STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DEPUTY SHERIFF'S BENEVOLENT ASSOCIATION OF ONONDAGA COUNTY, INC.,

Charging Party, **CASE NO. U-39063**

- and -

COUNTY OF ONONDAGA and ONONDAGA COUNTY SHERIFF,

Respondent.

COSTELLO, COONEY & FEARON, PLLC (CHRISTOPHER M. MILITELLO of counsel), for Charging Party

ROBERT A. DURR, COUNTY ATTORNEY (THOMAS H. KUTZER and MICHELLE DEKAY and ERIN WELCH FAIR of counsel), for County of Onondaga

ADAMS LECLAIR LLP (STACEY E. TRIEN and RYAN LEFKOWITZ of counsel), for Onondaga County Sheriff

DECISION OF ADMINISTRATIVE LAW JUDGE

On August 31, 2023, the Deputy Sheriff's Benevolent Association of Onondaga County, Inc. (DSBA), filed an improper practice charge alleging that the County of Onondaga (County) and Onondaga County Sheriff (Sheriff) violated §§ 209-a.1(a), (b), (c), and (d) of the Public Employees' Fair Employment Act (Act). Specifically, the DSBA alleges that Sheriff Tobias Shelley's "repeated threats to arrest and prosecute" union leadership violated §§ 209-a.1(a), (b), and (c); that the Sheriff's Office violated §§ 209-a.1(a) and (c) when it sent staff to the homes of employees who called in sick; that the

Sheriff's Office violated §§ 209-a.1(a) and (b) when Shelley made certain comments during roll call; and that the County violated § 209-a.1(d) by negotiating in bad faith over an overtime proposal.

The Sheriff and the County filed answers denying the material allegations of the charge.

A hearing was held on February 5, 2024, February 7, 2024, May 8, 2024, June 24, 2024, and September 30, 2024, during which all parties were present and represented by counsel. All parties filed post-hearing briefs.

FACTS

The DSBA and the Sheriff stipulated to the following facts:

1. The Deputy Sheriffs Benevolent Association of Onondaga County, Inc. (the "DSBA") is the exclusive bargaining agent for deputy sheriffs in the Custody and Civil Departments of the Onondaga County Sheriff's Office ("OSCO").
2. The terms and conditions of DSBA members' employment are set forth in a Collective Bargaining Agreement ("CBA") between the DSBA and Onondaga County with an effective date through December 21, 2023, which is currently the subject of collective negotiations for a successor agreement to the contract.
3. The OSCO operates the Onondaga County Justice Center, which has been the primary location of the operations of OCSO's Custody Department at all times relevant to the subject Charge.
4. On or about June 8, 2023, DSBA President Joseph Lee ("Lee") and Vice President Jonathan Hagenmayer ("Hagenmayer") met with Sheriff Tobias Shelley, Undersheriff Jeffrey Passino, Chief Custody Deputy John Drapikowski, and Captain Corey Moore, and Lee and Hagenmayer, asked the Sheriff to agree to pay DSBA members who worked overtime on Friday evening and weekend shifts through Labor Day at a rate of two-and-a-half times their regular pay.
5. On July 11, 2023, Sheriff Shelley and Undersheriff Passino met with Hagenmayer.
6. On July 13, 2023, Deps. Lee, Hagenmayer and Earl met with Sheriff Shelley and Undersheriff Passino and initially discussed a different subject than the summer overtime proposal.
7. On July 16, 2023, the Booking Unit of the OCSO Custody Department was closed during C watch.

8. On July 20, 2023, OCSO Chiefs Marueen Murphy and Melissa Berlinski visited the home of DSBA member John Hinton, who was scheduled to work that day but called in to use sick leave.
9. On July 21, 2023, Chiefs Murphy and Berlinski visited the homes of DSBA members who were scheduled to work but call in to use sick leave.
10. Following the home visits, Chief Murphy asked Lt. Angela Bush to have Deputies Bryant and Brannock submit memoranda detailing their whereabouts at the time that Chiefs Murphy and/or Berlinski visited their homes.
11. On July 26, 2023, Deputy Hagenmayer became DSBA President and Deputy Earl became DSBA Vice President as elected by the DSBA membership.
12. On August 8, 2023, OSCO Captains Corey Moore and Nathan Hawker visited the homes of DSBA members who were scheduled to work that day but called in to use sick leave.
13. In August 2023, Sheriff Shelley attended roll call at the Jamesville Correctional Facility and spoke to the employees in attendance.
14. In August 2023, Sheriff Shelley attended Custody Department roll call prior to C watch and spoke to the employees in attendance.[1]

Dana Earl testified on behalf of the DSBA. Earl is employed as a deputy in the Sheriff's Office Custody Division and serves as the vice president of the DSBA.[2] Earl works in the booking unit,[3] which he described as the intake facility for the jail.[4]

Earl testified that he attended a meeting after he was elected vice president in May 2023 during which the DSBA proposed double time-and-a-half overtime on Fridays, Saturdays, and Sundays during the summer of 2023 to improve staffing levels on the weekends.[5] According to Earl, the meeting was also attended by Joe Lee, then president of the DSBA; John Hagenmayer, then vice president of the DSBA; Director of

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[1] Joint Ex 2.
[2] Tr, at 21-22.
[3] The "booking unit" is also referred to as the "booking department" or "booking section" by various witnesses. "Booking unit" will be the term primarily used herein.
[4] Tr, at 42.
[5] Tr, at 22-23.

Personnel Carl Hummel; and County Executive Ryan McMahon.[6] Earl testified that the Sheriff agreed to support the proposal if the County approved, although he was not personally involved in meetings with the Sheriff to that end.[7]

Earl testified that during the meeting with Hummel and McMahon, Hummel "wanted the DSBA to endorse the closure of the Jamesville Correctional Facility."[8] Earl confirmed that the outgoing sheriff, Eugene Conway, had previously announced that Jamesville would close and that the County's two jails would be consolidated.[9] Earl testified further that the then-incoming sheriff, Shelley, announced that Jamesville would not close.[10] Earl characterized this as a "battle" between Shelley and the County.[11] Earl confirmed that he understood McMahon to support the closure of Jamesville, and that he wanted the DSBA's support, as well.[12] Earl testified that the DSBA declined to take a position, and left the meeting with the understanding that Hummel and McMahon would discuss the DSBA's overtime proposal and get back to them.[13]

Earl testified that on a Sunday in mid-July of 2023, he learned that there would not be an agreement on the DSBA's overtime proposal.[14] That same day, the booking unit of the Justice Center was closed due to a staffing shortage.[15] According to Earl, he subsequently learned that Shelley was accusing Earl and Hagenmayer of "organizing a

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[6] Tr, at 22-24, 47.
[7] Tr, at 23.
[8] *Id.*
[9] Tr, at 24.
[10] *Id.*
[11] *Id.*
[12] Tr, at 25.
[13] Tr, at 25-26.
[14] Tr, at 26-27.
[15] Tr, at 27. Earl confirmed on cross-examination that the date was July 16, 2023. Tr, at 48.

blue flu."[16] Earl also testified that he had heard that Shelley would arrest him if Shelley found out they had organized a "blue flu."[17] Earl defined a "blue flu" as an action, in violation of the Taylor Law, in which law enforcement personnel coordinate to call in sick in order to create a staffing shortage.[18]

Earl testified that, after learning of the accusation, he contacted Shelley on his cell phone; Earl testified that he has known Shelley since childhood and has a personal relationship with him.[19] According to Earl, he asked to meet with Shelley a few days after the booking unit was shut down, and did meet Shelley—who was not working that day—on Shelley's farm.[20] Earl testified that he denied the "blue flu" allegation, and told Shelley that the day of the booking unit closure was "just a normal Sunday in the summer . . . [i]t's always short [staffed] like that."[21] Earl also testified that during the meeting, he reviewed with Shelley a copy of the schedule for the day of the booking closure.[22] Earl testified that the schedule reflected three employees out sick, including Hagenmayer.[23] According to Earl, there are usually 32 to 40 employees scheduled to work on Sundays.[24] Earl testified to Shelley's response: "He responded to me as if he didn't—he didn't look at the schedule when he was making the accusations of us organizing a blue flu. He looked at the schedule after that and realized that there was

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[16] Tr, at 27-28.
[17] Tr, at 34.
[18] Tr, at 28.
[19] Tr, at 30-31.
[20] Tr, at 31.
[21] Tr, at 32.
[22] *Id.*
[23] *Id.*
[24] Tr, at 33.

no blue flu."[25] Earl testified that Shelley neither admitted nor denied making the "blue flu" accusation during their conversation at the farm.[26]

Earl testified that when he visited Shelley at the farm, he also inquired as to why Shelley "had gone back on his agreement" regarding the overtime proposal.[27] According to Earl, Shelley said that he "had time to think about it and he wanted . . . the J meds[] in exchange for" the enhanced overtime.[28] Earl testified that "J med" is a term used at the facility for a doctor's note that would excuse an employee from being mandated to work a second eight-hour shift as overtime; the term derives from a provision in the parties' CBA.[29] According to Earl, the majority of employees have such a doctor's note.[30] Earl testified that Shelley wanted the DSBA to agree to "suspend the J meds" for the duration of the summer double time-and-a-half overtime proposal, and Earl understood that if the DSBA did not agree, there would be no agreement on the overtime proposal.[31]

Earl testified that before leaving Shelley's farm, he asked for and obtained Shelley's permission to speak with Passino.[32] Later that same day, Earl testified, he spoke with Passino in an attempt to obtain agreement on the overtime proposal.[33] According to Earl, he pointed out to Passino that the Sheriff had averred that he would support the proposal if the County approved it; Earl testified that Shelley specifically

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[25] *Id.*
[26] Tr, at 33-34.
[27] Tr, at 36.
[28] *Id.*
[29] Tr, at 36-37.
[30] Tr, at 37.
[31] Tr, at 37-39.
[32] Tr, at 40.
[33] *Id.*

said, during a roll call, "I support you guys making as much money as you can."[34] Earl testified that Passino responded by saying that the Sheriff's Office would not support the overtime proposal unless the "J meds" were suspended for the same period of time.[35]

On cross-examination, Earl agreed that if the booking unit is closed, the police have nowhere to take individuals who have been arrested.[36] Earl confirmed that the DSBA's overtime proposal would have been in effect through Labor Day of 2023.[37]

Earl agreed on cross-examination that during the Summer of 2023, full staffing required some employees to work overtime, and that understaffing raises safety concerns.[38] When asked on cross-examination about the effect of "J meds," Earl agreed that the Sheriff cannot schedule employees for overtime if they have submitted a "J med" that exempts them from working overtime.[39]

Earl testified on cross-examination that he believed both the Sheriff and the County had to agree to the overtime proposal for it to be accepted.[40] When asked about whether he had heard the Sheriff express support for the proposal, Earl testified that during a roll call in the Summer of 2023, a deputy asked Shelley if he would support the overtime proposal, and Shelley responded: "I support you guys making all the money you can make."[41]

Earl confirmed on cross-examination that during the July 7, 2023 meeting with

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[34] Tr, at 41.
[35] *Id.*
[36] Tr, at 43.
[37] *Id.*
[38] Tr, at 44.
[39] Tr, at 45.
[40] *Id.*
[41] Tr, at 46.

Hummel and McMahon, Lee and Hagenmayer presented a proposed memorandum of understanding regarding the overtime proposal.[42] Earl denied learning prior to the closure of the booking unit on July 16, 2023, that the Sheriff wanted "J meds" suspended in exchange for the DSBA's overtime proposal.[43]

Earl testified on cross-examination that he was scheduled to work the 3:00 p.m. to 11:00 p.m. shift in the booking unit on July 16, 2023, but was on paid leave during that time.[44]

Earl was asked on cross-examination about the July 16, 2023, schedule that he took to his meeting with Shelley.[45] Earl testified that the schedule shows all staff on leave in the Custody Department, of which the booking unit is a part.[46] Earl testified that abbreviations next to the name of each employee on leave indicate the reason for the leave, including "comp" time used (CTU) and sick leave (SL).[47] Earl confirmed that he used comp time on July 16, 2023, and that four deputies and one sergeant in the Custody Division used sick leave that day.[48]

When asked on cross-examination about his meeting with Shelley on Shelley's farm, Earl agreed that Shelley did not say during that meeting that he would arrest or prosecute anyone.[49] As for their conversation that day, Earl testified:

> I specifically remember asking him why he was telling people that we organized people to call in sick. I said, this is not us organizing to have everyone call in sick. We have three deputies other than Hagenmayer

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[42] Tr, at 47.
[43] Tr, at 48.
[44] Tr, at 48-49.
[45] Tr, at 50.
[46] Tr, at 52.
[47] *Id.*
[48] *Id.*
[49] Tr, at 53.

> calling in sick and one sergeant. He was—specifically told me that he hadn't—when he accused us of organizing that, he had not looked at the schedule yet.[50]

Earl conceded that although he believed Shelley was mistaken about the "blue flu," Shelley did not say explicitly that he had been mistaken.[51]

Earl confirmed on cross-examination that Shelley never told Earl he would arrest or prosecute a DSBA member, including Earl or Hagenmayer.[52] Earl also confirmed on cross-examination that the CBA prohibits employees on sick leave from leaving their homes, except for certain reasons.[53]

Earl testified on redirect examination that he only attended one meeting with Hummel concerning the overtime proposal, but that he believed it to be the first meeting on the subject.[54]

Earl was asked on cross-examination about "J meds," and agreed that there is a document in the CBA called "Work Limitation [and] Restriction Procedure."[55]

Earl could not recall whether Hummel already had a copy of the proposed memorandum of agreement (MOA) at the July 7, 2023, meeting, or whether the attendees reviewed the document.[56] Earl confirmed that Hummel said, in effect, "that there was a readymade solution to the staffing problem, and that was the proposal to close down Jamesville and merge the two workforces[.]"[57]

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[50] Tr, at 54.
[51] Tr, at 56.
[52] Tr, at 56-57.
[53] Tr, at 58.
[54] Tr, at 58-59.
[55] Tr, at 59; Joint Ex 1, at 61-62.
[56] Tr, at 60.
[57] *Id.*

Robert Howell testified on behalf of the DSBA pursuant to a subpoena.[58] Howell is employed as a deputy in the Custody Department.[59] Howell is on the Sheriff's Emergency Response Team (SERT), with responsibility for escorting inmates.[60] Howell testified that he works from 2:45 p.m., when roll call takes place, until 11:00 p.m.[61] Howell testified that roll call is conducted by a sergeant or the control supervisor.[62]

Howell testified that it is "not a common occurrence" for Shelley to attend roll call.[63] However, Howell testified that Shelley attended roll call twice in 2023—once in June, and once in August.[64] According to Howell, during the June roll call attended by Shelley, Shelley addressed the employees and said, among other things, that he was "not opposed to [them] getting double time and a half," was "all for it," and that the employees "should get whatever is available for [them]."[65] When asked if Shelley said anything about a concession or condition, Howell answered in the negative.[66]

When asked about the August roll call attended by Shelley, Howell testified that it was "a lot different than the first one in terms of the demeanor."[67] Specifically, Howell testified that Shelley had the employees remain at attention during roll call, brought up the "J meds," and said the DSBA "lied . . . about potentially getting double time and a half."[68] Howell testified that he believed Shelley was referring to Hagenmayer,

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[58] Tr, at 62.
[59] *Id.*
[60] *Id.*
[61] Tr, at 62-63. Howell testified that roll call is a pre-shift briefing. Tr, at 63.
[62] Tr, at 63.
[63] Tr, at 64.
[64] *Id.*
[65] Tr, at 64-66.
[66] Tr, at 65.
[67] Tr, at 66.
[68] *Id.*

specifically, in part because Shelley looked at Hagenmayer while addressing the assembled employees.[69] According to Howell, Hagenmayer did not respond.[70] However, Howell testified that he spoke up, and told Shelley with respect to the "J meds": "[Y]ou don't understand what it does to someone's health when they have to work 16 hours every day for ten years like I did. . . . It deteriorates your health pretty bad."[71] Howell testified that Shelley responded by saying "[W]ell, I don't want to take you guys away from your families."[72]

Howell confirmed on cross-examination that he was not involved in any discussions between Shelley and the DSBA regarding the overtime proposal.[73] Howell conceded that in the summer of 2023 he had a "J med" from a physician.[74]

David Squairs testified on behalf of the Charging Party. Squairs is employed as a lieutenant in the housing section of the Custody Department and serves as one of the six watch commanders.[75] Squairs testified that he works the 3:00 p.m. to 11:00 p.m. shift, and said of the watch commander position: "We ensure that the schedule is sustainable for that night. We fill other [watches'] schedules. We oversee all of the day-to-day activities of the facility when we are working."[76] Squairs testified that staffing has been an issue for five to ten years, with "summers and weekends" being the most difficult time to adequately staff the facility, including in the summer of 2023.[77]

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[69] Tr, at 68-69.
[70] Tr, at 70.
[71] Tr, at 71.
[72] Tr, at 71-72.
[73] Tr, at 73.
[74] Tr, at 74.
[75] Tr, at 81-83.
[76] Tr, at 82.
[77] Tr, at 84-85.

Squairs testified that he discussed staffing with Shelley in August of 2023.[78] During that conversation, according to Squairs, Shelley indicated that he believed there was a "blue flu going on over the past weekend . . . and that it was orchestrated by the DSBA president, John Hagenmayer, and probably the vice president, Dana Earl."[79] Squairs testified that "a blue flu is when a lot of staff members call in sick, generally believed to be an orchestrated event. We have a no strike clause in our contract, so obviously we can't strike, but a blue flu would be essentially a form of a strike, I guess."[80] Squairs testified further of his conversation with Shelley: "[Shelley] said that if he found out that Deputy Hagenmayer or Deputy Earl orchestrated this blue flu, that he would have them arrested."[81]

On cross-examination, Squairs testified that he has heard Shelley say that he hates Hagenmayer, but that Shelley has never said that to Squairs directly.[82] Squairs also agreed that the sheriff did not say he "wanted" to arrest Hagenmayer.[83] Squairs could not recall whether Shelley said he would arrest anyone "found to have committed the blue flu," and when asked if Shelley used the specific term "blue flu," Squairs said the he could not recall Shelley's "exact wording."[84] Squairs agreed that Shelley did not say "he was planning to arrest or prosecute Deputy Hagenmayer" or any other DSBA members.[85]

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[78] Tr, at 85-86.
[79] Tr, at 86.
[80] Tr, at 86-87.
[81] Tr, at 87.
[82] Tr, at 89-90.
[83] Tr, at 90.
[84] Tr, at 90-91.
[85] Tr, at 91.

Mark Chapman testified on behalf of the DSBA pursuant to a subpoena.[86] Chapman is a deputy and has been employed by the Sheriff's Office since 2006.[87] He is a member of the DSBA.[88] Chapman works in the transport division of the Custody Department, "transport[ing] incarcerated individuals to and from court, medical appointments, federal facilities, state facilities, county facilities, throughout the state and throughout the country."[89]

Chapman testified that in July of 2023 he underwent a scheduled surgery on his back to address a prior injury and was absent from work as a result.[90] Approximately one month prior to his absence, Chapman testified, he notified his unit commander, Lieutenant Angela Bush, about the surgery and recovery time.[91] The surgery was performed on July 3, 2023.[92] Chapman testified that on July 21, 2023, he was still out of work and his girlfriend answered a knock at their door to find two law enforcement officers, one of whom was in uniform.[93] Chapman testified further that his girlfriend told him he "probably should come out and talk to them" because it seemed like they "really want[ed] to talk to" Chapman.[94]

Chapman testified further that he got out of bed, put a shirt on, and met the officers in his driveway.[95] Chapman testified that he recognized the person in uniform

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[86] Tr, at 94.
[87] *Id.*
[88] *Id.*
[89] Tr, at 94-95.
[90] Tr, at 95.
[91] Tr, at 96.
[92] Tr, at 96-97.
[93] Tr, at 97.
[94] Tr, at 98.
[95] *Id.*

as Berlinski."[96] The individual in plain clothes was Murphy.[97] According to Chapman, the two did not identify themselves, but stated that they were performing "home visit checks," which he did not understand.[98] Chapman testified that they asked why he was not at work, and that he was "taken aback" because his "whole department knew that [he] hadn't punched in in well over a week."[99] Chapman testified further that, based on their stern demeanor, Berlinski and Murphy did not seem to believe that he was actually ill.[100]

Chapman testified that he told Berlinski and Murphy that he underwent a scheduled surgery, and that he was then asked, "would it surprise you that we don't know anything about it[?]"[101] According to Chapman, he answered in the affirmative.[102] Chapman testified that Berlinski also asked him the name of his doctor, and when she did not seem satisfied, he lifted his shirt to show the bracing on his torso and the bruising on his shoulder.[103] Chapman testified that Berlinski and Murphy did not wish him well and that, based on their demeanor, he thought he was in trouble.[104] Subsequently, according to Chapman, he called Drapikowski and Bush.[105] Chapman testified that Bush said she would look into the situation.[106] Chapman also testified that he had submitted paperwork prior to his surgery to use FMLA leave, and that he

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[96] Tr, at 97-98.
[97] Tr, at 109.
[98] Tr, at 99.
[99] *Id.*
[100] Tr, at 99-100.
[101] Tr, at 100.
[102] *Id.*
[103] Tr, at 101.
[104] Tr, at 102.
[105] Tr, at 102-103.
[106] Tr, at 103.

believed the FMLA usage was approved.[107]

On cross-examination, Chapman confirmed that, per the CBA, he was expected to be home while using sick leave.[108] When asked about his knowledge of sick leave checks, Chapman testified that he had never previously used FMLA, but had used sick leave and had never "had anybody show up and check on me."[109] He also denied hearing about any other employees being the subject of such visits.[110]

Chapman was asked on cross-examination if he informed Murphy or Berlinski about his surgery, and he testified that he had never spoken to Murphy before she came to his house, and that he had only ever encountered Berlinski at in-service training.[111] Chapman was also asked about the procedure for calling in sick, and he testified that in the transport unit, there is a designated number for an employee to call and leave a message with their identification number and name.[112] Chapman believes the messages are reviewed by a desk sergeant or Bush each day.[113]

Chapman testified further on cross-examination that an employee on FMLA leave is not required to call in sick each day; they are known to be on leave until a return-to-work note from a doctor is submitted.[114] According to Chapman, Bush specifically told him that he did not have to call in during his FMLA leave, and that she was surprised Berlinski and Murphy did not know about his leave.[115]

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[107] Tr. at 103-104.
[108] Tr. at 108.
[109] Tr. at 109.
[110] *Id.*
[111] Tr. at 110.
[112] *Id.*
[113] Tr. at 111.
[114] Tr. at 112.
[115] Tr. at 113-114.

When asked on cross-examination if Berlinski and Murphy asked him to prove he underwent surgery, Chapman answered in the negative, but also testified that they asked him why he was out of work and said that he "was supposed to be at work."[116] Chapman agreed on cross-examination that he was not reprimanded or docked pay for being on leave following his surgery.[117]

Jason Jarvis testified on behalf of the DSBA. Jarvis retired in December of 2023 from the Sheriff's Office, having been last employed as a lieutenant in the Custody Department.[118] Jarvis testified that his job assignment was the 3 p.m. to 11 p.m. housing lieutenant, a job in which he "oversaw the everyday functioning of the inmates and staff[.]"[119] Jarvis testified that the Sheriff only "[s]poradically" attended "commander meeting[s]" attended by captains, sometimes the chief and undersheriff, lieutenants and the record keeping sergeant.[120] However, Jarvis testified that Shelley attended such a meeting in August of 2023 and told the group that

> staffing levels are not what he was hoping for, and that he believed a lot of it had to do with union leadership. . . . [H]e did specifically say that he believed that the union leadership were asking members to not work overtime and to call in sick. Kind of a blue flu . . . if you will.[121]

Jarvis was asked about his understanding of the term "blue flu," to which he testified that "the blue flu is when you get multiple people to call in sick. Kind of almost like a strike, but not [an] official strike. More of a kind of putting the department at a

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[116] Tr, at 116.
[117] Tr, at 118-119.
[118] Tr, at 120-121.
[119] Tr, at 121.
[120] Tr, at 122.
[121] Tr, at 122-123

disadvantage for staffing rolls."[122] Jarvis testified that Shelley told the assembled staff at the August 2023 meeting that he would investigate and take action, "up to and including arrest."[123] Jarvis testified that he understood Shelley to mean that he could arrest the union leadership, that is, the president and vice president.[124]

Jarvis testified that in another commanders' meeting, a Sergeant Suk accused him of participating in a blue flu, and he subsequently wrote a report denying the accusation.[125]

Jarvis testified on cross-examination that he was aware of the staffing shortage during the summer of 2023; that he was also aware of the DSBA's double time-and-a-half summer weekend overtime proposal; that he was also aware of the Sheriff's proposal to temporarily suspend "J meds" in exchange for the DSBA's proposal; and that he would not have supported the Sheriff's counterproposal.[126]

Jarvis agreed on cross-examination that during the August 2023 commanders' meeting about which he testified, Shelley did not say that he had completed an investigation into the potential "blue flu."[127] He confirmed that Shelley said, during the commanders' meeting, that he would arrest "anyone" engaged in a "blue flu."[128]

Jarvis confirmed that he did not ask Suk why she accused him of coordinating a "blue flu."[129]

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[122] Tr, at 124.
[123] *Id.*
[124] Tr, at 124-125.
[125] Tr, at 125, 128; Charging Party's Ex 1.
[126] Tr, at 133.
[127] Tr, at 135.
[128] *Id.*
[129] Tr, at 137.

Jarvis testified that he was the watch commander for C Watch on July 16, 2023, and that he approved the watch schedule for that day, which had been completed by Sergeant Heaney.[130] Jarvis confirmed that the July 16, 2023 watch schedule shows what staff members worked on that day in the booking unit.[131] He also testified, when asked on cross-examination about the booking unit being closed that day, that "[b]ooking was closed because there was only one certified person who was able to work in booking that day."[132] According to Jarvis, that person was Deputy Hudson.[133]

Bradley Jordan testified on behalf of the DSBA pursuant to a subpoena.[134] Jordan has been employed by the Sheriff's Office since 2003 as a deputy.[135]

Jordan testified that on July 21, 2023, he took sick leave because he had an appointment for a physical with his primary care doctor.[136] Jordan testified that the appointment was at 10:00 a.m.—partway through his 8 a.m. to 4 p.m. shift—and that he went home after the appointment concluded.[137] That day, Berlinski and Murphy came to his house.[138] Jordan testified that he was asleep when his wife answered the door for Berlinski and Murphy, then went to the door after his wife woke him.[139] Jordan testified further that Berlinski asked him, in a sarcastic tone, if his "allergies were

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[130] Tr, at 138; Respondent's Ex 1.
[131] *Id.*
[132] Tr, at 139.
[133] *Id.*
[134] Tr, at 141-142.
[135] *Id.*
[136] Tr, at 142-143.
[137] *Id.*
[138] Tr, at 143.
[139] Tr, at 144.

reacting up."[140] According to Jordan, he had not said anything about allergies.[141] Jordan testified that he told Berlinski and Murphy that he had a doctor's appointment for a physical and that he would turn in the paperwork for the physical the following Monday.[142] Jordan confirmed that his appointment was on a Friday, and that it would be "ordinary" to turn in medical documentation on the workday following an absence.[143] According to Jordan, Murphy and Berlinski "said okay and then they left."[144] Jordan testified that he was surprised by their visit, and "had never had anybody show up at [his] house" to check on him on a sick leave day in his 21 years with the Sheriff's Office.[145]

When asked about other medical conditions, Jordan testified that he has FMLA leave because he previously had open heart surgery and sees his cardiologist four times per year, his neurologist at least once per year, and his primary care provider at least three times per year for various issues.[146] Jordan testified further that he has followed this regimen of appointments since 2017.[147]

On cross-examination, Jordan testified that he called in sick on July 21, 2023, by calling the transport sick line.[148] Jordan testified further that Murphy was in plain clothes and Berlinski was in uniform when they came to his house.[149] Jordan testified that he

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[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] Tr, at 144-145.
[144] Tr, at 145.
[145] Tr, at 145-146.
[146] Tr, at 146.
[147] Tr, at 147.
[148] Tr, at 148-149.
[149] Tr, at 149.

believed Murphy and Berlinski were checking "to see if I had stayed at home like we're supposed to."[150] Jordan testified that he turned in his doctor's note when he returned to work and confirmed that he was not reprimanded for using a sick day on July 21, 2023.[151]

Laura Collins testified on behalf of the DSBA pursuant to a subpoena.[152] Collins has worked for the Sheriff's Office for approximately 15 years, and is an investigator in the pistol license unit and criminal investigations division, which is within the police division of the Sheriff's Office.[153] Collins is the president of the Onondaga County Sheriffs Police Association (OCSPA), another bargaining unit of Sheriff's Office employees.[154] Prior to becoming the president of OCSPA in November of 2022, Collins served as the secretary.[155]

Collins testified that on August 18, 2023, she had completed an arrest and was looking for a supervisor to sign the arrest report; her direct supervisor, the undersheriff, was unavailable so she had Chief Fisher, chief of the police division, sign the report.[156] Collins testified further that when she approached Fisher with the report, he was in the sheriff's administrative area with Shelley, Murphy, and Berlinski.[157] According to Collins, before she entered the room Fisher, Shelley, Murphy, and Berlinski were in, she "overheard Chief Murphy say something about blue flu."[158] Collins testified: "After Chief

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[150] Tr, at 150.
[151] Tr, at 151.
[152] Tr, at 158-159.
[153] Tr, at 159-160.
[154] Tr, at 160.
[155] *Id.*
[156] Tr, at 161.
[157] Tr, at 162.
[158] *Id.*

Fisher took my arrest report, he stepped away for a few minutes, and the sheriff had asked me if I would help him arrest John Hagenmayer."[159] Collins testified further that Shelley did not explain his statement, nor did she respond to the question; Shelley then asked something to the effect of "if I arrest him, are you going to file a grievance?", to which Collins replied that she has enough grievances.[160] Following this exchange with Shelley, Collins testified, Fisher returned with the arrest report and she left the area.[161]

Collins denied understanding why Shelley would ask for her help arresting Hagenmayer, but said: "I heard some rumors previously about the sheriff wanting to arrest Deputy Hagenmayer for inciting a blue flu."[162] Asked how she reconciled the comment she overheard from Murphy about a blue flu and Shelley's question about arresting Hagenmayer, Collins testified: "I believe that, after overhearing Chief Murphy say . . . 'blue flu', and the sheriff asking what he did in conjunction with the previous rumors that I heard, I believe that he was asking me to assist in arresting Deputy Hagenmayer for inciting a blue flu."[163] Collins added that "[t]here was no indication that the sheriff was joking."[164]

Collins confirmed on cross-examination that she does not work in the custody division, does not work at the Justice Center, and that OCSPA does not, by and large, represent employees at the Justice Center.[165]

When asked on cross-examination about why she was able to recollect the date

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[159] Tr, at 162-163.
[160] Tr, at 163.
[161] *Id.*
[162] *Id.*
[163] Tr, at 165.
[164] *Id.*
[165] Tr, at 166.

of her conversation with Shelley, Collins testified that she texted Hagenmayer immediately after the conversation to let him know what the Sheriff had said.[166]

Collins confirmed that the Sheriff has the authority to direct her "to arrest particular individuals," although he has never done so before.[167] Collins was pressed on cross-examination about her interpretation of Shelley's question:

> Q. If the sheriff was actually directing you to arrest someone in a serious manner, would you be required to comply with that request?
>
> A. Yes, I would.
>
> Q. It's correct that you did not arrest Deputy Hagenmayer, correct?
>
> A. No, I did not.
>
> Q. You didn't really believe that the sheriff was directing you, as your superior, to arrest Deputy Hagenmayer, did you?
>
> A. If he was directing me, he would have given me a direct order. He was asking me if I would assist him in arresting Deputy Hagenmayer.[168]

Collins noted on cross-examination that she and Shelley "do not have a joking type of relationship" and that she did not "know why the sheriff would need my assistance for that . . . type of arrest[.]"[169]

John Hinton testified on behalf of the DSBA. Hinton is employed in the Custody Department of the Sheriff's Office as a housing deputy and has worked for the Sheriff's Office for over fifteen years.[170] Hinton testified that he suffers from post-traumatic stress disorder following military service that pre-dated his employment with the

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[166] Tr, at 167.
[167] Tr, at 168.
[168] Tr, at 168-169.
[169] Tr, at 171.
[170] Tr, at 173-174.

Sheriff's Office.[171] Hinton testified further that he has "seen a psychologist on at least a monthly basis for the past 13 or 14 years."[172] Hinton has submitted an application for, and been granted, FMLA leave for his PTSD each year since he was diagnosed.[173] Hinton described his condition as "unpredictable," noting that "there are days that I am unable to come to work, whether it be from the medications I'm on, or from nightmares, or a lot of things involving my PTSD" and that he sometimes attends group meetings and doctor's appointments.[174]

Hinton testified that he used FMLA leave on July 20, 2023.[175] On that day, he testified, his children were playing outside when a black SUV drove up his driveway; his children initially ran toward the car, but ran into the house crying after seeing Murphy and Berlinski get out of the vehicle, the latter of whom was armed.[176] According to Hinton, both were in plain clothes.[177] Hinton testified that he met Murphy and Berlinski outside, and that he did "not want them to know where I lived, [and] I definitely didn't want them to come into my home."[178] Hinton testified further that Murphy said she was doing "checks per the sheriff's orders" to ensure Hinton was home while on FMLA leave.[179] According to Hinton, Berlinski commented that he did not "sound sick."[180] After this interaction, the Murphy and Berlinski left.[181] Hinton characterized Murphy's

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[171] Tr, at 174-177.
[172] Tr, at 177.
[173] Tr, at 179-181; Charging Party's Ex 2.
[174] Tr, at 181.
[175] Tr, at 182.
[176] *Id.*
[177] *Id.*
[178] Tr, at 183.
[179] *Id.*
[180] *Id.*
[181] Tr, at 186.

and Berlinski's visit as "odd" and "like an intimidation tactic," noting that they did not ask if he was okay.[182] Hinton testified that, as he understands the policy, there is no obligation to be at home while on FMLA leave; he goes to meetings and engages in activities recommended by his doctor, like walking and other exercise.[183]

When asked about how he notified the Sheriff's Office of his absence, Hinton testified that he called in the night before, even though there is no minimum notice for FMLA leave.[184] Hinton testified that he did not have sick leave or other paid leave available to him, so his FMLA absence on July 20, 2023 was unpaid.[185]

Hinton testified that he received six visits of a similar nature.[186] The next visit was in August of 2023, when Captain Moore and another man (whom he later learned was then-Captain Nathan Hawker) arrived in an unmarked SUV while Hinton was away from home picking up a prescription.[187] According to Hinton, Moore and Hawker told his wife they were making sure he was home, and his wife told them where he was and that he would be back shortly, but they chose not to wait.[188] Hinton identified the men by reviewing his security camera recording.[189]

Hinton testified to his belief that Murphy has been aware of his medical issues and his FMLA leave for multiple years, and has "tried to come after [Hinton] to terminate [him] for some reason or another" every year.[190]

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[182] *Id.*
[183] *Id.*
[184] Tr, at 184.
[185] Tr, at 185.
[186] Tr, at 186. Hinton only testified about the two visits reflected here.
[187] Tr, at 187.
[188] Tr, at 187-188.
[189] *Id.*
[190] Tr, at 189.

On cross-examination, Hinton confirmed that he has discussed his PTSD with Murphy, most recently about six years ago.[191] Hinton conceded that he has never been told, while on FMLA leave, that he must return to work immediately or that he should not "dare take . . . FMLA leave[.]"[192] Hinton testified on cross-examination that when he called in on July 19, 2023, to say that he would be absent on July 20, 2023, he spoke with the deputy who answered the phone, and that although the line is recorded, it is answered by a person.[193] Hinton was asked on cross-examination if he was surprised when Murphy and Berlinski came to his house, to which he replied: "Absolutely. I've been there 15 years and that's never happened to be before."[194] Hinton confirmed that he was not reprimanded for taking FMLA leave, was not docked pay, and was never ordered back to work or required to submit additional paperwork after any of the six visits he referenced.[195] Hinton testified that the six visits were in a span of three months in 2023.[196]

Joseph Lee testified on behalf of the DSBA. Lee is a deputy who has been employed by the Sheriff's Office for approximately 22 years.[197] Lee is not presently in a DSBA leadership role but previously served as secretary, vice president, and president.[198] Lee was the DSBA president when Shelley took office, and his tenure concluded at the end of July of 2023.[199]

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[191] Tr, at 192.
[192] Tr, at 193.
[193] Tr, at 195, 197.
[194] Tr, at 198.
[195] Tr, at 199-200.
[196] Tr, at 201-202.
[197] Tr, at 204.
[198] Tr, at 205.
[199] *Id.*

Lee testified that on or about June 8, 2023, he and Hagenmayer—then the vice president of the DSBA—met with Shelley and Passino and discussed the staffing issues.[200] During that meeting, Lee testified, he and Hagenmayer brought up the possibility of double time-and-a-half to encourage employees to work summer weekend overtime.[201] According to Lee, Shelley said that the proposal was acceptable to him as long as it was acceptable to the County, and that Shelley wanted to see employees in the Custody Department "make as much money as [they] can."[202] Lee denied that either Shelley or Passino brought up any necessary concessions.[203] Subsequently, Lee testified, Hagenmayer set up and attended a meeting on July 10 or 11, 2023, with Hummel, Lee, and Earl.[204]

Lee testified that during the meeting Hummel raised concerns about employees potentially working more overtime on the weekends and less during the week if the DSBA's proposal was implemented, and asked the DSBA representatives if they would "be on board" with supporting the County Executive's proposal to close the Jamesville Correctional Facility.[205] Lee testified further that Hummel linked the overtime proposal and the Jamesville closure, saying that the closure of Jamesville would help alleviate the staffing issues.[206] Lee testified that the DSBA representatives told Hummel they could not "take sides" by supporting the Jamesville proposal.[207] According to Lee,

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[200] Tr, at 206, 208-209.
[201] Tr, at 206.
[202] Tr, at 208.
[203] *Id.*
[204] Tr, at 208-209. Lee testified on redirect examination that he was not sure of the date. Tr, at 222.
[205] Tr, at 210.
[206] Tr, at 211.
[207] *Id.*

Hummel did not give an answer on the overtime proposal by the end of the meeting, but said he had to speak with the "14th floor," which Lee took to mean the County Executive.[208] Lee said that the DSBA representatives had "no idea which way [the County] would go" at the time the meeting concluded.[209] Lee also testified that Hummel did not mention suspending work limitations during the meeting, and that Lee had no knowledge of Hummel being aware of "any condition that the sheriff put on approval."[210]

On cross-examination, Lee confirmed that Hagenmayer became DSBA president on July 26, 2023, and that thereafter, Lee was no longer in a DSBA leadership position.[211] Lee denied that Drapikowski or Moore was present for the June 8, 2023, meeting with Shelley and Passino.[212] Lee testified that he believed the DSBA gave the Sheriff and the County a written proposal for the double time-and-a-half sometime after the June 8, 2023 meeting, although he was unsure.[213] Lee agreed that there were not enough employees to "fully staff the Justice Center" without overtime in 2023.[214] Lee also agreed that both the Sheriff and County would have needed to approve the double time-and-a-half proposal.[215]

Lee testified on cross-examination that the DSBA membership did not have to approve amendments to the CBA made outside of typical contract negotiations, but rather, that the DSBA president or vice president could enter a MOA with the County

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[208] *Id.*
[209] Tr, at 211-212.
[210] Tr, at 212.
[211] Tr, at 213.
[212] *Id.*
[213] Tr, at 214-215, 226.
[214] Tr, at 215.
[215] Tr, at 216.

and Sheriff.[216]

Lee testified on cross-examination that he learned, with about a week left in his presidency, about the Sheriff's proposal to suspend "J meds" in exchange for the DSBA's overtime proposal.[217] As for the closure of booking on July 16, 2023, Lee testified that he was not scheduled to work that day and only learned of the closure a few days later.[218] Lee confirmed that Shelley never said anything to him about arresting or prosecuting any DSBA members or leadership.[219]

Lee agreed on redirect examination that he turned the negotiation of the overtime proposal over to Hagenmayer when Hagenmayer took over the DSBA presidency.[220]

Lee confirmed on cross-examination that he was aware of Hagenmayer speaking to Hummel by phone following their meeting with Hummel, and that at that point he understood the County's acceptance of the proposal to be without condition, and specifically that DSBA support for the closure of Jamesville was off the table.[221]

Jonathan Hagenmayer testified on behalf of the DSBA. Hagenmayer works as a deputy in the Custody Department, specifically in the booking unit, and has been employed by the Sheriff's Office since 2016.[222] Hagenmayer has been the DSBA president since July 26, 2023, and previously served as the treasurer and vice president.[223]

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[216] Tr, at 218-219.
[217] Tr, at 221.
[218] *Id.*
[219] Tr, at 222.
[220] Tr, at 223.
[221] Tr, at 224-225.
[222] Tr, at 227.
[223] Tr, at 228.

Hagenmayer testified that when he and Lee met with Shelley and Passino to discuss the enhanced overtime proposal, Drapikowski and Moore were also present.[224] Hagenmayer testified that the purpose of the meeting was to propose a MOA to address short staffing, and he read from the DSBA's proposed MOA during the meeting.[225] According to Hagenmayer, the Sheriff declined a copy of the MOA during the meeting.[226] Hagenmayer testified that the terms of the proposal were as follows: members working overtime between three p.m. on Friday and seven a.m. on Monday would be compensated at double time-and-a-half "to make overtime more . . . attractive."[227] According to Hagenmayer, the Onondaga County 911 Center "had the same agreement in place" during the summer of 2023.[228]

Hagenmayer testified that Shelley responded by saying he "supports us making as much money as we can, but we would need to speak to the County to see if they would be on board with supporting this, in addition to the sheriff's support."[229] Hagenmayer testified further that Passino told him not to let the County know the DSBA had already met with the Sheriff on this issue.[230] Hagenmayer said that Shelley or Passino asked for an update after the meeting with the County, and that he left the meeting with the impression that he had the Sheriff's support and his "next hurdle was the county."[231] Hagenmayer testified that none of the Sheriff's Office representatives at

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[224] Tr, at 228-229.
[225] Tr, at 229.
[226] Tr, at 232.
[227] Tr, at 234.
[228] Tr, at 234-235.
[229] Tr, at 235.
[230] Tr, at 235-236.
[231] Tr, at 236.

the meeting mentioned concessions or conditions.[232]

Hagenmayer testified that he, Lee, and Earl met with Hummel on July 7, 2023.[233] During that meeting, according to Hagenmayer, he presented the enhanced overtime proposal as he had to the Sheriff.[234] Hagenmayer testified that Hummel said closing Jamesville and transferring its staff to the Justice Center would alleviate the staffing issues, and Hummel asked for the DSBA's support of that proposal.[235] Hagenmayer testified that he explained why the DSBA could not publicly support the closure, but Hummel told him to "sleep on it."[236] Hagenmayer spoke with Passino after the meeting with Hummel to let him know what was discussed regarding Jamesville.[237] Hagenmayer denied that Passino said anything in that call about a waiver of work limitations (J meds).[238]

Hagenmayer testified that he subsequently spoke with Hummel and "reaffirmed our stance that . . . we were not going to support publicly the closure of Jamesville."[239] Hummel responded that he would let Hagenmayer know of the County's decision on the overtime proposal.[240]

The next day, Hagenmayer testified, he received a phone call from Passino asking to set up a meeting with the Sheriff.[241] The following day, July 11, 2023,

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[232] *Id.*
[233] Tr, at 237.
[234] Tr, at 238.
[235] *Id.*
[236] Tr, at 239-240.
[237] Tr, at 241.
[238] Tr, at 242.
[239] *Id.*
[240] Tr, at 243.
[241] Tr, at 244-246.

Hagenmayer met Shelley and Passino at a Dunkin Donuts, at which time Shelley asked Hagenmayer to meet with Hummel and McMahon while wearing a wire, to prove they engaged in "bribery of a public servant."[242] Hagenmayer said he told Shelley and Passino that he was uncomfortable with the request and declined.[243]

According to Hagenmayer he received a call later that same day from Hummel letting him know the County "approved the MOA" and needed the Sheriff to contact him to work out the budgetary implications.[244] Hagenmayer testified that he passed this information on to Passino.[245]

On July 17, 2023, Hagenmayer spoke with Drapikowski in person about getting "the MOA across the finish line," and Drapikowski told him that he would speak with the Sheriff.[246] A few hours after that conversation, Hagenmayer received a text message from Drapikowski saying that the Sheriff "wants J meds suspended for [the] expiration of [the] MOU."[247] Hagenmayer responded:

> I think that ends our road here. That is not a determination that the executive board would make on behalf of the members. We would have to present it at the union meeting the last Thursday in July and call a vote. . . . By the time the vote was conducted . . . we would be in the middle of [A]ugust and maybe have the agreement for 2 weekends after that. The damage has already been done by then.[248]

Hagenmayer asked Drapikowski to "present it that way to the sheriff," and Drapikowski said he would.[249] When Drapikowski noted that the agreement would be of short

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[242] Tr, at 127.
[243] Tr, at 248.
[244] Tr, at 249.
[245] Tr, at 250.
[246] Tr, at 254-255, 260-261.
[247] Tr, at 255; Joint Ex 3, at 1.
[248] Joint Ex 3, at 1.
[249] *Id, at* 2.

duration regardless, Hagenmayer responded "It wouldn't fly. Especially because we were told no concessions, now we're being told there are."[250]

Hagenmayer was asked why he told Drapikowski that the membership would have to vote on the Sheriff's proposal.[251] He testified that while he *could* have approved a MOU with no concessions, he *would* not approve an MOU with concessions without the membership weighing in.[252]

Hagenmayer testified that he called in sick on July 16, 2023, because it was the one-year anniversary of what should have been his stillborn daughter's birthday, and he found out that the booking unit had closed.[253] A few days later, Deputy Christine O'Connor told Hagenmayer that she had overheard the Sheriff saying Hagenmayer organized a blue flu and that he would arrest him.[254] Hagenmayer testified that he shared this information with Earl.[255]

Hagenmayer testified that during roll call on August 11, 2023, Shelley showed up, the watch commander called the employees to attention, Shelley told them to remain at attention, and then Shelley told the assembled employees that "they've been lied to by their union representation, that he has always wanted medicals in exchange for double time and a half, and that he can't justify giving it to us if we're not willing to give him that."[256] Hagenmayer added: "The whole time the sheriff was addressing the roll[ ]call, he was staring right at me. So, he's telling all my co-workers that I'm lying to

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[250] *Id.*
[251] Tr, at 256-257.
[252] Tr, at 257.
[253] Tr, at 262.
[254] Tr, at 263-264, 303.
[255] Tr, at 264.
[256] Tr, at 265.

them . . . and literally staring me in the eyes doing it. And what I felt was he was trying to provoke me."[257]

Regarding the Sheriff's alleged threats to arrest him, Hagenmayer testified that "[i]t spread like wildfire. I had other deputies, I had lieutenants, I had sergeants—a lot of people were concerned that he was going to arrest me for something that wasn't true."[258] Hagenmayer testified that hearing about the Sheriff's threats "made [him] second guess [his] ability to try and negotiate with this administration to try to make the working conditions better" and raised concerns that the Sheriff would arrest him and "parade" him around."[259]

Hagenmayer agreed on cross-examination that Shelley expressed concern during the June 8, 2023, meeting that "people would want to work overtime on the weekends and there would be a lack of people working overtime during the week[.]"[260] Hagenmayer also agreed that when the term "J meds" is used, it refers to part of the work limitation and restriction procedure, but he also testified that it is used to mean the entire form.[261] Hagenmayer testified that when Shelley proposed suspending "J meds," he was proposing a suspension of the entire document.[262] Hagenmayer disagreed that

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[257] *Id.*
[258] Tr, at 267.
[259] Tr, at 267-269.
[260] Tr, at 270.
[261] Tr, at 271-272.
[262] Tr, at 272. The form colloquially referred to as a "J med," titled "Physician's Certification Report as to a Work Limitation or Restriction," contains three sections, the second of which states: "As a result of this medical condition, I certify the following regarding any work limitation or restriction[.]" Joint Ex 1, at 63. The second section then has three sub-sections that can be filled out by the physician: "A. As to the patient's physical ability to perform the patient's essential function of the job."; "B. As to the patient's ability to work a regular work shift."; and "C. As to the patient's ability to work overtime hours beyond a regular work shift." *Id.*

Shelley was only referring to paragraph 2C, regarding ability to work overtime.[263] When asked on cross-examination what would have happened if Shelley proposed suspending "J meds" at the June 8, 2023 meeting, Hagenmayer testified that he "would have ended the conversation and ended [his] attempts" to reach an agreement.[264]

Tobias Shelley testified on behalf of the County. Shelley has been the elected Sheriff of Onondaga County since January 1, 2023.[265] He was previously employed by the County as a police division deputy, a detective, a police academy instructor, a sergeant, and a member of the warrants task force, all positions in the police division of the Sheriff's Office.[266]

Shelley explained that the Justice Center is a "jail that houses sentenced and unsentenced inmates" under the purview of the Custody Department of the Sheriff's Office, while the Jamesville Correctional Facility is under the purview of the Correction Department of the Sheriff's Office.[267] Shelley testified that the booking unit of the Justice Center is where police officers bring individuals who have been arrested and where those individuals are processed.[268]

Shelley testified that staffing at the Justice Center has been "critical . . . for some[ ]time," including in the spring of 2023, noting that a typical shift is short 17 staff members, positions that must be filled with overtime.[269]

Shelley testified that Justice Center medical waivers are referred to as "J meds"

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[263] Tr, at 273.
[264] Tr, at 276.
[265] Tr, at 328.
[266] *Id.*
[267] Tr, at 333.
[268] Tr, at 335.
[269] Tr, at 336.

and that "J med" could refer to any portion of the form.[270] Shelley testified that "when you can't order someone to work overtime because of a [J med] and almost everybody in the Justice Center has a [J med], then it causes a [staffing] challenge."[271]

Shelley testified that the Sheriff's Office and the County are joint employers, and that both the Sheriff and County would have to approve amendments to the CBA.[272]

Shelley testified that when the DSBA presented the double time-and-a-half overtime proposal at the June 8, 2023 meeting, he "wasn't opposed to the offer but it seemed like a contradiction that you could work overtime for double time and a half with a [J med] but you couldn't work time and a half with a [J med]."[273] According to Shelley, he also voiced a concern that staff would want to work overtime on weekends and not during the week.[274] Shelley confirmed that he said, during the meeting, that he supported employees making more money.[275] Shelley did not recall receiving a written MOA during the meeting and left the meeting with the understanding that further discussion with the County would have to occur.[276] Shelley testified that there was "no agreement that [he] would approve anything without a further discussion."[277]

Shelley described roll call as a meeting at the beginning of a shift where staff are given assignments and safety issues are discussed.[278] Shelley recalled that when he attended a roll call in June of 2023, there was "concern about double time" and he

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[270] Tr, at 342-344.
[271] Tr, at 346.
[272] Tr, at 346-347.
[273] Tr, at 348.
[274] Tr, at 349.
[275] *Id.*
[276] Tr, at 349-350.
[277] Tr, at 350.
[278] *Id.*

voiced his position that the enhanced overtime proposal is "a contradiction" for those who have "J meds."[279]

Shelley testified about his meeting with Hagenmayer and Passino on July 11, 2023. According to Shelley, it had come to his attention that the County was trying to bribe a union official; specifically that the "county would agree to the double time and a half if Hagenmayer stood with the county executive to announce the closing of . . . Jamesville[.]"[280] Shelley and Passino asked Hagenmayer to wear a wire to "corroborate the alleged crime," but Hagenmayer declined.[281]

Shelley testified that he did not recall discussing the double time-and-a-half proposal during a July 13, 2023, meeting that included DSBA leadership, but that if he was told the County wanted to discuss the proposal, he would have said to set up a meeting.[282]

Shelley testified that when the booking unit was closed on July 16, 2023, it was during the "C" watch, which is 3 p.m. to 11 p.m.[283] Shelley said that the booking unit was closed for "over two hours" until he and others arranged for Drapikowski, Passino, and Passino's brother to report and open booking.[284] Shelley testified that while booking was closed, the Syracuse police "couldn't take any more calls" because officers were "tied up" with individuals under arrest who could not be taken to the booking unit.[285]

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[279] Tr, at 351.
[280] Tr, at 352-353.
[281] Tr, at 352.
[282] Tr, at 353-354.
[283] Tr, at 354-355.
[284] Tr, at 356.
[285] Tr, at 356-357.

Shelley testified that the booking unit nearly closed on August 5, 2023, but that he "was fortunate . . . because I was secretly notified by someone that people were going to call in sick and try to shut down booking. . . . So I was able to get ahead of that and line people up to come in[.]"[286]

When asked about the term "blue flu," Shelley described it as "a police term" referring to an event "when police officers or people in law enforcement . . . get together and call in sick."[287] Shelley testified that participation in a "blue flu" is official misconduct.[288] Shelley testified that he became concerned, particularly after August 5, 2023, that a "blue flu" was taking place and directed an audit of sick leave and implementation of "sick checks."[289] Shelley determined, based on his investigation, that there was "not enough evidence to prosecute anybody for official misconduct."[290]

According to Shelley, the CBA allows sick checks, and the Sheriff's office had conducted sick checks prior to his election; sick checks were re-implemented after the closure of the booking unit in July of 2023.[291] Shelley testified that the sick checks are performed based on random selection.[292]

Shelley testified that Earl came to Shelley's farm in the summer of 2023 to discuss the enhanced overtime and the closure of booking.[293] With respect to the double time-and-a-half, Shelley testified that his "response never changed" and that he

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[286] Tr, at 357-358.
[287] Tr, at 360.
[288] Tr, at 360-361.
[289] Tr, at 361.
[290] *Id.*
[291] Tr, at 362.
[292] Tr, at 364.
[293] Tr, at 364-365,

told Earl "it's a conflict with [J meds] and you have to get the county to agree before I will."[294] Shelley testified that he warned Earl—as he did others—that if he engaged in a blue flu he would be arrested.[295]

Shelley testified that he did attend roll call at Jamesville and discussed the July closure of booking unit, and "gave the Jamesville people the same warning I gave everybody else[:] If you attempt the blue flu and get caught, you will get arrested."[296] Shelley denied saying anything specifically about DSBA members during those remarks.[297]

Shelley also testified that he attended roll call at the Justice Center on August 11, 2023, during which he made the employees stand at attention, "told them . . . the blue flu won't be tolerated," and warned them that engaging in a blue flu would lead to arrest.[298] Shelley also testified that during the roll call he mentioned a rumor that he had rejected the double time-and-a-half proposal, and told the assembled employees that he believes it to be a contradiction with "J meds" and that it would have to be coordinated with the County.[299] Shelley did not recall whether Hagenmayer was present at the August 11, 2023 roll call.[300]

Shelley denied asking Collins to arrest Hagenmayer, and added: "If I had enough to arrest Hagenmayer I would do it myself."[301] Further, Shelley denied ever asking or

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[294] Tr, at 365.
[295] Tr, at 366.
[296] Tr, at 367.
[297] *Id.*
[298] Tr, at 367-368.
[299] Tr, at 368.
[300] *Id.*
[301] Tr, at 370.

ordering Collins or any other deputy to arrest anyone.[302]

Shelley testified that he spoke with Squairs in August of 2023, and during that conversation he assured Squairs that the task of scheduling would be returned to lieutenants once the staffing issues were worked out.[303] According to Shelley, he also gave Squairs the same "warning" he gave other staff—if he engaged in the blue flu, he would be arrested.[304] Shelley denied telling Squairs that he believed Hagenmayer and Earl "orchestrated a blue flu."[305] When asked if he ever said he would "bankrupt the DSBA," Shelley replied: "No. They're going to bankrupt themselves, the way it looks."[306] Shelley also denied telling anyone that he planned to arrest Hagenmayer or Earl, or threatening to arrest either.[307] Shelley denied ever saying he hated Hagenmayer.[308]

Shelley agreed on cross-examination that the Custody Department is understaffed, and that the sheriff is responsible for hiring.[309] Shelley was not able to recall who articulated, during the June 8, 2023 meeting, the Sheriff's Office's concern with the double time-and-a-half proposal.[310] Shelley denied stating explicitly during that meeting that acceptance of the DSBA's proposal would be conditioned on the suspension of "J meds."[311]

With respect to the closure of booking on July 16, 2023, Shelley testified on

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[302] *Id.*
[303] Tr, at 377-378.
[304] Tr. at 378.
[305] *Id.*
[306] Tr, at 379. On cross-examination, Shelley explained that he was referring to issues being litigated by the DSBA. Tr, at 381-382.
[307] Tr, at 380
[308] *Id.*
[309] Tr, at 383-384.
[310] Tr, at 391-392.
[311] Tr, at 393.

cross-examination that he learned about it from Drapikowski and that the closure was due to employees calling in sick.[312]

When asked on cross-examination about the July 16, 2023, "C" watch staffing documents, Shelley conceded that the closure of booking was not due *solely* to staff calling in sick.[313] Shelley agreed on cross-examination that employees who were injured on duty and using FMLA leave were not participating in a blue flu.[314] Shelley testified that the staffing document "played a part" in the conclusions he drew about a blue flu.[315] Shelley testified further on cross-examination that the Sheriff's Office determined the closure of booking was due to sick leave abuse by reviewing sick leave use to identify patterns, however, he conceded that prior sick leave use was not reviewed for any of the employees who called in sick on July 16, 2023, and in fact, patterns of sick leave use were only scrutinized moving forward after July 16, 2023.[316]

Shelley testified on cross-examination that he did not recall instructing Drapikowski to communicate with Hagenmayer about wanting the "J meds" to be suspended as part of an agreement on overtime, but that Drapikowski had the authority to communicate on his behalf.[317] When asked whether he or anyone communicating on his behalf conveyed to the DSBA prior to July 17, 2023, that he wanted "J meds" suspended as part of an overtime agreement, Shelley testified that he was not aware of it.[318]

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[312] Tr, at 394.
[313] Tr, at 400-401.
[314] Tr, at 402.
[315] Tr, at 404.
[316] Tr, at 406-407, 409, 411.
[317] Tr, at 425.
[318] Tr, at 425-426.

Shelley was asked on cross-examination about the information he received suggesting that booking would be closed again in August because employees were planning to call in sick.[319] Shelley testified that the person who conveyed this information to him had personal knowledge of it, obtained by working in the jail.[320] Shelley believed that the individual heard the information from coworkers.[321] Shelley testified that he believed the person and did not attempt to verify the information with anyone else.[322] Shelley testified on cross-examination that he did not investigate whether any of the employees who called in sick August 4 through August 5, 2023, were actually sick.[323]

Shelley was asked on cross-examination how staff conducting sick checks are to determine if an employee using sick leave is sick.[324] Shelley answered that some employees "could be obviously sick, some people could have a doctor's note."[325]

Shelley testified on cross-examination that when he addressed roll call on August 11, 2023, he was conveying the message that they "can't have a blue flu," and that eight employees calling in sick on August 5, 2023, was sufficient to cause concern about a blue flu.[326] However, Shelley conceded that he did not investigate the employees who had called in sick on August 5, 2023, prior to addressing the roll call on August 11, 2023.[327] Shelley also testified that when he addressed the roll call, he "dispel[ed] a

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[319] Tr, at 433-434.
[320] Tr, at 434.
[321] Tr, at 436.
[322] Tr, at 437.
[323] Tr, at 446-447.
[324] Tr, at 447-448.
[325] Tr, at 448.
[326] Tr, at 451-452.
[327] Tr, at 452.

rumor" that he had rejected the double time-and-a-half proposal.[328]

Shelley agreed on cross-examination that the rank-and-file employees present for the roll call, who made up a majority of the 30 or so people in attendance, were DSBA members.[329]

On cross-examination, Shelley denied saying anything about arresting union leadership when he spoke with Squairs about the schedules.[330] He also denied making such a statement in a staff meeting that included Jarvis.[331]

With respect to his conversation with Collins, Shelley denied raising the possibility of arresting Hagenmayer.[332] He also testified that "any conversation [Collins] has with [him] has to be recorded[,]" because he has ordered her to record all conversations between them based on "untruthful things that she says."[333] Shelley conceded that that order was not in place in August of 2023, but that he had already ordered her not to come into his office.[334] Shelley denied asking Collins to help him arrest Hagenmayer and denied asking Collins if she would file a grievance if he arrested Hagenmayer himself.[335]

Shelley testified on cross-examination that he believed the DSBA did organize a blue flu, as evidenced by the fact that "it hasn't happened again."[336]

Shelley denied speaking with anyone from the County about the DSBA's double

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[328] Tr, at 456.
[329] Tr, at 457.
[330] Tr, at 467.
[331] *Id.*
[332] Tr, at 468.
[333] Tr, at 469.
[334] Tr, at 470.
[335] Tr, at 471.
[336] Tr, at 479.

time-and-a-half proposal.[337]

Jeffrey Passino testified on behalf of the Sheriff's Office. Passino has been the Undersheriff since January 1, 2023, and assumes the Sheriff's responsibilities when the Sheriff is unavailable.[338] Passino previously held various other law enforcement titles with the County and was also a vice president and president of the Onondaga County Deputy Sheriffs Police Association (OCDSPA).[339]

Passino testified that he first heard about the DSBA's double time-and-a-half proposal during the June 8, 2023, meeting with Shelley, Drapikowski, Lee, and Hagenmayer.[340] Passino testified that he responded to the proposal by saying the DSBA had to "go see the county first to see if they would even be on board" and that Shelley said he was "not opposed to people making money" but had concerns about the "J meds."[341] According to Passino, he left the meeting with the understanding that the DSBA would speak to the County, and then all three parties would get together to discuss the proposal.[342] Passino testified that Shelley did not agree to the proposal, he only agreed to discuss it.[343]

Passino testified that after the June 8, 2023 meeting, Hagenmayer called him to relate the conversation between Hagenmayer and Hummel, in which Hummel asked for the DSBA's support regarding the closure of Jamesville in exchange for the County

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[337] Tr, at 487.
[338] Tr, at 520.
[339] Tr, at 520-521.
[340] Tr, at 522.
[341] Tr, at 523.
[342] Tr, at 523-524.
[343] Tr, at 524-525.

supporting the double time-and-a-half proposal.[344] Regarding his text messages with Hagenmayer on July 10, 2023, Passino testified that he understood the DSBA would not support the closure of Jamesville, but that Hummel would speak with the County Executive about the double time-and-a-half proposal anyway.[345]

Passino testified that subsequently, Hagenmayer called him and said that Hummel wanted Shelley to call him about the overtime proposal; when Passino relayed that information to Shelley, Shelley said "if Carl Hummel wants to speak to me, he'll call me."[346] According to Passino, Hagenmayer believed the County was agreeing to the proposal.[347]

Passino testified that he attended a meeting with DSBA leadership on July 13, 2023, regarding peace officer certification.[348] According to Passino, at the end of the meeting, Hagenmayer asked Murphy to have Shelley call Hummel, to which Murphy responded, "we don't tell the sheriff what to do or who to call."[349]

With respect to sick checks, Passino testified that they have been conducted by the Sheriff's Office for years, and that he supported the decision to conduct them in the summer of 2023.[350] Passino testified that the two instances when the booking unit was closed or nearly closed raised a concern about sick leave abuse.[351] Passino confirmed that he had heard Shelley say he would arrest anyone "involved in a blue flu . . . if he

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344 Tr, at 525.
345 Tr, at 527-528
346 Tr, at 534-535.
347 Tr, at 576.
348 Tr, at 535.
349 Tr, at 537.
350 Tr, at 546-547.
351 Tr, at 548.

found evidence that they were involved[.]"[352] Passino denied hearing Shelley say that he would arrest Lee, Earl, Hagenmayer, or "DSBA leadership" specifically.[353]

John Drapikowski testified on behalf of the Sheriff's Office. Drapikowski is the Chief of the Custody Department.[354] Drapikowski confirmed that there were staffing issues, including issues staffing overtime, in the spring and summer of 2023.[355]

With respect to "J meds," Drapikowski testified that they prevent employees from being ordered to work overtime, and that over 95 percent of custody department deputies have "J meds."[356]

Drapikowski testified that he was present for the June 8, 2023 meeting with Shelley, Passino, Hagenmayer, and Lee at which the DSBA proposed the double time-and-a-half.[357] According to Drapikowski, Shelley "was not against" the proposal but wanted "J meds" suspended for the duration of the proposal.[358] Drapikowski did not recall seeing a written proposal during the meeting.[359]

Drapikowski testified that, subsequent to the June 8, 2023 meeting, Hagenmayer asked him to see if Shelley "would change his mind about having the J meds suspended[.]"[360] Drapikowski testified further that he did speak with Shelley; that Shelley was not interested in agreeing to double time-and-a-half without the suspension

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[352] *Id.*
[353] Tr, at 549.
[354] Tr, at 587.
[355] Tr, at 588-589.
[356] Tr, at 590.
[357] Tr, at 592.
[358] Tr, at 594.
[359] Tr, at 595.
[360] Tr, at 596.

of "J meds;" and that he conveyed Shelley's response to Hagenmayer.[361]

Regarding the short staffing on August 5, 2023, Drapikowski testified that the schedule showed "a high number of sick individuals."[362] He testified further that Shelley reached out to him after August 5, 2023, and expressed a belief that the sick calls were "suspicious" and the result of a "concerted effort" or "blue flu."[363] Drapikowski testified that he had heard Shelley say he would arrest anyone engaged in a blue flu, but had not heard Shelley name specific names or reference DSBA affiliation.[364]

Drapikowski was asked on cross-examination if he recalled "exchanging text messages with Former Chief Melissa Berlinski in which [he] indicated [his] awareness that Laura Collins had stated that the sheriff had asked her to arrest Deputy Hagenmayer;" Drapikowski did not recall.[365]

Maureen Murphy testified on behalf of the Sheriff's Office. Murphy is the Chief Deputy of Administration, a title she had held since January of 2023.[366] Prior to January of 2023, she was the Sheriff's Office Personnel Administrator.[367]

Murphy testified generally about the sick leave provisions in the CBA, contained in Article 16, and noted that an employee might take sick leave for their own illness or a

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[361] Tr, at 596-597; Joint Ex 3, at 1. Drapikowski agreed on cross-examination that he had not previously heard Shelley expressly condition acceptance of the proposal on the suspension of "J meds," but he understood that to be the case. Tr, at 644. When Hagenmayer asked for Drapikowski's help in removing the suspension of the "J meds" as a condition, Drapikowski concluded that Hagenmayer "must have had that knowledge" that Shelley wanted the concession. Tr, at 643.
[362] Tr, at 625.
[363] Tr, at 626-627.
[364] Tr, at 629.
[365] Tr, at 663.
[366] Tr, at 674-675.
[367] Tr, at 675.

family member's illness.[368] Murphy testified that an employee must call in sick at least one hour before the beginning of their shift.[369] When an employee calls, according to Murphy, they would specify whether they were sick themselves or taking sick leave for a family member, or if their absence was FMLA-related.[370] Murphy testified that an employee can only use seven "unverified" sick leave days per calendar year, but an absence can be "verified" with a medical note.[371] Murphy testified further that when an employee is using sick leave, they must be at home or seeking medical treatment.[372]

Murphy testified that the Sheriff's Office began random sick checks during the period of staffing difficulties in the summer of 2023. [373] She believes that, although sick checks were used in the past, they were not necessarily random.[374] When asked about the procedure in the summer of 2023, Murphy testified that she carried out sick checks herself, and that the Sheriff's Office used a random generator to pick three days per month on which members of management, generally captains or above, would conduct sick checks.[375]

Murphy confirmed that she and Berlinski conducted a sick check of Hinton on July 20, 2023, and testified that Hinton was the only call-in in the custody division on the day in question.[376] Murphy described a cordial visit, although she noted that Hinton "did

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[368] Tr, at 676-679.
[369] Tr, at 680.
[370] Tr, at 680-681.
[371] Tr, at 681-682.
[372] Tr, at 682; Joint Ex 1, at 14.
[373] Tr, at 682-683, 692-693.
[374] Tr, at 693.
[375] Tr, at 694, 702.
[376] Tr, at 707-708, 710.

not look well."[377] Murphy testified that she now knows Hinton was using FMLA leave on the day she and Berlinski performed the sick check.[378]

Murphy also testified about the sick check she and Berlinski performed at Chapman's home on July 21, 2023.[379] Again, she described a cordial visit, and testified further that she was upset to learn she has been given Chapman's name as a call-in when he had, in fact, undergone surgery.[380] Murphy testified that she had not been previously aware of Chapman's surgery.[381]

Murphy testified that "J meds" refers to a form employees can have filled out by a physician stating that the employee cannot be "ordered to work overtime due to a certain medical condition."[382] According to Murphy, all but five to ten deputies out of about 200 have submitted "J meds."[383]

Murphy testified that she had heard Shelley make comments about arresting employees engaged in a blue flu, but denied hearing him name any specific individuals.[384] Murphy could not recall "anything specific" that Shelley said to Collins about a blue flu, nor did she recall hearing Shelley ask Collins to arrest Hagenmayer.[385]

Murphy testified on cross-examination that the CBA does not explicitly give the Sheriff's office the ability to check on an employee using sick leave to confirm their whereabouts, although the right to confirm that an employee is home derives from the

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[377] Tr, at 709.
[378] Tr, at 710.
[379] Tr, at 717-720.
[380] Tr, at 718-720.
[381] Tr, at 721.
[382] Tr, at 685-686.
[383] Tr, at 688.
[384] Tr, at 728.
[385] Tr, at 730-731.

language in the CBA requiring an employee on sick leave to be at home.[386]

When asked on cross-examination how the implementation of sick checks came about, Murphy testified about a command staff meeting in May or June of 2023 in which Drapikowski brought up staffing difficulties.[387] Murphy testified that the Sheriff's Office conducted "a lot of different studies with call-ins and staffing."[388] According to Murphy, they discovered that there were times when too many employees were allowed to take time off simultaneously.[389] Murphy denied discovering evidence that sick leave was being abused.[390]

Murphy disagreed on cross-examination with Chapman's characterization of her demeanor during the sick check at his house as "stern."[391]

Murphy testified on cross-examination that when she first learned what the term "blue flu" meant, she was standing around with others including the Sheriff's secretary, Shelley, and "[p]ossibly the undersheriff."[392] Murphy did not know whether the first meeting at which sick checks were discussed occurred before or after she learned about the term "blue flu."[393] Murphy testified that it was Shelley who used the term "blue flu" after the closure of the booking unit, and that he mentioned the "appearance of a . . . blue flu."[394] Murphy denied being asked to determine if a "blue flu" had occurred and testified that she would not necessarily have paid attention if she had heard further

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[386] Tr, at 753-756.
[387] Tr, at 759-761.
[388] Tr, at 762.
[389] Tr, at 763.
[390] Tr, at 765-766.
[391] Tr, at 771-773.
[392] Tr, at 775-776.
[393] Tr, at 776.
[394] Tr, at 777-778.

references made to a "blue flu" after the conversation during which she learned what it meant, although she confirmed that she understood it to be an "illegal action."[395]

Murphy testified on cross-examination that she believed the conversation between Shelley and Collins took place at the same time as the discussion during which she asked about the meaning of the term "blue flu."[396] Murphy denied hearing Shelley say to Collins that he wanted to arrest Hagenmayer.[397]

Nathan Hawker testified on behalf of the Sheriff's Office. Hawker is the Chief Custody Deputy for the Sheriff's Office, a position he has held since July 1, 2024, and that Drapikowski held before him.[398] Prior to becoming the Chief Custody Deputy, Hawker was a corrections captain at Jamesville Correctional Facility.[399] Hawker testified that, although he was still a corrections captain in the summer of 2023, he was assigned to the Justice Center by Shelley so he could learn about the facility's operations.[400]

Hawker testified that he was called by Passino on August 5, 2023 when there was a short staffing situation in the booking unit, and although Hawker was not scheduled to work at the time, he reported to the booking unit.[401]

Melissa Berlinski provided rebuttal testimony on behalf of the DSBA. Berlinski was previously employed by the Sheriff's Office in a variety of capacities, the last of

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[395] Tr, at 778-779.
[396] Tr, at 780-781.
[397] Tr, at 782.
[398] Tr, at 790.
[399] Tr, at 792.
[400] Tr, at 794-795.
[401] Tr, at 796-797, 800-801.

which was as Civil Deputy Chief from January 1, 2023, until December of 2023.[402]

Berlinski testified to being present for a discussion in August of 2023 in the "reception area[ ] outside the sheriff's office" during which Collins walked in.[403] Berlinski testified that Shelley, Fisher, and Murphy were also present at the time.[404] Berlinski testified that she heard Shelley say, to Collins, words to the effect of "would you like to help me arrest" Hagenmayer.[405] According to Berlinski, she was standing next to Shelley when he made the statement.[406] Berlinski testified further that after Shelley made the remark, Collins looked "startled," and Shelley said something to the effect of "I have to learn how to not say things out loud."[407] Berlinski testified that Murphy appeared to try to stop Shelley from making the first comment.[408] According to Berlinski, the situation became "awkward," and the group dispersed.[409]

Berlinski testified on cross-examination that her employment with the Sheriff's Office ended in December of 2023 because her probation period was terminated, and that she did not choose to leave the Sheriff's Office at that time.[410]

Berlinski testified on cross-examination that the term "blue flu" was not used while Collins was present, but rather, it had been discussed before her arrival.[411] Berlinski could not recall Shelley saying anything to Collins about Hagenmayer calling in

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[402] Tr, at 815.
[403] Tr, at 816.
[404] *Id.*
[405] Tr, at 817. Berlinski could not specifically recall whether Shelley used Hagenmayer's name or referred to the DSBA President. *Id.*
[406] Tr, at 820.
[407] Tr, at 818.
[408] *Id.*
[409] Tr, at 820
[410] Tr, at 821-822.
[411] Tr, at 822.

sick.[412]

When asked about Shelley's statement to Collins, Berlinski testified on cross-examination that she did not perceive it as a direct order to arrest Hagenmayer, but rather an inquiry about whether Collins would "like to help [Shelley] arrest the president of the DSBA."[413] Berlinski agreed that Shelley and Collins had a contentious relationship, and she did not recall Drapikowski being present for the conversation in the reception area.[414]

DISCUSSION

Although the six allegations made by the DSBA overlap in terms of the underlying factual bases and the sections of the Act allegedly violated, the allegations will be addressed, in turn, as articulated in the charge.[415]

The DSBA's first allegation is:

> Sheriff Shelley's repeated threats to arrest and prosecute Deps. Hagenmayer and Earl were made for the purpose of intimidating Deps. Hagenmayer and Earl, discouraging them from participating in activity protected by Civil Service Law §§[]201 and 202, specifically negotiating with OCSO and the County on behalf of the DSBA[,] in violation of Civil Service Law §[]209-a.1(a) and (c)."[416]

Section 209-a.1(a) of the Act declares it an improper practice for a public employer to deliberately "interfere with, restrain or coerce public employees in the

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[412] *Id.*
[413] Tr, at 822-823.
[414] Tr, at 823.
[415] None of the allegations are specifically against the County. All allegations reference action by Sheriff Shelley or the Sheriff's Office. The DSBA's representative stipulated during the hearing that the charge does not allege a violation of the Act by the County. Tr, at 312-313. Nonetheless, a motion made by the County during the hearing in this matter for the charges to be dismissed as to the County was denied, as the County and Sheriff are joint employers.
[416] ALJ Ex 1, at ¶ bb.

exercise of their rights guaranteed in section two hundred two of this article for the purpose of depriving them of such rights[.]"[417]

When employer speech is alleged to have violated § 209-a.1(a), PERB applies the following objective test:

> We examine only whether a reasonable employee would view the statements as threatening or coercive in the context in which the statements are delivered. An employer's representatives "are entitled to express opinions regarding the merits" of the subject at issue "so long as they do not do so in a coercive manner nor subvert the authority of the [Union's] negotiators."[418]

Witness testimony conflicted over who, exactly, Shelley threatened to arrest, although there is no dispute that he made statements about making arrests related to the suspected blue flu. On balance, however, I credit the testimony that Shelley specifically threatened to arrest Hagenmayer and Earl, or at least that he specifically threatened to arrest union officials. The fact that some witnesses did not hear, or recall hearing, Shelley mention union officials by name or title does not contradict those who did; the evidence strongly suggests that Shelley discussed or made comments about blue flu-related arrests on a multitude of occasions.

During the hearing, Shelley stated: "If I had enough to arrest Hagenmayer I would do it myself."[419] Shelley's willingness to articulate this during the hearing supports the allegation that he specifically mentioned arresting Hagenmayer at other times and in other settings. Witness testimony reveals that threats to arrest the union officials were disseminated to members of the bargaining unit. Although Shelley denied

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[417] Act, § 209-a.1(a).
[418] *Pleasantville Union Free Sch Dist*, 51 PERB ¶ 3024, 3104 (2018), quoting *Buffalo City Sch Dist*, 49 PERB ¶ 3028, 3088 (2016).
[419] Tr, at 370.

specifically threatening to arrest Hagenmayer or Earl, I found Shelley to be a less than credible witness. Throughout his testimony, Shelley was combative, reticent, and evasive.

Shelley's own testimony reveals that his suspicions about a blue flu were not supported by concrete evidence. The record does not establish that Shelley had a reasonable basis for accusing Hagenmayer and Earl of orchestrating a blue flu or even of suggesting, generally, that employees were engaged in a blue flu, nor do the actions taken by the Sheriff's Office reveal a sincere effort to ascertain whether a blue flu occurred. Notably, the investigation into potential sick leave abuse only addressed absences occurring after the closure of the booking unit. There was no apparent effort to determine whether the absences on the day of the booking closure were legitimate.

Although a blue flu, had one occurred, would be unprotected activity under the Act, I nonetheless find the threats to arrest union officials for engaging in a blue flu, where there was no legitimate basis to believe one was carried out, to be threatening and coercive to union officials and bargaining unit members. Shelley's repeated, baseless statements about making arrests could certainly have had a chilling effect on the union officials and the bargaining unit as a whole. Hagenmayer specifically testified that the threats caused him to "second guess" negotiating with Shelley on behalf of the bargaining unit.[420] Accordingly, I find that Shelley's threats to arrest Hagenmayer and Earl were in violation of § 209-a.1(a).

As for the portion of the DSBA's first allegation related to § 209-a.1(c), that section of the Act makes it an improper practice for a public employer to deliberately

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[420] Tr, at 267-269.

"discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization[.]"[421]

The DSBA has produced no evidence that Hagenmayer or Earl were subject to any adverse employment action. Accordingly, there can be no violation of § 209-a.1(c) as a result of the alleged threats to arrest and prosecute, as discrimination requires an adverse employment action.[422]

The DSBA's second allegation is: "Sheriff Shelley's repeated threats to arrest and prosecute Deps. Hagenmayer and Earl were made for the purpose of undermining Deps. Hagenmayer and Earl's authority as DSBA president and vice president in violation of Civil Service Law §[]209-a.1(a) and (b)."[423]

The test for determining whether employer speech violates § 209-a.1(a) was articulated above and applied to the same underlying factual allegation: Shelley's alleged threats to arrest and prosecute Hagenmayer and Earl. The DSBA avers that the threats were "made for the purpose of undermining" Hagenmayer and Earl, but the Board has made clear that "[i]n assessing whether any speech violates the Act, we reject the [ ] argument that the speaker's subjective intent or the recipient's subjective reaction to it is relevant. The test for whether speech violates the Act is a purely objective one."[424] Nonetheless, as discussed above, I have found that Shelley's threats to make arrests violated § 209-a.1(a).

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[421] Act, § 209-a.1(c).
[422] *See, e.g., State of New York (OPWDD) (O'Dell)*, 58 PERB ¶ 3028 (2025).
[423] ALJ Ex 1, at ¶ cc.
[424] *Bd of Educ of the City Sch Dist of the City of New York*, 58 PERB ¶ 3016, 3104 (2025), *quoting Buffalo City Sch Dist*, 49 PERB ¶ 3028, at 3087 (additional citations omitted).

Section 209-a.1(b) of the Act declares that it is an improper practice for a public employer "to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of [§ 202 rights.]"[425] The Board has made clear that

> the term "interference" in subsection (b) is "designed to prevent a public employer from meddling in the internal affairs of the organization or trying to control it." Moreover . . . "the prohibition in [that subsection] is directed to conduct by a public employer which would compromise the independence of an employee organization that represents or seeks to represent its employees."[426]

No evidence has been presented to demonstrate that the County has sought to control the DSBA, nor has there been evidence presented that the County's actions do or could compromise the DSBA's independence. Even if the Sheriff's alleged statements did, as the DSBA alleges, undermine Hagenmayer's and Earl's authority, they did not reflect an attempt to control or compromise the DSBA's independence. Based on the standard articulated by the Board, the DSBA has not demonstrated in this case that the County violated § 209-a.1(b).

The DSBA's third allegation is:

> Sheriff Shelley's repeated threats to arrest and prosecute Deps. Hagenmayer and Earl were made for the purpose of retaliating against them for their engagement in activity protected by Civil Service Law §§[]201 and 202, including the presentation of and negotiation over the summer overtime proposal in violation of Civil Service Law §[]209-a.1(a) and (c).[427]

To prove that retaliation has occurred in violation of §§ 209-a.1(a) and (c), the

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[425] Act, § 209-a.1(b).
[426] *Pleasantville Union Free Sch Dist*, 51 PERB ¶ 3024, 3104 (2018), *quoting State of New York (Dept of Corrections and Community Supervision)*, 50 PERB ¶ 3037, 3157 (2017) (additional citations omitted).
[427] ALJ Ex 1, at ¶ dd.

charging party bears a well-established burden:

> When an improper practice charge alleges retaliation in violation of § § 209-a.1 (a) and (c) of the Act, the charging party has the burden of demonstrating three elements by a preponderance of the credible evidence: a) that the affected individual engaged in protected activity under the Act; b) such activity was known to the person or persons taking the employment action; and c) the employment action would not have been taken "but for" the protected activity. As we have often reaffirmed, the ultimate burden of proof always remains with the charging party. However, the initial burden of proof to establish a *prima facie* case (an inference of improper motivation) is relatively low, and a charging party can establish the existence of anti-union animus by statements or by circumstantial evidence. Only "if the charging party can establish such an inference, does the burden of production shift to the respondent to present evidence demonstrating that its conduct was not improperly motivated." The employer "can dispel the *prima facie* case, and defeat the charge, by rebutting any of the three prongs of the *prima facie* case or through the presentation of evidence demonstrating that the employment action or conduct was motivated by a legitimate non-discriminatory business reason."[428]

In the present case, although discussion or negotiation of overtime procedures by union leadership are certainly protected activity, and that protected activity was known to the Sheriff, the DSBA fails meet its *prima facie* burden because, as noted above, there is no evidence that Hagenmayer or Earl were subject to adverse employment action. Accordingly, the DSBA has not demonstrated that retaliation or discrimination in violation of §§ 209-a.1(a) and (c) has occurred.

The DSBA's fourth allegation is:

> [The Sheriff's] action of sending Chiefs Murphy and Berlinski to the homes of members who called in sick on July 20 [and] 21[, 2023,] and Captains Moore and Hawker on August 8, 2023, was taken for the purpose of retaliating against those members for exercising their protected right to use a contractually negotiated benefit, namely sick leave as provided in Article 16 of the CBA, in violation of Civil Service

[428] *Maine-Endwell Cent Sch Dist,* 56 PERB ¶ 3013, 3071 (2023) (internal citations omitted).

Law §[]209-a.1(a) and (c).[429]

The DSBA has failed to show that any adverse employment action was taken against any employees who were subject to sick checks while utilizing sick leave or FMLA leave. Although multiple witnesses testified that they were surprised by the visits and felt intimidated, all agreed that they did not suffer any disciplinary action or loss of pay as a result of the sick checks. Accordingly, the DSBA has not demonstrated that those employees were retaliated against in violation of §§ 209-a.1(a) and (c).[430]

The DSBA's fifth allegation is: "Sheriff Shelley's comments made at and conduct during Justice Center C watch roll call on August 11, 2023, were done for the purpose of undermining Dep. Hagenmayer's authority as DSBA president in violation of Civil Service Law §[]209-a.1(a) and (b)."[431]

The test to be applied where employer speech is alleged to have violated § 209-a.1(a) was articulated above.

The DSBA alleges that Shelley told the assembled employees at the August 11, 2023, roll call—the vast majority of whom were DSBA members—that the DSBA lied to them about negotiations over the double time-and-a-half proposal, and that he (Shelley) had always wanted "J meds" suspended as part of an overtime agreement.

The DSBA's witnesses who testified about the August roll call testified to this

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[429] ALJ Ex 1, at ¶ ee.

[430] There is no need to analyze whether the employees were engaged in protected activity, as the charging party's *prima facie* burden cannot be met without showing adverse employment action. Moreover, as the charge specifically alleged that the sick leave checks constituted retaliation in violation of §§ 209-a.1(a) and (c), the question of whether the sick leave checks might constitute a standalone violation of § 209-a.1(a) is not before me. *See, e.g., County of Suffolk and Sheriff of Suffolk County*, 29 PERB ¶ 3002 (1996).

[431] ALJ Ex 1, at ¶ ff.

version of events, while Shelley testified that he merely addressed a rumor that he had not always sought a concession regarding "J meds."

I credit the DSBA witnesses' accounts of the comments made during roll call. Their descriptions of Shelley's comments were consistent, and they testified credibly. Shelley, on the other hand, was not a credible witness, as already discussed.

While the Board has held that with respect to employment issues, "[a]n employer's representatives 'are entitled to express opinions regarding the merits' of the subject at issue 'so long as they do not do so in a coercive manner nor subvert the authority of the [Union's] negotiators[,]" I find that in the instant case, Shelley's comments did just that.[432] By telling DSBA members during roll call—ostensibly a time to disseminate important information about the upcoming shift, and in his capacity as Sheriff—that their union had lied to them about negotiations over the overtime proposal, Shelley disparaged the DSBA leadership and undermined their authority and credibility. By delivering this message to DSBA members in this setting, Shelley interfered with the DSBA's and its members' organizational and representation rights under the Act, in violation of § 209-a.1(a).

The DSBA's sixth and final allegation is:

> [The Sheriff's] conduct in the negotiating over the DSBA's summer overtime proposal, specifically Sheriff Shelley's initial agreement to the terms as proposed by the DSBA, later refusal to agree to the proposal unless the DSBA suspended the Work Limitation and Restriction Procedure during the term of the MOA, and statement to DSBA members during Justice Center C watch roll call on August 11, 2023, that he had 'always wanted medicals' constituted bad faith bargaining in violation of . . . Civil Service Law §[]209-a.1(d).[433]

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[432] *Pleasantville Union Free Sch Dist*, 51 PERB ¶ 3024, at 3104.
[433] ALJ Ex 1, at ¶ gg.

Although the charge and this specific allegation involve a proposed agreement on a specific topic, and not collective negotiations for a new or successor CBA, PERB caselaw makes clear that the duty to negotiate continues during the life of a contract, not merely when it is time to negotiate a successor agreement.[434]

As a preliminary matter, the Sheriff and the County are joint employers. Neither the Sheriff nor the County can independently reach an agreement regarding terms and conditions of employment with the DSBA; both joint employers must be party to an agreement.[435] Although PERB has held that a party to negotiations may rely on the apparent authority of another party's negotiator, there is no evidence in the record that the DSBA believed the Sheriff had the authority to unilaterally reach an agreement on behalf of the joint employers.[436]

Second, the record evidence does not establish that there was a meeting of the minds with respect to the proposal and any conditions placed thereon by the Sheriff or County. "The Act specifically defines an agreement as an exchange of mutual promises between the chief executive officer and an employee organization 'which becomes a binding contract' except as to any provisions which require approval by the legislative body . . . ."[437] It is a fundamental tenant of contract law that a contract only exists where there has been a "meeting of the minds" between the parties.[438]

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[434] *See, e.g., New Paltz Cent Sch Dist*, 11 PERB ¶ 3057 (1978).
[435] *See, N.Y. Public Library et al v NYS Pub Empl Relations Bd*, 45 AD2d 271 (1st Dept 1974), *aff'd* 37 NY2d 752, 8 PERB ¶ 7013 (1975); *County of Ulster and Ulster Cnty Sheriff*, 3 PERB ¶ 3032 (1970).
[436] *See Town of Dresden*, 17 PERB ¶ 3096, 3149 (1984); *Sachem Cent Sch Dist No. 5*, 6 PERB ¶ 3014, 3035 (1973)
[437] *Town of Dresden*, 17 PERB ¶ 3096, at 3149.
[438] *See Yonkers Federation of Teachers, Local 860, American Federation of Teachers, AFL-CIO*, 8 PERB ¶ 3020, 3031 (1975).

The parties have presented conflicting evidence as to what was said during the June 8, 2023, meeting and what the Sheriff's position was on the overtime proposal and the DSBA's understanding thereof. The Sheriff takes the position that he did not "affirmatively accept[]" the overtime proposal at the June 8, 2023 meeting, and that he "always raised the issue of wanting to suspend [J meds] in connection with the Summer Overtime Proposal."[439] Conversely, the DSBA asserts that "when the DSBA presented the proposal to Sheriff Shelley and his command staff on or about June 8, 2023, [Shelley] indicated his agreement to its terms without concessions."[440] The record does not establish that there was a meeting of the minds as to an agreement on the summer overtime proposal.[441]

As the Board has held,

> when there is strong and compelling objective evidence in the record demonstrating that there was no meeting of the minds between the parties with respect to the terms of a signed tentative agreement, we will not find a violation of §§209-a.1(d) . . . of the Act when a party refuses to execute a collectively negotiated agreement containing the provisions of that tentative agreement.[442]

Given my findings that the Sheriff did not have authority to unilaterally bind the joint employers and that there was no meeting of the minds as to terms of a summer overtime agreement, the DSBA has not established that the Sheriff engaged in bad faith negotiations in violation of § 209-a.1(d).

For the reasons set forth above, the County of Onondaga and Onondaga County

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[439] Sheriff's Brief, at 4, 5.
[440] DSBA's Brief, at 59.
[441] Even if the factual dispute could be resolved and I found that there was a meeting of the minds between the DSBA and Sheriff, there can be no binding agreement between the employee organization and only one of the joint employers.
[442] *Village of Bath*, 45 PERB ¶ 3037, at 3091.

Sheriff violated § 209-a.1(a) of the Act when the Sheriff threatened to arrest DSBA officials for engaging in a "blue flu" without evidence of the same and when the Sheriff commented to DSBA-represented employees during roll call that the employee organization had lied to them about the negotiation of an enhanced overtime agreement. The remaining allegations are dismissed in their entirety.

IT IS, THEREFORE, ORDERED that the County of Onondaga and Onondaga County Sheriff:

1. Stop threatening to arrest DSBA officials without reasonable basis to do so;
2. Stop making statements to employees about the DSBA's conduct that interfere with organizational and representational rights guaranteed by the Act; and
3. Sign and post the attached notice at all physical and electronic locations customarily used to post notices to bargaining unit employees.

Dated at Albany, New York
this 23rd day of December, 2025

Sarah M. Coligan
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT (ACT)

We hereby notify all employees of the County of Onondaga and Onondaga County Sheriff in the bargaining unit represented by the Deputy Sheriff's Benevolent Association of Onondaga County, Inc. (DSBA) that:

PERB has found that the County of Onondaga and Onondaga County Sheriff violated § 209-a.1(a) of the Act when the Sheriff threatened to arrest DSBA officials for engaging in a "blue flu" without evidence of the same and when the Sheriff commented to DSBA-represented employees during roll call that the employee organization had lied to them about the negotiation of an enhanced overtime agreement.

Furthermore, the County of Onondaga and Onondaga County Sheriff shall forthwith:

1. Stop threatening to arrest DSBA officials without reasonable basis to do so; and
2. Stop making statements to employees about the DSBA's conduct that interfere with organizational and representational rights guaranteed by the Act.

Dated . . . . . .

By . . . . . .
on behalf of the County of Onondaga

By . . . . . .
on behalf of the Onondaga County Sheriff

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

The Public Employment Relations Board is an independent New York State agency that administers the State Employment Relations Act of 1937, the Public Employees' Fair Employment Act of 1967 (known as the Taylor Law), and the Farm Laborers' Fair Labor Practices Act of 2019. To find out more about your rights under these Acts, you may obtain information from the Board's website at www.perb.ny.gov.