

# CITY OF WAUWATOSA

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## EMPLOYEE RELATIONS COMMITTEE MEETING

Tuesday, March 11, 2003  
Council Chambers

PRESENT: Ald. Casey, Heins, Kopischke, Stepaniak – 4

EXCUSED: Ald. Jenkins

ALSO PRESENT: Mayor Estness; T. Wontorek, City Admin.; B. Aldana, Asst. City Atty.; M. Brown, Personnel Dir.; Chief B. Weber, Police

Ald. Casey as Chair called the meeting to order at 7:33 p.m.

### Memorandum of Understanding reflecting a change in the use of compensatory time off

Mr. Wontorek told the committee that negotiations regarding the Memorandum of Understanding (MOU) have been going on for about six to eight months. He said the current policy provides that an employee working overtime can take time and one half in pay or compensatory time off. The practice has been to deny an employee regular time off if another employee would have to be called in at the overtime rate to cover their position. Wauwatosa patterned this policy after the City of Milwaukee's policy. He said this change in policy was reached between police department Capt. Jeffrey Sutter and the Wauwatosa Peace Officers Association (WPOA) after a review of a past civil suit filed by the Milwaukee Peace Officers Association. The Assistant City Attorney believes that the outcome of the lawsuit determined that the City of Milwaukee's existing policy regarding the denial of compensatory time off is a violation of the Fair Labor Standards Act (FLSA).

Mr. Wontorek pointed out that the cover memo raises questions as to the potential costs contained in the MOU. He said there is no indication in the city's history that would provide an estimate on what this change in policy would cost. Given the impact of the state's budget cuts on the city, this agreement could end up costing the city more money.

Ms. Aldana said the proposed MOU is not a formal agreement. It has been negotiated from an operational standpoint. A final agreement has not been reached, but the parties have reached some understanding of the terms being proposed.

Mr. Wontorek explained that an employee working an hour of overtime earns an hour and one half in compensatory time off. When that employee decides to take that time off, the employee filling in for them could potentially be paid at the time and one half overtime rate and so on. He said the system resembles a pyramid of rising costs as this pattern continues.

Ald. Casey asked if there was any way to know what the cost of the changes would be. Mr. Wontorek responded that it was Capt. Sutter's suggestion that this change be implemented or tried out for a number of months and then an evaluation can be done on the impact.

In response to questions regarding where the drafting of the MOU originated, Ms. Aldana said that the union approached someone in the police department and Capt. Sutter referenced Milwaukee's situation. She gave a history of the situation in the City of Milwaukee explaining that the issue was raised about employees being denied compensatory time off and if that would create more overtime pay. A lawsuit followed and the decision

of the court was that the current City of Milwaukee policy was a violation of FLSA. The parties involved agreed to a settlement approved by the court because the finding was that the practice was inappropriate.

Ald. Stepaniak said the concerns appear to be: 1) the legal point of view defining what this apparent precedent would mean in terms of the management rights of the city to define the conditions of employment. He said there is a specific set of rights that the city has as an employer. He would like to know the city's legal standing in terms of labor law; and 2) on the cost side, he indicated that it would be important to have some overtime figures from the past and an understanding of the driving forces behind those figures. He added that the police department has some individual officers making \$40,000, \$50,000 and \$60,000 each year because of overtime pay. He expressed his concern that this was a situation in which they should have all the information possible before making a decision.

Moved by Ald. Stepaniak, seconded by Ald. Kopischke to hold the item for two weeks for further information --

Ald. Kopischke said he shared Ald. Stepaniak's concerns. He asked if the committee could unilaterally make adjustments to the policy without having to enter into negotiation. He asked if the policy could be relaxed under certain circumstances. Ms. Aldana responded that this was an issue that required bargaining, but there were limited things that could be done unilaterally. If the policy was varied in a way that was acceptable to the union, that would be informal bargaining. Any changes being made in the particular issues involved in the MOU would have to be negotiated. Ald. Kopischke expressed concern that the way the MOU is written, could open the door to potential abuse of overtime.

Mr. Brown agreed there would be that potential. He said there are indications that the policy is unacceptable in its current form. Holding the issue for two weeks would provide time to address some of the issues. He indicated that the current practice of denying compensatory time off is illegal in some labor standards. He added that they began the negotiating process after the issue was raised because a voluntary settlement was more cost effective than a lawsuit.

Ms. Aldana said the memo regarding the MOU indicates that Capt. Sutter is recommending the policy; however, the committee is free to accept or reject that. Mr. Wontorek added that staff could produce a history of what has happened in the past. Chief Weber said he wanted to clarify that Capt. Sutter made his recommendation after consultation with others in the department and the attorney's office.

Ald. Heins said the potential for abuse is a deep concern. Mr. Brown advised that the committee could send this back to negotiations with directions to minimize the budgetary impact. Ald. Heins said she could not vote in favor of this issue at this time.

Ald. Stepaniak said he would like more information put on the table. He did not want to put the committee in the position of rejecting a policy change when the city attorneys say the policy change cannot be legally rejected. He would like to see more information on the legal grounds and options. Ms. Aldana stressed that they have thoroughly researched the legal issues. She pointed out that the City of Milwaukee case is not the only case that exists. They have also referred this issue to specialists in labor laws. They are aware of the legal parameters.

Chief Weber said he would prefer that the committee send the issue back for further negotiations and buy more time rather than rejecting the issue outright.

Ald. Heins asked how long this issue could be held without legal liability. Mr. Wontorek responded that staff could provide a report in the two week period before the next meeting. This would move the issue forward and present some options to the committee. Ms. Aldana added that the bottom line is that they have to be working on this issue in good faith.

Ald. Casey stressed that containing costs is a very important goal citywide.

Vote on the motion was, Ayes: 4

The meeting adjourned at 8:00 p.m.

Carla A. Ledesma, City Clerk  
City of Wauwatosa

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