

# **Be Careful What You Wish For: FLSA and Philadelphia Fire EMS**



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# This is the City. Philadelphia

- 6<sup>th</sup> largest U.S. city
- Population ~ 1,540,000
- Chartered by William Penn in 1701



Independence Hall



1736, Union Fire Company



# The Philadelphia Fire Department

- Sole 9-1-1 fire, EMS responder
  - 37 ALS, 13 BLS ambulances
    - Fire Service Paramedics, FF-EMTs
    - Members of Local 22 of IAFF
  - Follow statewide protocols
  - 223,241 medical runs in 2010
  - Budget *very* tight
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# Fire Service Paramedic

- In 1970s, some FFs attended medic training, became full-time paramedics
- Due to ↑ costs, City started hiring medics
  - Calls them “Fire Service Paramedics”
  - Their PFD orientation includes:
    - Familiarization with fire equipment
    - Basic firefighting skills
    - Safe operation on fireground



# The Schedule

- Medics worked platoon schedules:
  1. **2** 10-hr day shifts → **2** 14-hr night shifts → **4** days off
  2. **4** 12-hr day shifts → **4** days off
- In 8-day cycle, medic could work 34 hrs/wk or 48 hrs/wk

# The Schedule

- Per 2 wk pay period, medics paid for 42 hrs/wk
  - Whether they worked 34 or 48 hrs
  - Paid “premium rate” for hrs 41 & 42
- Paid overtime if they worked  $\geq 15$  minutes after end of shift



# The Story

- 2003, FSP filed suit against City
  - Claimed violation of overtime payment requirements of Fair Labor Standards Act
    - Not paid overtime when worked 48 hrs/wk
  - Others joined suit. Ultimately ~ 300 current and former FSPs involved



# FLSA



- Passed in 1938 as part of New Deal
  - Addressed low wages, long work hrs
- For most workers, requires that overtime be paid at time-and-a-half
  - Starting at 41st hour of work wk







# FLSA

- Congress exempted some employees from standard overtime rule:
    - Public employees engaged in *fire protection* or law enforcement activities
      - Allows agencies to calculate overtime according to wider range of work periods
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# FLSA

- “Employee in fire protection activities” includes firefighter, paramedic, ...who:
  1. Is trained in fire suppression
  2. Has legal authority, responsibility to engage in fire suppression
  3. Is employed by fire department

# The Argument

- Plaintiffs argued FSPs were not FFs, were not exempt from overtime
- The City argued they were FFs:
  - Trained in fire suppression
  - Carried SCBA, bunker gear
    - Would help with fire suppression if ordered, i.e. had legal authority



# The Ruling(s)

- 2006, District Court decided for City
- FSPs appealed
  - 2008, US Court of Appeals ruled in favor of FSPs
    - FSPs are not *certified* firefighters
    - Firefighting not part of job description
    - FSPs not exempted from overtime









# The Consequences – Part 1

- FSPs got lots of back overtime \$\$\$
- *But then*, FSP schedule changed to comply with FLSA
  - Some on permanent days, some on permanent nights
  - No longer have 4 days off
  - Out of sync with FF schedule

# The Rest of the Story

- PA Act 111
  - Police and Firefighter Collective Bargaining
- Police, FFs may organize in units represented by employee organizations for collective bargaining with employers



# The Consequences – Part *Deux*

- March 2009, City filed “*petition for unit clarification*” with Pennsylvania Labor Relations Board
  - Argued since FSPs are not FFs, they should be excluded from the collective bargaining unit represented by Local 22
- Sept 2010 PLRB finds in favor of the City
  - FSPs appealed, and lost



# The Consequences – Part *Trois*

- FSPs became non-represented civil service employees
- Terms of collective bargaining agreement & interest arbitration awards between City, Local 22 no longer applied to FSPs
- Potential to impact health plan, pension, grievance process



# The Response

## Philadelphia paramedics booted from union

-October 4th, 2010



**Mayor Nutter**



## Councilman to Nutter: Keep Paramedics in the Firefighters' Union

-October 07, 2010



## Philadelphia Paramedics To Appeal Labor Board Ruling

# How Does the Story End?

- Not totally clear
- FSPs suing Mayor
- Local 22 will most likely represent FSPs as separate bargaining unit
  - Medics will negotiate new contract
  - Reduced bargaining power

# Conclusions

- Labor issues have had profound impact on EMS operations, budget, and morale
  - Inherent to fire-based EMS systems
  - Unique Philly twists
- Be careful what you wish for – *because it might come true*



