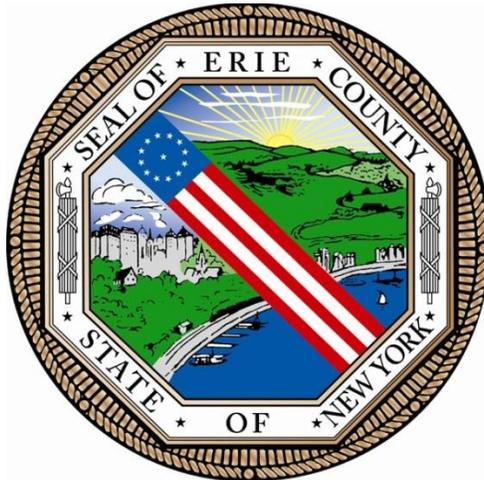


**September 2018**

**A Report on Shift Differential Payments  
to Erie County Employees**



**STEFAN I. MYCHAJLIW  
ERIE COUNTY COMPTROLLER**

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**HON. STEFAN I. MYCHAJLIW  
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95 FRANKLIN STREET  
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**September 12, 2018**

Erie County Legislature  
92 Franklin Street 4<sup>th</sup> Floor  
Buffalo, New York 14202

Dear Honorable Members:

In May, the Erie County Comptroller's Office has completed a report on shift differential and shift differential-overtime payments made to certain Erie County employees. As yet, increased shift differential payments have not been made to employees entitled to them. As such, we have revisited the issue.

Our objectives were to:

- Determine what Erie County employees covered by the CSEA collective bargaining agreement are owed for shift differential pay.
- Determine if these employees are being paid properly.

To accomplish these objectives, we reviewed the previous collective bargaining agreement and the relevant changes made to it under the current agreement. We also reviewed payments made to employees for shift differential and shift differential-overtime.

As a result of our examination, we have determined that employees are being underpaid for work performed and have made a recommendation that employees be properly compensated according to the collective bargaining agreement.

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## Collective Bargaining Agreement

Section 13.7 of the CSEA Local Collective Bargaining Agreement, which covers January 1, 2007 through December 31, 2016, reads:

### Shift Differential Pay

- (a) An eighty-five (\$.85) cents per hour shift differential will be granted to all employees on the second or third shifts for every hour actually worked on such shifts.
- (b) For every twenty-four (24) hour operations, normally the second shift begins at 3:00 p.m. and terminates at 11:00 p.m., while the third shift begins at 11:00 p.m. and ends at 7:00 a.m. When an employee works for (4) hours or more into the second shift, he/she will be paid for all hours worked in the second shift, including the first (4) hours.
- (c) Shift differential will be paid to employees for actual hours in accordance with the above provisions.
- (d) All cash payments for employees who are entitled to shift differential and who work overtime shall be made not later than the next regular payroll check.
- (e) For traditional day (usually 9:00 to 5:00 p.m.) operations, employees who are scheduled (involuntarily) to work a full hour or more beyond their normal shift shall be paid the appropriate shift differential as provided in subdivision (a) of this section for all hours worked.

On January 10-12, 2018, members of CSEA Local 815 voted on a new contract, whose term would be January 1, 2017 through December 31, 2022. The new contract passed by a vote of 1578 in favor and 887 opposed. On January 18, 2018, the Erie County Legislature unanimously approved item number Comm. 2E-26 "CSEA Local 815 – 2017-2021 (sic) Successor Collective Bargaining Agreement."

The issue of shift differential is addressed in the new contract. Shift differential for an afternoon shift is increased from \$.85 per hour to \$1.20 per hour. Shift differential for the midnight shift is increased from \$.85 per hour to \$1.50 per hour.

The wage schedule specifically states the effective dates for raises, including retroactive raises for 2017. Further, the term of the contract is stated to begin on January 1, 2017. However, there is no indication in the fact sheet provided by CSEA that shift differential payments are retroactive to the beginning of the term of the contract, or even to January 1, 2018. As such, for the purposes of this report, it will be assumed that the increase in shift differential became effective on January 18, 2018, the date that the collective bargaining agreement was approved by the legislature. The effective date of increased shift differential payments may be ultimately

clarified with the final editing of the agreement by CSEA and Erie County, which has not yet been completed and released.

## **Shift Differential Payments**

In an attempt to determine if proper shift differential was being paid to employees, we compiled a cost center report which encompassed work performed from January 20, 2018 through September 7, 2018. The report indicated that 211 individuals received shift differential pay for 60,615 hours worked. The amount paid to these individuals was \$51,524. These numbers indicate that a shift differential of \$.85 per hour was paid to these employees. It is important to note that this report does not include work performed on January 18, 2018, which was the day the contract was approved prior to the afternoon shift. It also does not include work performed on January 19, 2018, the last day of pay period 2.

Based on this information, it is clear that at least 211 employees have not yet been properly compensated for work performed through August 31, 2018. The cost center report does not indicate the specific hours worked by the employee. As such, it cannot be determined from the report if the employees were entitled to afternoon shift differential or midnight shift differential. However, it is known that each of these employees was entitled to at least \$1.20 per hour shift differential, and not the old rate of \$.85. Based on the lowest possible shift differential amount in the new contract, these 211 employees are owed at least \$21,215, plus more for individuals who worked a midnight shift.

We also ran a cost center report to examine payments made for a separate category, which is shift differential-overtime. This is shift differential pay for individuals who worked an afternoon or midnight shift and who were also paid overtime. The overtime rate is one and a half times the regular rate. As such, under the previous contract, shift differential for people receiving overtime was \$1.275 per hour for worked performed under this category.

The cost center report for January 20, 2018 through September 7, 2018 indicates that 615 individuals received shift differential-overtime payments. These individuals worked 18,085 hours and received \$23,063. This equates to \$1.275 per hour worked.

Based on this information, it is clear that at least 615 employees have not yet been properly compensated for work performed through August 31, 2018. The cost center report does not indicate the specific hours worked by the employee. As such, it cannot be determined from the report if the employees were entitled to afternoon shift differential-overtime or midnight shift differential-overtime. However, it is known that each of these employees was entitled to at least \$1.80 per hour shift differential-overtime, and not the old rate of \$1.275. Based on the lowest possible shift differential-overtime amount in the new contract, these 615 employees are owed at least \$9,495, plus more for individuals who worked a midnight shift.

## Conclusion

Erie County CSEA employees have been underpaid at least \$15,369 for shift differential and shift differential-overtime payments made at the improper rate, for worked performed from January 18, 2018 through August 31, 2018. Because this number is based solely on the shift differential rate for an afternoon shift, and not the rate for a midnight shift, the number actually underpaid is certainly higher. Further, the amount does not include shift differential for work performed on January 18, 2018, the date of approval of the collective bargaining agreement by the Erie County Legislature, or January 19, 2018, the last day of pay period 2. The contract indicates that employees entitled to shift differential pay shall be paid “not later than the next payroll check.” This has not happened. For some employees, based on the date certain work was performed and based on the effective date of the new collective bargaining agreement, sixteen payroll checks have occurred without payment of wages owed for work performed.

**WE RECOMMEND** that the Department of Personnel take steps to immediately pay individuals money owed for work already performed between January 18, 2018 and August 31, 2018.

**WE FURTHER RECOMMEND** that the Department of Personnel takes steps to ensure that employees are being properly compensated for their work on a timely basis going forward.