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## TEAMSTERS JOINT COUNCIL 40

### REPORT OF LEGAL COUNSEL

### May 18, 2016

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#### I. *New Overtime Rules*

Today, President Obama announced the publication of the Department of Labor's final rule updating the overtime regulations, which will automatically extend overtime pay protections to over 4 million workers within the first year of implementation. Perhaps the most basic tenet of our economy is that a hard day's work should result in a fair day's pay. A cornerstone of this promise is that you should be paid more if you work more than 40 hours in a week. The Department of Labor's new rule guarantees this promise for American workers, many of whom have worked longer hours with no additional pay, taking them away from their families and personal life without any extra compensation.

#### Key Provisions of the New Rule

The Final Rule focuses primarily on updating the salary and compensation levels needed for white collar workers to be exempt. Specifically, the Final Rule will:

- Raise the salary threshold eligibility from \$455/week to \$913 (\$47,476 per year) ensuring protections to 4.2 million workers.
- Automatically update the salary threshold every three years, based on wage growth over time, increasing predictability.
- Strengthen overtime protections for salaried workers already entitled to overtime.
- The effective date of the final rule is December 1, 2016. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

What this means is simple: millions of lower- and middle-class Americans who aren't earning a single extra cent for long hours worked will soon be more fairly compensated for their sacrifices. Since 2004, the annual overtime threshold has remained at \$23,660. Salaried employees earning in excess of that are frequently (and legally) excluded from time-and-a-half pay because their employers classify them as executive, professional, or administrative employees.

#### II. *Friedrichs v. California Teachers Association – Supreme Court Part II*

On April 8, 2016, lawyers for nine California teachers/Plaintiffs filed a petition asking the Supreme Court to re-hear arguments in *Friedrichs v. California Teachers Association* when a new Justice is confirmed.



As I reported at the January 2016 Joint Council 40 meeting, the Supreme Court accepted the *Friedrichs* case for review. On February 13, 2016, Supreme Court Justice Antonin Scalia died. As such, the court was composed of only 8 members when the case was decided. On March 29, 2016, the Supreme Court issued a 4-4 split decision in the *Friedrichs* case, leaving in place laws in more than 20 states that allow unions to require non-union members to pay “agency fees” to support the union’s collective bargaining work. A group of California teachers challenged this arrangement as a violation of their First Amendment rights.

As I reported in January 2016, in the last several years, majority opinions from the Supreme Court twice have questioned compatibility of the case that agency fees rest on, *Abood v. City of Detroit*, with core First Amendment principles. The Supreme Court has plainly indicated, “The *Abood* Court’s analysis is questionable on several grounds.”

The current petition argues that this issue cannot be left for another day or another case. The Petition for re-hearing states:

Moreover, precisely because the issues presented are of such importance, an equally divided affirmance will only defer decision of these pressing questions for another day. Right now, there are multiple cases pending in the lower courts that implicate the Questions Presented. In the absence of a precedential ruling from this Court, at least one of those cases will almost certainly reach the Court in the next several years. Rather than defer this issue for resolution in some future case at some future time, the better and more efficient course would be to hold the case this Court has already agreed to decide until it is capable of issuing a decision.

While it is rare for the Supreme Court to re-hear cases that have been decided by a majority, it is much more common for the Court to re-hear cases where an unexpected vacancy prevented a majority opinion. A majority of the court must decide to re-hear the case. This may occur with only eight members if at least five of the eight agree. Alternatively, the petition could be held until a new Justice is confirmed and he or she breaks the tie about whether or not to re-hear the case.

Simply put- who you vote for as President will have an impact on how this and other seminal cases affecting labor are decided.

Respectfully submitted,  
*JOSEPH S. PASS, ESQUIRE*