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Wayne, County of & Sheriff of Wayne County and Wayne County Sheriffs Court Officers Association

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Wayne, County of & Sheriff of Wayne County and Wayne County Sheriffs Court Officers Association

Abstract

In the matter of the fact-finding between the County of Wayne & Sheriff of Wayne County, employer, and the Wayne County Sheriff's Court Officers Association, union. PERB case no. M2010-008.

Keywords

New York State, PERB, fact finding

PUBLIC EMPLOYMENT RELATIONS BOARD
FACT-FINDING IN IMPASSE BARGAINING

IN THE MATTER OF FACT-FINDING BETWEEN

COUNTY OF WAYNE & SHERIFF OF WAYNE CO.

**FACT-FINDING
REPORT**

- AND -

**WAYNE COUNTY SHERIFF'S COURT OFFICERS
ASSOCIATION**

**CASE NUMBER:
M2010-008**

Re: Fact-Finding of Outstanding Bargaining Issues

BEFORE: Stephen P. LaLonde, Impartial Fact Finder

APPEARANCES:

For the Association: Thomas H. Ross, LRS, NYS Deputies Association, Inc.
Dawn Piscioti, President, WCSCOA
Daniel E. Carr, Vice President, WCSCOA

For the County: Charles Dye, County HR Director
Daniel M. Wyner, County Attorney
Richard House, Wayne County Undersheriff

B A C K G R O U N D

The County of Wayne/Sheriff of Wayne County ("County") and Wayne County Sheriff's Court Officers Association ("Association") met in negotiations for the purpose of determining a successor agreement to their January 1, 2007 – December 31, 2009 Collective Bargaining Agreement ("CBA"). The Parties met for four (4) negotiation sessions (November 20, 2009, January 2010, February 17, 2010 and March 23, 2010). The Association submitted a Declaration of Impasse to the New York State Public Employment Relations Board ("PERB") on March 30, 2010. Subsequent to the Declaration of Impasse, PERB Mediator, Murray F. Solomon, was appointed and met with Parties on two separate occasions (May 25, 2010 and July 15, 2010) in an effort to mediate the Impasse. Mediation efforts proved to be unsuccessful and the undersigned was appointed as Fact Finder on August 9, 2010.

An Initial Pre-Hearing Conference (“IPHC”) was held between the Parties and the Fact Finder on September 2, 2010 at which time the outstanding issues in dispute were identified and confirmed for the purposes of Fact-Finding and procedural issues were clarified. The Parties agreed that they would submit pre-hearing briefs. The pre-hearing briefs were received by the Fact Finder on October 1, 2010. A Fact-Finding Hearing was held on October 29, 2010 at which time the Parties presented documentation and testimony on behalf of their respective positions on the outstanding issues and reviewed the documentation and argument presented in their pre-hearing briefs. The Parties agreed to submit post-hearing rebuttal briefs which were received by the Fact Finder on December 3, 2010 at which time the record was closed.

ISSUES

The Parties brought the following issues to Fact-Finding:

Issue #1:	Article 5.1	Annual Leave in ½ Hour Increments
Issue #2:	Article 7.1.3	Comp Time for Show-Up Time Including the Issue of the Ability to Modify Schedules for Show-Up Time
Issue #3:	Article 8	Wages
Issue #4:	Article 9	Health Insurance
Issue #5:	Article 13	Disciplinary Procedure

Each of these issues will be addressed in turn with the relative positions of the Parties summarized and presented as each issue is identified.

ISSUE #1: ARTICLE 5.1 – ANNUAL LEAVE IN ½ HOUR INCREMENTS

Association Position:

The Association proposes that annual leave be changed from the current language requiring that annual leave will not be approved for any amount of time less than one (1) hour. The Association seeks to change this limit from 1 hour to one-half (1/2) hour.

The Association states that its proposal will give unit members more flexibility in the use of their annual leave. This proposal is not a sea-change as it does not alter the existing County authority to deny any request for use of annual leave that creates operational problems and coverage issues. The Association notes that contrary to the County's claim, the use of annual leave in half hour increments will not result in more time off. The Association is not proposing any increase in accrual of annual leave or any restrictions on the existing right of the County to grant or deny leave requests given staffing needs.

The Association further points out that unit members are entitled to request leave time in half hour increments over the current 1 hour minimum (ex., 1 ½ or 3 ½ hours). The fact of the half hour use over the minimum is not a problem for the County so the County's argument about the half hour unit creating scheduling problems is not credible. The half hour utilization minimum will also bring the CBA in line with other bargaining units' CBAs and the County has made a repeated point about the need to bring consistency to its various labor agreements which the Association proposal accomplishes. Further, the County's stated concern over ability to schedule should exigent circumstances arise is not compromised in any way as the Association has repeatedly recognized the County's need to maintain adequate staffing.

The Association asserts that the testimony of Undersheriff Richard House ("House") should be given little if any credibility by the Fact Finder. House spoke at length about concerns over staffing and the need and cost of backfilling from Sheriff and Correction units in order to cover the needs of the Courts when a unit member utilizes annual leave. The Association notes, however, that House's testimony was long on theory but short (if not entirely lacking) on any data to support the alleged concerns about staffing backfill that the use of annual leave in half hour increments would cause. When directly asked about what data his conclusions were based on, House was unable to cite any data whatsoever. He only fell back to stating the he could not name a specific instance of the backfill problem but was certain that it had occurred. The Association also stated that the County's response, on the question of where is the data supporting their opposition to the Association's proposal, was to the effect that the budget figures were not completed for this year. What a projected budget figure has to do with data

showing actual usage and an alleged staffing problem is completely irrelevant. In the absence of the County being unable to produce any data in support of their opposition to the proposal, the Association did its own investigation of the alleged backfill problem and found the following information. In the Police Division the use of full-time road deputies to fill Court Security posts was extremely rare, according to one sergeant responsible for scheduling, as part-time deputies are used in these cases. Further there is no evidence that overtime had to be paid to part-time deputies to backfill for the court. The Association is willing to concede that the overtime situation may have occurred with other sergeants making other assignments but it would be a rarity and not a regular occurrence given the preference and custom of filling the vacancies with part-time deputies. The Association states that correction officers are rarely assigned to court security. The Association requested data from the Court Security Supervisor which showed for the period in question that out of all the vacancies that needed to be filled by employees from other divisions, correction officers only filled two (2) of the 121 vacancies. All the rest were filled with part-time deputies. Most of these assignments were only needed for the morning and extra staff were released as courts completed their business.

Additionally, the Association notes that anyone utilizing the ½ hour increment would more often than not be doing so at the end of the day and there would be no need to bring in a replacement for that period of time. The Association states, once again, that they are proposing no change whatsoever in the County's ability to grant or deny such leave usage based on staffing needs at the time.

The County's allegation that a potential increase in overtime costs will result is pure speculation and groundless as they were not able to produce any data in support of such an allegation and the Association has demonstrated that, in fact, no such problem has or will result. The Association's proposal is reasonable and should be recommended.

County Position:

The County desires that the language on annual leave usage, especially as it pertains to the one (1) hour minimum utilization aspect, remain unchanged. They oppose the Association's proposal that the language be changed to allow for employees to use annual leave in half hour (1/2) increments. The County states that while employees want more control over when and how much of their annual leave time they use, the County must weigh that against the requirements for staffing the security of the courts. The County notes that the language on the minimum one (1) hour increment for use of annual leave has existed in both previous CBAs with the Association. Prior to that, the minimum utilization had to be two (2) hours. The County does not see the need to reduce what they view as a reasonable and necessary limitation.

Additionally, the County claims that reducing the minimum utilization from one hour to one-half hour will only compound operations and scheduling. They note that security coverage for the courts is a mandated function and not optional. In the event that staffing shortages develop, the County must often meet these shortages by call-in of either corrections officers or road patrol deputies. When corrections or deputies are on "call-in" there is a minimum guarantee of two (2) hours of pay at overtime rates. Further, a call-in from corrections or deputies can have a ripple effect if those call-ins create staffing shortages in the units from which the officers are drawn. Also, the County notes that County Court sessions have been more frequently scheduled and they have run for longer periods of time than in the past thus contributing to staffing concerns.

Reducing the reasonable minimum utilization requirement of one hour down to one-half hour will only increase the chances for staffing shortages and the need to call-in coverage at expensive payment rates and guaranteed time to be paid. As such, the Association's proposal on use of annual leave should not be recommended.

ISSUE #2: ARTICLE 7.1.3 - Comp Time for Show-Up Time Including the Issue of the Ability to Modify Schedules for Show-Up Time

Association Position:

Currently, unit members are required to report to work fifteen (15) minutes before their set start time and are compensated for that time. The Association states that in many cases the result is an overtime payment for the employees. The Association opines that their proposal merely seeks to clarify that (as under Article 8.3.3 Premium Pay for Overtime) employees have the right to exercise whether they want their appropriate salary rate paid or whether they want to use compensatory time. Further, the Association indicates that when show-up time puts the employee into an overtime situation, the employee has the option of taking compensatory time as is recognized under the Fair Labor Standards Act (“FSLA”). The Association indicates that the clarification of this point is more easily done at the negotiations table rather than make it a point of confrontation to be processed through the grievance process with its attendant costs to the Association and to County taxpayers.

The Association states that the CBA (Article 8.3.3, second paragraph) places a clear limit on the amount of overtime that an employee can convert to comp time in the course of a year. That limit is forty (40) hours, cannot be exceeded and any remaining comp time at the end of the year must be converted to payment. The Association’s position is that this option to convert already exists in the CBA and they are seeking only to reference it in this Article. Further, doing so will have absolutely no impact on the current maximum accrual of comp time allowed or to the process for converting unused comp time to cash payment at the end of the year.

County Position:

The County opposes the proposal of the Association that Show-Up Time be taken as either paid time or as compensatory time with the employee determining what option they want to exercise. The County wants show-up time to be paid time as worked. As in the annual leave issue noted above, the County asserts that any increase in time off will only increase the problems in scheduling and coverage required for the courts.

The County further notes that if an employee chose to exercise comp time for all of the 15 minute periods, that employee would be able to accrue sixty (60) additional hours of time off at

the end of 240 work days. If every unit member did this, it would only increase an already problematic scheduling situation when it comes to staffing.

Regarding show-up time, the County proposes that the show-up report time be made flexible. They state their proposal as follows:

Employees will be scheduled to report to work fifteen minutes before the regular start time, or to remain at work an additional fifteen minutes after the regular end time, as determined by the Sheriff or his designee. Employees will be compensated for the required fifteen minutes at the appropriate rate of pay.

The County contends that this flexibility is necessary in that the Sheriff has determined that the entire unit is not needed to report early and it would be beneficial to be able to assign officers more in keeping to when they are needed most. The County states that they are receiving increasing requests from the County Courts to have a building security sweep done after the close of court sessions and/or that the Courts desire a general security presence remain after the close of sessions. The County argues that their proposal will provide them with the additional flexibility of assigning officers when and where they see the need.

The County requests that the Fact Finder not support the Association's proposal on comp time for show-up time and support the County's proposal for increased flexibility in scheduling personnel.

ISSUE #3: ARTICLE 8 - WAGES

Association Position:

The Association seeks an increase in salaries for court officers. They state that their use of data regarding NYS Court Officers was utilized only as a reference point and that contrary to the County's assertion the Association is not seeking parity with the State system. The Association claims that its initial proposal was to establish a mid-point between existing County Court Officers and NYS Court Officers salary levels. The Association contends that the effect of their

initial proposal would have a County Court Officer (at top pay level) make less than a third year NYS Court Officer would have made three years previously. This is not seeking parity.

The Association takes strong issue with the County's claim that State reimbursements for providing security at the courts do not cover the full costs of providing that service by the County and that the County must absorb any additional costs. The Association argues that the County has provided no data in support of its claims that current or future salary increases would only increase the unreimbursed costs that the County must pay. The Association notes that the County claimed in its pre-hearing brief that the County's unreimbursed costs would be in excess of \$100,000 but offered no data or other evidence to support that claim. At the Fact-Finding hearing Undersheriff House claimed that the amount would be over \$130,000. When the Association directly asked House what the basis and the numbers were upon which that estimate was made, he was unable to provide any substantiation. The County then stated that the budget for the coming year had not yet been completed and the numbers were not available. The Association asks then where did these numbers come from? The Association further states that the State does not arbitrarily establish a reimbursement amount in the contract with the County nor does it "impose a cap" as the County continually stated and would like everyone to believe. These contracts with the State are determined through a process of negotiation between the County and the State in which the County proposes/reports its service and cost structure needs and a final agreement is negotiated. These are no contracts unilaterally imposed on the County by the State and there are no arbitrary reimbursement caps imposed by the State either. The agreements are jointly negotiated and not unilaterally imposed by the State. Further, the contention of the County that there is no provision for reimbursement from the State after March 31, 2011 is not because the State will no longer reimburse the County for court security expenses, as the County implies, but the fact that the State's budget year ends on March 31 and a new contract to cover the next year's expenses will be negotiated. Reimbursements are negotiated annually.

Also, the Association disputes the County claim that the Association did not object to the County's proposal on equalizing the salary steps. The Association asserts that they did object to

this proposal because it offered no benefit to the Association and actually negatively impacted some members. If the Association had not objected, the issue would not now be at Fact-Finding. The Association had said in negotiations that they would accept the salary proposal of the County in consideration for the Association's proposal to enhance the longevity steps and make it comparable to other bargaining units. The County rejected it for the reason that higher longevity steps were negotiated in the deputy's unit as a means to reduce the high turnover rate of road patrol deputies and increase retention rates. The Association notes, however, that similar longevity steps are found in the corrections CBA and the lieutenants' contract and neither of those units are or have had retention problems. They were obviously negotiated for compensation and not retention purposes.

The Association contends that individual aspects of the compensation issues cannot be viewed in isolation as the County attempts to do through their selective and changing use of what the County considers comparable counties. On longevity, the County referenced 6 of its 7 comparable counties but only referenced 3 of those 7 in addressing wages. The County is mixing and matching comparables to selectively cherry pick. The reason why the County only selected 3 of their 7 comparables on wages is that to look at the rest of them would clearly demonstrate that the Association wages lag far behind most of them.

The Association previously noted that the POA unit received a 4.5% wage increase in 2010 and the SEA unit also received 4.5% in 2010 and will receive 4.5% in 2011. The County's explanation that these were multi-year agreements negotiated before the economy went into recession might have some credibility except it appears not to be a problem for the County when they negotiated the Lieutenant's Association contract. That contract was negotiated in July 2009 and included three (3) years of raises at 4.5% each year covering the years 2008, 2009 and 2010. The economy went into freefall in the later part of 2008 and as much as the County is now decrying the state of the economy and that the Association's wage proposals are "so out of line" with that fact, they went right ahead and gave the lieutenants' unit the same wage increases that they had given to other units in their multi-year agreements which the County said were done deals that they could do nothing about. Yet, when they could do something about wage increases,

they completely ignored the economy argument and gave the same amount to the lieutenants' unit. The County has always spoken of consistency and the Association's wage proposal, while not matching that of the other units, will at least approach consistency. The facts demonstrate that the County's "economic downturn" argument is a sham. Further highlighting this blatant inconsistency is the fact that the Lieutenants' bargaining unit is 100% County funded while the State reimburses the County for the Court Security unit.

The County has been beating the issue of consistency to death during the negotiations. Now is the time for them to make it so regarding wages.

County Position:

The County asserts that for purposes of wage comparisons comparable counties need to be the standard for comparison and that comparisons to New York State are not legitimate sources for such comparison. They argue that comparing types of jobs that happen to be similar work performed by both the County and the State (i.e., troopers and sheriff deputies, state court security and County court security) is inappropriate.

They state that it is true that court security functions have been taken over by the NYS Unified Court System in some counties but this is not the case with Wayne County. While the Association may claim that the County is reimbursed by the State Office of Court Administration ("OCA") for Court Security Officer wages and benefits and that these expenses will be absorbed by the State, it is not the case. The County notes that OCA has set a cap on what they will pay to reimburse the County for these expenses. The County claims that the OCA cap of slightly over \$620,000 set by them for the April 1, 2010 through March 31, 2011 will not cover salary and benefit costs. The County claims that the anticipated non-reimbursed costs for 2011 will be in excess of \$100,000 all of which the County must cover. The County must consider controlling costs for court security because of the uncertainty of what level of reimbursement OCA will set for the next state fiscal year.

The County has made three proposals regarding Article 8.1 on wages.

County Proposal - Wage Increases

The first of their proposals deals with wage increases. The County is offering a one percent (1%) increase for 2010 and a one and a half percent (1.5%) increase for 2011 which are appropriate for the economic downturn impacting the County as well as the country in general. The County cannot agree with the Association's proposal to raise the base pay of Court Security Officers to \$45,000 by 2012. They claim that the Association has made no justification in support of this demand except that it is reasonable. The County calculates that it would be required to raise wages by at least 5% each year over three (3) years duration. Not only is there no justification for such large increases but such a demand is way out of keeping with the current local and national economic situation. As examples, the County notes that the BLS calculation of CPI-U for August 2010 was 1.1%, the 114 day strike at Mott's in Williamson that settled with a freeze on wages for three years and County retirement contributions for all Court Security Officers have continued to rise (7.2% in 2009, 11.2% in 2010 & 15.6% for 2011). These economic realities are strong argument against the excessive wage proposal in the Association's proposal.

Further, the County points to Cayuga, Livingston and Steuben counties as comparable counties with job titles that perform similar court security functions and notes that the County's proposed wage rates are equal to or better than these counties.

The County's wage proposals are far more in keeping with economic reality and should be what is recommended.

County Proposal – Even Spacing of Wage Steps

The County's second wage proposal deals with the steps in the salary system. The County contends that the current step spacing is arbitrary and a revision to equalize step spacing is in order. Further, the County states this revision will not have any negative impact on the

bargaining unit as all but one of the unit members is on the top step of the salary structure. The County contends that the Association has voiced no objection to this proposal. In light of this, the County requests the Fact Finder to recommend the change to even spacing of wage steps beginning in 2010.

County Proposal – Regarding the Association’s Longevity Proposal

The County states that the issue of longevity pay increases was not raised by the Association in the negotiations until May during Impasse Mediation with PERB Mediator Solomon. At that time the Association proposed changing the existing longevity schedule from a set dollar amount to a percentage calculation. The County has rejected this proposal because of its impact on salary costs that would result. They note that the Association’s percentage proposal would increase salary costs in 2010 by over \$7,600 over the current longevity system and would increase costs in 2011 by over \$8,600. This would only place the County even further above the OCA reimbursement cap.

Further, the County opines that the intent of the Association’s longevity proposal is to bring them to parity with the Sheriff’s deputies and corrections agreements. The County points out that when the Association was a part of the larger group, they had their own separate longevity system that was a set dollar amount while corrections had a percentage system. The County states that the Association never had a longevity system comparable to that of the other units who had percentage systems. Additionally, they note that the current longevity system was negotiated and increased in the original CBA covering 2004-2006 and was unchanged in the 2007-2009 current agreement. The County states that they created a percentage longevity system for the deputies because the road patrol unit was experiencing very high employee turnover as road patrol deputies were being hired and trained and then leaving for higher paying jobs in other counties. The County improved their longevity schedule to counter this high turnover rate. The County argues that there is no employee turnover problem in the Court Security unit because of the favorable work schedule enjoyed by unit members (daytime hours Monday through Friday only, no 24/7 shift schedule and no unexpected schedule changes). The County further asserts

that its current longevity system for the Court Security unit is richer and starts earlier in an employee's career than comparable surrounding counties. The County sees no need or justification to change the already generous longevity system and requests that the Fact Finder reject the Association's proposal.

ISSUE #4: ARTICLE 9 – HEALTH INSURANCE

Association Position:

The Association contends that the County initially was seeking what constitutes a complete re-writing of Article 9 and in later proposals actually increased the employee contribution rate from the increases they had first proposed.

Regarding the 3-tier prescription plan, the Association has said all along that it could be agreeable to that in the context of an overall wage settlement.

The Association notes that there has been some confusion over the County's proposal on contribution rates on health insurance premiums. The existing language is that the County contributes 90% on a single policy and 80% on a family or 2-person policy. During the negotiation sessions and mediation, County numbers changed and actually increased from their original proposal calling for increased contributions from the employees. The Association argues that if one combines the County's wage offer and their proposal on health insurance contributions, the effect in total dollars is that bargaining unit members would actually earn less than they do now. Even at current contribution rates, the Court Security Officers unit is paying a higher percentage of their salary for health insurance than the other units and if raised to the 30% employee contribution rate proposed by the County, that percentage would rise to just under 15% of total salary. This, in combination with the County's wage proposal, would mean that Court Security Officers would get a raise 3% lower than the other units and would have to pay out of pocket for a higher percentage of health insurance premiums. This is an unrealistic position by the County and one that the Association asserts cannot be sold to the membership. The

Association states that the bargaining unit is already paying significantly more on health insurance premiums than are employees in other counties and this is using the County's own list of comparable counties.

The Association opines that in a package settlement offer made to the County in February 2010, they included an increase in the employee contribution rate to 25% in exchange for their wage proposal and inclusion of a HRA program and guarantee that employee contributions would not increase more than once a year. The other units all have/will have HRA programs so the Association is not asking to break ground on a new concept.

County Position:

The County states that under the current contract, they pay 90% of the cost of the health insurance premium for a single person policy and 80% of the premium for a family plan. The County is proposing that the percentage of premium costs paid by them be reduced to 80% and 70% respectively. The 70% contribution would also apply to 2-person plan coverage.

The County asserts that the ever increasing cost of health insurance coverage continues at annual and dramatic rates. They note that since 2005 premiums have increased by 90%. These substantial increases are a heavy burden on the County and it is necessary that employees share more of that burden. The County proposal for increased employee contribution rates is not extreme and is more than reasonable given the general economic environment and the double digit nature of health insurance increases.

ISSUE #5: ARTICLE 13 – DISCIPLINARY PROCEDURE

Association Position:

The Association notes that the existing language on representation was the result of the negotiations that concluded in the current CBA. During the negotiations for that CBA, the

Parties agreed to amend the language in Section 13.2.3 to allow an employee to appeal disciplinary action against them on their own and without Association representation if the employee so wished. This would apply in situations where the Association had made a determination that pursuing a disciplinary appeal would not be justified or practical. In these cases, the employee would bear their share of the costs of the appeal process to and through arbitration.

The Association states that it has cooperated with the County and agreed with much of the County's proposed changes in the discipline process. They are at a loss to understand why this matter of "conflict of interest" has arisen and been pushed by the County into the Fact Finding process. The Association states that since the inception of this language on representation, there has never been a problem of conflict of interest. They opine that the language proposed by the County will create more problems than it will solve. They note that it is vague, opening the door to the ability of the County to claim that any representative might have a "conflict of interest". It also does not address who would have the authority to determine the outcome if the claim of conflict of interest was challenged. The Association does not see the need for this proposal by the County as there have been no problems relative to it.

County Position:

The County points out that the Parties have been working on rewriting Article 13 and that the current section 13.2 is to be re-titled as Article 14 Discipline and Discharge. The outstanding issue in this provision relates to representation for an employee who is subject to discipline.

The County asserts that the Association's proposal calling for the right of an employee to be represented in disciplinary matters creates the potential for a situation where the employee may be represented by someone who is also subject to the same disciplinary event or who was a witness to events leading to discipline. This would be a situation that is inappropriate and unacceptable to the County.

The County proposes the following language on representation in disciplinary matters:

An employee shall have the right to be represented in disciplinary matters by an Association representative, or another representative of his or her choosing, providing that such representative is not associated with or a witness to the disciplinary matter. This right extends only to disciplinary matters and not to matters of contract language interpretation.

The County argues that this language protects both Parties and does not diminish an employee's right to be represented in disciplinary matters and should be recommended for final language.

DISCUSSION & RECOMMENDATIONS

Each of the issues presented above will be discussed in turn and the Fact Finder's Recommendations will follow that discussion.

GENERAL OVERVIEW

The Wayne County Sheriff's Court Officers' Association consists of employees holding the titles of Court Security Officer and Court Security Supervisor. These employees are responsible for the safety and security of county court buildings, individuals employed by the courts and members of the public having business in those facilities. The members of the bargaining unit are jointly employed by the County and the Sheriff.

The Association was formerly part of and represented by the Wayne County Sheriff's Employees Association and was recognized as an independent bargaining unit in 2003. The Association and the County concluded their first CBA in 2004 covering the period 2004-2006. The second agreement covered the period 2007-2009. The Parties are currently in negotiations for a successor agreement to that CBA.

ISSUE #1: ARTICLE 5.1 – ANNUAL LEAVE IN ½ HOUR INCREMENTS

Upon review and reflection, the Association's proposal to be able to utilize annual leave in minimum half hour (1/2) units is not unreasonable. The County made a great point of opining that reducing the minimum time to one half hour would create significant staffing problems, result in the need to backfill positions of individuals that were assigned from other units to cover the court vacancy, and would involve increased overtime in order to do so. However, the County provided absolutely no evidence or documentation to substantiate their claim. Undersheriff House was unable to cite instances of where this had occurred (or would occur). The Association's investigation showed that the overwhelming number of times where employees from other units were used to cover in the courts, those employees were part-time deputies where issues of overtime do not arise. Additionally, the fact that other units have the half hour minimum option and the County has repeatedly stated its desire for consistency in its bargaining unit agreements raises questions about the sincerity of such a claim when the County is so adamantly against it in the Association bargaining unit. More importantly, the key element here is that the Association proposal does nothing to impinge on the existing authority of the County to grant or deny leave requests based on staffing needs. Given the complete lack of documentation by the County to the contrary, the half hour minimum is of little or no consequence in its impact.

RECOMMENDATION:

- 1. It is recommended that the minimum request for use of annual leave under Article 5.1.6 be changed from one (1) hour to one half (1/2) hour. All other provisions of this section will remain unchanged.**

**ISSUE #2: ARTICLE 7.1.3 – COMP TIME FOR SHOW-UP TIME
INCLUDING THE ISSUE OF THE ABILITY TO MODIFY SCHEDULES
FOR SHOW-UP TIME**

There are two parts to the discussion on Show-Up time. The first is the question of converting show-up to comp time in situations where the show-up time results in an employee going into overtime and the second aspect of the discussion is the question is flexible scheduling of show-up time.

Show-Up Time: Employee Option to Convert Overtime to Comp Time

The Association is very persuasive on this point. Article 8 dealing with pay for overtime and specifically Article 8.3.3 already gives the employee the right to convert overtime to comp time. Under the “plain language” rule of contractual construction, the right of an employee to convert overtime to comp time is clear and unambiguous. The pertinent language in Article 8.3.3 states:

The Sheriff shall abide by the Fair Labor Standards Act for acceptance of compensatory time as overtime payment. As such, an employee will have the option of receiving “compensatory time” in lieu of paid overtime. (Article 8.3.3, first paragraph)

It cannot be any more clear than that. Whenever employees are entitled to overtime pay, they have the option (as the FLSA mandates and Article 8.3.3 acknowledges and reinforces) of converting that overtime pay to comp time. The FLSA does not carve out an exception for Article 7 nor does Article 8.3.3 and the County would have a serious problem explaining why FLSA overtime requirements and options would not apply in Article 7 when overtime requirements/options are applied everywhere else. Article 8.3 is the controlling language on overtime and governs overtime earning and options wherever overtime might appear or the conditions under which it is earned anywhere else in the terms of the CBA. There is no need to add any additional language to Article 7 clarifying that overtime conversion to comp time is allowed. Article 8.3.3 governs and states it already. As a recognized, clearly and unambiguously stated fundamental contractual principle, it does not have to be repeated.

Show-Up Time: Modifying the Show-Up Time Schedules for Employees

Considering that the court building must be security cleared before opening for business each day and there are two stories to the building that need to be cleared, 15 minutes ahead of opening raises legitimate concerns for the public and the court administrative personnel as to whether a thorough and proper security sweep can be done in 15 minutes given the fact that many other governmental facilities and even some private facilities have quite extensive security sweep protocols. This concern is especially relevant when, according to the County proposal, the normal complement of four officers will no longer all be called in early to security sweep and prep the Hall of Justice building and its entrance for opening. While the County has stated that “the Sheriff has found that the entire unit is not needed to report early”, no evidence or data was presented demonstrating that claim nor why, in a 15 minute block of time, fewer officers to perform the security sweep in a multi-story building will be sufficient to assure the public and court employees that the building is safe at a time when security threats against governmental institutions have never been higher. Coupled with the fact that there is no security presence in the building overnight, proper and adequate security sweeps become doubly important. The County has failed to make a credible showing that a reduction in the presence of security personnel prior to the opening of the Hall of Justice will maintain adequate levels of security to assure the same level of safety for the public and court employees that is now present in the rather limited 15 minutes allocated to securing the building.

That said however, the County’s proposal to allow the Sheriff or the Sheriff’s designee to schedule a court officer or officers to remain an additional 15 minutes after the regular end time has more credibility. The County indicates that it is becoming a more frequent occurrence that court sessions run long and that judges and court personnel staying late have expressed the desire to have a security presence beyond the regular building closing time. Additionally, the County indicates that the Courts are requesting security sweeps after the conclusion of court sessions.

Securing the safety of employees and the public in governmental facilities has risen to an unprecedented level of attention and concern. The failure of the County to make a case for the reduction in security presence at the beginning of the day does not lessen the legitimate concern for increasing security at the end of the court day. The County should have the contractual

authority to schedule Court Security Officers beyond the normal work day in order to better protect court personnel and the facility itself.

RECOMMENDATION:

1. **It is recommended that no additional language be added to Article 7.1.3 regarding the conversion of overtime to compensatory time because it is unnecessary. Article 8.3.3 covers the matter of conversion of overtime and is controlling on the matter of an employee option to either take overtime or convert it to compensatory time.**
2. **It is recommended that the language of Article 7.1.3 regarding Show-Up Time remains unchanged.**
3. **It is recommended that a new provision (Article 7.1.4) be added and read as follows:**

7.1.4 Flexible End Time Scheduling: Employees may be scheduled to remain at work an additional fifteen (15) minutes after the regular end time, as determined by the Sheriff or the Sheriff's designee. Employees will be compensated for the required fifteen minutes at the appropriate rate of pay.

ISSUE #3: ARTICLE 8 - WAGES

As is often the case, Parties attempt to bolster their positions through the use of comparables or as some would say, “fun with numbers”. Both Parties in this matter call upon comparables in the matter of wages. While all comparables are subject to manipulation, cherry picking and “cut and paste”, a review of the comparable data submitted demonstrates that the Association’s comparables are more consistent in comparisons and less subject to the flaws mentioned above than are the County’s. One aspect of note in reviewing the comparables (and this is from the County’s own selection of comparable counties) is that the data reveals that Wayne County is second highest in population, has the highest median household income, has the second highest median value of owner-occupied homes, and is the lowest in percentage of persons below the

poverty level. While not dispositive in itself, it does show that the County compares very favorably in income levels and property values.

The County contends that the comparisons presented by the Association relative to NYS Court Security Officers and their rates of compensation are not valid comparisons because the State does not run the County court security and the Association is trying to bring its compensation to the level of State court security workers which is considerably higher and richer than the County level. The County has a valid concern insofar as it goes relative to the State Court Security rates of compensation. However, there are two points on which the County assessment falters. First, a review of the evidence and proposals submitted does not show that the Association is proposing parity with the State of New York court security officer rates of compensation.

The County repeatedly asserted that the State has not taken over the operation and oversight of county court security as they have done in other situations and it is the County who has to “bear the costs” of county court security operations. Coupled with this is the assertion by the County that while the State does some reimbursement of court security expenses, “the State has imposed a cap on reimbursements” so that the County is not able to go beyond it and must absorb the cost overruns which they currently claim (through County and Undersheriff testimony) are \$100,000 or \$130,000 depending on whom you reference. The claims of cost burden and imposed cap need to be assessed.

The relationship between the County and the State revolves around a contract for services agreement through the New York State Unified Court System (“UCS”). A review of this agreement is both seminal to and revealing of the costs to the County and the issue of an alleged State reimbursement cap. This Fact Finder has direct experience in negotiating contract for service agreements with divisions/departments of the State of New York involving provision of statewide contracted services. While State contracts can often be complex and compounded in their provisions and requirements, the UCS contract with the County does not require a Rosetta stone to understand the financial aspects of the agreement.

The UCS Contract #C200430 with the County dealing with payments for court security costs states in pertinent part:

The reimbursement not-to-exceed amount must be equal to the amount of the average annual salary and the average annual fringe benefits for employees assigned to provide security pursuant to this agreement as specified in Appendix B. The average annual salary and fringe benefits must include all allowable reimbursement costs as specified in paragraph (B) of this section. For each subsequent one-year period, a new Appendix B and a new Appendix B-1 will be submitted. (UCS Contract #C200430, 4)

What this clearly shows is that the State reimburses the County for the costs of the Court Security Officers' wages. The only requirement is that the State pays the average of the salaries and applies that average amount times the number of employees in the unit. The County has stated that all but one of the Association court security officers are at the top step pay rate so if there is any shortfall coverage in the averaging process it is statistically insignificant. For all intents and purposes, the State pays the salaries of all the Association members.

The same is true for fringe benefits. The fringe benefit reimbursement for each employee paid by the State includes reimbursing the County's employer contribution to Social Security, the County's contribution to employee retirement and the County's cost of employee medical insurance (approximately \$9,000 average per employee). This section begins with a clear statement of the commitment of the State that they will reimburse the costs of "fringe benefits pursuant to collective bargaining agreement . . ." (UCS Contract #C200430, Appendix B, 2). The State reimburses for the employer's cost of social security, retirement, medical insurance and disability insurance. Not claimed by the County but also reimbursable are workers comp insurance, liability insurance, dental insurance and welfare fund. In short, the State will reimburse the County for the costs of all fringe benefits included in the CBA. The overwhelming majority of employee costs associated with County court security and Association employee costs are "pass through" costs borne by the State. There are even provisions in the UCS contract that address overtime situations.

Regarding the County Claim of a "State Imposed Cap"

The County repeatedly claimed that they were under a “State imposed cap” that they could do nothing about. After analysis of the UCS contract, the kindest thing that can be said about this repeated claim by the County is that it is disingenuous and a misrepresentation of the fiscal relationship between the County and the State regarding reimbursement for court security costs. The County’s continuous reliance on this claim critically damages the County’s credibility on the issue of wages.

There is no State imposed cap under which the County must labor. Nowhere in the UCS contract does it state or is there an arbitrary and capricious unilateral imposition of a cap on reimbursements. What the UCS contract does indicate is that there is a “reimbursement not-to-exceed” amount mentioned in Section B on Allowable Costs. This is not a State imposed cap. What this constitutes is a summary statement of the total amount of reimbursement to the County for the single year in question. Where does this figure come from? It does not unilaterally come from the State but is the result of the salary and fringe benefit data supplied by the County in Appendix B of the agreement. This “reimbursement not-to-exceed” figure will change as the County updates the salary and benefits information and figures in Appendix B each year as required by the contract and acknowledged by the State. The County’s insistence that they would not receive reimbursement from the State for \$100,000 or \$130,000 dollars has no credibility given the language of the UCS contract’s reimbursement terms and the fact that the County failed to provide any evidence or documentation to support such a claim. It should also be noted that the UCS contract allows for reimbursement of overtime upon application, justification and approval but what the credible Association evidence showed on filling vacancies due to annual leave situations, is that almost all vacancies at the court were filled by part-time deputies who would not be subject to overtime.

In actuality, the annual adjustments in reimbursement to the County for salaries and fringe benefits are certainly not imposed by the State nor is there a unilateral State imposed cap. The annual adjustments are less of a negotiation and more of a listing by the County of the current employee average salaries and current fringe benefits for the year in question as called for in the

CBA, that the State reviews and signs off on for the purposes of their reimbursement to the County. It is more *pro forma* than even a negotiations give and take. The State acknowledges that employee and fringe costs will rise and makes provision for that in the annual Appendix B adjustment process. Based on the evidence provided, the Court Security bargaining unit is the most heavily State subsidized and reimbursed per capita unit of any of the County units with County taxpayers ultimately responsible for a very small percentage of the total costs.

The county has oft argued that the State has not taken over the county court security function and it is up to the County to do it. Even a cursory analysis of the UCS contract indicates that while the County may have its name on the door, the State is, in effect, the “operator” of the system through its reimbursement to the County of almost all of the expenses associated with providing court security functions (salary, fringe benefits, *et.al.*).

The County also decried the state of the economy during the Fact Finding and stated that the Association’s wage proposals were way out of line with that reality and were in excess of what the County has paid in wage settlements to its other units. They went so far as to characterize the Association as “greedy” and yet the County in 2009, at the depth of the economic meltdown, negotiated a 3 year contract with the Lieutenant’s Association for 4.5% raises in each of the three years of that agreement. This reveals a Janus-like nature to their statements about the economy and wages and further undermines the credibility of the County position on wage increases. As the Association notes, the Lieutenant’s unit is 100% funded by County taxpayers and yet the County had no problem in agreeing to 4.5% annual increases for three years during the height of the recession whereas the Association unit wages and fringe benefits are underwritten and reimbursed by the State and adjusted each year to account for increases in salary and fringe benefit costs and yet the County would only offer them a 1.5% increase, three (3) times less than what was given to the Lieutenants’ unit during the depth of the recession.

Given all of the above, the Association has the more credible position and justification on the issue of wages. That is not to say, however, that the Association can simply demand anything in

the way of salary and fringe benefit increases and rely on the argument that the State will foot the bill.

Additionally, a successor agreement with a three (3) year duration is strongly recommended especially given the level of hostility and acrimony that surfaced during the Fact-Finding hearing. This will give the Parties some breathing room (and reflection) between the conclusion of this agreement the need to ramp up for the next round of negotiations.

RECOMMENDATION:

- 1. It is recommended that the Parties have a three (3) year term for their successor contract (2010-2012).**

- 2. It is recommended that the base wage rates be increased for the term of the contract as follows:**
 - 2010: 1.50%**
 - 2011: 1.50% (Linked with Recommendation #3 below)**
 - 2012: 1.50%**

- 3. It is recommended that the Longevity Schedule be changed as follows:**

For Longevity Years 5-10:	Add \$200 to the current amount
For Longevity Years 11-26 or More:	Add \$800 to the current amount

- 4. It is recommended that the change in the Longevity Schedule take effect in the second year (2011) of the agreement.**

- 5. It is recommended that the salary steps be equalized starting with the 2011 contract year with the understanding that any employee who might be negatively impacted by such a change be saved harmless in the transition.**

ISSUE #4: ARTICLE 9 – HEALTH INSURANCE

The continuing double digit annual increases in health insurance premiums is a valid concern for both Parties and one whose financial impact cannot be ignored. The County pays a high percentage of premiums currently (90% for single and 80% for 2-person and family) and seeks more cost sharing by employees regarding these spiraling costs. The Association is concerned that proportionally they already have a higher percentage of salary burden on them compared to other units when it comes to paying for premiums. They are also concerned that increased premium contributions coupled with very low wage increases will create a situation where the net effect is a reduction in salary at a time when other bargaining units are receiving net increases.

The concerns expressed by both Parties are legitimate. What also cannot be ignored is the huge burden that ever increasing health insurance premiums place on the fiscal reality that both Parties have to live within. Employers want to reduce their health insurance costs and employees want to maintain what they have. The one distinguishing characteristic here is that the State reimburses the County for fringe benefits pursuant to the CBA (including medical insurance) and adjusts that reimbursement each year of the contract with the County for court security (UCS Contract #C200430, Appendix B, 2). While the County is reimbursed for medical insurance costs (just under \$9,000 average per employee), there is a greater spread in the costs considering the differences among single, 2-person and family policy premiums. As opposed to the tight average costs relative to salaries, the medical insurance average subjects the County to more out of pocket expense relatively speaking although the bulk of insurance costs are reimbursed by the State. Based on the evidence and testimony presented by the Parties on this matter and with consideration to an overall settlement recommendation on the outstanding issues, there is a middle ground that will allow the Parties to accomplish some of their objectives in this area.

RECOMMENDATION:

- 1. It is recommended that the County/employee contribution rates for health insurance premiums remain unchanged for the 2010 and 2011 contract years.**

2. **It is recommended that the dollar amounts for the various policies paid by the County and employees during the 2011 contract year be frozen going forward.**

3. **It is recommended that in 2012 the County and employees share the costs of the yearly increases in health insurance premiums as follows:**
 - For employees with a Single Policy: County pays 85%, Employee pays 15%**
 - For employees with a Family Policy: County pays 75%, Employee pays 25%**
 - For employees with a 2-Person Policy: County pays 75%, Employee pays 25%**

4. **It is also recommended that the 3-tier prescription plan be implemented.**

ISSUE #5: ARTICLE 13 – DISCIPLINARY PROCEDURE

The County proposes a change in Article 13 language as it relates to Association representation of an employee during a disciplinary process. They are concerned about a potential situation where an employee might possibly be represented by an Association representative who is subject to discipline for the same incident or is someone who was a witness to the incident giving rise to the disciplinary action. The County proposes the following language:

An employee shall have the right to be represented in disciplinary matters by an Association representative, or another representative of his or her choosing, providing that such representative is not associated with or a witness to the disciplinary matter. This right extends only to disciplinary matters and not to matters of contract language interpretation.

At first glance, the County's concern seems reasonable although it is speculative in that no such incident has ever arisen between the Parties. The Association asserts, however, that the language offered by the County creates more problems than it solves and will create additional sources of union/management conflict over its use and interpretation. Additionally, this has never been a problem between the Parties and they do not see why it has to be addressed now.

A closer look at the language reveals that the devil is in the details. The language is not well crafted for the stated purpose. It suffers primarily from imprecision and is subject to the law of unintended consequences all of which militate against its inclusion. The construction of the language regarding “another representative” is presented in a broad context with the effect of fundamentally altering the representational rights and ownership by the Association of the grievance process. Existing language in the CBA allows for the employee to elect to “go it alone” at the arbitration stage where the Association has determined that the disciplinary action is justified and the Association determines that appealing the matter to arbitration will not be productive. The Association rightfully has the responsibility and authority to represent the employee and pursue the grievance through the pre-arbitration stages (or to arbitration if they think the grievance is meritorious). The County’s language would eliminate that by giving the employee the “go it alone” option right from the first stage of the disciplinary grievance process. This is a fundamental change and the Association’s concern over the implications of such a change is well-placed not only involving ownership of the process and representational issues but also raises Duty of Fair Representation (“DFR”) questions.

The “not associated with” aspect of the language is imprecise and subject to broad interpretation all of which would give rise to procedural disputes that would only serve to compound the issues in the case and delay a final determination on the disciplinary decision.

The last section is redundant in that language in Article 13.1 and 13.2 make it clear that there is a clear distinction between contract interpretation and discipline grievances on representational and other grounds.

Considering the imprecision and unintended consequences contained within the language only gives credence to the underlying reality that this has never been a problem. The old saw that someone should not try to fix something that is not broken is sanguine in this case. Further, given what has generally been in the past a cooperative interaction between the Parties, if such a situation was to arise where there was the potential to develop into such a conflict, this Fact Finder has every confidence in the reasonableness, professional judgment and ability of the

Parties to deal with and avoid representational problems in order to further the process and eliminate distractive elements.

RECOMMENDATION:

- 1. It is recommended that the language of current Article 13.2 regarding representation in discipline proceedings remain unchanged.**

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P O S T S C R I P T

It needs to be mentioned that at times during the Fact-Finding hearing, some participants adopted a tone of open hostility, *ad hominem* characterizations and highly distributive demeanor toward each other. This is noteworthy in that the vast majority of the time the Parties conducted themselves in a manner that clearly and respectfully outlined the issues, points of disagreement and rationales between them. The distributive demeanors harkened back to the Ford Motor strike era rather than to modern labor-management interaction and was doubly troubling in that, based on all indications, the Parties have in past negotiations and contract administration conducted themselves in a more restrained, respectful and cooperative manner. It is understood that Parties will disagree on issues and will bring passion and commitment to their respective advocacy. However, progressive labor-management environments recognize that the interaction between labor and management is, first and foremost, a professional relationship and successful parties strive to promote and enhance that understanding. It is the sincere hope of the Fact Finder that the Parties will return to and embrace this understanding as they continue their relationship.

AFFIRMATION

I affirm on my oath that the foregoing is my Fact-Finding Report with Recommendations in the above captioned matter.



Stephen P. LaLonde
Impartial Fact Finder

Dated: January 9, 2011