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October 15, 2001

The Honorable Jeff Lamberti
State Senator and Co-Chairperson
Legislative Fiscal Committee
State Capitol
L-O-C-A-L

The Honorable David Millage
State Representative and Co-Chairperson
Legislative Fiscal Committee
State Capitol
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Dear Senator Lamberti and Representative Millage:

At the request of Beth Lenstra of the Legislative Fiscal Bureau, I am writing to summarize the pending litigation against the State under the Fair Labor Standards Act (FLSA). State employees from four state agencies filed suit: the Department of Public Safety (DPS); the Department of Transportation (DOT); the Department of Corrections (DOC); and the Department of Natural Resources (DNR). The recent Iowa Supreme Court decision in Anthony v. State, No. 99-0515, issued on September 6, 2001, has resolved the liability issues except calculation of damages. Currently our office is considering whether to file a petition for certiorari to the United States Supreme Court.

CLAIMS

Approximately 276 State employees sued four state agencies to recover overtime pay which they claim is due under the federal FLSA, 29 U.S.C. § 201 et seq., and the state Wage Payment Collection Law, Iowa Code chp. 91A. Although the positions and nature of the work performed at each state agency vary factually, the cases share common legal defenses which are discussed further below. Briefly, the employees in each state agency and the nature of their work can be summarized as follows:

Department of Public Safety

Approximately 130 thirty supervisors from the Iowa State Patrol, Division of Criminal Investigation and Division of Narcotics Enforcement sued DPS. The plaintiffs include the current and past three heads of the Iowa State Patrol, as well as employees from every other supervisory job classification in these divisions. These employees are responsible for supervising a wide range of law enforcement duties carried out by DPS personnel.

Department of Transportation

Seventy-two employees, most of whom are highway maintenance supervisors, sued the DOT. These employees supervise crews that maintain the State's highways. Employees may be called out during winter weather to supervise snow plowing or may be called out to deal with other unpredictable road conditions -- including floods, heat damage or motor vehicle accidents.

Department of Corrections

Sixty-eight supervisory correctional officers at prison facilities, including deputy wardens, sued the DOC. These employees may be called upon to deal with lock downs or other prison disruptions and may be needed to transfer inmates to, or guard inmates at, various court hearings.

Department of Natural Resources

Six district supervisors, each classified as Public Service Executive II, sued the DNR. These employees supervise conservation officers in districts across the State as designated by DNR for the enforcement of laws governing fish and wildlife or state parks and recreation. Five of the six plaintiffs supervise game wardens in the Fish and Wildlife Division; one of the plaintiffs supervises conservation officers in the Parks, Recreation and Preserves Division.

DEFENSES

Sovereign immunity has been a central issue in the litigation of all these cases. Suits were originally filed in federal district court in 1994 and then dismissed in 1996 under the Eleventh Amendment, because Congress lacked the authority to provide for

The Honorable Jeff Lamberti
The Honorable David Millage
Page 3

suit against the State in federal court and the State had not waived its immunity by enacting the Wage Payment Collection Law. These claims were then filed in state court in 1996. Throughout the state court litigation we have argued that the State has a similar constitutional sovereign immunity from these claims in state court and has not waived this form of immunity by enacting the Wage Payment Collection Law.

The Iowa Supreme Court resolved the sovereign immunity issue adversely to the State through an unusual procedural process. The Court in February, 2001, declined to address sovereign immunity, but ruled in favor of the State on an alternative legal theory which obviated liability by recognizing certain steps the State had taken to correct challenged employment policies. Then the Court granted a petition for rehearing filed by the plaintiffs. In September, 2001, the Court withdrew the February opinion, reversed its decision on the alternative legal theory, concluded sovereign immunity applies and found that sovereign immunity had been waived by the State through enactment of the Wage Payment Collection Law and through promulgation of administrative rules. As a consequence, and for the first time, an Iowa court issued a final decision imposing liability on the State for overtime compensation as defined by the FLSA.

Our office is considering whether to petition for certiorari to the United States Supreme Court to ask that the Court reverse a 1985 decision under which the Supreme Court determined that the FLSA applies to the States. A petition would be due the first week of December, 2001. If the petition were granted and if the State prevailed, no overtime pay would be awarded at all. But certiorari is granted rarely: approximately one percent of all the petitions for certiorari filed with the Supreme Court are granted.

DAMAGES

Damages would be paid through the State Appeal Board. But many issues remain to be decided before damages could be calculated. Any estimate would be speculative while so many issues remain unresolved and, in any event, would be inappropriate while the cases are pending before a court. The following issues concerning calculation of damages remain unresolved:

* Whether the violations by the State are willful? The statute of limitation is two years, but can extend to three years if the violations are willful. If the violations are found to be willful an additional year could be included in damages.

The Honorable Jeff Lamberti
The Honorable David Millage
Page 4

* Whether the statute of limitations tolled at the filing of the federal court litigation or the state court litigation? Plaintiffs argue that the statute of limitations tolls at the filing of the federal court litigation; the State argues that the statute of limitations tolls at the filing of the state court litigation - a difference of nearly two years in damages.

* Whether liquidated damages apply? Liquidated damages can double the amount of the damage award, but are not available if the State reasonably believed it was in compliance with the law.

In addition, each case includes significant factual issues concerning the calculation of damages. For example, the suit against DPS includes claims for time spent driving to and from work, during lunch and while on coffee breaks - claims for which the State argues no overtime pay is owed. Further, not all employees at these agencies have records to substantiate if or when they actually worked overtime hours. These and other factual issues may impact calculation of any damage awards.

I hope this overview of the status of the FLSA cases has been helpful to you. I would be happy to address any additional questions you may have when you meet on October 24, 2001.

Sincerely,



JULIE F. POTTORFF
Deputy Attorney General