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**FILED**  
MAY 11 2005  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
BY *AS* DEPUTY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

ROBERT NIGG et al., ) Case No. SA CV 03-1611-GLT (ANx)  
 )  
Plaintiffs, ) ORDER DENYING PLAINTIFFS' MOTION  
 ) FOR RECONSIDERATION  
vs. )  
 )  
UNITED STATES POSTAL SERVICE, )  
 )  
Defendant. )

DOCKETED ON CM  
MAY 12 2005  
BY *[Signature]* 040

Plaintiffs' motion for reconsideration is DENIED.

I. BACKGROUND

Plaintiffs, postal inspectors, brought this action against Defendant U.S. Postal Service, alleging they are entitled to overtime pay under the Fair Labor Standards Act ("FLSA"). On March 30, 2005, the Court granted Defendant's motion for summary judgment, finding Defendant's interpretation of 39 U.S.C. § 1003(c) -- which effectively exempts postal inspectors from receiving overtime pay under the FLSA -- is permissible as a matter of law. Plaintiffs now move for reconsideration.

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II. DISCUSSION

"Reconsideration is appropriate . . . if there is an intervening change in controlling law." Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

The Court's March 30, 2005 Order held Defendant's interpretation of 39 U.S.C. § 1003(c), effectively exempting postal inspectors from receiving overtime pay under the FLSA, is permissible as a matter of law. Plaintiffs argue this holding is incorrect in light of Bull v. United States, 63 Fed. Cl. 580, 588 (2005), a recent case from the U.S. Court of Federal Claims. Plaintiffs primarily rely on the following text in Bull:

[E]ven if the agency regulations were found to exempt customs officers from FLSA coverage, the court is not persuaded that the agencies possess the authority to effect such an exemption. Neither Treasury nor [the Department of Homeland Security] has the authority to create a FLSA exemption by the promulgation of regulations because FLSA does not confer rulemaking authority on those agencies.

Id.

Bull does not cause the Court to change its earlier holding. The text on which Plaintiffs rely is dicta, and is not explained or analyzed. While Bull may be eventually held to be correct, in the absence of a specific ruling or persuasive analysis the Court will follow the well-established rule in the Ninth Circuit: "We give deference to an agency's interpretation of statutes . . . it is charged with administering." Am. Fed'n of Gov't Employees v. Fed. Labor Relations Auth., 204 F.3d 1272, 1274-75 (9th Cir. 2000).

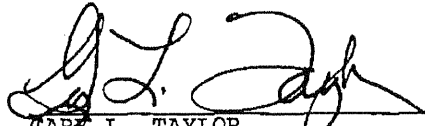
The Court concludes Defendant's interpretation of 39 U.S.C. §

1 1003(c) is permissible as a matter of law.<sup>1/</sup>

2 III. DISPOSITION

3 Plaintiffs' motion for reconsideration is DENIED. Plaintiffs'  
4 request for oral argument is DENIED. The May 16, 2005 hearing on  
5 Plaintiffs' motion is VACATED.

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7 DATED: May 10, 2005

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10 GARY L. TAYLOR  
11 UNITED STATES DISTRICT JUDGE  
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18 <sup>1/</sup> Plaintiffs also argue a proposition in the Court's March  
19 30, 2005 Order is supported by inapplicable authority. In that  
20 Order, the Court found "Congress has not clearly spoken whether  
21 postal inspectors are entitled to overtime pay under FLSA."  
22 (Ct.'s Mar. 30, 2005 Order at 3.) In support of that  
23 proposition, the Court cited several authorities, including a  
24 Department of Labor letter, Dymond v. United States Postal  
25 Service, 670 F.2d 93, 94-96 (8th Cir. 1982), and Sprague v.  
26 United States, 677 F.2d 865, 868-69 (Ct. Cl. 1982).

27 Plaintiffs contend neither the letter nor the two cases  
28 "constitute[s] an expression of Congress's intent." (Pls.' Mot.  
Recons. at 8.) Plaintiffs also contend the authorities are  
distinguishable because they all assumed "FLSA protected postal  
inspectors and then analyzed whether the administrative exemption  
applied." (Pls.' Mot. Recons. at 8.)

The Court deletes its reliance on the letter, Dymond, and  
Sprague, and relies solely on the text of 39 U.S.C. § 1003(c),  
which, by itself, shows Congress has not clearly spoken on  
whether postal inspectors are entitled to overtime pay under  
FLSA.