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Michael G. Whelan

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Onondaga, County of and CSEA Local 1000, AFSCME, AFL-CIO, Onondaga County Local 843

Abstract

In the matter of the fact-finding between the Onondaga County, employer, and the CSEA Local 1000, AFSCME, AFL-CIO, Onondaga County Local 843, union. PERB case no. M2013-298. Before: Michael G. Whelan, fact finder.

Keywords

New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

CIVIL SERVICE EMPLOYEES' ASSOCIATION
OF ONONDAGA COUNTY, INC.

Employee Organization,

Case No. M2013-298

and

COUNTY OF ONONDAGA

Public Employer.

FACT-FINDING REPORT AND RECOMMENDATIONS

Fact-Finder Michael G. Whelan

August 3, 2015

APPEARANCES

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Introduction and Procedural History

The Onondaga County Local 843, Civil Service Employees Association, Inc. ("CSEA" or "Union") and the County of Onondaga ("County") are parties to a collective bargaining agreement ("CBA"), which expired on December 31, 2012. The parties entered into bargaining for a successor agreement on January 10, 2013. They have met on several occasions since that date but have been unable to reach agreement on six open issues. After the filing of a Declaration of Impasse on February 5, 2014, the New York State Public Employment Relations Board ("PERB") appointed a mediator. Two mediation sessions were held, with the last being held on June 19, 2014. At the June 19, 2014 mediation session, the parties reached a tentative settlement agreement, which was rejected by CSEA bargaining unit members.

On August 18, 2014, the County filed a request with PERB for appointment of a Fact-Finder. On September 9, 2014, PERB appointed the undersigned Fact-Finder to conduct a hearing into the causes and circumstances of the dispute and to make findings of fact and recommendations to resolve the dispute. By agreement of the parties, the Fact-Finding hearing was scheduled for March 26, 2015, and a preliminary conference call was held on January 21, 2015, so that the parties could stipulate to the outstanding issues.

The fact-finding hearing was held on March 26, 2015, during which the parties presented evidence and argument in support of their respective positions. The Fact-Finder left the hearing open so that the parties could file post-hearing briefs and thereafter the hearing was deemed closed. This report is submitted pursuant to Section 209.3(c) of the Public Employees' Fair Employment Act.

Issues at Impasse

The unresolved issues that the parties submitted to fact-finding involved the following articles: (1) Article 9 – Continuous Recruitment; (2) Article 10 – Wages; (3) Article 13 – Holidays; (4) Article 22 – WEP Physicals; (5) Article 24 – Health Benefit Contribution Rates; and (6) New Article – Drug Testing Policy for Certain Covered Titles.

Findings of Facts

1. The Parties

The County of Onondaga is located in Central New York and is comprised of 19 towns, 15 villages, and includes the City of Syracuse. The County has a total population of approximately 467,026, including about 145,170 individuals residing in the City of Syracuse, and a total land area of 793.5 square miles. The County is bordered by Oswego County to the north, Cayuga County to the west, Cortland County to the south, and Oneida and Madison Counties to the east. The County is divided into 17 legislative districts, each with an elected legislator representing each district in the County Legislature. The County Executive serves as the Chief Executive Officer and Chief Budget Officer of the County.

The CSEA is the exclusive representative of a bargaining unit consisting of all regularly scheduled full-time and part-time employees in approximately 450 competitive, non-competitive and labor class civil service titles within the County. Specifically, the CSEA represents approximately 2,300 employees employed within the myriad departments within the County, including in the Combined Services Unit, Department of Social Services Unit, Parks Department Unit, Public Library Unit, Water Environment

Protection Unit, as well as certain titles employed within the Onondaga County Correctional Facility ("OCCF") (Corrections Department Unit).

Report and Recommendations

Each recommendation set forth below is presented after a summary of the parties' respective positions.

1. Article 9 – Continuous Recruitment

A. County's Position – Continuous Recruitment

The County proposes to amend Article 9, Section II of the parties' CBA. First, the County proposes that the third paragraph of that Section be eliminated and substituted with the following language:

After a first failure in an evaluation period for a specific title, the employee shall not be eligible to bid on that job title for at least 6 months. After a second failure and beyond, for each failed attempt, the employee must wait at least one (1) year to participate in recruitment for that title. This applies to all locations for such title, however, the waiting period only applies for the specific title, within the same department, for which the employee failed the evaluation.

The County further proposes that the final sentence of the fourth paragraph of that Section read: "It is the responsibility of the employee to re-bid after the six (6) month or one (1) year waiting period is concluded."

B. Union's Position – Continuous Recruitment

The CSEA has also proposed that the third paragraph of Article 9, Section II be amended to provide for a 6 month waiting period after the first failure; for a 1 year waiting period for subsequent failures; and that the respective waiting period apply only for the specific title within the department for which the employee failed the evaluation.

C. Recommendation – Continuous Recruitment

The Fact-Finder recommends the County's last proposal because it represents a position that was a true compromise between the County's original proposal on this issue and the Union's position on this issue. Both parties seem to realize that this modest resolution will be an important step to solving a problem that both parties seem to agree exists.

2. **Article 10 – Wages**

The parties present the following wage proposals:

County

2013:	0%
2014:	1% with any period of retroactivity limited to 6 months from the date of the Fact-Finder's decision
2015:	2%
2016:	2%
2017:	2%

Union

2013:	2.75% retroactive to January 1, 2013
2014:	2.5% retroactive to July 1, 2014
2015:	2.5% retroactive to January 1, 2015
2016:	2.5%
2017:	2.75%

A. County's Position – Wages

The County submits that its proposed raises and wage rates are, and will remain, competitive with comparable and surrounding jurisdictions. The County further contends that the Union's proposed increases and periods of retroactivity would impose significant costs on the County that are not justified or reasonable in light of the wages paid by comparable jurisdictions.

The County submits that the overall economic status of the County must be taken into consideration when determining the County's future financial commitments, and that specific focus must be given to the financial challenges facing the County in the immediate future. The County notes that it has faced a dramatic rise in benefit costs, pension obligations, Medicaid costs, debt service and other "Major Budget Pressures", including transportation debt, labor costs, correctional health costs, infrastructure investments, federal inmate revenue loss and a "structural gap". The County further contends that sales tax collection – the largest source of revenue to its general fund – is tied to the overall economy and is highly volatile.

The County submits that its proposal represents reasonable increases that will preserve the competitive wages offered to the CSEA, while putting the County in a position to meet the financial challenges it believes it will face throughout the life of the new agreement.

B. Union's Position – Wages

The Union submits that the quality of life for employees of the bargaining unit is regressing, not advancing or keeping pace with the Consumer Price Index ("CPI"), and that the discretionary income of unit members falls far below that earned and enjoyed by other County employees. The Union claims that a review of the 2014 annual salaries of unit members depicts a 35% majority concentration of unit members earning between \$45,000 and \$49,000; 41% earning less than the average base of \$46,130; and 69 unit members earning \$25,000 to \$29,000. The Union contends that a 1% increase in the average annual salary of \$46,130, effective the first full payroll of 2014, would amount to \$461 less taxes, which the Union submits is considerably less than the CPI and

significantly lower than the percent amount currently enjoyed by the Onondaga County Deputy Sheriff's Police Association.

The Union also contends that the County has the ability to pay the increases the Union has proposed, and the Union raises several points in support of this contention. First, the Union notes that the County's fund balance for 2013 was \$97 million, explaining that a 2.75% wage increase for CSEA bargaining unit members would amount to 3.0% of the 2013 fund balance and a \$1,268.56 less taxes average wage increase for each member of the bargaining unit, which it submits is considerably less than the average wage increase of a deputy, sergeant or lieutenant of the Onondaga County Deputy Sheriff's Police Association. Among the evidence submitted by the Union in support of its claim that the County has the ability to pay the proposed increases is (1) the 2013 State of the County Address; (2) the Comprehensive Annual Financial Report of Onondaga County, submitted by the Onondaga County Comptroller's Office on April 17, 2014; (3) the 2015 State of the County Address; (4) a newspaper article reporting on the County Legislature's suggested wage increases for certain County positions; and (5) the County's retention of outside legal counsel.

In further support of its proposal, the Union claims that CSEA unit members should receive the same wage increases as bestowed upon the Onondaga County Deputy Sheriff's Police Association through interest arbitration and, most recently, through the Tentative Agreement reached and ratified with the County in February 2015. The Union submits that CSEA unit members are an integral part in the overall success of the County and deserve to achieve economic success to the same degree as other bargaining units.

C. Recommendation – Wages

The Fact-Finder finds that both parties made compelling arguments regarding wages. The County identified the appropriate comparable; and Road patrol Deputy salaries are not appropriate comparables. However, the Fact-Finder finds that although CPI growth has been maintained, some increase to the wage settlement and some retroactivity is necessary in order to conclude the dispute. The Fact-Finder recommends the following:

- 1) Effective January 1, 2013, 0% wage increase;
- 2) Retroactive to July 1, 2014, unit members will be awarded a 2% wage increase on his/her base salary;
- 3) Effective January 1, 2015, unit members will be awarded a 2.25% wage increase on his/her base salary;
- 4) Effective January 1, 2016, unit members will be awarded a 2.25% wage increase on his/her base salary; and
- 5) Effective January 1, 2017, unit members will be awarded a 2.75% wage increase on his/her base salary.

3. **Article 13 – Holidays**

A. County's Position – Holidays

The County proposes increasing the number of holiday shifts that Department of Correction and 911 employees are required to work from seven holiday shifts to eight holiday shifts per year. The County submits that its proposal should be accepted because it had been agreed to in principle in mediation.

B. Union's Position – Holidays

The Union opposes the County's proposal as unnecessary, first, because most of the holidays rotate or are floating holidays, and second, because the CBA provides for mandatory overtime. The Union therefore submits that the parties maintain the status quo.

C. Recommendation – Holidays

The Fact-Finder finds that change to this area of the contract is appropriate. This report calls for more wage growth than the County's evidence supported, and as such, concessions in this issue and other open items is appropriate. The Fact-Finder, however, recommends something different than requested by either party at the Fact-Finding. The Fact-Finder recommends an earlier Union proposal that the County had previously agreed to in early negotiation sessions. Pursuant to the below-identified recommended contract change, rather than working a set amount of holidays, individuals in the Department of Corrections and the Department of Emergency Communications will be required to work as they are scheduled, without any special treatment of holidays. The specific language that had been previously approved by the parties is set forth below:

The parties hereby agree to modify Article 13, Holidays, Section E as follows:

E. Eligibility

In order to be eligible for the holiday pay as defined in Section (A) and (C), those employees covered by this agreement must actually work their last scheduled work day prior to the holiday, the holiday when they are required to work, and their first scheduled work day after the holiday unless their absence was scheduled and approved in advance by the department head or authorized designee. All regularly scheduled employees shall be obligated to work no more than seven of the holidays, except **that Employees of the Department of Corrections and the Department of Emergency Communications (E-911) will be required to work as scheduled by the Department on all holidays, which may be more than seven holidays in a calendar year. Employees scheduled to work on holidays will not be eligible to use compensatory**

time, vacation, personal leave, or any other time off when scheduled on a holiday. Only vacations pre-approved in accordance with the vacation scheduling procedures of the collective bargaining agreement will be allowable and coverage on holidays takes precedence. If sick time is used on a scheduled holiday, the County may require a physician's statement (even for a one-day absence) regardless of the requirements set forth in Article 28, Sick Leave, Sections A through E. ~~for employees of the Department of Emergency Communications which shall be eight (8) of the holidays as of January 1, 2009, as enumerated in Section (A).~~

In instances where an employee was ordered or volunteered to work on an overtime basis on a holiday, the overtime worked shall count as one (1) day toward satisfying the seven holiday obligation set forth above. ~~except for employees of the Department of Emergency Communications where this shall not apply as of January 1, 2009.~~ For example, an employee works from 7 a.m. – 3 p.m. on Christmas Day. The employee then works from 3 p.m. – 11 p.m. on an overtime basis on that day. The employee would be credited with one holiday worked for their regularly scheduled hours worked and one holiday worked for the overtime hours worked for a total of two holidays worked toward satisfying the holiday requirement set forth above. In all cases, the employee must work a minimum of **eight** ~~four~~ hours **(or a full shift if that is not eight hours)** on a holiday for this to apply **as only full shifts worked on holidays will count toward the required number of holidays to be worked in a calendar year, including overtime shifts.**

4. Article 22 – WEP Physicals

A. County's Position – WEP Physicals

The County proposes to eliminate Article 22 from the CBA. The County submits that the annual physical examination requirement of Article 22 is outdated and no longer a necessary part of the work relationship between unit members and the County. The County further submits that the specific components of the Article 22 examination can be sufficiently provided by unit members' individual physicians at each member's own yearly physical. The County therefore contends that there is no longer a need for Article 22.

B. Union's Position – WEP Physicals

The Union has agreed to eliminate Article 22 from the CBA, provided the County enters into a Memorandum of Agreement (1) revising the WEP Health and Safety

Program Manual and (2) providing that the County will (a) bear all costs associated with annual physicals (including co-payments), and (b) give employees 4 hours paid time off in order to attend annual physicals.

C. Recommendation – WEP Physicals

The Fact-Finder recommends that:

- (1) Article 22 be eliminated from the CBA in its entirety; and
- (2) The County add an education component to the WEP's annual "Right-to-Know" training.

5. Article 24 – Health Benefit Contribution Rates

A. County's Position – Health Benefit Contribution Rates

The County proposes a 15% per month employee contribution rate for individual and family coverage through the Onondaga County Health and Wellness Program ("OnPoint Program") effective January 1, 2015, and 20% per month, effective January 1, 2016. This includes the same percentage contribution for both medical and prescription benefits.

The County contends that the Union has failed to recognize the changing conditions in this country given increasing medical and prescription costs and the passage of the ACA and the degree to which it altered the manner in which employers provide benefits to employees. The County contends that minimally increasing employee health benefit contribution rates is a simple and effective measure that is necessary to help offset just some of the costs related to health benefits that the County faces and will continue to face in the immediate future. In support of its contention, the County notes that other bargaining units in the County already contribute at least 15%

toward the cost of their health insurance and some already have agreed to contribute up to 20%. The County submits that its proposal will bring CSEA contributions in line with other bargaining units in the County and in comparable counties.

The County contends that containing health benefit related expenses is of great importance to virtually all employers today, and that asking employees to incur a slightly higher percentage of the cost of health benefit contributions is appropriate in today's environment. The County submits that its proposal should therefore be adopted.

B. Union's Position – Health Benefit Contribution Rates

The Union concedes to a 15% per month employee contribution rate for individual and family coverage through the OnPoint Program. The Union objects, however, to the subsequent increase to a 20% per month contribution.

The Union submits that a 15% family health contribution increase for the 2015 fiscal year amounts to \$590.16. The Union contends that because the median salary range of the bargaining unit is \$46,130, such that a 2% wage increase for 2015 amounts to \$922.60, subtracting the 15% family health benefit contribution increase from that amount results in the County's proposed salary increase totaling \$332.44 ($\$922.60 - 590.16$). The Union contends, therefore, that the County's proposed salary increase for 2015 does not come close to a 1% wage increase on the median salary of \$46,130. The Union submits, therefore, that until the County places some "real money" on the table, unit members will be set back by the proposed increase to a 20% per month contribution.

The Union contends that since the County sets the premium rates, the Union does not know what the health benefit rate increases will be in upcoming years, but that

any expectation of health benefit rates decreasing is unrealistic. The Union further submits that, based on the health benefit expenditures from 2007 to 2013, it is clearly evident that the County has been able to contain rising health care costs.

C. Recommendation – Health Benefit Contribution Rates

The Fact-Finder recommends that, effective upon ratification, health and dental benefit contributions for bargaining unit members will be 17.5% per month for the medical and prescription drug components (all portions of the plan for individual and family coverage) and that the percentage will increase to 20% effective January 1, 2016.

6. New Article – Drug Testing Policy for Certain Covered Titles

A. County's Position – Drug Testing Policy for Certain Covered Titles

The County seeks to add an article to the CBA that establishes a drug and alcohol testing policy (the "Policy") for identified safety-sensitive positions. The County submits that implementation of the Policy is critical in order to ensure the safety of its residents, CSEA unit members, and individuals incarcerated within its correctional facility. The County contends that the parties have engaged in extensive negotiations over the titles to be covered by the Policy, transportation and mileage reimbursement related to carrying out the requirements of the Policy, and the effect the Policy would have on the parties' disciplinary procedure. The County specifically submits that it has bargained in good faith by limiting the scope of the Policy to cover unit members who occupy safety-sensitive titles, including, but not limited to, specific armed probation personnel, corrections personnel, emergency communications personnel, Hillbrook Juvenile Detention personnel, and Onondaga Community College personnel.

The County further contends that requiring public employees, particularly those engaged in public safety and law enforcement-type duties, to comply with a drug and alcohol testing policy is essential to ensure the safety of County employees and individuals with whom County employees come into contact, and that such a policy in no way places unreasonable expectations on employees or constitutes an intrusion on members' privacy rights.

The County also notes that, consistent with the notion of internal equity, other bargaining units within the County are already subject to a drug testing policy similar to the one being negotiated by the parties here. Further, the County relies on evidence showing that other counties, including Cortland, Erie and Madison, all have similar contractual provisions, and that in 2012, Cayuga County put a similar program in place for *all* CSEA employees (not just those in safety sensitive positions).

The County submits that the potential impact of employees who abuse drugs and alcohol can trigger additional financial liability for the County, including increased medical costs and costs associated with increased absenteeism. The County argues that a 2011 study suggests that the implementation of a drug and alcohol testing policy may directly result in increased productivity, lower absenteeism rates, fewer workers' compensation claims, and diminished workforce turnover.

B. Union's Position – Drug Testing Policy for Certain Covered Titles

The Union submits that the County has never supported its proposal with any evidence or justification of a problem. The Union further submits that the County must pay for the costs of all drug and alcohol testing, including confirmatory and split sample testing, which is an expense.

Concerning the substance of the Policy, the Union contends: (1) the Policy essentially gives the County "carte blanche" to subject any employee to the testing process, regardless of the safety sensitivity of the subject employee's position, and is therefore unacceptable; (2) the Policy's "reasonable suspicion" language is markedly different from the federal regulations; (3) the Policy should specify what training supervisors receive and set clear protocol/parameters regarding the release and retention of testing records, granting access only to the tested employee; and (4) the County should specifically ensure that the MRO and SAP are different persons so as to avoid the potential for a conflict of interest. The Union further opposes the attachment of the Onondaga County Work Rules to the Policy.

C. Recommendation – Drug Testing Policy for Certain Covered Titles

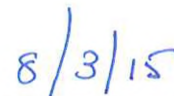
The Fact-Finder recommends that the parties implement the comprehensive drug testing policy for all safety sensitive positions as negotiated by the parties and affixed to the prior Tentative Settlement Agreement. The copy previously and fully negotiated by the parties and now recommended by the undersigned Fact-Finder is attached to this report.

Conclusion

The recommendations above strike a reasonable balance between the parties' interests.



Michael G. Whelan
Fact-Finder



Date

APPENDIX K

ONONDAGA COUNTY DRUG AND ALCOHOL TESTING POLICY FOR CSEA

I. Purpose

To establish a drug and alcohol testing program for employees of Onondaga County (the "County") holding and serving in positions referenced in Section II, below, that are represented by the Civil Service Employees Association ("CSEA").

II. Covered Titles

Probation

Probation Officer
Probation Officer (Sp Spkg)
Probation Officer Minority Group Specialist
Probation Supervisor
Probation Trainee
Probation Trainee (Minority Group Specialist)
Probation Trainee (Sp. Spkg)

Corrections

Correction Officer Trainee
Correction Officer
Senior Correction Officer
Correction Sergeant
Correction Lieutenant
Correction Counselor I
Correction Counselor II
Casework Supervisor
Education Programs Supervisor

Emergency Communications

Telecommunicator
Public Safety Dispatcher
Public Safety Shift Supervisor
Supervisor of Dispatch Operations
Supervisor of Shift Operations

Hillbrook

Detention Home Aide
Detention Home Counselor I
Detention Home Counselor II
Teacher

OCC

Campus Security Officer

III. Definitions

Alcohol

The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

Breath Alcohol Technician (BAT)

A qualified individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device. The confirming testing device must utilize infrared technology or a blood test.

BAC

Blood Alcohol Concentration (BAC) is the content of alcohol in an individual's blood based on the breathalyzer test or blood test.

Confirmation Test

For alcohol testing, a second test following a screening test with a result of greater than .02, that provides quantitative data of alcohol concentration. For controlled substance testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Medical Review Officer (MRO)

A licensed physician responsible for receiving laboratory results generated by the County drug test program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate employee's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Prohibited Conduct

Conduct which is prohibited is described in Section VII of this policy.

Refusal to Submit

An employee who (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received a notice of the requirement for the breath testing; (2) fails to provide adequate urine for drug testing without a valid medical explanation after he or

she has received notice of the requirement for urine testing; (3) engages in conduct that clearly obstructs the testing process; or (4) otherwise refuses to submit, will be classified as having refused to submit to an alcohol or drug test.

Screening Test

In alcohol testing, means an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in his or her system. In drug testing, an immunoassay procedure to eliminate "negative" urine specimens from further consideration.

Substance Abuse Professional

A substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addition counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of an clinical experience in the diagnosis and treatment of alcohol and drugs-related disorders.

IV. Testing

There are several occasions when an employee will be subject to drug and alcohol screening tests pursuant to this policy.

a. Random Testing

Random testing is unannounced testing for alcohol and drugs administered in a statistically random manner throughout the year to employees in ratios so that all employees have an equal probability of selection each time a random test is administered.

Random drug and alcohol testing may be conducted at any time during the employee's regularly scheduled tour of duty.

Random drug and alcohol tests will not exceed ten percent (10%) of the aggregate number of all authorized positions for all covered titles per year.

One name will be randomly selected per draw.

The test must be scheduled (if at all) within thirty (30) days of the drawing of the employee's name.

No more than one test will be conducted at the same time of the day.

A draw will be nullified within thirty (30) days if the employee is unavailable due to scheduled time off.

b. Reasonable Suspicion Testing

Reasonable suspicion testing is alcohol and drug testing that the County will conduct when it has reasonable suspicion to believe that an employee has engaged in conduct prohibited by this policy. Reasonable suspicion must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an employee by a County official who has received required training to recognize probable alcohol misuse or drug use.

The County will, if possible, administer a reasonable suspicion alcohol and/or drug test within 2 hours of the reasonable suspicion determination, but in no event more than eight (8) hours following the determination. In the event that these time periods are not met, the County will prepare and maintain on file a record stating the reasons the alcohol and/or drug test was not promptly administered.

The County will not permit any employee to report for duty or remain on duty while the employee is under the influence of, or impaired by, alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, until an alcohol test is administered and the employee's blood alcohol concentration measures less than .02 or 24 hours have elapsed following a determination that reasonable suspicion exists to believe that the alcohol prohibitions of this policy have been violated.

A written record shall be made of observations leading to reasonable suspicion, signed by the supervisor or person who made the observations, within twenty-four (24) hours of the observed behavior or before the results of a drug test are released, whichever is earlier.

Reasonable suspicion drug and alcohol testing may be conducted at any time the employee is on duty for the County.

c. Return to Duty Testing

Return to duty testing is alcohol and drug testing conducted after an employee has engaged in prohibited conduct under this policy, completed counseling prescribed by a substance abuse professional, if any, and prior to his/her return to duty. Before an employee may return to duty, he/she must undergo return to duty testing with an alcohol test result indicating a BAC of less than .02 and a drug test indicating a verified negative result of tested drugs.

d. Follow-up Testing

Follow-up tests are given following a determination by the Substance Abuse Professional (SAP) that an employee is in need of assistance in resolving problems associated with misuses of alcohol and/or tested drugs. This is an unannounced test, given at least six (6) times within twelve (12) months with the actual frequency and number of tests determined by the SAP, but in no event may the follow-up testing continue for a period beyond sixty (60) months from the employee's return to duty. The SAP may terminate the requirement of follow-up testing at any time after the first six (6) tests have been administered if he/she determines that follow-up testing is no longer necessary.

e. Testing Costs

The cost of all testing under this policy except as provided in Section V, Drug & Alcohol Testing Procedures (b) Alcohol and (c) Tested Drugs for the confirming test of a split sample which confirms an initial positive test shall be paid by the County.

V. Drug and Alcohol Testing Procedures

a. Privacy and Dignity:

Testing will be conducted in a location that affords visual and aural privacy to employees being tested. Employees shall have the right to refuse to participate in any testing which requires the provision of a urine sample while under direct observation.

b. Alcohol:

Alcohol testing will be administered by a Breath Alcohol Technician (BAT). If the initial test reveals a BAC of greater than .02, at the employee's option a confirmatory test (infra-red breathalyzer or blood test) will be performed at that facility. The completed confirmatory test result is the final test result for purposes of this policy. The County requires that the cost for the confirmatory test will be the employee's responsibility if the employee elects to have the test and such test confirms a positive test result. If the employee is ultimately exonerated based on the results from the confirmatory test, the County shall reimburse the employee for his/her costs for the confirmatory test. Payment will be made within two full pay periods following receipt by the employee of notice from the County of the exoneration. If the final test result reveals a BAC greater than .02 but less than .04 the employee will not be permitted to work for 24 hours. The employee will be eligible to use leave accruals (but not sick leave) during this 24 hours.

If the BAC is .04 or greater, the employee will not be permitted to work until the Substance Abuse Professional (SAP) verifies the employee is capable of returning. During this period, the employee is eligible to use leave accruals and compensatory time but sick leave may only be used for any periods of disability as determined by the SAP after the date of the positive test.

Any leave accruals or compensatory time forfeited/used (except sick leave) because of a positive alcohol test shall be considered part of any disciplinary penalty if one is imposed later.

c. Tested Drugs:

A Federal Department of Health and Human Services certified laboratory will perform drug testing on urine samples provided by employees. The drugs for which tests will be conducted and the initial and confirmatory positive/negative test results are:

Type of Drug or Metabolite	Initial Test	Confirmation Test
(1) Marijuana metabolites	50	15
(i) Delta-9-tetrahydrocannabinol -9-carboxylic acid (THC)	300	150
(2) Cocaine metabolites (Benzoylecgonine)	300	150
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	1000	500
(i) Amphetamine		500 (Specimen must also contain amphetamine at a concentrate of greater than or equal to 200 mb/ml)
(ii) Methamphetamine		
(5) Opiate metabolites	2000	2000
(i) Codeine		2000
(ii) Morphine		2000
(iii) 6-acetylmorphine		10
		Test for 6-A.M. in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 mg/mg

The County will contract with a laboratory certified by the United States Department of Health and Human Services to insure that the collection, shipment, testing and chain of custody procedures insure the integrity of the testing process.

The split sample urine testing will be utilized. This method requires that the urine specimen be divided into two samples providing one sample for preliminary screening and initial confirmation, and a second sample for the second test if needed at a later date. The County requires that the cost for testing this split sample will be the employee's responsibility if the employee elects to have the second sample tested and such test confirms a positive test result. If the employee is ultimately exonerated based on the results from the second sample, the County shall reimburse the employee for his/her costs for the second test. Payment will be made within two full pay periods following receipt by the employee of notice from the County of exoneration.

The Medical Review officer (MRO) will conduct a final review of all positive test results to assess possible medical explanations for the positive test results. In cases where a member tests positive and then alleges it is due to passive exposure, the member shall have the right to be retested no sooner than ten (10) days after the exposure.

Information concerning testing results reported to the County by the MRO shall be consistent with 49 CFR Part 40 § 40.131 and § 40.163 and as may be amended.

d. Disclosure of Test Results:

The County shall maintain records in a secure manner so that disclosure of information to unauthorized persons does not occur. The County shall not release the tested drug and alcohol testing records of an employee except:

- i. to his/her designee upon written request;
- ii. to the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from the results of mandatory testing pursuant to this policy.

e. Uncompleted Testing:

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable.

f. Records Retention/Test Results:

- i. Records Retention: The County shall maintain records of its alcohol and drug abuse program in a secure location with controlled access. The County shall maintain the following records for five years: (1) records of

alcohol test results indicating a BAC of .02 or greater; (2) records of verified positive drug test results; (3) documentation of refusals to take required alcohol and/or drug tests; Records related to the alcohol and drug collection process and training shall be maintained for a minimum of two years. Records of negative and canceled drug test results and alcohol tests with concentration of less than .02 shall be maintained for one year.

ii. Test Results: The County shall notify an employee of the results of random and reasonable suspicion drug tests if the test results are verified positive and which tested drug(s) were verified as positive.

g. Transportation:

The County determines the transportation method to the testing facility. If a County vehicle is not used for transportation, mileage may be reimbursed pursuant to Department reimbursement policies/Article 18 of the collective bargaining agreement.

VI. Refusal to Submit to Testing

An employee shall not refuse to submit to a random alcohol or drug test required under this policy, a reasonable suspicion alcohol or drug test required under this policy, a return to duty alcohol or drug test, or a follow-up alcohol or drug test required under this policy. Any employee shall not be permitted to return to duty subsequent to a refusal to submit to a test required under the policy until the employee is evaluated by a Substance Abuse Professional and completes a substance abuse program designed by a Substance Abuse Professional, if any, and undergoes a return to duty alcohol test revealing a BAC of less than .02 and a drug test with a verified negative result. A refusal to submit to testing is the equivalent of an alcohol test revealing a BAC of .02 or greater or a drug test with a positive result. A refusal to be tested shall be defined as a refusal by an employee to complete and sign the breath alcohol testing form or to complete the drug screening chain of custody form, to provide breath, to provide an adequate amount of breath, to provide an adequate amount of urine or otherwise to cooperate with the testing process in a way that prevents the complete of the test. The BAT or collector shall record such refusal in the remarks section of the form. The testing process shall then be terminated and the BAT or collector shall immediately notify the County.

VII. Prohibited Conduct

1. No employee shall work or report to work in violation of this policy.
2. No employee shall use, possess, distribute or dispense alcohol or prohibited drugs under this policy while on duty outside the scope of his/her job duties, including while on County property or work sites.

3. No employee shall refuse to submit to a required alcohol or drug test conducted pursuant to this policy.
4. No employee shall report for duty or remain on duty if the employee tests positive for tested alcohol or drugs as defined by the policy.

VIII. Referral, Evaluation, and Treatment

1. The County shall make available to employees through the County's Employee Assistance Program information regarding the resources available for evaluating and resolving problems associated with the misuse of alcohol and use of drugs, including the names, addresses, and telephone numbers of Substance Abuse Professionals and counseling and treatment programs.

2. An employee who engages in conduct prohibited by this policy shall be evaluated by a Substance Abuse Professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug use. The costs associated with this evaluation are the responsibility of the employee and may be covered by the employee's health benefits plan, subject to the plan's conditions and limitations.

3. Before an employee returns to duty after engaging in conduct prohibited by this Policy, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than .02 if the conduct involved alcohol, or a drug test with a verified negative result if the conduct involved drugs.

4. Employees identified as needing assistance in resolving problems associated with alcohol misuse or drug use shall:

a. be evaluated by a Substance Abuse Professional to determine if the employee has properly followed any rehabilitation program prescribed under paragraph 2 of this section;

b. shall be subject to unannounced follow-up alcohol and drug tests administered by the County following the employee's return to duty. The number and frequency of the follow-up tests shall be as directed by the Substance Abuse Professional, and consist of at least six (6) tests in the first twelve (12) months following the employee's return to duty. The County may direct the employee to undergo return-to-duty and follow-up testing for both alcohol and drugs, if the Substance Abuse Professional determines that return-to-duty and follow-up testing for both alcohol and drugs is necessary for that employee. Such testing shall be in conformance with this policy. Follow-up testing shall not exceed sixty (60) months from the date of the employee's return to duty. The Substance Abuse

Professional may terminate the requirement at any time after the first six (6) tests have been administered, if the Substance Abuse Professional determines that such testing is no longer necessary.

- c. The evaluation and rehabilitation shall be provided by:
 - 1) a Substance Abuse Professional approved by the County; or
 - 2) a Substance Abuse Professional selected by the employee. The employee shall be required to submit to the County a written verification from the Substance Abuse Professional that they meet the qualifications as set forth in Section II — Substance Abuse Professional of this policy prior to receiving the evaluation and rehabilitation.
- d. A Substance Abuse Professional who determines that an employee requires assistance in resolving problems with alcohol misuse or drug use shall not refer the employee to the Substance Abuse Professional's own private practice, or to a person or organization from which the Substance Abuse Professional receives remuneration or in which the Substance Abuse Professional has a financial interest.
- e. Costs associated with evaluation and treatment shall be the responsibility of the employee and may be covered by the employee's health benefits plan, subject to the plan's conditions and limitations.

IX. Consequences for Covered Employees

Employees found to have violated prohibited conduct under this policy will be subject to disciplinary action in accordance with Onondaga County Work Rules and the collective bargaining agreement, up to and including discharge. Any disciplinary action initiated will be administered in accordance with the provision of the applicable collective bargaining agreement.

Under those circumstances where an employee reports to duty while voluntarily on-call, he/she will not be subject to discipline for testing positive for alcohol use provided he/she has disclosed to his/her supervisor prior to commencing duty that he/she had consumed alcohol.

Applicable Sections of the Duty Manual include, but are not limited to the following:

- Part I- 1.1, 1.11
- Part H — 2.8
- Part III — 3.1, 3.2, 3.3, 3.26
- Part IV — 4.1
- Part V-5.7

Employees found to have a BAC of .04 or above or a positive drug test shall be required to be evaluated by a Substance Abuse Professional and to complete any treatment determined to be necessary by the Substance Abuse Professional before any return-to-duty can be considered.

No employee shall report for or be on duty if such employee has engaged in conduct prohibited by this policy.

X. Employee Notification

The County shall provide a copy of this policy to each employee and to his/her collective bargaining agent. Each employee is required to sign a statement certifying that he/she has received this information. The County shall maintain the original signed certification as a permanent part of the personnel file. The County will provide a copy of the certification to the employee upon request. Prior to the implementation of this policy, the County will provide approximately one hour of in-service training on this policy. New employees, including lateral transfers, shall receive approximately one hour of in-service training on this policy during orientation.

XI. Administration

The County's historic drug and alcohol test scheduling records shall be made available to the CSEA within thirty (30) days after a written request is received by the Division of Employee Relations.