The Bill Blackwood
Law Enforcement Management Institute of Texas

===============

Managing Off-Duty Police Work:
A Chief's Duty

===============
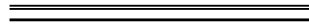
A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College

===============

By
Janet Sandman

Highland Park Department of Public Safety
Highland Park, Texas
July 2013

ABSTRACT

Although the vast majority of police departments in the United States permit off-duty employment, many police administrators are failing to provide adequate control of their secondary employment programs, which results in decreased officer safety, increased liability, and loss of public trust. Police administrators should gain control of their secondary employment programs by ensuring there are policies in place that safeguard their departments, their officers, and their communities and by providing sufficient oversight and enforcement. A review of journals, books, and newspaper articles provided clear evidence of problems related to secondary employment to include conflicts of interest between private employers and officers, inequity of job assignments, disparity in pay rates, the receiving of cash payments, lack of limits on hours worked, financial dependence on secondary income, officer fatigue, misuse of department time, and lack of supervision and accountability.

It is imperative that police administrators take a hard look at these issues and realize that it is their *duty* to manage secondary employment. While police administrators may have concerns about the cost of effectively managing off-duty employment and the impact restrictions could have on employee morale, failing to do so could be even more costly in the form of criminal and civil litigation and loss of life. Police administrators must reconsider the overall scope and purpose of off-duty employment and the extent to which it provides public benefit. Administrators must realize that in the broad scope of all the duties and responsibilities police agencies have, secondary employment should be just that – *secondary.*

TABLE OF CONTENTS

Page

Abstract

INTRODUCTION

The Commission on Accreditation for Law Enforcement Agencies (CALEA) has established agency standards for sworn personnel engaging in extra-duty employment. The International Association of Chiefs of Police (IACP) has established model policy for secondary employment. The Texas Police Chiefs Association (TPCA) has established best practice standards for off-duty employment. These prestigious agencies each use different terms when referring to uniformed or non-uniformed police work conducted while an officer is off-duty from his primary law enforcement employer. It is little wonder that there is also no consensus in police agencies across the nation when referring to this type of police work, much less how to provide adequate oversight. For the purpose of discussion in this paper, the terms secondary employment, extra-duty job, off-duty employment, paid detail, outside employment and pay job will be used interchangeably to describe police work performed outside of normal primary employment duty hours that involves the potential use of law enforcement powers. This can include work as varied as patrolling a neighborhood, standing guard at a private party, providing security at a shopping center, providing crowd control at a special event, or providing personal security for a public figure (Bureau of Governmental Research [BGR], 2011).

Issues surrounding uniformed off-duty employment that were identified in the late 1970s again resurfaced in the early 1990's. Today, departments continue to be plagued by fraud, conflicts of interest, inequity, public risk, officer safety, and liability issues. In an executive summary regarding the New Orleans Police Department, the Department of Justice (DOJ) (2011) reported that, "There are few aspects of the NOPD more

broadly troubling than its Paid Detail system" (p. 11). They determined that the system, as it was structured, drastically undermined the quality of policing, fostered abuse and corruption, contributed to officer fatigue, and resulted in inequitable policing. Despite most police agencies having policies in place to regulate and manage off-duty police work, one need only read the headlines to know that police administrators are still failing to provide adequate oversight for police department secondary employment programs.

The City of San Jose, California, in a report from the City Auditor (2012), made an urgent plea for reform and cultural change regarding secondary employment. The city had *established* policies in place that governed off-duty employment. They had also staffed a Secondary Employment Unit 15 years earlier to manage off-duty jobs and ensure policy enforcement. Even with these oversight measures in place, the city auditor found the department was still confronted with the same problems identified in 1995 by an Independent Police Auditor (IPA). The 1995 audit revealed a number of problems related to secondary employment within the department: cash payments, officer solicitation of jobs, hire and fire authority vested in individual officers, conflicts of interest between private employers and police officers, a financial dependence on secondary jobs, a lack of supervision by department or private employer, lack of documentation, lack of accountability of types of work and hours worked, and fatigue (City of San Jose, 2012).

According to a website query, the role of a city police chief is to "develop values, philosophies, policies and strategies that are supported by the community and the department and that afford the department the capacity to fulfill its agreed upon mission" ("What does a city police" n.d., para. 1). Having a best practice policy in place or

technically meeting the accreditation standard for secondary employment does not ensure the department is enforcing those polices or managing them adequately. Police administrators should gain control of off-duty police work in their departments.

POSITION

Police administrators should gain control of off-duty police work to ensure that their programs are adequately supervised, that there is sufficient oversight, and that the established policies of the department are being enforced. The San Jose City Auditor (2012) found information so lacking in the San Jose Police Department that it determined it was impossible for them to provide sufficient oversight of their secondary employment program. They identified critical regulations the department had in place for oversight but found these regulations were not being enforced. The report identified the department as failing to track off-duty jobs in that they were unaware when and where officers were working and they were not tracking vehicle use. They also found that officers were not using established pay rates and were using sick and disability leave for days worked at their secondary employment (City of San Jose, 2012).

Although the vast majority of police departments in the United States permit secondary employment, there is considerable diversity in how those jobs are organized and managed (Reiss, 1988). Departments may elect to use decentralized control, centralized control, or a combination of the two to manage off-duty police work. In decentralized control, individual officers are allowed to line up their own secondary employment, negotiate the hours and pay, hire and fire officers for the job, bill for hours worked, and receive payment directly from the employer, sometimes in cash (Brunet, 2008). Officers are usually required to complete an extra-job request form that is

approved in advance. In an overview of policies governing paid police details by the Bureau of Governmental Research (2011), they stated that in order to minimize risks to the department, "best practices clearly favor centralized control and administration of details" where the department, rather than an officer, manages the secondary employment (p. 3). In this model, departments would receive and evaluate employment requests, enter into business contracts, and handle the scheduling, billing, and payments. Regardless of whether departments use decentralized or centralized control or a combination system, it is imperative that police administrators have systems in place that allow for the tracking of off-duty jobs to the degree it can ensure transparency of the secondary employment program.

Police administrators should gain control of their department's secondary employment to minimize the risk of fraud, conflicts of interest, and inequity. The City of San Jose (2012) found their highly decentralized system of off-duty job coordination routinely placed employees in conflicted positions, fostered inequity among employees, and increased fraud potential. Departments should closely evaluate their policies and procedures from this perspective.

According to the Fraud Examiner's Manual, "A recurring theme in occupational fraud schemes is the reliance of perpetrators on the inattentiveness of others" (as cited by City of San Jose, 2012, p.15). In October, 2006, six Raleigh, North Carolina police officers were under criminal investigation for working off-duty jobs during city work shifts, and 100 other officers had violated off-duty policy and were being disciplined administratively (Dees & Ovaska, 2006). Woolfolk (2012) reported that, "until a recent crackdown by Chief Chris Moore, the program was so loosely overseen that the

department couldn't track where and how long officers were doing outside work, or situations where on-duty assignments might conflict with secondary jobs" (para. 4). Hensley (2012) reported that three Phoenix police officers were indicted in 2010 on suspicion of fraud and theft in a scheme to get paid for off-duty employment without doing the work, and two Maricopa County deputies were under investigation for working off-duty jobs while still on the county clock. Tracking extra-duty employment is critical in mitigating the risk of fraud.

According to Coleman (2007), for those in positions of public trust, regardless of actions, conflicts of interest tend to create the appearance of bias. Depending on the type of secondary employment, officers may find it difficult to balance the needs of the employer with the expectations of their department and the public (Brunet, 2008). Suppose an officer is employed to provide security at a restaurant and bar in her jurisdiction where the owner is respected and well known as a strong community advocate. The owner pays generously and treats his employees well. The off-duty officer observes the owner routinely serving alcohol to his underage son and friends in the main bar of the restaurant (Coleman, 2007). Consider the impact on public perception upon seeing the officer receiving cash payment for her work. While many departments have banned officers from off-duty employment at establishments where alcohol is served, the same conflict of interest could arise at a private party. There are many situations, not involving alcohol or illegal activities, in which officers may be tempted to ignore offenses that would impact their secondary employer's business, and some employers may even make decisions about which officers to hire based upon the officers willingness to look the other way (BGR, 2011). Police administrators must be

cognizant of potential conflicts of interest within their secondary employment programs and take immediate steps to mitigate the risks and maintain public trust.

Stodghill (2009) posed the question, "Which officers get a crack at those plum extra-duty jobs that are paying $55" an hour (para. 3)? Some agencies distribute opportunities for off-duty jobs on a first-come, first-served basis. Some maintain a list of officers interested in secondary employment and work down the list as extra-duty jobs become available. These methods are generally seen to be equitable ways of handling off-duty job assignments but still require oversight to ensure fairness. Other agencies allow individual officers to act as off-duty job coordinators (Brunet, 2008). The coordinator for that pay job usually has the power to recruit officers to work for them. The coordinator decides if they work, when they work, and how much they make. He has the ability to fire them from that extra-duty job and may even have a department supervisor working under him (City of San Jose, 2012). Brunet (2008) found this approach often creates friction among employees across the ranks and leads to allegations of unfair and inequitable secondary employment practices. Stodghill (2009) interviewed Steve Holt, a retired 32-year veteran of law enforcement who stated he had lobbied prior police administrations to make extra-duty job assignments more equitable. Holt said that certain "power brokers" or "barons" controlled the jobs and that he had been told that he "needed more whiskers" or "needed to kiss ass" to get extra-duty work (para. 9). The Duluth Police Department was in the news because their new police chief, Gordon Ramsay, believed there were problems with their current off-duty work policy, one of which was unfairness. Stodghill (2009) reported that in the new policy, all extra-duty jobs would be assigned by the department. The new system, according to

Chief Ramsay, was "built to ensure a fair and equitable process for all officers" (Stodghill, 2009, para. 7).

Police administrators should gain control of off-duty police work because public and police safety are potentially at risk due to fatigue and the lack of limits on off-duty employment hours. Vila (2006) stated that police work, if performed while fatigue-impaired, poses a serious risk to the officer, the department, and to the public (as cited by Senjo, 2011). Moreover, the National Institute of Justice (NIJ) (2005) found that "sleep deprivation dangerously hinders officers' ability to analyze situations and assess risk correctly, make proper decisions, and proceed toward safe outcomes" (as cited by Senjo, 2011, p. 238). Officers may, due to fatigue, misperceive observed behaviors and respond inappropriately (Pinizzotto et al., 2000 as cited by Senjo, 2011). Recognizing the powers that officers have, this is problematic for police administrators who have a responsibility to try and mitigate civil and criminal liability.

Few police departments adequately track off duty-jobs or restrict the number of hours officers work in those jobs (Vila, 2006). The City of San Jose (2012), found that while the department had limits on secondary employment hours, they had no limits on the number of hours an officer could work on regular duty, overtime, and extra-duty jobs combined. Even though they had policies in place, they found that one employee had worked nearly 300 hours in one month doing police related work and another had worked 150 hours in just two weeks. According to Senjo (2011), most police officers lead active lives outside of work and may have family, educational, and financial responsibilities that require a significant amount of personal time. Most officers adopt a "whatever it takes approach" to meet their demands (p. 238). While it is acknowledged

that long hours are an inherently accepted part of police work, for the long hours that are the result of extra-duty jobs, police administrators have a responsibility to monitor those jobs and place reasonable limits on this "source of fatigue" (City of San Jose, 2012, p. 51).

COUNTER POSITION

A primary concern of some police administrators is that regardless of the size of the police department, monitoring secondary employment is costly. Hensley (2012) reported that as agencies reevaluate their secondary employment programs and try to address policy failures, the agencies and taxpayers could find that instituting tighter controls may come at a cost. He also used the example of the Peoria Police Department, which spent $180,000 on a computer system to help manage secondary employment (Hensley, 2012).

If departments followed best practices outlined by the BGR (2011) for centralized control and administration, the task would be monumental. Police agencies would have to do the following: evaluate employers' requests, draw up business contracts, and manage all of the scheduling, billing, and payroll. The BGR (2011) also indicated that in order for a department to provide the level of oversight needed, a "key administrative function in a designated office" would have to be established (p. 3). This increased staffing need, for most agencies, would entail creating a new position or assigning these additional responsibilities to an already overloaded employee. Strict monitoring of secondary employment is another demand on already taxed resources.

Nevertheless, police administrators should realize there are significant costs associated with *not* providing adequate oversight of secondary employment programs to

include safety, decreased performance, and civil or criminal liability. In the event of a civil lawsuit arising from a paid police job, agencies should expect to be held liable and accountable. The best way to meet this legal challenge is to ensure that the systems, policies, and procedures in place can withstand legal and public scrutiny (Breads, 2012). Failure to do so can cost agencies more than dollars; it can cost them public trust.

According to Hensley (2012), police departments consider it a "trade-off of sorts" and appear to be more willing to spend tax dollars to gain more control over secondary employment if it decreases abuse (para. 3). There are costs associated with managing paid details, but some agencies elect to cover the costs by charging a percentage-based fee to employers that can result in increased revenue for the city (Breads, 2012). This fee normally includes a charge for equipment usage, an administrative fee to cover the cost to the department, and the officer's pay (BGR, 2011).

While centralized control and administration may be considered best practice, an agency that is unable to adopt this approach for budgetary reasons is not exempt from providing adequate oversight. Police administrators must find creative, cost effective ways to manage secondary employment rather than mechanically imitating others' policies and practices. No matter how well written or strongly worded a policy is, it is only effective to the degree it is enforced (BGR, 2011).

Another concern of police chiefs is that placing tighter controls and increased restrictions on secondary employment will create dissent among officers. Senjo (2011) wrote that since police officers generally have lower salaries, they work extra-duty jobs to supplement their income, especially new officers or those officers with family

obligations. The economic crisis that has been affecting law enforcement agencies since 2008 has resulted in significant pay cuts and unpaid furloughs that have further impacted officers' take home pay (Police Executive Research Form [PERF], 2010). The Atlanta Police Department was one of the first police agencies to enact furloughs. In this report, Police Chief George Turner stated that it was a difficult process and that the department "lost morale and some officers just basically shut down" (PERF, 2010, p. 9). When the New Haven Connecticut Police Department made changes to their secondary employment policy requiring that all off-duty jobs be assigned through the extra-duty office, it prompted threats of lawsuits and resignations from officers who easily supplemented their income by 50% or more through these extra-jobs. The officers argued that businesses ought to have a say in which officers they want to hire (Kaempffer, 2010).

Senjo (2011) commented that, "While it is charming to consider police work as a calling similar to that of a soldier, priest, or elected official, the truth is that most officers moonlight" (p. 243). Police departments do not want to restrict the number of hours officers are allowed to work because they may find themselves with no officers available to work overtime when unexpected situations arise. The officers do not want the restrictions because, due to low pay, they need the money. In 2006, the Boston Police Department began stringently enforcing their established policy that placed limits on the number of hours officers were allowed to work. The administration undertook this measure to mitigate fatigue, but because officers had been working these hours for years without any objections, dissent immediately spread throughout the department (Senjo, 2011).

Although this argument has merit, police administrators should reconsider the overall purpose and scope of secondary employment and the extent to which it provides a public benefit. While off-duty employment coordinators believe the purpose of off-duty employment is to provide opportunities for officers to supplement their income, and business owners, who can afford to pay the price, enjoy the benefits of increased security for their customers, it is imperative that police chiefs first consider the degree of public benefit when making decisions about which extra-duty jobs they allow officers to work (Brunet, 2008). Some pay jobs provide a clear, substantial benefit to the public such as officers working in public schools. Others provide a clear benefit to the employee and a small number of citizens, such as working a private party or housesitting. However, the real public benefit comes from the calls for service that patrol officers do not have to answer, from problems that are averted by an officer's presence, from off-duty jobs located in high crime areas, and from the ability to quickly augment the police force in critical situations.

When evaluating secondary employment requests, if the extra-job is primarily for the benefit of the employee, administrators should strongly consider limiting the number of these pay jobs that officers are allowed to work. Conversely, if the department determines that an extra-duty job truly provides a broad public benefit and does not interfere with the employees' primary job responsibilities, they should devote adequate resources for effective oversight. Successful management of secondary employment from this perspective will require police administrators to decide whether this work is a public safety priority (City of San Jose, 2012).

RECOMMENDATION

Police administrators should gain control of off-duty police work within their departments. Control, in this instance, means strong policies and procedures, sufficient oversight, and adequate enforcement. Police chiefs are responsible for ensuring their agencies have policies and procedures in place that safeguard their departments and communities. CALEA, IACP, and TPCA all provide model secondary employment policies. However, having these policies in place is not an assurance of sufficient oversight or adequate enforcement.

Police administrators should review their current policies regarding off-duty police work and compare them with actual practices in their agencies. A review from this perspective should provide insight as to the degree of oversight and enforcement. It should also help to identify weaknesses and policy failures. Next, police administrators need to make a plan to address discrepancies and evaluate the impact these changes will have on employee morale and pay, businesses' needs, and public safety.   Police chiefs should be mindful that a strong secondary employment program should: provide adequate oversight, reduce the risk of fraud, prohibit extra-duty jobs that have inherent conflicts of interest, provide for equitable distribution among employees, place restrictions on numbers of hours worked, use an established fee schedule, prohibit cash payments to officers, prohibit officers from soliciting work, have a central point of coordination and control, minimize liability risks, include ethics training, and be primarily for the benefit of the public. Departments can maximize this benefit by looking closely at the off-duty jobs being worked and coordinating them with on-duty assignments (Brunet, 2008).

Whether an agency elects to monitor their extra-duty jobs or not, there is a cost. The cost will come in the form of resources, time, staffing, and morale or it will come in the form of lawsuits, loss of public trust, and officer safety. The degree of control police administrators take and the manner in which they do it will be an important factor in how easily their employees adjust. Keeping officers involved and in the loop will go a long way in helping to mitigate their concerns. While no one wants to negatively impact an officer's take home pay, the scope and purpose of secondary employment must be revisited. In the broad scope of all of the duties and responsibilities police agencies have, secondary employment should be just that – secondary.

There is much to be learned from other police agencies whose internal and external investigations, and city audits, revealed systemic problems in their secondary employment programs. According to the DOJ (2011), "long term commitment and meaningful engagement of all key stakeholders" is needed for lasting change (p. 19). It is imperative that police administrators take a hard look at these issues and realize that managing secondary police work is a chief's duty.

REFERENCES

Breads, J.F. (2012, April). Is the devil in the paid details? *Police Chief, 79*(4), 12-13.

Brunet, J.R. (2008). Blurring the line between public and private sectors: The case of police officers' off-duty employment. *Public Personnel Management, 37*(2), 161-174.

Bureau of Governmental Research. (2011). *Moonlighting: An overview of policies governing paid police details.* Retrieved from http://www.bgr.org/files/reports/BGR--Police_Details.pdf

City of San Jose. (2012). *Urgent reform and cultural change needed to gain control of off-duty police work.* Retrieved from http://www.sanjoseca.gov/auditor/AuditReports/1204/1204.pdf

Coleman, S. (2007). Conflict of interest and police: An unavoidable problem. In J. Ruiz & D. Hummer (Eds.), *Handbook of Police Administration (pp. 387-399).* London: Taylor & Francis.

Dees, M., & Ovaska, S. (2006, October 22). Off-duty job rules tighten for cops. *The News and Observer,* p. A1.

Department of Justice, Office of Public Affairs. (2011). *Executive Summary: NOPD investigation findings.* Retrieved from http://justice.gov/crt/about/spl/nopd_exec_summary.pdf

Hensley, J.J. (2012, March 20). Phoenix area police off-duty work gets little agency oversight. *The Republic.* Retrieved from: http://www.azcentral.com/arizonarepublic/news/articles/2012/03/10/20120310phoenix-area-police-off-duty-work.html

Kaempffer, W. (2010, January 20). Extra-duty changes spark tension in NHPD. *New Haven Register,* p. A3.

Police Executive Research Forum. (2010). *Critical issues in policing series: Is the economic downturn fundamentally changing how we police?* Retrieved from http://members.policeforum.org/library/critical-issues-in-policing-series/Economicdownturnaffectpolicing12.10.pdf

Reiss Jr., J.A. (1988). *Private employment of public police.* Washington, DC: U.S. Department of Justice.

Senjo, S.R. (2011). Dangerous fatigue conditions: a study of police work and law enforcement administration. *Police Practice and Research: An International Journal, 12*(3), 235-252.

Stodghill, M. (2009, October 11). Duluth's police chief makes new rules for cops working extra duty: Because there's too much unfairness in the current extra-duty policy, Duluth Police Chief Gordon Ramsay said, he plans to make changes Jan. 1. *Duluth News-Tribune.* Retrieved from http://ehis.ebscohost.com/ehost/detail?sid=8706fee6-9ff9-4c8e-bee6-d27d54517b7a%40sessionmgr112&vid=4&hid=107&bdata=JnNpdGU9ZWhvc3QtbGl2ZSZzY29wZT1zaXRl#db=nfh&AN=2W63649839082

Vila, B. (2006, September 27). Impact of long work hours on police officers and the communities they serve. *American Journal of Industrial Medicine, 49,* 972-980. doi: 10.1002/ajim.20333

What does a city police chief do? (n.d.). [Online forum comment]. Retrieved from http://wiki.answers.com/Q/What_does_a_city_chief_police_do

Woolfolk,J. (2012, March 25). Cops' side jobs ripped: Inquiry into program that lets off-

duty officers provide security shows conflicts, lack of oversight. *San Jose*

Mercury News, p. 1B.