STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

COUNTY OF ONONDAGA AND SHERIFF
OF ONONDAGA COUNTY,

Public Employer,

and

Case No. M2013-079

DEPUTY SHERIFFS BENEVOLENT ASSOCIATION
OF ONONDAGA COUNTY,

Employee Organization.

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FACT-FINDING REPORT AND RECOMMENDATIONS

Fact-Finder Michael G. Whelan

January 23, 2015

APPEARANCES

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Introduction and Procedural History

The Deputy Sheriff's Benevolent Association of Onondaga County, Inc. ("Association" or "DSBA"), and the County of Onondaga and the Sheriff of Onondaga County ("County") are parties to a collective bargaining agreement ("CBA"), which expired on December 31, 2012. The parties entered into bargaining for a successor agreement on December 17, 2012, and they have met on several occasions since that date, but they have been unable to reach agreement on all open issues. After the filing of a Declaration of Impasse on June 12, 2013, the New York State Public Employment Relations Board ("PERB") appointed a mediator. The parties conducted sessions with the PERB-appointed mediator, but they were unable to resolve all disputed issues between them.

On January 13, 2014, the Association filed a request with PERB for the appointment of a fact-finder. On February 18, 2014, PERB's Director of Conciliation appointed the undersigned Fact-Finder to conduct a hearing into the causes and circumstances of the dispute and to make findings of fact and recommendations to resolve the dispute.

By agreement of the parties, the fact-finding hearing was scheduled for June 26, 2014, and at the request of the parties a brief preliminary conference call was held on April 4, 2014, for the purpose of discussing the fact-finding hearing procedures. Prior to the scheduled hearing date, the County requested, and the Association agreed to, a postponement of the hearing until July 30, 2014.

The fact-finding hearing was held in the City of Syracuse on July 30, 2014, during which the parties presented evidence and argument in support of their respective

positions. The Fact-Finder left the hearing open so that the parties could file post-hearing briefs and rebuttal briefs. The parties timely submitted their post-hearing briefs on August 29, 2014, and their rebuttal briefs on October 3, 2014, and the hearing was deemed closed. This report is submitted pursuant to Section 209.3(c) of the Public Employees' Fair Employment Act.

Issues at Impasse

During negotiations to amend the CBA, the parties submitted proposals to establish new articles and amend several existing articles. The unresolved issues that the parties submitted to fact-finding involve the following articles: (1) Article 4 – County Management; (2) Article 7 – Overtime Compensation; (3) Article 7 – Training Time; (4) Article 9 – Health and Dental Benefits; (5) Article 12 – Shift Differential; (6) Article 14 – Clothing Allowance/Footwear; (7) Article 16 – Sick Leave; (8) Article 16 – Annual/Vacation Leave; (9) Article 22 – Employee Investigation Procedure; (10) Article 30 – Salaries; (11) Article 37 – Term; (12) New Article – Drug and Alcohol Testing: and (13) New Article - Longevity Pay.[1]

Findings of Fact

1. The Parties

The County of Onondaga is located in Central New York and is comprised of 19 towns, 15 villages, as well as the City of Syracuse. The County has a total population of approximately 467,026, including about 145,170 individuals residing in the City of Syracuse, and a total land area of 794 square miles. The County is divided into 17 legislative districts, with an elected legislator representing each district in the County

[1] The parties have agreed on amendments to Article 3 relating to Association Status and Article 14 relating to Holidays, and further agreed that these articles do not need to be submitted to fact-finding.

Legislature. Further, the County Executive serves as the Chief Executive Officer and Chief Budget Officer of the County. The Onondaga County Sheriff's Office is a distinct unit of County government and a full-service law enforcement agency, employing approximately 650 individuals. The Sheriff's Office is comprised of 3 separate departments: the Police Department, the Custody Department, and the Civil Department.

The DSBA is the exclusive representative of a bargaining unit consisting of approximately 287 sworn deputy sheriffs employed within the Custody Department, the Civil Department at the Onondaga County Courthouse, and in various Community Service capacities. The DSBA represents all deputy sheriffs employed by the Onondaga County Sheriff's Office, except those in the Police Department who are represented by the Onondaga County Deputy Sheriff's Police Association ("OCSPA").[2] Specifically, the DSBA represents deputy sheriffs working in the following classifications: Deputy Sheriff Civil, Deputy Sheriff Community Service Officer, Deputy Sheriff – Confidential Attendant (Administrative Judge 5th Judicial District), Deputy Sheriff Court Attendant, Deputy Sheriff Custody, Deputy Sheriff Juvenile Transportation Officer, Deputy Sheriff Lieutenant Civil, Deputy Sheriff Lieutenant Custody, Deputy Sheriff Sergeant Civil, and Deputy Sheriff Sergeant Custody.

Currently, the vast majority of employees in the DSBA unit work in the Custody Department; 9 unit members work in the Civil Department; and 12 unit members work in the Courthouse. Those working in the Custody Department are responsible for providing pre-sentenced correctional law-enforcement services and prisoner-transportation

[2] In approximately 1993, the police division deputy sheriffs fragmented from the DSBA unit and created their own separate and distinct unit.

services for inmates committed to the care and custody of the Onondaga County Sheriff from federal, state, and local courts in the County, the City of Syracuse, and various towns and villages. The Custody Department also provides services as a "lock-up" location for un-arraigned inmates and post-arrest processing for both the Syracuse Police Department and the Onondaga Sheriff's Office. Inmates are incarcerated for charges ranging from misdemeanors to murder.

2. Comparative Data

The findings in this section are based on evidence presented by the parties concerning the salaries and other terms of employment for similarly situated employees working for other counties within the state.

a) Salary

Both parties presented data from Broome, Monroe, Niagara, and Oswego counties. Among the other counties upon which the parties presented data, the following were considered as comparators based largely on proximity to and relative population with Onondaga County: Albany, Dutchess, Erie, Oneida, and Saratoga.[3]

Table 1 below contains the entry rate and maximum rate for deputy sheriffs and the maximum rate for sergeants and lieutenants for 2012, or from prior years as indicated. Although the parties presented data on other years, data for 2012 was the

[3] Corrections officers in the CSEA unit were not considered in this analysis. Although sheriff's deputies and corrections officers both supervise inmates, the inmates each classification supervises are different in terms of risk and danger. The inmates supervised by corrections officers are typically minimum risk inmates sentenced for up to one year, whereas the inmates supervised by deputies are more likely to be high risk. In addition to the different risks and dangers inherent in these positions, other factors of comparability have been considered in previous litigation of this issue, and it has been held that the two positions are not comparable.

most thorough, and that year is particularly significant in this matter because the CBA expired at the end of 2012.

Table 1

Year	County	Population	Entry Rate Deputy Sheriff	Max Rate Deputy Sheriff	Max Rate Sergeant	Max Rate Lieutenant
2012	Oswego	121,700	$40,872	$53,747	$57,640	
2012	Broome	198,069	$39,769	$58,532	$64,384	$70,236
2011	Niagara	215,124	$33,509	$61,006	$67,600	
2012	Saratoga	219,607	$40,226	$57,221	$61,496	$64,394
2012	Oneida	234,878	$33,165	$51,000	$54,683	$59,439
2010	Dutchess	297,322	$47,589	$58,265	$69,451	
2012	Albany	304,204	$43,637	$51,511	$63,522	$68,730
2012	**Onondaga**	**466,852**	**$40,410**	**$52,985**	**$60,579**	**$64,742**
2012	Monroe	747,813	$41,261	$64,210	$74,484	
2012	Erie	919,040	$38,646	$54,887	$59.184	$63,500

The information in Table 1 can be analyzed to show how employees in the DSBA unit compared to similarly situated employees across the state in 2012. First, in terms of how unit members compare with others from high to low on the salary scale, Table 1 shows that the entry rate for deputy sheriffs in Onondaga ranks 5th out of 10, while the maximum rate for deputy sheriffs ranks 8th out of 10. The maximum rate for sergeants ranks 7th out of 10, and the maximum rate for lieutenants ranks 3rd out of 6.

In terms of averages,[4] the average entry rate for deputy sheriffs among the comparators is $39,852, while the Onondaga County entry rate is $40,410. The average maximum deputy sheriff rate is $56,709, while the Onondaga County maximum rate is $52,985. The average maximum sergeant rate is $63,605, while the Onondaga County

[4] Averages were calculated without including Onondaga County rates.

maximum rate is $60,579. The average maximum lieutenant rate is $65,260, while the Onondaga County maximum rate is $64,742.

These data show that in 2012 the entry rate for Onondaga County deputy sheriffs and the maximum rate for lieutenants were in line with other comparable entities, but the maximum rate for Onondaga County deputy sheriffs and sergeants were near the bottom of the group.

It is also the case that over two years have passed since the CBA expired and some employers have negotiated increases to their rates in effect in 2012. Tables 2 and 3 below include record data on negotiated salaries for the comparable employers for 2013 and 2014 that can be used to continue to analyze the relative position of the DSBA unit with other comparable employees.

Table 2

Year	County	Population	Entry Rate Deputy Sheriff	Max Rate Deputy Sheriff	Max Rate Sergeant	Max Rate Lieutenant
2013	Broome	198,069	$40,962	$60,288	$66,316	$72,343
2013	Saratoga	219,607	$40,930	$58,173	$62,523	$65,471
2013	Oneida	234,878	$33,165	$51,000	$54,683	$59,439
2013	Albany	304,204	$35,000	$50,501	$64,792	$70,105
2013	Erie	919,040	$39,420	$55,985	$60,368	$64,771

Table 3

Year	County	Population	Entry Rate Deputy Sheriff	Max Rate Deputy Sheriff	Max Rate Sergeant	Max Rate Lieutenant
2014	Broome	198,069	$42,191	$62,097	$68,305	$74,513
2014	Saratoga	219,607	$41,748	$59,281	$63,717	$66,725
2014	Oneida	234,878	$33,165	$51,000	$54,683	$59,439
2014	Albany	304,204	$35,000	$55,041		
2014	Erie	919,040	$40,208	$57,105	$61,575	$66,066

The record data are insufficient to draw any definitive conclusions regarding a pattern of wage increases among the comparator group. For example, employees in Broome County received increases of 3% in 2013 and 2014; employees in Erie County received 2 % increases in 2013 and 2014; and employees in Saratoga County received increases ranging from 1.67% to 1.75% in 2013 and approximately 2% in 2014. The data also show that employees in Oneida County agreed to a contractual wage freeze for 2013 and 2014. Also, in Albany County, the starting deputy wage was dramatically reduced, while the maximum deputy rate decreased about 2% for 2013 and then increased 9% for 2014. However, Table 4 below shows data from the most recent years available and can be used to update the relative position of the DSBA bargaining unit when compared to the other employers.

Table 4

Year	County	Population	Entry Rate Deputy Sheriff	Max Rate Deputy Sheriff	Max Rate Sergeant	Max Rate Lieutenant
2012	Oswego	121,700	$40,872	$53,747	$57,640	
2014	Broome	198,069	$42,191	$62,097	$68,305	$74,513
2011	Niagara	215,124	$33,509	$61,006	$67,600	
2014	Saratoga	219,607	$41,748	$59,281	$63,717	$66,725
2014	Oneida	234,878	$33,165	$51,000	$54,683	$59,439
2010	Dutchess	297,322	$47,589	$58,265	$69,451	
2014 2013	Albany	304,204	$35,000	$55,041	 $64,792	 $70,105
2012	**Onondaga**	**466,852**	**$40,410**	**$52,985**	**$60,579**	**$64,742**
2012	Monroe	747,813	$41,261	$64,210	$74,484	
2014	Erie	919,040	$40,208	$57,105	$61,575	$66,066

The data in Table 4 show how employees in the DSBA unit compare to similarly situated employees across the state in 2014. First, in terms of how unit members

compare with others from high to low on the salary scale, Table 1 shows that the entry rate for deputy sheriffs in Onondaga ranks 6th out of 10, while the maximum rate for deputy sheriffs ranks 9th out of 10. The maximum rate for sergeants ranks 8th out of 10, and the maximum rate for lieutenants ranks 5th out of 6.

In terms of averages, the average entry rate for deputy sheriffs among the comparators is $39,504, while the Onondaga County entry rate is $40,410. The average maximum deputy sheriff rate is $57,972, while the Onondaga County maximum rate is $52,985. The average maximum sergeant rate is $64,694, while the Onondaga County maximum rate is $60,579. The average maximum lieutenant rate is $66,686, while the Onondaga County maximum rate is $67,370.

Overall, these data show that the entry rate for Onondaga deputy sheriffs continues to be in line with other comparable entities. However, the maximum rate for deputy sheriffs and sergeants has fallen even closer to the bottom of the group, and the maximum rate for lieutenants has also slipped in relation to others in the group.

b) Vacation Leave

There is record evidence on vacation leave from eight of the nine comparators identified above in the section on salary. The maximum number of vacation days provided by each county is: Erie – 30; Oswego – 28; Albany – 25; Broome – 24; Monroe – 24; Niagara – 20; Oneida – 20; and Saratoga – 20. Five of the eight comparators have more vacation leave than members of the DSBA unit, and the average maximum number of vacation days among the comparators rounds up to 24.

c) Training Time

There is evidence in the record on training time from eight of the nine comparators identified above in the section on salary. Of those, three employers – Albany, Broome, and Oswego counties – pay time and one-half after the employee has worked 40 hours in the week. Saratoga County pays time and one-half for training when the training is contiguous to the shift. Niagara County pays two-thirds time for the first 24 hours of training. Like Onondaga County, Erie and Monroe counties pay straight time for training. Only Oneida County pays for training at the rate of time and one-half, and its employees have the option to take compensatory time rather than pay.

d) Shift Differential

There is evidence in the record on shift differential from six of the nine comparators identified above in the section on salary. These counties pay shift differential in the following manner: Monroe County – 2.5% of base salary (approximately $.50 per hour for entry level deputy sheriffs; $.77 per hour for deputy sheriffs at the maximum rate; and $.90 cents per hour for sergeants at the maximum rate); Broome County – $.90 per hour; Erie County – $.85 per hour; Oneida County – $.60 per hour for second shift and $.65 per hour for third shift; Niagara County – $.50 per hour for second shift and $.55 per hour for third shift; and Oswego County – $.45 per hour for second shift and $.50 per hour for third shift.

Using an average rate of $.72 per hour for Monroe County, the average shift differential among the comparators is $.67 per hour for second shift and $.70 per hour for third shift.

e) Drug Testing

The employees of several county sheriffs in New York are subject to drug and alcohol testing, including those in Albany, Broome, Cortland, Erie, and Madison counties.

f) Use of Part-Time Deputies

Several county sheriffs employ part-time deputies or corrections officers. In Cortland, Erie (CSEA-Corrections Officers), and Saratoga counties, part-timers are included in bargaining units of sheriff's deputies or corrections officers. Part-timers who are not in a sheriff's deputy or corrections officer bargaining unit are utilized in Cayuga County. In Niagara and Oswego counties, part-timers are utilized, but there is no record evidence to confirm their bargaining unit status. Where part-timers are used, there are often restrictions on when they can be used to cover overtime shifts. For example, in Cortland County part-time employees are only used for overtime only if full-time staff is unavailable, and in Erie County full-time deputies working on a shift are used on overtime before calling in part-time employees.

3. Overtime

Annual overtime costs associated with the DSBA unit have steadily increased since at least 2010. The total amounts of overtime for unit employees over the last few years were $1,973,558 in 2010; $2,104,716 in 2011; $2,643,589 in 2012; and $3,064,503 in 2013. By mid-2014, overtime costs for 2014 appeared to continue this trend. The total payroll for the unit in 2013 was $18,747,732. Thus, overtime costs for that year were about 16.7% of payroll.

To put these numbers in perspective, the entry rate for deputies is $40,410, and at the top end of the pay scale, the maximum rate for lieutenants is $64,742 per year. Overtime pay for bargaining unit members averaged over $9,000 per member in 2012 and over $10,000 per member in 2013. However, the vast majority of overtime pay is earned by the half of the unit. For example, in 2012, about one-half the unit collected about 91% of the overtime, and in 2013, about one-half of the unit collected about 86% of the overtime. Some employees earned large sums in overtime compensation. In 2012, ten unit employees earned over $47,000 in overtime, with the highest earning $87,537. In 2013, ten unit employees earned over $54,000 in overtime, with the highest earning $73,046. Overall, 10% of unit employees earned over $27,000 in overtime compensation in 2012, and 10% of the unit earned over $31,000 in 2013.

The significant amount spent by the County on overtime for the DSBA unit did not go unnoticed by County officials and the media. In 2012, the County Legislature moved to eliminate certain overtime practices and called for County administrators to negotiate changes to labor agreements to control overtime costs. The County comptroller audited the payroll practices of the custody division in 2013, and in September of that year it released a report and a series of recommendations for controlling overtime including contractual changes and use of part-time custody deputies

4. The County's Financial Condition

The County has done a good job over the last few years dealing with the complexity and unpredictability of the budgeting process. County Exhibits show that in 2013, the County's general fund took in about $775 million. Principal sources of revenue

include sales and property taxes, although there are many other sources of revenue, including over $11 million generated annually through custody services the County provides for other municipalities.

County revenue is spent providing various government services, as follows: 43% on mandates, including Medicaid; 32% on public safety; 12% on physical services, including transportation; and 13% on other government services. The cost of providing Medicaid alone consumes about 13% of the County's budget. The County's cost for providing Medicaid had increased from about $82 million in 2010 to almost $105 million in 2012 and 2013. As a result of savings for various reasons, including the Affordable Care Act ("ACA"), the cost of providing Medicaid decreased in 2012 by about $2 million. Debt service is another significant expense for the County that cost nearly $50 million in 2013 and is projected to cost upwards of $90 million by 2018.

Wages and benefits necessary to pay the County employees who provide government services also consume a significant part of the County's revenue. In 2013, wages paid accounted for approximately $250 million, and approximately 62% of that amount, or an additional $150 million, went to pay fringe benefits. About $42 million of the fringe benefit total went to support retirement benefits, and this figure was a $27 million increase over the County retirement benefit costs in 2009. However, in 2014, the County's cost for retirement benefits came down about $2 million.

The County concedes that it is not fiscally distressed, and there are indications that it is financially sound. One such indicator is the County's prudent use of its taxing authority. Property tax revenue, which came in at about $141 million in 2014, has decreased steadily over the last few years as the County has consistently lowered its

full value tax rate. The full value tax rate (i.e., the rate per thousand dollars of assessed value) has decreased from 7.28% in 2008 to 5.23% in 2014, resulting in a reduction in tax levy of nearly $38 million. As a result of this prudent use of its taxing authority, the County is nearly 70% under its constitutional taxing authority.

Another key indicator of the County's financial health and its ability to pay increases is the condition of its general fund balance. Despite the reduction in full value tax rate and the resulting loss in property tax revenue during the last several years, the record evidence shows that since 2005 the general fund balance has been consistently above the County's general fund balance goal, established pursuant to Resolution # 270-1999, of 10% of general fund revenue. As of 2012, the last year for which there is record evidence, the general fund balance stood at over $89 million, or 13.25% of general fund revenue.

Another positive sign is that the County's sales tax collections have trended upward dramatically over the last several years. In 2009, the County brought in about $128 million in sales tax collects in the wake of the economic crisis that spawned the "great recession." Since then, sales tax collections have increased dramatically to the point where they reached $250 million in 2014. Finally, another positive sign is that after several years of dramatic increases, retirement and Medicaid costs have stabilized and have come down slightly.

In sum, there are financial challenges ahead for the County as labor costs, debt service, and other costs rise, and because certain forms of revenue, such as sales taxes, are unpredictable, but the County is able to provide some of the increases sought by the Association.

Report and Recommendations

Both parties in these negotiations had ambitious goals and opened numerous articles. They are also represented by talented and experienced professionals, and it is apparent from the parties' well-crafted briefs and oral presentations that they feel strongly about the disputed issues. But now, over two years since the CBA expired, the time has come for the parties to take stock of what can reasonably be gained in bargaining and the costs of continuing to prolong this dispute.

One thing that can be said about these negotiations is that both sides cannot get all they want. The only way to get this relationship back on track and get a new agreement is to make some reasonable compromises. This need to compromise does not mean that important principles need to be abandoned, but solutions that are fair and reasonable should be adopted. The Fact-Finder's recommendations below attempt to find fair and reasonable solutions to the issues presented, taking into consideration the evidence presented and statutory guidance from the Taylor Law.

The Taylor Law does not require fact-finders to take into account specific factors when making recommendations. However, the statutory criteria employed in compulsory interest arbitration provide useful guidance. Those factors, which will be considered when relevant here, include:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

These factors and the evidence presented by the parties are the basis for the recommendation below on each of the open issues. Each recommendation set forth below is presented after a summary of the parties' respective positions and a discussion of the issue on the merits.

1. Article 4 – County Management

A. County's Position – County Management Article

The County proposes to amend Article 4 of the parties' CBA through the addition of the following language:

> Up to thirty (30) non-bargaining unit part-time employees may be employed by the County in the "Deputy Sheriff (Custody)" title at any one time, to be utilized to perform bargaining unit work as deemed appropriate by management. No such part-time employee will work more than 1,040 hours in any calendar year. The use of these part-time employees shall not destroy any exclusivity that may currently exist, and no full-time Deputy will be laid off for lack of work while part-time employees holding the "Deputy Sheriff (Custody)" title remain employed.

The County submits that overtime costs attributable to the DSBA unit represent a significant area of concern that warrants immediate attention. The County acknowledged that some amount of overtime for the DSBA unit is an operational necessity, but contends that authorizing the Sheriff to utilize a small number of part-time, non-unit employees in the limited capacity proposed would allow the County to take a significant step toward reducing its excessive overtime costs while at the same

time protecting the bargaining unit and its exclusivity rights. The County has proposed the above language to limit the amount of overtime in the unit by using a limited number of part-time, non-bargaining unit employees to cover shifts that would currently must be covered by using bargaining unit members working overtime.

B. DSBA's Position – County Management Article

The DSBA opposes the County's proposal and submits that it is a direct attack on the future of the its bargaining unit comprised of full-time deputies who supervise pre-sentence and pre-trial detainees. The DSBA contends that the proposal is a direct attack on the unit because the County could unilaterally establish wages and other terms and conditions of employment for thirty part-time employees – the equivalent of fifteen full-time employees – who would be performing unit work. The DSBA adds that it is likely that the County would not stop with just thirty part-time employees, which, over the next decade, would leave the DSBA a shell of the current unit, while very dangerous unit work was being performed by part-time, non-unit, ill-trained employees.

The DBSA also rejects the County's rationale for the proposal of curtailing overtime costs because the County determines when overtime hours are required and the County reduced the number of positions in the unit which has increased the amount of work that must be performed on overtime. The DSBA reasons that the County is simply intending to reduce its DSBA workforce through attrition and replace unit members with cheaper labor. Further, the DSBA notes that any argument by the County to rationalize this proposal because of complaints about the overtime selection process by seniority for those working overtime must also be rejected because the County did not address the seniority based overtime selection process in fact-finding.

Finally, the DSBA argues that the County has a long history of attempting to use non-unit employees to perform DSBA unit work, which the DSBA has successfully attacked and thwarted by litigation before PERB and the courts, and which the parties continue to litigate in a pending court case.

C. Discussion – County Management Article

The County has a legitimate interest in attempting to limit the amount of overtime that it currently pays to bargaining unit members, and it is attempting to negotiate a provision that could reduce the amount of overtime by allowing non-unit, part-time employees to perform bargaining unit work. That stated, the record evidence does not support the proposition that a large number of county sheriffs in New York use non-bargaining unit part-time employees to perform bargaining unit work. For most of the jurisdictions in which the unit status of employees could be determined, part-time employees were included in the unit or they could not be used for overtime until after it had been offered to full-time employees.

The parties have a long history of disputes over what constitutes bargaining unit work and how it can be performed. The result of these disputes is that bargaining unit work has been defined as guarding pre-sentence and pre-trial detainees, and the Association has been ever vigilant in protecting its work. In view of this history, it is highly unlikely that the Association would agree to any provision that would allow non-unit members to perform bargaining unit work.

There are other ways to address the County's interest in limiting the amount of overtime paid to unit members. Hiring other deputies may resolve some aspects of this issue, but, as noted by the County, hiring additional unit members also brings with it the

significant burden of fringe benefit costs, which currently average over 60% of wages. As discussed below, recommended changes to Article 7 may also help address this issue.

D. Recommendation – County Management Article

The Fact Finder recommends that the parties maintain the status quo on Article 4 and that the County's proposal not be included in a new agreement.

2. Article 7 – Overtime Compensation

A. County's Position – Overtime Compensation

The County has proposed eliminating language in Article 7 of the CBA providing that eligibility for overtime compensation shall include some sick leave and other paid leave accruals as time worked. Under the County's proposal, only actual hours worked would be used to determine eligibility for overtime compensation.

As justification for this proposal, the County claims that overtime costs incurred by the DSBA unit present both an immediate financial concern and a secondary concern related to inflated pension obligations for the County. The County further claims that its proposal would allow it to realize necessary savings while taking an important step towards permanently addressing growing overtime concerns with respect to this bargaining unit. The County also argues that the CBA provides a more generous and expensive treatment of overtime compensation than permitted under federal law. Finally, the County also argues that Article 6 of the CBA provides for several types of premium compensation not addressed by this proposal from which unit members will continue to benefit.

B. DSBA's Position – Overtime Compensation

The DSBA opposes the County's proposal on these grounds: that the present method of calculating overtime has been treated the same way for many years; that it would result in a significant pay decrease to unit members; and that no other County bargaining units have agreed to such a proposal. In addition, the DSBA objects to the County's proposal because it would result in a significant pay decrease when the County has also proposed no wage increase for two out of four years and an increase in the employee health insurance contribution. The DSBA also notes that Article 7 already limits how much sick leave can count towards hours worked to the first five verified and first five unverified sick leave days in a calendar year. Finally, the DSBA also notes that a previous fact-finder rejected a similar County proposal in 2010.

C. Discussion – Overtime Compensation

Four years ago in a similar proceeding, the Fact-Finder concluded that "this is not one of the major problems facing the parties, and given the strong objection of the Association, it is not an issue which the parties have agreed to put before me." Now, given the significant amounts of overtime paid to a portion of the unit and the outside attention this issue has received, the County has a legitimate interest in attempting to curb the significant amounts of overtime earned by unit members. Of course, the Association is correct that any method to reduce the overtime earned by unit members would cost them money, so any recommendations should meet the County's legitimate interest in reducing overtime while minimizing the overall effect on unit members. Hiring part-timers would be a direct way to attempt to address the overtime issue, but for reasons discussed above, this method has not been recommended.

The County pins most of the blame for excessive overtime on existing contract language. Yet a contractual provision that appears to be intended to reduce employees' eligibility for overtime in the context of shift swaps is presently being ignored in favor of an extra-contractual practice. That provision in Article 7 states that "[i]n order to be eligible to be paid overtime compensation, a member must actually, physically work their regular work schedule during the fourteen (14) day payroll period." The plain language of this provision would not require the County to pay overtime to an employee who works an extra shift during a payroll period in which another employee worked a shift for him or her due to a swap. Because the language of the CBA itself is favorable to the County, it is not the current language that needs fixing, it is the implementation of that language that needs to be addressed.

The County also wants to exclude all other paid leave when determining eligibility for overtime. Adopting this approach may give the County some relief, but it could have a significant effect on some unit members.[5] However, there is an approach that the parties are already using that does not go so far as the County's proposal, but may balance the competing interests of the parties. In the context of determining eligibility for overtime, the parties currently limit the amount of sick leave that is treated as time worked to the first five verified sick leave days in a calendar year and the first five unverified sick leave days in a calendar year. If this approach is modified such that only five days of sick leave may count as time worked, regardless of whether they are verified, and only five days of other forms of paid leave may be considered time worked,

[5] As discussed above in the findings of fact, the greatest impact of any changes to the overtime provisions would be on that minority of the unit getting significant amounts of overtime. Because nearly half the unit collects only about 13% of the overtime paid out, this group of employees would not be greatly impacted by any proposed or recommended changes.

it may serve to reduce the amount of overtime eligibility in the unit without unduly affecting employees who have grown accustomed to earning a lot of overtime.

These recommended changes may not go as far as the County wants in curbing overtime, but because coverage for paid leave results in about 45% of overtime use, and coverage for sick leave results in about 11% of overtime use, they may be a step towards controlling excessive overtime costs. As another means to mitigate the effect of this recommendation on unit members, it will be recommended that the County provide wage increases greater than those it has proposed.

D. Recommendation – Overtime Compensation

The Fact Finder recommends that the parties amend Article 7 to delete the current subparts A, B, and C, and replace with the following:

A) Sick leave limited to the first five sick leave days in a calendar year (regardless of whether verified);

B) All other paid leave (e.g., annual leave, personal leave) limited to the first five leave days in a calendar year.

3. Article 7 – Training Time

A. DSBA's Position – Training Time

The DSBA has proposed that training hours be compensated at the overtime rate of time and one-half the regular hourly rate. The current contact states that the first 40 hours of training will be paid at straight time or compensatory time, and said training is scheduled during non-working hours. As justification for its proposal, the DSBA notes that the OCSPA unit has training during working hours.

B. County's Position – Training Time

The County opposes the DSBA's proposal on the grounds that paying training time at the overtime rate would add to the already excessive overtime costs associated with the DSBA unit, and there is no reasonable justification to alter the existing CBA language. The County contends that this proposal would amount to over $150,000 in additional expense to the County. The County also argues that this proposal is inconsistent with training-time language found in agreements from surrounding and comparable counties, and that none of the other jurisdictions surveyed by the County compensate for training time as richly as would be required under the DSBA's proposal.

C. Discussion – Training Time

The County has a legitimate interest in limiting overtime, and this is not the time to create additional overtime obligations for the County.

D. Recommendation – Training Time

The Fact-Finder recommends that the parties maintain the status quo on training time, and that the Association's proposal not be included in a new agreement.

4. Article 9 – Health and Dental Benefits

Both parties put forward proposals to amend Article 9 of their CBA concerning health and dental benefits.

The County proposed to increase the rate of employee contributions for individual and family coverage under the Onondaga County Health and Wellness Program ("OnPoint Program") from 15% to the following contributions over the term of a 3-year agreement: 20% effective at ratification and legislative approval; 25% effective January 1, 2015; and 30% effective January 1, 2016. In addition, the County submitted

a proposal to address the potential impact of the ACA and the Health Care and Education Reconciliation Act of 2010 ("HCERA").

The DSBA proposed moving from the OnPoint Program to the County Health Insurance Coalition ("Coalition") effective the first day of January after agreement and ratification, and further proposes that the employee contribution rate should be reduced from 15% to 12%.

A. County's Position – Health and Dental Benefits

The County submits that its proposal allows DSBA members to maintain their current plan design through the OnPoint Program, while gradually increasing employee contribution rates to help offset the impact of its ever-rising health insurance costs. The County contends that containing health-insurance-related expenses is of great importance to virtually all employers today, and that asking employees to incur a slightly higher percentage of the cost of health insurance is appropriate in today's environment. The County contends that regardless of whether the DSBA unit moves to the Coalition plan or remains in its existing plan, increased employee contribution rates are necessary and appropriate. In support of this contention, the County notes that the cost of health benefits to the County associated with the DSBA eclipsed $5 million in fiscal year 2013 alone.

The County also submits that its proposal to address the potential impact of the ACA and HCERA seeks to add flexibility to the parties' agreement for the limited purpose of addressing the impact of potential changes stemming from and/or required by the ACA that will become effective during the life of the next agreement. The County contends that because the ACA has undergone countless revisions since its enactment,

it is not unreasonable to assume that it will likely be subject to additional modifications in the near future when the effects of many of its more significant provisions will begin to be implemented.

The County contends that the Association's proposal is premised on its misplaced argument that switching to the plan design associated with the health insurance Coalition would result in massive savings to the County. The County explains that a self-funded health insurance plan is an arrangement where, in exchange for assuming all liability and risk associated with the uncertainty of health insurance usage, employers can achieve greater flexibility over plan design and administration. The County also notes that under the self-funded plan model, instead of paying a health insurance company at premium rates established in accordance with projected claims-related costs, factoring in the administrative and overhead costs of the insurer, the employer collects employee contributions at amounts set in accordance with actuarial principles (called premium equivalent rates) and then pays all claims directly. Further, the County makes the point that claims-related expenses are often volatile and unpredictable; thus fluctuations in claims can create substantial financial exposure for employers with self-funded plans. Finally, the County argues that while self-funded plans offer employers possible benefits, including the potential for some savings in years when claims are lower than expected and avoidance of administrative fees charged by insurers, the employer remains liable for potential massive expenses and costs incurred when claims exceed expectations.

B. DSBA's Position – Health and Dental Benefits

The DSBA has proposed moving to the County health insurance Coalition effective the first day of January after agreement and ratification and a reduction in the employee contribution from 15% to 12%. The Association objects to the County's proposal on the grounds that no other County bargaining unit contributes more than 15% toward the health insurance premium.

The Association notes that current monthly contribution rates for the two plans are as follows:

2014 Monthly rates for the Coalition

Individual	$413.43
Employer	$367.60
Employee	$ 45.83
Family	$1,124.77
Employer	$1,000.08
Employee	$ 124.69

2014 Monthly rates for OnPoint Program

Individual	$607.79
Employer	$516.62
Employee	$ 91.17
Family	$1,592.51
Employer	$1,353.68
Employee	$ 238.89

The Association contends that by moving the DSBA unit from the Onpoint Program to the Coalition, the County would save about $885,870 annually. The Association claims that this cost savings is beyond what the County would save by doubling the DSBA contribution rate to 30% which would equate to a savings of $47,877 a month or $574,532 a year. The Association further asserts that the employer is not so

much concerned with cost savings as it is with attempting to have each of its bargaining units at a 30% contribution level.

Finally, with regard to the County's proposal regarding its ability to make changes to terms and conditions of employment to comply with the ACA, the Association contends that health insurance is a mandatory subject of bargaining, and, as such, any such changes must be negotiated.

C. Discussion – Health and Dental Benefits

The County correctly notes that under the Coalition plan its costs are unpredictable. Depending on claims submitted by employees it may have to pick up the difference between what it collects in "premiums" and what it pays out for claims. Although the Association's calculations concerning the amount of money the County would save by moving the DSBA unit members into the Coalition appear to be accurate, they do not lead to a "hard" savings of over $800,000 because the way the Coalition is designed, the County is ultimately responsible to pay for the actual cost of all claims, which may exceed premiums.

That stated, the current "premiums" in the Coalition plan are significantly less than those in the OnPoint Program. Because the DSBA wants to be included in the Coalition, and it does not appear that the County objects, the sensible recommendation here is that the DSBA unit should join the other County units in the Coalition.

Under the Association's proposal, the first time that could happen would be January 1, 2016, so that for this year the DSBA would remain in the OnPoint Program. Under the County's proposal, the employee cost of the monthly premium would increase from 15% to 25%. Under the current circumstances that is an unreasonable

increase, particularly when no other County unit pays over 15%. Because unit employees are currently paying 15%, that rate should continue for 2015.

As for 2016, the recommendation below is for the DSBA unit to go to the Coalition. By maintaining a 15% rate of employee contribution after transitioning into the Coalition and using the 2014 Coalition rates, DBSA unit members with individual coverage would save $350 annually over their current OnPoint payments, and DSBA members with family coverage would save $842 annually over their current OnPoint payments. Based on the 2014 rates, the County would also save money, but as mentioned above, the County remains liable for plan expenditures which exceed planned contributions.

Concerning the County's proposal to permit changes to the CBA to comply with the ACA, the Association is rightly concerned about agreeing to language that could be construed as a waiver of its right to bargain. The right to bargain is not inconsistent with the County's ability to maintain compliance with the ACA, and for that reason, the County's proposal on that issue will not be recommended.

D. Recommendation – Health and Dental Benefits

The Fact-Finder recommends that:

(1) the parties maintain the status quo for 2015, such that the DSBA unit members should remain in the OnPoint Program with a monthly contribution rate of 15% percent of the total premium;

(2) effective January 1, 2016, the DSBA unit should move to the Coalition with a monthly contribution rate of 15% of total premium; and

(3) the County's proposal to include language concerning amendments to the CBA to comply with the ACA should not be included in a new agreement.

5. Article 12 – Shift Differential

A. County's Position – Shift Differential

The County contends that the Association has failed to provide any compelling rationale to support the Association's proposal to increase the shift differential paid to employees who work the afternoon and night shifts from $.65 to $.75 per hour, which would cost the County over $25,000 per year. The County further submits that its current shift differential is comparable to that of other counties.

B. DSBA's Position – Shift Differential

The Association submits that its proposal to increase the shift differential by $.10 per hour is modest, and still below the $1.00 per hour shift differential paid to County employees in the CSEA and Operating Engineers bargaining units. In further support for its proposal, the Association notes that Broome County deputy sheriffs are paid a $.90 shift differential.

C. Discussion – Shift Differential

Shift differential paid by other counties ranges from $.45 per hour to $.90 per hour, with the average rate among the comparator group of $.67 per hour for second shift and $.70 per hour for third shift. The County's current rate of $.65 per hour is well within the range of the comparators and very close to the average rate. Because the shift differential rate is competitive and there is no compelling justification in the record to change it, it should remain the same for the duration of a new agreement.

D. Recommendation – Shift Differential

The Fact-Finder recommends that the parties maintain the status quo on Article 12 and that the Association's proposal not be included in a new agreement.

6. Article 14 – Clothing Allowance

A. County's Position – Clothing Allowance

The County claims that the Association's proposal that employees receive a $200 annual footwear allowance is unnecessary because of the existing footwear replacement program, under which DSBA members generally receive new footwear once every two years. The County contends that comparable jurisdictions also do not provide cash payments for footwear. Finally, the County contends that adopting the Association's proposal would result in an additional annual expense to the County of approximately $47,000.

B. DSBA's Position – Clothing Allowance

The Association proposes that unit employees be paid $200 annually as a footwear allowance because they are on their feet the entire work day. The Association contends that a $200 annual allowance is a modest proposal to address this situation.

C. Discussion – Clothing Allowance

The evidence supports the view that comparable employers do not provide a monetary shoe allowance. Given that this benefit is uncommon in the state and that it would provide an additional expense where money may be more appropriately allocated for wages, this proposal should not be adopted.

D. Recommendation – Clothing Allowance

The Fact-Finder recommends that the parties maintain the status quo on Article 14 and that the Association's proposal not be included in a new agreement.

7. Article 16 – Sick Leave

Under the existing sick leave provisions of the parties' CBA, unit members' sick leave accrual is limited to 10 days per year. The Association's proposal would increase this to 12 days per year.

A. County's Position – Sick Leave

The County argues that the Association's proposal for 2 additional days of paid sick leave per year is not justified or necessary, and it would result in worsening the County's existing overtime cost concerns. The County estimates that the additional overtime that would be generated to cover additional absences would be approximately $300,000 in 2012 and over $714,000 during the life of a new agreement. Further, the County claims that the Association's proposal would result in the DSBA unit's sick leave allotment exceeding the amount provided to other bargaining units within the County, thus creating an internal equity issue that does not currently exist,

B. DSBA's Position – Sick Leave

The Association argues that its proposal to have a total of 12 sick days per year would bring it to the norm in most collective bargaining agreements. In support of this argument, the Association notes that Niagara County deputies are provided with 96 hours (12 days) annually and Genesee County deputies are provided with 120 hours (15 days) of paid sick leave.

C. Discussion – Sick Leave

The fact that the Association's proposal would put its sick leave allotment ahead of other units and that it would create the need for additional overtime weigh heavily against its recommendation. In addition, there was no evidence presented of any compelling need for more sick time for unit members.

D. Recommendation – Sick Leave

The Fact-Finder recommends that the parties maintain the status quo on the sick leave provision in Article 16 and that the Association's proposal not be included in a new agreement.

8. Article 16 – Annual/Vacation Leave

The Association has proposed increasing the amount of vacation leave by 2 days for each attained category of years of service as shown below:

Years of Service	Days of Entitlement	
	Proposal	Currently
1st anniversary – 4th anniversary	13 days	11 days
5th anniversary – 9th anniversary	18 days	16 days
10th anniversary – 14th anniversary	19 days	17 days
15th anniversary	23 days	21 days
16th anniversary and thereafter	24 days	22 days

A. County's Position – Annual/Vacation Leave

The County contends that the Association's Sick Leave proposal should be rejected because the Association has offered no reasonable justification for altering the existing entitlement and, if adopted, it would cause the County to incur substantial additional expenses, including increased overtime obligations within this unit. The County claims that based on figures from fiscal year 2012, this proposal would have

cost the County an additional $121,032 for the new days of leave and $181,527 in new overtime costs, for a total expense of roughly $302,000 in 2012 alone. Further, the County submits that the Association's proposal would create an internal equity issue because it would give DSBA unit members a significantly more generous benefit than is afforded to all other Associations within the County.

B. DSBA's Position – Annual/Vacation Leave

The Association argues that its proposal is supported by the fact that (1) Broome and Monroe Counties have a maximum vacation leave of 24 days; (2) Niagara, Dutchess and Genesee counties have 25 days; and (3) Oswego County has 28 days.

C. Discussion – Annual/Vacation Leave

There is comparative data that suggests that at the high end of years of service, the County is slightly behind other jurisdictions in the maximum allotment of vacation leave. The average maximum allotment of vacation leave among the comparators was almost 24, whereas the maximum number of days enjoyed by DSBA members is 22.

Nevertheless, there are two significant factors that weigh against recommending an increase in vacation-leave entitlement. The first is that it would likely increase the amount of overtime required to provide adequate staffing. As noted above, the issue of excessive overtime is a sensitive one that should not be exacerbated by other changes in a new agreement. More importantly, the issue of internal equity requires that there be some consistency in the way benefit issues are determined across the County. For example, the principle of internal equity is a major factor in the recommendation to provide DSBA members with substantially greater increases than have been proposed by the County.

D. Recommendation – Annual/Vacation Leave

The Fact-Finder recommends that the parties maintain the status quo regarding the annual leave provisions in Article 16, and that the Association's proposal not be included in a new agreement.

9. Article 22 – Employee Investigation Procedure

Article 22, numbered paragraph 1 of the CBA reads:

> Investigatory interviews of any department member shall be at a reasonable hour, and the member shall be offered the opportunity to be represented by the person of their choice. The investigatory interview shall take place preferably when the member is on duty and during daylight hours, unless the circumstances of the investigation dictate otherwise, which should be determined by the Sheriff or officer in charge of the investigation.

The DSBA has proposed to amend the above paragraph by adding the underscored language:

> Investigatory interviews of any department member shall be at a reasonable hour, and the member shall be offered the opportunity to be represented by a DSBA representative. The investigatory interview shall take place preferably when the member is on duty and during daylight hours, unless the circumstances of the investigation dictate otherwise, which should be determined by the Sheriff or office in charge of the investigation. In addition, any discussions with the member concerning the settlement of allegations against the member, either before or after disciplinary charges are preferred against the member, shall be in the presence of a DSBA representative.

A. County's Position – Employee Investigation Procedure

The County contents that the current procedure in the CBA offers unit members more than adequate protection during investigatory interviews. In that regard, the County notes that it is currently required to offer individuals who are the subject of an interview representation by the person of his or her choice. The County argues that

there is no compelling reason to create a new obligation with respect to Association representation, and that the Association's proposal should be rejected.

B. DSBA's Position – Employee Investigation Procedure

The Association argues that this proposal is simply an effort by the DSBA to afford a unit employee with its Taylor Law rights to representation.

C. Discussion – Employee Investigation Procedure

The current language is compliant with the Taylor Law, and there is insufficient evidence that the new language proposed by the Association is needed or that it is common among similar jurisdictions.

D. Recommendation – Employee Investigation Procedure

The Fact-Finder recommends that the parties maintain the status quo on Article 22 and that the Association's proposal not be included in a new agreement.

10. Article 30 – Salaries

The parties presented the following wage proposals:

County

2013:	0%
2014:	0%
1/1/2015:	2%
1/1/2016:	2%

Association

1/1/2013:	4.5%
1/1/2014:	4.5%
1/1/2015:	4%
1/1/2016:	4%

Increase Grade "3" at each step by $2,000
Increase Grade "6" at each step by $1,500
Increase CSOs pay grade "CS" by $3,500

Retroactive on all compensation earned to January 1, 2013

A. County's Position – Salaries

The County submits that current DSBA salary figures are competitive with comparable jurisdictions and will remain so under its proposal. The County further contends that the Association's proposed increases would result in the DSBA's wages, on average, rising above those of all comparable counties. In addition, the County contends that positions in the DSBA bargaining unit are in high demand and that employees are not leaving these positions because of dissatisfaction with pay rates.

The County takes issue with the Association's assertion that the County is in a sound financial position simply because the County is not in a distressed financial state. In that regard, the County submits that the overall economic status of the County must be taken into consideration when determining the County's future financial commitments. In so doing, the County notes that it has faced a dramatic rise in benefit costs, pension obligations, Medicaid costs, debt service, and other major budget pressures. The County further stresses that sales tax collection, which is a large percentage of its revenue, is tied to the overall economy and is highly volatile.

The County also disagrees with rationale behind the Association's proposal. The County claims that the savings the Association claims the County would have if the County agreed to the Association's health insurance proposal are "fictional" and based on flawed calculations and reasoning. The County also claims that the fact that it realizes revenue from its Custody Department functions does not present a justification to provide the Association with massive pay increases.

In summary, the County submits that its proposal represents reasonable increases that will preserve the competitive wages offered to the DSBA, while putting

the County in a position to meet the financial challenges it will face throughout the life of a new agreement.

B. DSBA's Position – Salaries

The Association submits that DSBA unit members are undercompensated in comparison to other deputy sheriffs in the state, and that the County has the ability to pay the increases the Association has proposed to bring up wage rates to a more comparable posture. In support of its proposal, the Association claims that a review of salaries paid in comparable counties shows that the Association members' wages are behind similarly situated deputy sheriffs, even those in less-populated counties.

The Association also contends that the County has the ability to pay the increases the Association has proposed, and the Association raises several points in support of this contention. Among the Association's claims are that (1) its members have produced millions of dollars of revenue for the County; (2) the County's 2014 Fiscal Summary shows that since 2005, both the County's Fund Revenues and the Unreserved General Fund Balance have risen significantly; (3) there has been a dramatic increase in sales tax revenue collected by the County; (4) the County is not in fiscal distress; (5) the ACA has generated a savings to the Medicaid program; (6) the full value of County property has increased while the tax levy has decreased; (7) the County has received a number of grants to generate economic development; (8) the County is receiving it share of casino revenues; and (9) the County enjoys good credit ratings. Further, the Association calls attention to a recent interest arbitration award in which it was concluded that the County had the ability to pay wage increases to the police unit.

Finally, in support of its proposal for salary upgrades, the Association contends that deputy sheriff community service officers ("CSOs") should have their pay rates increased because their jobs are stressful and they are severely underpaid. The Association also seeks to have the rate for deputy sheriffs increased to bring the salary for that position closer to a sergeant's pay grade, and to increase the rate for the lieutenant position to widen the gap between the sergeant and lieutenant positions.

C. Discussion – Salaries

Not surprisingly, the parties take a different view on how the salaries of the County's deputy sheriffs compare to those in other comparable jurisdictions and how to characterize those comparisons. The County claims that its rates are competitive. If "competitive" means anywhere within in the range from highest paid to lowest paid, that term would be accurate. If competitive means somewhere in the middle or top of the range, then the County's rates are competitive only in a limited sense, and that is at the entry level for deputy sheriffs. The County's deputy sheriffs' entry rate ranks 5th out of 10 in the 2012 comparison shown in Table 1 and ranks 6th out of 10 in the 2014 comparison shown in Table 4. For convenience, both tables are shown again below.

Table 1

Year	County	Population	Entry Rate Deputy Sheriff	Max Rate Deputy Sheriff	Max Rate Sergeant	Max Rate Lieutenant
2012	Oswego	121,700	$40,872	$53,747	$57,640	
2012	Broome	198,069	$39,769	$58,532	$64,384	$70,236
2011	Niagara	215,124	$33,509	$61,006	$67,600	
2012	Saratoga	219,607	$40,226	$57,221	$61,496	$64,394
2012	Oneida	234,878	$33,165	$51,000	$54,683	$59,439
2010	Dutchess	297,322	$47,589	$58,265	$69,451	
2012	Albany	304,204	$43,637	$51,511	$63,522	$68,730
2012	**Onondaga**	**466,852**	**$40,410**	**$52,985**	**$60,579**	**$64,742**
2012	Monroe	747,813	$41,261	$64,210	$74,484	
2012	Erie	919,040	$38,646	$54,887	$59.184	$63,500

Table 4

Year	County	Population	Entry Rate Deputy Sheriff	Max Rate Deputy Sheriff	Max Rate Sergeant	Max Rate Lieutenant
2012	Oswego	121,700	$40,872	$53,747	$57,640	
2014	Broome	198,069	$42,191	$62,097	$68,305	$74,513
2011	Niagara	215,124	$33,509	$61,006	$67,600	
2014	Saratoga	219,607	$41,748	$59,281	$63,717	$66,725
2014	Oneida	234,878	$33,165	$51,000	$54,683	$59,439
2010	Dutchess	297,322	$47,589	$58,265	$69,451	
2014 2013	Albany	304,204	$35,000	$55,041	$64,792	$70,105
2012	**Onondaga**	**466,852**	**$40,410**	**$52,985**	**$60,579**	**$64,742**
2012	Monroe	747,813	$41,261	$64,210	$74,484	
2014	Erie	919,040	$40,208	$57,105	$61,575	$66,066

However, entry level is not a very significant data point for this bargaining unit, as the vast majority of the unit has moved well beyond that point in the salary schedule and is at or approaching the maximum rate attained after 7 years of employment. At the

maximum rate for deputy sheriff, the County's rates ranked 8th out of 10 in 2012 and 9th out of 10 in 2014. At the sergeant rank, the County's rates ranked 7th out of 10 in 2012 and 8th out of 10 in 2014. The overwhelming majority of bargaining unit members are in these two ranks, and the County's rates are close to the bottom of the comparative scale. The relative position of lieutenants has also slipped from 3rd out of 6 in 2012 to 5th out of 6 in 2014.

Except at the entry level, the County's rates were also below average in 2012 and have lost ground in the two years since. The Onondaga County maximum rate for deputy sheriffs is $52,985, while the average rate among the comparators was $56,709 in 2012 and 57,972 in 2014. The Onondaga County maximum rate for sergeants is $60,579, while the average rate among the comparators was $63,605 in 2012 and 64,557 in 2014. The Onondaga County maximum rate for lieutenants is $64,742, while the average rate among the comparators was $65,260 in 2012 and 67,370 in 2014.

Based on these data, the salaries of the vast majority of bargaining unit members are below or well-below average. For the County to be truly competitive, these rates should be raised if the County has the ability to do so. In that regard, it has already been concluded that the County has the ability to fund some increases.

The increases proposed by the County would do little to improve the relative position of County rates. For example, if the first three years of the County's wage proposal were implemented effective January 1, 2015, the new maximum rates would be $54,044 for deputy sheriffs, $61,790 for sergeants, and $66,037 for lieutenants. These new rates would still leave unit employees well below the average rates for their positions, and they would still rank near the bottom when compared to the rates in effect

for other jurisdictions in 2014. The maximum rate for DSBA unit members would be 7th out of 10 for deputy sheriffs, 7th out of 10 for sergeants, and 5th out of 6 for lieutenants.

In determining appropriate salary levels for the County's deputy sheriffs, the treatment of the County's other bargaining unit of deputy sheriffs should be considered under the principle of internal equity. One component of internal equity is compensating employees who perform similar work in a similar manner. Undeniably there are differences between the work of police and custody deputies, but there are similarities as well. Both share common titles and ultimately report up through a chain of command to the Sheriff in a para-military organization. Both face hazards and dangers that are not common to most public employees because of their interaction with violent individuals. Because of these aspects of their positions, both are highly trained and are required to be constantly vigilant in the performance of their duties, lest they risk the safety of themselves and others.

Over the years the gap between the salaries of police deputies and custody deputies has grown. For example, in 2009 the maximum deputy salary in the OCSPA unit was 11% higher than the maximum salary for deputies in the DSBA unit, and by 2013 the OCSPA salary was 20% higher. Similarly, the maximum sergeant salary in the OCSPA unit was 6.5% higher than the maximum salary for sergeants in the DSBA unit, and by 2013 the OCSPA salary was 13.5% higher. In 2014, the OCSPA unit was awarded a salary increase of 2.75 percent for 2013, pursuant to an arbitration award. The principle of internal equity suggests that the DSBA unit should receive the same increase.

The DSBA has proposed higher increases than 2.75% for each of the four years of a new agreement. Those increases may be needed to move the County toward the top of the group of comparators, but given the complexity and unpredictability of the County's finances, increases of that magnitude are not warranted. Nevertheless, continuing a pattern of 2.75% increases over the term of a new agreement would have the effect of moving the County's rates near or above the average of the comparator's rates in 2014. For example, 2.75% increases for the first three years of the agreement would (1) bring the maximum deputy rate to $57,478, or $494 below the 2014 average maximum rate; (2) bring the maximum sergeant rate to $65,715, or $1,021 over the 2014 average maximum rate; and (3) bring the maximum lieutenant rate to $70,231, or $2,861 over the 2014 average maximum rate. In terms of ranking, these new rates would put the County in 6th place out of 10 for the maximum deputy rate; 5th place out of 10 for the maximum sergeant rate; and 2nd place out of 6 for the maximum lieutenant rate.[6]

The Association has also proposed upgrades that would (1) increase CSO's pay by $3,500 at each step; (2) increase deputy sheriff's pay by $2,000 at each step; and (3) increase lieutenant's pay by $1,500 at each step. The cost of these upgrades is significant. According to the Association's calculations, the cost of the upgrades alone would be over $500,000 in the first year of a new agreement, and this cost would be built in to a new base for each succeeding year.

The rationale to upgrade CSO's pay is that they are underpaid for the amount of stressful work they perform. Current CSO pay is $26,408 at the entry rate and $29,116

[6] The County's rankings would likely be lower because the rates for other jurisdictions are also likely to increase.

at the maximum rate. These rates are very low compared to other employees in the unit, and because of the nature of percentage increases over the years, the rates of CSOs lose ground comparatively each year. For example, if the salary increases recommended in this report were implemented, the gap in the maximum rate between CSOs and deputies would increase by $3,048 by the fourth year of the agreement. An upgrade of $2,000 at each step beginning in the third year of the agreement would serve to address these issues.

On the other hand, the long-term effect of percentage increases undercuts the Association's rationale for upgrading the lieutenant position. The Association contends that the lieutenant positon should be upgraded to increase the gap between that position and the sergeant position. The long-term effect of percentage increases already increases the gap between these two positions. For example, if the salary increases recommended in this report were implemented, the gap in the maximum rate between sergeants and lieutenants would increase by $449 by the fourth year of the agreement. In addition, if lieutenants are provided with the recommended raises, they will be in a more favorable position relative to other jurisdictions than any other positon in the bargaining unit. Under these circumstances, there is no compelling justification for recommending upgrades for the lieutenant position.

Finally, the increases recommended in this report would make a significant improvement in the overall standing of deputy sheriff's pay and place them near the middle of the range of comparators. In addition, the longevity increases recommended in this report will further increase the pay of all unit members, including deputy sheriffs.

Given such improvement in standing and the cost of providing upgrades to the large number of deputies in the unit, the proposed upgrades are not warranted.

D. Recommendation – Salaries

The Fact-Finder recommends the following:

1) Unit members be awarded a 2.75% increase in base pay effective the first full pay period after January 1, 2013;

2) Unit members be awarded a 2.75% increase in base pay effective the first full pay period after January 1, 2014;

3) Unit members be awarded a 2.75% increase in base pay effective the first full pay period after January 1, 2015;

4) Unit members be awarded a 2.75% increase in base pay effective the first full pay period after January 1, 2016;

5) All pay increases shall be retroactive on base pay, overtime pay, holiday pay, sick pay, and annual leave;

6) The pay rate for community service officers shall be increased by $2,000 at each step effective the first full pay period after January 1, 2015; and

7) Only those unit members who are employed as of the date of this Fact-Finding Report and Recommendations shall be eligible for retroactive pay.

11. Article 37 – Term

A. County's Position – Term

The County has proposed a four-year contract term – from January 1, 2013, to December 31, 2016. The County submits that retroactive pay increases are not warranted.

B. DSBA's Position – Term

The DSBA has also proposed a four-year contract term – from January 1, 2013, to December 31, 2016, with payment on all monies earned retroactive to January 1, 2013.

C. Discussion – Term

The parties' proposals are the same regarding this issue, except on the matter of retroactivity of pay increases, which has already been addressed above.

D. Recommendation – Term

As noted above, the Fact Finder recommends a four-year contract term – from January 1, 2013 to December 31, 2016.

12. New Article – Drug Testing

A. County's Position – Drug Testing

The County seeks to add an article to the CBA that incorporates the current Onondaga County Sheriff's Office Drug and Alcohol Testing Policy (the "Policy"). The County submits that it is critical that it be able to implement the Policy to ensure the safety of its residents, DSBA unit members, and individuals incarcerated within its correctional facilities. The County also notes that, consistent with the notion of internal equity, two of the three other law enforcement bargaining units within the County already are subject to the Policy. Further, the County relies on evidence showing that similarly situated employees in other jurisdictions, including Albany, Broome, Cortland, Erie, and Madison Counties, must comply with drug and alcohol testing policies. Finally, the County argues that a 2011 study suggests that the implementation of a drug and

alcohol testing policy may directly result in increased productivity, lower absenteeism rates, fewer workers' compensation claims, and diminished workforce turnover.

B. DSBA's Position – Drug Testing

The DSBA does not condone drug and alcohol use at the workplace, but it reasons that the County's proposal is a significant intrusion on the personal privacy rights of unit members and that it is unnecessary and unfair. In support of this contention, the DSBA submits that there is no drug and alcohol problem within the bargaining unit, and that the County treats the DSBA unit much differently than its other units. Further, the Association contends that it is well settled that for a bargaining unit to agree to significant concessions like a drug and alcohol testing policy, an employer must compensate the unit for the concession.

Concerning the issue of unfair treatment, the Association explains that the County provided other bargaining units with average raises over four years (2009-2012) of 3.18% without any requirement that employees in these units, including corrections officers in the CSEA unit, agree to a drug and alcohol policy. In addition, the Association notes that deputies in the OCSPA unit working in the police division had a drug and alcohol policy imposed on them in a binding interest arbitration award, but also received in the same award significant wage increases. These increases were in contrast to the County's current wage offer of equating to average raises of 1% per year, which creates no financial incentive for the DSBA to agree to this policy.

C. Discussion – Drug Testing

Drug and alcohol testing does create an inconvenience to DSBA unit members, but if the Policy is implemented correctly, it should not pose an unreasonable intrusion

on them. Implementation of the Policy would also address the safety issues presented by the County and the internal equity issue, as all sheriff's deputies would then be subject to testing. To the extent that the Association believes that it should be compensated for agreeing to such a proposal, the increases recommended above should address that concern.

D. Recommendation – Drug Testing

The Fact-Finder recommends that the parties adopt the County's drug testing proposal.

13. New Article – Longevity Pay

The DSBA has introduced the following proposal that would establish a longevity pay provision:

Longevity Pay

Completion of	Annual Amount
10 years of employment	$500
15 years of employment	$1,000
20 years of employment	$1,500
25 years of employment	$2,000
30 years of employment	$2,500

A. County's Position – Longevity Pay

The County submits that a new Longevity Pay benefit is expensive and unnecessary. As far as expense is concerned, the County claims that the Association's longevity payment would result in the following costs over the life of the next contract: 2013 - $207,500; 2014 - $226,500; 2015 - $234,000; and 2016 - $259,500.

The County claims that this proposed new expense of over $920,000 as a means of rewarding long-term employees and aiding in retention is simply a solution in search

of a problem because the County does not have recruitment and/or retention problems. Further, the County argues that any suggestion that this new benefit is required to encourage employees to extend their careers with the County is belied by the fact that unit employees are already incentivized by the County's competitive wages and the defined-benefit pension plan.

B. DSBA's Position – Longevity Pay

The Association claims that most other sheriff departments have longevity pay, including Broome, Genesee, and Monroe counties. The Association also notes that deputies in the County's OCSPA unit are also receiving longevity pay, pursuant to a recent arbitration award. Finally, the Association notes that longevity pay is an important benefit that not only rewards long-term employees who decide to make the job a career, but also allows the County to benefit from the work experience of these employees.

C. Discussion – Longevity Pay

The County's argument that longevity is not needed to retain long-service employees carries some weight, but the overriding principle in this matter is that of internal equity. Because deputy sheriffs in the County's Police Department receive longevity pay, so too should deputy sheriffs in the County's Custody and Civil Departments. The amount of longevity pay should be the same as awarded to the OCSPA unit. To limit the County's immediate cost to implement this provision, it will be recommended that longevity pay take effect with the first pay period after January 1, 2015.

D. Recommendation – Longevity Pay

The Fact-Finder recommends a longevity provision with the following specifications:

- Sheriff's Deputies – $800 after 12 years of service
- Sergeants – $1,000 after 5 years of service
- Lieutenants – $1,200 after 5 years of service
- provision effective with the first pay period after January 1, 2015
- going forward, paid on a prorated basis in each pay period

Conclusion

Both parties took aggressive positions in negotiations – they both are asking for a lot. It would be unusual in any collective bargaining relationship to have both parties completely satisfied, particularly in upstate New York in the wake of the fiscal crisis that rocked the nation in the fall of 2008. But now, several years later, the County's fiscal condition is sound enough to provide some pay raises. The percentage raise provided to deputies in the OCSPA Unit for 2013-14 is a fair compromise between the parties' positions and promotes internal equity by providing all County sheriffs' deputies with the same percentage increase for that year. This principle of internal equity also supports the County's proposal to include in the DSBA contract a drug testing policy applicable to the OCSPA unit, and the DSBA proposal to include a longevity provision. This report also provides some relief to the County on overtime costs and does not recommend many of the other new benefits sought by the Association. In sum, the recommendations above strike a reasonable balance between the parties' interests.

Michael G. Whelan
Fact-Finder

Date 1/23/15