
**SUFFOLK COUNTY LEGISLATURE
BUDGET REVIEW OFFICE**



TO: WILLIAM J. LINDSAY, PRESIDING OFFICER AND ALL SUFFOLK COUNTY LEGISLATORS

FROM: GAIL VIZZINI, DIRECTOR OF BUDGET REVIEW *Gail Vizzini*

SUBJECT: REVIEW OF THE PROPOSED POLICE BENEVOLENT ASSOCIATION MEMORANDUM OF AGREEMENT

DATE: SEPTEMBER 27, 2012

Introductory Resolution No. 1915-2012 authorizes the County Executive to execute the eight year memorandum of agreement with the Suffolk County Police Benevolent Association (PBA) which is dated September 6, 2012. We have provided an Executive summary for your reference followed by a discussion of the costs and future savings associated with this proposed agreement.

Executive Summary for Proposed PBA Agreement

- The projected additional cost impact of the PBA Memorandum of Agreement is \$268.7 million over 2011-2018. This differs from the fiscal impact prepared by the County Executive's Office of \$183 million in that BRO includes \$45.8 million in the additional retirement and \$13.8 million in additional social security costs associated with the increases in salary and includes \$21.1 million in higher personnel costs associated with the last class of 60 recruits hired in December 2011.
- The proposed agreement calls for no increases in 2011 and 2012 and two increases in 2013. The County Executive estimates this would provide budgetary relief of \$43.7 million.
- The proposed agreement maintains the existing salary structure for current members and establishes a separate salary structure for new recruits.
- Almost 85% of Police Officers are currently at top step. Top step police officer wages received (excluding overtime, night differential or other forms of pay) will increase by 2.04% in 2013, 3.83% in 2014, 6.11% in 2015, 5.63% in 2016, 3.53% in 2017 and 3.53% in 2018.
- The total increase over the life of the contract is 27.28% from 2011 through 2018.
- The average annual rate of growth over this eight year period is **3.41%**. The compounded effective growth rate is 3.06% per year.
- Over the life of the proposed contract, top step base pay will increase for existing Police Officers from the current \$108,608 to \$139,234 by the end of 2018.
- Based on the W-2 data, overtime, night differential and holiday pay, etc. averaged 36.9% of base pay in 2011 and in excess of 40% in prior years.
- Top step is increased by \$1,250 on January 1, 2013, and again by \$1,250 effective January 1, 2015. Each increase equates to approximately \$2 million in cost.
- Top step base pay is increased by the dollar amount of 20 hours compensatory time effective April 1, 2014 and by the dollar amount of 40 hours compensatory time effective April 1, 2015.

- Section 3 refers to the EMHP agreement and states that current members will not contribute to health insurance for the duration of the agreement. New recruits will contribute 15% of the health care cost.
- Transferring highway patrol back to the Police is projected to accelerate a pay-out of \$4 million to Deputy Sheriffs, which was previously deferred to 2015 as a cost saving and cash consideration.
- Paragraph 9.b provides for a guarantee of no layoffs in this bargaining unit through 2018.
- Currently new recruits work 261 days the first year and 249 the second. This agreement reduces the number of work days for new recruits to 232-234 days depending on shift, which reduces productivity.
- Longevity is currently \$375 per year of service and will increase \$25 in 2013, 2014 and 2015. The effective date of these three increases is delayed until 2016. Longevity will increase by \$50 effective December 31, 2018 to \$500 per year of service.
- Effective January 1, 2014, top step will increase by \$1,500 based on attaining a college degree. Holiday pay will be reduced accordingly for those who do not attain the degree.
- New recruits will start on a separate pay scale which requires 12 years to attain top step rather than the current 5 year steps.
- Starting salary for new recruits will remain frozen at \$42,000 for the duration of the contract. After 12 years, top step on the new salary schedule is estimated as \$111,506.
- The proposed agreement states that the new employee wage chart will consist of 12 years to top step with equal raises every 6 months. This translates to an average annual increase of 8.6%.
- Compared to the existing agreement, the cost avoidance for base pay alone for each recruit hired under the new salary schedule is estimated at \$128,000 per recruit over the life of the proposed contract and \$210,000 per recruit over 12 years.
- If the proposed PBA agreement is not ratified by the Legislature, an “impasse” can be declared in the negotiations. The first step would be to proceed to mediation. If that is not successful, the County or the PBA may request that the dispute be referred to public arbitration.

Budgetary Impact of the MOA

The term of the proposed PBA agreement is eight years, from January 1, 2011 through December 31, 2018. The Budget Review Office calculated the projected cumulative cost of the PBA Memorandum of Agreement based on the following assumptions:

1. The source document for salary calculations is biweekly payroll data provided by the Department of Audit and Control. All existing 1,610 PBA members are moved through their appropriate step increases with the applied salary increases (both percentage increases and base pay increases) from 2013 through 2018.
2. The 2011 W-2 earnings were utilized to calculate additional personnel costs above base pay including overtime, night differential, holiday pay, et al, but not including longevity or SCAT pay.
3. No projected retirements or separations from service and no new recruit hires are included. The savings associated with new recruits compared to the existing salary structure is a separate section of the analysis.
4. Costs for Social Security and Retirement are included in our analysis, but are omitted from the Executive’s Fiscal Impact Statement.

Additional Cost Impact of Tentative PBA MOA

	2011	2012	2013	2014	2015	2016	2017	2018	TOTAL
Personnel Costs	\$0	\$0	\$4,784,838	\$15,144,887	\$34,350,747	\$50,551,772	\$54,674,981	\$64,707,733	\$224,214,958
Productivity 5.a.	\$0	\$0	(\$1,538,097)	(\$1,596,991)	(\$1,694,557)	\$0	\$0	\$0	(\$4,829,645)
Deferrals 8.a.b.	\$0	\$193,116	\$0	\$0	\$0	\$0	\$0	\$0	\$193,116
Deferrals 8.d.e.	\$0	\$0	(\$2,025,543)	(\$2,103,310)	(\$4,463,631)	\$0	\$0	\$0	(\$8,592,484)
Longevity 11	\$0	\$0	\$0	\$0	\$0	\$1,729,050	\$1,729,050	\$1,729,050	\$5,187,150
Highway Patrol 9.a.	\$0	\$4,000,000	\$2,058,000	\$2,125,502	(\$1,786,502)	\$2,361,084	\$2,442,778	\$2,533,161	\$13,734,023
Benefit Fund	\$0	\$0	(\$3,232,013)	\$69,323	\$107,227	\$158,306	\$55,477	\$0	(\$2,841,681)
Health Insurance	\$0	\$0	(\$2,987,300)	(\$2,987,300)	(\$2,987,300)	(\$2,987,300)	(\$2,987,300)	(\$2,987,300)	(\$17,923,800)
Social Security	\$0	\$0	\$448,339	\$814,205	\$1,584,363	\$3,278,514	\$3,530,809	\$4,138,197	\$13,794,427
Retirement	\$0	\$0	\$531,282	\$1,593,845	\$3,859,333	\$7,509,883	\$15,540,158	\$16,736,032	\$45,770,532
TOTAL	\$0	\$4,193,116	(\$1,960,494)	\$13,060,161	\$28,969,681	\$62,601,309	\$74,985,952	\$86,856,872	\$268,706,597

The projected additional cost impact of the PBA Memorandum of Agreement is shown on the table above. This table recalculates the base case shown in the County Executive’s Fiscal Impact Statement (FIS) dated September 6, 2012. Implicit in the table is the assumption of a static PBA workforce, with no retirements and no new hires. BRO estimates that the cost to the County above existing expenditures implicit in the current expired contract is **\$268.7 million** over the eight year period covered by the proposed agreement. This compares to \$183.1 million implicit in the Executive’s FIS. Most of the \$85.6 million difference is attributed to three factors: 1) our estimated personnel costs are \$21.1 million higher than shown in the Executive’s fiscal impact and include the most recent class of 60 hired in December, 2011; 2) we include \$13.8 million for additional Social Security payments, and: 3) \$45.8 million for additional retirement payments. The Executive’s fiscal impact does not include these expenses.

The County Executive’s FIS also considers two alternative scenarios, hiring either 50 recruits or 80 recruits on January 1st of each year, from 2013 through 2018. In both cases 45 retirements are assumed at the start of each year. Under both scenarios the cost of the contract is reduced compared to hiring under the existing agreement. In particular, costs are reduced by approximately 25% when 50 recruits per year are assumed and by about 33% when 80 recruits are assumed. The Budget Review Office agrees with the finding that the cost would be reduced as more recruits are hired. The reason is that each new hire represents a savings under the proposed contract relative to the existing agreement. That being said, our baseline costs are almost 47% higher than depicted in the County Executive’s FIS. Given the assumption of no increase in overtime hours that was made in both analyses, the actual budgetary impact of the proposed agreement could be greater than what is shown in the table.

Historically, the Budget Review Office has included a Cumulative Cost Impact table when reviewing proposed labor agreements. The cumulative cost is the sum of the additional costs each year as shown on the table below. It should be noted that the Total column in the table above matches the 2018 column in the following table.

Cumulative Cost Impact of Tentative PBA MOA

	2011	2012	2013	2014	2015	2016	2017	2018
Personnel Costs	\$0	\$0	\$4,784,838	\$19,929,726	\$54,280,473	\$104,832,244	\$159,507,225	\$224,214,958
Productivity 5.a.	\$0	\$0	(\$1,538,097)	(\$3,135,088)	(\$4,829,645)	(\$4,829,645)	(\$4,829,645)	(\$4,829,645)
Deferrals 8.a.b.	\$0	\$193,116	\$193,116	\$193,116	\$193,116	\$193,116	\$193,116	\$193,116
Deferrals 8.d.e.	\$0	\$0	(\$2,025,543)	(\$4,128,853)	(\$8,592,484)	(\$8,592,484)	(\$8,592,484)	(\$8,592,484)
Longevity 11.	\$0	\$0	\$0	\$0	\$0	\$1,729,050	\$3,458,100	\$5,187,150
Highway Patrol 9.a.	\$0	\$4,000,000	\$6,058,000	\$8,183,502	\$6,397,001	\$8,758,085	\$11,200,863	\$13,734,023
Benefit Fund 6.e.	\$0	\$0	(\$3,232,013)	(\$3,162,690)	(\$3,055,463)	(\$2,897,158)	(\$2,841,681)	(\$2,841,681)
Health Insurance 3.	\$0	\$0	(\$2,987,300)	(\$5,974,600)	(\$8,961,900)	(\$11,949,200)	(\$14,936,500)	(\$17,923,800)
Social Security	\$0	\$0	\$448,339	\$1,262,544	\$2,846,908	\$6,125,422	\$9,656,230	\$13,794,427
Retirement	\$0	\$0	\$531,282	\$2,125,126	\$5,984,459	\$13,494,342	\$29,034,500	\$45,770,532
TOTAL	\$0	\$4,193,116	\$2,232,622	\$15,292,783	\$44,262,464	\$106,863,772	\$181,849,724	\$268,706,597

Base pay increases to existing top step members of the PBA

As shown in the next table, the proposed agreement calls for no increases in 2011 and 2012, two increases in 2013, four in each of 2014 and 2015, and two in each of 2016 through 2018. Almost 85% of Police Officers are currently at top step. Top step police officer wages (excluding overtime, night differential or other forms of pay) will increase by 2.04% in 2013, 3.83% in 2014, 6.11% in 2015, 5.63% in 2016, 3.53% in 2017 and 3.53% in 2018. The total increase over the life of the contract is 27.28% from 2011 through 2018. The average annual rate of growth over this eight-year period is **3.41%**. Taking into consideration compounding translates into an effective growth rate of 3.06% per year. If we restrict our analysis to the six-year period (2013-2018) in which salaries increase, average growth is in the 4% range. Over the life of the proposed contract, top step base pay will increase from the current \$108,608 to \$139,234 by the end of 2018. Although other income from overtime, night differential, holiday pay, etc. is excluded from the table below, it is included in the personnel costs above. Based on the W-2 data, these other sources of income averaged 36.9% of base pay in 2011 and in excess of 40% in prior years.

PBA Memorandum of Agreement Increases for top step members of the PBA					
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Date of Increase	Salary increase	Annual Top Step Pay			
		Salary Received	Percent Increase in Salary Received	Year End Base Pay	Percent Increase in Year End Base Pay
2011-2012	0.00%	\$108,608	0.00%	\$108,608	0.00%
1/1/2013 *	1.15%	\$110,819	2.04%	\$111,506	2.67%
6/1/2013	1.50%				
1/1/2014 *	1.35%	\$115,064	3.83%	\$117,676	5.53%
4/1/2014 *	1.08%				
6/1/2014	1.50%				
12/1/2014	1.50%				
1/1/2015 *	1.06%	\$122,091	6.11%	\$125,470	6.62%
4/1/2015 *	2.16%				
6/1/2015	1.50%				
12/1/2015	1.75%				
1/1/2016	1.75%				
6/1/2016	1.75%	\$128,969	5.63%	\$129,899	3.53%
1/1/2017	1.75%	\$133,521	3.53%	\$134,486	3.53%
6/1/2017	1.75%				
1/1/2018	1.75%				
6/1/2018	1.75%	\$138,236	3.53%	\$139,234	3.53%

2011-2018 annual rates of growth:		
Average rate of growth (not compounded)	3.41%	3.52%
Compounded rate of growth	3.06%	3.15%

2013-2018 annual rates of growth:		
Average rate of growth (not compounded)	4.55%	4.70%
Compounded rate of growth	4.10%	4.23%

Total increase over the life of the contract	27.28%	28.20%
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* Salary Increases not included as "Percentage Increases" in Paragraph 2 of the Memorandum of Agreement are: (1) 1/1/2013: 1.15% = \$1,250/\$108,608 (see paragraph 5.a.); (2) 1/1/2014: 1.35% = \$1,500/\$111,506 (see paragraph 15.); (3) 4/1/2014: 1.08% = (20 hrs. * \$58.52) / \$108,608; (4) 1/1/2015: 1.06% = \$1,250 / \$117,676; (5) 4/1/2015: 2.155% = (40 hrs. * \$58.52) / \$108,608 (see paragraph 8.b.).

The following provides a brief explanation of several of the paragraphs contained in the proposed PBA Memorandum of Agreement (MOA) that have a fiscal impact.

Paragraphs in the MOA that increase costs

- **Paragraph 2. Percentage raises:** 0% increases in 2011 and 2012, followed by 1.5% increases in each of the following four periods: 6/1/13, 6/1/14, 12/1/14, and 6/1/15, and

by 1.75% increases in each of the following seven periods: 12/1/15, 1/1/16, 6/1/16, 1/1/17, 6/1/17, 1/1/18, and 6/1/18. As shown in the above table, there are five additional increases:

- ✓ Percentage increases for 2011 and 2012 are 0% leading to no retroactive payments in 2011 and 2012. The Executive's FIS identifies this as a savings from 2011 through 2013 of \$43 million. While the Budget Review Office cannot predict what would have transpired compared to binding arbitration, the County Executive's estimate of \$43.7 million over the 2011 to 2013 period is plausible.
- **Paragraph 5.a. Productivity:** "Effective January 1, 2013, top base pay shall be increased by \$1,250 and the salary scale shall be adjusted in accordance with paragraph 4." This would be the first "raise" for PBA members, not June 1, 2013. This would equate to a full year increase in 2013 of 1.15% for a top step PO and a 1.19% increase for the lowest in-step PO (step 2). Assuming all PO's will get a \$1,250 increase on January 1, 2013, this would equate to a cost of \$2,035,000 while also increasing their base pay that will be compounded by the June 1, 2013 raise of 1.5%. Top step base pay would be \$109,858 on January 1, 2013 and \$111,506 on June 1, 2013.
- **Paragraph 5.b. Productivity:** "Effective January 1, 2015, top base pay shall be increased by \$1,250 and the salary scale shall be adjusted in accordance with paragraph 4." Again, this would equate to a cost of over \$2 million while also increasing their base pay.
- **Paragraph 8.a.b. Deferrals:** "Effective April 1, 2014 top base pay shall be increased by the dollar amount of twenty (20) hours Compensatory time at the then prevailing top step rate." PBA members on January 1, 2011 who separate from service prior to April 1, 2014 shall receive twenty hours of compensatory time upon separation and PBA members on January 1, 2012 who separate from service prior to April 1, 2015 shall receive forty hours of compensatory time upon separation. Based on 45 PBA separations in 2011 and 60 in 2012, the projected cost is \$193,116.
- **Paragraph 8.b. – Deferrals:** "Effective April 1, 2015 top base pay shall be increased by the dollar amount of forty (40) hours Compensatory time at the then prevailing top step rate." This equates to a \$2,340 increase to base pay.
- **Paragraph 9.a. – Highway Patrol:** While the Police Commissioner has stated on the record in the Legislative Public Safety Committee on August 16, 2012 that the Department will use existing personnel from other commands to cover the additional Highway Patrol functions without an interruption in other services, specifically precinct sector patrol, it is logical to assume that this will impact the Department's ability to fully staff other commands without impacting services and overtime. Although there is likely to be considerable pressure to increase overtime to maintain services, for the purposes of this report, the assumption is made that no additional overtime hours will be incurred and that additional costs will be equivalent to the difference in pay for a top step Police Officer versus a top step Deputy Sheriff I for 35 highway patrolmen per day. Also included in our analysis, as well as the County Executive's, is over \$4 million advanced from 2015 to 2012 to the Deputy Sheriffs for deferring pay under an agreement with the former County Executive.
- **Paragraph 9.b. – Employee Protection:** There is a no-layoff provision that the County Executive and Legislature are not likely to extend to other bargaining units. Given the current fiscal climate, future layoffs may be an option that the County may find it difficult to abide by.
- **Paragraph 9.g. – Employee Protection:** Reduces the number of work days for future recruits, from 261 in the first year and 249 in the second year, to 232-234 days. Beyond the second year currently all officers work between 232 and 234 days

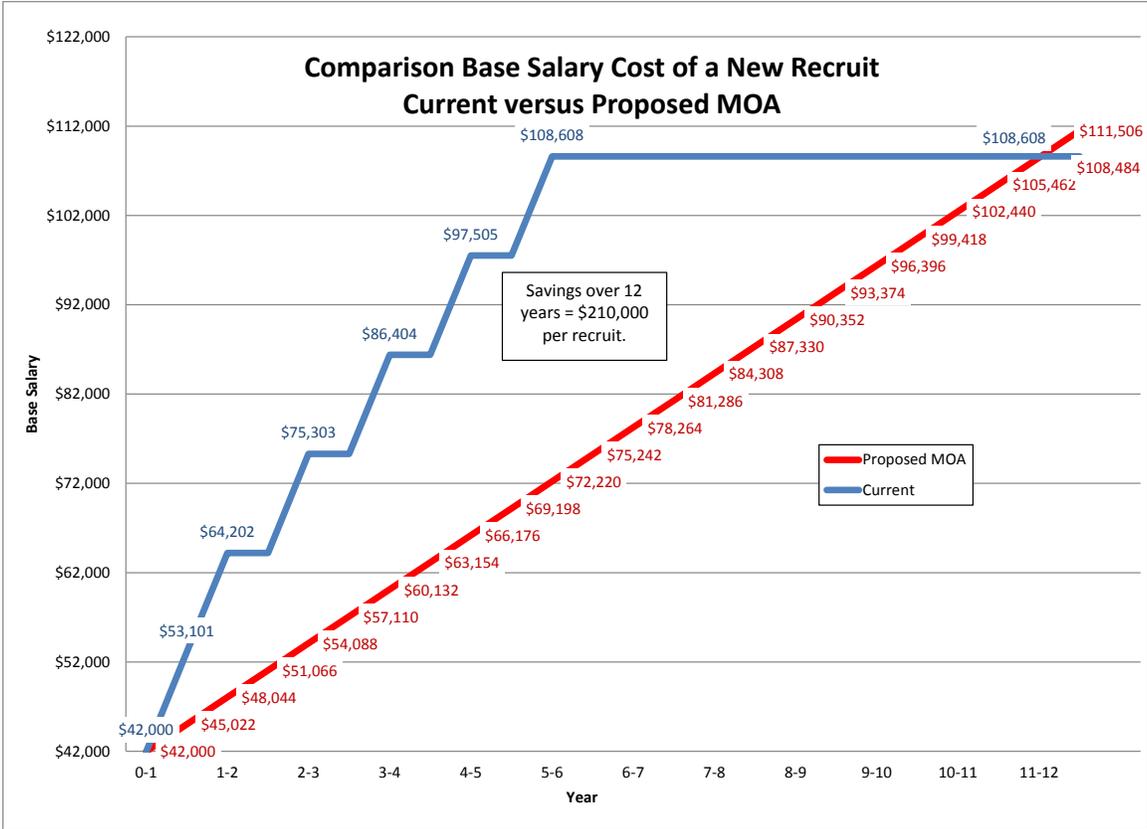
depending upon the extent to which they work night or day shifts. The fiscal impact of this contract provision is in the first two years for new recruits and results in: (1) a reduction in the number of PBA days available to work; (2) an increase in hourly pay, which is the base for overtime and night differential; and (3) with the loss of the additional days/hours there will be a likely increase in demand for overtime to be performed by higher paid officers at time and a half. The cost impact will be determined by how the Department utilizes personnel to make up for the loss of these days.

- **Paragraph 11 – Longevity:** Longevity is currently \$375 per year of service and will increase by \$25 each year in 2013, 2014 and 2015. Increases will not become effective until 2016. Longevity will increase by \$50 on December 31, 2018 to \$500. Employees will defer \$25 of this increase until 1/1/2020. Longevity is calculated into the rate for OT and holiday pay (after 15 years longevity will be \$7,500 and after 20 years it will be \$10,000). The approximate increase for 2016 through 2018 would be \$1.7 million per year.
- **Paragraph 15 – Education:** An “education” raise of \$1,500 is added to top step base pay effective January 1, 2014. As this is an increase to base pay, this impacts all personnel costs for all PO’s not just those without college credits. This is a departure from the tuition reimbursement program offered to other bargaining units. The proposed PBA agreement would allow for credits outside the criminal justice field. Holiday pay will be reduced accordingly for those who do not attain the degree. The Budget Review Office notes that a college degree exceeds the minimum requirements for Police Officer as established by Civil Service. Additionally, the County has previously been advised by the Department of Justice that a college degree could be viewed as an obstacle to minority hiring and therefore it is not included as a minimum qualification.
- **Paragraph 17 – Re-Opener:** The agreement provides for a re-opener clause should any current or future Suffolk County Law Enforcement bargaining unit be awarded greater benefits or lesser concession during the period of this agreement. This is very generic and has the potential for increased costs.
- **Overtime and other Personnel Services accounts:** While the Police Department may be limiting overtime hours, the base pay increases and the addition of LIE/Sunrise Highway patrol will impact all personnel costs.

Paragraphs in the MOA that provide savings

- **Paragraph 3 – Healthcare:** New recruits will be required to pay 15% of health insurance premiums. While the County would save on new recruits, the cost of not extending employee paid premiums to all active and retired staff is substantial.
 - ✓ **EMHP:** This is a reference to the PBA share of approximately \$2.9 million of the stated savings of \$17 million in the proposed EMHP agreement. The EMHP agreement will be before the Legislature in Introductory Resolution No. 1886-2012.
- **Paragraph 4 – New Employees and Wage Charts:** As depicted in the graph below, starting salaries for new recruits will be frozen at \$42,000 for the length of the contract. Under the existing agreement, a new recruit reaches a top step base salary of \$108,608 in five years. Under the proposed agreement, it will take a new recruit 12 years to reach top step at a base salary of \$111,506.
 - ✓ **Paragraph 18** allows for increases for new recruits only through the end of 2013.
 - ✓ Cost avoidance for base pay alone for each recruit hired, compared to the existing PBA contract, would be approximately \$210,000 over 12 years. Over the life of the proposed contract, the savings would be approximately \$128,000 per recruit if hired on January 1, 2013. The average annual savings is \$17,515, which will peak in

year five when an existing Police Officer would earn \$108,608 compared to the proposed agreement wherein a new recruit would earn \$73,731 for a difference of \$34,877. The actual cost avoidance will depend on when and how many new recruits are hired in the future.



No salary schedule for new recruits was attached with the agreement nor is the agreement specific as to when increases will occur. For the purposes of fiscal impact we constructed an unofficial *illustrative* salary schedule based on the description in the agreement. New recruits will have a starting salary of \$42,000 and will reach a top step salary of \$111,506 in 12 years. All steps will be an equidistant which we calculated to be \$3,022 between steps and two steps will be awarded annually comprising a 24-step pay scale. The tables below compare the unofficial new salary schedule for base salary to the existing salary schedule for base salary. The average annual increase in base salary for new recruits is 8.6% compared to the current 17.3%.

NEW RECRUIT: SALARY SCALE			
Year	Step	Base Salary	% Increase from Previous Year
0-1	1	\$42,000	
0-1	2	\$45,022	7.2%
1-2	3	\$48,044	
1-2	4	\$51,066	13.4%
2-3	5	\$54,088	
2-3	6	\$57,110	11.8%
3-4	7	\$60,132	
3-4	8	\$63,154	10.6%
4-5	9	\$66,176	
4-5	10	\$69,198	9.6%
5-6	11	\$72,220	
5-6	12	\$75,242	8.7%
6-7	13	\$78,264	
6-7	14	\$81,286	8.0%
7-8	15	\$84,308	
7-8	16	\$87,330	7.4%
8-9	17	\$90,352	
8-9	18	\$93,374	6.9%
9-10	19	\$96,396	
9-10	20	\$99,418	6.5%
10-11	21	\$102,440	
10-11	22	\$105,462	6.1%
11-12	23	\$108,484	
11-12	24	\$111,506	5.7%

The existing step schedule consists of equidistant steps of \$11,101 with an average annual step increase of 17.3%.

Year	Step	Base Salary	% Increase from Previous Year
0-1	0	\$42,000	N/A
0-1	1	\$53,101	26.4%
2	2	\$64,202	20.9%
3	3	\$75,303	17.3%
4	4	\$86,404	14.7%
5	5	\$97,505	12.8%
6	6	\$108,608	11.4%
		Average	17.3%

The analysis of the proposed PBA agreement can be looked upon as a time horizon problem. In the short-term there are considerable savings associated with avoiding retroactive pay for 2011 and 2012, and some additional savings in 2013. In the medium-term there are substantial costs associated with proposed salary increases averaging 3.4% to existing members of the PBA. In the long-term there are considerable savings that will be realized as new recruits are hired at a pay scale that requires twelve rather than five years to reach top step and requires new recruits to pay 15% of their health insurance premiums.

It is difficult to address how the proposed contract would differ from a possible agreement reached through the process of binding arbitration. In recent years, despite the declaration of budget shortfalls, binding arbitration has had a history of granting the PBA annual increases of 3.5% from 2008 to 2010, 3.75% from 2004 to 2007, and even larger increases prior to 2003. Certainly the length of the agreement would be shorter. An Arbitrator is only allowed to consider a settlement for two years (2011-2012), unless the County authorizes him or her to extend the agreement, while the proposed negotiated settlement covers eight years (2011-2018). It is unclear if an arbitrator would venture into returning responsibility to patrol the LIE and Sunrise Highway to the Police Department, grant a no layoff clause, or require new recruits to pay 15% of their health insurance premiums.

Suffolk County, like numerous other municipalities, is experiencing a serious structural budget deficit that is not likely to be resolved for several years. The 2013 Recommended Operating Budget assumes the savings and 2013 costs associated with the PBA agreement. Despite the 2013 recommended budget presentation, there is a structural imbalance in the budget due to the reliance on one shots rather than recurring revenue. In the final analysis, it remains to be seen how our fiscal plight would be taken into consideration by an Arbitrator.

The following section discusses the role of the Legislature in ratifying a labor agreement.

Role of the Legislature in Ratifying an Agreement

New York State Civil Service Law Article 14, the Fair Employment Act defines the role of a legislative body in approving agreements made between the municipality and recognized employee organizations. Section 204a of the Fair Employment Act requires that any written agreement between a public employer and an employee organization include the following notice:

“It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing additional funds therefore shall not become effective until the appropriate legislative body has given approval.”

This provision appears on page 7 of the current agreement between Suffolk County and the Suffolk County Patrolmen’s Benevolent Association Inc.

New York State Civil Service Law Section 201 (12) defines the term “agreement” as the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee organization, which becomes a binding contract for the period set forth. The exception is any provision which requires approval by a legislative body. Any such provision shall become binding when the appropriate legislative body gives it approval.

Pursuant to this section of law where the designate of the chief executive and the union, including union membership, have agreed to a contract, the power of the Legislature to withhold approval is restricted to those areas of the agreement which require legislative action. Those areas may vary by municipality depending upon the legal basis defining Executive and Legislative responsibilities. Traditionally, this is an area which is usually resolved between the County Executive and the Legislature.

Most items included in the tentative agreement between the County and the PBA have fiscal implications, which directly impact the County's operating budget. It is our opinion that any impact upon the operating budget requires legislative action and overview.

In particular, the total of proposed salary increases and associated costs will have to comply with a multitude of budget caps and by 2014 exceed recurring revenue generated from the limitations of the 2% property tax cap. The Legislature will have to address compliance on an annual basis.

If the County Legislature takes exception to any of the items in the proposed agreement, which require legislative action, the County and the union would be required to return to the negotiating table to resolve the problems. The Legislature must either adopt the contract in its entirety or reject it.

The union could perceive the issues not approved by the Legislature as not being within the legislative purview. The union may then file with New York State Public Employee Relations Board. The charge would be improper practice against the County for bargaining in bad faith and not effectuating a binding provision pursuant to Section 209 (A) of the Fair Employment Act.

Impasse

If the proposed PBA agreement is not ratified by the Legislature, an "impasse" can be declared in the negotiations. At that juncture either the County or the PBA may request that the board refer the dispute to public arbitration.

Binding arbitration is provided under Section 209 (4) of the Taylor Law and applies to certain categories of public employees as specified in the law. If the Legislature rejects the agreement, the Executive and the union, with the assistance of the appointed mediator, would try to renegotiate an agreement acceptable to the Legislature. The mediated agreement is only a recommendation and is not final or binding. If a new agreement is negotiated, it will be presented to the rank and file for a vote. If accepted by the rank and file, the agreement goes to the Legislature for ratification.

The impasse can continue if either (1) the parties are unable to renegotiate the agreement; or (2) the rank and file, or the Legislature fails to ratify the renegotiated agreement. To resolve the impasse, the Public Employment Relations Board (PERB), upon the request of either the County or the PBA, shall refer the dispute to public arbitration. The public arbitration panel shall consist of one member appointed by the public employer, one member appointed by the employee organization, and one public member appointed jointly by the public employer and employee organization who shall be selected within ten days after receipt by the board of a petition for creation of the arbitration panel. Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member.

The public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard in person or by counsel, and may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and arguments of their respective positions.

The panel shall have the authority to require the production of such additional evidence as necessary and may provide for a complete record to be kept of the proceedings, the cost of which shall be shared equally by the parties. All matters presented to the panel shall be decided by majority vote and the panel shall specify the basis for its findings. The determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of the previous collective bargaining agreement. The determination of the arbitration panel shall not be subject to the approval of the Legislature or any other municipal authority but would be subject to a review by a court of competent jurisdiction.

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