

CITY OF WAUWATOSA

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EMPLOYEE RELATIONS COMMITTEE MEETING

Tuesday, March 25, 2003

Council Chambers

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

EXCUSED: Ald. Casey

ALSO PRESENT: T. Wontorek, City Admin.; B. Aldana, Asst. City Atty.; M. Brown, Personnel Dir.;
Capt. J. Sutter, Police

Ald. Jenkins as Chair called the meeting to order at 7:30 p.m.

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

Mr. Wontorek said the current procedure allows police officers to accumulate compensatory time in lieu of overtime pay for work in excess of 8.4 hours per day or 84 hours bi-weekly. He said the current practice is to allow officers to schedule use of compensatory time so long as it does not result in additional overtime cost to the city. The City of Milwaukee has used a similar policy and they have found that it was not in conformance with federal law. He said terms of a Memorandum of Understanding (MOU) were negotiated with the Wauwatosa Peace Officers Association (WPOA) to address how changes in the administration of compensatory time should be implemented.

Mr. Wontorek said the following information affects potential costs to the city: 1) an officer is scheduled to work 67.2 hours in the pay period. He/she could work two additional 8.4 hour days at straight time. In any given pay period, 1/3 of the officers are working the 67.2 hour schedule and would be available to work additional hours at straight time; 2) in 2002 a total of 21,300 hours of overtime was worked. Of that total, 5,846 hours were taken as compensatory time and 8,123 hours were paid to the officer at the time the overtime was worked. The balance of 7,331 hours was paid in either the April or October payouts. The city is already paying out approximately 73% of the overtime that is worked. The practice outlined in the MOU would only affect the 27% balance of overtime; 3) the Operations Captain sets the minimum staffing level, depending on the shift and day of the week. The shift supervisor is responsible for ordering overtime if the scheduled and available number of officers is below the minimum level. He/she also has the discretion to allow scheduled officers to take compensatory time off contingent upon the established minimum staffing level requirement; 4) the district court for the eastern district of Wisconsin held that it was illegal for the City of Milwaukee to deny requests for compensatory time off if granting the time off would create overtime. Other circuit courts have held the opposite. There is a case pending, regarding the City of Houston. The 5th Circuit Court of Appeals will soon rule on this issue. It might be prudent to include a reference to the City of Houston case in the MOU so the city can reserve the right to revert to its current practice if it is determined that the Houston overtime issue does not violate the Fair Labor Standards Act (FLSA); 5) under the proposed change, officers would have a greater ability to take compensatory time off. Based on an hourly rate at Step 1 of the patrol officer pay range, the 7,331 hours of compensatory time from 2002 would cost \$241,000 in overtime. If one-half the hours worked were paid and one-half were taken and another officer was called and paid overtime, the additional cost would be approximately \$60,000. If none of the hours were paid and all of them were taken and the officer had to be replaced on overtime, the additional cost would be approximately \$120,000; 6) the projected additional cost could be lessened by the shift supervisor's ability to allow the time off without hitting the minimum staffing level and without having to call in another officer on overtime.

Mr. Wontorek stressed that the fiscal impact is still not clear because the city does not have a history with a policy like this. He added that each shift supervisor might treat the staffing needs differently. He cautioned that putting a policy into effect would run the risk of difficulty in trying to make a change in the future. He stressed that the city should try to include language that is equitable and fair in the MOU. He also recommended that elements of control be included in the policy.

Capt. Sutter said that he along with Chief Weber and Capt. Bozicevich are aware that the court is saying they have to make this change. He added that without a history of how the policy may be implemented, they have no way of predicting how many officers would take advantage of it. Because they can only estimate, they are hesitant to put a cost to it. He indicated there is a potential that some employees could coordinate their schedules in a way that would set up a lot of overtime, so they are being cautious.

Ald. Kopischke agreed with Capt. Sutter. He expressed concern that they create a system that would not be subject to abuse. He asked what the current standards were regarding compensatory time and payouts. Capt. Sutter responded that the overtime is automatically banked during the year and can be paid out. Ald. Kopischke stressed that there has to be some level of limitations and options even if the Houston ruling comes through. He encouraged the parties involved to include something in the MOU that will protect the city's risk.

Mr. Wontorek said that a general direction from the committee would give them enough to work with in order to make some proposals and modifications in negotiations. He added that there are management rights that can be utilized as well.

Ald. Stepaniak said that an overtime pay number of six figures is very scary because he has no idea where that money would come from. He explained that his position was to preserve management rights so the Operations Captain and the shift supervisor will be able to manage the schedule. He stressed that it will be hard enough to handle the usual contingencies in the city budget without factoring in this policy change. With regard to the Houston ruling, he said the city has nothing to lose by waiting for the decision to be handed down.

Ald. Stepaniak expressed his concern that the current circuit court case provides no guidance for this issue and the Houston decision might. He reiterated that the city's best position is to go back and see what other options can be crafted. He said the policy can be crafted to control any potential for abuse. He added that the police officers are aware of the city's budget concerns. Every \$10,000 in overtime will affect the other employees in terms of the personnel budget.

Moved by Ald. Heins, seconded by Ald. Stepaniak to recommend rejecting the MOU without direction and to send it back for further negotiations with the union --

Ald. Jenkins encouraged staff to look into every possible option and see what police departments in other municipalities are doing.

Vote on the motion was, Ayes: 4

Amendment to ordinance Section 20.01.5

Mr. Brown said the Civil Service Commission has made a request to expand the pool of employment candidates from 7 to 10. This would increase the number of persons eligible to apply for city jobs. He said that in dealing with the hiring process for the Court Clerk's office, they ended up with only three candidates and they had to add another two in order to widen the field of applicants.

Moved by Ald. Heins, seconded by Ald. Kopischke to recommend sending the amendment to Ordinance Section 20.01.5 to the Council for introduction --

In response to questions regarding the relationship between test scores and the number of candidates, Mr. Brown said it would be possible to have more than 10 people when those from the bargaining unit score within 7% of the top; however, it would be unlikely to have a very high number of applicants from the bargaining unit eligible at any one time. Having over 10 eligible internal candidates would be very unusual. Ms. Aldana added that the increase in the names of candidates gives a little bump to internal candidates.

Vote on the motion was, Ayes: 4

The meeting adjourned at 7:58 p.m.

Carla A. Ledesma, City Clerk
City of Wauwatosa

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