

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GARY P. COLOREZ, et al.,

Plaintiffs,

v.

Case No. 98-C-1195

CITY OF MILWAUKEE,

Defendant.

FINAL SETTLEMENT AGREEMENT

This Agreement is entered into between the twenty-eight plaintiffs in the above-captioned action and defendant, City of Milwaukee, with the intent to fully and finally resolve all issues relating to this case. The parties agree as follows:

1. Plaintiffs, each a Supervisor in one of three divisions of the City's Department of Public Works, filed the complaint in this action on December 8, 1998 alleging violations of the Fair Labor Standards Act and seeking, inter alia, back overtime pay. A bona fide dispute exists between the plaintiffs and the defendant as to whether defendant has committed any violation of the Act, whether plaintiffs are exempt or not under the applicable FLSA "duties" and "salary basis" tests, whether plaintiffs are entitled to damages of any type, including but not limited to compensatory and liquidated damages, attorneys' fees, and costs, and whether any alleged violations of the Act were willful or not.

2. After completion of discovery and filing of cross motions for summary judgement (including briefs, oral argument, and supplemental briefs), the parties are mutually desirous of fully and finally settling this case in accordance with the terms set forth in this Agreement.

3. The City agrees to pay \$130,000.00 to the 28 plaintiffs, which sum shall be allocated among them as shown on the Settlement Table (Attachment A), which Table is incorporated herein by reference. The amount allocated to each individual plaintiff is shown in the final column of the Settlement Table, which column is captioned, "Indiv'l Settlement." Plaintiffs understand that their individual payments are subject to standard payroll withholding practices. Plaintiffs agree that the amount received by each or otherwise paid pursuant to this agreement represent payments for the releases and discharges of all claims and forms of recovery at issue in this action as referenced in paragraph 6, below, agree that a bona fide dispute exists between the parties as to the precise amount of damages to which they would be entitled if the City were found liable in this case, and agree that the sums paid to each, when added to the sum payable to each under paragraph 4, below, includes a fair and reasonable approximation of the City's back overtime pay liability to each if such liability were found to exist.

4. The City further agrees to pay \$58,000.00 to Michael T. Leibig, out of which, however, \$350.00 will be distributed by him to each of the 28 plaintiffs, with the understanding that the balance remaining to Mr. Leibig after such payments shall constitute full payment to him and any co-counsel for all attorney's fees and costs associated with the present action (the distribution to his co-counsel to be handled by Mr.

Leibig), and with the further understanding that the \$350.00 allocated to each plaintiff out of this payment constitutes taxable income to them.

5. By entering into this Agreement, the City does not admit and hereby specifically denies liability to the plaintiffs or any other employee in any amount for any claim at issue in or relating in any way to the present litigation.

6. Each plaintiff releases and fully discharges the City and its elected officials, employees, and agents from any and all liability, damages, attorney's fees, costs, or any other forms of relief, and from any and all causes of action, complaints, claims, or demands, of any type, that relate in any way to local, state, or federal wage and hour laws, rules, regulations, or other obligations, of any type, that arise or exist at any time up to the date the present case is dismissed by the Court with prejudice; these releases and discharges do not apply to liability, damages, attorney's fees, costs, or other forms of relief, or to causes of action, complaints, claims, or demands, of any type, that relate solely to time periods after the present case is dismissed by the Court with prejudice. Each plaintiff agrees not to authorize, permit, cooperate with, or benefit from any suit against the City or its elected officials, employees, or agents involving any matter within the scope of the releases and discharges referenced in this paragraph.

7. Plaintiffs agree and understand that this Agreement is subject to Common Council approval and cannot become final or binding absent both such approval and the Court's dismissal as provided in paragraph 8, below. The City agrees to seek Common Council approval within a reasonable period of time after plaintiffs' and their attorneys' sign this Agreement and to issue payments as required in paragraphs 3 and 4 within a

reasonable time of the Common Council's approval of this Agreement and of the Court's dismissal as provided in paragraph 8, below.

8. The parties agree to submit to the Court the Stipulation for Dismissal and Judgment appended as Attachment B to this Agreement, which Stipulation is incorporated herein by reference, so as to obtain an order from the Court dismissing this case with prejudice and without costs and an entry of judgment to this effect; such dismissal and judgment are to be based upon the terms and conditions of this Agreement, which Agreement shall be attached to and incorporated by reference into the Stipulation when it is submitted to the Court. The parties agree that this present Agreement shall become final and binding only if and when such dismissal and judgment are obtained from the Court, and with Common Council approval as specified in paragraph 7, above.

9. This Agreement is a jointly negotiated instrument, no provision of which shall be construed against either party upon grounds of sole authorship.

10. This Agreement requires the signatures of each plaintiff and their attorneys; plaintiffs' attorneys, in signing this Agreement, release the City from any attorney's fees or costs associated with this action except as specified in paragraph 4, above.

12. By signing this Agreement, each plaintiff acknowledges he or she has read and understands it and freely and voluntarily agrees to its terms.

Dated: _____, 2001

GARY P. COLOREZ, Plaintiff

Dated: _____, 2001

TODD A. HENRY, Plaintiff

Dated: _____, 2001

TERRY L. WOBICK, Plaintiff

Dated: _____, 2001

PAULA L. OLESZAK, Plaintiff

Dated: _____, 2001

ELIZABETH KIEREN, Plaintiff

Dated: _____, 2001

MICHAEL J. PRONOLD, Plaintiff

Dated: _____, 2001

RICHARD A. LIMON, Plaintiff

Dated: _____, 2001

JUAN MALDONADO, JR., Plaintiff

Dated: _____, 2001

PAMELA KUPTZ, Plaintiff

Dated: _____, 2001

BILLY J. SMITH, Plaintiff

Dated: _____, 2001

MARILYN JACKSON, Plaintiff

Dated: _____, 2001

JEFFREY L. SMITH, Plaintiff

Dated: _____, 2001

KENNETH J. BONTEMPO, Plaintiff

Dated: _____, 2001

WILLIAM MULLINS, Plaintiff

Dated: _____, 2001

MICHAEL CYRULIK, Plaintiff

Dated: _____, 2001

GARY P. HALVORSEN, Plaintiff

Dated: _____, 2001

GARY LASSANSKE, Plaintiff

Dated: _____, 2001

RICHARD A. LAND, Plaintiff

Dated: _____, 2001

PAUL H. ERBER, Plaintiff

Dated: _____, 2001

RAUL FIGUEROA, Plaintiff

Dated: _____, 2001

ROBERT STEADMAN, Plaintiff

Dated: _____, 2001

MARY E. BENGSCHE, Plaintiff

Dated: _____, 2001

SAMUEL GAMBOA, Plaintiff

Dated: _____, 2001

JOSEPH CAPUTA, Plaintiff

Dated: _____, 2001

JOHN C. HAGEN, Plaintiff

Dated: _____, 2001

MICHAEL R. DANIELS, Plaintiff

Dated: _____, 2001

JAMES M. POWALISZ, Plaintiff

Dated: _____, 2001

GARY N. KADOW, Plaintiff

Dated: _____, 2001

Michael T. Leibig
ZWERDLING, PAUL, LEIBIG,
KAHN, THOMPSON & WOLLY, PC
1421 Prince Street, Suite 400-A
Alexandria, VA 22314
Attorney for the Plaintiffs

Dated: _____, 2001

Judith O. O'Connell
PETERSON, JOHNSON & MURRAY
733 North Van Buren Street, Sixth Floor
Milwaukee, WI 53202
Attorney for the Plaintiffs

GRANT F. LANGLEY
City Attorney

Dated: _____, 2001

By: _____
Donald L. Schriefer

State Bar No. 01010693
Assistant City Attorney
200 East Wells Street
Milwaukee, WI 53202-3551

DLS:km/39682