

HEOs win OT payout

By DANIA RAJENDRA

On May 1, nine LaGuardia employees in Higher Education Officer-series titles signed an important piece of paper – a settlement with the college granting them back pay for overtime worked beyond 40 hours. At least as important, the settlement recognizes that they are entitled to such overtime pay in the future.

Plaintiff Robert Bandelt encouraged other HEOs across CUNY to call the union if they are assigned to work more than 35 hours without pay. “There is a sense of change going through this University,” Bandelt said, “because the people who work at this school are no longer going to accept business as usual.”

Seven Assistants to HEO and two HEO Assistants filed a federal lawsuit last summer, charging that LaGuardia Community College owed them money for time they were assigned to work beyond the contractually required 35 hours. The PSC worked closely with the plaintiffs and provided legal counsel for the suit.

IT'S THE LAW

Under the lawsuit settlement, LaGuardia management: 1) agreed to pay the plaintiffs double the amount of back wages they were due for time-and-a-half for work over 40 hours; 2) reimbursed the plaintiff's attorney fees; and 3) agreed that in the future they will comply with the law and pay plaintiffs time-and-a-half after 40 hours of work in a week. As a result of the financial settlement, each plaintiff will receive \$2,500.

The two sides agreed to defer the decision on payment for work over 35 and up to 40 hours to an arbitration the PSC has filed on the issue. The position of LaGuardia and CUNY management in the arbitration is that, under the contract, HEOs are not owed any compensation for assigned work over 35 hours. In the case, the union argued that HEOs should be paid straight-time or pro-rated hourly pay based on their annual salary. The arbitrator's decision is expected this summer.

“While this settlement applies to only these nine plaintiffs,” said PSC First Vice President Steve London, “this trail-blazing victory makes clear that CUNY colleges will have to pay for past violations of federal law, and the union will see to it that the law is enforced so that management has a clear financial incentive to obey the law in the future.”

Bandelt explained that PSC members in LaGuardia's Enrollment Services Department decided to take action after seeing some discrepancies in treatment. In August 2005, Bandelt saw an adver-

Speaking up about long hours at LaGuardia



From left, Robert Bandelt, Melanie Abreu, Sutonia Boykin, Cheryl McKenzie and Ganga Persaud signed their settlement papers at the PSC on May 1.

tisement for an enrollment specialist with a job description similar to his own as a financial counselor. The ad, Bandelt told *Clarion*, specified that overtime pay was offered. “So, the question was raised, why was that position offered overtime, but we weren't?”

The ad came shortly after another incident that had angered PSC members in the department. “A number of my colleagues worked very late during registration that Thursday before Labor Day. They worked until 11 pm,” Bandelt said. “Management had promised them cabs home, but by 11 management had all gone home, and there was nobody there to approve the expense. They were unceremoniously dumped onto the streets in Long Island City at 11:00 at night,” Bandelt recalled.

In September, Bandelt's colleagues met with Human Resources Director Raymond Carozza and LaGuardia Vice President Peter Grant Jordan, who told the HEOs that LaGuardia did not pay overtime, period. And, moreover, that the hours between 35 and 40 were not paid at all. That meeting spurred Bandelt and his colleagues to call the union office.

GRIEVANCE

The PSC-CUNY contract specifies a 35-hour work week for HEO-series employees (Assistant to HEO, HEO Assistant, HEO Associate and Higher Education Officer – together referred to simply as “HEOs”). The union decided on a two-pronged strategy: 1) file a grievance for the contractual violation of forcing these plaintiffs to work beyond the required 35 hours; and 2) file a lawsuit under the federal Fair Labor Standards Act (FLSA).

“The only way to make management respect the 35-hour week is to force them to do so through the grievance procedure or the courts,” said PSC grievance counselor Donna Gill, herself a HEO at Hunter College. Gill worked with the LaGuardia plaintiffs as they prepared their grievance. “It's hard for us,” she told *Clarion*, “because CUNY takes advantage of our professional commitment to our students. But if no one speaks out, our hours become endless.”

Like many other HEOs, those at LaGuardia say they routinely work more than 35 hours. During registration periods, they often work more than 40 hours – and thanks to changes in the process, registration periods now take place approximately seven out of 12 months a year.

MANDATORY

Overtime, HEOs say, is common and mandatory.

“I don't volunteer overtime; I'm required to do overtime,” Financial Counselor Ganga Persaud said in his deposition. He explained how it worked: “You are given a schedule. If you are unlucky enough to be working that day when we have a huge crowd and the work ends later, you have no choice.” His colleague Melanie Abreu testified that “We're there until we see the last student.”

“In our line of work, it's difficult,” said Cheryl McKenzie, who works in Enrollment Services. “When we're advising a student, we don't want to keep our eyes on the clock. But we should be compensated when we work late.”

The Fair Labor Standards Act requires employers to pay time-and-a-half for hours worked after 40. Many types of workers are exempt – farmworkers, some sales workers, executives and others.

CUNY management now presumes Assistants to HEO to be covered under the time-and-a-half provision of the FLSA. For other HEO-series titles, CUNY says, its assessment of which ones are covered and which ones exempt depends on a case-by-case analysis of job responsibilities, including the level of independent exercise of discretion and judgment.

SETTLEMENT

All nine plaintiffs in the lawsuit were entitled to overtime according to CUNY's classifications, and CUNY clearly violated the law – sometimes quite flagrantly. Persaud, Bandelt and other HEOs testified that supervisors doctored their timesheets, erasing the notes about overtime hours. Their colleagues who joined the lawsuit – Abreu, McKenzie, Anthony Sclafani, Renee Daniels, Sutonia Boykin, Stephen Greene and Abram Bolouvi – testified to similar practices and other problems with overtime.

At a May 1 event at the PSC, five of the LaGuardia plaintiffs signed the settlement, celebrated the victory and affirmed their resolve to continue the fight. Union leaders were on hand to offer congratulations, thanks and support for the future.

“This is really what a union means,” said London, “that the people on the front line are not alone.”

“The plaintiffs took such an incredible lead in confronting overwork – and work without pay – in the University,” said LaGuardia Chapter Chair Lorraine Cohen.

HEO Chapter Chair Jean Weisman noted that the issue of out-of-control work hours among HEOs – which leads to burnout and problems for family life – has been a priority issue for the PSC for the last

Back pay and the law

Under CUNY's interpretation of the federal Fair Labor Standards Act (FLSA), employees in an Assistant to HEO title are presumed eligible to be paid time-and-a-half for hours worked over 40 hours a week. Some in other HEO-series titles may also be covered, says CUNY, but this depends on a case-by-case analysis of their specific jobs.

All covered employees should be paid time-and-a-half going forward, but the legal procedures for collecting back pay for overtime depend on where you are employed.

If you are employed by a community college, you may sue for up to three years of back pay. For instance, if you worked 45 hours per week for two weeks in each of the last three years, and your hourly rate works out to \$40, you would be entitled to \$1,800 in back pay. If you are employed by a senior college, the Graduate Center, or the CUNY Central Office, you can only go back six months.

In the absence of record keeping by the employer, documentation of hours worked is required. The documentation required at the community colleges, however, is less stringent than that required in the case of a lawsuit filed at a senior college. This distinction is due to the fact that CUNY is both a City and a State institution, and the law treats City and State employees differently.

If there are weeks when you are assigned to work more than either 35 or 40 hours as described above, or this has happened in the past, call Cynthia Campos at the PSC office immediately at (212) 354-1252. – PH

several years. “This has taken a lot of hard work and persistence from union leadership, staff and members alike,” she said. “Our efforts are finally starting to bear fruit.”

FIGHT CONTINUES

The union says similar problems likely exist on other campuses. As news of the settlement spread, members in HEO-series titles on other campuses began calling, PSC Coordinator of Contract Enforcement Cynthia Campos told *Clarion*. (HEO-series employees who have been assigned overtime without compensation should call Campos at (212) 354-1252. The PSC is interested in pursuing other cases, so those affected should call immediately.)

Even in the midst of the celebration, HEO leaders – and plaintiffs – kept their focus on the rest of the fight.

“The real argument is about hours 36 to 40,” Abreu told *Clarion*. “That's the bulk of the hours we all work beyond what the contract requires.”