

GRIEVANCE

November 19, 2003

This is a Class Action Grievance filed on behalf of Fire Fighter Peter Georgantas, Fire Fighter/Lead Medic D. Chris Vaughan and Fire Lieutenant Jay R. Schmitt. Fire Fighter/Lead Medic D. Chris Vaughan will be the designated spokesperson for the group.

On October 12, 2003, a follow-up letter was sent to Chief Rowland Herald from Union President John Lee at the request of the above mentioned individuals to be placed on a 40 hour workweek. The reason was so they could attend a dive competition in which members of this fire department have participated for the past several years. This was granted for the week of October 13-17, 2003 and that they would return to the 56 hour workweek on October 23, 2003. They were told to keep track of the actual hours of competition and report this upon their return, which they did. Prior to all of this, there was a memo dated September 18, 2003 from Chief Weinreich confirming the dates that addressed when the divers would be placed on a 40-hour workweek.

On October 16, 2003, a message was left on the answering service at the motel and retrieved by Lt. Schmitt that stated they were to contact Chief Fogarty, which he did. Chief Fogarty explained that there was a manpower shortage and they were looking at several options, including having the divers return the following day. They were also to call him at 0800 the next morning for further direction, which they did. A call was placed to Chief Fogarty as directed and they were given a direct order to return immediately. All three individuals arrived at Fire Station 45 sometime between 1100-1130hrs and cleaned and stowed the dive gear, after which, they met with Chief Fogarty. The ensuing discussion was as to how they were to be paid. Chief Fogarty stated, "whatever it takes-overtime comp time," and that he thought it wouldn't be a problem. This amounted to fifty hours on a 40-hour workweek and going right into a twenty-four hour shift the very next day. After working the twenty-four hour shift on Saturday, Fire Fighter/Lead Medic D. Chris Vaughan was told by his District Chief from Dan Carpenter, the Administrative Budget/Payroll Assistant, that the department had no intention of compensating the three individuals in any way except for their normal pay. The ten hours of overtime pay was then calculated at the 56-hour rate and not the 40-hour rate. The twenty-four hour shift was paid at their normal rate of pay.

On Sunday, October 19, 2003, there were overtime slots to be filled, however, nobody had signed up for overtime. Mandatory overtime was ordered for individuals where needed. There were also two other Fire Fighter/Lead Medics that were in Texas participating in an EMS competition of sorts, but these two individuals were not called back and were compensated at the agreed upon 40-hour workweek. Also of note, the Swat Medics were sent to a mid-state school and placed on a 40-hour workweek, which put the department into an overtime situation. The Swat Medics were not ordered to return to their shifts.

Therefore, this grievance is being file for the following violations of the AGREEMENT between CITY OF CLEARWATER and INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO Local 1158:

1. Preamble;
2. Article 5;
3. Article 15, Section 4C;
4. Article 25, Section 3;
5. Article 25, Section 3C6;
6. Article 25, Section 5A; and
7. Article 26, Section 4;

As to the first violation:

This Article states, “...The Agreement has been negotiated in good faith for the purpose of promoting harmonious relations, establishing an orderly and peaceful procedure to settle differences which might arise, and setting forth the basic and full agreement between the parties concerning wages, rates of pay, hours of work, and all other terms and conditions of employment.” The City has maintained that they do not violate this section of the AGREEMENT and work to maintain harmonious relations with the Union. However, the number of grievances filed within the last two years alone, the nearly one hundred percent denial of said grievances and the adversarial stance at contract negotiations, contradicts their position.

As to the second violation:

This Article states, “The City and Union agree to maintain a single cooperative Labor/Management committee for both IAFF Local 1158 bargaining units. The committee shall consist of an equal number of members from each party. It is understood that this committee in no way is a substitute for the grievance procedure or the right of collective bargaining but has been established for the purpose of discussion and input from both sides on matters that may be mutually resolved by the parties or may eventually become items of collective bargaining, grievances, or litigation.” At no time did Chief Weinreich, who made the decision on how to compensate the three individuals as stated in an email dated October 13, 2003, ever invoke the Labor/Management committee. Had he chosen this option, this grievance may not have been necessary.

As to the third violation:

This Article states, “Overtime is defined as one and one-half (1 ½) times an employee’s regular rate of pay.” At the time of the three individuals’ accrual of overtime, they were working on a 40-hour workweek and all of their wages, hours, etc. had been converted from a 56-hour workweek. They were not due back to their regular schedule until October 23, 2003. Because of this conversion, their wages should have been paid based on the 40-hour workweek. This did not happen.

As to the fourth violation:

This Article states, "Department Policy may require the scheduling of overtime. The Department shall attempt to equalize overtime to the extent practicable. The selection of certified and/or trained individuals may be required and shall be allowed. The current practices regarding overtime compensation shall be paid as defined in this Agreement." There was no mandatory overtime invoked while the three individuals were out of town. Had this occurred, there would have been no need for them to be ordered to return to work. Mandatory overtime was invoked on the following day after their first twenty-four hour shift.

As to the fifth violation:

This Article states, "Failing all of the above the Fire District Chief will fill the position with an employee who is otherwise determined to be capable of performing the duties or the affected unit may be taken out of service." Chief Weinreich, usurping the District Chiefs' authority and overtime policies, made the decision to order the return of the three individuals and not use overtime.

As to the sixth violation:

This Article states, "When an employee is called in at least thirty (30) minutes prior to the start of his/her regularly scheduled shift, he/she will be paid a minimum of four (4) hours at the overtime rate of pay. The City may require the employee to remain on duty for the duration of the four (4) hour period or for as long as he/she is needed, at the option of the City." As the three individuals were working on a 40-hour workweek when they were given the direct order to return, this became overtime pay for them based on the 40-hour workweek rates of pay for the twenty-four hours on October 18, 2003.

As to the seventh violation:

This Article states, "All rights and working conditions, enjoyed throughout the Department by the employees at the present time which are not included in this Agreement shall be presumed to be reasonable and proper and shall not be changed by the City in an arbitrary or capricious manner..." The decision to order the three individuals to return and not the other two fire fighters was done in an arbitrary and capricious manner. This is further evidenced by the subsequent invoking of mandatory overtime the following day after their twenty-four hour shift as well as not ordering the Swat Medics to return when there was overtime incurred.

REMEDY

The solutions are very simple. First, stop violating the contract. Reviewing the AGREEMENT from time to time can remedy this. Second, make Fire Fighter Pete Georgantas, Fire Fighter/Lead Medic D. Chris Vaughan and Fire Lieutenant Jay R. Schmitt whole by paying the correct wages due them based on the 40-hour workweek rates of pay and overtime.

Respectfully submitted,

D. Chris Vaughan, Fire Fighter/Lead Medic
Clearwater Fire Department
610 Franklin Street
Clearwater, Florida 33756
727-562-4334