



SEBA NEWS FLASH

PLACE ON BRIEFING BOARD

PROPOSED 12-HOUR SHIFTS

From President Bill Abernathie:

On June 16, 2010, SEBA was notified by the Office of the Sheriff, the Department plans to implement a 12-hour schedule with an 80-hour work period for patrol operations effective July 3, 2010. This was one of three actions the Department was planning on implementing for the purpose of cost savings measures to avoid potential layoffs for Safety members.

SEBA is not opposed to the Sheriff's Department implementing 12-hour shifts for patrol operations, however to protect the integrity of the "meet and confer" process, it is important to adhere to the language of the M.O.U. On April 19, 2010, SEBA and Sheriff Executive staff members met to discuss a trial period test program for 12-hour shifts at the Twin Peaks and Barstow stations. With the understanding the Sheriff's Department had the absolute right to implement an "8 hour" schedule with a (2) pay period notification; I felt the membership would be willing to examine the feasibility of the 12-hour shift for patrol operations. A 90 day test period was established, beginning May 22, 2010.

The notice received from the Sheriff's Department on June 16, 2010, stated the following; "Effective July 3, 2010, all patrol operations will function on a 12-hour schedule with an 80-hour work period." This is contrary to the agreement reached on April 19, 2010, establishing a test period. Even if the Department was legally able to impose a schedule that had not been agreed to during the "meet and confer" process, they still would not be able to implement the schedule until after a (2) pay period notification.

Patrol station representatives will be conducting surveys of all patrol deputy sheriffs to determine their desire to work a 12-hour schedule with an 80 hour pay period or an 8 hour work schedule with an 80 hour pay period. If the results of the survey indicate a desire to change to the 12-hour work schedule, SEBA will not block the Departments desire to implement that type of schedule on July 17, 2010 or sooner if applicable. Please participate in the survey process so SEBA can have a clear picture of which schedule patrol personnel would want to work.

(Continued)



SEBA NEWS FLASH

PLACE ON BRIEFING BOARD

Page 2

Included with this FLASH are copies of the following letters that have been generated since the beginning of this discussion process on April 19, 2010. Please take the 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 – April 20, 2010
- Letter from Sheriff's Department to President Abernathie – June 16, 2010
- Letter from SEBA Law Firm to Undersheriff Abernathy – June 17, 2010
- Letter from Sheriff's Department to President Abernathie – June 17, 2010

You will notice in the letter from the Sheriff's Department dated June 16, 2010, there are two other changes the Department was planning on implementing. Both of these items are addressed in our response letter dated June 17, 2010, from the Law Firm of Silver, Hadden, Silver, Wexler & Levine. I recognize the desire of the Sheriff's Department to implement cost-savings measures to make-up for the \$13 million the Board of Supervisors just cut from their budget, but it is also important to maintain the integrity of the "meet and confer" process. I will keep you informed as things develop.

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

This News Flash consists of 10 pages.



ROD HOOPS, SHERIFF-CORONER

April 20, 2010

William Abernathie, President
Safety Employees' Benefit Association

735 E. Carnegie Dr. Ste #125
San Bernardino, CA 92408

RE: 12-Hour Patrol Trial Schedule – Twin Peaks/Barstow Stations

Dear Mr. Abernathie:

On April 19, 2010, the Department and representatives of SEBA met to discuss the feasibility of a 12-hour shift for Deputies assigned to patrol. During our meeting it was determined that the Department will initiate a 4 month trial period of 12-hour shifts at the Twin Peaks and Barstow stations. The parties agreed that the Twin Peaks station will operate with six 12-hour shifts and one 8 hour shift per pay period and the Barstow station will operate with five 12-hour shifts and two 10-hour shifts per pay period on a trial basis for 120 days. It was agreed that the above trial schedules will start effective May 22, 2010. This scheduling practice will be reevaluated after the expiration of 90 days, and a final decision regarding the permanence of the schedule will be accomplished before the expiration of 120 days from May 22, 2010, approximately September 25, 2010.

During this trial period the Barstow and Twin Peaks stations will be staffed with only the number of deputies required to accommodate the 12 hour scheduling in order to accurately evaluate the scheduling. All deputies not required to effectuate the 12 hour scheduling will also be placed on 12 hour shifts and assigned other duties as determined by the Office of the Sheriff or his designee.

The parties also discussed situations in which a Deputy works in excess of 16 hours in a shift. The parties agreed that this would be a rare occurrence; however, pursuant to Department Policy 2/2.258- Usage of Overtime, a Deputy must have at least 8 hours of rest before the start of the next shift. The parties agreed that in such situations the Deputy's schedule will be adjusted to allow 8 hours of rest in between shifts and the Deputy will be allowed to work over to complete his regularly scheduled hours for that shift. However, if the Deputy requests to end at his or her normal time, he will be allowed to do so and the Department will only compensate the hours worked for that shift. The latter schedule accommodation will be allowed only at the request of the Deputy, and will not be suggested or mandated by management.

We will reconvene in September to discuss the outcome of the trial 12 hour schedules and whether the Department wishes to continue a 12-hour schedule and the feasibility of this scheduling at other stations. If so, the parties may agree to enter into a side letter agreement at that time. If the parties

cannot agree, the 12-hour schedules will cease at the Twin Peaks and Barstow Stations effective September 25, 2010.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Ornelas". The signature is fluid and cursive, with the first name "Laura" written in a larger, more prominent script than the last name "Ornelas".

Laura Ornelas
Human Resources Officer

cc: Bill Abernathy, Undersheriff
Glenn Pratt, Assistant Sheriff
Sheree Stewart, Deputy Chief
Bob Windle, Asst. Director Human Resources
Cynthia O'Neill, County Counsel



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,

Bill Abernathy
Undersheriff

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

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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
Page 2

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
Attn: Bill Abernathy, Undersheriff
Page 3

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



ROD HOOPS, SHERIFF-CORONER



June 17, 2010

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

RE: Patrol Operations Schedules – All Safety Unit Members

Dear Mr. Abernathie:

On May 22, 2010, the Office of the Sheriff met with SEBA representatives to discuss the possibility of taking patrol functions from a 4/10 schedule to a 12 hour schedule with an 80 hour pay period. The purpose of this was to free up Deputy Sheriffs to be redeployed to custodial facilities. By doing so, the Department would reduce the overtime burden, saving budgeted monies in an attempt to meet the contractual obligation of salary increases due to Safety employees.

On June 16, 2010, the Department notified SEBA of the desire to implement the 12 hour schedule with 80 hours per pay period at Patrol Operations. The Department wanted to use the 12 hour schedule to address the significant budget gap that salary increases have contributed to. This change would cause reassignments to Corrections and the Department would create a "float pool" for Corrections. Any members reassigned to the Corrections float pool would remain on an 80 hour per pay period schedule. Such changes are intended to avoid lay offs to Safety members. Our only motivation is to avoid layoffs, meet our budgeted allotment for FY 10/11 and not to compromise public safety.

Today I received of a letter from SEBA's attorney indicating that the Department could not implement a 12 hour schedule and cited that the contractual language provides solely for a change to an "8 hour" schedule. While we disagree with this assertion, given the urgency with which we have to address these budget issues, please be advised that the Sheriff's Department will be changing all schedules of Safety personnel assigned to patrol operations to 5 8-hour days per week schedules effective July 17, 2010 as specified in SEBA's letter dated June 17, 2010. However, if SEBA membership elects to agree to 12 hour shifts with 80 hours per pay period as the Department desired to implement, the Department would be agreeable to such scheduling effective July 17, 2010 and would need to be notified as soon as possible.

June 17, 2010
Page 2

This letter will serve as the required 2 pay period notice regarding such schedule changes as indicated in Appendix D of the Memorandum of Understanding. I will advise all command staff to notify all Safety members by midnight on June 18, 2010 of this change and to prepare schedules accordingly.

Please contact me if you have any questions.

Sincerely,



Bill Abernathy
Undersheriff

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