sessions, unscheduled emergency calls, and canine demonstrations were found to be integral and indispensable parts of the officers’ principal activities.<sup>iii[53]</sup>

### **Transportation Time**

Although the Court agreed with the canine officers that time spent at home caring for the dogs is compensable work time under the FLSA, it rejected the officers’ arguments that time spent transporting the dogs back and forth between home and the station is also compensable.

In reaching the conclusion that time spent transporting the dogs is not compensable, the Court focused on the following explicit language of the FLSA which excludes commuting time:

[N]o employer shall be subject to any liability . . . on account of the failure of such employer to pay an employee . . . [for] walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform . . . . 29 U.S.C. §254(a)(1)

The Court stated that the presence of the dogs during the ordinary commute between work and home does not add any time to that commute. Since the officers would be making the same commute whether or not they had dogs with them, the commute itself is not an integral and indispensable part of the officers' principal activities, and, therefore, is not compensable. If extra effort and time were required because of the presence of the dogs, this conclusion might be different, but the Court noted that loading the dogs in and out of the car requires only a negligible or *de minimus* degree of time and effort that does not rise to the level of compensable work time.

While there is some split of authority on this issue, the Court noted that a majority of the courts that have addressed this transportation issue have concluded that such commuting activity is specifically excluded by the FLSA and that canine officers are not entitled to additional compensation for what they would have to do anyway, i.e., getting to work.

### **Volunteers**

A police department would not be able to avoid overtime liability under the FLSA by claiming that the canine officers volunteered for those duties. As the Court noted, the fact that an employee volunteers for an activity does not mean it is not compensable. This is because the FLSA prohibits employees from volunteering to provide (without proper compensation) the same type of services which they ordinarily perform for the employer. The apparent intent of this prohibition is to prevent employers from avoiding FLSA requirements by directly or indirectly pressuring employees to "volunteer" their services.

Prior FLSA letter rulings of the Department of Labor (e.g., August 11, 1993) have also held that ownership of the dogs is not a relevant factor in determining the compensability of time spent on principal work activities under the FLSA. Thus, even if an officer volunteers for canine unit work, using his own dog, there will be overtime liability exposure under the FLSA for time spent caring for the dog at home.

Additionally, the Supreme Court has held that employees cannot waive their compensation rights under the FLSA.<sup>iv[54]</sup>

### **Statute of Limitations**

Since the Court found the Department of Correction liable to the canine officers for time spent at home caring for the dogs, it then had to address the back pay issue.

The FLSA generally has a statute of limitations which allows employees to recover back wages for the two years prior to commencement of the lawsuit. However, this may be extended to three years of back pay if the employer's violation of the FLSA is found to be "willful."

Citing Supreme Court precedent, the Court noted that an employer commits a willful violation where it knew or acted with reckless disregard of whether it was violating the statute.

The employer's state of mind or awareness of the law is not relevant when determining if the employer acted willfully; the significant inquiry is the employer's knowledge, awareness, and motivation.

However, evidence that an employer was aware of the FLSA's requirements does not, in and of itself, prove that the employer willfully violated the law. Since the Department of Correction did not anticipate the particular application of the law involved in this case, the Court concluded that there was not a willful violation.

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