

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.

**JUNE MURPHY, individually and
behalf of all other similarly situated
persons,**

Plaintiffs,

v.

**NORTHERN DUTCHESS
PARAMEDICS, INC., and EDWARD B.
MURRAY,**

Defendants

'11 CIV 5661

JUDGE [unclear]

COLLECTIVE & CLASS ACTION COMPLAINT

1. Defendant NORTHERN DUTCHESS PARAMEDICS, INC. is a privately owned company, owned and operated by Edward Murray and Robert Latimer. Defendants operate a company that provides medical transportation, based in Rhinebeck, New York. NORTHERN DUTCHESS PARAMEDICS, INC. is an ambulance and ambulance company staffed by professional paramedics and emergency medical technicians (EMTs) who provide emergency medical transportation as well as transportation to and from medical appointments and transportation for wheel chair bound individuals.
2. Plaintiffs are scheduled to work shifts of varying amounts of time for defendants ranging from 8 hours to 24 hours. Plaintiffs generally work three to four shifts per week. Defendants pay their employees an hourly rate and time and a half overtime for work that is scheduled or is approved for hours over forty in a week.
3. Defendants fail to pay drivers all the wages which they are owed for all the hours they work. With Defendants' knowledge and consent, Paramedics and EMTs regularly come

in prior to their shift to make sure their ambulance will pass the pre-tour (or pre-shift) checklist (an extensive New York State mandated checklist that makes sure the ambulance is medically and mechanically ready) and to be available for calls so the prior shift does not have to go out on last minute calls at the end of their shift. With Defendants' knowledge and consent, Paramedics and EMTs also regularly work past their scheduled shift time in order to complete necessary paperwork and to do all the things necessary to make sure the ambulance is medically and mechanically ready for the next shift's run. This time is not compensated by Defendants.

4. Plaintiff seeks unpaid wages, liquidated damages, interest, costs and attorneys' fees, as well as declaratory relief under the FLSA and state minimum wage and wage payment laws. Plaintiff brings this claim individually and on behalf of other similarly situated employees under the collective action provisions of the FLSA. 29 U.S.C. § 216(b). Plaintiff brings these state claims individually and under the class action rules of Fed. R. Civ. P. Rule 23.

JURISDICTION AND VENUE

5. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce. Jurisdiction over Plaintiff's claims for declaratory relief is conferred by 28 U.S.C. §§2201 and 2202.
6. This Court has supplemental jurisdiction over the state claims raised in this case by virtue of 28 U.S.C. §§ 1332 and 1367.
7. Defendants reside in Rhinebeck, New York. Plaintiff resides in High Falls, New York.

8. Venue is proper in the Southern District of New York, pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claim occurred in this District and the Defendants resides in this District.

PARTIES

A. Plaintiff

9. Plaintiff JUNE MURPHY is a natural person residing in High Falls, New York. Plaintiff MURPHY was an employee of Defendants, as described herein. Plaintiff MURPHY worked for Defendants in New York from approximately December 2005 until June 2011.
10. Plaintiff brings claims under the Fair Labor Standards Act, individually and on behalf of a collective action class as further described herein to redress the Defendants' failure to pay them wages for all hours worked and overtime at the rate of time and one half for all hours worked over forty in a week.
11. Plaintiff brings claims under New York Labor Law Articles 6 (failure to pay wages due) and their implementing regulations, 12 NYCRR part 142, including, §142-2.2 (overtime), individually and on behalf of a class pursuant to Fed. R. Civ. P. 23, to redress the Defendants failure to pay them all wages due for all hours worked and overtime at the rate of time and one half.
12. Plaintiffs were engaged in commerce in their work for Defendants.

B. Represented Parties under FLSA

13. The term "Plaintiff" or "Plaintiffs" as used in this Complaint refers to the named Plaintiff and any additional represented Class Members pursuant to the collective action provision of 29U.S.C. §216(b), and any additional Class Members pursuant to Rule 23.

14. The named Plaintiff brings this case under the collective action provision of the FLSA, as set forth in 29 U.S.C. §216(b), on behalf of herself and a class of persons throughout the U.S. consisting of “all professional employees (paramedics and EMTs) for NORTHERN DUTCHESS PARAMEDICS, INC. employed by Defendants within the limitation period.” The claim limitation period includes the three years preceding the filing of an individual class member’s Consent to Sue form, up through the date of final judgment herein and subject to any equitable tolling for any applicable period proceeding the limitation period.

C. Class Action Allegations

15. The named Plaintiff brings the Second Cause of Action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and a class of similarly situated persons consisting of “all professional employees (paramedics and EMTs) for NORTHERN DUTCHESS PARAMEDICS, INC. employed by Defendants within the limitation period.” The claim limitation period includes the six years preceding the filing of the initial complaint up through the date of final judgment herein and subject to any equitable tolling for any applicable period proceeding the limitation period.

16. Excluded from any Rule 23 or Collective Action Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in any Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from any Rule 23 Class.

17. The persons in the Rule 23 Class identified above are so numerous that joinder of all

members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

18. Upon information and belief, the size of the Rule 23 Class exceeds 40 individuals.
19. Defendants acted or refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final relief or corresponding declaratory relief with respect to the Class as a whole.
20. The New York State Causes of Action are properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:
 - a. whether Defendants knew or should have known that the Plaintiffs were performing uncompensated work,
 - b. whether Defendants failed to pay the Rule 23 class Plaintiffs the overtime wages due under state statutes in each week of more than forty hours work;
 - c. whether Defendants wrongfully failed to pay each class member for all their hours of work,
 - d. whether Defendants failed to pay New York class Plaintiffs state spread of hours wages due for each day's labor with a spread of hours greater than ten, and;
 - e. the nature and extent of Class-wide injury and the appropriate measure of damages for the Classes.
21. The claims of Plaintiff are typical of the claims of the Class she seeks to represent. Plaintiff and the Class members work or have worked for Defendants and have been

subjected to common contract terms and a policy and pattern or practice of failing to pay for all hours worked and all overtime. Defendants acted and refused to act on grounds generally applicable to the Class, thereby making declaratory relief with respect to the Class appropriate.

22. Plaintiff will fairly and adequately represent and protect the interests of the Class.
 - a. Plaintiff understands that, as class representative, she assumes a fiduciary responsibility to the Class to represent its interests fairly and adequately.
 - b. Plaintiff recognizes that as class representative, she must represent and consider the interests of the Class just as she would represent and consider her own interests.
 - c. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over those of the Class.
 - d. Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Class.
 - e. Plaintiff understands that to provide adequate representation, she must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and in trial.
23. Plaintiff has retained counsel competent and experienced in complex class action employment litigation.
24. A class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of wage litigation like the present action,

where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against Defendants. The members of the Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

D. Defendants

25. Upon information and belief, Defendant NORTHERN DUTCHESS PARAMEDICS, INC. is a business corporation having an office and place of business in New York.
26. Defendant NORTHERN DUTCHESS PARAMEDICS, INC. is a New York business corporation that lists its headquarters and principal office address as 3 Hook Road, PO Box 672, Rhinebeck, NY 12572.
27. Defendant EDWARD B. MURRAY is the owner and chief executive officer of NORTHERN DUTCHESS PARAMEDICS, INC..
28. Upon information and Belief Defendant EDWARD B. MURRAY resides in Rhinebeck, New York
29. Upon information and belief, Defendants grossed more than \$500,000 in each of the last six calendar years, individually and collectively.
30. Defendants jointly employ the named Plaintiff and Plaintiff class members.
31. Defendant NORTHERN DUTCHESS PARAMEDICS, INC. is an enterprise engaged in interstate commerce for purposes of the Fair Labor Standards Act.
32. All actions and omissions described in this complaint were made by Defendants directly or through their supervisory employees and agents.

FACTS

33. Defendants employs Plaintiff.
34. Plaintiff drives Defendants' ambulances in response to emergency medical calls, and emergency transports (from nursing home to hospital or from hospital to hospital, as well as for stand by service for civic events such as parades, festivals, etc.
35. Upon information and belief, Defendants obtain revenues through billings to individuals, nursing homes, insurance companies, Medicaid, and Medicare.
36. Defendants generally schedule Plaintiffs for 3 to 4 shifts per week, with each shift most often scheduled for 8 or 24 hours periods.
37. Plaintiffs regularly work 12-14 or more hours for Defendants in a day.
38. Defendants promise to pay Plaintiffs an hourly rate for each hour of work.
39. Defendants promise to pay Plaintiffs time and a half for each hour scheduled or approved over forty in a week.
40. Defendants knew or should have known that Plaintiffs perform uncompensated work
41. Defendants fail to pay Plaintiff's for work done prior to their scheduled shift or after the end of their scheduled shift. With Defendants' knowledge and consent, Paramedics and EMTs regularly come in prior to their shift to make sure their ambulance will pass the pre-tour (or pre-shift) checklist (an extensive New York State mandated checklist that makes sure the ambulance is medically and mechanically ready) and to be available for calls so the prior shift does not have to go out on last minute calls at the end of their shift.
42. With Defendants' knowledge and consent, Paramedics and EMTs also regularly work past their scheduled shift time in order to complete necessary paperwork and to do all the things necessary to make sure the ambulance is medically and mechanically ready for the

next shift's run.

43. Defendants fail to compensate Plaintiffs for the work described herein.
44. Because of this uncompensated work, Defendants fail to pay Plaintiffs for all their straight time hours worked, and fail to pay all overtime at the rate of time and one half otherwise due to Plaintiffs.
45. Defendants fail to pay any spread of hours pay when the start and end of work involves a spread of hours of more than 10 hours in a workday.

**FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT)**

46. Defendants failed to pay overtime premium pay to Plaintiffs in violation of the Fair Labor Standards Act, 29 U.S.C. §207 *et seq.* and its implementing regulations.
47. Defendants' failure to pay proper overtime wages for each hour worked per week was willful within the meaning of the FLSA.
48. Defendants' failure to comply with the FLSA overtime wage protections caused Plaintiffs to suffer loss of wages and interest thereon.

**SECOND CAUSE OF ACTION
(NEW YORK LABOR LAW)**

49. Plaintiff re-allege and incorporate by reference all allegations in all preceding paragraphs.
50. Defendants failed to pay the named Plaintiff and the New York Class overtime premium pay for hours over 40 in each week of work, in violation of New York Labor Law, Article 19 and the administrative regulations implementing such provisions, as set forth in 12 NYCRR 142-1.1, *et seq.*, including 12 NYCRR §142-2.2.
51. Defendants failed to pay the named Plaintiff and the New York Class all straight time wages when due in violation of New York Labor Law, Article 6, and NY Labor Law

§191, *et seq.*

52. Defendants failed to pay the named Plaintiffs and Class members one hour's pay at the minimum hourly wage rate, in addition to the regular wage for any day in which the spread of hours exceeds 10 hours as required by New York Labor Law Article 19 and 12 NYCRR §142-2.4.
53. Defendants' failure to comply with New York Labor Law caused Plaintiff to suffer loss of wages and interest thereon.
54. Defendants' failure to comply with New York Labor Law was willful.

WHEREFORE, Plaintiffs request that this Court enter an Order:

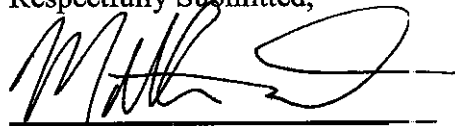
1. With respect to the FLSA violations:
 - a. Declaring that Defendants violated the FLSA;
 - b. Approving this action as a collective action;
 - c. Declaring that Defendants' violations of the FLSA were willful;
 - d. Granting judgment to Plaintiffs and represented parties for their claims of unpaid wages as secured by the Fair Labor Standards Act, as well as an equal amount in liquidated damages and interest; and
 - e. Awarding Plaintiffs and represented parties their costs and reasonable attorneys' fees.
2. With respect to the Classes:
 - a. Certifying this action as a class action;
 - b. Designating Plaintiff as Class Representatives;
 - c. Designating the undersigned counsel as Class Counsel; and
 - d. Entering a declaratory judgment that the practices complained of herein are

unlawful;

3. With respect to the New York state law claims:
 - e. Granting judgment to the named Plaintiff and Class members including awarding statutory, compensatory and liquidated damages;
 - f. Awarding Pre-judgment and Post-Judgment interest, as provided by law; and
 - g. Awarding Plaintiffs their attorneys' fees and costs of suit, including expert fees.

Dated: August 12, 2011

Respectfully Submitted,



Matthew Dunn (MD1103)

Dan Getman (DG4613)

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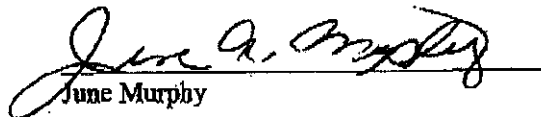
ATTORNEYS FOR PLAINTIFFS

CONSENT TO SUE UNDER THE FLSA

I, June Murphy, hereby consent to be a plaintiff in an action under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., to secure any unpaid wages, minimum wages, overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Northern Dutchess Paramedics, Inc. and any other associated parties.

I authorize Getman & Sweeney, PLLC, Dan Getman, Esq., and any associated attorneys as well as any successors or assigns, to represent me in such action.

Dated: 7/14/2011


June Murphy