

**March 10, 2015**  
**Martin v. US - Shutdown FLSA Case**

Members have begun asking NATCA's National Office about NATCA's opinion regarding Martin, et. al v. the United States of America, a lawsuit brought by federal employees working for the Bureau of Prisons over a claim that the government violated the Fair Labor Standards Act when it did not pay the minimum wage or overtime pay in a timely manner for the first five days of the government shutdown, October 1-5, 2013. The substance of the case is not that the federal employees failed to ultimately receive the appropriate pay for work performed during the shutdown, but that the federal government committed a technical violation of the FLSA's minimum wage and overtime pay requirements by delaying that pay and that, as a result, the employees are entitled to liquidated damages for not having use of those funds during the delay.

The case has recently been certified as a collective action and similarly situated employees of other federal agencies who are eligible to opt into the case will receive notice shortly, via electronic mail, of their eligibility and the opt-in process. The FAA has advised NATCA that counsel for the plaintiffs will send notices by U.S. mail to all affected NATCA represented DOT employees in the 2152 job series this week. A copy of both the court approved notice and consent form are attached. NATCA represented DOT employees in other job series will receive the forms electronically this week from the Department of Transportation. NATCA has not received any information about how affected Department of Defense bargaining unit employees will receive notification.

The court has not yet ruled on the issue of whether the government is actually liable to pay liquidated damages. The case will have to go through a discovery phase prior to a trial on this issue. If the plaintiffs prevail on the minimum wage claim, each would be entitled to a maximum of \$290 before 20% attorneys' fees, additional litigation expenses, and taxes are subtracted. If the plaintiffs prevail on the overtime claim, liquidated damages would be equal to the amount of overtime pay received during October 1-5 minus the 20% attorneys' fees, additional litigation expenses, and taxes. It should also be noted that employees who worked on September 29 and 30 would have to have an annual salary of less than approximately \$37,800 in order to qualify on the minimum wage claim. Employees who worked either September 29 or 30 would have to have an annual salary of less than approximately \$75,600 in order to qualify on the minimum wage claim. This is because they would have received at least \$290 in wages for the 40 hours in the workweek covering October 1-5.

NATCA will not be recommending whether or not to opt-in to this lawsuit. Each member must make that decision for him or herself. NATCA is not a sponsor of this lawsuit nor do we have any relationship with the case or the counsel handling the case on behalf of the plaintiffs. NATCA will not be bringing a similar case on behalf of our members. We do expect litigation over this matter to go on for many years before final resolution is reached.