

F I L E D
Clerk of the Superior Court

JUN 12 2006

By: C. WALKER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

STEVEN A. SLOAN, PAUL HUBKA, and
PETER MILLS,

Plaintiffs,

v.

CITY OF SAN DIEGO, and DOES 1 to 20,
inclusive,

Defendants.

) Case No. GIC 848641

) **RULING AFTER HEARING**

) Judge: Hon. Judith F. Hayes
) Dept.: 68

The question before this Court is whether San Diego police officers in the K-9 unit, including the three officers named as moving parties to this action, are permitted to include Canine Care Pay in the calculation of their retirement base compensation for purposes of determining their total retirement benefits as safety officers under the City's retirement systems pension plan.

Canine Care Pay refers to time spent by officers off duty to care for the dogs assigned to them. Care includes feeding, exercising, grooming, and housing. All K-9 officers who perform Canine Care duties receive extra compensation at the rate of 3.5 hours per week calculated at overtime rates. This estimate of 3.5 hours per week is conservative. Most officers spend considerably more than 3.5 hours per week in caring for their K9 partners.

In the City of San Diego, peace officer retirement pay is calculated in a three-step process. "Final Compensation" is the officer's highest total base compensation for a one year period during

1 which the officer is a member of the retirement system. It is determined and multiplied by years in
2 service, and then multiplied by a retirement factor, in this case, three percent for police officers to
3 arrive at the officer's retirement pay.

4 San Diego Municipal Code Section 24.0103 defines "Base Compensation" as including
5 those classifications of pay identified in the Earnings Code Document which is prepared annually
6 and which is kept on file in the office of the City Clerk and also maintained by the City Manager,
7 the City Auditor, the Retirement Administrator, and the Personnel Director. The Earnings Codes
8 Document is amended annually, as necessary, to reflect any changes or additions made during the
9 city's budget adoption process. This document contains the list of pay categories which are either
10 "included" or "excluded" for purposes of determining Base Compensation.

11 The Earnings Codes Document for the City of San Diego is ratified on a yearly basis by the
12 City Council. Each Document is signed by the Retirement Administrator, the City's Personnel
13 Director, the City's Auditor and Comptroller, and the City Manager. The City's Earnings Code
14 Document currently in effect (as well as those in effect in years past) **expressly includes** Canine
15 Care Pay in retirement base earnings or "Base Pay" for purposes of determining peace officer
16 retirement.

17 Since Canine Care is done after hours, that is, after the officer's shift ends, the City argues
18 that such pay constitutes overtime pay. Overtime pay is expressly excluded from the Retirement
19 pay determination by the Memorandum of Understanding which has expired but which has been the
20 document according to which the City has contracted with the San Diego Police Department. The
21 City argues that the inclusion of Canine Care Pay in the list of included pay classifications on the
22 Earnings Code Document is an error and should not control.

23 This Court finds, based upon the evidence presented at the hearing and authorities cited in
24 the moving papers, that Canine Care pay is not overtime and should be included in the
25 determination of final compensation. Canine Care Pay is not overtime pay in the classic sense.
26 Each K9 officer receives the same fixed pay for canine care, regardless of how many off duty hours
27 are spent attending to the animal in question. This pay doesn't vary on the basis of whether or not

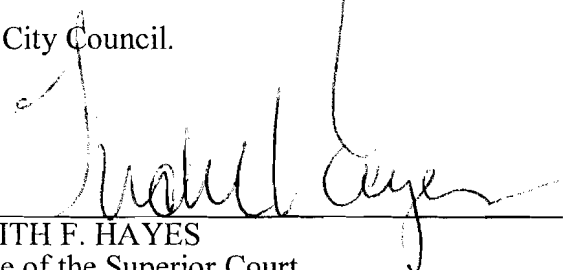
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1 the officer is called in to work overtime with the K-9. This compensation is more akin to a part of
2 the regular periodic compensation received by the officers for their work as K-9 handlers.

3 Inclusion in the list of earnings included in the determination of retirement pay is no
4 mistake. There is no credible evidence before this court to support the conclusion that no one read
5 or considered the Earnings Code Document before signing it. To the contrary, the evidence
6 supports the conclusion that every City Auditor and Controller who signed the document since
7 1998 read and understood the classifications included and excluded prior to affixing his/her
8 signature.

9 The language of the Earnings Code Document is clear and unambiguous. It is important
10 that City employees have confidence in the reliability of the classifications contained in the
11 Earnings Code Document. Assuming the City believes an error occurred in the inclusion of Canine
12 Care Pay as an "included" classification within the Earnings Code Document, the City's remedy is
13 to modify the classification by action through the City Council.

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15 Dated: JUN 12 2005

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17 JUDITH F. HAYES
18 Judge of the Superior Court

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6 TH AVE., SAN DIEGO, CA 92101-3296 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4 TH AVE., SAN DIEGO, CA 92101-3105 <input type="checkbox"/> KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3 RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792	F I L E D Clerk of the Superior Court JUN 12 2006 By: C. WALKER, Deputy
PLAINTIFF(S)/PETITIONER(S) STEVEN A. SLOAN, et al.	Judge: JUDITH F. HAYES Dept.: 68
DEFENDANT(S)/RESPONDENT(S) CITY OF SAN DIEGO	CASE NUMBER GIC 848641
CLERK'S CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4))	

I, **MICHAEL M. RODDY**, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

RULING AFTER HEARING, exhibits (to Pittf.'s Counsel)
+ 6/12/06 minutes.

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at:

San Diego Vista El Cajon Chula Vista Oceanside Ramona, California.

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MICHAEL M. RODDY
CLERK OF THE SUPERIOR COURT

Date: JUN 12 2006

By: C. Walker , Deputy
C. WALKER

CLERK'S CERTIFICATE OF SERVICE BY MAIL