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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SAN JUAN
BY [Signature] DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ROBERT NIGG et al.,
Plaintiffs,
vs.
UNITED STATES POSTAL SERVICE,
Defendant.

Case No. SA CV 03-1611-GLT (ANx)
ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

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MAR 30 2005
BY [Signature] 040

Defendant's motion for summary judgment is GRANTED.

I. BACKGROUND

Plaintiffs sued Defendant U.S. Postal Service, alleging they are entitled to overtime pay under the Fair Labor Standards Act ("FLSA"). The Court concludes the Postal Service's interpretation of the law is correct, and grants its motion for summary judgment.

II. DISCUSSION

Summary judgment is proper if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The issue presented here is an issue of law, suited for summary judgment determination. An agency's

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1 interpretation of a statute is a question of law reviewed de novo.
2 Brower v. Evans, 257 F.3d 1058, 1065 (9th Cir. 2001).

3 In reviewing an agency's interpretation, courts apply a two-part
4 test. Chevron, USA, Inc. v. Natural Res. Def. Council, Inc., 467 U.S.
5 837, 842-43 (1984). First, the court determines whether Congress has
6 clearly spoken to the precise question. Id. If the intent of Congress
7 is clear, the analysis ends, "for the court, as well as the agency,
8 must give effect to the unambiguously expressed intent of Congress."
9 Id. If Congress has not clearly spoken, the court determines whether
10 the agency's interpretation is based on a permissible construction of
11 the statute. Id. at 843. Courts defer to an agency's interpretation
12 of a statute, unless its interpretation is contrary to clear
13 congressional intent. Biodiversity Legal Found. v. Badgley, 309 F.3d
14 1166, 1175 (9th Cir. 2002).

15 Here, the key statute is 39 U.S.C. § 1003(c) (Supp. 2004),
16 providing the compensation and benefits for all postal inspectors must
17 be "maintained on a standard of comparability to the compensation and
18 benefits paid for comparable levels of work in the executive branch of
19 the Government outside of the Postal Service." In interpreting this
20 statute, Defendant made compensation and benefits of postal inspectors
21 comparable to the compensation and benefits of criminal investigators
22 who do comparable work. (Bellinger Decl. ¶ 3.) Criminal investigators'
23 pay structure is based on "availability pay," and they do not receive
24 overtime pay under FLSA, 29 U.S.C. § 213(a)(16) (1998). Applying this
25 pay structure to postal inspectors, they also do not receive overtime
26 pay under FLSA. The Court concludes this is an appropriate agency
27 interpretation.

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1 Congress has not clearly spoken whether postal inspectors are
2 entitled to overtime pay under FLSA. This conclusion is supported by
3 the historical record. Postal inspectors have never been paid overtime
4 under FLSA. (Def.'s Reply at 5-6.) As Defendant observes, in 1976,
5 two years after Congress amended FLSA to include employees of the Postal
6 Service, the Department of Labor determined postal inspectors were
7 exempt from FLSA based on the "administrative employee" exemption. In
8 1982, two courts agreed. See Dymond v. United States Postal Serv., 670
9 F.2d 93, 94-96 (8th Cir. 1982) (upholding agency action determining
10 postal inspectors met the "administrative employee" exemption from
11 FLSA); Sprague v. United States, 677 F.2d 865, 868-69 (Ct. Cl. 1982)
12 (same).

13 The Court concludes Defendant's interpretation of § 1003(c) is not
14 contrary to clear congressional intent.

15 By enacting the Law Enforcement Availability Pay Act ("LEAP") in
16 1994, Congress provided "availability pay" for criminal investigators,
17 taking criminal investigators out of the operation of FLSA. By
18 enacting § 1003(c) in 1996, Congress provided the compensation and
19 benefits of postal inspectors should be comparable to the compensation
20 and benefits of executive branch employees outside of the Postal
21 Service. This statutory scheme permits the Postal Service to adopt the
22 pay structure of criminal investigators as the structure for postal
23 inspectors. There is no clear congressional intent to the contrary.

24 The Court holds the Postal Service's interpretation of § 1003(c)
25 is permissible as a matter of law.^{1/}

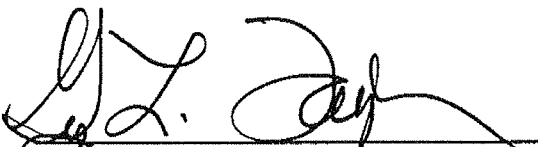
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28 ^{1/}On March 3, 2005, Plaintiffs filed an ex parte application, seeking permission to file a supplemental response. That response has been considered in reaching the Court's ruling.

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III. DISPOSITION

Defendant's motion for summary judgment is GRANTED. Defendant is ordered to submit to the Court within 10 days a short form of a proposed judgment.

DATED: March 29, 2005



GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE