

A Report of the 2004-05 Civil Grand Jury
For the City and County of San Francisco

**Compensation Issues in the
San Francisco Police Department**

Released (March 29, 2005)

Pursuant to State law, reports of the Civil Grand Jury do not identify the names or identifying information about individuals who provided information to the Civil Grand Jury.

Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of the Supervisors. As to each finding of the Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further as to each recommendation made by the Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was; (2) the recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a timeframe for the officer or agency head to be prepared to discuss it (less than six months from the release of this Report); or (4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (Cal. Penal Code, sec. 933, 933.05)

Summary of Recommendations

The City should negotiate with the POA for elimination of OT/CT benefits for top managerial staff of the SFPD and consider less costly alternatives such as limited administrative leave as provided by other jurisdictions and City departments.

If top managerial staff continue to be eligible for CT accrual, the City should negotiate limits in the MOU on their accrual comparable to rank and file officers.

The City should negotiate to pay CT balances prior to the effective date of promotions to limit the inflationary effect of carrying CT balances for long periods of time.

The SFPD should manage the CT banks with the objective of minimizing the long-term liability of large CT balances. Such management must include enforcement of CT caps. The law allows that such management may include requiring officers to use their accrued CT.

Given that rank and file officers will have had four years to reduce their CT balances to 480 hours by the end of the current MOU, the City should negotiate for the next MOU, some penalty for continuing to maintain a CT balance greater than 480 hours, such as forfeiture of hours above 480.

The SFPD must manage their vehicle fleet in accordance with Administrative Code 4.11 as well as optimize the use of this valuable resource for police services.

The City should negotiate to include all forms of premium pay available to all officers in comparisons for the purposes of salary setting.

The Board of Supervisors should request that the Budget Analyst update the management audits of 1996 and 1998 regarding SFPD policies and practices and make recommendations for opportunities for cost savings.

Glossary

CT – Compensatory Time: Leave time accrued at time-and-one-half in lieu of overtime pay

CT Cap – Compensatory Time Cap: Maximum hours of accrued Compensatory Time permitted by the POA MOU

FLSA – Fair Labor Standards Act: Federal law regulating employment and compensation

MEA – Municipal Executives' Association

MOU – Memorandum of Understanding: Collective Bargaining Agreement between bargaining unit and the City and County of San Francisco

OT – Overtime Pay: pay at time-and-one-half of time worked

POA – Police Officers Association: Collective Bargaining Agent for sworn police officers of the City of San Francisco except Chief, Assistant Chief, and Criminologist

SFPD – San Francisco Police Department

Top Managerial Staff – Deputy Chiefs, Commanders, and Captains within the context of this report only. Excludes Chief, Assistant Chief, and Criminologist who are represented by another bargaining agent.

This report is issued by the 2004-05 Grand Jury with the exception of one member of the jury who presently has a family member in the employment of the SFPD. This juror did not participate in the investigation or acceptance of this report.

Introduction

The Civil Grand Jury initiated this investigation in response to several complaints from citizens regarding aspects of compensation of police officers in San Francisco. These complaints alleged that:

- Top managerial positions in the SFPD are being paid overtime in violation of the current MOU with the POA.
 - Determination: The MOU does not prohibit payment of overtime for these positions.
- Police Officers are accruing compensatory time in excess of limits imposed by the current MOU.
 - Determination: Seventeen officers with compensatory time balances greater than allowed by the MOU were permitted to accrue additional compensatory time during the period 7/2/04 to 12/17/04.
- Top managerial staff in the SFPD are assigned Department vehicles for transportation to and from their residence.
 - Determination: Top managerial staff are authorized to use City-owned vehicles for transportation to and from their residence in excess of numbers permitted by Administrative Code 4.11.

We are grateful to the citizens who take the time and effort to write to the Civil Grand Jury about the issues of concern to them. We rely on the advocacy of citizens to alert us to issues of which we would otherwise be unaware.

We researched these allegations in the context of all compensation practices in the SFPD and compared those practices to other City departments as well as to other police departments in the State considered comparable (as defined by the MOU with the POA).

Our investigation did not extend into policing functions, nor are we in a position to judge the effectiveness of the SFPD. Any findings or recommendations regarding specific compensation practices in the Department are not intended to reflect on other aspects of the SFPD.

We also acknowledge that the new Police Chief was appointed to her position early in 2004 in an acting capacity and that her appointment was only recently made permanent. She is not responsible for the policies or practices of her predecessors. We are confident that issues brought to her attention by this investigation will be expeditiously corrected by her administration insofar as they are SFPD's prerogatives. It is, however, our duty to report our findings.

Many of our recommendations are subject to negotiation between the POA and the City. We understand that the SFPD's ability to implement many of our recommendations is limited by its obligation to administer the MOU, which expires 6/30/07. Our recommendations are intended to facilitate the City's negotiation for a new MOU that is fair and equitable to both the SFPD and the City.

Background

Although we will focus on a few specific compensation practices in the SFPD, we think of them only as examples of opportunities to reduce costs without jeopardizing the public's safety. Therefore, we begin by describing the broad context within which we evaluated these practices to justify consideration of alternatives to present compensation practices.

The SFPD was allocated \$219,886,890 from the City's General Fund in FY 2004-05, a budget allocation that is exceeded only by the Department of Public Health (\$231,496,144).¹ The SFPD paid \$27,274,786 in overtime in FY 2003-04, which represented 10.7% of the total pay of the Department's staff.² Only Muni paid more overtime to its staff.³

The citizens of San Francisco are rightfully proud of their City and are quick to point out its uniqueness. Comparisons with other cities are therefore often received with suspicion. Still, we turn to the Federal Bureau of Justice Statistics for assurance that the SFPD is adequately staffed since insufficient staff would be justification for overtime payments. According to the "2000 Data for Individual State and Local Agencies with 100 or More Officers" (see Appendix B):

- San Francisco compares favorably with the six police agencies in California⁴ that are considered comparable to the SFPD by the current MOU for the purposes of salary setting. According to the Federal Bureau of Justice Statistics, San Francisco employed an average of 28.67 officers per 10,000 residents in 2000. The other 6 jurisdictions in California employed an average of 16.49.
- San Francisco spent 42% more per resident on law enforcement services than comparable jurisdictions in California in 2000 according to the Federal Bureau of Justice Statistics. San Francisco spent \$329.21 per resident for police protection in 2000. The average expenditure per resident in comparable jurisdictions was \$232.50 that year.⁵
- As a small, densely populated city, we should not be surprised to learn that we have over 5 times the number of officers per square mile of geographic area compared to the other 6 jurisdictions. San Francisco has 47.69 officers per square mile compared to an average of 9.19 officers per square mile for the comparable jurisdictions.⁶

The Budget Analyst was authorized to conduct a management audit of the SFPD by the Board of Supervisors in 1996. This comprehensive analysis was published in two phases in December 1996 and May 1998 (available on the Budget Analyst's website). The Budget Analyst made 76 recommendations in these reports and estimated cost savings of \$15.3 million if recommendations were fully implemented. Few of these recommendations have been implemented. Some will be revisited by this Grand Jury report.

¹ Annual Appropriation Ordinance, Fiscal Year Ending June 30, 2005, page 9

² The SFPD reports that about 20% of overtime payments were funded by reimbursements for providing security services to private organizations such as the 49ers and the Giants. They also report that \$6,286,683 of these payments were for various categories of premium payments that SFPD considers different from OT, such as working holidays.

³ SFStat, November 5, 2004 and verified by Controller's Office. SFStat is a management meeting held by the Mayor.

⁴ Oakland, San Jose, Los Angeles, Santa Rosa, Fremont, and Richmond

⁵ "2000 Data for Individual State and Local Agencies with 100 or More Officers", Federal Bureau of Justice Statistics.

⁶ Geographic data from California Cities, Towns & Counties, Basic Data Profiles for all Municipalities & Counties, 2001.

In addition to \$27.3 million in overtime payments, the sworn staff of the SFPD had accrued 514,452 hours of compensatory time (CT) as of 12/17/04.⁷ CT is accrued by officers working overtime in lieu of overtime payments. CT balances are paid at the time of separation or retirement at the pay rate at the time of separation, rather than the pay rate at which the hours are earned. For example, if the hours are accrued while serving as the lowest ranking officer and paid some years later after several cost of living increases and promotions, the value of the CT is increased accordingly. To the extent that these pay increases exceed the current interest rate on savings accounts, this is an attractive, risk-free method of saving for retirement.

The reader should understand the relationship between OT pay and CT accrual. CT accrual is merely a method of postponing the costs of OT pay. It does not reduce costs in the long-term unless the CT is used and does not require coverage by a substitute. If CT balances are paid at the same pay rate at which they are earned, there is no increased cost associated with postponing payment. When CT balances are used, there is frequently a cost associated with filling whatever vacancies result from the leave of the officer using his/her CT time balance. If substitutes are required, they may be eligible for OT payments for covering for the absent officer. If the substitute is covering the assignment of an officer of a higher rank, the substituting officer is eligible for premium pay, known as “like-work-like-pay” which the City has agreed to pay in the POA MOU.⁸

In January 2003, the Controller reported to the Board of Supervisors that, “...comp time is now used to reduce the overtime budget need in the current year, thereby creating budget problems in future years.” (see Appendix C) He reported that the current Citywide liability of CT balances was \$44.4 million at that time of which \$23 million was attributable to the SFPD. The POA bargaining agreement (MOU) with the City was one of the few that did not have a limit on CT accrual at that time. He recommended that the MOU be changed to establish a cap on CT accrual.⁹

The magnitude of the liability associated with the unlimited accrual of CT resulted in the recent imposition of limits on the accrual of CT in the POA MOU that became effective 7/1/03. Despite the institution of these caps, payments of accrued CT balances to 80 officers separating or retiring in calendar year 2004 cost the City \$1,082,023.¹⁰ This is not an improvement (if calculated per retiring officer) over the cost of paying out CT balances prior to the institution of the caps. Eighty-seven officers retired in FY 02-03 and were paid out \$1,162,061 for accrued CT.¹¹ Although there are only six months between these periods of time for the caps to demonstrate their effectiveness, we believe that increased costs per officer are not a positive indicator that CT balances are being reduced, particularly by those nearing retirement. These CT caps in the MOU of 7/1/03 and the present status of CT accruals will be explained in detail later in our report.–

We complete our background with a description of the current economic climate, which we believe creates new opportunities to address these issues. The City as well as the State has been in a state of economic crisis for approximately 3 years. We have experienced severe cuts of our public budgets (e.g., \$97 million mid-year cut this fiscal year)¹² and we anticipate further cuts (\$113 million anticipated in FY 05-06)¹³. City

⁷ Source: Controller’s Office

⁸ SFPD reports that top managerial staff are routinely replaced when on leave by lower ranks that receive “like work like pay” premium pay.

⁹ Memo from Ed Harrington to Board of Supervisors, January 16, 2003. Appendix C

¹⁰ Source: SFPD, 12/31/04. One retiring officer was paid \$194,368 for 2078.25 of accrued CT.

¹¹ Memo from Budget Analyst to Finance & Audits Committee of Board of Supervisors, 9/17/03

¹² “Economy helps city cut deficit”, SF Examiner, February 9, 2005, page 9

employees have been required to help the City meet its obligations to its citizens by accepting responsibility for contributions to the retirement system (7.5% of salary) previously funded by the City.¹⁴

Most City employees did not receive salary increases other than additional floating holidays (varies from one bargaining unit to another) in the current fiscal year. In contrast, the POA MOU effective 7/1/03, obligated the City to increase the salary of sworn officers of the SFPD by 2.41% on 7/1/04 and by an additional 4.83% on 1/1/05. Only four other bargaining units received a salary increase during FY 04-05¹⁵. Physicians and dentists received 2% on 7/1/04. Supervising nurses represented by the Teamsters received 2% on 7/1/04 and nurses represented by SEIU received an additional 3.1% on 1/1/05.¹⁶ (see Appendix D) Police officers received the greatest salary increases of all employees in the City represented by collective bargaining agents according to the Department of Human Resources.

The POA MOU also obligates the City to conduct salary surveys for possible salary increases in the next two fiscal years. The MOU guarantees members of the POA salary increases that ensure that their salaries will be 100% of the salaries of comparable jurisdictions (measured by specific data elements) by the end of the MOU, 6/30/07. Since retirement contributions are one of the data elements in these salary surveys, the retirement contributions of POA members will be fully restored by the expiration of the current MOU.¹⁷

The requirements of the recruitment labor market are a legitimate reason for increasing salaries. That is, if the demand for labor exceeds its supply, labor is attracted, as needed, by salaries that compare favorably to available alternatives. It follows that if the SFPD were having difficulty recruiting and retaining qualified officers, the City would be justified in offering salaries that are high enough to fill their ranks. The SFPD received 2,465 applications for entry-level police officer positions announced in November 2004, of which 2,260 were qualified to take the written exam. It is not yet known at this time how many officers will be hired from this pool, because funding sources have yet to be determined. The number of applications has increased steadily since 2000 when 1685 applications resulted in 58 hires to 2003 when 2207 applications resulted in one training academy class of 50 officers, which is still in progress.¹⁸ The salaries offered by the SFPD are sufficient to attract many qualified applicants for every available position.¹⁹

So, why are the salaries of police officers being increased in the current economic climate? The people of San Francisco are generous with their public employees. Kevin Starr observes in Coast of Dreams: California on the Edge, 1990-2003,²⁰ "...the city and county of San Francisco, [is] the epicenter of public employee featherbedding..." The power of particular unions completes the picture. The San Francisco Examiner reported this explanation for high overtime costs, "Hiring freezes instituted during the budget crisis have hurt flexibility, and managers are often caught between reformist pressure and strong unions."²¹ Ed Harrington, the City's Controller, is quoted in this article, "At the end of the day, the fire chief still

¹³ Ibid.

¹⁴ Review of current MOU's

¹⁵ In addition to the General Wage increases described in Appendix D, selected classifications received "internal, market, parity and differential adjustments". These are also described in Appendix D.

¹⁶ Department of Human Resources, 12/27/04

¹⁷ POA MOU, page 24

¹⁸ SFPD reports that the rigorous screening process for new hires narrows the pool of eligible hires. However, the chief limitation on the number of hires is available funding.

¹⁹ SFPD Examination Division

²⁰ Alfred A. Knopf, New York, 2004, page 241.

²¹ "Cutting OT pay could save millions, controller explains", San Francisco Examiner, December 17, 2004

knows that keeping the firefighters union happy is a huge part of her job,' said Harrington. 'And maybe even more important than keeping the mayor happy.'"²² The fact that officers represented by the POA received the highest salary increases in the City may be an indication that it is even more powerful than the firefighters' union.

However, a recent survey conducted by David Binder Research of the opinions of San Franciscans regarding the relative importance of local public policy issues may indicate an opportunity for decision makers to reconsider the generous compensation of the SFPD. This survey, conducted in January 2004, asked 600 likely San Francisco voters the open-ended question: What is the most important public policy issue facing San Francisco today? Sixty-one percent said "homelessness". Only 4% said "crime and public safety". Public schools, the economy, housing, the City budget, and health care were all considered more important issues to the respondents.²³

Now we will describe a few specific examples of compensation policies in the SFPD that are more generous than those of other City employees and other police departments in California.

Overtime Compensation of Top Managerial Staff

Two collective bargaining agents represent the top managerial staff of the SFPD. The Chief, Assistant Chief (presently vacant), and Criminologist are represented by Municipal Executives' Association (MEA) for Police Department Management. The 3 members of this bargaining unit are not eligible for OT pay or CT accrual in lieu of OT pay. They are eligible to receive up to 100 hours of paid administrative leave per fiscal year for time worked in excess of normally scheduled hours. The Appointing Officer must approve the use of such leave in advance. Up to 100 hours may be carried forward into a subsequent fiscal year, but the total amount of accrued administrative leave may not exceed 120 hours.²⁴

These policies are comparable to other executives represented by the MEA. Four job titles²⁵ are covered by the MEA agreement for the Fire Department and 296 job titles are presently covered by the MEA agreement for all other City departments. In addition to strict limitations on accrual of leave time to compensate for work in excess of normally scheduled hours, these agreements do not permit "cashing out" administrative leave balances at the time of separation.

The Police Officer's Association (POA) represents all other sworn officers of the SFPD not covered by the Chief's MEA agreement. The collective bargaining agreement with the POA provides eligibility for overtime pay and compensatory time in lieu of overtime pay for all members of the bargaining unit from the deputy chiefs down to the entry-level police officer.

The Fair Labor Standards Act (FLSA) establishes the minimum acceptable standards for wages and working conditions in the United States. The standards may be exceeded by state and local laws, but may not be waived or reduced. The FLSA establishes that executive positions that are primarily supervisory and that are highly paid are exempt from overtime payments. The top managerial staff of the SFPD—ranks of deputy chief, commander, captain--meet the FLSA tests of executive exempt status. Consistent with this federal

²² Ibid.

²³ <http://www.colemanadvocates.org/includes/downloads/licypriorities.pdf>

²⁴ MEA, Police, MOU

²⁵ Chief, Deputy Chief, Assistant Deputy Chief II, Emergency Medical Services Chief

exemption, these job titles are not eligible for overtime pay in most comparable jurisdictions in California. We will provide detail about these jurisdictions later in this section.

The Civil Grand Jury received a complaint from a citizen regarding the overtime pay of deputy chiefs, commanders, and captains in the SFPD. We will call these ranks the “top managerial staff” in this report. This complaint alleged that these job titles are receiving overtime pay in violation of the current MOU with the POA. The current MOU contains the following provision regarding these job titles:

“Section 2. 159. The parties further acknowledge that deputy chiefs, commanders, and captains are exempt from the application of the FLSA as permitted by 29 USC Section 213.”²⁶

This paragraph appears in the section of the MOU regarding overtime and compensatory time-off. Superficially, it suggests that these job titles are exempt from overtime pay as allowed by the Federal Fair Labor Standards Act (FLSA). However, the Civil Grand Jury has learned that such an exemption from overtime pay was not the intention of this paragraph. We were told by those involved in the negotiation of the agreement that the intent of the paragraph was to exempt these job titles from the methods of calculating overtime payments defined by the FLSA. Such methods are more costly than the methods defined by the POA MOU. The MOU therefore refers to the fact that these job titles are not eligible for overtime pay according to the FLSA in order to establish the legality of using less costly methods of calculating overtime payments for these job titles.

Indeed, these job titles continue to be paid for OT, receiving \$504,703 of overtime pay in FY 03-04. There were 37.61²⁷ officers in these ranks during FY 03-04. Therefore, the average OT payment was \$13,419 per top managerial staff member in that fiscal year.²⁸ These OT payments are made in addition to high base salaries ranging from \$131,040 to \$190,580 as explained later in this report.

We look to other jurisdictions within California for comparison with these compensation practices of top managerial staff. The POA MOU establishes six comparable jurisdictions for the purposes of salary setting. These jurisdictions were negotiated with the POA. In other words, the POA participated in the identification of these jurisdictions as being comparable to the SFPD and they were used to increase the salaries of the SFPD at a time when few City employees received any salary increase. Since these jurisdictions are considered sufficiently similar to increase salaries, we assume they are also useful for making other comparisons.

The six jurisdictions are Oakland, San Jose, Los Angeles, Santa Rosa, Fremont, and Richmond.²⁹ We reviewed the collective bargaining agreements of the police departments in these jurisdictions. Only Oakland and San Jose pay overtime to captains and none of these jurisdictions pay overtime to ranks above captain.

The Budget Analyst surveyed an additional five jurisdictions (Sacramento, Alameda, Long Beach, Fresno, and San Diego). None of these jurisdictions paid overtime to ranks of captain or above. Nine years ago, the Budget Analyst recommended that these job titles not receive overtime pay:

²⁶ POA MOU effective 7/1/03, page 27

²⁷ 78,839 hours / 2096 hours = 37.61 FTEs. Source: Controller’s report of OT to top managerial staff, FY 03-04

²⁸ Source: Controller’s Office

²⁹ POA MOU effective 7/1/03, page 24

“3.5.3 Meet and confer with the Police Officers Association to exclude sworn members of the Police Department with the rank of captain, commander, deputy chief, assistant chief or chief of police from the payment of overtime.”³⁰

The Budget Analyst observed that, “...eliminating overtime for these high ranks would set an example for lower ranks and would increase scrutiny of overtime use by officers of lower rank.”³¹ High-ranking officers earning large overtime payments are not in a position to pressure those whom they supervise to limit their overtime activities. To the extent that they exert such pressures, they are likely to produce a negative reaction from those whom they supervise.

Likewise, the Controller made the following observation in this memo to the Board of Supervisors of 1/16/03 (see Appendix C):

“City managers, including those in the Police Department, need to understand that part of the reason managers are paid more than other staff is the reasonable expectation that they will work more than 40 hours per week with only limited additional compensation.”³²

Clearly, we are not the first to report on this issue. We are merely repeating the recommendations of highly qualified City officials (with greater analytical resources than are available to the Civil Grand Jury) who are responsible for the fiscal health of our City.

Compensatory Time of Top Managerial Staff

In addition to OT payments, officers in the ranks of deputy chief, commander, and captain had 29,202 hours of accrued CT at the end of FY 03-04. This represents an average of 834 hours per officer in these ranks on 6/30/04.³³ The value of these hours at the average hourly wage of officers in these ranks was \$1,842,574 before the salary increase of 7/1/04.³⁴

The current POA MOU does not set any limit on CT accrual of officers in these ranks until 6/30/05:

“Deputy chiefs, commanders and captains with existing compensatory time off balances in excess of 480 hours as of June 30, 2003 may continue to carry such balances provided that such balances not exceed 1500 hours as of June 30, 2005 and 1300 hours as of June 30, 2007. For those occupying those ranks, compensatory time-off balances in excess of these amounts on the dates set forth shall be forfeited.”³⁵

However, officers promoted to these ranks on or after 7/1/03, are limited by the MOU to 480 hours of CT accrual:

³⁰ Budget Analyst, management audit, Phase I, December 1996, section 3.5

³¹ Budget Analyst, management audit, Phase I, December 1996, section 3.5

³² Memo from Ed Harrington to the Clerk of the Board of Supervisors RE Compensatory Time, January 16, 2003

³³ 29,202 / 35 = 834; Source: Controller's Office

³⁴ \$4,974,014 / 37.61 FTEs = \$132,252 / 2096 hours = \$63.10 x 29,202 hours = \$1,842,574

³⁵ POA MOU effective 7/1/03, page 27

“Deputy chiefs, commanders and captains newly hired or promoted into such ranks on or after July 1, 2003, may not accrue more than 480 hours of compensatory time-off.”³⁶

The SFPD reports that six officers have been promoted to the rank of captain since 7/1/03. All six officers had CT balances greater than 480 hours on 12/17/04.

**SF Police Department
Comp Time Balances of Officers
Promoted to Top Managerial Positions since 7/1/03**

Date of Promotion to Captain	CT Balance @ 12/17/04	CT Balance @ 7/2/04	Change in CT Balance
8/18/2003	1533.75	1565.75	-32.0
11/17/2003	1584.25	1595.75	-11.5
6/14/2004	706.25	706.25	0
6/14/2004	1191.50	1191.50	0
11/4/2004	1510.00	1510.00	0
11/3/2004	1167.00	1167.00	0
Average	1282.13		

Sources:

Promotion dates from SFPD

CT Balances from Controller's Office

The average number of hours of accrued CT for these officers is 1,282, which is greater than the 480-hour cap according to the POA MOU. However, none of these officers have accrued more CT since 7/2/04. Apparently the SFPD is interpreting this provision of the POA MOU as limiting additional accruals, but not limiting the actual balance of CT. The CT balance of these officers is now more valuable than it was before their promotions because it will be paid at the pay rate of their promotion if cashed out.

We compared this policy with the MOU for police officers at the rank of captain and above in the City of Los Angeles. These ranks are not eligible for OT payment or the accumulation of CT in lieu of OT payments in Los Angeles. The MOU for these officers provides that:

“Any employee, who, upon promotion to captain, has an accumulated overtime balance shall be compensated, in cash, for such overtime. Such compensation shall be at the rate of compensation prior to promotion.”³⁷

This policy helps to prevent the inflationary effect of carrying forward CT balances earned at a lower pay rate that can be cashed out at a higher pay rate at a later date.

³⁶ POA MOU effective 7/1/03, page 28

³⁷ Los Angeles Police Command Officers Assoc, MOU, page 10

These same liberal CT policies enjoyed by the top managerial staff of the SFPD, do not apply to the rank and file. The Fair Labor Standards Act (FLSA) sets a limit of 480 hours of accrued CT for public safety officers. In recognition of the need for public safety officers to respond to emergency situations, this limit is twice the FLSA 240-hour limit of CT accrual for all other public employees.

The current POA MOU establishes a limit on CT accrual for officers in ranks below those of deputy chief, commander and captain. There were no limits on CT accrual in prior MOU's.

“Employees with more than 480 hours of compensatory time-off as of July 1, 2003 may not accrue additional compensatory time-off until and unless their compensatory time-off balances fall below 480 hours.”³⁸

The rank and file of the SFPD is being held to a limit on the accrual of CT by the MOU, while the top managerial staff is not.³⁹ Such a discrepancy is unlikely to contribute to the morale of the rank and file.

One possible justification for these compensation practices, despite FLSA exemptions and the policies of other jurisdictions, might be that demands are made on these ranks of the SFPD that are unique. Once again, we turn to the Budget Analyst's report for confirmation that there is no evidence that the top managerial staff of the SFPD have greater responsibilities than their counterparts in other jurisdictions.

Phase II of the Budget Analyst's management audit contains an analysis of management staffing and supervision of the SFPD. (see Appendix E) The Budget Analyst surveyed the 10 largest cities in California regarding their police staffing and supervision. Seven jurisdictions responded. Based on these responses, the Budget Analyst concluded, "...it appears that the San Francisco Police Department has sufficient supervisory positions to manage line staff...when comparing San Francisco to other jurisdictions."⁴⁰ When the Budget Analyst breaks down the analysis to the level of district police stations, the comparisons hold: "...although the district stations in San Francisco have relatively high supervisor to staff ratios, they still fall within the range of supervisor to staff ratios in other comparable jurisdictions"⁴¹. (see Table A1-5 in Appendix E)

We acknowledge that this analysis was done over 6 years ago, during a period of an expanding economy and plentiful public budgets. However, we believe that staffing levels in the SFPD have been fairly constant since being mandated by the voters in 1994.⁴² Since other jurisdictions in California have experienced the same negative economic conditions as San Francisco, we believe that it is reasonable to assume that their staffing levels are static as well.

Compensation of Top Managerial Staff

We suggest that these compensation practices be considered in the context of the base salaries of other public safety officers in San Francisco. The following are the base salaries of the top managerial staff of the SFPD and the comparable salaries of two other public safety departments in San Francisco.

³⁸ POA MOU effective 7/1/02, page 27

³⁹ However, SFPD informs us that the Department is not permitting any officers, regardless of rank, to accrue more CT if they have a CT balance of 480 hours.

⁴⁰ Appendix E, Budget Analyst's management audit, Phase II, May 1998, page 8

⁴¹ *Ibid.*, page 9

⁴² City Charter, Section 4.127

Annual Base Salaries FY 04-05*								
Police			Fire			Sheriff		
Job Code	Job Title	Salary	Job Code	Job Title	Salary	Job Code	Job Title	Salary
Q-82	Captain III+	131,040	H-30	Captain	98,098	8312	Sheriff's Captain**	106,860
488	Commander	146,120						
489	Commander II	151,944						
490	Commander III	154,882	H-50	Asst Chief	136,110	8314	Chief Deputy Sheriff**	117,806
402	Deputy Chief III+	190,580	H-51	Asst Deputy Chief II**	145,834	8315	Asst Sheriff**	113,152

*Highest rate, Compensation Manual FY 2004-05

**Not eligible for overtime payments

+Although lower grades theoretically exist, none are currently occupied according to the Annual Salary Ordinance, FY 04-05

In every case, the salaries of police are higher than their counterparts in other public safety departments. Furthermore, the majority of comparable job titles in other departments are exempt from overtime payments, whereas all top managerial staff in the SFPD are eligible for overtime payments.

In addition to their base salaries, top managerial staff as well as all SFPD sworn officers represented by the POA are eligible for many different premium payments. For example:

- “Effective July 1, 2004, employees shall receive a one percent adjustment to their regular rate of pay in recognition of mandated, specialized training dealing with emergencies involving terrorism and bio-terrorism.”⁴³ (The Controller anticipated that this expense would be funded by the City when the MOU was approved: “If Federal Homeland Security grants can cover the cost, the premium will be excluded from the City’s total compensation figure in FY 2004-05 only. Given our current understanding of these grants it is unlikely that Federal funding will be secured and we have therefore included the premium in the total compensation calculations.”)⁴⁴
- “Employees who have completed twenty-five years or more of service as a sworn member of the Department...shall receive 2% retention pay.”⁴⁵ “Effective July 1, 2004, the qualifying years of service under this provision shall be lowered to twenty-three years or more of service...”⁴⁶ The Controller estimated that the cost of this Retention Pay provision would range from \$665,000 to \$670,000 in FY 04-05.⁴⁷
- Effective 7/1/04, members of the POA received a new uniform allowance of \$750 per year, as provided by the current POA MOU.

The Fire and Sheriff’s Departments also receive premium payments. These premium payments may even be equivalent to those in the SFPD. We do not have the analytical resources to conduct such a complete

⁴³ POA MOU, effective 7/1/03, page 32

⁴⁴ Memo from Ed Harrington to Clerk of the Board of Supervisors RE POA MOU, 9/10/03

⁴⁵ Ibid., page 30

⁴⁶ Ibid., page 31

⁴⁷ Memo from Ed Harrington to Clerk of the Board of Supervisors RE POA MOU, 9/10/03

comparison. We mention these forms of premium pay so the reader understands that base pay is not the sole measure of compensation of public safety officers.

In addition to these and other forms of premium pay, the top managerial staff in the SFPD are assigned a vehicle “for transportation to and from an employee’s place of residence”⁴⁸ in accordance with Administrative Code 4.11(b)(4). The SFPD provides maintenance and fuel for these vehicles.⁴⁹ The SFPD has provided a list of 83 members of the SFPD (exclusive of Airport staff) who are assigned vehicles “for transportation to and from [their] residence.” (see Appendix F)

Although Administrative Code 4.11(b)(4) specifically provides for such use by a few City departments, including SFPD, it sets limits on the number of vehicles assigned for this purpose: “...and provided further that the number of vehicles so exempted shall not exceed: ...San Francisco Police Department: 33.”⁵⁰ In other words, the number of City owned vehicles assigned to individual members of the Department currently exceeds the number provided by the Administrative Code by 50 vehicles.⁵¹

The value of this benefit increases as the cost of fuel increases. However, the cost of this benefit cannot be measured solely by the cost of maintenance and fuel. The opportunity cost of tying up a limited supply of vehicles by assigning them to an officer who has sole use of the vehicle should also be taken into consideration. The SFPD has a limited number of vehicles. Those assigned to specific officers are not available for other uses.

The series of investigative articles published by the Chronicle in 2002 supplies us with a specific example of such potential opportunity cost: “San Francisco inspectors must vie to use a limited number of cars from a centralized motor pool. At times, some inspectors said, cars have been unavailable.”⁵² The Chronicle quotes inspectors in the SFPD as saying that a shortage of vehicles is a factor in their inability to investigate and solve crimes. We don’t know if this continues to be a problem in the SFPD. We use it only as an example of how vehicles are at a premium in the SFPD.

Concluding this section of our report, we point out that the top managerial staff are well compensated in comparison with other public safety officers in San Francisco and that they receive other benefits, such as a vehicle for their personal use for which all operating expenses are paid. These factors should be taken into consideration when negotiating the continuation of overtime payments and the maintenance of compensatory time balances that are 2.7 times greater⁵³ than other officers and the FLSA standards.

Compensatory Time Balances of Rank and File Officers

We also received a complaint from a citizen alleging that police officers are being permitted to accrue CT over the 480-hour limit of CT accrual in the current POA MOU. Recall that the current POA MOU limits CT accrual to 480 hours (except for the ranks of deputy chief, commander, and captain): “Employees with

⁴⁸ SF Administrative Code 4.11(b)(4)

⁴⁹ Source: Letter from SFPD to Civil Grand Jury, 1/25/05

⁵⁰ SF Administrative Code 4.11(b)(4)

⁵¹ SFPD is aware of the limitations in the Administrative Code on the number of vehicles assigned for transportation to and from the residence of the officers. However, they believe that this practice is justified by “the public safety and emergency response nature of the SFPD.”

⁵² “Where solving crimes takes priority”, SF Chronicle, May 21, 2002

⁵³ 1300 hours/ 480 hours = 2.7

more than 480 hours of compensatory time-off as of July 1, 2003 may not accrue additional compensatory time-off until and unless their compensatory time-off balances fall below 480 hours.”⁵⁴

We found the citizen’s allegation to be substantially incorrect.

**SFPD
CT Balances => 480 hours***

	7/2/2004	12/17/2004	Difference
Number of Sworn Officers below the Rank of Captain	240	238	2
Number of Hours of Accrued CT	180,248	176,181	4,067

*Source: Controller's Office

Although the number of rank and file officers with CT balances of 480 hours or more has decreased very little in the past six months, their balances have decreased during this period by 4,067 hours. Two hundred thirty-eight sworn officers below the rank of captain have CT balances of 480 hours or more as of 12/17/04. This is approximately 10% of the budgeted positions in those ranks in the current fiscal year.⁵⁵ By comparing detailed reports for these two points in time, we found 17 rank and file officers with 480 hours or more of CT time on 7/2/04 that increased their CT balances during this period, in violation of the MOU.

However, we remind the reader that the City’s liability for accrued CT in the SFPD is enormous and remains a concern. As we reported earlier, the total of all CT balances of police officers was 514,452 hours as of 12/17/04. We must also repeat that the value of these hours—and therefore the costs to the City--increases when officers receive a pay increase, which is likely given the provisions of the MOU regarding salary increases in the next two fiscal years.

Therefore, we compared the ability of police officers to retain their CT balances indefinitely with other jurisdictions. San Jose, for example, has negotiated elaborate procedures for limiting CT balances of police officers to 240 hours. (see Appendix G) These procedures conclude with the Department’s ability to “buy down” outstanding balances of CT at current pay rates. Such options should be explored for the SFPD in order to limit the City’s liability for CT balances.

The SFPD should also understand that the law permits the Department to require officers to use their CT balances. The United States Supreme Court ruled in *Christensen v. Harris County* that the county could order the deputies to use their comp time.⁵⁶ We acknowledge that CT use frequently requires OT coverage by substitute officers. However, these costs should be balanced with the long-term and inflationary costs associated with unlimited CT accrual. We also acknowledge that Section 4.8.A. of the MOU requires the City to give written notice of changes of “matters within the scope of representation” and obligates the City to meet and confer with bargaining agents regarding such changes.

⁵⁴ POA MOU effective 7/1/02, page 27

⁵⁵ Annual Salary Ordinance, FY 04-05; budgeted positions of sworn officers below captain = 2,463

⁵⁶ *Christensen v. Harris County* 529 U.S. 576 (2000)

General Compensation Issues

In the course of investigating the specific complaints of citizens, we learned about a few unrelated compensation issues in the SFPD. As noted earlier, the Budget Analyst's management audit of the SFPD made 76 recommendations and estimated cost savings of \$15.3 million if recommendations were fully implemented. We have referred to some of their recommendations in our report. There are also a few that have been implemented:

- The minimum of overtime hours that an officer must be paid—regardless of the number of hours worked--when called in for an unscheduled shift has been reduced from 10 to 4 hours in the current POA MOU.
- Senior officers and sergeants receive a 2% additional premium to work night duty assignments. This premium motivates senior officers to work the more difficult night shifts that they would otherwise avoid because the MOU provides for shift selection on the basis of seniority. This premium was added to the current MOU in response to the recommendation of the Budget Analyst.
- San Franciscans recently voted to replace some clerical/administrative positions with civilian employees who receive less compensation than the sworn officers they will replace without reducing the number of officers available for public safety assignments.⁵⁷

However, many other important recommendations have yet to be acted upon. They are too numerous to mention here. We will describe a single recommendation from the Budget Analyst's management audit that has not been implemented as an example of the remaining opportunities for cost reduction.

Police officers in district stations work four-day, ten-hour shifts each week (known as 4/10 schedule). If the SFPD were to return to five-day, eight-hour shifts (known as 5/8 schedule) productivity could be increased or staffing reduced without decreasing productivity. Here is a brief sampling of the ways in which the 4/10 schedule reduces productivity and increases costs according the Budget Analyst's analysis:

- 4/10 schedule results in higher than necessary overtime expenditures for special events and court appearances because it is more likely that officers will be called in for such duty on their regularly scheduled days off.
- 4/10 schedule results in less police coverage than provided by a 5/8 schedule. If an officer on a 4/10 schedule takes a day off, his/her total hours worked during that week is reduced by 10 hours, compared to 8 hours under the 5/8 schedule.

The Budget Analyst estimated that implementation of a 5/8 schedule at district stations would provide the equivalent of 40 additional officers at no additional cost.⁵⁸ We have verified that these 4/10 schedules continue to the present time. Since the consequences of these schedules on staffing are inherent to the schedule, we believe that the analysis is still relevant.

We also suggest that the data elements used in salary surveys for the purposes of determining salary increases be expanded to include all forms of compensation for which all members of the bargaining unit are eligible. We understand that a change in the definition of the salary surveys would not be possible until the

⁵⁷ Section 4.127, City Charter

⁵⁸ Section 2, Budget Analyst's Management Audit, Phase I, December 1996

MOU is renegotiated. At the present time, the MOU specifies that, “The salary survey shall measure total compensation based on the following data points:

- Maximum monthly salary for the rank of police officers (Q2);
- Longevity pay;
- Uniform pay/allowance;
- Education incentives (e.g., POST);
- Employer payment of mandatory employee retirement contributions and retirement supplements;
- Maximum monthly total employer contribution for the following insurance benefits: health, dental, vision, LTD and life insurance.”⁵⁹

Floating holidays are an example of a benefit awarded to all officers that is not included in the salary survey. The POA MOU of 7/1/03, awarded 5 additional floating holidays for officers working five-days per week, 8 hours per day and 4 additional floating holidays for officers working four-days per week, 10 hours per day. The Controller reported to the Board of Supervisors that, “...costs are likely to increase due to the floating holiday provisions.”⁶⁰

The Department of Human Resources reported in an SFStat meeting (Mayor’s management meeting with selected department heads) on November 5, 2004, that the City of San Francisco is presently awarding all City employees an average of 10 floating holidays (in addition to 11 legal holidays) per year. They also reported that the average number of floating holidays awarded by other Bay Area municipalities is only 1.4 days per year. Many of the floating holidays in San Francisco were awarded during the past two years as a trade off for employees’ 7.5% contribution to retirement plans. In the case of the POA, members of that bargaining unit received both additional floating holidays and provision for salary increases. There is no provision in the POA MOU for the number of floating holidays to decrease as salaries are increased.

This discrepancy between our local policies and those of other cities may help to explain the difference between our average costs of police enforcement and those of comparable jurisdictions reported earlier. According to the 2000 Federal Bureau of Justice Statistics our average cost of police enforcement per resident is \$329.21, compared to \$232.50 for the 6 comparable jurisdictions used by the MOU for salary setting. This suggests that present methods of comparing salaries for the purposes of salary setting, does not capture full costs.

We urge the SFPD and our elected representatives to consider these opportunities for reducing costs in the SFPD. We believe that some cost reductions can be achieved without jeopardizing the public’s safety. The current economic climate represents both an opportunity and an obligation to consider all alternatives to reducing services to the public. Service in the SFPD remains an attractive employment opportunity that is highly competitive with alternate forms of employment for individuals with the qualifications needed to apply.

⁵⁹ POA MOU effective July 1, 2003, page 24

⁶⁰ Memo from Ed Harrington to the Board of Supervisors, September 10, 2003

Findings and Recommendations

Findings

1. San Francisco spends more per resident on police protection than other comparable jurisdictions in California. Likewise it has more officers per resident and per square mile of geographic area than these jurisdictions.
2. Top managerial staff of the SFPD are paid OT and accrue CT in lieu of OT payments, although federal labor law exempts such positions from OT and does not mandate CT. In contrast, most comparable jurisdictions do not pay OT/CT benefits to most of these positions, nor do other public safety departments in San Francisco.
3. The POA MOU sets no limit on the CT accrual of top managerial staff until 6/30/05. When the current MOU expires, top managerial staff will still have a CT limit that is 2.7 times greater than rank and file officers.
4. Top managerial staff of the SFPD are better compensated than comparable job titles in other City public safety departments.
5. All officers of the SFPD, including the top managerial staff, have received greater salary increases than other City employees in a time of budgetary constraint.
6. Seventeen officers below the rank of captain with CT balances of 480 hours or more on 7/2/04 were permitted to accrue more hours of CT during the six-month period ending 12/17/04, in violation of the CT cap established by the MOU.
7. The SFPD is assigning vehicles to high-ranking officers for transportation to and from their homes in excess of the number of vehicles allowed by the City's Administrative Code in apparent violation of the City's policies.
8. SFPD CT policies and practices are more generous than other City departments and other comparable jurisdictions. Although CT banks are being managed by the SFPD, they remain a large liability for the City.

Recommendations

1. The City should negotiate with the POA for elimination of OT/CT benefits for top managerial staff and consider less costly alternatives such as limited administrative leave as provided by other jurisdictions and City departments.
2. If top managerial staff continue to be eligible for CT accrual, the City should negotiate limits in the MOU on their accrual comparable to rank and file officers.

3. The City should negotiate to pay CT balances prior to the effective date of promotions to limit the inflationary effect of carrying CT balances for long periods of time.
4. The SFPD should manage the CT banks with the objective of minimizing the long-term liability of large CT balances. Such management must include enforcement of CT caps. The law allows that such management may include requiring officers to use their accrued CT.
5. Given that rank and file officers will have had four years to reduce their CT balances to 480 hours by the end of the current MOU, the City should negotiate for the next MOU, some penalty for continuing to maintain a CT balance greater than 480 hours, such as forfeiture of hours above 480.
6. The SFPD must manage their vehicle fleet in accordance with Administrative Code 4.11 as well as optimize the use of this valuable resource for police protection.
7. The City should negotiate to include all forms of premium pay available to all officers in comparisons for the purposes of salary setting.
8. The Board of Supervisors should request that the Budget Analyst update the management audits of 1996 and 1998 regarding SFPD policies and practices and make recommendations for opportunities for cost savings.

Required Responses (Please reply to those Findings and Recommendations that are within your jurisdiction.)

SFPD – 60 days

Department of Human Resources – 60 days

Board of Supervisors – 90 days

Mayor – 60 days