



SEBA NEWS FLASH

PLACE ON BRIEFING BOARD

12 Hour (80 hour work period) **Shift Survey**

From President Bill Abernathie:

On June 23, 2010, the Office of the Sheriff noticed SEBA with their intent to go back to 8 hours shifts for all Jail Facilities effective August 28, 2010 as a cost savings measure to avoid potential layoff of Safety members.

Presently, under the MOU the Department must provide SEBA with a two pay-period notice before going back to the 8 hour schedule. The department has informed SEBA that they would like to implement a 12 hour (80 hour work period) schedule for all jail facilities however this schedule has not been previously negotiated with SEBA.

Station Director's for the Jail Facilities are conducting a survey to determine what schedule the membership would prefer to work. The survey will consist of the following questions:

Do you want to work an 8 hour (80 hour work period) schedule?
Yes or No

Do you want to work a 12 hour (80 hour work period) schedule?
Yes or No

Do you want to work a 12 hour (80 hour work period) schedule for three years with a *Sunset Clause* reverting back to the existing schedule? (This is SEBA's Proposal)
Yes or No

These surveys are due back to SEBA by 5:00 pm, Thursday, July 8, 2010.

(Continued)



SEBA NEWS FLASH

PLACE ON BRIEFING BOARD

Included in this FLASH are copies of the following letters that have been generated since the beginning of this discussion process. Please take time to read them and make yourselves familiar with the chain of events so you have a clear understanding of what has transpired.

- Letter from Sheriff's Department to President Abernathie – June 16, 2010
- Letter from SEBA Law Firm to Undersheriff Abernathy – June 17, 2010
- Letter from SEBA Law Firm to Undersheriff Abernathy – June 21, 2010
- Letter from Sheriff's Department to President Abernathie – June 23, 2010

**THIS SEBA FLASH ALONG WITH ALL CORRESPONDING DOCUMENTS IS
POSTED ON THE SEBA WEBSITE.**

This News Flash consists of 9 pages.



ROD HOOPS, SHERIFF - CORONER



June 16, 2010

William Abernathie, President
Safety Employees' Benefit Association
735 E. Carnegie Dr. Suite 125
San Bernardino, CA 92408

Re: Sheriff's Department 2010/2011 budget

Dear Mr. Abernathie,

As you are aware, the County CAO's proposed 10/11 budget does not provide funding for the Safety/Safety Management Unit's 2010 salary increases. The burden of these salary increases falls on the Sheriff's Department's fiscal year 10/11's overall budget. Given that the County will not fund these pay increases, the Department will implement the following operational changes in an attempt to mitigate a significant shortfall in the Department's budget.

- Effective July 3, 2010, all patrol operations will function on a 12-hour schedule with an 80-hour work period.
- Unit members assigned to the Detentions and Corrections bureau and outlying stations who are currently working 12-hour schedules will be changed from an 84-hour to an 80-hour work period.
- As soon as practicable, the Department will eliminate a significant number of take-home vehicles. Only unit members with county-wide roll-out responsibilities will be permitted to take home County units.

Laura Ornelas, Human Resources Officer will contact you to discuss whether SEBA is interested in discussing the impact of the above decisions. Given the short time frame of this proposed budget impact, we are available to meet with you this week.

As a courtesy, please be informed that the Department will closely review the utilization of on-call pay. The Department needs to take all steps to minimize this catastrophic impact to its budget while minimizing the impact to public safety. We will keep you informed of any additional necessary changes.

Feel free to contact me if you have further questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Bill Abernathie".

Bill Abernathie
Undersheriff

cc: Andrew Lamberto, Director, Human Resources
Bob Windle, Assistant Director, Human Resources
Cynthia O'Neill, Deputy County Counsel
Laura Ornelas, Human Resources Officer

SILVER, HADDEN, SILVER, WEXLER & LEVINE
A PROFESSIONAL LAW CORPORATION

STEPHEN H. SILVER
WILLIAM J. HADDEN
SUSAN SILVER
ROBERT M. WEXLER
RICHARD A. LEVINE
KEN YUWILER
ELIZABETH SILVER TOURGEMAN
HOWARD A. LIBERMAN
MICHAEL D. SCHWARTZ
MICHAEL SIMIDJIAN

1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1488
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKER'S COMPENSATION
OF COUNSEL
STEVEN E. KAYE

June 17, 2010

San Bernardino Sheriff's Department
Office of Sheriff-Coroner
Attn: Bill Abernathy, Undersheriff
655 East Third Street
San Bernardino, CA. 92415

Via Fax and U.S. Mail

Re: Sheriff's Department 2010/2011 Budget;
June 16, 2010 Notification of Changes on
Hours and Working Conditions

Dear Undersheriff Abernathy:

As you are aware this office represents the legal interest of the San Bernardino County Safety Employees' Benefit Association (SEBA) and this letter is written on behalf of such employee organization respecting your correspondence dated June 16, 2010 announcing the decision by the Sheriff's Department to implement "operational changes" in an effort to address an asserted shortfall in the Department's budget.

I. Work Schedule Change

According to your correspondence the Department will implement, effective July 3, 2010, a change of work schedule for all patrol operations wherein such personnel will be subject to a 12 hour work schedule. Such an alteration of work hours from the existing ten hour work day (4/10) is a clear violation of the 2009-2012 Memorandum of Understanding between the County and SEBA where: 1.) Appendix D to the M.O.U. does not vest the Department with the authority to change the working hours of affected personnel to a 12 hour work shift, rather the contractual language provides solely for change to a "8-hour shift schedule", provided the Department also satisfies certain conditions precedent; 2.) the Full Understanding Clause of the M.O.U. confirms that the express provisions of the Agreement constitute the "complete and total contract" respecting wages, hours and other terms and conditions of employment and that the parties are precluded from compelling the reopener of such agreement; and 3.) Appendix D to the M.O.U. requires advance notification by the Department of no less than two (2) pay periods prior to discontinuation of the 4/10 work schedule.

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San Bernardino Sheriff's Department
Office of Sheriff-Coroner
Attn: Bill Abernathy, Undersheriff
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The California Supreme Court in *Glendale City Employees' Association, Inc. v. City of Glendale*, (1975) 15 Cal.3d 328, 124 Cal.Rptr. 513, reiterated the binding nature of a Memorandum of Understanding, as follows:

Why negotiate an agreement if either party can disregard the provisions? What point would there be to reducing it to writing, if the terms of the contract were of no legal consequence? Why submit the agreement to the governing body for determination, if the approval were without significance? What integrity would be left in government if government itself could attack the integrity of its own agreement? The procedure established by the act would be meaningless if the end product, a labor management agreement ratified by the governing body of the agency, were a document that was itself meaningless? . . . Successful bargaining rests on the sanctity and the legal viability of the given word. (*Glendale, supra*, 15 Cal.3d at 336-337.)

Consequently, the Department is contractually precluded from implementing the change of work schedule respecting all patrol operations as set forth in your June 16 advisement.

As a separate and independent issue, contrary to the implication in your letter that the Department need only discuss the "impact" of the above decision respecting changes in work hours, it is clearly established that a change of work hours are a *mandatory* subject of bargaining. *Huntington Beach Police Officers Association v City of Huntington Beach* (1976) 58 Cal App3d 492; *Firefighters Union v City of Vallejo* (1974) 12 Cal 3d 608. See Gen. Government Code Section 3504.5. Moreover, in accordance with the Employee Relations Ordinance, Section 13.0210 (b)(1)(2) the County is obligated to engage in "meet and confer" regarding any proposed changes within the scope of representation, which would include Mediation of any disputed issues. The "scope of representation" is defined by Government Code Section 3504 as including, but not limited to wages, hours and other terms and conditions of employment.

II. Change of Work Period

According to your advisement in your June 16, 2010 correspondence, unit members assigned to Detentions and Corrections bureau and outlying stations who are currently working 12-hour schedules will be changed from an 84-hour to an 80-hour work period. However, pursuant to a reasonable construction of the contractual language of the current M.O.U., such employees are subject to a 84-hour work period where the contract provides that: "For employees assigned to a twelve (12) hour shift schedule, employees will normally be scheduled to work seven (7) twelve (12) hour shifts in a fourteen (14) day pay period." 2009-2012 M.O.U. Overtime

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San Bernardino Sheriff's Department
Office of Sheriff-Coroner
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Section at p. 34. Based upon such language, the appropriate contractual work period would be a 84-hour work period.

Therefore, as previously set forth, any change of work hours would constitute a breach of the Memorandum of Understanding and as an independent proposition would comprise a mandatory subject of bargaining under Government Code Section 3500 et seq, 3504, 3504.5 and cases construing the Myers-Milias-Brown Act as well as subject to the full spectrum of meet and confer rights under the Employee Relations Ordinance.

III. Elimination of Significant Number of Take-Home Vehicles

Your correspondence to SEBA further advised that "as soon as practicable, the Department will eliminate a significant number of take-home vehicles. Only unit members with county-wide roll-out responsibilities will be permitted to take home County units". Such a directive would constitute a breach and violation of the Grievance Settlement Agreement executed in March 2006 between the County and Michael Wirz and SEBA regarding the Sheriff's Department Assignment of Department Vehicles policy. Specifically, the Agreement required the Department to amend the policies regarding assignment of Department vehicles wherein safety personnel in certain ranks assigned unmarked vehicles owned by the County who utilize that vehicle in the normal course of their assignment shall be authorized to use that vehicle for the commute to and from work except in particular circumstances not otherwise applicable herein. To the extent that the Department now seeks to reduce a significant number of take-home vehicles, the represented members of the Association otherwise eligible to take home their County vehicle will be denied a valuable benefit and condition of employment. In addition, such a change of working conditions would constitute a mandatory subject of bargaining under Government Code Section 3500 et seq, 3504, 3504.5 and cases construing the Myers-Milias-Brown Act as well as subject to complete meet and confer rights under the Employee Relations Ordinance.

Based upon the foregoing, a demand is hereby made that the Sheriff's Department refrain from implementation of the foregoing changes of hours and conditions of employment contrary to the legal obligations set forth herein.

Very truly yours,



RICHARD A. LEVINE

cc: William Abernathie, President SEBA
Mike Eagleson, Chief of Labor Relations SEBA

SILVER, HADDEN, SILVER, WEXLER & LEVINE
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1428 SECOND STREET
SANTA MONICA, CALIFORNIA 90401
MAILING ADDRESS
POST OFFICE BOX 2161
SANTA MONICA, CALIFORNIA 90407-2161
TELEPHONE (310) 393-1488
TELEPHONE (323) 870-0900
FACSIMILE (310) 395-5801

WORKER'S COMPENSATION
OF COUNSEL
STEVEN E. KAYE

June 21, 2010

San Bernardino Sheriff's Department
Office of Sheriff-Coroner
Attn: Bill Abernathy, Undersheriff
655 East Third Street
San Bernardino, CA. 92415

Via Fax and U.S. Mail

Re: Sheriff's Department 2010/2011 Budget;
June 16, 2010 Notification of Work Period Change

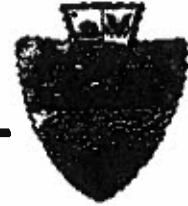
Dear Undersheriff Abernathy:

In accordance with our correspondence dated June 17, 2010, may this serve as a formal demand on behalf of the San Bernardino County Safety Employees' Benefit Association (SEBA) for the Sheriff's Department to meet and confer with authorized representatives of the Association respecting the Department's decision to change the work period from 84-hour to 80-hour period as to those unit members assigned to Detentions and Corrections bureau and outlying stations who are currently working a 12-hour schedule. Consistent with our legal position previously set forth in our June 17 letter, the Association's participation in such meet and confer is without prejudice or waiver of the Association's contention that such change of work period is a violation of the current Memorandum of Understanding between the parties.

Very truly yours,

RICHARD A. LEVINE

cc: William Abernathie, President SEBA
Mike Eagleson, Chief of Labor Relations SEBA



ROD HOOPS, SHERIFF-CORONER

June 23, 2010

William Abernathie, President
Safety Employees' Benefit Association
735 E. Carnegie Dr. Ste #125
San Bernardino, CA 92408

RE: Detentions and Corrections Bureau Schedule Change

Dear Mr. Abernathie:

As you know, on June 16th of last week the Department proposed a 12-hour work schedule for our Detentions and Corrections Bureau that could help lower expenses for the coming fiscal year. We believe that reducing the amount of hours worked in a pay period from 84 to 80 will help us meet our budget allotment for FY2010-11 and avoid potential layoffs of Safety members.

However, we received a letter the following day from SEBA's attorney indicating the Department could not implement the proposed schedule because the Overtime Article in the MOU states: *"For employees assigned to twelve (12) hour shift schedule, employees will normally be scheduled to work (7) twelve (12) hour shifts in a fourteen (14) day period."* The Department, of course, disagrees that employees must always be scheduled to work 12-hour shifts in this manner. But, given the urgency of the budget situation, we must implement a workable schedule that helps us avoid layoffs as soon as possible.

As such, please be advised that effective August 28, 2010, all Safety and Safety Management members—excluding Lieutenants—that are assigned to work in the Detentions and Corrections Bureau, as well as members assigned to 3/12 - 84 hour work schedules at Type I Jail facilities, will be assigned to an 8-hour per day/5 days per week work schedule. Accordingly, if SEBA membership elects to agree to 12-hour shifts with 80 hours per pay period (as the Department desired to implement), we would be agreeable to such scheduling and would need to be notified as soon as possible.

This letter will serve as the required notice regarding such schedule changes as specified in the Pay Period article in the MOU.

June 23, 2010
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Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Abernathy". The signature is written in a cursive, flowing style.

**Bill Abernathy,
Undersheriff**

**cc: Cynthia O'Neill, Deputy County Counsel
Bob Windle, Asst. Director Human
Laura Omelas, Human Resources Officer
Sheriff's Executive Staff**