MARGENE M. MCCOY : NUMBER: 505,624

VERSES : FIRST JUDICIAL DISTRICT COURT

CITY OF SHREVEPORT : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT ON MOTION FOR**

**SUMMARY JUDGMENT (FILED BY CITY OF SHREVEPORT)**

**UPON RECONSIDERATION**

On March 14, 2013, the Second Circuit Court of Appeal granted a writ of supervisory review taken by City of Shreveport on a 2012 Judgment in which this Court denied the City’s Motion for Summary Judgment. The Second Circuit wrote:

We note the issue concerning the applicability of La. R.S. 33:1994. We find that La. R.S. 33:1994 is applicable in this case. Based on the amendment of the statute in 1993, it is clear that the legislature intended that the FLSA be applicable to the fire fighters covered under the statute.

Accordingly, the case is remanded to the trial court for reconsideration for the motion for summary judgment in light of the applicability of La. R.S. 33:1994.

In accordance with the remand directive, this Court conducted a hearing on August 19, 2013 in which the motion was re-argued and submitted for decision. After a thorough review of the summary judgment record, in light of the Second Circuit pronouncement that pursuant to La. R.S. 33:1994, the FSLA controls the determination of overtime wages for City of Shreveport firefighters, the Court concludes that there are no genuine issues of material fact and the City of Shreveport is entitled to summary judgment as a matter of law.

During the time period at issue Margene McCoy, as Assistant Fire Chief, held a high ranking and high salaried position with the Shreveport Fire Department; in fact, Mr. McCoy was third in command, next to the Deputy Chief and Fire Chief positions. It is undisputed that that this is a supervisory and managerial position in a metropolitan fire department serving a population vastly exceeding the 13,000 figure referenced in La. R.S. 33:1994.

Applying the FLSA to the undisputed facts of this case, the Court must conclude that the position of Assistant Fire Chief is an exempt position from minimum wage and overtime pay requirements. It is also clear under applicable law that additional voluntary or discretionary compensation by a municipality in the form of overtime does not defeat or waive the exemption. Because Margene McCoy clearly held a management position, he is exempt from the overtime pay requirement of the FLSA (notwithstanding the fact that Fmr. Asst. Chief McCoy was a valuable member of SFD who served with distinction). Accordingly, the Motion for Summary Judgment on Behalf of the City of Shreveport, filed August 29, 2012, upon reconsideration as ordered by the Second Circuit Court of Appeal on March 14, 2013, and as argued to this Court on August 19, 2013, is granted. Because this dispositive motion is granted, this Court need not address the prescription exception filed by City of Shreveport.

Counsel shall submit a formal Judgment in accordance with this ruling and La. Dist. Ct. R. 9.5.

Signed this 5th day of December, 2013 in Shreveport, Caddo Parish, Louisiana.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

Daniel E. Broussard, Jr., Counsel for Margene M. McCoy

Jennifer P. McKay, Counsel for City of Shreveport