

RETURN DATE: OCTOBER 10, 2017 : SUPERIOR COURT

DEENA STAPLES, ELIZABETH : J.D. OF HARTFORD
HANNON, JASMINE WALKER,
PAULA MOHAMED-HEGAZI, AND :
JACQUELINE DEMARCO ON
BEHALF OF THEMSELVES AND :
ALL OTHER SIMILARLY SITUATED
PLAINTIFFS :

V. : AT HARTFORD

STATE OF CONNECTICUT : AUGUST 25, 2017

COMPLAINT

PRELIMINARY STATEMENT

The plaintiffs, Deena Staples, Elizabeth Hannon, Jasmine Walker, Paula Mohamed-Hegazi and Jacqueline DeMarco by and through their undersigned counsel, on behalf of themselves and all other persons similarly situated, allege the following facts and claims upon knowledge as to matters relating to themselves; and, upon information and belief as to all other matters.

1. The plaintiffs bring this action on behalf of themselves and all members of a class defined as follows: All persons covered by the pertinent provisions of the “Contract Between the State of Connecticut and New England Health Care Employees Union District 1199,” and/or NP-6 and/or P-1 collective bargaining contracts (hereinafter “collective bargaining agreement(s)”) who are and/or have been employed by the State of Connecticut as a part-time employee who have been subjected to “mandatory overtime” or “mandated” under said

collective bargaining agreement(s), and have not received full and fair compensation as required by the collective bargaining agreement(s).

2. The plaintiffs seek damages consisting of wrongfully withheld wages for all mandated overtime due them under the collective bargaining agreement(s), as aforesaid, attorneys' fees, as well as any other relief as the Court may deem just and proper on behalf of all class members.

3. The proposed class is so numerous that individual joinder of all of its members would be impractical; the exact size of the class is currently unknown, however, such information can be obtained through appropriate discovery during these proceedings.

4. The plaintiffs' claims are typical of the individual claims of the members of the class, as all such claims arise out of part-time employees that are members of the NP-6 and/or P-1 bargaining units, and subject to the collective bargaining agreement(s), who were required to work mandated overtime hours pursuant to the same.

5. Named plaintiffs will fairly and adequately represent the members of the class and have no interests antagonistic to those of the class. Plaintiffs' counsel are experienced in the prosecution of class action suits, including wage and employment matters.

6. Common questions of law and fact and common and general interests exist as to all members of the class and predominate over any questions affecting only individual members of the class.

7. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impractical.

8. The expenses and burden of individual litigation render litigation by individuals in the same circumstances as the plaintiffs impractical, difficult and/or impossible.

9. Individual litigation would impose a substantial burden on the Court and raises the risk of contradictory and inconsistent adjudication.

10. In contrast, proceeding as a class action presents fewer management difficulties, conserves the resources of the parties and those of the Court, and is the only means reasonably available to adequately protect the rights of all class members.

PARTIES

11. The plaintiff, Deena Staples, is and has been at all times relevant to this complaint, a resident of Storrs, Connecticut, and has been employed by the Department of Developmental Services of the State of Connecticut as a Licensed Practical Nurse since July of 2015.

12. The plaintiff, Elizabeth Hannon, is and has been at all times relevant to this complaint, a resident of Clinton, Connecticut, and has been employed by the Department of Developmental Services of the State of Connecticut as a Licensed Practical Nurse since July of 2015.

13. The plaintiff, Jasmine Walker, is and has been at all times relevant to this complaint, a resident of Preston, Connecticut, and has been employed by the Department of

Developmental Services of the State of Connecticut as a Licensed Practical Nurse since February of 2011.

14. The plaintiff, Paula Mohamed-Hegazi, is and has been at all times relevant to this complaint, a resident of Middletown, Connecticut, and has been employed by the Department of Developmental Services of the State of Connecticut as a Licensed Practical Nurse since May of 2012.

15. The plaintiff, Jacqueline DeMarco, is and has been at all times relevant to this complaint, a resident of Waterford, Connecticut, and has been employed by the Department of Developmental Services of the State of Connecticut as a Licensed Practical Nurse since November of 2002.

16. The defendant, State of Connecticut, is a sovereign entity existing within the United States pursuant to state and federal laws and acting through its employees, agents, and/or representatives including all state agencies, officials, and/or Commissioners of the State of Connecticut, at all pertinent times and for all purposes herein. It is the employer for all plaintiffs.

STATEMENT OF THE CASE

17. The collective bargaining agreement between the members of the New England Health Care Employees Union District 1199 and the State of Connecticut pertinent hereto was effective July 1, 2009 through June 20, 2012, and was extended by an Addendum to June 30, 2016 (hereinafter referred to as the “collective bargaining agreement” or the “Agreement.”)

18. A “part-time Employee” under Art. 1, § 2 of collective bargaining agreement(s) is defined as “an Employee who is hired to work a regular schedule of less than thirty-five (35) hours per week.” Moreover, “Part-time Employees in permanent positions shall receive wage rates, wage increases and fringe benefits, on a pro rata basis, except as specifically provided otherwise.”

19. “Overtime” under Art. 13, § 4, indicates that “[t]he State will continue to pay overtime to eligible Employees at a straight time rate for hours up to forty (40) and at time and one-half for hours worked over forty (40). . . .”

20. “Mandatory Overtime” under Art. 13, § 13(a) of the Agreement is defined as follows: “Employees shall not be mandated to work overtime except in an emergency. An emergency shall be defined as a weather emergency or other event where the governor closes state offices, a lockdown in a correctional institution, or when the number of actual staff reporting to work below minimum safe levels or legal requirements. **If such a mandate takes place, the affected employee shall be compensated at a rate double his/her regular hourly rate. . . .**”

21. As opposed to voluntary overtime, mandated overtime is the involuntary retention of an employee for one of the “emergency” reasons listed in Art. 13, § 13(a).

22. As opposed to voluntary overtime, for which employees who have not worked forty (40) hours within the weekly pay period would be compensated at their straight time rate of pay under Art. 13, § 4, mandatory overtime under Art. 13, § 13(a) entitles the subject employee

to receive twice his or her straight time rate of pay (hereinafter “double time”), regardless of the total number of hours worked during that weekly pay period.

23. The language of Art. 13, § 13(a) was new to the 2001-2005 collective bargaining agreement and has remained unchanged since that time.

24. Since the adoption of the language of Art. 13, § 13(a) to the collective bargaining agreement(s) in 2001, the defendant, State of Connecticut, has taken the position that part-time employees are not covered by the double time requirement of § 13(a). Consequently, it has only paid a straight time rate of pay to individuals who have worked mandated overtime under the Agreement.

25. A general or institutional grievance was brought by the New England Health Care Employees Union District 1199 (hereafter “the Union”) on behalf of aggrieved part-time employees with regard to compensation for mandated overtime under Art. 13, § 13(a) and was heard at arbitration before Arbitrator Joan Parker in September of 2002. See State of Connecticut and New England Health Care Employees Union, District 1199, OLR #10, 6451 and #11, 3565, Parker, J. Arb., October 30, 2002 (hereinafter “Parker Decision”).

26. The Parker Decision held that the State of Connecticut was not in violation of the collective bargaining agreement in failing to compensate part-time employees at a double time rate of compensation when mandated to work under Art. 13, § 13(a), as long as their total hours for the weekly pay period were at or below forty (40) in total.

27. Through the grievance process, arbitration and Parker Decision, the administrative remedies available to the plaintiffs have been exhausted.

28. A general or institutional grievance was also brought by the New England Health Care Employees Union District 1199 (hereafter “the Union”) on behalf of aggrieved full-time employees with regard to compensation for mandated overtime under Art. 13, § 13(a) and was heard at arbitration before Arbitrator Roberta Golick in June of 2003. See State of Connecticut and New England Health Care Employees Union, District 1199, General Notice No. 2003-22, Golick, R. Arb., June 30, 2003 (hereinafter “Golick Decision”).

29. Contrary to the Parker Decision, the Golick Decision held that Art. 13, § 13(a) requires double time compensation for all full-time employees who are subject to mandated overtime by the Defendant, regardless of whether the full-time employee has reached forty (40) hours for the weekly pay period.

30. Since 2001, it has been the practice of the defendant, State of Connecticut, to involuntarily retain part-time employees subject to the collective bargaining agreement under “mandated overtime” for one of the enumerated “emergency” situations, and then purposefully input or code their hours in the State of Connecticut’s payroll system as “overtime,” for which the part-time employees, having not worked at least forty (40) hours during the weekly pay period, would receive their straight time rate of compensation, instead of double time.

31. The plaintiffs, Deena Staples, Elizabeth Hannon, Jasmine Walker, Paula Mohamed-Hegazi and Jacqueline DeMarco and all others similarly situated, are part-time employees of

the defendant, State of Connecticut, subject to the collective bargaining agreement who have been involuntarily retained under the “mandated overtime” provision, Art. 13, § 13(a), of the collective bargaining agreements by the Defendant, State of Connecticut.

FIRST COUNT: (Breach of the Collective Bargaining Agreement(s))

32. The plaintiffs were, at all relevant times herein, members of the NP-6 and/or P-1 bargaining units and were thereby parties to the Contract Between the State of Connecticut and New England Health Care Employees Union District 1199, and/or NP-6 and/or P-1 collective bargaining contracts, effective as of July 1, 2009.

33. The plaintiffs were entitled, under the collective bargaining agreement, Art. 13 § 13(a) to receive double time compensation, or twice their straight time rate of compensation, for all hours for which they were subject to mandatory overtime work by the Defendant, State of Connecticut.

34. The language of the collective bargaining agreement clearly and unambiguously indicates that work performed during the workweek that is fewer than forty (40) hours may still constitute “overtime”, irrespective of the rate of compensation. For example, a full-time employee under the collective bargaining agreement(s) who works more than thirty-five hours in a week, but fewer than forty hours in that week, would have worked “overtime” despite receiving their normal straight time rate of compensation. Additionally, an employee who is held over more than fifteen (15) minutes beyond their scheduled shift would receive a

minimum of one (1) hour “overtime” at the applicable rate under Art. 13, § 13(b), without regard to whether that employee has worked at least forty hours during the weekly pay period.

35. As such, Art. 13, § 13(a) clearly carves out from the general overtime provision a specific exception for mandated overtime. That provision unambiguously requires all employees subject to mandatory overtime, whether full-time or part-time, receive compensation at double time for all mandated hours, regardless of whether the employee has worked at least forty hours during the weekly pay period.

36. By failing to compensate the plaintiffs and all those similarly situated as required under the Agreement, Art. 13, § 13(a), the defendant, State of Connecticut, has materially breached the collective bargaining agreement(s).

37. At all relevant times, the plaintiffs and those similarly situated have fully performed their obligations under the collective bargaining agreement by working mandated or mandatory overtime as directed by the defendant, State of Connecticut.

38. The plaintiffs and all those similarly situated have been unjustly aggrieved and damaged by the Defendant State of Connecticut’s failure and refusal to pay the double time rate for mandated overtime in breach of the Agreement.

SECOND COUNT: (Specific Performance)

1. Through 38. Paragraphs 1 through 38 of the First Count above are re-alleged and incorporated by reference as if fully set forth herein as paragraphs 1 through 38 of this Second Count.

39. The plaintiffs and all those similarly situated are entitled to specific performance of the Defendant's promise and agreement, pursuant to the collective bargaining agreement(s) Art. 13, § 13(a), to be compensated at double their hourly rates for all mandated overtime that has been worked..

THIRD COUNT: (Violation of Wage Payment Laws, C.G.S. §§ 31-71a, *et seq.*)

1. Through 38. Paragraphs 1 through 38 of the First Count above are re-alleged and incorporated by reference as if fully set forth herein as paragraphs 1 through 38 of this Third Count.

39. The plaintiffs and all those similarly situated constitute "employees" under C.G.S. § 31-71a(2).

40. The defendant, State of Connecticut, constitutes an "employer" under C.G.S. § 31-71a(1).

41. As an employer, the State of Connecticut may not withhold or divert any portion of an employee's wages unless certain limited and finite exceptions apply under C.G.S. § 31-71e.

42. The plaintiffs and all those similarly situated were entitled to double their straight time rate of compensation whenever "mandated" or subject to work mandatory overtime under the collective bargaining agreement Art. 13, § 13(a).

43. The defendant, State of Connecticut has withheld, failed and refused to pay and/or diverted wages which were and are rightly due and payable to the plaintiffs under the Agreement, all in violation of C.G.S. §§ 31-71a, *et seq.*

WHEREFORE, the plaintiff claims:

1. Judgment and certification of a class of part-time workers who have been wrongfully underpaid;
2. An Order enjoining the Defendant from any future wage withholding for workers who work mandatory overtime;
3. Fair, just and reasonable damages;
4. Specific performance of Art. 13, § 13(a) of the collective bargaining agreement(s);
5. Interest, including, but not limited to Pre-Judgment Interest;
6. Twice the full amount of wages that are unpaid pursuant to C.G.S. § 31-72;
7. Attorneys fees and costs;
8. Such other relief as the Court may deem just and proper.

Hereof fail not but of this writ, with your doings thereon, make due service and return according to law.

Dated at Hartford, Connecticut, this 25th day of August, 2017.

**DEENA STAPLES, ELIZABETH HANNON,
JASMINE WALKER, PAULA MOHAMED-
HEGAZI, JACQUELINE DEMARCO
And all those similarly situated**

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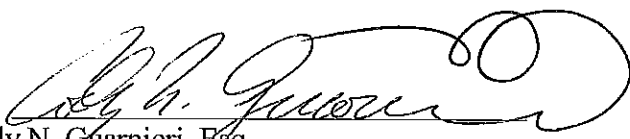
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STATEMENT OF AMOUNT IN DEMAND

The amount, legal interest or property in demand is in excess of \$15,000.00, exclusive of interest and costs.

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