

representing its membership as a whole, and I must assume that it deems its own proposal in the best interests of its collective membership.

I note that Aviles could foresee no problem with the proposal. Further, I give some weight to the fact that the superior officers already have such an arrangement. Awarding this proposal will improve employee morale, reduce employee fatigue and lessen the attendant safety risk. There is no demonstrable harm to the County. I conclude that it serves the public interest. The proposal is awarded with a slight modification to provide that both affected officers must agree to the split.

Court Time:

The PBA proposes to modify Section 7a, Court Appearances. The clause currently provides,

The County shall pay all employees for appearance in municipal court, county and superior court, juvenile court, grand jury and ABC proceedings on their own time at time and one half (1-1/2) with a four (4) hour minimum.

The Union seeks to modify this section to include all courts, provided that the appearance is on behalf of the County. The County has agreed to this proposal. Accordingly, it shall be incorporated in my award.

Compensatory Time:

The PBA seeks a new Section 11 which would provide,

Officers may accrue up to 40 hours of renewable compensatory time per calendar year in lieu of paid overtime. Compensatory time shall accrue at the rate of 1.5 hours for each hour of overtime worked. The decision to accept compensatory time instead of cash overtime is solely the employee's. Any compensatory time not used by December 31 of the year in which it is earned shall be paid to the employee at the December 31 rate of pay in the January of the subsequent year.

The PBA argues that its proposal is in the interest of the public. As Aviles testified, overtime is a necessary evil of employment for Corrections Officers and there is a lot of overtime available at the Correctional Facility. Thus, the PBA reasons that instead of paying cash for all overtime, the County, and thus the public, would benefit from allowing officers to take compensatory time instead of receiving cash overtime. The County will save on the upfront costs of some overtime, and the officers will benefit from increased time off. The County will have no long-term liability as the unused time must be cashed-in at the end of the year. Moreover, the PBA notes that I recently awarded a similar proposal in Hudson I. The County points out that there is another significant cost to compensatory time. Section 207 (4) also provides:

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than--

(A) the average regular rate received by such employee during the last 3 years of the employee's

employment, or
(B) the final regular rate received by such employee,
whichever is higher[.]..

Therefore, the County would be required to pay more money upon the employee's separation at a salary rate that is higher than when he/she initially earned overtime. The County argues that, in the current economic times, it is more reasonable to permit the County to pay the required overtime in cash, as it will permit the County to monitor its expenditures for overtime based upon current cash payments. Therefore, it asserts, the proposal for compensatory time should be rejected.

Generally, the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, requires an employer to pay a non-exempt worker who exceeds specified maximum hours at an "overtime" rate one and one-half times the worker's regular rate. 29 U.S.C. § 207(a). Cash payment is the required default method for compensating an employee who works overtime when a collective negotiations agreement has not specifically specified for another method, i.e. compensatory time.

First, it goes without saying that any comp time payment for overtime would be based upon 1.5 times the hours worked, just as the cash overtime rate is. Thus, an officer working an extra eight-hour tour would be credited with 12 hours comp

time. The County's argument presupposes that each time an officer takes a comp day, his/her position would have to be filled with another officer called in or held over on overtime. However, this is not the case. My award will give the County discretion to approve or reject a requested comp day depending upon whether minimum staffing level is met.

The County is also concerned about officers accruing a substantial bank of comp time which would have to be cashed out upon separation of service or retirement, at a much higher pay rate than what would have been paid when the time was earned. As noted above, the PBA has proposed permitting officers to accrue a bank of up to 40 hours. Under the PBA's proposal, this would not occur.

I have carefully considered the respective arguments of both parties on this issue. I award the following:

Officers will be compensated for all overtime worked at the overtime rate of 1.5. Such compensation may be in the form of cash payment or compensatory time, at the sole discretion of the officer. Officers may take compensatory time off upon approval by management's designee. The decision to grant a comp time request shall be based upon whether minimum staffing levels are met, but may not be unreasonably denied. Officers may accrue a maximum of 40 hours of renewable compensatory time per calendar year. Any compensatory time not used by December 31 of the year in which it is earned shall be paid to the employee at the December 31 rate of pay in January of the subsequent year.

This award will virtually guarantee that the County's overtime costs will be reduced. The employer will have control over when employees take their comp time so that minimum staffing levels can be met and back-filling comp days with overtime will be limited. The County's concerns about huge payouts later in the employee's career will be satisfied, as the most it would cost the County would be to pay out the comp bank at the end of the year, when the employee's pay is the same as when the overtime was earned. At the same time, it will provide officers with the ability to take time off on relatively short notice - days they may have otherwise been forced to use a sick day. This in turn should have the effect of reducing sick calls, further reducing the need for overtime liability and saving the County money.

Calculation of Overtime

The County seeks to add a provision that sick time will not be counted towards the accrual of overtime. Presently, sick time is excluded from the overtime calculation only after the fifth sick day in a calendar year.

Sheil testified that there is an absenteeism issue at the jail. The County argues that, reducing the amount of sick days in the calculation is a cost containment tool in addressing the County's efforts to control costs and can affect the absenteeism issue.