

AGENDA ITEM

NOV 112-N
Memorandum of
Understanding Modification:
Investigator Overtime
Ratification

DATE: November 1, 2010

TO: Members, Board Operations Committee
Members, Board of Governors

FROM: Robert Hawley, Deputy Executive Director

SUBJECT: Memorandum of Understanding Modification
Investigator Overtime Ratification

EXECUTIVE SUMMARY

Periodic reports have been given to the Board about pending “meet & confer” discussions with the Union toward resolving the overtime non-exempt status of State Bar Investigators. On October 13, 2010, the Board Operations Committee, acting on behalf of the Board in-between meetings, authorized the State Bar to resolve the outstanding issues within certain parameters. The State Bar’s bargaining team was successful in reaching a tentative agreement with the Union within these parameters that includes a cash payment to Investigators and modifications of the MOU terms governing Investigator overtime. The MOU modifications require Board ratification and are presented here for that purpose. The Union will present these terms to the Investigators for ratification. The State Bar and the Union recommend ratification. IF YOU HAVE SUBSTANTIVE QUESTIONS PLEASE ATTEND THE BOARD OPERATIONS COMMITTEE MEETING OR CONTACT ROBERT HAWLEY (415) 538-2277, Robert.Hawley@calbar.ca.gov.

RECOMMENDATION

Rules 6.8 and 6.9 of the Rules & Regulations for the Administration of Employer-Employee Relations require that all Memoranda of Understanding and amendments (“MOUs”) be submitted to the Board of Governors for ratification. The State Bar and Union bargaining teams have reached tentative agreement on an interim modification to the General Unit MOU on Investigator overtime as described here and each is recommending ratification to their respective constituencies. The tentative agreement is presented here to the Board Operations Committee and the Board. The Board’s ratification of these terms is expressly made contingent upon the Investigators following the recommendation of the Union and ratifying these terms on the Union’s side.

The terms presented here resolve the overtime issues within the authority previously granted by the Board Operations Committee, change the overtime calculation for Investigators, and enhance management's administration of overtime for Investigators. These terms are consistent with prudent personnel administration standards.

State Bar management recommends ratification. Assuming that the Board Operations Committee and Board are prepared to ratify the terms reported here, the following resolution is recommended:

"WHEREAS, representatives of the State Bar of California ("State Bar") and Service Employees International Union (SEIU) Local 1000, operating under a Service Agreement with SEIU Local 535 ("Union"), met and conferred pursuant to California Government Code sections 3505 and 3505.1 and the State Bar's Rules & Regulations for the Administration of Employer-Employee Relations, with a view to reaching agreement on amendments to the Memoranda of Understanding (MOU) for the General Bargaining Unit pertaining to overtime for the Investigator Classifications; and

WHEREAS, the Union and State Bar bargaining teams have met in good faith and reached tentative agreement on MOU amendments on this subject; and

WHEREAS, the Union is presenting the tentative agreement to its membership with a recommendation that it be ratified; and

WHEREAS, the State Bar's Rules and Regulations for the Administration of Employer-Employee Relations provide at Sections 6.8 and 6.9 that proposed MOU terms and amendments be submitted to the Board of Governors for ratification; now therefore, it is

RESOLVED that, upon the recommendation of the Board Operations Committee, the Board of Governors ratifies the proposed Memoranda of Understanding amendments for the General Bargaining Unit in the form discussed this date to be effective upon full ratification by both the Board and the Union; and it is

FURTHER RESOLVED that the Board's action here is contingent upon the Union fully ratifying the tentative agreement in the same form as presented here. The Board action here does not become effective until the Union confirms full ratification of the tentative agreement as set forth here. If, for any reason, Union ratification does not occur, the action of the Board here is voided. The Board further reserves the right to withdraw this action at any time prior to Union ratification; and it is

FURTHER RESOLVED that the Office of General Counsel and the Office of the Executive Director take the appropriate steps to effectuate these amendments.

BACKGROUND

Periodic reports have been given to the Board about pending "meet & confer" discussions with the Union toward resolving the overtime non-exempt status of State Bar Investigators. On October 13, 2010, the Board Operations Committee, acting on behalf of the Board in-between meetings, authorized the State Bar to resolve the pending Investigator overtime issues within certain parameters. The State Bar's bargaining team was successful in reaching a tentative agreement with the Union within these parameters. This includes a cash payment to Investigators and modifications of the MOU terms governing overtime as they apply to Investigators, discussed further below. The tentative agreement is reported here for Board ratification. The Union will present these terms to the Investigators for ratification. The State Bar and the Union both recommend ratification.

DISCUSSION

Applicable Authorities

The employees of the State Bar of California have been represented by Service Employees International Union ("SEIU") since 1980. The State Bar is a public entity subject to the jurisdiction of California's Meyers-Milias-Brown Act ("MMBA"), Government Code sections 3500 *et seq.*, for labor relations purposes. The MMBA governs cities, counties and "miscellaneous" public entities such as water districts, community college districts, and redevelopment agencies. The State Bar's Executive Staff and designated Confidential Employees (e.g., those within the Offices of General Counsel and Human Resources) are Confidential Employees excluded from Union participation.

It is a responsibility of the Board and its Board Operations Committee to set prudent policy standards pertaining to employer-employee relations. Pursuant to Rules 6.8 and 6.9 of the Rules & Regulations for the Administration of Employer-Employee Relations, this includes providing policy guidance to management for the MOU negotiations and ratifying successor MOUs. It is the responsibility of the Executive Director to manage personnel prudently and of her designees to conduct negotiations in accordance with the policy and budget determinations set by the Board. The terms presented here are in accord with these principles and the pre-existing authority granted by the Board Operations Committee.

Management is satisfied that the proposed amendments are consistent with the Board's previously granted authority and with prudent management of State Bar's resources and personnel. The proposed MOU amendments are summarized in the attached Executive Summary. The actual MOU amendments will be drafted and approved by the Office of General Counsel and the Office of the Executive Director/Secretary consistent with the proposed resolution above.

PERSONNEL/FISCAL IMPACT

State Bar management is pleased to obtain the terms presented here. These terms are discussed in the Executive Summary attached. The immediate fiscal impact is less than \$100,000, representing a flat rate \$1,800.00 cash payment to each Investigator. This is within the authority previously granted. The modified MOU terms confirm the non-exempt overtime status of Investigators, convert Investigators to a 40 hour per week overtime standard in lieu of the existing eight hour per day standard giving the State Bar more flexibility in managing Investigator assignments, time and overtime costs. Management maintains absolute control over overtime authorization.

ADMINISTRATIVE MANUEL IMPACT

None

RULES/STRATEGIC PLANNING CONSIDERATIONS

None

CONCLUSION

Assuming the Board Operations Committee and the Board of Governors support ratification of these terms, it is recommended that the above resolution be adopted.

To expedite consideration of this item at the meeting, if anyone wishes a more detailed explanation of the amendments or the negotiating process, please contact Robert Hawley at (415) 538-2277, Robert.Hawley@calbar.ca.gov.

Investigator Overtime Resolution General Unit Memorandum of Understanding

Executive Summary

The terms of the tentative agreement will be embodied in a written Letter of Understanding applicable only to State Bar Employees in the classifications of Investigator and incorporated in to the General Unit MOU as an amendment.

Investigators are confirmed to be “non-exempt” for overtime purposes, i.e. entitled to overtime payment.

Chargeable time for overtime purposes remains unchanged from the governing MOU.

Consistent with MOU Section 20.E.3, for Investigator overtime purposes, "Chargeable Time" is defined as: (1) all hours actually worked during the Calendar Week, (2) paid holidays, (3) jury duty, (4) military leave, and (5) paid sick leave that is taken because of the Employee's own illness. Consistent with MOU Section 20.E.4, for Investigator overtime purposes, "Non-chargeable Time" is defined as paid time-off during a Calendar Week not included in the forty (40) hour requirement for overtime payment. Non-chargeable time includes, but is not limited to, paid sick leave that is not taken because of the Employee's own illness, paid personal leave, vacation and bereavement leave.

The defined Individual Workweek for Investigators remains unchanged.

Chargeable time worked in excess of 40 hours in a Calendar Week will be paid at one and one-half (1-1/2) times the Employee's straight time hourly rate.

Chargeable Time worked on a seventh consecutive day of a Calendar Week will be paid at two (2) times the Employee's straight time hourly rate, consistent with MOU Section 20.E.2.

Other than as set forth in this Letter of Understanding, hours worked in excess of eight hours per day, do not result in overtime payment.

Consistent with MOU Section 20.E.5, an Investigator must obtain the authorization of an Executive Staff manager prior to working any overtime. Thereafter, in order to attest to the accuracy and validity of such overtime, an Executive Staff manager must sign the Investigator's time card.

Consistent with MOU Section 20.E.6, there shall be no unauthorized overtime permitted under any circumstances.

If an Investigator's work requires that he or she work in excess of 40 hours in a Calendar Week or a seventh consecutive day, the Investigator will notify an Executive Staff manager of the need to do so as soon as reasonably possible. The Investigator's manager will notify the Investigator in a timely manner whether or not they are approved to work such overtime hours.

Consistent with MOU Section 20.E.7, an Investigator may elect in writing to receive compensatory time off in lieu of overtime pay. Compensatory time shall be computed in conformity with and governed by this Letter of Understanding. Compensatory time accumulated under this provision shall be scheduled to be taken at times mutually convenient to the Investigator and the State Bar. Investigator requests to schedule compensatory time shall not be unreasonably denied. Investigators shall be paid for all unused compensatory time accumulated under this Section at the end of each calendar year or upon termination of employment.

Subject to MOU Section 23.B's standards on works assignments and the distribution of work, an Investigator working at least four hours per day and not working overtime will

not be required to obtain approval from their supervisor or manager with respect to their work hours schedule. This is in lieu of MOU Section 20.E.8 on "make up" time.

Nothing in this Letter of Understanding shall be deemed to prevent an Investigator from participating on a non-exempt Employee Alternative Work Schedule ("AWS"), consistent with MOU Section 19.G and H and Appendix D. Non-exempt AWS agreements must be entered into by Investigators participating in the AWS program.

An Investigator who demonstrates that a paid leave bank was docked for partial day absence increments since January 1, 2008, up to the time reclassified as non-exempt in August 2010, will be have those leave banks correspondingly credited. No cash value for this time will be paid to Investigators if the affected paid leave bank is at the maximum. If an Investigator's leave bank is at the maximum, so that the time that would be credited hereunder cannot be credited, then that same amount of time will be taken by the Investigator on a straight time basis during the month of January 2011, or lost.

The terms of this Letter of Understanding are contingent upon achieving a complete resolution of the pending Investigator overtime issues as set forth here.

Prior to December 31, 2010, the State Bar will pay each Investigator a flat rate of \$1,800.00 in a single lump sum, less appropriate deductions, to compromise overtime claims as set forth here.

The Union will release the State Bar from all liability for any potential retroactive Investigator overtime under the MOU as of the date this Letter of Understanding is executed.

The Union, on its own behalf, will release the State Bar from all liability for any potential retroactive Investigator overtime under the Fair Labor Standards Act (FLSA), 29 USCA Section 201 et seq., or any other legal standard, and waive attorneys fees.

These releases and compromises will be reflected in a written settlement agreement and release separate from this Letter of Understanding.

Time dockage for Investigators for partial day absences will be addressed as provided in the MOU. Investigators are removed from the Exempt Time Guidelines and MOU Appendix K Letter of Understanding.

Violations of this Letter of Understanding are subject to and governed by MOU Section 17's grievance and arbitration procedure to the extent set forth in the MOU.