

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

183



FROM: Human Resources Department

SUBMITTAL DATE:
October 12, 2005

SUBJECT: Rejection of Advisory Arbitration Opinion

RECOMMENDED MOTION: That the Board of Supervisors reject the Arbitrator's Advisory Opinion and Award dated August 21, 2002, between the Riverside Sheriffs' Association and the County of Riverside.

BACKGROUND: The Human Resources Department and County Counsel are requesting that the Board formally reject an arbitration decision received in August of 2002. The issue in this case is *when* an employee is entitled to use earned compensatory time. There are two possible interpretations: 1) it can be used within a reasonable time, based on departmental needs and scheduling; or 2) it must be granted unless the absence would cause an "undue disruption to the Employer's operations." The case was brought by a Correctional Deputy, and heard by Arbitrator Michael Prihar on January 14, 2002 and an Advisory Opinion was issued on August 21, 2002. The ruling was applied to all RSA-represented employees.

Departmental Concurrence

(continued on Page 2)

Ronald W. Komers
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:	
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	NO
	Annual Net County Cost:	\$	For Fiscal Year:	2005-06

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: | **District:** | **Agenda Number:**

3.35

BACKGROUND (continued)

Arbitrator Prihar determined that the Department had breached the MOU and ordered that the County "cease and desist from denying employees use of comp time other than on those occasions where the resulting absences would create an undue disruption to the Employer's operations," based in part on *his* interpretation of the Fair Labor Standards Act (FLSA).

After Arbitrator Prihar issued his Advisory Opinion, both the 5th and the 9th Circuit Courts of Appeal have ruled on the same issue that was before Arbitrator Prihar. The 5th Circuit determined in 2003 that the FLSA "does not require a public employer to authorize comp-time use as specifically requested by an employee (subject to the undue disruption clause), but instead requires that the comp time be permitted within a reasonable period after the employee requests its use. " On May 24, 2004, the 9th Circuit agreed with the 5th Circuit, stating, "Joining the Fifth Circuit, we hold that the text of §207(o)(5) unambiguously states that once an employee requests the use of CTO, the employer has a reasonable period of time to grant the request." In his Advisory Opinion, Arbitrator Prihar had adopted the approach that an employee must be allowed to take time off when they request it unless it would create an "undue disruption."

The County followed Arbitrator Prihar's advice until the 9th Circuit Court ruling was issued. As a result of these federal Courts of Appeal decisions, however, Arbitrator Prihar's Advisory Opinion is contrary to the current interpretation of the law, and does not provide the Board of Supervisors correct advice. It is important that the County retain its ability to use a standard of reasonableness in scheduling planned absences, as opposed to the "undue disruption" standard.

Arbitrator Prihar also exceeded his jurisdiction by issuing an "advisory award" that is applicable to persons other than the grievant, Wayne Tillett. The MOU permits the Arbitrator to decide only the issue placed before him by the parties. The Board is authorized by the MOU to reject an Advisory Opinion in cases where the Arbitrator has exceeded his jurisdiction.

We recommend that the Board of Supervisors reject the attached Arbitrator's Advisory Opinion on the basis that:

1. The Arbitrator exceeded his jurisdiction under the MOU in issuing an order that applied to persons other than the grievant, Wayne Tillett; and
2. The Arbitrator's legal analysis contained in the Advisory Opinion was subsequently rejected by the federal Courts of Appeal as the proper interpretation of the *Fair Labor Standards Act* with respect to the scheduling of compensatory time off.

The Sheriff supports this recommendation.