

GARDEN GROVE POLICE DEPARTMENT

To: California Police Chiefs

Date: April 30, 2003

From: Joe Polisar

Subject: Comp Time

First, I want to thank all the Cal Chiefs who responded to my request for information concerning the accrual and usage of comp time. The information was invaluable. In fact, based on your input and some further legal research, I will be proposing a new system of comp time accrual and usage to my Police Association.

I received 44 responses to my comp time request. Every agency, except one, indicated that they allowed the accrual of comp time, with banks ranging from 40 hours to 480 hours. More than half expressed concern regarding the FLSA clause making comp time an employee "property," allowing employees the right to take time off at their request, unless the agency could demonstrate an "undue hardship." Most agencies understood well the fact that paying overtime to meet staffing needs did not amount to an "undue hardship."

Because of this issue, many agencies, including my own, have worked out comp time usage agreements with their labor groups, both formally and informally. In essence, these agencies are allowing the accrual and usage of comp time as long as their labor groups don't abuse their legal right to take the time off. Some of these agreements allow the use of comp time with advance notice, as long as someone is willing to work overtime. Others allow the use of comp time with the understanding that if it costs too much overtime to meet staffing needs, the agency will discontinue the practice of comp time accrual (paid overtime instead). And others deny comp time off, based on minimum staffing, and the labor groups have agreed not to press the issue.

Just to balance things out, many agencies reported that the accrual and usage of comp time has never been an issue. On the other hand, one agency reported that they discontinued the accrual of comp time because it was costing too much to back-fill with overtime, based on its staffing situation.

I did a little more research and discovered that I did not have a full understanding of FLSA regulations regarding comp time and overtime. Let me explain.

FLSA only requires agencies to pay time and one-half (1.5) for hours "actually worked" in excess of 171 hours in a 28-day cycle. Even the first 11 hours after 160 hours actually worked in four weeks are paid at straight time. For purposes of this report, let's call that "**FLSA overtime.**"

regulations are much more generous and liberal than what FLSA requires. Let's call this "**MOU overtime.**" **FLSA regulations concerning comp time off, i.e. cannot deny comp time off unless there is an undue hardship, does not apply to banked MOU overtime.**

Just for information, Peter Brown, an attorney at Liebert, Cassidy, and Whitmore, told me that he has conducted FLSA audits at various police departments in California. He has concluded that 85% of police overtime is **MOU overtime**, and 15% is **FLSA overtime**. He may have used the phrase, "It's a racket." To double-check, I had my City's Finance Department conduct our own FLSA audit for the first nine months of this fiscal year. Sure enough, of the \$1.3 million in overtime, 83.9% was MOU overtime, and 16.1% was FLSA overtime. Our Finance Director would prefer I say, "That cost the City \$363,203 more than what FLSA requires!"

Again, based on your input and some further legal research, I will be proposing a new system of comp time accrual and usage to my Police Association. Some may find this proposal a win-win in the area of labor relations. Our labor groups seem to desperately want a form of a comp time bank, and the ability to sell the hours for cash when the need arises. On the other hand, police chiefs don't seem to mind a comp time bank; however, they want to maintain the ability to deny comp time off when staffing so dictates. This proposal may be the answer.

Our proposal will allow **MOU overtime** to accrue in a bank. We will be willing to allow the bank to be larger than the current 40 hours. We will also allow a predetermined time once a year to cash out any and all hours in the bank. However, we will pay **all FLSA overtime**, not allowing the accrual of any FLSA overtime in a comp time bank. **Because this proposal prohibits the banking FLSA overtime, permitting only the banking of MOU overtime, we will not be governed by the FLSA regulations, i.e. undue hardship, concerning requests for time off from this bank.**

I have checked with three legal advisors – Peter Brown, Marty Mayer, and Steve Filarsky – all three said without hesitation that this proposal would legally get us out from under the requirement to grant comp time off even if it means we have to pay overtime to another officer, and so on and so on. But I also should tell you, all three said that the financially wise thing to do is to redefine how we pay time and one-half overtime to the FLSA definition....Good luck with that!

Thanks again,

Joe Polisar