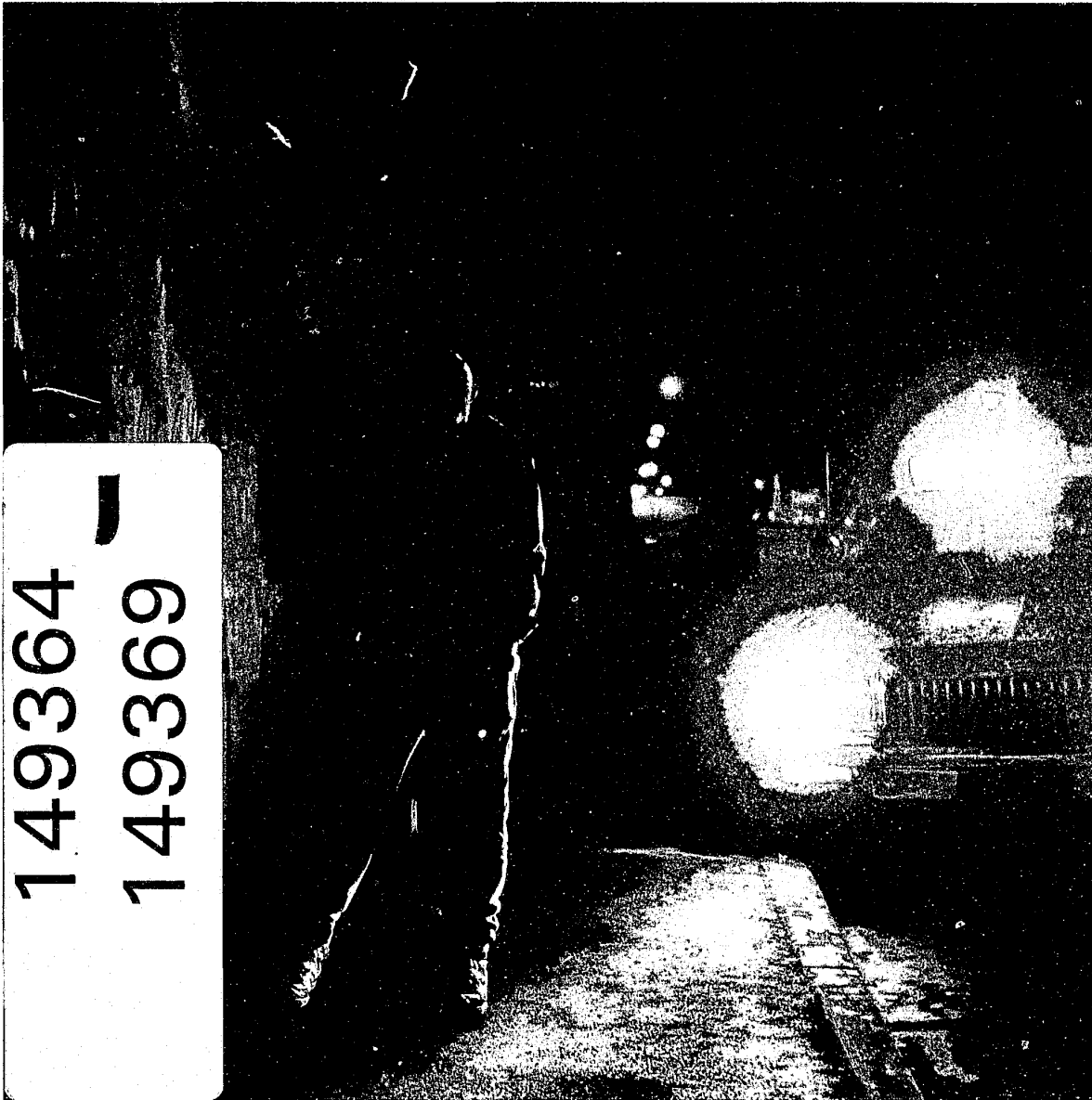




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Police Reserves Rights and Liabilities

By
HARVEY WALLACE, J.D., and ARNOLD P. PETER, J.D.



With tax revenues shrinking at an accelerated rate, public agencies now turn increasingly to volunteers to supplement their existing staffs. The reality of today's budgetary crisis requires that police administrators encourage and expand voluntarism in every possible facet of their agencies. However, in addition to implementing important policy and managerial strategies for the use of volunteers, law enforcement administrators must also deal with several troublesome legal requirements.

While every agency, whether public or private, must confront some legal obstacles when using volunteers, the use of volunteers in police work presents an entirely distinct set of legal issues. Unless addressed, these legal issues can endanger the success of even the most well-executed volunteer plan.

What follows is a discussion of the most critical of these issues. Law enforcement administrators who are familiar with possible problem areas can better protect the interests of both their agencies and their volunteers.

LEGAL ISSUES

Compensation of Reserve Officers

Law enforcement agencies traditionally use volunteers as a "reserve" component to supplement and assist full-time officers. Customarily, reserve officers receive no monetary compensation for their services, although some departments do pay for uniforms and other incidental costs. In fact, compensating these officers, even on a periodic or occasional basis, may raise

questions about their "volunteer" status. Generally, however, reserves may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, without losing their status as volunteers.¹

U.S. Department of Labor rules clearly stipulate that individuals who donate their time and services, without expectation of payment, for humanitarian, public service, or religious reasons are not considered employees.² Therefore, police departments that use such volunteer services need not comply with rules requiring payment of minimum wages and overtime.

The issue of compensation for volunteers came before the Supreme Court in *Alamo Foundation v. Secretary of Labor*.³ In this case, the Supreme Court distinguished between volunteers in commercial and noncommercial organizations and held that the so-called volunteers used by the Alamo Foundation, a religious organization, were *employees* within the meaning of the Federal wage and hour standards. The Court noted that the foundation derived income from the commercial enterprises in which the individuals worked and that the volunteers were paid in the form of benefits. Accordingly, the foundation was required to meet minimum wage, overtime, and recordkeeping requirements.⁴ Police reserves, however, are engaged in civic, not commercial, functions.

Because some agencies benefit greatly from the use of reservists, there is a natural tendency for administrators to want to compensate their efforts financially. While much of the reserve officers' appeal would be lost if they were

compensated on the same wage scale as full-time officers, some agencies have experimented with paying reserve officers and other volunteers on a reduced pay scale.

As a practical matter, regularly paid reserves may well argue that if they perform the same functions as full-time officers, they should be paid on the same scale. This is a real concern for agencies that routinely select new full-time officers from the reserve ranks, thereby using the reserve program as a pre-employment training period. These agencies may experience morale problems within the reserve ranks when reservists are paid less than the regular members of the department, even while performing the same duties. Therefore, the issue of compensation is extremely important when administrators consider the use of police reserves.

Union Considerations

Any proposal for change or revision within a law enforcement agency, including the initiation or expansion of a reserve program, may be met with a cry from law enforcement unions as a change in working conditions or wages. Structural reorganization that affects working conditions may be subject to the "meet and confer" process by which the agencies negotiate the proposed change with the unions.⁵

Specifically, police unions may argue that if payment to reserve officers reduces the number of overtime hours available to regular police officers, the issue is a mandatory subject of bargaining.⁶ Therefore, law enforcement agencies may be required to confer with the appropriate unions before initiating any formal plans for a reserve unit.



Mr. Wallace is an associate professor in the Department of Criminology, California State University, Fresno, California.



Mr. Peter is with the Fresno City, California, Attorney's Office.

Workers' Compensation

Law enforcement administrators also confront some crucial questions regarding workers' compensation benefits for reserve officers injured in the line of duty. Because police work is inherently strenuous and dangerous, workers' compensation claims within some law enforcement agencies far eclipse those of other agencies.

In some States, volunteers performing law enforcement or firefighting duties are automatically covered under the workers' compensation system.⁷ The additional cost of workers' compensation benefits for reserves would be minimal because the system already exists for full-time officers. However, when workers' compensation benefits are not automatically extended, valid reasons exist for law enforcement agencies to consider providing such benefits to reserve officers.

Extending workers' compensation benefits to reserve officers boosts morale. It demonstrates the agency's concern for the welfare of its reserve force.

This extension of workers' compensation benefits is also an effective way to limit civil liability and court judgments by seriously injured reserve officers. Workers' compensation provides a remedy for work-related injuries.

Failure to Train

Police administrators should be aware of the possible legal ramifications of allowing volunteers to perform police duties without sufficient training. While a single incident involving the use of force

by a police officer does not warrant an inference of failure to train properly, other areas of potential liability for reserve officers and their employers exist.⁸

Courts have found municipalities liable for failing to train in a variety of situations, including legal limits on the use of force,⁹ high-speed pursuits,¹⁰ constitutional limits of strip searches,¹¹ and the importance of confidentiality with respect to sexually transmitted diseases.¹²

“
Police reserves provide municipalities with an inexpensive solution to continuing demands for greater police service.
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Reserve officers by the very nature of their volunteer status engage in law enforcement activities sporadically. This part-time employment raises issues of the validity and effectiveness of any post-academy training.

Because reserve officers may not be available when departments conduct their regular training classes, police administrators must ensure that all reservists receive necessary training at another time. This may require a concerted effort by personnel in a department's training section to schedule

training during times when reserve officers are available.

However, administrators should bear in mind that all training of reservists must be as professional and timely as that offered to regular officers. Simply having a sergeant read a training memorandum to the reservists to satisfy the department's educational requirements could be viewed by a court as deliberate indifference.¹³

In *Russo v. City of Cincinnati*,¹⁴ the 6th Circuit held that a municipality does not automatically shield itself from liability or failure to train police officers simply by offering a course covering the subject. The ruling in *Russo* requires that any training conducted by the municipality must be adequate in content, as well as in quality. Thus, special attention needs to be paid to the type and quality of training afforded police reserves.

Police administrators should view the training of volunteers to be a significant consideration. Those who do not look at training in this light not only commit a disservice to the reserve officers but they also expose their departments to liability for failure to train.

CONCLUSION

Voluntarism is an American tradition. Dwindling public sector resources now provide further impetus for increasing the number of volunteers in law enforcement. Police reserves provide municipalities with an inexpensive solution to continuing demands for greater police service. However, administrators of law enforcement agencies

that incorporate volunteers must first understand both the legal issues and liabilities that may impact on the use of reserve police officers. Without a clear understanding of these issues, the benefits of such volunteers can be completely eliminated by possible negative effects. ♦

Endnotes

¹ C.F.R. 553.100-106.

² *Alamo Foundation v. Department of Labor*, 471 U.S. 290, 295, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985) (hereinafter *Alamo Foundation*).

³ *Id.* at 294.

⁴ *Id.* at 295.

⁵ For a Federal perspective, see N.L.R.A. sec. 8 (d), which mandates that private employers bargain on wages, hours, and other terms and conditions of employment. Work assignments have been held to be a condition of employment. See *Brotherhood of Locomotive Firemen & Enginemen*, 168 N.L.R.B. 677 (1967). See also, Grodin, "Public Employee Bargaining in California: The Meyers-Millias-Brown Act in the Courts," 23 *Hast. L.J.* 719, 749 (1972).

⁶ See *Crown Coast Corp.*, 155 N.L.R.B. 625 (1965), which held that work that deprives union employees of overtime pay is a mandated subject of collective bargaining. See also, *Dublin Professional Firefighters Local 1885 v. Valley Community Service Dist.*, 45 Cal. App.3d 116, 119, 119 Cal. Rptr. 182 (1975).

⁷ See Texas Rev. Civ. Stat. Ann. Art. 839h (Vernon Supp. 1992) and California Labor Code secs. 3361, 3365, 3366.

⁸ See *City of Oklahoma v. Tuttle*, 471 U.S. 808 (1985).

⁹ *Davis v. Mason County*, 927 F.2d 1473 (9th Cir. 1991), cert. denied, 112 S.Ct. 275 (1991).

¹⁰ *Frye v. Town of Akron*, 759 F.Supp. 1320, 1325 (N.D. Ind. 1991).

¹¹ *Doe v. Calumet City*, 754 F.Supp. 1211, 1225 (N.D. Ill. 1990).

¹² *Doe v. Borough of Barrington*, 729 F.Supp. 376 (D.N.J. 1990).

¹³ Deliberate indifference is the legal standard that courts require to establish the municipal policy as the "moving force" behind the constitutional violation. See *City of Canton v. Harris*, 109 S.Ct. 1197, 1204 n.8 (1989).

¹⁴ 953 F.2d 1036, 1047 (6th Cir. 1992).

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