

12512

June 21, 2010

To: Honorable Members of the
Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Request for Authorization to enter into a stipulation in Langford, et al. v. County of Westchester in an amount not to exceed \$75,000.00, inclusive of counsel fees

Attached for your consideration is a resolution which, if approved by your Honorable Board, would authorize the County's execution of a stipulation settling the matter entitled Langford, et al. v. County of Westchester pursuant to which the County shall make payment to the plaintiffs in an amount not to exceed \$75,000.00, inclusive of counsel fees.

Plaintiffs¹, six canine officers in the Westchester County Department of Public Safety ("the Department"), commenced this federal action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), on September 27, 2007. The FLSA requires that certain classes of employees, which police officers are a part of, must be paid for any hours worked over forty hours per week, at rate of one and a half times their regular rate of pay. The FLSA allows plaintiffs to seek two years of back pay from the date of the action's commencement in cases of non-willful violations of the Act and three years of back pay in cases where it is proved that the employer violated the act willfully. Further, the Act provides for the granting of liquidated damages equaling double the amount of nominal damages, and attorney's fees.

The Complaint is premised upon a theory that during the three-year period from September 27, 2004, through September 27, 2007, the County violated FLSA by failing to pay the plaintiffs overtime or otherwise adequately compensate them for off-duty canine-related activities, and that said violation was willful. Specifically, plaintiffs argue that under the FLSA, they are entitled to unpaid wages for overtime hours worked training, caring and exercising their respective assigned police dogs on their days off and vacation days and for the time it took to transport their canines to and from work.

¹ The plaintiffs in this case are Sergeant Daniel Langford, Detective Thomas Barker, Police Officer John Nordone, Police Officer Mitchell Serlin, Detective Kenneth Hasko and Detective Mark Carey.

The County presently owns seven police dogs; five Labrador Retrievers used by the Department to detect explosives and narcotics and two Bloodhounds used to locate lost and missing persons.

In addition to the ability to claim overtime as set forth above, during the three-year period alleged in the Complaint, officers who were assigned Department dogs were provided with a \$1,000.00 annual stipend to compensate them for canine-related work performed on their days off. In April, 1997, the \$1,000.00 annual stipend was awarded to PBA members with assigned dogs by an interest arbitration panel.

By Act No. 169 of 2008, the Westchester County Board of Legislators enacted legislation effective September 26, 2008, increasing the \$1,000.00 annual canine stipend to \$3,100.00 (retroactive to January 1, 2005), \$3,450.00 (retroactive to January 1, 2006) and \$3,800.00 (retroactive to January 1, 2007). Because there is legal authority supporting the position that canine handling police officers can be compensated at a rate less than a police officers pay rate for the training and care of their assigned dogs, these stipends were calculated by using minimum wage rates applicable to each year.

The stipend was recently increased, again, when on February 27, 2010 an Interest Arbitration panel raised it to \$4,100.00 per year retroactive to January 1, 2008, "with the understanding that should the Court [in this case] award a greater sum, that sum shall apply."

On February 6, 2009, the County made a motion for summary judgment seeking dismissal of the Complaint. On October 22, 2009, United States District Court Judge Cathy Seibel partially denied and partially granted the County's motion. In her ruling from the bench, Judge Seibel dismissed as a matter of law Plaintiffs' cause of action seeking overtime pay for time spent transporting their assigned canines to and from work but held that there existed triable issues of fact regarding whether the County violated the FLSA, and if so, whether the violation was willful. By the consent of the parties, the matter was referred to United States Magistrate George Yanthis for trial, which was scheduled for May 17, 2010.

In the months preceding the May 17, 2010 trial date, the parties engaged in extensive settlement negotiations. On May 14, 2010, a settlement agreement was reached, contingent upon the approval of the Westchester County Board of Acquisition and Contract. Under the terms of the Agreement, the County would pay Plaintiffs the sum of \$75,000.00, said sum to include all monetary damages, costs and legal fees. It was also agreed that the stipend would remain at \$4,100.00 per year and that any future changes in the stipend would be effectuated through the collective bargaining process.

Because of the inherent risk associated with a trial along with the possibility that the County would be found in violation of the FLSA and liquidated damages would be imposed, I recommend the County enter into the stipulation of settlement in an amount not to exceed \$75,000.00, inclusive of counsel fees. George Longworth, Commissioner of the Westchester County Department of Public Safety, concurs in this recommendation.

RFM/fs

cc: Kevin Plunkett
Deputy County Executive

RFM/fs

APPROVED BOARD OF ACQUISITION & CONTRACT - 7-29-2010 - JOMARY VIEIRA, SECRETARY

RESOLUTION

Upon the communication of the County Attorney, it is hereby

RESOLVED, that the County Attorney is hereby authorized to enter into a stipulation in Langford, et al. v. County of Westchester, pursuant to which the County shall make payment to the Plaintiffs in an amount not to exceed \$75,000.00, inclusive of counsel fees, and it is further

RESOLVED, that the County Attorney or his designee is authorized to execute any documents necessary to implement this resolution.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	38	1022	6291		\$75,000.00

Budget Funding Year(s) 2008 reserve Start Date _____ End Date _____
 (must match resolution)

Funding Source Tax Dollars 100% _____

State Aid _____

\$ 75,000.00 Federal Aid _____

(must match resolution)

Other _____