

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

COUNTY OF SENECA,

Public Employer,

and

Case No. M2013-244

SENECA COUNTY SHERIFF'S
EMPLOYEES' ASSOCIATION,

Employee Organization.

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FACT-FINDING REPORT AND RECOMMENDATIONS

Fact-Finder Michael G. Whelan

August 3, 2015

APPEARANCES

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Introduction and Procedural History

The Seneca County Sheriff's Employees' Association ("SCSEA" or "Union"), and the County of Seneca ("County") are parties to a collective bargaining agreement ("CBA"), which expired on December 31, 2013. The parties entered into bargaining for a successor agreement on or about October 15, 2013, and 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 January 9, 2014, 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 October 3, 2014, the Union submitted a request with PERB for the appointment of a fact-finder. On November 12, 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 March 5, 2015, and at the request of the parties a brief preliminary conference call was held on February 6, 2015, for the purpose of discussing the fact-finding hearing procedures. On March 5, 2015, in the Village of Waterloo, New York, a fact-finding hearing was conducted. At the start of the hearing, the parties presented the Fact-Finder with a Memorandum of Agreement, dated March 5, 2015, under which they agreed to remove some issues from the fact-finding process and stipulated to how those issues would be addressed outside of fact-finding. The Fact-Finder accepted the representations of the

parties contained in that memorandum and gave the parties an opportunity to present evidence and argument in support of their respective positions on the remaining issues in dispute. The Fact-Finder left the hearing open so that the parties could file post-hearing briefs. The parties timely submitted their post-hearing briefs on April 24, 2015, 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 twenty-three unresolved issues that the parties submitted to fact-finding are:

- (1) Article 5, Section 5.01 (Overtime Distribution)
- (2) Article 5, Section 5.02 (Part-Time Open Shifts)
- (3) Article 5, Section 5.04 (Compensatory Time)
- (4) Article 5, Section 5.04(C) (Overtime Allocation)
- (5) Article 5, Section 5.05(A) (Exchange Time)
- (6) Article 5, Section 5.11 (Salary)
- (7) Article 5, Section 5.12 (Call-In Premiums)
- (8) Article 6, Section 6.14(A) (Sick Leave Incentive)
- (9) Article 6, Section 6.14.1(Sick Leave)
- (10) Article 6, Section 6.15 (Sick Leave – Physicians Certificate)
- (11) Article 6, Section 6.25(D) (Maternity Leave)
- (12) Article 6, Section 6.28 (Holiday Leave)
- (13) Article 7, Section 7.01 (Leave of Absence Requirements)

- (14) Article 8, Section 8.01a (Health Insurance)
- (15) Article 9, Section 9.05 (Uniform Maintenance and Replacement Allowance)
- (16) Article 9, Section 9.08 (Longevity)
- (17) Article 9, Section 9.21 (Shift Differential)
- (18) Article 9, Section 9.23.1 (Field Training Officer Incentive)
- (19) Article 10, Section 10.03 (Discipline and Discharge)
- (20) Article 10, Section 10.03A (Discipline and Discharge)
- (21) Article 15, Section 15.01 (Promotions)
- (22) New Article (Vacation Selection)
- (23) New Article (Vacation Shift Coverage).

Findings of Fact

1. The Parties

Seneca County sits in the heart of New York's Finger Lakes Region. It is home to approximately 35,000 residents and can fairly be described as rural. As of the 2010 Census, the median income for a household in the County was \$37,140, and the median income for a family was \$45,445. The County provides municipal services to its residents. Among those services are those provided by the Sheriff, including law enforcement and a jail.

The SCSEA represents certain employees in the County Sheriff's Department and E-911 Public Safety Answer Point. In the jail, the Union represents all full-time Correction Officers ("COs"), Senior Correction Officers (aka Sergeants), Corrections Lieutenants, and civilian employees. In the E-911 call center, the Union represents Dispatchers and Senior Dispatchers. There are approximately 75 members in the unit –

43 COs, 8 Sergeants, 1 Lieutenant, 17 Dispatchers, and 5 Senior Dispatchers (supervisors).

2. Comparative Data

The findings below are based on evidence presented by the parties concerning the salaries and other terms of employment for similarly situated employees working for other counties. The parties agree that the following bordering counties are appropriate comparables: Cayuga, Ontario, Schuyler, Tompkins, Wayne, and Yates.

a) Salary

Although the parties agree on comparables, a complicating factor is that the base pay of County COs hired before January 1, 2010, is usually higher than the pay of COs hired after January 1, 2010, and for more senior COs, the base pay is much higher. For this reason, comparisons of County CO base pay will use both the starting rate for COs hired before and after January 1, 2010.¹ Table 1 below shows the start rates and maximum rates for COs and Sergeants from the County and comparable counties.²

¹ The County included figures based on base salary plus longevity, and noted that the highest rate for COs hired before 2010 was \$54,766. For purposes of consistency, the Fact-Finder attempted to use data on base salary only. In that regard, County Exhibit 21 shows that the highest base salary for a CO is \$49,240.

² There was insufficient evidence in the record to make similar comparisons for Dispatchers and other positions.

Table 1

Year	County	Start Rate CO	Max Rate CO	Start Rate Sergeant	Max Rate Sergeant
2011	Cayuga		\$40,898		
2012	Cayuga	\$37,525	\$41,898		
2014	Ontario	\$40,164	\$56,139	\$46,155	\$62,744
2015	Ontario	\$40,976	\$57,262	\$47,070	\$64,022
2012	Schuyler	\$35,753	\$53,094	\$35,753	\$53,094
2013	Seneca- Before 2010	N/A	\$49,240	\$42,639*	\$56,091**
2013	Seneca- After 2010	\$35,880	\$35,880	\$38,750***	\$38,750***
2014	Tompkins	\$35,484	\$50,544	\$53,185	\$57,428
2013	Wayne	\$38,186	\$50,901	\$47,365	\$57,518
2014	Wayne	\$38,854	\$51,792	\$48,195	\$58,524
2013	Yates	\$42,412	\$49,899	\$45,531	\$54,017
2014	Yates	\$43,264	\$50,897	\$46,446	\$55,099

* Lowest Paid Sergeant

** Highest Paid Sergeant

*** Start rate plus 8% promotional Increase, pursuant to Section 5.11.B.

Table 2 below shows the starting rates during recent years for COs from the County and comparable counties ranked from highest-to lowest-starting salary.

Table 2 – CO Starting Salary Ranking

Year	County	Start Rate CO
2014	Yates	\$43,264
2015	Ontario	\$40,976
2014	Wayne	\$38,854
2012	Cayuga	\$37,525
2013	Seneca	\$35,880
2012	Schuyler	\$35,753
2014	Tompkins	\$35,484

Table 3 below shows the maximum rates during recent years for COs from the County and comparable counties ranked from highest-to lowest-maximum salary.

Table 3 – CO Maximum Salary Ranking

Year	County	Max Rate CO
2015	Ontario	\$57,262
2012	Schuyler	\$53,094
2014	Wayne	\$51,792
2014	Tompkins	\$50,544
2014	Yates	\$49,899
2013	Seneca- Before 2010	\$49,240
2012	Cayuga	\$41,898
2013	Seneca- After 2010	\$35,880

Table 4 below shows the starting rates during recent years for Sergeants from the County and comparable counties ranked from highest-to lowest-starting salary.

Table 4 – Sergeant Starting Salary Ranking

Year	County	Start Rate Sergeant
2014	Tompkins	\$53,185
2014	Wayne	\$48,195
2015	Ontario	\$47,070
2014	Yates	\$46,446
2013	Seneca- Before 2010	\$42,639*
2013	Seneca- After 2010	\$38,750***
2012	Schuyler	\$35,753

* Lowest paid Sergeant

*** Start rate plus 8% promotional increase, pursuant to Section 5.11.B.

Table 5 below shows the maximum rates during recent years for COs from the County and comparable counties ranked from highest-to lowest-maximum salary.

Table 5 – Sergeant Maximum Salary Ranking

Year	County	Max Rate Sergeant
2015	Ontario	\$64,022
2014	Wayne	\$58,524
2014	Tompkins	\$57,428
2013	Seneca	\$56,091**
2014	Yates	\$55,099
2012	Schuyler	\$53,094
2013	Seneca After 2010	\$38,750***

** Highest paid Sergeant

*** Start rate plus 8% promotional increase, pursuant to Section 5.11.B.

b) Health Insurance

Table 6 below shows the maximum contribution to employee health insurance made by the County and comparable counties.

Table 6

County	Max Employer Contribution for Employee Coverage	Max Employer Contribution for Dependent Coverage
Cayuga	100%	50%
Cayuga After 2005	90%	50%
Ontario Blue Choice	100% - 75%*	
Schuyler	85%	85%
Tompkins	80%	80%
Wayne	90%	80%
Seneca	85%	
Yates	85%	85%

* Depending on plan employee selects

3. The County's Financial Condition

Over the past couple of years, the County's sales tax revenue has increased, and it has not had to increase property tax rates. These factors, and – no doubt – sound fiscal management and planning, have left the County with a very healthy fund balance. Along the way, other factors have contributed to the County's fiscal success in an incremental way. For example, as noted in the Sheriff's 2013 Annual Report, the "in-boarding" of federal and out-of-County inmates into the jail, which began in April 2009, has generated additional funds that have been deposited directly into the County's General Operating Fund to help offset taxes. The County does not deny that it is in a healthy financial condition, and there does not appear to be any dispute that it has the ability to pay wage and benefit increases.

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 the following:

- 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 5 – Section 5.01 Overtime Distribution

Presently, the CBA requires that overtime must be offered on a rotational basis within classification. The Union has proposed that overtime be offered on a rotational basis regardless of classification.

A. Union's Position

The SCSEA's proposal on this issue is intended to change the way that overtime is distributed within the jail, with the goal of providing some opportunities to Sergeants for overtime. Currently, the staffing requirements mandate at least one supervisor on each shift. However, the regular schedule will have more than one supervisor scheduled. When there is a vacant Sergeant position created by an absence, and that absence would leave the facility below the overall minimum staffing level or not provide the necessary officers for all required constant watches, transports, etc., the position will be filled with overtime.

The Union claims that under the current practice, overtime is first offered to COs and will only be available to Sergeants if all COs pass on the assignment. The Union contends that this has resulted in a situation where Sergeants get very little available overtime. This then compounds the small separation between CO and Sergeant salaries and results in many COs earning more than their supervising Sergeants.

The Union's proposal would create a single overtime list, rather than separate CO and supervisor lists. All available overtime would be assigned based on this list. Sergeants would be allowed to fill CO vacancies, which should not present any operational problem since Sergeants can perform all of the necessary duties. Likewise, COs would be allowed to fill Sergeant vacancies, subject to the same caveat as the current practice, which is that there must be at least one supervisor on duty. The SCSEA recognizes that one consequence of this proposal would be that the same overtime list, in inverse order, would be used for mandated overtime, and the Union is prepared to accept that outcome.

B. County's Position

The County is not opposed to the Union's proposal. However, the County insists it must retain the right to determine if a particular classification is required to work the overtime, or if there is enough supervision on the shift so a person in a lower rank could work for an officer of higher rank and vice versa. For example, if the County determined that a Sergeant is needed because that Sergeant will be in charge of the jail, it would be able to insist that a Sergeant work the overtime shift. In addition, if overtime is assigned by seniority, then mandatory overtime should also be assigned by seniority. Thus, if no officer volunteers for the overtime shift, officers on the list will be required to work in order of seniority.

C. Discussion

The parties appear to be in agreement on this proposal, as long as it is clear that the County reserves the right to determine if a particular classification is required to work the overtime.

D. Recommendation

The Fact-Finder recommends that the parties adopt a variation of the Union's proposal that would (1) be more explicit with regard to the County's right to determine if unit members holding certain ranks must cover certain positions, and (2) make it clear that the list created will be operative in seeking volunteers for overtime and for assigning mandatory overtime. In the absence of the parties agreeing to language that would accomplish all these aspects of this recommendation, the Fact-Finder recommends the following language:

A. The County retains the right to determine the number and rank of supervision on any given shift. Overtime shall be offered on a rotational

basis starting with the most senior qualified unit member until a list is established. This list shall be used for seeking volunteers to work overtime and, when necessary, for assigning mandatory overtime.

2. Article 5 – Section 5.02 (Part-Time Open Shifts)

Currently, the CBA permits part-time employees who are appointed from an eligible list to work four eight-hour shifts. It appears that the SCSEA is seeking to limit part-time employees to three eight-hour shifts per week.

A. Union's Position

The Union asserts that, in a prior labor agreement, it agreed to allow the use of part-time employees – employees whom it does not represent. The Union contends that this was intended to facilitate the filling of periodic vacancies due to vacations, injuries, sick leave, etc. Under the current arrangement, part-timers can be used for up to three shifts per week without the Sheriff having to first offer the available shift to a unit member on an overtime basis. However, that maximum is increased to four when the part-time employee is on the eligible Civil Service list. The Union also contends that this practice is being done, not on an occasional basis to handle an unexpected absence, but on a continual basis.

The SCSEA asserts that the current practice represents an abuse of the concession it previously afforded the County on this issue. Additionally, the SCSEA submits that the consistent use of part-time employees for four shifts per week – 32 hours – is simply not consistent with part-time status. The Union maintains that it is unfair and inequitable for these employees to be routinely used on an almost full-time basis merely to avoid making a full-time hire and providing the additional benefits that

full-time status entails, or offering unit members some additional overtime to supplement their sub-par salaries.

B. County's Position

The County contends that the Union's proposal seeks to limit assignments to vacant shifts only to part-time employees who are not appointed from eligible lists. The County further contends that this proposal simply seeks to create more overtime opportunities for full-time unit members by limiting the number of hours part-time employees can work. The County contends that other jurisdictions appear to have no restriction on the number of hours part-time employees work. Given this, the County argues that there is no justification to further limit the County's ability to use part-time employees. In sum, the County contends that the Union's proposal should be rejected, especially in the face of the significant increases the SCSEA seeks in base and longevity pay.

C. Discussion

The use of part-time corrections employees is a sensitive issue in many jurisdictions. For the Union, the use of part-timers not only has the effect of reducing the size of the unit, but it also limits the amount of overtime available for unit members. For the County, the primary reason to use part-timers is to control overtime costs in the event of staffing shortfalls.

In the instant matter, the fact that the CBA presently allows the use of part-time employees and sets limits on that use puts the burden on the Union to demonstrate that the current arrangement is untenable. This task is difficult given that the County has demonstrated that several local jurisdictions use part-time employees with few

limitations. In addition, as discussed above, unit employees must sometimes be forced to work overtime. Although these employees who are forced to work overtime enjoy a premium rate of pay, they are still inconvenienced. The fact that even with the present use of part-time employees, it may still be necessary to force unit employees to work overtime tends to show that part-time employees are used appropriately. If the use of part-time employees was further limited more unit employees could be inconvenienced. Under these circumstances, the parties are best served with the present arrangement.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on Section 5.02 and that the Union's proposal not be included in a new agreement.

3. Article 5 – Section 5.04 (Compensatory Time)

A. County's Position

The County proposed that unit employees no longer have the ability to earn compensatory time off when working overtime. As justification for this proposal, the County claims that compensatory time creates a vicious cycle. Specifically, the County contends that overtime is caused by lack of staffing, but when officers work overtime and elect compensatory time off, that time off has to be used. When the time is used, it creates – or could cause – short-staffing, which creates the need to use staff on overtime. This cycle then repeats itself without end. Conversely, if overtime pay is paid to all employees working overtime instead of compensatory time, there is less time off to provide and, in turn, less cost to the County because there is less time off to schedule.

B. Union's Position

The Union submits believes that this is an unnecessary proposal that would significantly impact members to address some problem that does not seem to exist to any significant degree. The Union further contends that the option to earn compensatory time for overtime work, rather than receive immediate payment, is an extremely common provision in any collective bargaining agreement, particularly for law enforcement units. It allows members to earn some additional time off in exchange for working overtime and does so at minimal cost to the employer.

The Union further argues that there has been no showing that the Sheriff's Department has an overtime problem. The Union notes that the Sheriff has overtime expenditures of less than \$200,000 per year (\$185,000 in 2014), and contends that in the context of a budget salary level of \$2,744,207, that is a relatively low overtime budget, representing less than seven percent of total salary expenses. Finally, the Union argues that without some significant demonstration of a real and legitimate problem, there should not be a change of this magnitude.

C. Discussion

For 2011, 2012, and 2013, the CBA limited the amount of compensatory time an employee could earn to 80 hours. Currently, and since the end of 2013, employees may earn compensatory time up to 120 hours in lieu of overtime. The County seeks to eliminate the use of compensatory time, and the Union seeks to remove those sentences that provide for an 80-hour limitation in the amount of compensatory time in 2011, 2012, and 2013.

During the term of the CBA, which expired on December 31, 2013, the parties had reached their own balance on this issue – the County did not have its optimal circumstance of no compensatory time, and the Union did not have its optimal circumstance of 120 hours of compensatory time. Restoring that balance between the parties' positions appears to be a reasonable way to proceed on this issue.

D. Recommendation

The Fact-Finder recommends that compensatory time should be limited to 80 hours, effective on the date the agreement is ratified. Unit members who have already earned more than 80 hours of compensatory time at the time of ratification should be permitted to keep and use all hours earned at the time of ratification.

4. Article 5 – Section 5.04(C) (Overtime Allocation)

A. Union's Position

The Union contends that its proposal is simply to delete language that refers to the 80-hour limitation on the accumulation of compensatory time that existed for 2011, 2012, and 2013. The Union argues that this language no longer has any meaning or effect and that there is no legitimate justification for not removing it from the contract.

B. County's Position

This County sees much more in the Union's proposal. Specifically, the County contends that the Union's proposal seeks to eliminate an employee's option to carry over up to 40 hours of compensatory time from one year into the next and then use those 40 hours as time off in the next year. The County submits that the SCSEA is really trying to force the County to cash-out more than the 80 hours of compensatory time allowed for under the current language rather than roll it over into the next year to

be used only as time off. The County also asserts that the SCSEA provides no real justification for this proposal and that it should be rejected.

C. Discussion

It appears that the parties are arguing about different proposals. The Union did not brief the issue of carrying compensatory time from one year to the next. Because the Union's proposal in this regard is simply to clean up expired language, it should be included in the new agreement. Because the County is opposed to any change to the manner in which employees may carry over compensatory time, and the Union did not argue in support of any change, the status quo on that issue should remain.

D. Recommendation

The Fact-Finder recommends that the Union's proposal on Section 5.04 – to the extent that it seeks to delete expired language in the CBA concerning compensatory time limitations for years 2011, 2012, and 2013 – should be adopted in a new agreement.

5. Article 5 – Section 5.05(A) (Exchanging Time)

The Union has proposed deleting this provision that requires that time exchanges between dispatch employees, excluding supervisors, shall not require payment of overtime and will be authorized only after all accruals have been used or when there is no other alternative to filling a request for time off.

A. Union's Position

The Union contends that its proposal merely seeks to eliminate an unexplained and unjustified disparity in the way dispatchers are treated with respect to utilizing exchange time, which is simply a swap of scheduled shifts with another employee. The

Union notes that jail employees are allowed to utilize exchange time, or shift swapping as it sometimes known, without any requirement to first utilize all accrued leave credits or demonstrate that no other alternative exists to obtain the day off. Further, the Union claims that there appears to be no legitimate basis upon which to restrict the use of exchange time, especially since the contract clearly states that no overtime may be required to be paid as the result of any shift swap.

B. County's Position

The County is not opposed to eliminating the requirement that employees use all accruals before engaging in a swap, but the County wants to keep the requirement that no overtime be incurred.

C. Discussion

It does not appear that the County has any serious contention with the Union's proposal as long as it is clear that exchanging time shall not cause overtime.

D. Recommendation

The Fact-Finder recommends that the Union's proposal should be adopted as long as the parties stipulate in the agreement or otherwise that exchanges of time shall not cause overtime.

6. Article 5 – Section 5.11 (Salary)

There are two issues in this section. The first concerns across-the-board salary increases and the second concerns a Union proposal to increase supervisor pay and thereafter set a minimum gap between the pay for COs and the pay for supervisors.

The parties' respective positions on the salary issue are the following:

Union (increases sought to be paid retroactively):

2014	3%
2015	3%
2016	4%
2017	4%

County

2014	0%
2015	0%
2016	1.5%
2017	1.5%

A. Union's Position

The Union submits that the increases it proposed are justified due to the County's favorable financial status, the increased workload and risk imposed by the housing of federal inmates, the high turnover rates due to poor salaries, and the compensation in comparable neighboring counties.

The Union maintains that base pay is \$35,880 per year for COs and \$31,450 for Dispatchers, and that this base pay is at the very lowest end of all comparables. The Union further claims that as of 2011, Cayuga County COs were already more than \$2,000 ahead, and, as of 2014, the COs in Ontario County were nearly \$5,000 higher in starting base pay. In addition, according to the Union, the base pay for COs in Yates County was \$7,500 higher, and the base pay for COs in Wayne County was \$8,500 higher. These are huge differences in starting pay, equating to 20-25 percent. Only Schuyler and Tompkins were in the same neighborhood for starting pay.

The Union additionally claims that another important factor is that all of the comparables have multi-step salary schedules where members receive wage increases

with each year of employment. Seneca County, however, no longer has such a step schedule, as the SCSEA acquiesced to a request by the County in the last round of negotiations to do away with the step system. The Union claims that this significantly exacerbates the already sizeable pay differences and, when top pay is looked at, puts SCSEA members far behind the comparables.

The Union presented the following chart that it claims represents top base pay for Corrections Officers among comparable employers:

- Cayuga \$40,898 (2011)
- Ontario \$56,140
- Schuyler \$49,191
- Tompkins \$50,544
- Wayne \$51,792
- Yates \$50,897

The Union presents this chart to show that in comparison to Seneca County, where the Union claims the top base pay for COs remains the same as starting pay – \$35,880 – the differences in top pay are appalling and completely unjustifiable. In that regard, the Union notes that Seneca County COs are about \$5,000, or roughly 14%, behind the closest comparable, which is based on a four-year-old salary figure from Cayuga County. Carrying this comparison further, the Union claims that Seneca County ranges from \$14,000 (Schuyler) to \$21,000 (Ontario) behind its competitors. The Union insists that this same pattern holds true for Sergeant pay and, although there are fewer comparables available, for Dispatcher pay. For example, the Union claims that with respect to the Dispatchers, only Ontario and Yates also have Dispatchers in the units for which CBAs were available.

The Union also argues that comparable units generally received 2.0% – 3.25% increases every year, with Cayuga getting 4.25% increases over multiple years.

Moreover, the Union argues, the lowest wage increase any comparable union received in any year was the 1.75% raises Wayne County received in each year of its last contract. The Union also notes, however, that Wayne County CO salaries are already approximately \$15,000 per year ahead of Seneca County CO salaries.

The second part of the Union's salary proposal seeks to (1) provide promoted employees with an increase of 4 percent in salary over the highest-paid employee in the job title promoted from or an 8 percent increase, whichever is higher, and (2) provide an initial additional 11 percent increase for current supervisors to set a minimum gap between CO and supervisor pay. The Union claims that this proposal is aimed at addressing salary compression that has resulted in the difference between CO and supervisor pay being so small that, especially with fewer overtime opportunities available to Sergeants, many COs end up earning more than their supervisors.

The Union's proposal seeks to address this problem in two ways. First, the Union claims that an initial 11 percent increase in the pay for supervisors would create a sufficient gap between supervisors and COs to incentivize promotions. Second, the Union seeks to guarantee the maintenance of a minimum gap between the titles going forward. As justification for this proposal, the Union claims that there is an extremely high turnover rate in the Jail, which imposes a great burden on supervisors due to the inexperience of new staff members.

B. County's Position

The County argues that wage adjustments provided to other County employees are important to keep in mind because if it were to agree to wage increases out-of-line with what other County employees received, it would be unsettling to labor peace within

the County. In this regard, the County submits that the wage adjustments sought by the Union are out-of-line with other wage settlements reached with other County bargaining units for 2014-2017. The County noted that its CSEA unit agreed to the following:

- For 2013, a 0% raise and \$825.00 off-base payment for employees at Step 12 or not entitled to step movement.
- For 2014, a 0% raise and \$825.00 off-base for Step 12 or not entitled to step movement.
- For 2015, a 0% raise and a 1.9% raise for employees at or above 12 and not eligible for step movement.
- For 2016, a 1.9% raise for employees at or above Step 12 and not eligible for step movement. Effective 7/1/2016, a 1% raise on the salary schedule for all employees.
- For 2017, a 1.5% raise for employees at or above Step 12 and not entitled to step movement. Effective 7/1/2017, a 1% raise on the salary schedule.

In addition, the County notes that the Seneca County Sheriff's Police Benevolent Association ("PBA") agreed to the following increases:

- A 0% salary increase in 2013
- A 2% salary increase in 2014
- A 2% salary increase in 2015

The County submits that the PBA increases must be tempered by the fact that the PBA's members are entitled to compulsory interest arbitration to settle the terms and conditions of employment, which generally increases the employer's incentive to settle with interest-arbitration-eligible groups. Also, given the public policy behind the Legislature's enactment of compulsory interest arbitration for municipal police and fire, these units typically see greater base wage increases than non-interest-arbitration-eligible bargaining units. As such, the County views the PBA's settlement as the ceiling for all units within the County. This is not to say the members of SCSEA do not provide valuable public-safety-oriented service to the County; rather, it is a measure of what wage settlements in the County should be. Along these lines, the County submits that

two years of 0% increases are warranted since the PBA received 0% in 2013 and CSEA received 0% in 2014 and 2015.

The County also maintains that other jurisdictions outside Seneca County have provided modest raises similar to those that other County units received during the same time period.

In addition, the County provided the following information to show that the top salaries of COs hired before January 1, 2010, are very competitive with COs (base pay & longevity at 25 years of service) in comparable jurisdictions:

- Wayne \$55,972 (as of 2013)
- Ontario \$55,695 (as of 2013)
- Seneca \$54,766 (as of 2013)
- Yates \$52,586 (as of 2013)
- Tompkins \$50,544 (as of 2014)
- Schuyler \$50,031 (as of 2012)
- Cayuga \$41,898 (as of 2012)

The County also provided the following information to show that the starting salaries of COs hired after January 1, 2010, are competitive with CO starting salaries (base pay & longevity) in comparable jurisdictions:

- Yates \$44,518 (as of 2013)
- Wayne \$38,174 (as of 2013)
- Ontario \$39,380 (as of 2013)
- Cayuga \$37,525 (as of 2012)
- Seneca \$35,880 (as of 2013)
- Schuyler \$35,753 (as of 2012)
- Tompkins \$34,694 (as of 2014)

The County acknowledged that it was sympathetic to employees hired after January 1, 2010, but noted that if the Union would not have agreed to restructure the wage scale for these employees, they would not have had their wages frozen or lost salary step progression. The County argues that attempting to “make up” for the

agreed-to change to the salary structure in one contract period is unrealistic and a deal-breaker.

Finally, the County takes issue with the Union's argument that wages should be increased because of high turnover, and the County disputes the Union's analysis of the reasons that employees left the County's employment. In that regard, the Union claims that only two former employees indicated the express reason for leaving was "a better job."

C. Discussion

There are several factors that should be considered in making a recommendation on the salary issue. Among them are how unit salaries in the County compare to those in local jurisdictions, internal equity within the unit and with other employee groups, and ability to pay. The Fact-Finder has already concluded that the County has the ability to pay salary increases, so that issue will not be addressed here.

Next, the focus will be on how County salaries compare to those in local jurisdictions that the parties have agreed are appropriate comparables. Salary comparison data shown in Tables 2-5, have been shown again below for the sake of convenience.

Table 2 – CO Starting Salary Ranking

Year	County	Start Rate CO
2014	Yates	\$43,264
2015	Ontario	\$40,976
2014	Wayne	\$38,854
2012	Cayuga	\$37,525
2013	Seneca	\$35,880
2012	Schuyler	\$35,753
2014	Tompkins	\$35,484

Table 3 – CO Maximum Salary Ranking

Year	County	Max Rate CO
2015	Ontario	\$57,262
2012	Schuyler	\$53,094
2014	Wayne	\$51,792
2014	Tompkins	\$50,544
2014	Yates	\$49,899
2013	Seneca- Before 2010	\$49,240
2012	Cayuga	\$41,898
2013	Seneca-After 2010	\$35,880

Table 4 – Sergeant Starting Salary Ranking

Year	County	Start Rate Sergeant
2014	Tompkins	\$53,185
2014	Wayne	\$48,195
2015	Ontario	\$47,070
2014	Yates	\$46,446
2013	Seneca- Before 2010	\$42,639*
2013	Seneca- After 2010	\$38,750***
2012	Schuyler	\$35,753

* Lowest paid Sergeant

*** Start rate plus 8% promotional increase, pursuant to Section 5.11.B.

Table 5 – Sergeant Maximum Salary Ranking

Year	County	Max Rate Sergeant
2015	Ontario	\$64,022
2014	Wayne	\$58,524
2014	Tompkins	\$57,428
2013	Seneca	\$56,091**
2014	Yates	\$55,099
2012	Schuyler	\$53,094
2013	Seneca After 2010	\$38,750***

** Highest paid Sergeant

*** Start rate plus 8% promotional increase, pursuant to Section 5.11.B.

A preliminary issue that must be addressed when analyzing these data is the two pay systems created in the last agreement. Regardless of how the different pay systems for the CO position came into being, they not only create difficulties in comparing CO pay to their counterparts in comparable counties, but they also create pay inequities within the unit that will have to be dealt with in the years ahead. As much as the County would like to gauge its competitiveness on the old system, almost 40% of the bargaining unit has been hired since January 1, 2010, so any comparison of the County's salaries to its competitors must take this factor into account.

The salary comparison data in Tables 2-5 show that the County's starting salary for COs ranks 5th out of 7. The County's maximum salary for COs ranks both 6th and 8th out of 8, depending on whether the County CO was hired before 2010. The County's starting salary for Sergeants ranks 5th and 6th out of 7. The County's maximum salary for Sergeants ranks 4th and 7th out of 7, again depending on whether the County employee was hired before 2010.

Several more detailed comparisons may be drawn from these Tables. First, the County's starting pay for COs is more than \$7,000 below the top comparable rate, more than \$1,600 below its nearest competitor, and within \$400 of the bottom of the comparables. On average, the County's starting CO rate is more than \$2,700 below the average comparable salary (excluding the County) of \$38,642 per year.

Second, the County's maximum pay for COs is near the bottom for those hired before 2010, and at the bottom for those hired after 2010. Among the comparable group, the average maximum CO rate (excluding both County rates) is \$50,748. Thus, the County's maximum rate for COs hired before 2010 is about \$1,500 below average,

and the County's maximum rate for COs hired after 2010 is almost \$15,000 below average.

Third, the County's starting rate for Sergeants is low, regardless of the date of hire. Among the comparable group, the average starting Sergeant rate (excluding both County rates) is \$46,129. Thus, the County's starting rate for Sergeants hired before 2010 is almost \$3,500 below average, and the County's starting rate for Sergeants hired after 2010 is over \$7,000 below average.³

Finally, the County's maximum rate for Sergeants is low for Sergeants hired before 2010, and extremely low for Sergeants hired after 2010. Among the comparable group, the average maximum Sergeant rate (excluding both County rates) is \$57,633. Thus, the County's maximum rate for Sergeants hired before 2010 is about \$1,500 below average, and the County's maximum rate for Sergeants hired after 2010 is almost \$19,000 below average.

In sum, the County's rates of pay for corrections positions are below average in relation to all agreed-upon comparables. It may be unrealistic for the County to move to the top of the rankings in the recent future, but if it wishes to remain competitive it must increase salaries.

Internal equity is another concern which should be addressed. One aspect of internal equity is the salary treatment of other County employees. The County's PBA unit will receive a 2% increase in 2014 and 2015. CSEA unit members will not get an across-the-board increase in 2014 and 2015, but they will get a 1% across-the-board

³ It should be noted that there are currently no Sergeants at the County who were hired after 2010. However, when a promotion first occurs for a CO hired after 2010, that Sergeant's salary would be well below the average of the comparable group. This situation will be discussed below when the issue of promotional increases is addressed.

increase in 2016 and 2017. However, the CSEA contract has a step plan under which employees will get annual raises.⁴ In addition, the record evidence shows that high-ranking officials of the County received annual increases over the last few years that were at or near 2%.

The County's wage proposal is not justified, given its weak position in relation to its peers and its treatment of its other employees. Generally, the County provided increases at or near 2% for most of its employees for 2014 and 2015, and it should match that increase for Union-represented employees. Even with those increases, the County will have much to do to maintain its already weak position among its comparables. For example, if this recommendation for 2014 and 2015 is accepted, the starting rate for CO's would be \$37,329 in 2015, which would still be about \$1,300 below the average salary of the comparable group and would not change the County's 5th out of 7 ranking. For this reason, and to keep pace with the CSEA, the County should raise unit wages 3% per year for 2016 and 2017.

Another aspect of internal equity is compensating employees who perform similar work in a similar manner. In many pay systems, there is some mechanism to move up the scale, but with the elimination of the step plan in the last contract, that mechanism was removed for unit employees. The result is that COs who work side-by-side often earn vastly different salaries. To some extent, this has always been the case, but at least with a step plan, employees understood that if they put in their time, they would move up the scale. Moreover, as long as across-the-board percentage increases are given, the pay gap between those hired before and after 2010 will widen, making the

⁴ CSEA unit employees who do not get step increases because they are at the top step will get other increases.

problem worse. The Fact-Finder will not make any specific recommendation to address this internal equity problem at this time, primarily because the parties have only proposed across-the-board increases. The Union's proposal on promotional increases, however, raises a related issue that will be addressed.

The Union claims that because of salary compression, a CO promoted to Sergeant could earn less, or much less, than a longer-tenured CO. For example, under the current language on promotional increases, a CO hired in 2005 who is promoted to Sergeant would make an annual salary of \$46,248 ($\$42,823 \times 1.08$). This salary would place the newly promoted Sergeant \$10,368 above the lowest-paid CO and \$2,992 below the highest-paid CO. The Union proposal would ensure that this newly promoted Sergeant would earn more than the highest paid CO. This would be a radical change to the current pay structure, and only one of the comparable jurisdictions – Tompkins – pays its employees in that manner.

The pay differences illustrated by this example are not extreme, but as employees hired after 2010 become promoted, their salaries would fall behind their subordinates even more significantly. For this reason, there should be some adjustment in the promotional-increase section of the agreement that would incentivize promotion and acknowledge the greater responsibilities associated with the higher rank. To accomplish these ends and help address the inequities that are made worse by the dual pay systems, newly promoted supervisors should receive the current promotional increase of 8% or 5% less than the lowest-paid supervisor in the rank they are being promoted into, whichever is higher.

D. Recommendation

The Fact-Finder recommends that the following wage increases be provided to unit members, and that they be paid retroactively:

2014	2%
2015	2%
2016	3%
2017	3%

In addition, Section 5.11.B. should be amended to read as follows:

Step Movement Due to Promotion:

Any employee being promoted to a higher job title shall receive an 8% increase from his or her current salary or 5% less than the lowest paid employee in the job title being promoted into, whichever is higher.

7. Article 5 – Section 5.12 (Call-In Premiums)

Section 5.12 of the CBA provides for a minimum of three hours pay where a member is called back to work after the completion of his or her regular shift. The Union's proposal seeks to extend this requirement for call-ins that occur on a member's scheduled day off.

A. Union's Position

Section 5.12 of the current CBA, which is a fairly common provision in law enforcement and corrections contracts, provides for a minimum of three (3) hours pay when a member is called back to work after the completion of his or her regular shift. The Union's proposal is merely seeking to extend this requirement for call-ins that occur on a member's scheduled day off. The Union contends that the rationale for its proposal is that when an employee is inconvenienced by a call in – whether it is at the beginning or end of a shift or on a day off – he or she should be compensated for more than the actual time spent at the facility. The Union notes that its proposal, which would

apply to all members, is primarily intended for the mental health clinician. The Union claims that the incumbent in that position, who works Monday through Friday, is quite often called in on the weekend when an inmate requires urgent mental health intervention.

The Union noted that it appeared that the County might be willing to accept the Union's proposal if the County had the right to assign the member to other tasks for the balance of the three hours for which pay would be provided. The SCSEA insists that whatever work is assigned must be consistent with the employee's job description and normal job duties. Further, the Union argues that if no such duties were available, the employee would be released but would still be entitled to the full three hours of overtime compensation. The SCSEA also submits that, if that scenario were to be proposed by the Fact-Finder, the employee should also have the option of either working the balance of three hours as assigned, or leaving when the task for which the call in was made is completed, in which case he or she would forfeit the guaranteed minimum of three hours overtime compensation and would instead only be paid for time actually worked.

A. County's Position

The County is not opposed to this proposal, but the specific call-in would need to be by the Sheriff, or Sheriff's designee.

C. Discussion

It appears that the parties are not far apart on this issue, provided that it apply only to the mental health clinician. Because there does not appear to be the case that corrections staff or Dispatchers are frequently called in for short periods of time, there is no compelling justification for extending this provision to all unit members.

D. Recommendation

The Fact-Finder recommends that the parties adopt the Union's proposal to apply only to the mental health clinician if the call-in is made by the Sheriff or Sheriff's designee. Language such as the following added to the end of the current section would meet this recommendation:

In addition, if a mental health clinician is called in on a regularly scheduled day off by the Sheriff or his or her designee, he or she shall be guaranteed a minimum of three hours premium time plus one-half, plus all hours worked in excess of three (3) hours, submitted on an Authorized for Overtime Form.

8. Article 6 – Section 6.14(A) (Sick Leave Incentive)

The current language provides an incentive payment for members who use zero, 8, or 16 hours of sick time or less. The intent was for this incentive payment to apply if a member used only 1 or 2 days. However, there has been an unintended consequence as a result of Dispatchers working 10 hour days. For those employees, calling in sick for a single shift will move them all the way from the \$2,000 incentive (for zero sick time) to the \$500 incentive, bypassing the \$1,000 incentive.

A. Union's Position

The union's proposal is simply to correct this unintended consequence. It did not appear that the County had any objection to this proposal.

B. County's Position

The County does not oppose this provision, provided that it is clear that "complete shift" applies to only the E-911 dispatchers. The SCSEA withdrew the aspect of this proposal seeking increases in sick leave incentive paid under this section.

C. Discussion

It does not appear that the parties disagree on this proposal as long as it is clear that the reference to "shift" applies only to dispatchers.

D. Recommendation

The Fact-Finder recommends that the parties include the following language to replace the second sentence of Section 6.14A:

Those employees covered by this Agreement will be paid a sick leave incentive of \$1,000 if one complete shift (for dispatchers) or eight (8) hours or less of sick time is used during the established dateline and \$500 if the employee covered by the agreement uses no more than two complete shifts (for dispatchers) or sixteen (16) hours of sick time in the established dateline above.

9. **Article 6 – Section 6.14.1 (Sick Leave)**

CURRENT CONTRACT LANGUAGE:

Sick Leave Accumulation. All employees shall accumulate one day of sick leave for every month of employment. Employees using more than five (5) sick days in a calendar year will be required to bring in a doctor's statement stating the employee is able to perform 100% of his/her duties. When an employee has a doctor's excuse, the time associated with this leave will not count towards the five (5) day sick leave trigger. Time used under the Family Medical Leave Act will not be counted towards the five (5) days sick time as stated above. If an employee is out of sick time and calls in sick, no Personal, Comp, or Vacation time will be allowed to be substituted. The employee will be deemed to be away without authorized leave and possible disciplinary action may be taken. In general, the discipline would be a counseling memo, letter of reprimand, suspension or termination. The use of sick time is prohibited to extend or begin vacation, plus being used to take time off between shift changes of any sort.

For employees hired previous to July 1, 1976, all accumulated sick time will be paid upon termination or retirement up to sixty (60) days, providing proper records were filed every pay period. The rate of payment of the sixty (60) days will be at the employees December 29, 1984 level of compensation.

A. Union's Position

The Union's proposal on this issue is to eliminate everything after the first sentence of this provision. The Union contends that the language after the first sentence does not make any sense.

The Union claims that the requirement to bring in a doctor's note after five days of sick leave in a year does not make sense because the note does not provide a requirement to confirm the illness, rather, it requires confirmation that there is no limiting injury of illness that would keep an employee from performing all his or her duties. The Union argues that the only consequence of the provision is that members have to make a completely unnecessary visit to the doctor, which will incur co-pay costs for the member and increase the County's healthcare costs.

The Union also contends that the County may also argue that there is some legitimate need to assess whether a member is physically capable of returning to work after a legitimate injury or illness. The Union concedes that the use of five *consecutive* sick days might raise a legitimate concern about an ability to return to work, but notes that the County has Civil Service Law § 72 at its disposal if there is a real and legitimate concern about an employee's ability to perform the job. The Union claims that this statutory provision allows the County to order a medical examination under circumstances where it believes an employee is unable to perform the necessary job duties.

The second portion of the provision that the SCSEA proposes to eliminate, prohibits a member out of sick time from substituting personal, compensatory or vacation time. The Union argues that this provision does not make sense because the

union is not seeking any paid leave for any member who does not have any remaining, but merely the opportunity to substitute one type for another. The Union claims that any use of other accrued leave credits would mean that the employee does not have those credits available to use later and it would not cost the County any more money. The Union further submits that allowing the use of compensatory time when an employee exhausts sick leave pay actually helps the County, because the compensatory time could otherwise potentially be cashed out years later at a higher pay rate.

The Union also takes issue with the last sentence of the first paragraph, which the Union notes is an outright prohibition on sick leave being used to extend or begin a vacation. The Union contends that this provision imposes an irrefutable presumption that sick leave before or after a vacation is *per se* fraudulent. While conceding that the use of sick leave before or after a vacation might be suspicious, the Union contends that an absolute ban to the use of sick leave in these circumstances is unjustified because employees cannot control when they get sick. The Union suggests that a potential compromise would be to permit the use of sick leave in such circumstances, but to require a doctor's note.

Finally, the Union contends that its proposal to eliminate the second paragraph of this section addressing payout on retirement to pre-1976 hires is merely housekeeping, as there are no longer any employees who were hired before 1976.

B. County's Position

This County contends that the Union's proposal seeks to eliminate significant controls on sick leave abuse and checks against an employee's inability to safely perform the correction officer job in Seneca County. The County contends that

eliminating these provisions would eliminate a significant control on use of sick leave and constrain the County's ability to prevent sick leave abuse and make determinations whether employees are fit for duty. For these reasons, the County submits that this proposal should be rejected.

C. Discussion

There does not appear to be a correlation between being absent for five days in a calendar year and the ability to perform all job duties. If there were some evidence that employees who were absent for five days in a calendar year tended to be unfit for duty, then this provision would appear reasonable. In the absence of any such evidence, this provision seems mostly punitive. That is, employees may think twice about calling in sick for a fifth time in a year because if they do they have to get a doctor's note, which bears inconvenience and possible out-of-pocket expense. The potential punitive aspect of this provision alone, does not justify it as a reasonable balance between the County's need to control abuse and employees need to be healthy on the job.

The issue of whether an employee who misses work for five consecutive days is fit to return to work does raise a more legitimate concern. Any illness or injury that keeps an employee out of work for an entire week raises at least of question of whether the employee is fit to return to duty. For this reason, a provision requiring an employee who misses five consecutive days of work from getting a doctor's note certifying that the employee is capable of performing all their job duties gives the employer reasonable assurance it seeks and removes the unreasonable and punitive aspects of the current provision.

The Union characterizes the issue of permitting employee who exhaust their sick leave to use other forms of leave as a pay issue, and the arguments the Union raises on that issue are sound. However, this language also creates a standard for the amount of sick leave that is acceptable, such that after twelve days in a year the employee is subject to discipline. As such, this provision is an important part of the County's absence policy and it should remain in the CBA.

On the issue of whether sick pay should be denied when used to extend a vacation the Union conceded that sick leave use under those circumstances may be suspicious. If so, the issue becomes how this suspicion should best be policed. Employers generally do not want to investigate ordinary claims of employee sick leave usage, and employees generally would not want to be the subject of such investigations. The doctor's note approach also has flaws. In addition to the inconvenience and cost of getting a note, many times employees do not want or need to see a doctor over minor illnesses or injuries. When they do, it is often after the fact, and these notes may not be entirely reliable reports of the employees' condition on the date of sick leave use. For some time now the parties have simply lived with the current policy, and, given the shortcomings of the alternatives and the County's need to predictably meet staffing levels, the current approach is reasonable.

On the issue of sick leave payout for employees hired before July 1, 1976, if there are no such employees, the language is obsolete and should be eliminated. The County may wish to keep the language to show that, by contrast, employees hired after that date are treated differently. The Fact-Finder is unaware of any language in the CBA or County policies that addresses that subject, but generally, in the absence of

some past practice of contractual provision creating an entitlement to a benefit, it would be very difficult for the Union to claim a benefit for employees hired after July 1, 1976, simply by removing language addressing treatment of employees hired prior to July 1, 1976.

D. Recommendation

The Fact-Finder recommends that the parties adopt the following language to replace the existing language in Section 6.14.1 of their CBA:.

Sick Leave Accumulation. All employees shall accumulate one day of sick leave for every month of employment. Employees using more than five (5) consecutive sick days in a calendar year will be required to bring in a doctor's statement stating the employee is able to perform 100% of his/her duties. Time used under the Family Medical Leave Act will not be counted towards the five (5) days sick time as stated above. If an employee is out of sick time and calls in sick, no Personal, Comp, or Vacation time will be allowed to be substituted. The employee will be deemed to be away without authorized leave and possible disciplinary action may be taken. In general, the discipline would be a counseling memo, letter of reprimand, suspension or termination. The use of sick time is prohibited to extend or begin vacation, plus being used to take time off between shift changes of any sort.

10. Article 6 – Section 6.15 (Sick Leave – Physicians Certificate)

A. Union's Position

The Union is proposing to exempt employees who have accumulated 60 or more days of sick leave from the requirement that a doctor's note be provided for any sick leave absence of three (3) consecutive days. For those employees, the requirement would not be triggered until an absence extends for five (5) consecutive shifts. The Union submits that this language was agreed to in negotiations for the last CBA, but for some reason never made it into the CBA.

The Union claims that the purpose of this proposal is simply to avoid unnecessary doctor visits for those employees who have clearly demonstrated, through their judicious use of sick time, that they are not sick leave abusers. The Union argues that an absence of three days, especially in an employment setting like the jail where care must be taken not to return too early and potentially spread illness, is not at all indicative of an illness of sufficient severity to require a doctor's visit. The Union further contends that employees who have accumulated 60 days of sick leave, which would take five years of employment never using a single sick day, have earned the benefit of the doubt and should not be required to obtain proof of illness for a relatively minor illness that requires missing only three days.

B. County's Position

The County claims that a sick note is not mandatory after three consecutive days of absence, rather, the provision states a note *may* be required. The County claims that any requirement to produce a note is at the Sheriff's discretion, which can be exercised after review of the time used and time the employee has on the books. The County also disagrees with the Union's premise that employees with sixty days of accrued leave time are unlikely to abuse sick leave. The County contends that sick leave can be abused even in one instance.

The County also disputes the Union's contention that the Union's proposal was supposed to be included in a prior agreement, and the County claims that the Union

failed to produce any other document showing this provision was included and should be included in the current agreement.

C. Discussion

It would stand to reason that if the Union's proposal was to be included in a prior agreement that there would be some documentary evidence to support that assertion. In the absence of such evidence and in light of the conflicting testimony on the issue, it cannot be concluded that the parties had previously agreed on this issue.

On the merits, this proposal could unfairly penalize junior employees who have not had the time to accumulate much sick leave, and give too much benefit of the doubt to very senior employees when the real issue for all employees is whether the absence was justified.

It may appear at first blush that the doctor's note requirement in this section contradicts the doctor's note requirement in Section 6.14.1, but the notes serve different purposes. If an employee is absent for three consecutive days, the possibility that a "physician's certificate" will be required appears to address whether the absence was medically justified. If an employee is absent for five consecutive days, the issue is whether he or she is fit to return to full duty. Of course, a doctor's note for an employee who misses five consecutive days may have to address both issues if the Sheriff wants to have medical justification for the absence.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on Section 6.15.

11. Article 6 – Section 6.25(D) (Maternity Leave)

Currently, an individual on maternity leave *may* use any accumulated compensatory time, vacation time, or personal time upon exhaustion of sick leave. The County has proposed that individuals *must* use these forms of paid leave upon exhaustion of sick leave.

A. County's Position

The County maintains that this contract provision must be amended to be in harmony with the County's Family Medical Leave ("FMLA") Policy, under which an employee must use their accrued time when taking FMLA leave. The County is not opposed to requiring the person to use all but seven days of leave time while on maternity leave.

B. Union's Position

The Union is not opposed to the concept of requiring a member on maternity leave to utilize accrued leave credits, as long as an employee would be permitted to reserve a minimum of seven (7) days' worth of leave credits. The Union reasons that an employee must be permitted to retain at least seven days to ensure an employee has paid time off after return to work from maternity leave, at a time when she will almost certainly have doctor's visits, both routine and unexpected, and for both her and her newborn.

C. Discussion

It does not appear that the parties are in disagreement with the County's proposal as long as employees are permitted to retain seven days of leave credits which on maternity leave.

D. Recommendation

The Fact-Finder recommends that the parties revise Section 6.25(D) to provide that all but seven days of accumulated leave must be used by employees on maternity leave.

12. Article 6 – Section 6.28 (Holiday Leave)

The County seeks to eliminate the words “excused holidays” and simply distinguish those days as “recognized holidays.”

A. County’s Position

By way of rationale, the County simply explained how its proposal would work as follows. If an officer is scheduled to work on any of the recognized holidays, they must report to work and shall receive compensation as set forth in Article 5, Section 5.06. If an officer is not scheduled to work on a recognized holiday they shall receive straight pay for the day, as holiday pay. If an officer is scheduled to work on a recognized holiday and that officer is approved for a day off, the officer shall receive straight pay for the day and his accruals will be charged for the use of the day.

B. Union’s Position

The Union claims that the practice which the County is seeking to change has existed for as long as anyone could recall and actually saves the County money. The Union submits that the reason that the County can save money with this arrangement, which may at first seem counterintuitive, is that, on average, it is the more senior workers, those who are older and more likely to have families and children, who choose to take the holidays off. And, in turn, it is on average the younger, lower paid, COs who choose to work overtime on the holidays. Thus, on balance, the County avoids paying a

premium pay shift to a higher wage employee and instead pays the overtime shift to a lower wage employee. The Union argues that because the current arrangement not only provides a benefit to employees, but also saves the County money, there is simply no justification to change it.

C. Discussion

The Union presented evidence that the County does save money on the current practice concerning holiday leave, despite the use of overtime involved. The practice has been in place for a long time and it does not appear that there is a strong rationale to change it.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on Section 6.28 (Holiday Leave).

13. Article 7 – Section 7.01 (Leave of Absence Requirements)

A. Union's Position

The Union has proposed a change to the leave of absence provisions to address one particular circumstance which has occurred multiple times – a member leaving the SCSEA unit to move to another position within the County, typically Road Patrol in the PBA unit. The Union maintains that under the current situation if that attempted move does not work out and the member returns to the SCSEA unit, he or she will have lost all accrued sick leave. The Union believes, because the employee remains within the County, that there is no reason the member should not have his or her accrued sick leave restored if they return to the SCSEA unit.

B. County's Position

The County raised three objections to the Union's proposal. First, the County contends that this proposal seeks to provide a benefit to members outside the bargaining unit. Second, the County contends that allowing a person to remain in his or her old title while "training" for a new position illegally encumbers civil service titles and interferes with the County's complete discretion whether to reinstate the employee to a position from which the employee resigned. Finally, the County submits that the Union's proposal prevents the Sheriff's Office from filling the title vacated by the employee seeking a new title.

C. Discussion

The County raises significant obstacles to change the long-standing manner in which resignations and accumulated sick leave has been addressed.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on Section 7.01.

14. Article 8 – Section 8.01a (Health Insurance)

The Union has proposed a decreasing schedule of employee contributions to health insurance which results in the insurance being fully paid by the County after six years of employment. The Union has also proposed a healthcare buyout under which employees covered under other plans will opt out of coverage in exchange for a cash payment.

A. Union's Position

The Union has proposed a decreasing schedule of employee contributions to health insurance largely as an alternative to sizeable wage increases in recognition that it may be politically difficult to give the Union wage increases which are dramatically higher than those given to other County employees and that compensation of this nature, as opposed to salary, would not increase the County's required contributions to the pension system or certain tax obligations. The Union also submits that an increase in compensation through lower healthcare contributions, although carrying some risk, also has the potential to be less costly in future years than a wage increase.

The Union contends that its proposal for a healthcare buyout would provide a benefit to both the employee and the County. In that regard, the Union maintains that its proposal that employees who are covered by another plan would receive a cash payment of 20% of the County contributions which would provide an incentive for a member to decline County coverage, thus saving the County significant money.

B. County's Position

The County argues that health insurance fully paid by the employer is neither realistic in today's economic climate, nor is it consistent with other comparable jurisdictions. Concerning the health insurance opt-out payment, the County contends that health insurance opt-out payments are the exception rather than the norm in comparable jurisdictions. Finally, the County argues that the Union's proposal should be rejected because of the sizeable base salary request made by the Union.

C. Discussion

As shown in Table 6, comparable jurisdictions generally do not pay the full amount of contributions toward health insurance premiums.

Table 6

County	Max Employer Contribution for Employee Coverage	Max Employer Contribution for Dependent Coverage
Cayuga	100%	50%
Cayuga After 2005	90%	50%
Ontario Blue Choice	100% - 75%*	
Schuyler	85%	85%
Tompkins	80%	80%
Wayne	90%	80%
Seneca	85%	
Yates	85%	85%

* Depending on plan employee selects

The County's payment of 85% of premiums after four years of employment is about the norm, and as such, additional County contributions are not warranted.

As to the Union's buyout proposal, there appear to be advantages to both sides to permitting employees who have access to other coverage to opt-out of County coverage. The principle of Internal equity is appropriate to rely on to assess the amount employee's should be paid when they elect to not take the County's coverage. In that regard, unit employees should receive the same payment as provided for under the CSEA agreement with the County.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo regarding health insurance premiums, but that employees be permitted to opt-out of County

provided health insurance coverage on the same basis as CSEA represented employees.

15. Article 9 – Section 9.05 (Uniform Maintenance and Replacement Allowance)

A. Union's Position

The Union proposed that Dispatchers be provided with a formal uniform. In support of its proposal, the Union contends that Dispatchers often have to appear in public for various functions associated with their job – for instance attending training or appearing at public events – and feel that an official uniform would be a better reflection on them and on the County.

B. County's Position

The County did not oppose this proposal.

C. Discussion

Because the parties seem to agree on this proposal, it will be recommended.

D. Recommendation

The Fact-Finder recommends that the parties adopt the Union's proposal on Section 9.05 that would provide Dispatchers with a formal uniform.

16. Article 9 – Section 9.08 (Longevity)

The Union has proposed increases in longevity payments to unit members ranging from \$50 to \$300.

A. Union's Position

The Union submits that increases in longevity payments are a means to increase members' overall compensation in effort to catch up to similar employees in neighboring counties, and at the same time to partially address the high turnover rate. The Union

maintains that while these increases are extremely modest, if combined with a reasonable salary increase and other benefits, it could help tip the balance for an employee considering taking other employment in favor of staying with the County.

The Union notes that some neighboring counties essentially build the longevity benefit directly into the salary schedule through a lengthy step schedule providing automatic increases up to 25 years of service. The Union also notes that for those other counties that have a separate longevity benefit set forth in their contracts, the current SCSEA longevity benefit, which ranges from a starting point of \$250 at 5 years of service up to \$1,400 at 25 years of service, is slightly better than the longevity benefits in Cayuga and Ontario Counties, which each top out at \$1,000, and for Schuyler County, which is computed as an addition to hourly rate and tops out at \$832. The Union claims that its longevity benefit, however, is far behind the longevity benefit in Wayne County, which essentially equates to .5% of salary for each year of service, up to a maximum of 10%.

In looking at the Cayuga and Ontario benefits, it must be kept in mind that Correction Officers in those counties are already thousands of dollars ahead of Seneca County COs in their base pay. In fact, before adding the longevity payment a CO at top pay in Ontario County is already earning more than \$20,000 more than a CO at top pay in Seneca County (\$56,140 compared to \$35,880). In light of that difference, the \$400 extra per year a Seneca County CO may receive in longevity is completely insignificant.

The Union also claims that if there is no longer any step schedule for base salaries, then the longevity benefit needs to be dramatically increased. Finally, the

Union contends that its proposal would only cost \$5,150, and an average of \$7,518 over the life of a possible four-year contract.

B. County's Position

The County contends that its current base salary and longevity payments for SCSEA's members are highly competitive and a further increase in longevity pay is not justified.

C. Discussion

As noted above, the County's salaries lag behind those of most neighboring counties. In addition, individual unit members falling further behind their peers in other jurisdictions that have step plans. Although the parties disagree on the causes of turnover within unit positions, the amount of turnover is not insignificant, and it is apparent that some employees have left for economic reasons. For these reasons, the modest increases in longevity sought by the Union should be provided.

D. Recommendation

The Fact-Finder recommends that the parties adopt the Union's longevity proposal concerning Section 9.08.

17. Article 9 – Section 9.21 (Shift Differential)

The Union has proposed a shift differential payment of \$1.25 per hour for employees working the evening shift and the overnight shift.

A. Union's Position

The Union contends that a shift differential payment is very common in any 24-hour operation, and it is virtually unheard of for 911 Dispatchers or Corrections Officers not to get shift differential. In support of its proposal, the Union claims that the payment

compensates for employees working hours which can be very difficult, not only in terms of the employee's sleep and physical health, but also in terms of family life and social events.

The Union notes that every other comparable, with the exception only of Schuyler, provides shift differential payments to those employees working the evening or overnight shifts. Those payments range from \$.40 per hour to 10% of salary. Finally, the Union claims that its proposal would place unit employees in the middle of comparables on this issue.

B. County's Position

The County argues that this is really a wage proposal, and that its wages are competitive. In addition, the County contends that the amounts sought by the Union are higher than those paid by comparable employers.

C. Discussion

It does appear that most comparable jurisdictions pay a shift differential. In addition, the County's PBA unit gets shift differential of \$.40 for the evening shift and \$.75 for the overnight shift. Therefore, payment of a shift differential would not only help to move the County in line with its peers, but also it would serve the principle of internal equity. For those reasons, it will be recommended that unit members be paid the same shift differential as County employees in the PBA unit.

D. Recommendation

The Fact-Finder recommends that the parties adopt the same shift differential payments for unit members that are paid to the County's PBA unit members.

18. Article 9 – Section 9.23.1 (Field Training Officer Incentive)

The Union has proposed that members who serve as Field Training Officers (“FTOs”) should receive one hour of personal time or \$20 pay for each shift they are assigned FTO duties.

A. Union’s Position

The Union claims that the additional work and additional responsibility given to FTOs should be compensated for in some way. The Union suggests that the County did not seem opposed to this proposal, merely countering that the benefit should only be provided to those members who are certified as FTOs. The union would not have any objection to that modification, as long as there is also an agreement that the County will not attempt to avoid the payment by using non-certified FTOs

B. County’s Position

The County is not opposed to this concept as long as the Sheriff decides which officers do field training and are entitled to the payment.

C. Discussion

It does not appear that the parties disagree with the concept that FTOs should be compensated for their training responsibilities. This would be a new benefit for unit members, and as such, it will be recommended provided that it is administered as proposed by the County.

D. Recommendation

The Fact-Finder recommends that FTOs selected by the Sheriff to do field training will receive either one hour of personal time or \$20 for each shift for such training.

19. Article 10 – Section 10.03 (Discipline and Discharge)

The County proposes the elimination of language concerning the requirement to serve disciplinary charges within fifteen days of official verbal notification or the charges become void.

A. County's Position

The County contends that the fifteen day requirement in this provision is ambiguous and can only lead to needless litigation between the parties.

B. Union's Position

The Union agrees that this is a fairly ambiguous provision, but that its purpose is fairly clear and certainly important, and that is that a member not have a potential disciplinary matter hanging over his/her head for up to 18 months, which is the time limit in which the employer must generally bring formal charges. As a result, the Union contends that the more appropriate course of action would not be to remove the provision entirely, but to clarify the language. More particularly, the element needing clarification is to better define the event which triggers the running of the 15 workday period.

The Union contends that during the course of negotiations it has recognized the Sheriff's right and need to conduct appropriate investigations into misconduct and is not attempting to unduly limit that right. However, the Union also contends that it is reasonable for the Sheriff to be expected to investigate matters with appropriate expediency and, once all relevant information has been obtained, to make a determination one way or the other as to whether charges will be brought.

Finally, the Union notes that this issue does not appear to have been a problem, at least under the current Sheriff, and, the matter is better left to future negotiations between the parties, either in the context of these current negotiations or a subsequent negotiation.

C. Discussion

Both parties recognize ambiguity in the language, yet there is no current proposal on new language. Under these circumstances, it is best to have the parties negotiate language that they believe will best suit them.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on this provision of Section 10.03.

20. Article 10 – Section 10.03A (Discipline and Discharge)

The County proposes to remove ambiguity in Section 10.03A of the Agreement by making it clear that an employee is only entitled to be on the payroll for 60 days (a total of 44 working days), and that the section applies when the employee has been charged with a crime alleging a violation of the oath of office, or a crime which, if convicted, would operate to automatically vacate the employee's office under the Public Officers Law or the disciplinary charges set forth acts which constitute a crime.

B. Union's Position

The union submits that any clarification of this language should be left to negotiations and not resolution via fact-finding.

C. Discussion

Again, there may be ambiguity in the language, yet there is no current proposal on new language. Under these circumstances, it is best to have the parties negotiate language that they believe will best suit them.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on Section 10.03A.

21. Article 15 – Section 15.01 (Promotions)

A. County's Position

The County proposes the removal of two sections of its promotion article, including the "rule of three," that it contends conflicts with Civil Service Law.

B. Union's Position

The Union claims that the language the County seeks to delete does not, on its face, violate or conflict with Civil Service Law.

C. Discussion

Whether the parties' promotional sections conflict with the Civil Service Law is beyond the scope of a fact-finding proceeding. If the parties agree that a provision of their agreement conflicts with law they are certainly free to negotiate new language. If they cannot agree on new language there are other forums to test their legal positions.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on Section 15.01.

22. **New Article (Vacation Selection)**

The County has proposed a provision requiring that vacation leave to be scheduled based on seniority in advance

A. County's Position

The County contends that the current vacation selection process has little structure and officers vie for vacation days on a first-come-first-served basis with consideration given to seniority. The County claims that this has led to a major source of overtime expense.

B. Union's Position

The Union claims that currently unit members are free to put requests for vacation time in at any point throughout the year. The Union also notes that there are current disputes concerning vacation scheduling and that it would be inappropriate to resolve this issue through fact-finding.

In addition, the Union claims that its members are resolute on this issue because they believe their compensation lags behind their peers and the one advantage that members have always enjoyed is the ability to use a vacation day at almost any time.

C. Discussion

There are elements of this proposal that can be attractive to the County as a way to control overtime costs, and to employees to lock in certain weeks of vacation. On the other hand, the CBA currently requires that all vacation requests must be made in advance. This should give the County some measure of control over when employees can use their vacation time. Under the present circumstances, there does not appear to be adequate justification for changing the agreement.

D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on vacation selection.

23. New Article (Vacation Shift Coverage)

The County proposes a contractual provision limiting the number of officers that can be off on leave per shift on personal leave, vacation leave, or compensatory time off.

A. County's Position

The County seeks to set a limited number of officers on leave per shift in order to save on overtime expense.

B. Union's Position

The Union opposes the County's proposal for the reasons expressed above on vacation selection.

C. Discussion

Under the present circumstances, there does not appear to be adequate justification for changing the agreement.

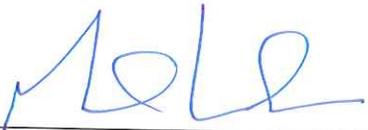
D. Recommendation

The Fact-Finder recommends that the parties maintain the status quo on shift coverage.

Conclusion

Both parties took aggressive positions in negotiations by asking for a lot and zealously advocating for their respective positions. Under these circumstances an agreement will not take place. After more than a year and one-half without a new

agreement it is time to find common ground that the parties can live with over the next few years. The recommendations in this report are designed to do that and the parties are encouraged to accept them.



Michael G. Whelan
Fact-Finder

8/3/15

Date