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Inter-Departmental Memo

To: Hon. Richard Nicolello, Presiding Officer
Hon. Kevan Abrahams, Minority Leader
All Members of the Nassau County Legislature

From: Maurice Chalmers, Director
Office of Legislative Budget Review

Date: February 1, 2023

Re: Memorandum of Understanding between Nassau County and the Police Benevolent Association (PBA).

The Office of Legislative Budget Review (OLBR) has prepared this report to provide an estimated fiscal cost for Clerk Item #37-23, which is a Memorandum of Understanding (MOU) between Nassau County and the Police Benevolent Association (PBA). The prior agreement expired on December 31, 2017, and this MOU ends a long period without a labor contract being in place between the County and the PBA. This is the third negotiated contract that the County has recently entered into with a union since all the CBAs expired. Previously, the County signed labor agreements with the Superior Officer's Association (SOA) and the Detectives Association Inc. (DAI). The Collective Bargaining Agreements (CBAs) with the Correction Officers Benevolent Association (COBA) and the Civil Service Employees Association (CSEA) currently remain expired. In FY 22, the County also made significant progress in labor negotiations by entering into a Memorandum of Agreement (MOA) and Stipulation of Settlement for disputed Longevity payments between the County and all unions. The agreement provided a longevity settlement which resolved a long-standing dispute between the County and all unions for which longevity payments had remained frozen.

The Nassau Interim Finance Authority (NIFA) will still need to approve this MOU, and if approved, it will be incorporated into one consolidated CBA within six months of its final ratification. The Administration has informed OLBR, that they anticipate support from NIFA because the Control Board, through their hired Labor Specialist, Mr. Dellaverson, was a party to this Collective Bargaining Agreement. NIFA, subsequently confirmed for OLBR, that Mr. Dellaverson participated in the negotiations.

The term of this agreement is for the period commencing January 1, 2018 through June 30, 2026. It is important to understand that absent of this MOU, union members that are entitled to step increases would have continued to receive their annual step adjustments and this agreement modifies some stipulations mainly by adding Cost of Living Adjustments (COLA).

The following discussion provides the estimated cost impact of the new agreement from the status quo, as well as highlights of the key provisions of the MOU. For the latter, OLBR engaged the Administration to ensure that the interpretation of the MOU was as intended.

Wage Increases

The table below reflects the scheduled General Wage Increases (GWI) as proposed in the agreement:

Proposed MOU Agreement

Date	GWI
July, 1 2018	1.00%
July, 1 2019	1.00%
July, 1 2020	1.00%
July, 1 2021	1.00%
July, 1 2022	2.50%
July, 1 2023	2.50%
July, 1 2024	3.00%
July, 1 2025	3.00%

Wages for all active PBA members will be increased annually by the GWI in July of each year based on the percentages reflected in the above chart. Although the GWI's go back to July 1, 2018, PBA Officers will only receive retroactive payouts for the period commencing January 1, 2021. There are no retroactive adjustments for wages for any earlier period.

After the ratification of this agreement, current onboard Police Officers will be paid out the impact of the 2021 and 2022 wage increases. In addition, their salaries will jump to the wages effective as of July 1, 2023, which includes the compounded impact of the prior year's COLAs from this MOU.

There is a new modified salary schedule which has been created for Police Officers who start after this Agreement is ratified. The 2023 values with the COLA impact include $37,333 for step "1" and $43,731 for step "2". After the impact of the GWI increases, the current top step will increase from $121,659 to $141,108 by the conclusion of this contract.

The chart on the next page provides the net projected costs and savings of the contract by fiscal year. OLBR estimates the costs associated with the contract to be approximately $250.4 million. In addition to the GWI, the costs include salary inflators, stipends, personal leave flexibility, among other items. These costs are reduced by anticipated savings of $83.3 million, from concessions in the contract for a net cumulative cost of **$167.1 million**. The Administration will need to monitor and ensure that the concessions are realized in order to offset the expense.

PBA Labor Contract Analysis (millions)

	2021	2022	2023	2024	2025	2026	Total By Year
Projected Cost							
Total GI Wage Increase	10.9	16.5	24.5	34.2	45.1	52.1	183.4
Stipend - 6 Year	0.0	4.0	12.1	12.4	12.8	13.0	54.3
Senior Officer Stipend - 15 Year	0.0	0.9	2.6	2.7	2.8	2.8	11.8
Personal Leave Day	0.0	0.0	0.2	0.2	0.3	0.3	1.0
Subtotal Costs	**10.9**	**21.4**	**39.5**	**49.5**	**61.0**	**68.2**	**250.4**
Projected Offsets							
Health Insurance Savings	(3.1)	(3.5)	(4.1)	(4.3)	(4.5)	(4.8)	(24.4)
Additional Appearances	0.0	0.0	(7.8)	(8.0)	(8.3)	(8.3)	(32.4)
Sick Leave 2 Days	0.0	0.0	(2.6)	(2.7)	(2.7)	(2.8)	(10.8)
Modified Salary Schedule (Steps 3-8)	0.0	0.0	0.0	0.0	(0.4)	(1.4)	(1.8)
Grievance	0.0	(4.8)	(2.2)	(2.3)	(2.3)	(2.4)	(14.0)
Subtotal Savings	(3.1)	(8.4)	(16.7)	(17.3)	(18.3)	(19.6)	(83.3)
Estimated Contract Cost By Year	7.9	13.0	22.7	32.3	42.7	48.6	**167.1**
Net Cumulative Contract Cost By Year	**7.9**	**20.9**	**43.6**	**75.8**	**118.5**	**167.1**	

Over the 8 ½ years of the contract, OLBR's net cumulative cost is $8.6 million higher than the Administration's figure of $158.5 million. The majority of the difference results from higher inflators used by OLBR to calculate the final costs. Both the Administration and OLBR used inflators to factor in the salary extras such as holiday, overtime, termination, and pension etc. OLBR's inflators, which were based on the latest actual five-year average compiled from the County's W-2 file, were slightly higher than the Administration.

The following are highlights of some key provisions of the contract:

<u>New Salary Scale</u>

Effective upon the date of final ratification of this Agreement, the existing salary schedule for new entrants shall be replaced with a new schedule.

<u>New Entrants</u>

Effective upon full and final ratification, employees hired on or after the execution date of this Agreement shall be subject to a modified salary schedule of **11** steps. Both steps "1" and "2" remain unchanged from the current salary plan resulting in zero savings, however the new schedule builds in a salary savings starting after the ratification of this agreement of approximately $2,133 for steps "3" through "8"; savings of roughly $21,411 for the new step "9" and $15,865 for the new step "10". These savings figures will continue to escalate in the out-years along with the GWI inflators until top step is reached.

The new schedule includes two additional steps: "10" and "11", for new officers hired after the date of this Agreement to reach the top step "9" under the current plan. Once a new officer, progresses through all 11 steps, they will reach the same top pay that current on-board officers will receive by FY 26 at $141,108. In other words, new officers will have to progress through two additional years, to reach the same top step, that current officers will receive. Once step "11" has been reached by an officer, there are no longer any County savings generated from the new salary plan.

OLBR is projecting savings of roughly $0.4 million in FY 25 and $1.4 million in FY 26 for a estimated total of $1.8 million, during the timeframe covered by this MOU.

The chart below displays the savings that will be generated between the new salary plan for officers that are hired after this Agreement is ratified, versus the plan for officers currently on-board.

Salary Plan Savings				
Step	Final Ratification	7/1/2023	7/1/2024	7/1/2025
01	0	0	0	0
02	0	0	0	0
03	(2,133)	(2,186)	(2,251)	(2,318)
04	(2,133)	(2,186)	(2,251)	(2,318)
05	(2,133)	(2,186)	(2,252)	(2,319)
06	(2,133)	(2,187)	(2,252)	(2,319)
07	(2,135)	(2,189)	(2,255)	(2,322)
08	(2,133)	(2,186)	(2,251)	(2,318)
09	(21,411)	(21,946)	(22,604)	(23,282)
10	(15,865)	(16,262)	(16,750)	(17,253)
11	0	0	0	0

Retroactive Wages (FY 21 & FY 22)
Every active employee, and any employee who is deceased or retired prior to the ratification date, will receive payment for service by the GWIs only for the period commencing January 1, 2021. The cost for FY 21 and FY 22 is approximately $32.3 million. There are not any retroactive adjustments for any wages for any other prior period.

Stipend – Six Years
Every member of the bargaining unit, who has attained at least six years as a sworn PBA union member of the Nassau County Police Department, as of September 1, 2022, shall receive an annual stipend of $6,480. The stipend will increase by the GWIs thereafter and will be considered as part of the base earnings, for purposes of all premium pay calculations and health contributions. Every member of the bargaining unit after September 1, 2022, will receive the stipend, at the then prevailing rate. The cost associated with this clause, over the term of the contract, is approximately $54.3 million through FY 26.

Senior Officer Pay – 15 Years
Effective September 1, 2022, and thereafter, every member of the bargaining unit, who has attained 15 years as a sworn PBA member of the Police Department will be designated a Senior Officer and will receive an additional annual service differential of $3,750. The stipend will also be increased by the GWIs and be considered as part of an officer's base earnings, for purposes of all premium pay calculations and health contributions. Every member of the bargaining unit who attains 15 years, will receive Senior Officer designation and the annual service differential at the then prevailing wage. The cost associated with this clause is estimated to be roughly $11.8 million through FY 26.

Health Insurance Contributions for Employees

Employed PBA members, not currently contributing to their health care benefits, will be required to contribute a percentage of their base earnings. The savings will be generated from members contributing 2.0% of their base earnings in 2021, 2.25% in 2022 and 2.5% from 2023 through FY 26. However, the cost of the contributions, is not allowed to exceed the equivalent dollar value of 15% of the cost of the health insurance premium, for family coverage, under the NYSHIP Empire Plan. The foregoing employee health contributions will cease upon retirement.

After questioning how these savings would be achieved for FY 21 and FY 22, the Administration explained that these savings will be deducted from the payments due to members from these years ensuring collection, this will be approximately $6.6 million for the retroactive portion. In total, OLBR estimates $24.4 million in savings from this provision.

The County and the PBA agree to review comprehensive health options, which would provide a plan of benefits, at less net cost to the County, than the NYSHIP Empire Plan, without requiring employee contributions. Those discussions may also include the possibility of self-insured coverage. In addition, the County will ensure that members may avail themselves of an effective "open" period, to elect the County's non-contributory HDHP Plan.

Employees who maintain alternative health care coverage, will have the option to opt-out of health care coverage with the County. They will be eligible to receive an annual opt-out payment of $2,000 for waived individual coverage, and $4,000 for waived family coverage. This is an increase from the current maximum of $500 for individual and $2,000 for family. Payments will be made at the end of the plan year commencing with 2023, with no partial payments.

As part of the agreement, the flexible spending program (FSA 125) will be made available to the bargaining unit, as soon as possible, after full and final ratification.

Schedules – Additional Tours

Effective January 1, 2023, all members of the bargaining unit, will be scheduled to work an additional **four** appearances per year. Additional tours shall be pro-rated for the first partial year, if necessary. According to the Agreement, the overtime rates of pay will continue to be calculated based upon a schedule of 1,985 annual hours.

All additional assigned tours are required to be worked and any scheduled additional tour missed, for any reason, shall be made up. Members will be assigned to tours in the same fashion as payback tours are currently scheduled. Two of the additional tours shall be utilized for the purpose of enhanced training; such as active shooter, EVOC, mental health and wellness, and de-escalation tactics. At the discretion of the Police Commissioner, an additional tour may be utilized for training purposes.

OLBR has estimated the savings from the additional tours to be roughly $32.4 million for this provision through FY 26.

Rules – Sick Leave and Personal Leave

Effective January 1, 2023, annual sick leave allowances will be reduced by two days, from 26 to 24 for incumbents, as of the execution date of this Agreement. OLBR includes savings of $10.8 million for the additional two days worked per year throughout the term of the contract.

The minimum number of officers in each precinct and command given time-off utilizing either personal leave or compensatory time on each tour shall be increased to two. Requests could result in an additional officer utilizing their personal leave day on the same tour. OLBR has captured a cost of roughly $1.0 million for the personal leave flexibility.

Rules – Termination Cap

Members with hire dates prior to the execution date of this Agreement (all incumbents), will continue to be subjected to an absolute cap on "termination pay" equivalent to (**2 times**) base salary, in the year in which he/she retires, under the same computational rules, as of the date of this Agreement.

Members with initial hire dates into sworn service with the Police Department, on or after the execution date of this Agreement, shall earn sick leave, at the rate of 18 days per year and will be subject to an absolute "termination pay" cap equivalent to 150 percent **(1½ times)** of base earnings in accordance with existing provisions, in the year in which such member retires under the same computational rules, as of the date of the Agreement.

While this clause is expected to generate significant savings in the future by limiting expenses, the anticipated terminal payouts are not expected to occur until after the expiration of the contract; when future members retire and as such, no savings were reflected in this analysis.

Additional Rules

The following highlights additional Rules of the Contract:

- The County may implement a fully electronic payroll subject to the constraints of the New York State Labor Law. The electronic payroll will obligate direct deposit of pay and pay advice (pay stubs) available electronically.
- At the discretion of Supervision, Police Officers may be permitted to take a meal period during the first or last hour of their tour.
- Three additional 'black out' days shall be added to the Agreement for Marathon Day and two days of Oysterfest.
- Subject to legal and administrative constraints, the Employer will establish a 401(a) program.
- The parties agree to convene a committee to review existing dental and optical benefits.

Other Provisions

The parties agree to resolve pending grievances in accordance with a separate agreement signed the same day as this Agreement.

The Administration states that working along with the County Attorney, Office of Management and Budget (OMB) and the Police Department, they were able to assess the risk the County could face in proceeding with these grievances. The Administration calculated the savings related to removing these claims to be roughly **$14.0** million. OLBR has incorporated the Administration savings into this analysis based on the expertise and collaboration between the Administration, the County Attorney, the Department and OMB. However, as with any grievances, there is a possibility that the outcome could have been different, and there's a possibility that no monies would be paid out making this savings highly subjective. Nonetheless, the Administration takes the position that it is in the County's best interest to resolve these matters as the exposure could be greater if the County does not prevail.

If, at any point during the term of this Agreement, NIFA or its successor, exercising the power to freeze any economic benefit, diminishes the benefit of this Agreement, then the scheduling of additional tours, health care contributions, and termination pay reductions set forth in this Agreement shall be considered a nullity and the status quo ante shall prevail.

Reopener Clause

This agreement includes a reopener clause in the event the County voluntarily agrees with another bargaining unit representing sworn members of the County to provisions greater than those provided in this agreement. In such an event, the Association must establish that the net value of the other agreement exceeds the net value of this agreement.

Except as modified in this MOU, all other terms and conditions of the parties' Collective Bargaining Agreement shall continue.

Prior agreements with the SOA and DAI included a similar reopener clause. OLBR has asked the Administration to confirm that to the best of their assessment that no clause in this contract will trigger a reopener for DAI and SOA. The Administration confirmed that "nothing in this agreement triggers a re-opener with DAI or SOA".

Conclusion

The proposed MOU ends a long period where no contract has been in effect between the County and the PBA. The County and the Union both take the position that this agreement is overdue and will harmonize the relationship between both parties allowing the Police Department to move forward. The MOU was approved by the union members and leadership. The Administration has affirmed that the proposed agreement conforms with NIFA requirements and as such, should gain the support of the Control Board. The County now has MOUs in effect with all three Police Unions (PBA, DAI and SOA). However, all three agreements contain reopener clauses where one union may move to get compensated for terms awarded to another union that it deems to be more beneficial than what it received. Should that happen, the County could incur additional costs; however, the Administration affirms that no re-opener clauses will be triggered.

OLBR estimates the cost of the MOU to be approximately $167.1 million over the term covered by the agreement. The costs were anticipated when the FY 23 operating budget was drafted and as such there is sufficient funding to absorb the award in the current budget. In addition, should the Administration be allowed to account for the retroactive portion of the agreement (FY 21 & FY 22) within the FY 22 year-end expenses, the FY 23 budget will be further alleviated.

cc: Arthur Walsh, Chief Deputy Executive
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