



OFFICE OF THE COUNTY AUDITOR

Craig Glendenning, CPA
County Auditor

February 24, 2016

The Honorable Members of the County Council
The Honorable County Executive Allan Kittleman
Mr. Lonnie Robbins, Chief Administrative Officer
Mr. Gary Kuc, County Solicitor
3430 Courthouse Drive
Ellicott City, MD 21043

Dear Members, Mr. Kittleman, Mr. Robbins and Mr. Kuc:

In accordance with Section 212 of the Howard County Charter, I am calling to the attention of the County Council and the County Executive improper procedures which were discovered as a result of our investigation of an allegation by an employee of the Sheriff's Office regarding the inappropriate use of Union leave.

In August 2015, we met with a Lieutenant Deputy Sheriff (the Lieutenant) who alleged the following:

1. Union leave hours used in 2014 surpassed the 200 hours allowed per the agreement between the Howard County Sheriff and the Fraternal Order of Police Lodge 131, effective July 1, 2013 thru June 30, 2015.
2. A Sergeant, who is not a member of Police Lodge 131 (the Union), used Union leave to provide support to the Sheriff's campaign during the primary and general elections.
3. Union leave was used by employees of the Sheriff's Office to provide support to the Sheriff's campaign during the primary and general elections. This allowed the employees to avoid reducing their Annual and/or Personal leave balances, and gave the Sheriff an unfair advantage over his opposition.

BACKGROUND

There are eight agreements between Howard County Unions and the County Administration. All of the Union agreements have sections concerning Union (Lodge) Leave. Among other things, all of the agreements stipulate the approval process, and the number of annual paid union leave hours to “conduct union business.” Only two of the eight agreements define “union business,” which is “for unit members to attend training and attend Union sponsored events, and in addition, to bridge the time needed in Presidents monthly work schedule where Union business may be out of town.”

The Deputy Sheriffs and Deputy Corporals in the Sheriff’s Office are State employees and their Union agreement is with the Sheriff and not the County Administration. However, because the agreement is dependent on County funding for salaries and benefits, the Union must also negotiate with the Administration. The County Council must approve the funding.

According to the Office of Law, “the Auditor has the authority to investigate the allegations in the complaint insofar as they relate to funds provided by the County to the Sheriff’s Office, and those allegations having a nexus to expenditure of funds” (See the Office of Law’s full opinion in Appendix A).

Other than some nominal grant funding, the County funds 100% of the operations of the Sheriff’s Office. The FY2015 budget for the Sheriff’s Office was \$7,291,017, of which \$5,823,903 (80%) was for personnel costs. Because the County provides the funding for all Sheriff’s Office employee leave and benefits, any allegations of abuse may be investigated by the County Auditor. We relied on the following resources for our investigation:

- ADP payroll records;
- Sheriff’s Office payroll reports and leave slips;
- The agreement between the Sheriff and the Union;
- The Office of Law;
- Interviews of the Sheriff and his staff.

FINDINGS

According to the Union Agreement, "all use of Lodge leave must be approved in writing, in advance, by the Sheriff or his/her designee." Union leave is generally requested by the union member to the Lodge President, who then asks the Sheriff for verbal approval. Once the verbal commitment has been received, a leave slip is prepared. Since the leave has been approved verbally by the Sheriff, the employee's supervisor signs the leave slip to officially approve the leave. The leave is tracked by the timekeeper, who keeps copies of the leave approval slips.

As a result of our investigation we determined the following:

1. According to Section 11.11(a) of the Agreement, "The Sheriff shall annually grant HCPO, FOP Lodge 131 two hundred (200) hours of paid leave to conduct Lodge business." The Lieutenant who made the allegation interpreted this to mean the agreement allowed 200 hours of Union leave per calendar year. In our opinion, because the Agreement term is based on fiscal years, the Union is provided with 200 hours of paid leave per fiscal year to conduct Lodge business. The Office of Law agreed with our interpretation.

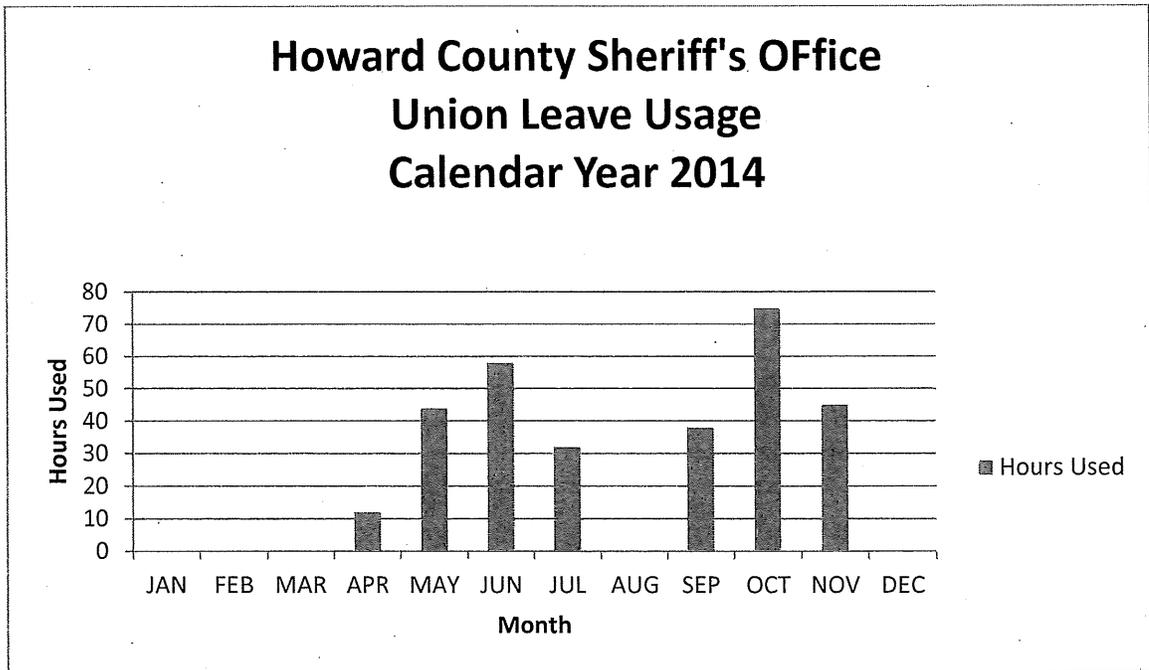
According to ADP records, there were 304 hours of Union leave used in calendar year 2014. However, 114 hours were used in FY2014 and 190 hours were used in FY2015. Union leave was not used in the portion of FY2014 that fell in calendar year 2013, and only four hours were used in the portion of FY2015 that fell in calendar year 2015. We concluded that the Union did not exceed the number of Lodge leave hours provided in the Agreement.

2. We determined that a Sergeant, who is not a member of Police Lodge 131 (the Union), used 30 hours of Union Leave. We reviewed the contract and we believe that Sergeants are specifically excluded from using Union Leave. We requested an opinion from the Office of Law. According to the Office of Law:

"We see nothing in the collective bargaining agreement (CBA) with Lodge 131 that would allow a sergeant who is a non-union employee to utilize the "Lodge Leave" provided in the CBA in order to conduct union business. Section 2.02 (a) of the CBA states that the union includes only deputy sheriffs and deputy corporals and, in fact the provision explicitly excludes sergeants from membership in the Lodge; someone who is, by definition, excluded from Lodge membership would not seem to be able to use the benefits bargained for, and that includes Lodge Leave."

We recommend that the County Administration either reduce the Sergeant's leave balance by 30 hours for the leave that was improperly used, or seek reimbursement of \$813, which was the cost to the County.

3. We reviewed the Office's leave payroll reports and leave slips for FY2014 and FY2015 and determined that five employees of the Sheriff's Office (including the Sergeant in finding 2) had used 304 hours of Union Leave at a cost of \$8,055. We were unable to determine if any additional overtime costs were incurred as a result of having to assign personnel to cover these employees' shifts. As revealed in the graph below, the hours were used prior to and during the Primary and General elections.



Sheriff's Office and Union personnel were only able to provide documentation to support the use of eight hours of leave by one employee. However, we were advised by the Union President and the Major that the balance of this leave (182 hours by four employees at a cost of \$7,823) was used to provide support to the Sheriff's campaign. The Sheriff would not comment on his approval of the leave. The Union President stated that he believes political campaigning is an acceptable use of Union leave.

We requested an Office of Law opinion regarding the use of union leave. According to the Office of Law:

"Lodge/Union business typically consists of activities such as union meetings, lobbying, contract negotiation, administrative tasks, and similar things. We can even potentially see the term including campaigning for a union election – perhaps – but we don't see how Lodge business could be extended to performing political campaign activities during public elections."

We agree with the Lieutenant, that the Sheriff was provided with County-subsidized campaign labor that was not available to any candidate that opposed him.

We recommend that the County Administration either reduce the leave balances or seek reimbursement for the amount of leave that was improperly used by the four employees of the Sheriff's Office.

We also recommend that the Administration makes certain that all future Union agreements delineate the purpose for which Union leave can be used.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Glendenning', with a long horizontal flourish extending to the right.

Craig Glendenning
County Auditor

APPENDIX A

AUTHORITY TO CONDUCT EXAMINATION

Maryland sheriffs are State constitutional officers who are elected by the citizens of each county. *Rucker v. Harford County*, 316 Md. 275 (1989). As an independent elected official, the sheriff of a county is not subject to the authority of or control by the county. Each county is, however, responsible for funding its respective sheriff's office, sufficient to enable the sheriff to perform his or her constitutional duties. *See* Md. Cts. & Jud. Proc. Code Ann. § 2-309; 60 Op. Att'y Gen. 647, 656-57 (1975).

Under the Howard County Code, employees of the Howard County Sheriff are "State-authorized exempt," defined as those employees "required by law to be funded by Howard County, or are necessary to support the functions of State agencies which are required or authorized by the State to be supported by Howard County." Howard County Code § 1.305(a). Employees in State-authorized exempt positions, including the Sheriff and deputy sheriffs, are not considered to be employees of Howard County but, instead, serve "in accordance with the provisions of State law." Howard County Code §§ 1.305(b).

Because the Howard County Sheriff is an independently elected State constitutional officer and neither he nor his employees are employees of Howard County, the County has no authority to impose disciplinary action against the Sheriff or his deputies. Nor can the County impose its policies and procedures upon the Sheriff or his employees. Practically speaking, the County's only ability to control the Sheriff is through its control of the budget; even then control is limited as the County is obligated to provide funding sufficient to permit the Sheriff to perform his constitutional duties. (The duties of the sheriff are those that existed at common law, as modified by the General Assembly, and generally include providing security for the circuit courts, transporting prisoners, service of process, and, in certain jurisdictions – though not in Howard County – serving as the county police force and operating the county detention center). In addition, the County Council approves minimum job qualifications for positions in the Sheriff's Office.

After receiving the complaint, the County Council directed the County Auditor to conduct an examination with relation to the allegations pursuant to its authority under Howard County Charter § 213, which provides that the "Council . . . may at any time order the examination or an audit of the accounts of any department, office or agency receiving funds from the County government." Under this authority, and the fact that the County provides budgeted funds for operating the Sheriff's Office, the Auditor has the authority to conduct a financial examination. In sum, the Auditor has the authority to investigate the allegations in the complaint insofar as they relate to funds provided by the County to the Sheriff's Office, and those allegations having a nexus to expenditure of funds.

The authority to conduct a financial examination extends to conduct of the Sheriff (or deputies) that may give rise to tort liability for the County. Pursuant to Md. State Finance &

Procurement Code Ann. § 9-108, a county government is liable for activities of a sheriff or sheriff's deputies when they engage in functions involving law enforcement and operation of a county detention center. While the Howard County Sheriff has no involvement in the operation of the County Detention Center, the Sheriff and his deputies are certified law enforcement officers and, while typically not the first responders, may act in a law enforcement capacity as permitted by law and as set out in a memorandum of understanding between the County, on behalf of the Police Department, and the Howard County Sheriff's Office. The State, not the County, is responsible for defending and paying any judgments or settlements when the Sheriff acts in any capacity other than law enforcement or detention center matters. Thus, the authority to conduct a financial examination based on potential tort liability would be limited to when members of the Sheriff's Office engage in law enforcement functions.