

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRADLEY DeBRASKA, JAMES KRAFT,
DAVID ARNDT, JAMES NISIEWICZ,
MARK NEWELL, HARRISON KERN,
ALAN WILKE, GREGORY SZABLEWSKI,

Plaintiffs,

Case No. 96-C-402

v.

CITY OF MILWAUKEE,

Defendant.

CITY OF MILWAUKEE,

Third-Party Plaintiff,

v.

MILWAUKEE POLICE ASSOCIATION,
IUPA, LOCAL NO. 21, AFL-CIO,

Third-Party Defendant.

FINAL SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the 1,743 current individual plaintiffs in the above-captioned case (“existing plaintiffs”), all additional current or former Milwaukee police officers who are or were members of the Milwaukee Police Association Local No. 21, IUPA, AFL-CIO, (“MPA”) and who file consents to participate in this case by July 15, 2002 (“new consenters”), the collective bargaining representative of the plaintiffs, the MPA, and the City of Milwaukee (“the City”) with the intent to fully and finally resolve all issues in the case. All of such parties to this proceeding agree as follows:

1. This action was originally filed on April 8, 1996 alleging that the City of Milwaukee (“City”) violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219 in various respects. All issues but one as set forth in the original Complaint initiating this proceeding have been resolved or determined in earlier phases of this proceeding. There remains only one unresolved issue in this proceeding with respect to which a bona fide dispute continues to exist between the parties. The issue concerns whether the system in effect within the Milwaukee Police Department for affording police officers access to accrued compensatory time-off balances complies with the requirements of the FLSA.

Furthermore, a bona fide dispute exists between the parties as to whether plaintiffs are entitled to damages of any type including (but not limited to) compensatory damages, liquidated damages, attorneys' fees and costs, and whether any alleged violations of the FLSA are "willful" or not.

2. The City of Milwaukee, the Milwaukee Police Department, and the MPA will cooperate in issuing joint communications to all current Milwaukee police officers and all former Milwaukee police officers who were employed by the Milwaukee Police Department at any time within the two (2)-year period immediately preceding the date of execution of this Agreement, and who are not already plaintiffs in this action, inviting them to join and participate in this litigation and in this settlement as new consenters under 29 U.S.C. § 216(b). The communication will describe the sole outstanding legal issue described in ¶ 1 of this Final Settlement Agreement and will outline the basis upon which the case is being settled. The City consents to the participation in this case of any and all such new consenters whose consent to the terms of this settlement and participation in this settlement is served on the City and filed with the Court by July 15, 2002. This Agreement shall, in its entirety, and at the City's option, be contingent upon at least 90 percent of police officers who are or were employed by the Department within the above-referenced two (2)-year period, and to whom the joint communications referenced above in this paragraph are to be sent, becoming new consenters as described in this paragraph. In addition, this Agreement shall, in its entirety, and at the City's option, be contingent upon all (if the Court approves counsel for the plaintiffs consenting on their behalf) or 90 percent (in the alternative), police officers who are plaintiffs in this action as of December 1, 2001 ("existing plaintiffs") consenting to the terms of this agreement. Any filing by or on behalf of a new consenter to join and participate in this litigation shall be understood and deemed to be both a consent to participate in the case and a consent to the settlement. With regard to the existing plaintiffs, the new consenters, and any additional consenters whose consent is filed with the court, and subject to ¶ 16 of this Agreement, their consent to the terms of this settlement and to participation in the settlement may be shown by a signed acceptance of this Agreement on forms to be distributed to each of them by the MPA and/or the City. Acceptance of the settlement includes acceptance of its waiver provisions in ¶ 11 of this Agreement. Distribution and all associated costs resulting from the requirements of this paragraph shall be borne by the City except the mailings and other distributions to the current active membership of the MPA.
3. The City and the MPA have agreed to amend Article 15 of their collective bargaining agreement entitled "Overtime" in accordance with the Court's dismissal of this proceeding, as reflected in Attachment A, and shall withdraw all of their respective demands to modify Article 15 during the course of the current collective bargaining negotiations or interest arbitration proceedings between the City and the MPA. (WERC Case 473 No. 59268, MIA-2339). The provisions of Article 15 attached hereto as Attachment A are incorporated as a part of this Agreement. The Agreement includes § 3.b.(3) of Article 15 on requests to use accrued compensatory time which, at the Court's request, must be reviewed and approved by the Wage and Hour Division of the U.S. Department of Labor as consistent with the requirements of the FLSA and its implementing regulations. In addition, the City Labor Negotiator and the MPA President shall jointly execute the Memorandum of Understanding Between the MPA and the City

(included as the final document attached to this Final Settlement Agreement) as Appendix F to the collective bargaining agreement between the City and the MPA.

4. The City shall cause the "Listing of Time Owed and Allowed" (LTOA) report, or its successor or equivalent, identified in Attachment B to be published and posted in each Milwaukee Police Department work location biweekly. In the event a successor or equivalent report replaces the existing LTOA report, the new report shall contain all information the current report LTOA report lists, unless the MPA agrees to less information; this obligation shall remain in effect through the effective dates of a successor agreement to the 2001-2003 City/MPA collective bargaining agreement (or the 2001-2002 agreement if a two-year agreement is awarded).
5. The City shall pay the sum of \$10.00 to each individual who is an existing plaintiff or a new consenter in this case and who is no longer a member of the MPA bargaining unit as of the date of the Court's dismissal of this proceeding.
6. The MPA agrees to assist the City in attempting to obtain the consent of all of its members and former members within the scope of ¶ 2 of this Final Settlement Agreement who have not already consented to participate in this case and in this settlement. The City agrees to waive \$10,000 of the payment from Invoice No. 42770, in lieu of actual costs incurred by the MPA for this purpose.
7. The City shall pay an additional \$175.00 to Police Officer Trina Crymes as a final and non-precedential settlement of the grievance filed by the MPA on behalf of Officer Crymes' on April 24, 1998. The MPA agrees to dismiss the grievance.
8. The City agrees to pay \$216,291.50 to counsel for the plaintiffs, comprising \$162,202.00 in attorney's fees and \$17,309.50 in costs to Michael T. Leibig and \$36,780.00 in attorney's fees to Laurie A. Eggert, in full and final settlement of any and all claims that they or their clients may have with respect to attorney's fees and costs associated with this proceeding.
9. By entering into this Agreement, the City does not admit and hereby specifically denies any liability to the plaintiffs or new consenters or to any other employee in any amount for any claim at issue or relating in any way to this proceeding.
10. The MPA, the existing plaintiffs, and all new consenters agree to dismissal with prejudice of their Complaint initiating this proceeding. The City agrees upon dismissal with prejudice of its Third Party Complaint against the MPA which is pending in the Milwaukee County Circuit Court as Case No. 02-CV-003896.
11. The MPA, each existing plaintiff, and each new consenter, through their counsel and their express authorization to that counsel, upon court approval, release and fully discharge, with prejudice, the City and its elected officials, employees and agents from any and all liability, damages, attorney's fees, costs, or any other forms of relief and from any and all causes of action, complaints, claims, or demands of any type that relate in any way to any of the issues raised in the Complaint initiating this proceeding and that have arisen or existed at any time up to the date of dismissal by the Court of this proceeding. Each

existing plaintiff, each new consenter, and the MPA agree not to authorize, cooperate with, or participate in any litigation against the City or its elected officials, employees or agents involving any matter within the scope of these releases and discharges.

12. All signatories to this agreement agree to cooperate in all aspects relating to the implementation of this Agreement.
13. This Agreement is subject to Common Council and mayoral approval and cannot become final or binding absent approval by the Court of this Agreement as outlined in ¶ 14 of this Agreement. The City agrees to seek Common Council and mayoral approval of this Agreement immediately following the execution of this Agreement by the City, the MPA and plaintiffs' counsel.
14. The parties agree to submit to the Court the forms of interim Orders and of a final Order and Judgment of Dismissal appended as Attachments C, D, and E to this Agreement, which forms are incorporated herein by reference, so as to obtain the necessary orders from the Court eventually and finally dismissing this proceeding in its entirety with prejudice and without costs and to obtain entry of judgment to that effect and incorporating the terms of settlement within its provisions. This Agreement is final and binding if and when such final dismissal and judgment are obtained from the Court.
15. This Agreement is a jointly negotiated instrument, no provision of which shall be construed against either parties on grounds of authorship.
16. This Agreement requires the signatures of counsel, the MPA, Chief of Police, City Labor Negotiator, existing plaintiffs and new consenters. Existing plaintiffs and new consenters may sign through individual forms of consent specified in ¶ 2 of this Agreement. If (and only if) approved by the Court, such signatures may be made by plaintiffs' counsel, provided that the existing plaintiff or new consenter has authorized plaintiffs' counsel to assent to the terms of settlement and execute all necessary forms evidencing such assent on his or her behalf.
17. The Court has agreed that the Administrator of the Wage and Hour Division of the United States Department of Labor shall, in lieu of a brief submitted to the Court, submit to the Court an affirmative response to the following request:

The Court has received, and is reviewing, a proposed settlement and stipulated dismissal of *DeBraska, et al. v. City of Milwaukee*, U.S. District Court, Eastern District of Wisconsin, Case No. 96-C0402. The Department of Labor has previously submitted an *amicus* brief in this case concerning the issue of employee access to accrued compensatory time off pursuant to 29 U.S.C. § 207(o) and 29 C.F.R. § 553.25. A significant element of the settlement involves the adoption within the Milwaukee Police Department of a new procedure for access to accrued compensatory time off which is to be incorporated into the applicable collective bargaining agreement between the City of Milwaukee and the Milwaukee Police Association, Local No. 21, IUPA, AFL-CIO (MPA). The Court requests that the Administrator of the Wage and Hour Division of the

United States Department of Labor, in accordance with 29 C.F.R. § 790.17, confirm to the Court in writing its approval of the new provisions set forth in the attached City/MPA collective bargaining agreement regarding access to accrued compensatory time off as consistent with the applicable requirements of the Fair Labor Standards Act and its implementing regulations.

This Agreement in its entirety is contingent upon the foregoing approval of the compensatory time off system in writing from the Wage and Hour Division Administrator, and shall be void and of no force or effect if approval, sufficient to invoke the immunity provided by 29 U.S.C. § 259, is not forthcoming.

18. The parties mutually agree to request the Court to hold a hearing no later than July 31, 2002, or such date as the Court may direct, concerning and addressing any objections to this Agreement or any of the terms of settlement of this proceeding and further to request the Court to issue an order to cut off claims of all objectors not filed and determined at the hearing(s).

**FOR DEFENDANT,
CITY OF MILWAUKEE**

Arthur L. Jones
Chief of Police for the
Milwaukee Police Department

Frank Forbes, City Labor Negotiator

Date

GRANT F. LANGLEY
City Attorney

By: _____
RUDOLPH M. KONRAD
Deputy City Attorney
State Bar No. 01015041

Date

By: _____
STUART S. MUKAMAL
Assistant City Attorney
State Bar No. 01016992

Date

By: _____
DONALD L. SCHRIEFER
Assistant City Attorney
State Bar No. 01010693

Date

FOR PLAINTIFFS:

Laurie A. Eggert
Eggert & Cermele, S.C.
1840 North Farwell Ave.
Milwaukee, WI 53202
State Bar No. 01018582

Date

Michael T. Leibig
Zwerdling, Paul, Leibig, Kahn, Thompson,
& Wolly, PC
1421 Prince Street, Suite 400-A
Alexandria, Va 22314

Date

Bradley DeBraska, MPA President

Date

James Miller, MPA Trustee

Date

Steven Lelinski, MPA Trustee

Date

James Nisiewicz, MPA Trustee

Date

48091