

The Protection Ranger



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The Newsletter of the U.S. Park Rangers Lodge, Fraternal Order of Police

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Lodge Sponsors Suit Against DOI and NPS

The Rangers Lodge has initiated a suit against the Department of Interior for failing to pay interest to commissioned officers on the back pay owed them. This seems to be a clear violation of law on the part of the National Park Service because hundreds of officers have not received the money due them.

The Lodge is trying to have the suit amended to include officers of the United States Fish and Wildlife Service also. Unless an agent comes forward, like the agents from the NPS, we may not be able to do it however.

Question: Are officers of the US Forest Service due this back pay? Please contact the Lodge at either: randallfop@ls.net or 8004078295 if you think the answer is 'yes'. We may also be able to include you.

The Law firm of Passman & Kaplan is handling the law suit for the Lodge.

We have received reports that some parks have paid the interest, other parks have not paid the interest and some, like we understand at Lake Mead, sometimes pay and sometimes don't. Quite the cavalier attitude expressed by management at Lake Mead, eh?

There are several Lodge members who have volunteered to stand as agents for the affected class and we are all thankful for them for doing this. You need to determine if you have been paid interest

on the law enforcement pay you received in lump sum. This pay covered the period from January 1992 to July, 1994. If you received this lump sum more than six years ago you probably cannot recoup this interest because of the time limit imposed by the law.

If the suit is successful, be prepared to make your claim to the agency.

We will pass on any developments in this case.

Amazing Support

By Bill Tadych

I recently developed lower back pain as a result of what I believe was a work related incident (I won't go into it) that would not go away no matter what I tried. It was 24/7.

Out of fear of having to undergo surgery, face disability, deplete my sick leave, I tried something out of the ordinary. First I began daily visits to a Chiropractor, second I began to talk about it to my coworkers to see if they had similar conditions or symptoms. Of course none did.

Third, risking getting wrote up (or sent home) for being out of uniform I bought a pair of Uncle Mikes duty suspenders and wore them to work one day. Aside from the few unsupportive "farmer john" jokes I had to endure, they went over well. The public didn't notice or care either. I was still called "the ranger".

The bottom line was that I was able to work almost without the pain. Believe me I tried everything from rearranging my duty belt,

changing chairs, taking my radio off my belt when I drove, hot and cold packs...everything. I have even talked to other departments that have a few officers that wear the suspenders and they swear by them.

My Supervisors and Chief were also supportive in my attempt to stay on the work force by allowing me to wear them. They are designed to take the weight of the duty belt off the hips and place it where the weight can be supported properly...on the shoulders.

I can tell you this. The combination of Chiropractor treatments and the suspenders has dramatically improved my back to the point where I may stop wearing them soon. After all, it is not a fashion statement. It is what I perceive to be a reasonable accommodation. After all, Ace Bandages are not part of the uniform but are allowed and they are certainly to help relieve a temporary medical condition. I compare them to "croakies". Allowable. They are certainly a fashion statement but do not serve to keep an employee on the job that they love.

If you are also suffering from a similar condition, look into the suspenders. They can be bought at www.uncle-mikes.com. And no, I am not endorsing their product. I only found their product to be the most unobjectionable in appearance and are specifically designed for LE work. Unfortunately they only sell the black nylon cordura fabric and not cordovan leather.

Following is a copy of the lawsuit against the DOI. It has been reduced to fit.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Michael D. Barnhart)
22045 Holiday Drive)
Smithsburg, Maryland 21783,)
)
Steven Connor)
118 Fair Oaks Place)
Hot Springs, Arizona 71901,)
)
Joseph A. Kanopsic)
115 Westminster Pl.)
Hot Springs, Arizona 71901, and)
)
Randolph B. Neal)
503 Lakeshore Road)
Boulder City, Nevada 89005-1208,)
)
on behalf of themselves)
and all similarly situated persons)
)
Plaintiffs,)
)
vs.)
)
Gale A. Norton, Secretary,)
The United States Department of Interior)
1849 C Street, N.W.)
Washington, D.C. 20240)
)
Defendant.)

CASE NUMBER 1:01CV01667
JUDGE: Ricardo M. Urbina
DECK TYPE: General Civil
DATE STAMP: 08/01/2001

CASE NO.

CLASS ACTION

CLASS ACTION COMPLAINT

I. NATURE OF THE ACTION

1. This is a class action seeking declaratory relief, as well as an award of back pay, interest, reasonable attorney fees, costs and expenses, on behalf of the plaintiff class. Plaintiffs are National Park Service Rangers and Bureau of Land Management Rangers at the United States Department of Interior, who

were found to be eligible for 5 U.S.C. § 8336(c) and 5 U.S.C. § 8412(d) law enforcement enhanced pay pursuant to the Federal Law Enforcement Pay Reform Act of 1990, 5 U.S.C. § 5305, Note 403, *et seq.*

2. Plaintiffs allege that Defendant has wrongfully denied and continues to deny them their entitlement to back pay and interest they are owed for retroactive law enforcement enhanced pay pursuant to the Federal Back Pay Act, 5 U.S.C. § 5596 (b)(a)(A)(i) and (b)(2)(A) and the Federal Law Enforcement Pay Reform Act of 1990, 5 U.S.C. § 5305, Note 403, *et seq.* Plaintiffs seek awards of back pay and interest on back pay for themselves and their class members, as well as an award of reasonable attorney fees and costs pursuant to the Federal Back Pay Act, 5 U.S.C. § 5596(b)(1)(A)(ii)(1998).

PARTIES

3. Plaintiff Michael D. Barnhart ("Barnhart") is a resident of Maryland and is a Park Ranger with the National Capital Region Office of Ranger Services. Plaintiff Barnhart worked at the Antietam National Battlefield in 1992 when his enhanced law enforcement pay was to become effective. Plaintiff Barnhart took an assignment at the National Capital Region Office of Ranger Services, where he was promoted to GS-11. Plaintiff Barnhart has not received his back pay or interest on that back pay from 1992 to the present.
4. Plaintiff Barnhart brings this action on behalf of himself and all other similarly situated persons.
5. Plaintiff Joseph Kanopsic ("Kanopsic") is a resident of Arizona and is a United States Park Ranger, GS-9, with the National Park Service at Hot Springs National Park. Plaintiff Kanopsic is entitled to back pay for the period of 1992 to the present. Plaintiff Kanopsic filed his initial claim for back pay in 1995. Plaintiff Kanopsic has not received his back pay or interest on that back pay.
6. Plaintiff Kanopsic brings this action on behalf of himself and all other similarly situated persons.
7. Plaintiff Steven Connor ("Connor") is a resident of Arizona and is a United States Park Ranger, GS-9, with the National Park Service at Hot Springs National Park. Plaintiff Connor learned that he was

entitled to law enforcement enhanced pay circa 1995 and received a letter from the Department of Interior approving him for law enforcement enhanced pay in January 1997. However, Plaintiff Connor has not received his back pay or interest on that back pay.

8. Plaintiff Connor brings this action on behalf of himself and all other similarly situated persons.
9. Plaintiff Randolph B. Neal ("Neal") is a resident of Nevada and is a United States Park Ranger with the National Park Service at Lake Mead National Recreation Area. Plaintiff Neal received notification that he was entitled to law enforcement enhanced pay on July 7, 1999. On May 16, 2000, Plaintiff Neal received back pay based on the Department of Interior's determination that he was entitled to law enforcement enhanced pay for the pay period beginning January 12, 1992, through July 10, 1994, but has not received interest on the back pay.
10. Plaintiff Neal brings this action on behalf of himself and all other similarly situated persons.
11. The Defendant, Gale A. Norton, Secretary, administers all back pay for law enforcement enhanced pay and interest payments on back pay to the Plaintiffs pursuant to the Federal Law Enforcement Pay Reform Act of 1990 and is being sued in her official capacity.

III. JURISDICTION

12. This Court has subject matter jurisdiction over this class action and the subject matter thereof pursuant to 28 U.S.C. § 1331, based on the fact that the issue raises a federal question. The recovery sought is less than \$10,000 per plaintiff, inclusive of attorney fees. The action arises under the Little Tucker Act, 28 U.S.C. § 1346(a)(2).

IV. VENUE

13. Venue is properly placed within this District, pursuant to 28 U.S.C. § 1391(a)(3), because Defendant is located within the District of Columbia.

V. CLASS ACTION ALLEGATIONS

14. Plaintiffs Barnhart, Connor, Kanopsic, and Neal seek to maintain this action as a class action on behalf of themselves and all other similarly situated persons pursuant to Fed. R. Civ. P. 23(b)(1)(A)(B) and 23(b)(2).
15. The definition of the plaintiff class sought to be maintained is:
All persons who served as National Park Service Rangers or Bureau of Land Management Park Rangers at the Department of Interior and who are entitled to back pay pursuant to the determination that they are eligible for law enforcement enhanced pay.
16. The members of the putative plaintiff class are so numerous that joinder of all members is impracticable. On information and belief, the class consists of more than 300 persons.
17. The questions of law or fact common to the entire class include:
 - A. Has the Department of Interior incorrectly interpreted the Federal Law Enforcement Pay Reform Act of 1990, 5 U.S.C. § 5305, Note 403, *et seq.* and the Federal Back Pay Act, 5 U.S.C. § 5596, in a manner which improperly denies members of the Plaintiff class the back pay they are entitled to pursuant to the determination that they were entitled to law enforcement enhanced pay.
 - B. Are all members of the Plaintiff class accordingly entitled to interest on the back pay retroactive to the period beginning on the effective date of the determination that they were entitled to back pay and ending on a date not more than 30 days before the date on which payment is made, to be computed at the rates in effect under § 6621(a)(1) of the Internal Revenue Code of 1986 during the period described above, pursuant to the Federal Back Pay Act, 5 U.S.C. § 5596?

18. The claims of the putative class representative parties are typical of the claims of the entire class, in that two of the named class representatives have not received the back pay they are entitled and all of the named class representatives have not received interest owed to them on the back pay pursuant to the determination that they were entitled to law enforcement enhanced pay. For the same reasons, all other members of the class are entitled to back pay and interest on back pay.

19. The putative class representatives will fairly and adequately protect the interests of the class. Each of the class representatives has retained the same competent counsel to represent them and an adequate sum, in the opinion of said counsel, has been paid to defray all of the anticipated costs and expenses of the litigation on behalf of the class.

20. Prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class, or adjudications with respect to individual members of the class, that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

21. The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate declaratory relief with respect to the class as a whole.

VII. STATEMENT OF RELEVANT FACTS

22. The Federal Law Enforcement Pay Reform Act of 1990 ("Pay Reform Act"), 5 U.S.C. § 5315, Note

403, et seq., established a higher rate of pay for federal law enforcement officers. The Pay Reform Act provides that it must be administered in accordance with the provisions of 5 U.S.C. § 5304, 5 U.S.C.

§ 5304(c)(2)(B) commands that payments made under its provisions "shall be paid... pursuant to any

provision of law outside of this section." Therefore, the Back Pay Act is applicable to any payments made under the terms of 5 U.S.C. § 5304, including the Pay Reform Act.

23. The Back Pay Act provides that an employee is entitled to receive an award of back pay in an amount equal to all or any part of the pay, allowances, or differentials, as applicable, which the employee would normally have earned or received during the period if the personnel action had not occurred, plus interest on the back pay that he or she is owed due to an unwarranted or unjustified personnel action.

See 5 U.S.C. § 5596(b)(2)(A). Therefore, back pay owed due to an agency's untimely compliance with the Pay Reform Act is payable with interest.

24. In computing interest on a back pay award, the interest begins to accrue on the date or dates on which the employee would have received the pay, allowances, and/or differentials if the personnel action had not occurred. See 5 C.F.R. § 550.806(a)(1) (2001).

25. The Department of Interior administers back pay and interest payments for the Plaintiffs for law enforcement enhanced pay.

VIII. STATEMENT OF CLAIMS AND CAUSES OF ACTION

Count I
(back pay sought)

26. Plaintiffs reallege and incorporate by reference the foregoing paragraphs 1 through 25.

27. As a result of the continuing failure and refusal of the Department of Interior to pay the Plaintiffs back pay, to which they are entitled, Plaintiffs have suffered, and will continue to suffer, substantial monetary losses.

Count II
(interest on back pay sought)

28. Plaintiffs reallege and incorporate by reference the foregoing paragraphs 1 through 27.

29. The Department of Interior has failed and refuses to pay the Plaintiffs interest payments on the back pay they receive.

30. As a result of the continuing failure and refusal of the Department of Interior to pay the Plaintiffs interest on the back pay, to which they are entitled, Plaintiffs have suffered, and will continue to suffer, substantial monetary losses.

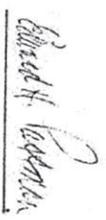
VIII. REMEDY

WHEREFORE, Plaintiffs request an Order affording Plaintiffs appropriate declaratory relief, pursuant to Rule 57, Fed. R. Civ. P., declaring that:

- a. Plaintiffs are entitled to back pay and interest on the back pay pursuant to the determination that they are entitled to law enforcement enhanced pay;
- b. Appropriate back pay;
- c. Appropriate interest;
- d. An award of reasonable attorney fees, costs and expenses pursuant to the provisions of the Federal Back Pay Act, 5 U.S.C. § 5596(b) (1998).

Plaintiffs also request such other and further relief as the Court may deem appropriate.

Respectfully submitted,



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Attorney for Plaintiffs



FRATERNAL ORDER OF POLICE
NATIONAL PARK RANGERS

P. O. BOX 151
FANCY GAP, VA 24328
July 30, 2001

Director Fran Mainella
National Park Service
1849 C St, NW
Washington, DC 20240

Dear Director Mainella:

The NPS program of medical and physical standards, known as RM57, has disrupted the operation of the agency's law enforcement program. It has also severely lowered morale among commissioned park rangers

Alone among federal agencies, the NPS did not grandfather its existing workforce when RM57 was put into effect. The US Forest Service, to cite an example, grandfathered its officers when their program went into effect one year after RM57. The House budgetary subcommittee which deals with the Interior Dept has language in its bill telling the NPS to grandfather its park rangers citing morale, agency efficiency, and the many management problems with RM57.

We believe that RM57 is deeply flawed and mismanaged. 5CFR339 has not been followed and career rangers, some with up to fifteen years service, have had their duties taken from them for the better part of one year and have been threatened with losing their retirement. None of these cases is performance based: They are all based on conditions discovered in medical exams and do not affect on-the-job ability.

One example is ranger Chris Locker from Buffalo River: Ranger Locker has been a commissioned officer for almost fifteen years, has won awards based on his performance, and has been given exemplary annual evaluations. The NPS is trying to remove him from his position because of a hearing "issue" discovered at an RM57 exam even though year after year he has proven he can safely do the job and no one he's ever worked with in all this time has ever noticed any type of hearing deficiency.

Justin Cully has been a temporary ranger for a few years and is in line for a permanent ranger job in North Dakota. He was discovered to have a vision "issue" and even though Ranger Cully presented evidence from a medical professional saying his eyesight is fine for ranger work and had supportive testimony from the Medora, ND, sheriff; the park's chief ranger and superintendent; and past NPS supervisors and co-workers, he may yet be denied the permanent job he has been performing on a temporary basis.

The Code of Federal Regulations which governs RM57 says that waivers must be given to employees and applicants when there is a reasonable expectation that they can safely perform the job. Rangers Locker and Cully have annual evaluations and supervisory testimony saying just that and still there are no waivers. Why?

Will you please issue an order grandfathering the existing ranger force? Or, alternatively, withdraw RM57 completely, restudy the problem, and promulgate a program of medical standards and physical standards that is in line with other federal agencies and recognizes that park ranger jobs vary from park to park and even district to district within parks.

The Fraternal Order of Police supports health and medical programs as long as they are fair and evenly implemented throughout the agency and as long as they abide by the legal requirements for such programs. Officers from this Lodge would like to meet with you and discuss this situation.

Sincerely,

Randall Kendrick
Executive Director



FRATERNAL ORDER OF POLICE
NATIONAL PARK RANGERS

P. O. BOX 151
FANCY GAP, VA 24328
July 14, 2001

Director Fran Mainella
National Park Service
1849 C St, NW
Washington, DC 20240

Dear Director Mainella:

Welcome to the National Park Service. We wish you the very best in the exciting and challenging months ahead.

The National Park Rangers Lodge of the Fraternal Order of Police is the NPS's largest organization of law enforcement rangers. The ranger law enforcement program is at a critical juncture. It has received criticism in last year's report from the International Associations of Chiefs of Police, and is undergoing review from the Inspector General of the Interior Dept. The leadership position, the Chief Ranger, is vacant

Our organization is deeply concerned that the Chief Ranger position will be filled before the IG's review of the law enforcement program is complete and you have a chance to study it and the IACP report.

The new Chief Ranger will have a great influence on the future direction of the ranger law enforcement program. Since the Inspector General's report has not been submitted, we don't think it's possible to select the right person at this time to implement the changes this report will recommend.

We believe that after the report is submitted and evaluated will be the best time for the selecting officials to make their choice. The IG report may well recommend that the law enforcement program be managed by an Associate Director, just like the IACP report has called for.

After the IG report has been completed, we hope a panel of experts in the management of law enforcement programs will be used to rate candidates for this position based upon the person's ability to manage a LE program and successfully implement change, rather than the past method of choosing a Chief Ranger.

We regret having to come to you in this manner just as you enter your position, but we believe that a commitment to delay the selection is urgent before the job offer is made. We hope to meet with you in the near future to give you a more cordial welcome to the NPS family with the hope of building a strong working relationship.

Sincerely,

Randall Kendrick, Executive Director

Lodge Website

Brother Duane Buck has built and maintains the Lodge website. We keep it updated with notices and links to other sites that we think are interesting and/or helpful to resource based law enforcement officers. Visit it often between issues of the Protection Ranger to keep current on things that affect you and your job. The address is www.rangerfop.com

Application for Membership

I, the undersigned, a full-time regularly employed law enforcement officer, do hereby make application for active membership in the U.S. Park Rangers Lodge, FOP. If my membership should be revoked or discontinued for any cause other than retirement while in good standing, I do hereby agree to return to the lodge my membership card and other material bearing the FOP emblem.

Name: _____

Signature: _____

Address: _____

City: _____

State: _____ Zip: _____

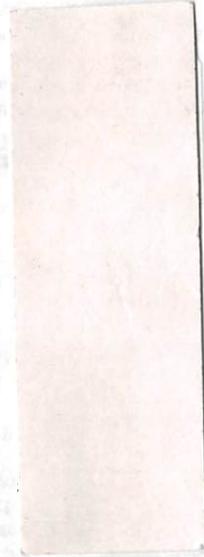
DOB: _____

Permanent Rangers: \$52/year
Seasonals and Retired Active Members: \$35/year
Associate (non-Commissioned) Membership (Newsletter only): \$35/year

Renewals: You do not need to send in this form to renew. Enclose a copy of your Commission (new members only).

Agency and Work Unit: _____

Mail to: FOP Lodge, POB 151, Fancy Gap, VA 24328
Phone: 1-800-407-8295 10am-10pm Eastern Time or email randallfop@ls.net



U.S. Park Rangers Lodge
Fraternal Order of Police
POB 151
Fancy Gap, VA 24328

