

## **Update from Office of General Counsel - Additional Information About March 31, 2017 FLSA Decision**

The National Office has received a number of calls and emails from current and retired NATCA members about the March 31, 2017 decision by the U.S. Court of Federal Claims in the pending Fair Labor Standards Act case. This case was filed on May 1, 2007, a related case with additional plaintiffs was filed in 2009, and the court cut off the addition of any new plaintiffs as of December 2010. Many of the affected NATCA members joined the case at the time of its filing in 2007, but several hundred additional affected members were added to the related case before the court closed it to new plaintiffs. Any members as of December 2010 who had not joined the case and any members who joined NATCA after December 2010 are not plaintiffs in the litigation.

Several members have inquired as to whether their recovery amounts will be the same as the recovery amounts entered by the court after the 2012 trial. Those individual amounts were contained in an official order of the court from September 2012. Because this case went up on appeal by the government to the U.S. Court of Appeals for the Federal Circuit and the Federal Circuit overturned a large portion of the trial court's decision, the recovery amounts from the September 2012 order are no longer applicable. On remand in the Court of Federal Claims in 2015, the recovery was limited to an award for credit hours in excess of the twenty-four hour cap (the earlier award included recovery for compensatory time hours and credit hours both above and below the cap). Please do not refer to the September 2012 order for a determination as to individual recovery amounts. The court has given the parties until July 30, 2017 to stipulate to the new, revised recovery amounts for individual plaintiffs. Counsel for the NATCA plaintiffs are preparing these calculations and NATCA will distribute the stipulation when it is entered with the court. Members with questions about the case should contact NATCA General Counsel Marguerite L. Graf at [mgraf@natcadc.org](mailto:mgraf@natcadc.org) or 202-220-9828.

### **Update from Office of General Counsel on FLSA Suit – March 31, 2017:**

On March 31, 2017, the federal judge presiding over the Fair Labor Standards Act case filed by NATCA almost ten years ago issued the latest decision in this marathon litigation and ruled in favor of the NATCA plaintiffs. The case was originally filed on May 1, 2007 in the U.S. Court of Federal Claims and alleged that the FAA unlawfully maintained compensatory time and credit hour programs in lieu of paying time-and-a-half pay for overtime hours after the passage of FAA's personnel reform law. After several years of discovery and motions in the trial court, the NATCA plaintiffs prevailed at trial in 2012. Subsequently, however, the FAA and Department of Justice appealed the case, and the U.S. Court of Appeals for the Federal Circuit ruled that the FAA retained the flexibility to utilize compensatory time and credit hour programs that otherwise comported with applicable laws and regulations. On remand back in the Court of Federal Claims, the court ruled at the end of 2015 that the credit hours program maintained by the FAA did not comport with applicable laws and regulations because it allowed NATCA plaintiffs to accumulate credit hours in excess of the twenty-four-hour cap and that the NATCA plaintiffs were entitled to time-and-a-half overtime pay for hours in excess of the twenty-four-hour cap.

Since the issuance of the court's 2015 decision, the FAA and DOJ have submitted additional filings to the court seeking to introduce new evidence related to credit hours that the NATCA plaintiffs may have used subsequent to the evidence submitted at the

2012 trial and that would allow the government an offset against the damages due to the NATCA plaintiffs. The decision issued by the court on March 31, 2017 rejected the arguments of the FAA and DOJ, and the court held that the government was not entitled to introduce new evidence at this late stage of the litigation. The court firmly ruled that the government was under an ongoing duty to timely supplement its disclosures with regard to credit hour usage for the calculation of damages, the government failed to fulfill its duty in a timely manner, and that the government's failure was not substantially justified or harmless. The court required the parties to jointly calculate and file a stipulation with the court for the amount of compensation to which each plaintiff is entitled by July 30, 2017.

NATCA anticipates that this latest decision in the FLSA suit will finally bring resolution to this case. We will update the NATCA plaintiffs in the case once the required stipulation as to individual damages has been submitted to the court. Members with questions about the case or the March 31, 2017 ruling should contact NATCA General Counsel Marguerite L. Graf at [mgraf@natcadc.org](mailto:mgraf@natcadc.org) or 202-220-9828.