

Summary of Issues Related to the Collective Bargaining Agreement, Payroll Recordkeeping, and Compensatory Time

How did we get here

Beginning in August 2025, agenda items relating to employee pension contributions and the Collective Bargaining Agreement (CBA) with Local 139 Operators Union appeared on multiple Town Board agendas. Town Board discussions of these agenda items remained at a high level where the intent of this document is to summarize the issues in increased detail, identify relevant legal and administrative requirements, and explains why additional policy and budget review may be necessary.

Background

At that time, payroll records did not fully itemize compensatory time, holidays, or paid time off within the payroll and tax software. Each paycheck was issued for 80 hours of straight time regardless of entries on the timecard. The DWD states that each timecard and paystub must include:

1. Name and address
2. Date of birth
3. Date of entering and leaving employment
4. Time of beginning and ending of work each day
5. Time of beginning and ending of meal periods if employees' meal periods are required or such meal periods are to be deducted from work time. This requirement shall not apply when work is of such a nature that production or business activity ceases on a regularly scheduled basis
6. Total number of hours per day and per week
7. Rate of pay and wages paid each payroll period
8. The amount of and reason for each deduction from the wages earned
9. Output of employee, if paid on other than a time basis

See <https://dwd.wisconsin.gov/er/laborstandards/permanentrecords.htm>

It was also identified that the Town was paying the full pension contribution for each employee, which appears inconsistent with the pension contribution amounts listed in Appendix A of the 2025 CBA.

Pension:

Pension per hour (Town portion) \$4.16

Pension per hour (Employee portion) \$4.59

Total \$8.75 per hour

During 2025, the Town Board encouraged the use of compensatory time in place of cash overtime payments for budgeting purposes. Under federal law, compensatory time for eligible public-sector employees may be provided at a rate of at least one and one-half hours for each overtime hour worked, subject to statutory limits on accrual and use. Compensatory time also must remain under 240 hours for total accrual.

Under certain prescribed conditions, employees of state and local government agencies may receive compensatory time off at a rate of not less than one and one-half hours for each overtime hour worked instead of cash payment for overtime. Among other things, the regulations governing the use of compensatory time off (comp time) impose limitations on the accrual of comp time, conditions regarding the use of accumulated comp time, and requirements for “pay outs” of unused comp time. Police, fire fighters, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours of comp time. Other public sector employees may accrue up to 240 hours.

<https://webapps.dol.gov/elaws/whd/flsa/otcalc/doc7oi1.asp>

In August 2025, federal tax law changes also created new reporting considerations related to qualified overtime compensation.

“No Tax on Overtime”

- **New deduction:** Effective for 2025 through 2028, individuals who receive qualified overtime compensation may deduct the pay that exceeds their regular rate of pay – such as the “half” portion of “time-and-a-half” compensation -- that is required by the Fair Labor Standards Act (FLSA) and that is reported on a Form W-2, Form 1099, or other specified statement furnished to the individual.
 - Maximum annual deduction is \$12,500 (\$25,000 for joint filers).
 - Deduction phases out for taxpayers with modified adjusted gross income over \$150,000 (\$300,000 for joint filers).

- **Taxpayer eligibility:** Deduction is available for both itemizing and non-itemizing taxpayers.
 - Taxpayers must:
 - include their Social Security Number on the return and
 - file jointly if married, to claim the deduction.
- **Reporting:** Employers and other payors are required to file information returns with the IRS (or SSA) and furnish statements to taxpayers showing the total amount of qualified overtime compensation paid during the year. See <https://www.irs.gov/newsroom/one-big-beautiful-bill-act-tax-deductions-for-working-americans-and-seniors>

These federal changes increased the importance of distinguishing overtime, compensatory time, holidays, and paid time off in payroll records and year-end tax reporting. IRS guidance states that only qualified overtime compensation required under the Fair Labor Standards Act may be eligible for the temporary federal deduction, and employers may need payroll records detailed enough to support employee reporting and employer compliance. Source: IRS guidance on qualified overtime compensation; U.S. Department of Labor overtime requirements.

During implementation efforts, it was also identified that vacation or sick leave balances and compensatory time may have been tracked together as a single balance. If so, that practice would make it difficult to determine the amount of compensatory time accrued under federal law. The 2025 and 2026 CBA language cited below appears to treat personal time off and compensatory time as combined categories.

1. Article 10, Paragraph D states:

The maximum amount of personal time off and compensatory time off that can be accumulated shall be two thousand eighty (2,080) hours for employees hired prior to January 1, 2026. All employees hired after January 1, 2026, can accumulate a maximum of one thousand four hundred forty (1,440) hours. The accumulated unused hours shall carry over from one calendar year to the next.

The hiring of an additional employee also highlighted the absence of a comprehensive Town personnel policy or employee handbook addressing matters such as pay rates, leave categories, holidays, personnel records, and terms of employment for employees who are not or may not want to be covered by a union agreement.

In January 2026, the Town sought legal review from municipal labor counsel regarding how to address the existing CBA language, payroll practices, and compensatory-time issues on a going-forward basis. An excerpt from that legal analysis is reproduced below, and the complete response is referenced as an attachment.

Thank you for sending over the January 1, 2026 – December 31, 2026, Collective Bargaining Agreement (“CBA”). In reviewing the Agreement, we have an immediate concern that this is an illegal Union Contract, due to the numerous items that are considered “prohibited subjects” of bargaining. 2011 Wisconsin Act 10 (“Act 10”) brought forth huge changes, especially to collective bargaining for public employees. Act 10 continued to allow collective bargaining with respect to wages, hours, and conditions of employment for public safety employees. A “public safety employee” is a municipal employee who is employed in a position that is classified as a protected occupation participant under: (1) the Wisconsin Retirement System (“WRS”) and who is a police officer, fire fighter, deputy sheriff, county traffic police officer, or person employed by a village to perform police and fire protection duties; or (2) a provision that is comparable to the provision in (1) that is in a county or city retirement system

2. Act 10 eliminated collective bargaining with respect to hours and conditions of employment for general municipal employees (municipal employees who are not public safety employees). Act 10 only allows municipal employees to collectively bargain with respect to “wages”. “Wages” includes only total base wages and excludes any other compensation, including overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.
3. The Town’s Public Works employees do not qualify as “public safety employees” and are considered “general municipal employees” and therefore, are only allowed to bargain base wages. In other words, the only thing the Public Works employees can bargain over is their base hourly wage. Everything else is considered a prohibited subject of bargaining.

We would recommend reviewing and updating the Town’s Employee Handbook or the Town’s Policies related to the other language and fringe benefits identified in the CBA. In addition to the general review of its Policies, the Town should review its Compensatory Time Policy. Currently, in the CBA, employees can receive compensatory time in lieu of actual overtime pay. If compensatory time is chosen, the employees receive compensatory time-off at the rate of time and one-half for each hour of overtime worked.

4. Article 10, Paragraph D states:

The maximum amount of personal time off and compensatory time off that can be accumulated shall be two thousand eighty (2,080) hours for employees hired prior to January 1, 2026. All employees hired after January 1, 2026, can accumulate a maximum of one thousand four hundred forty (1,440) hours. The accumulated unused hours shall carry over from one calendar year to the next.

This is troublesome for several reasons. First, the mixing of personal time off and compensatory time is not recommended and might be violating the “Big Beautiful Bill,” and the separate accounting requirements for overtime wages. Second, pursuant to the Fair Labor Standards Act (“FLSA”), employees of local government agencies may receive compensatory time off at a rate of not less than one and one-half hours for each overtime hour worked, instead of cash overtime pay. These local government employees may accrue up to 240 hours max. In other words, the Town’s cap of 2,080 hours violates the FLSA.

Lastly, a 2,080-hour cap for the Town is a huge financial liability. If an employee leaves or retires, they would be owed all those hours, at their current wage rate, regardless of when the time was accumulated. Most Policies indicate that no compensatory time is carried over from year-to-year, because if an employee is allowed to earn it in 2025, and then not get it paid out until 2035, the employee would be paid a much higher wage rate, that only increases the Town’s financial liability.

In May 2026, the Town obtained an additional legal opinion that reportedly reached similar conclusions regarding the scope and enforceability of the CBA. That full response was provided at a prior special meeting and is attached.

Current Issues and Next Steps

Based on the response from both attorneys, the Town of Oakland as an employer and its employees can no longer act under the terms of the collective bargaining agreement because of Act 10.

Act 10 states:

However, Act 10 eliminates collective bargaining with respect to hours and conditions of employment for general municipal employees (municipal employees who are not public safety employees) and repeals the provisions, described above, that specifically apply to school districts. Act 10 maintains the right of municipal employees to collectively bargain with respect to wages. Wages include only total base wages and excludes any other compensation, including overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions. Under Act 10, a municipal employer may not bargain collectively with general municipal employees with respect to a proposal that does any of the following: ☐ If there is an increase in the consumer price index (CPI) change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the CPI change. ☐ If there is a decrease in the CPI change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement decreased by a percentage of that expenditure that is equal to the decrease in the CPI change. Act 10 defines “consumer price index change” as the average annual percentage change in the CPI for all urban consumers, U.S. city average, as determined by the federal Department of Labor, for the 12 months immediately preceding the current date.

<https://docs.legis.wisconsin.gov/2011/related/lcactmemo/act010.pdf>

The existing contract also appears to acknowledge that changes in state or federal law may require policy or program changes affecting represented employees.

Changes Required by Law: To the extent the Township is required to adopt or implement any program or policy because of requirements imposed by any State or Federal law, the Township shall bargain with the bargaining unit regarding the impact of the program or policy to the wages, hours, or working conditions of the bargaining unit employees.

The legal opinions summarized here also identify potential risks associated with a compensatory-time structure that combines compensatory time with other leave categories, allows very high accrual limits, or delays payout over long periods. Those risks may include uncertainty about compliance with the Fair Labor Standards Act, increased financial burden for the town for accrued leave balances, and possible exposure to audit findings or other corrective action.

To preserve any employment benefits the Town intends to continue offering, those benefits may need to be stated in a personnel policy or employee handbook rather than in bargaining provisions that are not enforceable under current law. In addition, accrued compensatory-time and paid-time-off balances may need to be reviewed and, if necessary, adjusted to comply with applicable federal limits. Source: U.S. Department of Labor guidance on compensatory time for state and local governments; 29 C.F.R. § 553.22.

Wisconsin Act 15 created Wis. Stat. § 230.125, effective January 1, 2026, stating that, except where prohibited by federal law, accrued compensatory time cannot be paid in cash. The scope of that provision and whether it applies beyond state

employees would require legal interpretation in the specific municipal context. Source: 2025 Wisconsin Act 15, Section 318; Wis. Stat. § 230.125.

Section 318. 230.125 of the statutes is created to read:

230.125 Cash payment for compensatory time off prohibited. Except as prohibited by federal law, accrued compensatory time cannot be paid in cash.

This information was prepared by Lydia Schroeder, Town Clerk to help clarify the issues regarding the collective bargaining agreement, payroll tracking, and pension agenda items being discussed over the past year.