

FLSA (Fair Labor Standards Act) and the K-9 Handler

By Terry Fleck

There are three areas where we are either losing canine units throughout the United States, or they are being reduced in size. These areas are the demise of police canine:

1) Deployment Issues:

The issue of not deploying the dog properly, which led to litigation, which resulted in either a settlement or a jury verdict against the agency.

2) Accidental Bites:

Either civilians or other officers have been accidentally bit by a police service dog or contraband detector dog. This led to agency liability for that accidental bite.

Unfortunately, numerous police dogs have been shot and killed by fellow officers while they were being accidentally bit by a police dog.

3) Handler Compensation Issues:

The United States Department of Labor (DOL) mandates the handler compensation of "at-home care" of police dogs under the Fair Labor Standards Act (FLSA). An agency's failure to compensate a handler has resulted in litigation where the agency was found liable for 2-3 years of back pay for each canine handler.

This article will focus on the largest demise of police canine, FLSA handler compensation for at-home care.

The FLSA handler compensation issue started in 1985 when this case, **Garcia v San Antonio Metropolitan Transit Authority**, stated that the Fair Labor Standards Act (FLSA) was applicable to the public sector government.

Since then, the Federal court system has addressed the **Garcia** decision and what it meant to canine handlers. The courts are in total agreement that only one issue is compensable to a canine handler, the at-home care of his dog:

At-home Care:

This issue arises if the agency does not kennel the dog at the police station or some other fixed work place site. The norm is for the handler to kennel and care for the dog at the handler's home. The Department of Labor (DOL) has consistently held that time spent in the at-home care of police dogs is compensable time and that, to the extent that these hours exceed 40 in one week, time and one-half compensation must be paid.

The cases usually show summary judgment on compensability for specific activities. After the judgment, the agency either settles or there is an un-reported verdict.

Only one case, **Levering v District of Columbia**, specifically states the "appropriate time" for such activity compensation. This case states "**30 minutes per day**", seven days per week.

What is this compensation for? The Department of Labor (DOL) issued a "Letter Ruling" dated August 11, 1993. This ruling stated:

- 1) Bathing, brushing, exercising, feeding, grooming, cleaning of the dog's kennel or transport vehicle, administering drugs or medicine for illness and/or

transporting the dog to and from an animal hospital or veterinarian and training the dog at home are all compensable activities.

- 2) All these activities apply to workdays as well as days off duty or during vacation periods.

Using the **Levering** case, when do the math, the minimum compensable time owed to a canine handler for the at-home care of his dog is:

:30 minutes per day x 7 days per week = 3.5 hours per week. A lot of agencies have a problem computing the .5 hour. Those agencies typically round up the 3.5 hours to 4 hours per week.

Methods of compensation:

A) Factor all compensable time into the handler's normal workday. The handler's normal workday would consist of “___” hours of normal duties and “___” hours of FLSA compensable time = total workday hours.

B) Pay the handler all FLSA compensable time. The rate would be at one and one-half hourly rate for any hours which exceed forty per week. This is expensive, averaging about \$6,000 to \$8,000 per handler, per year.

C) Do a combination of both methods of compensation as listed above. Factor the compensable time into the workday, but if call load prohibits letting the handler leave early, pay the handler for that day only, usually at one hour overtime.

Compromise and negotiation:

This handler compensation issue must be negotiated with both the agency and handler's position/view point. Agencies and handlers should meet and confer on this issue. To prevent the demise of canine as we know it, both parties should arrive at a decision that both can live with.

In order for a labor agreement between the handler and agency to be reasonable, the agreement has to take into account some approximation of hours actually worked, or reasonably required to be worked, by the employee.

Officers cannot legally waive FLSA provisions. This would include waiving the FLSA two year statute of limitations.

I have polled about 12,000 canine personnel throughout the United States on this FLSA at-home care issue. About 70% of our industry not only knows about FLSA at-home care compensation, but are in compliance as well.

If you are in the other 30% and your agency is not in compliance with the labor law regarding handler compensation, it is inevitable that you will have one of these persons raise his ugly head, a disgruntled ex-canine handler. If your agency is not in compliance with the labor law, the handler will sue their agency and win! In addition to that one ex- handler winning, the entire canine unit will also be thrown into this action and the agency will not only owe the ex-handler, but all other handlers and ex-handlers as well.

Remember, there is a two to three year statute of limitations. It is not uncommon for each handler to receive \$40,000 to \$80,000 each!

The solution for the FLSA handler compensation for the at-home care of his dog is simple. Get into compliance. The faster you get into compliance, the faster you get past the statute of limitations. I applaud the 70% of agencies that are in compliance with Federal labor law on at-home care. It is unfortunate to see our

industry with 30% of agencies not in compliance with Federal labor law on handler compensation, at-home care.

I urge any agency not in compliance to get into compliance. It is time to stop this demise of police canine.

More information, including the cases, is available on my web site. Please contact me with any questions by visiting my Canine Legal Update and Opinions web site at www.k9fleck.org or by e-mail, k9fleck@aol.com.