



Office of the City Manager

CONSENT CALENDAR
November 19, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: LaTanya Bellow, Director of Human Resources

Subject: Authorizing City Manager To Provide a 2.5 Hour Minimum Overtime Pay For Emergency Call Back Employees In The Information Technology Department

RECOMMENDATION

Adopt a Resolution Authorizing Information Technology Employees with Service Employees International Union, Local 1021 Community Services And Part Time Recreation Leaders Association (“SEIU” or “SEIU Local 1021 CSU & PTRLA) to receive 2.5 hours of overtime compensation for emergency call back involving remote work. The City has already negotiated a 2.5 hour rate with SEIU Local 1021 CSU & PTRLA in a new MOU indicated as 13.5.1.

FISCAL IMPACTS OF RECOMMENDATION

The 2.5 hour overtime rate will result in a fiscal impact of approximately \$6,000 annually. The cost may be absorbed in the current General Fund.

CURRENT SITUATION AND ITS EFFECTS

Provides the employees in the Informational Technology Department represented by SEIU Local 1021 (CSU and PTRLA) a 2.5 minimum overtime compensation for remote work in the Virtual Private Network (VPN) or other remote technologies. Many comparable agencies pay special compensation to employees who are required to perform tasks on an emergency callback basis. The cities of Oakland, El Cerrito, Hayward and San Rafael all provide between 2.0 and 2.5 hours of overtime compensation for remote work.

BACKGROUND

The City’s Information Technology (IT) Department employs Information Systems Specialists and Senior Information Systems Specialists. One individual is required to be on standby 24 hours a day/seven days a week in order to provide IT after hours support throughout the city, such as for the police department. These employees are compensated for being on “standby” consistent with the MOU. However, several years ago the IT department reached an informal agreement with these employees regarding

callbacks. The informal agreement provided that IT employees would receive a minimum of 1 hour of overtime if they received a help request through the city's help-desk system after hours.

This informal agreement was necessitated because IT employees are, in the vast majority of cases, able to respond to IT requests remotely from home. IT employees seldom need to physically return to a city facility. Accordingly, the department and employees felt that a 1-hour minimum was fair for work performed remotely, typically from home.

The City and SEIU have agreed to a Side Letter to the MOU that would expressly provide a minimum of 2.5 hours of overtime for any remote work performed by IT employees. To arrive at the 2.5 hour number, the City focused in part on SEIU Local 102's previous and current agreements with other cities involving remote work. These cities included Sebastopol, with which Local 1021 agreed to 1.0 hour of overtime pay with less than one (1) minute of time considered 'de minimis,' or not compensable. The City noted that Oakland provides 2.5 hours, El Cerrito provides 2.5 hours, Albany provides 3.0 hours, San Rafael provides 2.0 hours, Sausalito provides 3.0 hours when an employee travels between their home and place of work, and Hayward provides 2.0 hours. Additionally, the City notes that Local 1021 negotiated with the County of Alameda to agree to a staggered increase in overtime which amounted to 2.0 hours or actual time worked, whichever was greater. The average of these nearby jurisdictions with similar provisions was 2.3 hours and the City of Berkeley rounded up to 2.5 based on the industry standard.

Since January 1, 2019, there have been approximately 70 instances of work remote by IT employees totaling 128.5 hours. If the 2.5 hour minimum had been in effect, the City would have paid an additional 73 hours of overtime to date in 2019. Those 73 hours of overtime have a value of approximately \$6000.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

RATIONALE FOR RECOMMENDATION

On or about January 17, 2019, SEIU filed a grievance alleging that the City was violating Section 13.5 of the MOU by not providing to IT employees performing work remotely a minimum of four (4) hours of compensation whenever an employee was required to perform "Emergency Call Back." The City denied the grievance on the ground that an employee performing work remotely is not entitled to the minimum four (4) hours of compensation under Section 13.5. It is SEIU's position that IT employees using the Virtual Private Network or their phones to remotely repair problems with the City's computer network 24 hours a day, seven days a week, were being "called back" to work and were entitled to call back pay.

In the interest of promoting harmonious labor relations between the parties and to avoid the uncertainty, inconvenience, and expense of litigation, the City and SEIU have agreed to a settlement of this grievance in the matter of CSMCS Case No. ARB-18-0314 and which settlement included 2.5 hours of overtime compensation for remote work in the VPN and other remote technologies.

The new language agreed to at a new Section 13.5.1 is as follows:

“For IT employees who perform remote work in the Virtual Private Network (VPN) or other remote technologies the minimum overtime compensation paid shall be for two and a half (2.5) hours. Remote work in the VPN or other remote technologies which is completed in less than one (1) minute (from log-on to log-off) shall be considered ‘de minimis’ and not compensable. Multiple ‘de minimis’ remote work shall be considered in the aggregate, and shall be compensable under this provision if the aggregate is greater than one (1) minute. If an IT employee is required to travel to a city facility or other physical location, the minimum overtime compensation shall be for four (4) hours. If the IT employee’s travel to a city facility or other physical location is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.”

ALTERNATIVE ACTIONS CONSIDERED

Not applicable.

CONTACT PERSON

LaTanya Bellow, Human Resources Director, lbellow@cityofberkeley.info or (510) 981-6807.

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

ADOPTING A 2.5 HOUR MINIMUM OVERTIME COMPENSATION PROVISION FOR
REMOTE WORK ON AN EMERGENCY CALLBACK BASIS

WHEREAS, Service Employees International Union Local 1021 Community Services & Part Time Recreational Leaders Association (“SEIU”) represents a number of classifications at the City of Berkeley (“City”); and

WHEREAS, SEIU and the City entered into a Memorandum of Understanding dated October 21, 2018 to June 27, 2020 (“MOU”) which set forth the wages, hours and other terms and conditions of employment for SEIU members; and

WHEREAS, Section 13.5 (Emergency Call Back Pay) of the MOU specifically provides that:

“Employees who are called into work outside their normal work schedule shall be paid overtime compensation for actual time worked. The minimum time for which such overtime compensation shall be paid shall be four (4) hours. If such overtime work is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.”

and

WHEREAS, the City and SEIU agreed that IT employees represented by SEIU would be compensated according to the following terms in a new Section 13.5.1:

“For IT employees who perform remote work in the Virtual Private Network (VPN) or other remote technologies the minimum overtime compensation paid shall be for two and a half (2.5) hours. Remote work in the VPN or other remote technologies which is completed in less than one (1) minute (from log-on to log-off) shall be considered ‘de minimis’ and not compensable. Multiple ‘de minimis’ remote work shall be considered in the aggregate, and shall be compensable under this provision if the aggregate is greater than one (1) minute. If an IT employee is required to travel to a city facility or other physical location, the minimum overtime compensation shall be for four (4) hours. If the IT employee’s travel to a city facility or other physical location is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

and

WHEREAS, the City recommends authorizing the 2.5 hour minimum overtime compensation rate for emergency call back pay.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a 2.5 hour minimum overtime compensation provision be effective as to the applicable MOU with SEIU Local 1021 CSU & PTRLA at the start of the pay period containing the date of Council approval.

Exhibits:

1. Agreed Upon Side Letter

Side Letter Agreement
Between City of Berkeley
and Service Employees International Union Local 1021
Regarding Emergency Call Back
(CSMCS Case No. ARB-18-0314)

1. The City of Berkeley (City) and the Service Employees International Union Local 1021 (SEIU) are parties to a Memorandum of Understanding (MOU) in effect from October 21, 2018 to June 27, 2020.
2. Section 13.5 of the MOU provides the following with respect to Emergency Call Back compensation:

Employees who are called into work outside their normal work schedule shall be paid overtime compensation for actual time worked. The minimum time for which such overtime compensation shall be paid shall be four (4) hours. If such overtime work is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

3. On or about January 17, 2019, SEIU filed a grievance alleging that the City was violating Section 13.5 of the MOU by not providing to IT employees performing work remotely a minimum of four (4) hours of compensation whenever an employee was required to perform "Emergency Call Back." The City denied the grievance on the ground that an employee performing work remotely is not entitled to the minimum four (4) hours of compensation under Section 13.5. It is SEIU's position that IT employees using the Virtual Private Network or their phones to remotely repair problems with the City's computer network 24 hours a day, seven days a week, were being "called back" to work and were entitled to call back pay.
4. In the interest of promoting harmonious labor relations between the parties and to avoid the uncertainty, inconvenience, and expense of litigation, the City and SEIU have agreed to this Side Letter in settlement of this grievance. (CSMCS Case No. ARB-18-0314)
5. The parties agree to the following provision which will be considered a Side Letter to the current MOU:

Section 13.5.1

For IT employees who perform remote work in the Virtual Private Network (VPN) or other remote technologies the minimum overtime compensation paid shall be for two and a half (2.5) hours. Remote work in the VPN or other remote technologies which is completed in less than one (1) minute (from log-on to log-off) shall be considered 'de minimis' and not compensable. Multiple 'de minimis' remote work shall be considered in the aggregate, and

shall be compensable under this provision if the aggregate is greater than one (1) minute. If an IT employee is required to travel to a city facility or other physical location, the minimum overtime compensation shall be for four (4) hours. If the IT employee's travel to a city facility or other physical location is performed prior to the beginning of the regularly scheduled work period and overtime continues into the regularly scheduled work period without a break in service, compensation shall be paid only for the actual time worked.

6. This new provision will take effect immediately upon approval by the City Council for the City of Berkeley. The City will present this Side Letter to the City Council for approval as soon as possible.
7. City staff will inform the City Council that this Side Letter has been reached as a result of negotiations between the parties and will recommend approval of the Side Letter by the City Council. If the City fails to present this Side Letter to the City Council as soon as practicable, or if the City Council does not approve the Side Letter, the grievance will be reset for arbitration before the same arbitrator with no impact on the potential remedy sought by SEIU.
8. SEIU hereby withdraws its grievance.
9. The parties will split the cost of any fees resulting from the cancellation of the arbitration in this matter.

11/1/19
Date

D. Williams Bidj
For City of Berkeley

10/30/19
Date

[Signature]
For SEIU Local 1021

