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To: Chairwoman Dimitrijevic
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Members of the Committee on Judiciary, Safety and General Services

cc: All Supervisors
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From: Paul Bargren *PB*
Corporation Counsel

Re: **Vacancies, Funded and Unfunded Positions
in the Milwaukee County Sheriff's Office**

In response to inquiries, I have prepared this report on vacancies and funding in the Milwaukee County Sheriff's Office.

A number of questions arose during the meeting of the Committee on Judiciary, Safety and General Services on April 9, 2015. Committee members were provided with sometimes conflicting information on the number of vacancies in the Sheriff's Office, the number of vacant and funded positions in the 2015 Budget, the number of new hires desired or authorized, and the projected deficit for the Sheriff's Office.

I have collected information for this report from sources including the Comptroller's Office, Sheriff's Office reports provided to the Comptroller's Office and the 2015 Budget and adoption proceedings. Materials cited are assembled in an appendix that I will send separately.

Observations

I can summarize much of what follows with these observations:

- The Sheriff's Office is, in fact, projecting a deficit for 2015, now estimated by the Sheriff's Office at \$902,926. (Major Variance Report at 1.)
- The Sheriff's Office deficit for 2014 was \$6 million. (Comptroller's Office.)
- The salary impact in 2015 for the 11 command staff positions restored by the Board to the budget without funding is \$967,826 per the Comptroller, \$847,106 per the Sheriff's Office. This is comparable to or more than the deficit now projected by the Sheriff's Office for 2015.
- The Sheriff's Office itself opted not to add any new deputies until July 1, 2015(10-deputy training class), in part to offset the added cost of the 11 Command Staff positions. (Major Variance Report at 5; Budget Blue Packet at 15.)
- The Sheriff's Office budget projects adding the 10 deputies in July as a training class; July; DAS/Budget has approved 5 of them. The flap at Judiciary Committee on April 9 boils down to a disagreement over adding 5 positions for six months, or 2.5 FTE, with a cost for those positions I estimate at \$164,510 for 2015.
- DAS/Budget has said it would consider approving additional deputy hiring as retirements occur (there were three this week), since those positions are funded. My understanding is that continues to be their position.
- More than 50% of the cost of the 10 additional "funded" deputy positions that the County Board added to the 2015 Budget was to be paid for with parking ticket revenue that does not exist. (Major Variance Report at 2, 3).
- The 15 unfunded deputy positions that were added to the 2015 Budget will not take effect unless and until funding is provided by Board/Executive action through a contingency transfer or similar action.
- Any new hires by the Sheriff's Office require a lead time of at least 18 weeks, plus whatever time is required to organize a training class, since all new deputies must complete training before starting active duty. Under the current schedule, regardless of how many new deputies are hired or authorized in 2015, they will not be available until about January 1, 2016.
- An additional appropriation of approximately \$1.5 million would a) cover the command staff deficit, b) cover the artificial parking ticket revenue that the Board included in the budget supposedly to fund the 10 additional funded deputy positions and c) allow the Sheriff's Office to convene a class of about 30 deputy/trainees on July 1.

Number of Positions

The Comptroller's Office has provided the following chart of positions for the Sheriff's Office, using April 2015 data:

Position	Adopted Total FTE	Current Filled	Filled not Funded	Funded not filled
Bureau Director	2	5	3	0
Facility administrator	0	1	1	0
Captain	4	11	7	0
Deputy	262	240	0	-22
Sergeant	14	11	0	-3
Lieutenant	9	6	0	-3
Co 1s	262	221	0	-41
Corr Offcr Lt	15	12	0	-3
Corr Manager	4	4	0	0
Sheriff and Dept Administr	2	2	0	0
Non Sworn Non Hourly	114.01	103	0	-11.01
Total	688.01	616	11	-83.01

Due to retirements among the veteran deputy workforce, the "Current Filled" and "Funded not Filled" columns will be changing. For example, the Sheriff's Office advised that three veteran officers submitted retirement notices April 27, effective within about two weeks, which will drop the "Filled" number to 237 and the "Funded not Filled" number to -25.

Sheriff's Office Deficit

The Judiciary Committee was told at the April 9 meeting that in contrast to recent years, the Sheriff's Office was committed to running a balanced budget in 2015 rather than a deficit. The Committee was also told that the Sheriff's Office was already showing a surplus for 2015.

However, in its Major Variance Report submitted to Central Accounting in the Comptroller's Office dated just eight days later on April 17, 2015, **the Sheriff's Office projects a deficit for 2015 of \$902,926** on budgeted spending of \$81 million. It is unclear why representations of no deficit were made at the April 9 meeting.

The Comptroller's Office has confirmed that the Sheriff's Office deficit for 2014 was \$6 million.

New Hires

Hiring new deputies for active duty in the Sheriff's Office requires a long lead time, since all new deputies must complete an 18-week training course, which must be organized and offered at the Training Academy. Even then, the newly graduated deputies are eased into active duty.

The Sheriff's Office's projected deficit of \$902,926 includes a request to hire 10 new deputy-trainees for a training class beginning July 1, 2015, at a cost of about \$329,020. (Major Variance

Report at 6.) Those hirees would fill some of the 22 “Funded not Filled” positions shown in the chart but would not be ready for duty until near the end of 2015 at the earliest. Thus all active duty demands would still fall on existing deputies through the end of 2015, including requiring overtime to continue at or above roughly current levels. Expected additional retirements during 2015 will increase demands on remaining deputies.

At some point, therefore, whether in 2015 or later, there will be a double “hit” on the budget. New deputy-trainees will be put on the payroll but existing deputies will need to continue to perform duties at current staffing and overtime levels for at least half a year until the trainees are ready for duty.

There are definite efficiencies in providing a training class for up to 30 new deputy-trainees at one time, rather than as few as 10. Past classes have had 25 to 30 members. The Sheriff’s Office uses the same number of teachers and instructional resources for a class of 10 as for a class of 30. All things being equal, the Sheriff’s Office would prefer a class of about 30. If a class of 30 began July 1, 2015, and given normal attrition, this would result in about 25 new deputies at the end of 2015, roughly equivalent to the number of available, funded deputy positions.

The Comptroller estimates the total projected Sheriff’s Office deficit for 2015 with a class of 30 deputy/trainees starting July 1 at about \$1.5 million.

The Sheriff’s Office has not addressed the 41 vacancies in funded correctional officer positions.

New Positions and Funding or Lack of Funding in 2015 Budget

The Executive’s Recommended 2015 Budget added \$3.9 million in tax levy to the Sheriff’s Office budget.¹ The County Board preserved that increase.

The Executive’s Recommended 2015 Budget provided funding for the Sheriff’s Office “as a ‘lump sum’ amount to acknowledge the Sheriff’s constitutional and statutory authority to deploy resources as the Office sees fit. It is anticipated and expected that the Office of the Sheriff will manage its staffing and expenditures within this allocated amount.” *Id.* at 159. The County Board accepted that approach as well.

11 Unfunded Command Staff positions

The Sheriff’s Office has chosen to fill 11 unfunded Command Staff positions for 2015. All 11 positions apparently had incumbents at the beginning of the year (although one incumbent has recently departed for MATC, leaving 10 incumbents). These are the Bureau Director, Facility Administrator and Captain positions noted in the chart above.

The Executive’s Recommended 2015 Budget had abolished the 11 unfunded command positions. *Id.* at 160.

¹ The Executive proposed, and the Board adopted, moving Emergency Management and 911 Communications from the Sheriff’s Office to the new Office of Emergency Management. The County Board rejected the Executive’s proposals to transfer Park Patrols and County Grounds security to municipalities; those functions stay with the Sheriff’s Office in 2015. None of those actions affect matters in this report.

On a vote of 11-6, the County Board amended the Budget to restore the positions without providing funding for them. (Blue Packet at page 15, Amendment 18.) The Executive vetoed that action but the Board overrode it. (Veto 22, override vote 16-2).

Per figures from the Comptroller, the salary impact of those positions is \$967,826 for 2015. The Sheriff's Office estimates the cost of the unfunded command staff positions at \$1.34 million. Major Variance Report at 5. Reflecting the Executive's acknowledgment that the Sheriff's Office has leeway in managing its budget, the Sheriff's Office has chosen to offset \$468,700 of the command staff cost by leaving open 10 funded deputy positions (i.e., the training class) until the last half of the year. Major Variance Report at 5. The Sheriff's Office states that "this should reduce the Command Staff cost to \$847,106."

10 New "Funded" Deputy positions

The County Board amended the 2015 Budget to add the 10 new "funded" deputy positions "at a personal service and fringe benefit cost of \$950,940." (Yellow Packet Amendment 1A039.) The amendment by Sup. Weishan was defeated 1-8 in Finance Committee but then adopted 9-8 on the Board floor. The Executive line-vetoed that provision to propose adding only 5 positions, but the veto was overridden. (Veto 23, override vote 16-2).

I have referred to the 10 positions as "funded" – in quotes – because more than half of the funding source provided by the Board was suspect. Rather than provide full tax levy funding for the 10 positions (an amendment offered in committee by then-Sup. David Cullen but not advanced), the Board determined to add only \$450,940 in tax levy funding and to make up the difference with \$500,000 in revenue "anticipated" to be generated by additional parking citations to be issued by the new deputies. *See* 1A039; *see also* Sheriff's Office April 17 Major Variance Report at 2.

That revenue source does not exist. The Sheriff's Office April 17 Major Variance Report notes that new officers will not be available to write additional citations until a training class is hired and trained, i.e., not until 2016. *Id.* at 3. The Sheriff's Office Major Variance Report states, "The 2015 The annual amount [of citation revenue] projected for 2015 is \$892,350 resulting in a deficit of \$822,150." *Id.* at 2.

Unfunded Deputy Positions

The same amendment that added the 10 "funded" deputy positions also added new 15 deputy positions that "are unfunded." Budget Amendment 1A039. Those 15 positions are not included in the "Adopted Total FTE" in the Comptroller's chart above and are not otherwise addressed in this report. No tax levy or other revenue was provided by the Board in the 2015 Budget or elsewhere for those positions.

Under state statutes governing county operations, "[n]o ordinance or resolution authorizing the creation of new or additional positions ... shall become effective in any fiscal year until an appropriation of funds for such purpose is made..." Wis. Stat. § 59.60(10). Because no appropriation has been made, the budget resolution creating these 15 positions is not in effect.

Other Measures

Sup. Weishan had also proposed a budget amendment that would have added \$1.88 million in tax levy, as well as the proposed \$500,000 in added citation revenue, for a total of \$2.38 million in salaries and benefits to create 25 funded deputy positions rather than only 10. The amendment failed 3-6 in Finance Committee and 7-10 on the Board floor. Budget Amendment 1A009.

Sheriff's Lawsuit Against Supervisors and Others

On February 2, 2015, the Sheriff joined with the Deputies' union and sued Milwaukee County, including the County Board.

The suit alleges that even as adopted by the Board after its veto overrides, under the 2015 Budget, an "untenable emergency situation exists in the Office of Sheriff because of a lack of authorized budgeted positions..." *Id.* ¶ 6. The suit demands an additional 75 deputy positions, 43 correctional officers, 10 deputy sergeants and 7 correctional lieutenants be created, or 135 positions in all. *Id.* 47, 48.

The suit seeks an order "declaring that the County Board of Supervisors and the County Executive's 2015 budget is arbitrary and unreasonable" and "creates unsafe and unreasonable working conditions." *Id.* at 12 ¶¶ A, B. The suit asks the Court for "an order requiring the County Board of Supervisors and the County Executive to authorize and create additional deputy sheriff positions." *Id.* at 13 ¶ F.²

Funding and Position Controls

Portions of two sections of Chapter 59 of the Wisconsin statutes address issues related to unfunded positions:

59.60(10) ORDINANCE INCREASING SALARIES; NEW POSITIONS; WHEN EFFECTIVE. No ordinance or resolution authorizing the creation of new or additional positions or increasing salaries shall become effective in any fiscal year until an appropriation of funds for such purpose is made ...

59.60(12) PAYMENTS AND OBLIGATIONS PROHIBITED; CERTIFICATIONS; PENALTIES. No payment may be authorized or made and no obligation incurred against the county unless the county has sufficient appropriations for payment. No payment may be made or obligation incurred against an appropriation unless the director [of the county department of administration] first certifies that a sufficient unencumbered balance is or will be available in the appropriation to make the payment or to meet the obligation when it becomes due and payable. An obligation incurred and an authorization of payment in violation of this subsection is void. A county officer who knowingly violates this subsection is jointly and severally liable to the county for the full amount paid. A county employee who knowingly violates this subsection may be removed for cause. ...

Under Sub. (10), no new or additional position is effective until there is an appropriation. This provides an easy answer to the fate of the 15 new unfunded deputy positions: Those positions are not effective unless or until funding is provided.

As to continuing payment for the 11 unfunded Command Staff positions, by practice and interpretation, they have been treated historically as continuations of existing positions rather than creation of new positions. For one thing, by allowing incumbents to continue in unfunded positions, the County Board is effectively authorizing a deficit for that department. Under that view, then, payment of those salaries may be authorized under Sub. (12) if "the county has sufficient appropriation for payment" and if the DAS Director (as represented by the Budget

² The County's outside counsel has filed a motion to dismiss the suit, which is scheduled for hearing in June.

Director) “certifies that a sufficient unencumbered balance is or will be available in the appropriation to make the payment.”

What’s missing from Sub. (12) is specificity: Does the “sufficient unencumbered balance” refer to a departmental balance? That generally is DAS’ interpretation. Or does it refer to a positive balance for the County overall?

In dealing with departments headed by the Executive’s appointees, DAS and Budget obviously have much more control over budgets and positions. It appears that part of Budget’s decision earlier in 2015 to authorize only 5 new deputy hires rather than the 10 requested by the Sheriff’s Office was based on the \$6 million deficit incurred by the Sheriff’s Office in 2014 and uncertainty about the Office’s 2015 deficit. Obviously the Sheriff’s Office has chafed at any such limitations, as evidenced for one thing by the lawsuit filed against the Executive and Supervisors.

But where a department is headed by an elected official, the Comptroller’s Office has taken the position that as long as the County overall is not in a projected-deficit position, payments will be authorized for work that has been performed by employees in funded positions and for existing incumbents in authorized but unfunded position. Payments will not be authorized by the Comptroller’s Office for new hires into new positions that are unfunded and/or unauthorized (for example the 15 unfunded deputy positions). Preferably, departments will allow incumbents to continue in unfunded positions only if they can find funds within their budgets. If an incumbent leaves an unfunded position, the Comptroller’s Office will pay for a new incumbent only if both the department and the County are projecting surpluses. Specifically related to the Sheriff’s Office, that Office includes authorized but unfunded positions that are filled, which contributes toward the Office’s projected deficit.

Because the Sheriff is an elected official rather than an appointee answering to the Executive, the ability of both the Executive and Comptroller to limit deficit spending or spending for unfunded positions by the Sheriff is sometimes limited, as is apparent to anyone who has followed County finances in recent years. This becomes another gray area in the law.