NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

STATE OF NEW JERSEY

"Public Employer,"

- and -

NEW JERSEY LAW ENFORCEMENT SUPERVISORS ASSOCIATION,

"Union."

Docket No. IA-2014-003

INTEREST ARBITRATION DECISION AND AWARD

Before
James W. Mastriani
Arbitrator

Appearances:

For the State:
Jeffrey J. Corradino, Esq.
James J. Gillespie, Esq.
Jackson Lewis, PC

For the Union:
Frank M. Crivelli, Esq.
Donald C. Barbati, Esq., on the brief
Pellettieri, Rabstein & Altman

This is an interest arbitration proceeding between the State of New Jersey [the "Employer" or "State"] and the New Jersey Law Enforcement Supervisors Association ["NJLESA" or the "Union"]. They are parties to a collective negotiations agreement [the "Agreement"] that expired on June 30, 2011. After direct negotiations culminated in an impasse, NJLESA filed a Petition to Initiate Compulsory Interest Arbitration on September 16, 2013.

The petition was held during a time period that the parties participated in a mediation process conducted by a PERC appointed mediator. The mediation process did not result in a settlement. Thereafter, on December 6, 2013, I was appointed to serve as interest arbitrator by PERC through its random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1).

This proceeding was held under provision of N.J.S.A. 34:13A-16. This statute was revised effective January 1, 2011 by P.L. 2010, c. 105. The revisions included (but are not limited to) the process of conventional arbitration as the mandatory terminal procedure, that the arbitrators have 45 days to issue an award after appointment and that there be a cap on the amount of base salary items to be awarded. On this latter point, N.J.S.A. 34:13A-16.7(a) defines base salary as:

> The salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall

> include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

The amount that an award cannot exceed is defined in N.J.S.A. 34:13A-16.7(b):

> Which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiations agreement subject to arbitration . . . the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiations agreement in unequal annual percentages.

As will be set forth in the Discussion section, the parties are in sharp conflict as to the amount that the State can expend on salary over the term of the new Agreement.

Arbitration hearings were held on December 13, 17, 18 and 19, 2013. At the hearings, the parties argued orally, presented and cross-examined witnesses and submitted extensive documentary evidence into the record. Testimony was given by Sergeant Eric Holliday, President of NJLESA, Campus Police Sergeant Michael Bell, Thomas Moran, Consultant for NJLESA, Christopher Young, NJLESA Financial Expert and Economist with Tinari Economics Group, Robert Peden, Deputy Director, Office of Management and Budget, David Cohen, Director, Governor's Office of Employee Relations, and Kenneth Green, Director of Employee Relations for the Department of Corrections. Transcripts of the

proceeds were taken. Both parties filed post-hearing briefs on January 6, 2014. In addition, the State filed a post-hearing submission on an issue in dispute on January 13, 2014 and NJLESA filed a response on January 14, 2014.

LAST OR FINAL OFFERS

Pursuant to law, and by direction from the arbitrator, the parties submitted their respective final offers on all issues in dispute. The State objected to the Union's inclusion of a proposal concerning layoff and recall in Article XXXIII, Section M. By interim decision, I sustained the State's objection to that proposal. Accordingly, that proposal will not be considered. The proposals of the parties are as follows:

New Jersey Law Enforcement Supervisors Association

1. **Article XIII: Salary Compensation Plan and Program:**

   The NJLESA seeks the maximum monetary amount available pursuant to N.J.S.A. 34:13A-16.7(b), and the restrictions contained therein, to increase the base salary items of its members. This monetary amount will be allocated between a lump sum payment to NJLESA members and an appropriate across-the-board increase applied to each negotiation unit employee's base salary effective the first full pay periods in July 2013 and July 2014.[1]

2. **Article XIII: Salary Compensation Plan and Program, Section D "Eye Care"**:

   The NJLESA proposes to change the rates contained in this section as follows:

   $45.00 payment for prescription eyeglasses with regular lenses
   $110.00 payment for such glasses with bi-focal lenses

   Add the following: The program shall provide for each eligible employee and dependents to receive a $70.00 payment for contact lenses.

[1] NJLESA provided a detailed scheme reflecting the specifics of its proposal prior to testimony being taken on the issue. The proposal will be set forth in the analysis of the salary issue.

Revise the following: Each eligible employee and dependent may receive only one payment for glasses and/or contact lenses and one payment for examinations during the fiscal period from July 1, 2011 to June 30, 2012, July 1, 2012 to June 30, 2013, July 1, 2013 to June 30, 2014, and July 1, 2014 to June 30, 2015.

3. **Amend Article XIX: Compensatory Time Off, Section D as follows:**

Ordinarily, a maximum of four hundred eighty (480) hours of compensatory time may be carried by an employee. Where the balance exceeds four hundred eighty (480) hours, the employee and the supervisor will meet to amicably schedule such compensatory time off. In the event the employee and supervisor are unable to amicably schedule such compensatory time off, the employee shall be entitled to receive a lump sum cash payment equating to the value of the compensatory time.

4. **Amend Article XXV: Leave for Association Activity, Section A as follows:**

The State agrees to provide leaves of absence with pay for delegates of the Association to attend Association activities. A total of 225 days of such leave may be used in each year from July 1, 2011 to June 30, 2015.

5. **Amend Article XXXVI: Uniform Allowance as follows:**

The State agrees to provide a cash payment of $1535 on January 1, 2012, a cash payment of $1535 on January 1, 2013, a cash payment of $1535 on January 1, 2014, and a cash payment of $1535 on January 1, 2015 to all employees in the unit who have attained one (1) year of service as of December 31, 2011, December 31, 2012 and December 31, 2013 and December 31, 2014 with the exception of Correction Sergeants.

The State will continue its practice of making initial issues of uniforms to all new employees and will continue its practice of uniform allowances to all employee groups except Correction Sergeants. It is understood that employees who are promoted to any of the titles in this unit and who had been issued a uniform at another rank which is still the appropriate uniform, are not to be considered as "new" employees in the context of this article and they will be issued only new insignia and/or badge as required by the appointing authority.

In exception to the program outlined herein, Correction Sergeants will be granted, in lieu of any uniform allowances, cash payments of $917.50 in July, 2011; $917.50 in January, 2012; $917.50 in July, 2012; $917.50 in January, 2013; $917.50 in July, 2013; $917.50 in January, 2014; $917.50 in July, 2014 and $917.50 in January, 2015.

All members of the Association who: (1) worked at some point during the time period covered by this Agreement; (2) were entitled to the uniform allowance/cash payments delineated above; and (3) have since retired, are entitled to the uniform allowance/cash payments delineated above retroactively up until the date of their respective retirement on a pro rata basis.

6. **Add New Section C entitled "Quarterly Supervisor Meeting" to Article V: Policy Agreements:**

There shall a quarterly supervisor meeting at each facility and/or institution among the supervisors and management. Said meetings shall be sometime during the months of January, April, July, and December. The purposes of these meetings are to allow supervisors and management to exchange information regarding the various issues surrounding the operation of each facility and/or institution and to resolve any problems pertaining to the same.

Either supervisors and/or management may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such a meeting. Written response to all agenda items shall be within thirty (30) days of each meeting.

A maximum of seven (7) employee representatives of the Association may attend such quarterly meetings. If any employee representative attends the quarterly meeting and is scheduled to work and works on another shift on the date of said meeting or attends the meeting on his/her normal day off, he/she shall be granted compensatory time for the actual time spent at the meeting. Such compensatory time granted shall not be considered time worked for the computation of overtime.

The provisions of this subsection are solely applicable to employees in the Department of Corrections and Juvenile Justice Commission.

7. **Amend Article XI: Discipline, Section L(6) as follows:**

In the event a disciplinary action is initiated, the employee or his/her representative [remove the following: may request and] shall be provided with copies of all written documents, reports, or statements which will be used against him/her at such hearing and a list of all known witnesses who may testify against him/her, which, normally will be provided not less than ten (10) days, exclusive of weekends, prior to the hearing date, but in no case less than five (5) days exclusive of weekends prior to the hearing date.

8. **Add New Subsections (f) and (g) to Article XVI: Personal Preference Days:**

f. Any employee who is on military leave during the time in which personal preference days are picked shall be permitted to pick their personal preference days upon returning to duty.

g. Any employee who is on military leave after having picked their personal preference days and after having worked the holiday shall be permitted to re-select their personal preference day off upon returning to duty if the day the employee originally chose was during the employee's time being out on military leave.

9. **Add New Section I entitled "Sick Leave for Campus Police Sergeants" to Article XX: Sick Leave:**

A Campus Police Sergeant who has been absent on sick leave for periods totaling fifteen (15) days in one (1) calendar year, specifically from January 1 to December 31, consisting of periods less than five (5) days shall submit acceptable medical evidence for any additional sick leave utilized in that year unless such illness is of a chronic and/or recurring nature requiring recurring absences of one (1) day or less in which case only one certificate shall be necessary for a period of six (6) months.

For purposes of this subsection, a period shall be considered a call out. Specifically, if a Campus Police Sergeant calls out sick for an ongoing illness, it shall be considered one call out. For example, if a Campus Police Sergeant called out sick for three (3) days due to the same illness, that would be considered one (1) call out, not three (3) separate call outs.

10. **Add New Subsection to Article XXVII: Overtime, Section A:**

"Mandatory overtime" means a period of assigned, non-scheduled overtime on the day in which it is to be worked and for a period in excess of fifteen (15) minutes.

11. **Add New Section M entitled "Layoff in Juvenile Justice Commission" to Article XXXIII: Layoff and Recall[2]:**

In the event of the elimination of, facility closures involving, or layoffs pertaining to the title Correction Sergeant, Juvenile Justice Commission, all eligible employees will be given an opportunity to transfer into the New Jersey Department of Corrections without any loss of salary.

When such transfers are made, all accrued leave balances will be carried over with the employee. In addition, job classification seniority as a Correction Sergeant, Juvenile Justice Commission will also be carried over with the employee.

12. **Add New Section I entitled "Shift-Overlap" to Article XXXIV: Safety:**

Custody Correction Sergeants and General Assignment Sergeants shall be given a ten (10) minute briefing period prior to the commencement of their shift, hereinafter referred to as "shift-overlap". This briefing period will allow officers to obtain and/or receive information pertaining to the daily operations of the institution and any and all issues associated therewith in preparation for the Sergeant's shift. This shift-overlap shall be paid to the Sergeants as compensatory time off.

For purposes of this subsection, a Custody Corrections Sergeant is a Sergeant who is assigned to a particular tier or housing unit within an institution as defined and understood by the New Jersey Department of Corrections' and Juvenile Justice Commission's operational policies and procedures. A General Assignment Sergeant is a Sergeant who is not assigned to particular tier or

[2] This proposal was stricken from NJLESA's final offer after the arbitrator sustained an objection that it was not submitted in compliance with the time constraints required by statue.

housing unit within an institution, but is responsible for the transport of inmates and/or serves as a "floater" between a tier and/or multiple tiers within an institution as defined and understood by the New Jersey Department of Corrections' and Juvenile Justice Commission's operational policies and procedures.

13. **Amend Article XLV: Term of Agreement to read as follows:**

This contract shall become effective on July 1, 2011 and shall remain in full force and effect until June 30, 2015.

14. **Side Letter of Agreement: Bidding and Tie-Breaker Pilot Program with Department of Corrections**

The NJLESA also seeks to codify within the contract the bidding and tie-breaker pilot program utilized by the New Jersey Department of Corrections in a Side Letter of Agreement between the parties.

The State

1. **Article XIII** - Salary and Compensation Plan and Program

Proposed Change: Sections C, D, E and G to be deleted and addressed in to Article XXXV [Health Insurance and Fringe Benefits]. Modify the remainder of the Article as follows:

Salary Compensation Plan and Program

A. Administration

1. The parties acknowledge the existence and continuation during the term of this Agreement of the State Compensation Plan which incorporates in particular, but without specific limit, the following basic concepts:

    a. A system of position classification with appropriate position descriptions.
    b. A salary range with specific minimum and maximum rates and intermediate incremental steps therein for each position.
    c. The authority, method and procedures to effect modifications as such are required. However, within any classification the annual salary rate of employees shall not be reduced as a result of the exercise of this authority.

2. The State agrees that all regular bi-weekly pay checks be accompanied by a current statement of earnings and deductions and cumulative year-to-date earnings and tax withholdings.

3. Overtime earnings shall be paid on the regular bi-weekly payroll.

B. Compensation Adjustment

It is agreed that during the term of this Agreement for the period July I, ~~2007~~2011- June 30, ~~2011~~2015, the following salary and fringe benefit improvements shall be provided to eligible employees in the unit within the applicable policies and practices of the State and in keeping with the conditions set forth herein.

1. Wage Increases: Subject to the State Legislature enacting appropriations of funds for these specific purposes, the State agrees to provide the following benefits effective at the time stated herein or, if later, within a reasonable time after the enactment of the appropriation.

   a) Effective the first full pay period ~~in~~after July 1,2014~~2007~~, there shall be a one percent (1.0%)~~three and one half (3.5%) percent~~ across the board increase applied to each negotiation unit employee's base salary in effect on June 30, 2014~~2007~~. The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate the above increases for each step of each salary range. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustments.

   b) Payable in the first full pay period after July 1, 2014, each negotiation unit employee who is at Step 10 of his/her appropriate salary range on or before the start of Pay Period 14 of 2014, and employed on the date of payment, shall receive a one-time lump sum cash bonus of four hundred and seventy-five dollars ($475), which shall not be included in the base salary.

   b) ~~Effective first full pay period in July 2008, there shall be a three and one half (3.5%) percent across the board increase applied to each negotiation unit employee's base salary in effect on June 30, 2008. The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate the increase by remaining at the Step in the range occupied prior to the adjustment. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustments.~~

   c) ~~Effective first full pay period in July 2010, there shall be a two percent (2.0%) across the board increase applied to each negotiation unit employee's base salary in effect on June 30, 2010. The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate the increase by remaining at the Step in the range occupied prior to the adjustment. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.~~

d) ~~Effective first full pay period in January 2011 there shall be a two percent (2.0%) across the board increase applied to each negotiation unit employee's base salary in effect on December 31, 2010. The State Compensation Plan Salary schedule shall be adjusted in accordance with established procedures to incorporate the increase by remaining at the Step in the range occupied prior to the adjustment. Each employee shall receive the increase by remaining at the Step in the range occupied prior to the adjustment.~~

2. Salary Increments: Normal increments shall be paid to all employees eligible for such increments within the policies of the State Compensation Plan during the term of this Agreement~~, except as set forth in sub-section (d) below~~:

a. Where the normal increment has been denied due to an unsatisfactory performance rating, and if subsequent performance of the employee is determined by the supervisor to have improved to the point which then warrants granting a merit increment, such increment may be granted effective on any of the three (3) quarterly action dates which follow the anniversary date of the employee, and subsequent to the improved performance and rating which justifies such action. The normal anniversary date of such employee shall not be affected by this action.

b. Employees who have been at the eighth step of the same range for 18 months or longer shall be eligible for movement to the ninth step providing their performance warrants this salary adjustment.

c. Employees who have been at the ninth step of the same range for 24 months or longer shall be eligible for movement to the tenth step providing their performance warrants this salary adjustment.

~~d. Effective Pay Period 4, 2010 through Pay Period 3, 2011 and notwithstanding any other provisions of this Agreement, no employee shall be eligible for any step increments. During this 26 pay period term, eligible employees shall not move to the next step in the guide. The time worked during the one-year period shall not count toward time needed for any increment except for the 18 month period between Step 8 and Step 9 and the 24-month period between Step 9 and Step 10 for those employees that were at Step 8 or Step 9 as of Pay Period 4 in 2010.~~

3. Salary Upon Promotion: ~~Effective as soon as practicable following issuance of the Interest Arbitration Award~~Pursuant to the 2011 amendment to N.J.A.C. 4A:3-4.9 by the Civil Service Commission, which applies to every employee promoted into this unit, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place them on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary

that they were receiving at the time of the promotion. ~~Notwithstanding any regulation or authority to the contrary, n~~No employee shall receive any salary increase greater than the increase provided for above, upon promotion to any job title represented by NJLESA. By way of illustration, a Senior Corrections Officer ("SCO") is currently in Employee Relations Group "L", Range 18. If such SCO is at Step 9 as of the date of the his/her promotion and therefore earning a salary of $77,667.99 as shown on the salary guide effective ~~12/23/06~~07/13/2013, such employee, upon promotion to Corrections Sergeant (Employee Relations Group "2", Range 21) would move to Step 6 at $80,254.10, as this is the lowest salary on the Group "2", Range 21 salary scale effective 01/01/11 that is above the promoted employee's salary as of the date of promotion. [It is understood that the foregoing example is for illustration purposes only and is based upon the salary guide effective as of ~~12/23/06~~01/01/11 and that the salary at each step of the guide is subject to change as per the across the board salary increases that are awarded in the interest arbitration proceeding.

H. Cooperative Effort

The parties to the agreement understand that the public services provided to the citizenry of the State of New Jersey require a continuing cooperative effort particularly during this period of severe fiscal constraints. They hereby pledge themselves to achieve the highest level of service by jointly endorsing a concept of intensive productivity improvements which may assist in realizing that objective. This provision is not intended to nullify or modify any portion of this Agreement.

2. **Article XXI, Section (C) - Leave of Absence Due to Injury**

Proposed Change: Delete:

3. **Article XXV - Leave for Association Activity**

Proposed Change: Modify as follows:

A. The State agrees to provide leaves of absence with pay for delegates of the Association to attend Association activities. A total of ~~195~~162days of such leave may be used in the year July I, ~~2007~~2013 to June 30, ~~2011~~2014 and a total of 162 days may be used in the year July 1, 2014 to June 30, 2015.

B. This leave is to be used exclusively for Association activities for which approval pursuant to Section D is required. In consideration for the number of leave days set forth in paragraph A above, the parties hereby agree to eliminate the distinction between a "chargeable" and a "non-chargeable" day. Except as expressly set forth in paragraph C of this provision, all leave for Association activities shall be chargeable, including but not limited to: (i) graduation ceremonies, (ii) random urine selection process, (iii) joint safety and health committee meetings held on the

departmental level, and (iv) employee relations meetings that occur on the departmental level.

C. The following sets forth the sole and exclusive circumstances where the Association shall be permitted leave for Association activity, but shall not be required to utilize the days of leave for Association activity provided in paragraph A above:

1. Convention leave that is taken pursuant to, and in accordance with, the provisions of New Jersey law and ordinarily granted under that statute.

2. Employee Relations Meetings or Joint Safety and Health Committee Meetings that occur at the departmental level to the extent that they are required by the department on more than a quarterly basis. An Employee Relations Meeting shall be defined as any meeting that the Administration agrees to participate in that relates to aspects of the Collective Bargaining Agreement, terms and conditions of employment, or pay and benefits for Association members. This definition shall not include meetings that relate to an individual employee's grievance or individual employee's discipline. A Joint Safety and Health Committee Meeting shall be defined as any meeting that the Administration agrees to participate in that affects the health, safety, or welfare of the employees and/or inmates employed with or housed by the New Jersey Department of Corrections.

3. Leave taken by a representative of the Association to represent Association members at: (i) hearings or appearances before an Administrative Law Judge at the Office of Administrative Law, (ii) arbitration hearings, conferences or appearances, (iii) proceedings at the New Jersey Public Employment Relations Commission, (iv) appearances at alternative dispute resolution and/or JUMP Panel meetings, hearings or conferences, (v) pre-arbitration conferences held in accordance with Article XI, Section H, Step 3, paragraph 1, or (vi) Laudermill hearings.

4. The State agrees that during working hours, on its premises and without loss of pay, properly designated and mutually agreed Association representatives shall be allowed to:

   a. represent employees or assist counsel in representing employees in the negotiating unit at grievance proceedings or departmental disciplinary hearings; also to represent employees at investigative interviews in accordance with Article XI, Section I, paragraph 2 (Weingarten representatives); these activities must be done by the on-site representative unless the on-site representative is unavailable, in which case the Association can designate a replacement to act as the representative. The sole exception to this requirement is where the Association

President or a member of the Association Executive Board has requested to represent an employee instead of the on-site representative pursuant to Article X (H) (step one) or Article XI (F) of the Agreement based on showing of a particular need to assist in the grievance or hearing, and such request has been granted by the Office of Employee Relations.

b. Submit Association notices for posting;

c. Attend negotiating meetings or contract negotiation sessions with the State if designated as a member of the negotiating team to a maximum two (2) ~~of twelve (12)~~ employees.

Provided, however, that where the representative, upon completion of the representational activities set forth in Section C(2), C(3) and C(4), above, could return to work with at least one (1) hour remaining on his/her scheduled shift, such representative must return to work and complete the remainder of his or her scheduled work shift. The determination of whether the representative could return to work with at least one (1) hour remaining on his/her scheduled shift shall take into account reasonable travel time from the location of the representational activity back to the representative's work location.

C. Application for any leave pursuant to this Article shall be submitted in writing to the Governor's Office of Employee Relations at least fourteen (14) days in advance to be reviewed for contractual compliance, and then forwarded to the affected department to determine if the request will cause an undue hardship on the department. Timely requests will not be unreasonably denied. Leaves will only be granted to individuals authorized by the Association President.

D. Any leave not utilized by the Association in a yearly period shall not be accumulated except where a written request of the Association for carryover of such leave for a particular purpose is made not later than ten (10) calendar days following the end of the year period. This request may be approved in whole or in part by the State.

~~**E.** In addition, the State agrees to provide leave of absence without pay for delegates of the Association to attend Association activities approved by the State. A total of thirty-five (35) days of such leave of absence without pay may be used during the period July 1, 2008 to June 30, 2009; thirty-five (35) days of such leave may be used during the period July 1, 2009 to June 30, 2010; and thirty-five (35) days of such leave may be used during the period July 1, 2010 to June 30, 2011. This additional leave of absence without pay is to be used under the same conditions and restrictions expressed in connection with the leaves of absence with pay.~~

4. **Article XXXV - Health Insurance and Fringe Benefits**

Proposed Change: Replace with the following:

A. State Health Benefits Program

As with any provisions of this Agreement that reflect statutory or regulatory mandates, the provisions of paragraphs (A)(B)(C) and (G) of this Article, are for informational purposes only and provide an explanation which is subject to change due to legislative action.

1. The State Health Benefits Program is applicable to employees covered by this Contract. It is agreed that, as part of that program, the State shall continue the Prescription Drug Benefit Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. Through December 31, 2011, active eligible employees are able to participate in the prescription drug card program. Similarly, through December 31 2011, active eligible employees are able to elect to participate in the NJDIRECT 15 Plan (as it existed on June 30, 2011). In the alternative, through December 31, 2011, active eligible employees are able to elect to participate in an HMO which existed in the program as of June 30, 2011. Beginning January 1, 2012, the State Health Benefits Plan Design Committee shall provide to employees the option to select one of at least three levels of coverage each for family, individual, individual and spouse, and individual and dependent, or equivalent categories, for each plan offered by the program differentiated by out of pocket costs to employees including co-payments and deductibles. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the plan design, plan components and coverage levels under the program.

2. Effective July 1, 2003, new hires are not eligible for enrollment in the Traditional Plan. The Traditional Plan and the NJ Plus POS Plan have been abolished.

3. Medicare Reimbursement - Effective January 1, 1996, consistent with law, the State will no longer reimburse active employees or their spouses for Medicare Part B premium payments.

B. Contributions Toward Health and Prescription Benefits

1. Effective July 1, 2011, or as soon thereafter as the State completes the necessary administrative actions for collection, employees shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of health care benefits coverage for the employee and any dependent provided under the State Health Benefits Program in an amount that shall be determined in accordance with section 39 of P.L. 2011, c. 78, except that, in

accordance with Section 40(a) of P.L. 2011, c. 78, an employee employed on July 1, 2011 shall pay:

a) from implementation through June 30, 2012, one-fourth of the amount of contribution;
b) from July 1, 2012 through June 30, 2013, one-half of the amount of contribution;
c) from July 1, 2013 through June 30, 2014, three-fourths of the amount of contribution; and
d) from July 1, 2014, the full amount of contribution, as that amount is calculated in accordance with section 39 of P.L. 2011 c. 78. After full implementation, the contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

2. The amount payable by any employee, pursuant to section 39 of P.L. 2011 c. 78 under this subsection shall not under any circumstance be less than the 1.5 percent of base salary that is provided for in subsection c. of section 6 of P.L.1996, c.8 (C.52:14-17.28b).

3. An employee who pays the contribution required under section 40 of P.L. 2011 c. 78 shall not also be required to pay the contribution of 1.5 percent of base salary under subsection c. of section 6 of P.L.1996, c.8 (C.52:14-17.28b).

4. The contribution shall apply to employees for whom the employer has assumed a health care benefits payment obligation, to require that such employees pay at a minimum the amount of contribution specified in this section for health care benefits coverage.

5. Should the necessary administrative actions for collection by the State not be completed by July 1, 2011, collection of the contribution rates set forth in section 39 of P.L. 2011, c. 78, and paragraph 1 above, shall not be applied retroactively to this act's effective date, provided, however, the employee shall continue to pay at least 1.5% of base salary during such implementation period.

6. The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan ("SHBP") and provide a certification to the State that he/she has other health insurance coverage, the State will waive the contribution for that employee.

7. An employee on leave without pay who receives health and prescription drug benefits provided by the State Health Benefits Program shall be required to pay the above-outlined contributions, and shall be billed by the State for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.

8. Active employees will be able to use pre-tax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be by deductions from pay.

C. Dental Care Program

1. It is agreed that the State shall continue the Dental Care Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. Through December 31, 2011, active eligible employees are able to participate in the Dental Care Program as described in the parties' July 1, 2007 – June 30, 2011 collective negotiations agreement. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the plan design, plan components and coverage levels under the program.

2. Participation in the Program shall be voluntary with a condition of participation being that each participating employee authorize a biweekly salary deduction as set by the State Health Benefits Design Committee.

3. Each employee shall be provided with a brochure describing the details of the Program and enrollment information and the required forms.

4. Participating employees shall be provided with an identification card to be utilized when covered dental care is required.

D. Eye Care Program

1. It is agreed that the State shall continue the Eye Care Program during the period of this Contract. The coverage shall provide for a $40.00 payment for regular prescription lens or $45.00 for bifocal lens or more complex prescriptions. Included are all eligible full-time employees and their eligible dependents (spouse and unmarried children under 23 years of age who live with the employee in a regular parent-child relationship). The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of $35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

3. Each eligible employee and dependent may receive only one payment for glasses and one payment for examinations during the period of July I, 2011 to June 30, 2013 and one payment for glasses and one payment for examination during the period of July 1, 2013 to June 30, 2015. This

program ends on June 30, 2015. Proper affidavit and submission of receipts are required of the employee in order to receive payments.

E. The provisions of Sections (A), (B) and (C) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article X.

F. Insurance Savings Program

Subject to any condition imposed by the insurer, all employees shall have the opportunity to voluntarily purchase various insurance policies on a group participation basis. The policy costs are to be borne entirely by the employee selecting insurance coverages provided in the program. The State will provide a payroll deduction procedure whereby authorized monies may be withheld from the earned salary of such employees and remitted to the insurance company. The insurance company will provide information concerning risks covered, service offered, and all other aspects of the program to each interested employee.

G. Health Insurance in Retirement

Those employees who have 20 or more years of creditable service on the effective date of P.L. 2011, c.78, who accrue 25 years of pension credit or retire on a disability retirement on or after July 1, 2011 will contribute 1.5% of the monthly retirement allowance toward the cost of post retirement medical benefits as is required under law. In accordance with P.L. 2011, c.78, the Retiree Wellness Program no longer applies. The provisions of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article XI.

H. Temporary Disability Plan

All employees in this unit are covered under the State of New Jersey Temporary Disability Plan. This is a shared cost plan which provides payments to employees who are unable to work as the result of non-work connected illness or injury and who have exhausted their accumulated sick leave.

~~G~~I. Deferred Compensation Plan

It is understood that the State shall continue the program which will permit eligible employees in this negotiating unit to voluntarily authorize deferment of a portion of their earned base salary so that the funds deferred can be placed in an Internal Revenue Service approved Federal Income Tax exempt investment plan. The deferred income so invested and the interest or other income return on the investment are intended to be exempt from current Federal Income Taxation until the individual employee withdraws or otherwise receives such funds as provided in the plan.

It is understood that the State shall be solely responsible for the administration of the plan and the determination of policies, conditions and regulations governing its implementation and use.

The State shall provide literature describing the plan as well as a required enrollment or other forms to all employees. It is further understood that the maximum amount of deferrable income under this plan shall be consistent with the amount allowable by law ~~twenty-five (25) percent or $7,500 whichever is less~~.

5. **Article XXXVI - Uniform Allowance**

Proposed Change: Modify as follows:

The State agrees to provide a cash payment of ~~$1485~~$1,535 in January ~~2008~~2012; 2013, 2014 and 2015,to all employees who are required to wear uniforms and have attained one year of service by December 31 of the foregoing years. ~~a cash payment of $1485 in January 2009, a cash payment of $1510 in January 2010, and a cash payment of $1535 on January 2011 to all employees in the unit who have attained one (1) year of service as of December 31, 2007, December 31, 2008, December 31, 2009, and December 31, 2010~~with the exception of Correction Sergeants.

The State will continue its practice of making initial issues of uniforms to all new employees and will continue its practice of uniform allowances to all employee groups except Correction Sergeants. It is understood that employees who are promoted to any of the titles in this unit and who had been issued a uniform at another rank which is still the appropriate uniform, are not to be considered as "new" employees in the context of this article and they will be issued only new insignia and/or badge as required by the appointing authority.

In exception to the program outlined herein, Correction Sergeants will be granted, in lieu of any uniform allowances, cash payments of~~$867.50 in July, 2007; $867.50 in January, 2008; $892.50 in July, 2008; $892.50 in January, 2009; $892.50 in July, 2009; $892.50 in January, 2010; $917.50 in July, 2010 and $917.50 in January, 2011.~~$917.50 in July 2011; January 2012; July 2012; January 2013; July 2013; January 2014; July 2014 and January 2015, respectively.

It is understood that the above cash payments are to be used for items of uniform or their maintenance and that all employees in the unit are expected to meet prescribed standards and regulations concerning individual items of uniform which are required and the reasonable standards of maintenance of such uniforms.

No allowance will be paid to employees who are not required to purchase a uniform and wear it for work. In the event additional employees are required to purchase and wear uniforms for work, during the term of this Agreement, the State agrees to negotiate with the Union the appropriateness of a uniform maintenance allowance for the affected employees.

6. **Article VII, Section A - Association Rights/Access to Premises**[3]

Proposed Change: Modify section A by adding new sub-paragraph 5.

5. A Union representative currently suspended from work by the State shall only be permitted to be present on State premises to the extent that an employee who is not a steward or executive board member would be under the same circumstances.

7. **Article IX, Section D - Printing of Agreement**

Modify as follows:

D. Printing of Agreement

The State will reproduce this Agreement as soon as reasonably possible ~~in sufficient quantities so that each employee in the negotiations unit may receive a copy, plus additional reserve copies for distribution to employees hired during the term of the Agreement. The State will~~and provide the Association with an electronic downloadable version of the Agreement. The Agreement cover will include the seal of the State of New Jersey and the Association insignia.

8. **Article IX, Section F - Lateness**

Proposed Change: Modify as follows:

Whenever an employee is delayed in reporting for a scheduled work assignment, he shall endeavor to contact his supervisor in advance, if possible. An employee who has a reasonable excuse and is less than fifteen (15) minutes late is not to be reduced in salary or denied the opportunity to work the balance of his scheduled shift and he shall not be disciplined ~~except~~. Where there is evidence of repetition or neglect or the employee incurs (3) such latenesses in a thirty (30) day period, the employee may be disciplined regardless of whether the employee has a reasonable excuse for such absence. In all circumstances the employee will be paid from the time he or she commences work. ~~A record of such lateness shall be maintained and may be charged against any compensatory time accrual where there is evidence of repetition or neglect.~~

Lateness beyond the fifteen (15) minute period above shall be treated on a discretionary basis. ~~However,~~This provision is not intended to mean that all lateness or each incidence of lateness beyond fifteen (15) minutes shall incur disciplinary action or loss of opportunity to complete a work shift or reduction of salary.

Consistent with the two paragraphs above, management shall maintain a record of lateness. This record may be used as the basis of disciplinary action, compulsory charge against an employee's compensatory time bank, or reduction in salary or any combination thereof. A record of such lateness shall be

[3] This proposal was withdrawn at hearing.

maintained and may be charged against any compensatory time accrual where there is evidence of repetition or neglect.

9. **Article IX, Section G - Lateness or Absence Due to Weather Conditions**

Proposed Change: Modify as follows:

G. Lateness or Absence Due to Weather Conditions

1. Cases of inclement weather shall be handled in accordance with the State's inclement weather policy as issued by the Governor's office of Employee Relations. ~~When an employee is unable to get to his assigned work because of weather conditions, his absence may be compensated if he has a sufficient compensatory time balance, or if none is available, a charge may be made against vacation balance or administrative leave balance if requested by the employee. Such absence will alternatively be without pay.~~

~~2.~~ When the State of New Jersey or a County within New Jersey declares a state of emergency due to weather related conditions, an employee who has made a reasonable effort to report on time and ~~that~~ is less than one-hour late for duty due to delays caused by such weather related conditions shall not be disciplined for such lateness. Lateness beyond one (1) hour shall be treated on a discretionary basis. This provision is not intended to mean that all lateness or each incidence of lateness beyond one hour shall incur disciplinary action. ~~Employees late for duty due to delays caused by weather conditions and who made a reasonable effort to report on time may be given credit for such late time at the discretion of the appointing authority.~~

3. Every employee is required to adjust his/her regular preparations for travel to work upon reasonable knowledge of expected inclement weather forecasts. Such measures shall include, but not necessarily be limited to earlier travel times and reasonable advance vehicle and roadway preparations in anticipation of substantially longer commute times during times of expected inclement weather. ~~When the State of New Jersey or a County within New Jersey declares a state of emergency due to weather related condition, an employee that is late for duty up to thirty (30) minutes due to delays caused by such weather related conditions and who has made a reasonable effort to report on time shall not be disciplined for such lateness.~~

10. **Article X, Section G(1) - Time Off For Grievance Hearings**

Proposed Change: Modify as follows:

G. Time Off for Grievance Hearings

1. An employee shall be allowed time off without loss of pay;

a. As may be required for appearance at a hearing of the employee's grievance scheduled during working hours;

b. For necessary travel time during working hours.

~~If the hearing extends beyond the employee's normal working hours, compensatory time equal to the additional time spent at the hearing shall be granted but such time shall not be considered time worked for the computation of overtime.~~

11. **Article X, Section H(2) - Step Three Arbitration**

Proposed Change: Modify Article H(2) to include the following language after the fourth (4th) sentence of the existing Article H(2):

All panel arbitrators must agree, in writing and in advance as a condition for being placed on the panel, to accept a fee of no more than $1,000 per day, and to impose a fee of no more than $500 for a late cancellation by either party without good cause.

12. **Article XI, Section L(5) [Discipline – 45 Day Rule]**

Proposed Change: Modify as follows:

~~5. All disciplinary charges shall be brought within 45 days of the appointing authority reasonably becoming aware of the offense, except for EEO charges which must be brought within sixty (60) days of the appointing authority reasonably becoming aware of the offense, or in the absence of the institution of the charge within the 45 day time period, the charge shall be considered dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed.~~

5.a All disciplinary charges shall be brought within forty-five (45) days of the appointing authority reasonably becoming aware of the offense, except, effective after ratification of this agreement, where the employee is charged with conduct related to the following, in which case a 120 day rule will apply:

1) Removal charges related to any criminal matter of the third degree or higher, or any criminal matter of the fourth degree or higher where the matter touches upon or concerns the individual's employment, or where the facts underlying the proposed discipline could support a criminal charge.

2) Removal charges related to positive test result for Controlled Dangerous Substances.

3) Removal charges related to the introduction of contraband into a State Correctional Facility, or Juvenile Justice Commission-

operated facility or program, which jeopardizes safety or security, including but not limited to cell phones and cell phone accessories.

4) Removal charges related to undue familiarity pursuant to the State's policy thereto.

5) Removal charges related to misconduct/inappropriate contact involving a student of a State College or University in which the employee is employed.

6) Removal charges related to uses of excessive force.

7) Removal charges related to incidents of workplace violence, violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy"), or findings of violations of State or Agency Codes of Ethics by the State Ethics Commission.

8) Removal charges related to matters where the employee becomes unfit to perform the duties of their title, including but not limited to physical unfitness, mental unfitness or being prohibited from carrying a firearm.

9) Removal charges related to matters where the employee is participating in a county, state or federal government investigation. The 120 day time limit in this instance shall not commence until the conclusion of the employee's participation in the investigation.

Charges related to the above conduct constitute cause for major discipline and only will be brought under N.J.S.A. 4A:2-2.3 or, if applicable, investigated as criminal matters.

All EEO charges not meeting the description above must be brought within sixty (60) days of the appointing authority reasonably becoming aware of the offense.

In the aforementioned cases, the forty-five (45) day rule shall not apply. Where the forty-five (45) day or sixty (60) day rule applies, any charges issued after the applicable time frame will be dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty imposed.

5.b. For the purpose of this sub-section, the following individuals, or their respective designees, shall be the appointing authority for their respective Department or Agency: Administrator (Corrections); Vice-Chairman (Parole); Superintendent (Juvenile Justice); Director of Administration (Treasury); Human Resources Director (Human Services); Superintendent (Palisades Interstate Park Commission); Director of Human Resources (Environmental Protection); Superintendent (Law and Public Safety); Assistant Vice President of Labor Relations (Rowan

University); and Vice President or Director of Human Resources (all other State Colleges).

5.c. The exceptions to the 45 day rule (Paragraph 4(A)), set forth in Paragraphs 4(A)(1)-(9)), will not be available to an appointing authority (as defined in Paragraph (4)(B)), for a period of one year, if that appointing authority issues removal charges under Paragraphs 4(A)(1) – (9) arising out of two (2) disciplinary events within a one year period(measured backwards from the date of issuance of discipline in the second event) and the removal charges are subsequently reduced by a final agency determination. The dismissal of charges is not considered "reduced" charges for purposes of the section.

13. **Article XI, Section N(1) - Minor Disciplines**

Proposed Change: Modify to include the following underlined language:

The parties agree to establish a Joint Association Management Panel consisting of one (1)person selected by the State and one (1) person selected by the Association and a third party neutral mutually selected by the parties. Each panel member shall serve on an ad hoc or other basis. The purpose of this panel is to review appeals from the Departmental determinations upholding disciplinary suspension of five (5) working days or less, excepting unclassified, provisional or probationary employees. All panel neutrals must agree, in advance as a condition for being selected for inclusion on a panel, to accept a fee of no more than $1,000 per day, and to impose a fee of no more than $500 for a cancellation by either party without good cause.

14. **Article XII, Section (C) - Seniority**

Proposed Change: Modify as follows:

1. A break in continuous service occurs when an employee resigns, is discharged for cause, retires or is laid off.

2. Pursuant to N.J.A.C. 4A:2-6.2, Aabsence without leave for five (5) or more consecutive days or failure to return from any leave of absence for five (5) or more consecutive business days shall be considered a resignation not in good standing.

15. **Article XIV, Section (C) - Vacation**[4]

Proposed Change: Modify as follows:

C. Payment For Vacation

1. Upon separation from the State, or upon retirement, an employee shall be entitled to vacation allowance for the current year on a

[4] At hearing, the parties stipulated that Vacation has been tentatively agreed to and have stipulated to its inclusion.

prorated basis consistent with N.J.A.C. 4A:6-1.5 and N.J.S.A. 11A:6-2.~~upon the number of months worked in the calendar year in which the separation or retirement becomes effective and any vacation leave which may have been carried over from the preceding calendar year.~~

2. If a permanent employee dies having vacation credits unused vacation leave shall be paid to the employee's estate pursuant to N.J.A.C. 4A:6-1.2(j).~~a sum of money equal to the compensation figured on his salary rate at the time of his death shall be calculated and paid to his estate~~

16. **Article XVI - Personal Preference Days**

Proposed Change: Modify as follows:

Personal Preference Days

~~**Between September 1 and October 1**~~During the month of November in the preceding calendar year, of the preceding year, employees may submit requests for alternative holidays to those specified to be celebrated within the calendar year, which shall be dates of personal preference such as religious holidays, employee's birthday, employee anniversary or like days of celebration provided:

a. the agency employing the individual agrees and schedules the alternative day off in lieu of the holiday specified and the employing agency and employee's function is scheduled to operate on the specified holiday ~~alternative dates selected;~~ such agreement shall not be unreasonably withheld;

b. the alternative day off in lieu of the holiday, other than Christmas, must occur after the specified holiday. Preference days in lieu of Christmas may be taken before the holiday,

~~b~~c. the employee shall be paid on the holiday worked and deferred at his regular daily rate of pay;

~~c~~d. the commitment to schedule the personal preference day off shall be non-revocable under any circumstances. The employee must actually work on the holiday that he/she agreed to work in exchange for the personal preference day in order to be entitled to the personal preference day. Moreover, under no circumstances shall there be compensation for personal preference days after retirement and employees shall be docked for any personal preference days that were utilized based upon the expectation of continued employment through the calendar year. Notwithstanding the foregoing, when an employee has already selected a personal preference day and worked the corresponding holiday as promised, and the employee gives at least ten (10) days written notice that he/she will be in no pay status for a period of at least twenty (20) days due to a documented medical condition, the employee may request

that the personal preference day be rescheduled to a later date and such request shall be considered in light of operational needs;

~~d~~e. and provided further that if, due to an emergency, the employee is required to work on the selected personal preference day he shall be paid on the same basis as if it were a holiday worked~~.~~;

[5]f. if an employee fails to honor his commitment to work the holiday for which he has taken a personal preference day he/she will be disqualified from taking a personal preference day for one year and any personal preference days scheduled within that calendar year may be revoked at the discretion of the agency.

Where more requests for personal preference days are made than ~~can be accommodated~~for operational reasons within a work unit, the job classification seniority of employees in the work unit shall be the basis for scheduling the personal preference days which can be accommodated.

17. **Article XVII, Section (C) - Administrative Leave**

Proposed Change: Modify the second paragraph of section (C) as follows:

Consistent with N.J.A.C. 4A:6-1.9, priority in granting such requests shall be ~~(1) unscheduled absences, (2) observation of religious or other days of celebration but not holidays, (3) personal business, (4) other personal matters~~ (1) Emergencies, (2) Religious holidays (3) personal matters. Where, within a work unit, there are more requests than can be granted for use of this leave for one of the purposes above, the conflict will then be resolved on the basis of State seniority and the maximum number of such requests shall be granted in accordance with the first paragraph of C. Administrative leave may be scheduled in units of one-half (1/2) day, one (1) day or more than one (1) day.

18. **Article XIX, Sections (B) and (D) - Compensatory Time Off**

Proposed Change: Modify as follows:

B. Employees requests for use of compensatory time balances shall be honored, so long as the request is received by the employer at least 48 hours in advance. Requests for use of compensatory time may, in the sole discretion of management, be rejected in all circumstances if this advanced notice is not provided, including circumstances that were previously referred to as "emergency comp time." Further, notwithstanding this notice, a request for compensatory time may be denied only in circumstances when it cannot be accommodated for operational reason. If denied, an alternate day may be requested and such request will be given preferential treatment but shall not require "bumping" another employee from a previously scheduled day off. Any grievance resulting from management's discretion to reject a request for

[5] The first paragraph of subsection (f) was withdrawn at hearing. The second paragraph of the State's proposal remains.

the use of comp time pursuant to this section shall not be subject to arbitration. Priorities in honoring requests for use of compensatory time balances will be given to employees.

2. Notwithstanding the provisions set forth in subsection (1) above, when the rejection of an employee's request for use of compensatory time would force an employee into no pay status, but where the employee still has one (1) or more accrued comp days standing to his/her credit, the employee shall be permitted to utilize a compensatory day to be paid for the day. Notwithstanding the fact that the employee is paid for the day, the employee may still be subject to discipline in accordance with the department's attendance policy.

3. Priorities in honoring requests for use of compensatory time balances will be given to employees:

    1. where scheduled one (1) month in advance,
    2. where shorter notice of request is made.

Requests for use of such time under 1 and 2 herein will be honored except where emergency conditions exist or where the dates requested conflict with holiday or vacation schedules.

D. Ordinarily, a maximum of one hundred (100) hours of compensatory time may be carried by any employee. Where the balance exceeds one hundred (100) hours, the employee and the supervisor will meet to amicably schedule such compensatory time off. If the employee and the supervisor cannot agree on the scheduling, the supervisor shall have the discretion to schedule the compensatory time off.

19. **Article XX, Section (C) - Sick Leave**

Proposed Change: Modify as follows:

Sick leave for absences of more than ~~ten (10)~~five (5) days must be requested by the employee in writing to his immediate supervisor. In addition, the employee must submit ~~This request must be accompanied by~~ a written and signed statement by a personal physician prescribing the reasons for the sick leave and the anticipated duration of the incapacity to human resources.

20. **Article XXVIII - Scheduling of Overtime**

Proposed Change: Add new section (F) as follows:

F. In the event a dispute regarding this Article is resolved in the Union's favor, the sole remedy available shall be the granting of the next available overtime opportunity to the aggrieved employee(s). In no event shall overtime payment be provided for a shift not worked.

21. **Article XXXI - Out-of-Title Work**[6]

Proposed Change: Eliminate section A.

~~**A.** Employees shall be assigned work appropriate to and within their job classification.~~

~~The assignment of out-of-title work on a regular and continuing basis, exclusive of stand-in for limited periods for vacation, sick leave or other leaves, shall be avoided. Instances of such out-of-title work identified by the Association and formally brought to the attention of the State shall be corrected immediately or by phasing out such assignments at the earliest possible time which shall in any case be no later than three (3) months from the time of notification by the Association. Any dispute as to whether the work is within the job classification of the employee(s) involved may be resolved by appeal to the Civil Service Commission where the matter will be heard within twenty-one (21) days and a decision rendered within fifteen (15) days of that hearing. Any dispute concerning the phasing out period will be resolved through the grievance procedure.~~

22. **Article XXXIV, Section E - Safety**

Proposed Change: Modify section (E) as follows:

E. The State and the Association shall place health and safety issues on the agenda for Quarterly Employee Relations Meetings ~~establish a Joint Safety and Health Committee consisting of four (4) members appointed by each party. Regular quarterly meetings will be scheduled~~ as required to discuss safety and health problems or hazards and programs and to make recommendations concerning improvement or modification of conditions regarding health and safety. ~~The Association shall supply an agenda when requesting a meeting.~~ Where reasonably possible, all committee meetings shall take place during working hours and employees shall suffer no loss of pay as a result of attendance at such meetings.

23. **Article XXXVII - Travel Regulations**

Proposed Change: Modify as follows:

Travel Regulation

Employees are not required to provide privately owned vehicles for official business of the State. However, when an employee is authorized to utilize his privately owned automobile for official business of the State, the employee, on a voluntary basis only may provide the use of said vehicle for the authorized purpose and will be reimbursed for mileage at a rate per mile provided by State law. The State requires each individual accepting such authorization to maintain insurance for personal liability in the amounts of $25,000 for each person and

[6] This proposal was withdrawn at hearing.

$50,000 for each accident and $10,000 property damage for each accident. The State will provide insurance coverage where such privately owned vehicles are used in the authorized business of the State covering the excess over the valid and collectible private insurance in the amount of $150,000 for each person and $500,000 for each accident for personal liability and $50,000 property damage for each accident unless and until legislation is passed which requires the State to indemnify and hold harmless their employees for personal injuries and property damage caused by the negligence of said employees while operating their privately owned vehicles on the authorized business of the State.

When an employee is authorized to utilize his own vehicle for travel on a temporary assignment, he shall be reimbursed for the mileage as provided ~~in the travel regulations~~ by State law.

24. **Article XXXVIII - Tuition Refund and Employee Training**

Proposed Change: Eliminate section A.

~~**A. Tuition Refund**~~

~~The tuition refund program of the State shall be continued during the term of this Agreement. Further, because of the special interests of employees and the Association, the availability and utilization of the program shall be part of the agenda for subsequent joint meetings to review the administration of this Agreement as provided elsewhere herein. It shall be the policy of the State, together with PBA SLEU, to provide information as to the availability of the program to all employees.~~ The tuition aid program shall be administered consistent with N.J.A.C. 4A:6-4.6.

25. **Article XL - Maintenance of Benefits**

Modify as follows:

Maintenance of Benefits

A. The fringe benefits, which are substantially uniform in their application to employees in the unit, and which are currently provided to those employees, including, but not limited to, the Health Benefits Program, the Life Insurance Program, the Prescription Drug Program and their like, shall remain in effect without diminution during the term of this Agreement unless modified herein, changed pursuant to statutory authority or by subsequent agreement ~~to~~ of the parties.

B. Other substantial benefits, not within the meaning of paragraph A above, currently enjoyed by an employee or a group of employees which are not in contradiction to current State law, regulation or policy and which are not in contradiction with other provisions of this Agreement shall remain in effect during the term of this Agreement and the continuation of the employee in his present assignment, provided that the continuance of such substantial benefit is not unreasonable under all of the circumstances and provided that if the State changes or intends to make

changes which have the effect of substantial modification or elimination of such substantial benefits, the State will notify the Association and, if requested by the Association within ten (l0) days of such notice or within ten (l0) days of the date on which the change would reasonably have become known to the employees affected, the State shall within twenty (20) days of such request enter negotiations with the Association on the matter involved providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and, further, if a dispute arises as to the negotiability of such matters that the procedures of the Public Employment Relations Commission shall be utilized to resolve such dispute.

It is further agreed that the State shall refrain from implementation of changes in the circumstances where the obligation to negotiate has been mutually agreed until such time as there has been a reasonable opportunity for the position of the parties to be fully negotiated in good faith.

It is further understood that the absence of mutual agreement as to the obligation to negotiate is not construed to be a waiver of any rights of the parties under the provisions of the Employer-Employee Relations Act as amended.

26. **Article XLI, Section A - Legislative Action**

Modify as follows:

1. If any provisions of this Agreement require legislative action, or adoption or modification of the Rules and Regulations of the Merit Systems Board to become effective, or the appropriation of funds for their implementation, it is hereby understood and agreed that such provisions shall become effective only after the necessary legislative action or rule modification is enacted~~, and that the parties shall jointly seek the enactment of such legislative action or rule modification~~.

2. In the event that legislation becomes effective during the term of this Agreement which has the effect of improving the fringe benefits otherwise available to eligible employees in this unit, this Agreement shall not be construed as a limitation on their eligibility for such improvements.

27. **Article XLI, Section C - Preservation of Rights**

Proposed Change: Eliminate.

~~Notwithstanding any other provision of this Agreement, the parties hereto recognize and agree that they separately maintain and reserve all rights to utilize the processes of the Public Employment Relations Commission and to seek judicial review of/or interpose any and all claims or defenses in legal actions surrounding such proceedings as unfair practices, scope of negotiations, enforcement or modification of arbitration awards, issues of arbitrability, and specific performance of the Agreement.~~

28. **Article XLIV - Negotiations Procedures**

Proposed Change: Modify as follows:

A. Successor Agreement

The parties further agree to enter into collective negotiations concerning a successor Agreement to become effective on or after July 1, ~~2011~~2015, subject to the provision expressed in "Term of Agreement".

~~**B. Procedure**~~

The parties ~~also~~ agree to negotiate in good faith on all matters properly presented for negotiations pursuant to applicable law. ~~Should an impasse develop, the procedures available under law shall be utilized exclusively in an orderly manner in an effort to resolve such impasse.~~

29. **Article XLV - Term of Agreement**

Proposed Change: Modify as follows:

Term of Agreement

This contract shall become effective on July 1, 2011, and shall remain in full force and effect until June 30, 2015.
~~The contract shall automatically be renewed from year to year thereafter unless either party shall give written notice of its desire to terminate, modify or amend the Agreement. Such notice shall be by certified mail prior to October 1, 2010 or October 1 of any succeeding year.~~

BACKGROUND

NJLESA represents employees in various employment titles in a bargaining unit referred to as the Primary Level Supervisory Law Enforcement Unit. The Office of Employee Relations (OER) for the State of New Jersey has broken down the number of bargaining unit employees that fall into three Employee Relations Groups (ERGs) along with a title description as follows (Exhibit S-1Q):

ERG	Employee Count	Title Description
2	541	Correction Sergeant; Correction Sergeant, Juvenile Justice Commission ("JJC"); Supervising Interstate Escort Officer
K (Colleges and PIP)	39	Sergeant Campus Police; Police Sergeant, Palisades Interstate Parkway ("PIP")
K (Centralized Payroll)	85	Asst. District Parole Supervisor; Asst. District Parole Supervisor, JJC; State Park Police Sergeant; Police Sergeant, Human Services; Conservation Officer II; Special Agent I
TOTAL	**665**	

The majority of unit members are Sergeants employed in the Department of Corrections (DOC). The DOC employs approximately 9,000 employees in thirteen (13) facilities. DOC employees are covered by nine (9) different collective negotiations agreements. At the DOC, Correction Sergeants supervise senior Corrections Officers who are represented by PBA Local 105. They are supervised by Corrections Lieutenants who are represented by NJSOLEA and Majors who are represented by NJLECOA. NJLESA has submitted job specifications into evidence for each employment title (Exhibit P-1). NJLESA offered the testimony of Sergeant Eric Holliday, President of NJLESA, Campus Police Sergeant Michael Bell and Thomas Moran, Consultant for NJLESA, all of whom testified to the duties and responsibilities of bargaining unit employees and in support of the individual issues that NJLESA presented in its final offer. Kenneth Green, Director of Employee Relations for the Department of Corrections, described the DOC as a paramilitary law enforcement organization that relies heavily on order and uniformity. Green testified to the many non-economic issues that are in dispute that concern departmental operations and administration. David Cohen, Director of the Governor's Office of Employee

Relations, provided testimony concerning the State's proposals emphasizing the factor of internal comparability as a factor that is entitled to substantial weight.

The budget for the DOC falls within the State's Executive Operations Category. Robert Peden, Deputy Director, Office of Management and Budget, testified to appropriations for the DOC and the Juvenile Justice Commission (JJC). These agencies employ the greatest number of bargaining unit employees. A chart in evidence, State Exhibit #2, shows that the FY 2014 appropriations for the DOC increased by 0.6% but Peden attributed the increase to a dedicated $9.4 million appropriation for inmate healthcare costs. Peden testified that when that increase is removed, the DOC budget has been reduced by more than 6% during the last five years, or from $1,043,219,000 to $974,983,000. A similar percentage reduction was experienced in the budget for the JJC.

There are many economic and non-economic issues in dispute. They will be discussed individually with an individual award on each issued followed by an overall award in the Award section.

DISCUSSION

The statute requires the arbitrator to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that are relevant to the resolution of the issues. These factors, commonly called the statutory criteria, are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the

arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

I will summarize the proposals of each party followed by an award on each issue.

STIPULATIONS

I commence with the awarding of the stipulations reached by the parties on many language issues. This is consistent with the criterion N.J.S.A. 34:13A-

16(g)(4) concerning the inclusion of stipulations into the award. They are as follows:

1. **Revise Existing Article III as follows:**

   Civil Service Regulations

   The administrative and procedural provisions and controls of the Civil Service law and Rules and Regulations promulgated there under are to be observed in the administration of this Agreement.

   **THE REFERENCES TO THE MERIT SYSTEM SHOULD BE REMOVED THROUGHOUT THE AGREEMENT

2. **Modify Article IV [Non-Discrimination] as follows**:

   The provision of this Agreement shall be applied equally to all employees. The Association and the State agree there shall not be any discrimination including harassment based race, creed, color, national origin, nationality, ancestry, age, sex, familial status, marital status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, including perceived disability and AIDS and HIV status, domestic partnership, political affiliation, Association membership, or lawful membership activities or activities provided in this Agreement.

3. **Modify Article V, Section B(3) as follows:**

   Quarterly Employee Relations Meetings with the Governor's Office of Employee Relations

   B. Quarterly Employee Relations Meetings

   1. A committee consisting of State and Association representatives may meet for the purposes of reviewing the administration of this Agreement, and to discuss problems which may arise. Said committee shall meet at least twice per year some time during the last week of February and November. At either party's request no more than two (2) additional meetings will be scheduled and take place. The additional meetings will be held some time in the last week of May and/or August. These meetings are not intended to by-pass the grievance procedure or to be considered contract negotiation meetings but are intended as a means of fostering good employee relations through regular communications between the parties.

2. Either party may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such a meeting. Written response to all agenda items shall be within thirty (30) days of each meeting.

3. A maximum of seven (7) employee representatives of the Association may attend such quarterly meetings.

4. The State shall provide to the Association semi-annually a list of names and addresses of all unit employees.

4. **Modify Article IX, Section E [Fringe Benefit Information] as follows:**

The State shall provide information describing the health benefits program, the life insurance and pension program and similar available information to all new employees when hired.

5. **Modify Article X, Section H(3) [Step Three Arbitration] to include the following underlined language between the existing eight (8th) and ninth (9th) sentences of the section. The existing 8th and 9th sentences of this article is included below for purposes of clarity**:

The fees and expenses of the arbitrator shall be divided equally between the parties. Either party may make a verbatim record through a certified transcriber, with the attendance fee of the court reporter shared between the parties. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including any attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including any attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost.

6. **Article XI, Section N(6) [Minor Discipline] add the following language to the end of this section**:

Either party may make a verbatim record through a certified transcriber, with the attendance fee of the court reporter shared between the parties. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties.

7. **Modify Article XIII, Section A(3) [Salary Compensation Plan and Program-Administration] as follows**:

3. Overtime earnings shall be paid on the regular bi-weekly payroll.

8. **Modify Article XIV, Section C [Vacation] as follows**:

C. Payment For Vacation

1. Upon separation from the State, or upon retirement, an employee shall be entitled to vacation allowance for the current year on a prorated basis consistent with N.J.A.C. 4A:6-1.5 and N.J.S.A. 11A:6-2.

2. If a permanent employee dies having vacation credits unused vacation leave shall be paid to the employee's estate pursuant to N.J.A.C. 4A:6-1.2(j).

9. **Article XV, Section A [Holidays]**:

Eliminate Lincoln's Birthday as a holiday; change "Washington's Birthday" to "President's Day" and add new language as follows:

New Year's Day
Martin Luther King's Birthday (3rd Monday in January)
President's Day (3rd Monday in February)
Good Friday
Memorial Day (Last Monday in May)
Independence Day
Labor Day
Columbus Day (2nd Monday in October)
Election Day
Veteran's Day (November 11)
Thanksgiving Day
Christmas Day

The statutorily prescribed holidays, including any subsequent amendments thereto shall be the holidays recognized for purposes of this agreement.

10. **Article XV, Section B [Holidays] modify existing section to read as follows**:

In addition to the aforementioned holidays, the State will grant a paid day off when the Governor, in his/her role as Chief Executive of the State of New Jersey, declares a paid day off by Executive Order.

11. **Modify Article XXVII [Overtime] as follows:**

a. Overtime will accrue and compensation will be made in compliance with the Civil Service Rules and Regulations. Eligible employees will be compensated at the rate of time and one-half (1 and ½) for overtime hours accrued in excess of the designated work week. These compensation credits shall be given in compensatory time or in cash.

1. For the purpose of computing overtime, all paid holiday, sick hours, and vacation hours, whether worked or not, for which an employee is

compensated shall be regarded as hours worked. Overtime pay shall not be pyramided.

2. "Scheduled overtime" means overtime assigned prior to the day on which it is to be worked.

3. "Non-scheduled overtime" means assigned overtime made on the day on which it is to be worked.

4. "Incidental overtime" is a period of assigned non-scheduled overtime worked of less than fifteen (15) minutes.

5. When a scheduled work shift extends from one (1) day to the next, it is considered to be on the day in which the larger portion of the hours are scheduled and all hours of the scheduled shift are considered to be on that day.

Article XXXV – Health Insurance and Fringe Benefits
Article XIII – Relocate, Update and Modify Eye Care, Dental Plan, Temporary Disability and Deferred Compensation Plan to Article XXXV

The State proposes several revisions to Article XXXV. In support of its proposals, the State contends that the modifications it seeks are required by, and consistent with, the requirements of P.L. 2011, c. 78. Beyond meeting the requirements of law, the State points out that the revisions that it seeks are wholly consistent with similar provisions that were voluntarily agreed to between the State and its contracts with its other negotiations units, including the PBA Local 105, NJSOLEA, FOP Local 174 and SLEU units, covering the same duration as NJLESA, July 1, 2011 through June 30, 2015. As a corollary to these proposals, the State seeks to relocate, update and/or modify benefits from Article XIII to Article XXXV. NJLESA proposes changes to benefit levels in the Eye Care Program.

Award

N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the State's lawful authority and statutory limitations. The State is required to implement P.L. 2011, c. 78 in accordance with its terms. This requires the awarding of the State's proposals that it is mandated to implement. The remaining terms of the State's proposal beyond what it is mandated to implement are consistent with the terms that it negotiated in all of the collective negotiations agreements that are in evidence.

I note that NJLESA has made a proposal to change the Eye Care Program (see NJLESA final offer concerning Article XIII). NJLESA seeks to increase the existing benefit for regular lenses from $40.00 to $45.00; the benefit for bifocal lenses from $45.00 to $110.00 and to institute a new $70.00 benefit for contact lenses. NJLESA also seeks to have the benefit amounts available annually as opposed to the current two year basis. This would have the effect of doubling the benefit.

The State, for the purpose of properly categorizing fringe benefits into a single article, has proposed to move the eye care plan as well as the dental plan, temporary disability, and deferred compensation from Article XIII to Article XXXV. It is logical for one article to reflect what the State is required to implement under law, for the overall health insurance program in order to reflect uniformity of

approach and to place each related subject matter under a common contract article.

NJLESA's proposal to modify the eye care benefit is not awarded. During the contract period at issue, the eye care benefit as it currently exists, is at the same level that is provided for all State employees and there is no justification for deviation. Based upon all of the above, I award the State's proposals to modify Article XXXV and relocate the fringe benefits from Article XIII to Article XXXV, giving weight to N.J.S.A. 34:13A-16g(2)(c), the subsection that references the criterion concerning comparisons in public employment in the same jurisdiction.

Article XXXVI – Uniform Allowance

Both parties offer proposals concerning Article XXXVI – Uniform Allowance. The proposals coincide in certain respects and differ in others.

As reflected in their final offers, the parties agree on the amount of cash payments and when these payments will be made for Corrections Sergeants and non-Correction Sergeants. The State and NJLESA agree to continue the existing levels of cash payments that are set forth in Article XXXVI. These amounts represent the continuation of the status quo and are awarded. In addition, NJLESA proposes to ensure that its members who have retired between the effective date of the Agreement and the effective date of the Award, receive a pro

rata share of the cash payments for the time they worked and would have been entitled to the allowance during the time period that they were active employees.

The State proposes to add language that would eliminate the uniform allowance for employees who it asserts are not required to purchase a uniform and wear it for work. The State also proposes to negotiate with the Union the appropriateness of providing a uniform maintenance allowance in the event additional employees are required to purchase and wear uniforms for work.

Award

I award the Union's proposed language regarding payments to employees who worked during this contract period and have retired. The language does not cover employees who resigned employment, were discharged from employment or otherwise left the bargaining unit without good standing or provide payments to former employees for time periods after they retired. It includes only those who were employed during the course of the Agreement and have retired pursuant to law. Such employees made expenditures pursuant to Article XXXVI and would have received the cash benefits on the appropriate effective dates during their employment prior to retirement. However, I award a modification to the Union's proposal that deletes reference to pro rata payments after the effective dates and instead award payments only to those employees who were on the payroll on the effective date that the payment would have been made without pro rata payments subsequent to those effective dates.

The State supports its proposal by making reference to four law enforcement units that agreed to the language that it has proposed. This includes PBA 105, NJSOLEA, FOP 174 and SLEU. Further, Director Cohen refers to an August 13, 2011 report issued by the State Comptroller's Office titled "An Analysis of Clothing Allowance Payments to White-Collar New Jersey State Employees." Director Cohen indicates that the State has sought to eliminate the clothing allowance benefit for those employees who are not required to wear uniforms or other special clothing. I do not award the State's proposal. The record reflects that the parties disagree on whether certain employees, Parole Sergeants and Transport Officers in particular, are required to wear a uniform for work. According to testimony, employees in these categories are required to wear gun holsters, gun belts, handcuff carriers and flashlight holders and are responsible to maintain these items in order to perform their duties. The State's proposal to eliminate the cash payments would require expenditures to be made from each employee's salary without reimbursements. These employees do not appear to fall within the definition of employees who are not required to wear uniforms or other special clothing nor, as law enforcement employees, fall under the definition of "white collar" employees who are subject to the Comptroller's Office report that the State relies upon.

Article XLV – Term of Agreement

Both parties propose modifications to Article XLV. NJLESA proposes to maintain the status quo in Article XLV except for changes to the effective dates of the Agreement. The State agrees to change the effective dates to conform to the current contract period but seeks to remove the following language in the second paragraph of Article XLV:

> The contract shall automatically be renewed from year to year thereafter unless either party shall give written notice of its desire to terminate, modify or amend the Agreement. Such notice shall be by certified mail prior to October 1, 2010 or October 1 of any succeeding year.

According to the State, its proposal is based upon trying to avoid the automatic renewal of the terms of the Agreement because in the event that one party did not properly or timely notify the other of its intent to renegotiate the Agreement.

Award

I award a continuation of the language except for the changes in the effective dates. I do not award the State's proposal. The State has not established that the technical requirement to notice the other party prior to October 1 of the year preceding the contract expiration, or October 1 of any succeeding year, cannot be met or constitutes an administrative burden. Accordingly, the State has not met its burden to change the status quo except for the changes to conform the dates to the effective dates of the new Agreement.

Article XLIV – Negotiations Procedures

The State proposes changes to Article XLIV – Negotiations Procedures. The first change is to change the effective date of the Agreement to enter into collective negotiations to conform with the changed date for the expiration of this Agreement. That ministerial change is awarded.

The State also seeks to change Article XLIV, Section B as reflected in the following strike-through and underlined language:

> ~~**B. Procedure**~~
>
> The parties ~~also~~ agree to negotiate in good faith on all matters properly presented for negotiations pursuant to applicable law. ~~Should an impasse develop, the procedures available under law shall be utilized exclusively in an orderly manner in an effort to resolve such impasse.~~

The first change would add "pursuant to applicable law." This references the language that precedes the proposed change referencing matters that are properly presented for negotiations. The State contends that the language it seeks would substitute for poorly written language. It submits that the NJSOLEA and FOP 174 units agreed to the identical modification and that PBA Local 105 agreed to eliminate the phrase "exclusively and in an orderly manner" from their 2011-2015 Agreements.

Award

I award the State's proposal in part. The language "pursuant to applicable law" is unnecessary and redundant in light of the fact that the parties are only obligated to negotiate in good faith on matters that are lawfully negotiable and the current language "properly presented for negotiations" meets the requirement that subject matters be lawful. This part of the proposal is not awarded. I do award a deletion of the language "exclusively and in an orderly manner" because the language that follows, "the procedures available under law," resolves any hypothetical issue as to obligations for engaging in the impasse procedure. Based upon the above, Article XLIV, Section B shall state:

Negotiation Procedures

A. Successor Agreement

The parties further agree to enter into collective negotiations concerning a successor Agreement to become effective on or after July 1, 2015 subject to the provision expressed in "Term of Agreement".

B. Procedure

The parties also agree to negotiate in good faith on all matters properly presented for negotiations. Should an impasse develop, the procedures available under law shall be utilized in an effort to resolve such impasse.

Article XLI – Effect of Law

The State proposes two changes to Article XLI. The first proposal would modify Section A, paragraph 1 by deleting the language set forth below that is bolded:

A. Legislative Action

1. If any provisions of this Agreement require legislative action, or adoption or modification of the Rules and Regulations of the Merit Systems Board to become effective, or the appropriation of funds for their implementation, it is hereby understood and agreed that such provisions shall become effective only after the necessary legislative action or rule modification is enacted, **and that the parties shall jointly seek the enactment of such legislative action or rule modification.**

The State also proposes to delete Section C – Preservation of Rights in its entirety. That section currently states the following:

C. Notwithstanding any other provision of this Agreement, the parties hereto recognize and agree that they separately maintain and reserve all rights to utilize the processes of the Public Employment Relations Commission and to seek judicial review of/or interpose any and all claims or defenses in legal actions surrounding such proceedings as unfair practices, scope of negotiations, enforcement or modification of arbitration awards, issues of arbitrability, and specific performance of the Agreement.

I do not award either proposal. There is nothing in Article XLI, Section A(1) that requires the State to negotiate on a matter that is not lawful. Further, the State has not established that the language it seeks to delete has compelled it to engage in negotiations on items that are contrary to law or lawfully permissive subjects. The State has also not established justification for the elimination of the preservation of rights language in Section C. There is no evidence that the language has interfered with the legal rights of either party or created unnecessary litigation.

Quarterly Supervisor Meetings

NJLESA proposes to add a new section to Article V of the collective bargaining agreement to institute quarterly supervisor meetings at each correctional facility and/or institution among certain NJLESA members and the managers of the facilities/institutions. It contends that the provisions of this section would be solely applicable to employees in the Department of Corrections and Juvenile Justice Commission. Currently, the collective bargaining agreement provides for such meetings between the NJLESA and the Governor's Office of Employee Relations at the State level. This proposed new section would be in addition to those meetings and be conducted at the institutional and/or facility level.

Award

I do not award this proposal. The existing Agreement mandates quarterly employee relations meetings at the State level. NJLESA has not justified a need to extend such meetings to the many Department of Corrections and Juvenile Justice Commission facilities throughout the State of New Jersey. Although the objectives sought, as set forth in the testimony of NJLESA President Eric Holliday are not unreasonable, the ability to meet and exchange information and resolve local problems has not been shown to be unavailable at the local level or not available during the quarterly meetings now provided for.

Article XL – Maintenance of Benefits

The State proposes to modify the Maintenance of Benefits provision by adding language in Section A and Section B that prevents the application of those sections when a fringe benefit is "changed pursuant to statutory authority" or by current State "law, regulation or... policy."

Award

The proposed language would serve to clarify, and place members on notice, that a benefit could not continue to be maintained due to a statute or a rule that preempts the benefit to be maintained. While the proposed language does not appear to be required due to case law that dictates that a benefit cannot be enforced if the subject matter is pre-empted by statute or rule [See State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978)], the proposed language would clarify the State's obligation and notice employees in the event that the State is mandated to conform a benefit to a level that is required by law. The language proposed is being awarded solely for this purpose and would not be applicable in circumstances where the statutory authority or regulation is not written in the imperative and does not remove the discretion of the employer to continue to maintain the benefit that has been provided. Accordingly, Article XL shall be modified to read as follows:

Maintenance of Benefits

A. The fringe benefits, which are substantially uniform in their application to employees in the unit, and which are currently

provided to those employees, including, but not limited to, the Health Benefits Program, the Life Insurance Program, the Prescription Drug Program and their like, shall remain in effect without diminution during the term of this Agreement unless modified herein, changed pursuant to statutory authority or by subsequent agreement of the parties.

B. Other substantial benefits, not within the meaning of paragraph A above, currently enjoyed by an employee or a group of employees which are not in contradiction to current State law, regulation or policy and which are not in contradiction with other provisions of this Agreement shall remain in effect during the term of this Agreement and the continuation of the employee in his present assignment, provided that the continuance of such substantial benefit is not unreasonable under all of the circumstances and provided that if the State changes or intends to make changes which have the effect of substantial modification or elimination of such substantial benefits, the State will notify the Association and, if requested by the Association within ten (l0) days of such notice or within ten (l0) days of the date on which the change would reasonably have become known to the employees affected, the State shall within twenty (20) days of such request enter negotiations with the Association on the matter involved providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and, further, if a dispute arises as to the negotiability of such matters that the procedures of the Public Employment Relations Commission shall be utilized to resolve such dispute.

It is further agreed that the State shall refrain from implementation of changes in the circumstances where the obligation to negotiate has been mutually agreed until such time as there has been a reasonable opportunity for the position of the parties to be fully negotiated in good faith.

It is further understood that the absence of mutual agreement as to the obligation to negotiate is not construed to be a waiver of any rights of the parties under the provisions of the Employer-Employee Relations Act as amended.

Article XXXVIII – Tuition Refund and Employee Training

The State proposes to eliminate Section A and in its place add a sentence covering the issue:

~~**A. Tuition Refund**~~

~~The tuition refund program of the State shall be continued during the term of this Agreement. Further, because of the special interests of employees and the Association, the availability and utilization of the program shall be part of the agenda for subsequent joint meetings to review the administration of this Agreement as provided elsewhere herein. It shall be the policy of the State, together with PBA SLEU, to provide information as to the availability of the program to all employees.~~ The tuition aid program shall be administered consistent with N.J.A.C. 4A:6-4.6.

According to the State, N.J.A.C. 4A:6-4.6 requires the adoption of its proposal because the State is limited by law to adhere to the stated regulation pursuant to criterion N.J.S.A. 34:13A-16g(9) and further, because the language is identical to what was modified in the 2011-2015 agreements with PBA Local 105, NJSOLEA and FOP 174.

Award

There is merit to maintaining a tuition refund program that is lawful and contains consistent and uniform standards for all employees within the department or agency. Accordingly, I award the proposal but also award the relevant rule that governs the tuition and programs in order to provide notice to unit employees as to the elements of the program that they may access. Further, the removal of the current language is not intended to prohibit the subject matter of tuition aid from placement on agenda for the joint meetings that are held by the parties as was required by the prior language.

Accordingly, the following language is awarded to replace Section A:

Article XXXVIII – Tuition Refund and Employee Training

Section B shall be maintained as is. A new Section C shall be added to include the terms of N.J.A.C. 4A:6-4.6 governing tuition for the purpose of noticing unit employees as to the terms of the tuition refund plan.

Article XXXVII – Travel Regulations

The State proposes to add language referencing "State law" in relation to mileage reimbursement and eliminate reference to travel regulations. The State contends that "travel regulations" do not exist and that mileage reimbursement rates are found in statutes that are periodically updated by the Annual Appropriations Act (the budget). It also points out that the changes it has proposed have been agreed to in the PBA Local 105 and FOP units.

Award

The proposal accurately reflects the authority to grant mileage reimbursements and the source of the authority that makes changes by law. Accordingly, it is awarded. The language is as follows:

Travel Regulation

Employees are not required to provide privately owned vehicles for official business of the State. However, when an employee is authorized to utilize his privately owned automobile for official business of the State, the employee, on a voluntary basis only may provide the use of said vehicle for the authorized purpose and will be reimbursed for mileage at a rate per mile provided by State law. The State requires each individual accepting such authorization to maintain

insurance for personal liability in the amounts of $25,000 for each person and $50,000 for each accident and $10,000 property damage for each accident. The State will provide insurance coverage where such privately owned vehicles are used in the authorized business of the State covering the excess over the valid and collectible private insurance in the amount of $150,000 for each person and $500,000 for each accident for personal liability and $50,000 property damage for each accident unless and until legislation is passed which requires the State to indemnify and hold harmless their employees for personal injuries and property damage caused by the negligence of said employees while operating their privately owned vehicles on the authorized business of the State.

When an employee is authorized to utilize his own vehicle for travel on a temporary assignment, he shall be reimbursed for the mileage as provided by State law.

Article XIII, Section F

The State seeks to remove Section F from the Agreement. Section F currently states:

F. Travel Compensation

Effective November 1, 2002 all employees serving in the title below, who are not provided transportation shall be compensated at the rate of twenty-seven (27) cents per mile of travel to and from their place of assignment and permanent place of residence in excess of twenty (20) highway miles each way. Such payment shall not be started nor enlarged as the result of an employee voluntarily moving his/her residence at a time that is not coincidental to a change in their place of assignment.

This reimbursement shall be made monthly commencing in the first full calendar month after the signing of this agreement and shall be made to only those eligible employees serving in the following titles:

State Park Police Sergeant
Conservation Officer II
Police Sergeant, Human Services
Principal Marine Police Officer

According to the State, the mileage reimbursement for employees in the titles State Park Police Sergeants, Conservation Officer II and Police Sergeant-Human Services, estimated to be twelve (12) employees, is an outdated benefit and is inconsistent with the fact that other State employees commute long distances without mileage payments. The State also points out that a similar provision was removed from the contract covering the NJSOLEA unit.

NJLESA submits that the employees are assigned to the many state parks throughout the entire state and can be assigned to any of these parks thus requiring extensive travel.

Award

The record does not contain any evidence as to the assignments of the twelve individuals, whether and how often such assignments vary and the amounts of mileage reimbursements that are being received. In the absence of such evidence that would allow for a fuller assessment of the merits of the proposal, the proposal to eliminate Section F is denied based upon insufficient justification.

Article XXXIV, Section E - Safety

The State proposes to modify Section E as reflected in the following language with additions underlined and deletions containing strike-throughs:

E. The State and the Association shall place health and safety issues on the agenda for Quarterly Employee Relations Meetings ~~establish a Joint Safety and Health Committee consisting of four (4) members appointed by each party. Regular quarterly meetings will be scheduled~~ as required to discuss safety and health problems or hazards and programs and to make recommendations concerning improvement or modification of conditions regarding health and safety. ~~The Association shall supply an agenda when requesting a meeting.~~ Where reasonably possible, all committee meetings shall take place during working hours and employees shall suffer no loss of pay as a result of attendance at such meetings.

The proposal would eliminate the existing Joint Safety and Health Committee and instead require NJLESA to place such subjects on the agenda for Quarterly Employee Relations Meetings. The State contends that the committee is unnecessary because it has not recently met.

Award

I do not award the proposal but have modified the existing provision to reduce the number of meetings required. The record shows that actual and potential issues involving safety and health are matters of serious concern to unit employees. The State has not established that the standing committee, while not having recently met, is not designed to operate in a manner consistent with its purpose or that it has interfered with Department operations. The State contends that the committee has not met during the last two or three years and that NJLESA has not requested it to meet. It further notes that the PBA Local 105, NJSOLEA and SLEU units have agreed to eliminate the committee. The fact that the committee has not recently met and that other units have agreed to the

State's language is insufficient justification to abolish the committee. Safety and health are matters of significance to the unit and the existence of the committee allows for a vehicle to communicate over those issues. However, the existing language that requires quarterly meetings appears unnecessary given the fact that meetings have not been conducted as stated in the provision. Accordingly, I award the following modification to Article XXXIV, Section E:

> **E.** The State and the Association shall establish a Joint Safety and Health Committee consisting of four (4) members appointed by each party. One meeting will be scheduled annually to discuss safety and health problems or hazards and programs and to make recommendations concerning improvement or modification of conditions regarding health and safety. The Association shall supply an agenda when requesting a meeting. Where reasonably possible, all committee meetings shall take place during working hours and employees shall suffer no loss of pay as a result of attendance at such meetings.

Article XI – Discipline
Section L(5) –State Proposal
Section L(6) – NJLESA Proposal

Both parties have offered proposals to amend Article XI: Discipline. NJLESA's proposal is more limited in nature and will be addressed first.

NJLESA proposes to amend Section L(6). This provision concerns the amount of notice provided for written documents, reports or statements that will be used against a unit member at a disciplinary hearing, as well as known witnesses who may testify. The proposal seeks to extend the time periods from three (3) and two (2) days respectively to ten (10) and five (5) days respectively.

Sgt. Holliday testified in support of the proposal. Sgt. Holliday's testimony indicated that the current timelines do not provide sufficient time for NJLESA to prepare for disciplinary hearings. His testimony was credible and not rebutted. There is no evidence that a reasonable expansion of the time limits cannot be met by the State or would be burdensome.

Award

I award an extension of the time periods as proposed by NJLESA. Accordingly, Article XI, Section L(6) shall be modified as follows:

> In the event a disciplinary action is initiated, the employee or his/her representative [remove the following: may request and] shall be provided with copies of all written documents, reports, or statements which will be used against him/her at such hearing and a list of all known witnesses who may testify against him/her, which, normally will be provided not less than ten (10) days, exclusive of weekends, prior to the hearing date, but in no case less than five (5) days exclusive of weekends prior to the hearing date.

The State has proposed substantial modifications to Article XI, Section L(5). The proposals center on modifying the time limits and procedures for bringing disciplinary charges against the unit member by the appointing authority. The proposal also seeks to have specific definitions as to what state representative shall constitute the appointing authority. Section 5 currently states the following:

> 5. All disciplinary charges shall be brought within 45 days of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within the 45 day time period, the charge shall be dismissed. The employee's

whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed. Charges under EEOC shall be brought within 60 days.

Testimony concerning the State's proposals was offered by Kenneth Green, Director of Employee Relations for the DOC and Thomas Moran, a former unit member who retired as the DOC Chief of Staff.

Green's testimony focused on the State's contention that the existing language concerning the 45 day rule can, and has, prohibited the State from bringing removal charges against a Corrections Officer. The essence of the proposal is to maintain the 45 day time period for when disciplinary charges shall be brought except when the State charges an employee with one of nine specific removal charges that relate to specific conduct that is either criminal or egregious. Under these exceptions a 120 day rule would apply. The specific types of exceptions are set forth in the State's final offer.

According to the State, its concern about a unit member not being disciplined because of a "technicality" was addressed in its negotiations with PBA Local 105 and NJSOLEA. In response to NJLESA questioning, Green acknowledged that the changes that were made in each of the two agreements differed from one another. From this, LESA contends that the State's argument as to the need for uniformity is without merit. Green responded that while the two agreements that were made differed, they both addressed the same concern that

the State has expressed in support of this proposal and that the proposal to NJLESA is the same that was made with NJSOLEA.

Moran testified in support of NJLESA's position to deny the State's proposal. He testified to the history of the 45 day rule, namely that it was first promulgated in 1988 by a DOC Human Resource Bulletin and extended the time period to 45 days some fifteen years ago. The rule was then included in the contract. NJLESA contends that the State's proposal is unnecessarily cumbersome when compared to the existing contract language that was derived for the most part from DOC documents. Green was cross-examined extensively as to the underlying purpose and claimed necessity for the State's proposal.

Award

The record does reflect that the 45 day rule has been the subject of interpretation and dispute. The fact that PBA Local 105 and NJSOLEA have agreed to some modification to the 45 day rule tends to support the State's argument that the rule is in need of some clarification and modification in order to minimize disputes over its application. NJLSEA shares a greater community of interest with NJSOLEA than with PBA local 105 based upon the fact that the two units represent superior officers. Moreover, the PBA 105 agreement provides the State with the broad authority to extend the 45 day period for an undetermined period of time by changing the trigger date from "45 days of the appointing authority reasonably becoming aware of the offense" to when "the

appointing authority reasonably becomes aware of the offense" without reference to days. The NJSOLEA agreement provides for dates of certainty by maintaining the 45 day rule except for when the 120 day rule would apply to the nine specific types of removal charges that are contained in the State's proposal to NJLESA. It is reasonable for Sergeants and Lieutenants operating in the same departments and agencies to have similar investigatory procedures that provide due process for unit members. An award of the State's proposal accomplishes that goal and it is awarded. I also award the State's proposal for specific individuals to serve as the appointing authority for their respective departments or agencies consistent with the terms agreed to by the other law enforcement units. Such designation will avoid any ambiguity as to who may bring disciplinary charges against a unit member. NJLESA contends that case law supersedes the State's proposal. This cannot be determined on this record but this award is intended to be consistent with case law.

Based upon all of the above, I award the State's proposal to modify Article XI, Section L(5).

Article X - Section G(1) - Time Off For Grievance Hearings

The State seeks to modify Section G(1) that references time off for grievance hearings. It proposes to eliminate the language that grants compensatory time equal to the additional time spent at a hearing in the event that a hearing extends beyond an employee's normal working hours. Under the

current provision, such time is not considered time worked for the computation of overtime.

Award

Testimony in support of the proposal reflects that employees, instead of continuing to be afforded the current benefit, would "just have to pursue their grievance after hours without pay." The record does not reflect the frequency nor the extent to which this section of Article X has caused the granting of compensatory time. There is no evidence that this provision has been abused. Accordingly, the proposal is not awarded based upon insufficient justification.

Article X – Section H(2) – Step Three Arbitration
Article XI – Section N(1) – Minor Disciplines

The State proposes virtually identical changes to Section H(2) of Article X (Step Three Arbitration) and Section N(1) of Article XI (Minor Discipline). Section H(2) of Article X provides a selection procedure for arbitrators to decide unresolved grievances and allows for the mutual selection of a panel of three (3) arbitrators. It also provides that if the parties are unable to agree upon a panel of arbitrators, the selection procedure of PERC shall govern the appointment of an arbitrator. Section N(1) of Article XI segregates out unresolved grievances involving disciplinary suspensions of five (5) working days or less (minor discipline) and creates a Joint Association Management Panel of one person selected by each party and a third party neutral mutually selected by the parties. Under the State's proposal, in both instances the per diem fees for the arbitrators

would be capped at $1,000 per day and $500 for a late cancellation by either party that is "without good cause."

The State's argument in support of its proposal is as follows:

> The State's final offer to modify Art. X, Sec. H(2), and Art. XI, Sec. N(1) to cap an arbitrator's fee for both grievance and minor discipline arbitrations to $1,000 per day, and to cap late cancellation fees to $500 per day is identical to the caps agreed to by the PBA 105, NJSOLEA, FOP 174, and SLEU law enforcement units. The same caps were also negotiated into the civilian 2011-2015 IFPTE CNA (See, S-1I at 10 (Art. 7, Sec. F(5)(6)), and have been in place for discipline arbitrations under the civilian CWA CNA since 2007. (Tr. 12/18/13 at 84 (Cohen).) The offer also mirrors the cap the State Legislature placed on interest arbitration fees. See, N.J.S.A. 34:13A-16F(6).
>
> Director Cohen testified that the State, with approximately 63,000 represented employees in the executive branch, is one of the largest consumers of arbitration services in New Jersey (Tr. 12/18/13 at 84; 12/19/13 at 124 (Cohen).) The annual case volume results in substantial costs for both parties. (Tr. 12/18/13 at 84 (Cohen).) The Union does not contest this point. The offer would actually benefit the Union in managing its treasury which, according to NJLESA President Holliday, "doesn't have enough funds to pay anybody's salary or [even] a day for a union time off." (Tr. 12/13/13 at 67-68 (Holliday).)
>
> Director Cohen further testified that the State has had no difficulty attracting experienced arbitrators willing to work at the capped rate. (Tr. 21/19/13 at 123-124 (Cohen).)

NJLESA contends that the State's proposals should be rejected. Its arguments are as follows:

> The above referenced proposals will be addressed in concert as they both seek the same modification to their respective contract articles. Perhaps none of the State's proposals illustrate their pervasive theme of trying to save a few dollars no matter what the cost as those that are attempting to limit the arbitration pool based on restrictions being placed on the arbitrator's fee. These proposed modifications, if approved, will force the NJLESA to utilize only those arbitrators that

> agree to perform services at a rate that does not exceed one thousand dollars ($1,000.00) per day. In short, the NJLESA does not want to be confined to work with only those arbitrators that accept employment at a discounted rate that is set and/or demanded by the State. ... the NJLESA does not take issue with paying an arbitrator his or her set fee and wholeheartedly does not agree to establishing a panel wherein which the sole criteria of an individual's participation is working at a discounted rate demanded by the State.

Award

The State's proposals are based upon reducing the costs of litigation through lower arbitration fees as well as comparability with other State units. The record contains no estimates as to what savings the State would derive from capping arbitrator's fees for the NJLESA unit, nor evidence as to the number of grievance arbitration awards the parties receive annually. The contracts in evidence do not reflect there is uniformity on the subject in each State labor agreement. The CWA units that represent the largest number of State employees does not have a cap on arbitration fees for grievances that concern contract interpretation issues but it has agreed to bifurcate disciplinary arbitrations and has agreed to subject those grievances to the cap that the State seeks to impose here but for all grievances.

Award

I award the State's proposal in respect to Article XI, Section N(1) – Minor Disciplines but not in respect to Article X, Section H(2) – Step Three Arbitration. This award is consistent with the approach taken by the State and CWA. While there is nothing in the record that reflects the basis for the bifurcation that exists

in the CWA units, the only reasonable explanation is that the State and CWA have acknowledged that the imposition of the cap is not as desirable on matters that concern matters of contract interpretation as opposed to the more straightforward types of cases that involve minor discipline.

Accordingly, the terms of Article X, Section H(2) shall remain as stated in the prior agreement. Article XI, Section N(1) shall be modified to reflect the following:

> The parties agree to establish a Joint Association Management Panel consisting of one (1) person selected by the State and one (1) person selected by the Association and a third party neutral mutually selected by the parties. Each panel member shall serve on an ad hoc or other basis. The purpose of this panel is to review appeals from the Departmental determinations upholding disciplinary suspension of five (5) working days or less, excepting unclassified, provisional or probationary employees. <u>All panel neutrals must agree, in advance as a condition for being selected for inclusion on a panel, to accept a fee of no more than $1,000 per day, and to impose a fee of no more than $500 for a cancellation by either party without good cause.</u>

Article XVI - Personal Preference Days

Both parties have proposals to modify Article XVI. The purpose of the personal preference days provision is to provide a procedure allowing employees to move a holiday to a day of their personal preference. Green offered testimony as to the nature of the provision. As Mr. Green testified, currently an employee can request to take any of the twelve holidays listed in Article XV on a day other than when the holiday falls in exchange for working on the holiday itself at straight time pay. The purpose of the provision is that the State gets the benefit

of an employee volunteering to work a holiday at straight time while the employee gets the benefit of taking up to twelve days off at a time of his/her choosing such as taking a day in lieu of a holiday for religious observances, birthdays, anniversaries, to extend a vacation or holiday, or to otherwise have off on a day of personal preference. For the purpose of evaluating the parties' respective positions on their proposals, I set forth below the entire personal preference days provision as it currently exists:

> Between September 1 and October 1 of the preceding year, employees may submit requests for alternative holidays for the upcoming calendar year which shall be dates of personal preference such as religious holidays, employee birthday, employee anniversary or like days of celebration provided:
>
> a. the agency employing the individual agrees and schedules the alternative date off in lieu of the holiday specified and the employing agency is scheduled to operate on the alternative dates selected; such agreement shall not be unreasonably withheld.
>
> b. the employee shall be paid on the holiday worked and deferred at his regular daily rate of pay;
>
> c. the commitment to schedule the personal preference day off shall be non-revocable under any circumstances. The employee must actually work on the holiday that he/she agreed to work in exchange for the personal preference day in order to be entitled to the personal preference day. Moreover, under no circumstances shall there be compensation for personal preference days after retirement and employees shall be docked for a personal preference days that were utilized based upon the expectation of continued employment through the calendar year. Notwithstanding the foregoing, when an employee has already selected a personal preference day and worked the corresponding holiday as promised, and the employee gives at least ten (10) days written notice that he/she will be in no pay status for a period of at least twenty (20) days due to a documented medical condition, the employee may request that the personal preference day be rescheduled to a later date and such requests shall be considered in light of operational needs;
>
> d. and provided further that if, due to an emergency, the employee is

required to work on the selected personal preference day he shall be paid the same basis as if it were a holiday worked.

Where more requests for personal preference days are made than can be accommodated within a work unit, the job classification seniority of employees in the work unit shall be the basis for scheduling the personal preference days which can be accommodated.

e. These provisions shall only be applicable to employees that work in institutions that are required to be manned 24 hours per day, seven (7) days per week.

I first address the proposals offered from NJLESA. NJLESA proposes two new sections to Article XVI that address issues that have arisen in connection with an employee who is away on military leave. The proposals are as follows:

f. Any employee who is on military leave during the time in which personal preference days are picked shall be permitted to pick their personal preference days upon returning to duty.

g. Any employee who is on military leave after having picked their personal preference days and after having worked the holiday shall be permitted to re-select their personal preference day off upon returning to duty if the day the employee originally chose was during the employee's time being out on military leave.

In support of its proposals, NJLESA offers the following arguments:

Currently, if a NJLESA member is away on military leave during the time personal preference days are selected, that member is unable to pick his/her personal preference days. (1T40:1-7). Issues have also arisen in the past when members have scheduled a personal preference day, but are unable to take advantage of the same because they are away on military leave. In that situation, the member would lose his/her personal preference day. (1T40:8-15). The NJLESA proposal would resolve the inequity of these situations.

Specifically, the NJLESA proposal would allow an employee on military leave during the time personal preference days are chosen to pick their personal preference days upon returning to state employment. Secondarily, an employee who is on military leave after

having picked their personal preference day and worked the corresponding holiday shall be permitted to re-select their personal preference day off upon returning to employment if the day originally chosen was during the employee's time being out on military leave. The proposal is simple and straightforward. Suffice it to say, the proposal ensures that NJLESA members who are serving their country are properly taken care of upon their return to employment and obtain the benefit they would have originally possessed but for their loyal service. When viewed in this light, there is absolutely no reason this proposal should not be awarded.

The State proposes four changes to Article XVI. Its proposals are set forth below through strike-throughs that delete current language and the addition of new language indicated by underlines. The first paragraph of subsection (f) was withdrawn at hearing:

Proposed Change: Modify as follows:

Personal Preference Days

~~**Between September 1 and October 1**~~During the month of November in the preceding calendar year, of the preceding year, employees may submit requests for alternative holidays to those specified to be celebrated within the calendar year, which shall be dates of personal preference such as religious holidays, employee's birthday, employee anniversary or like days of celebration provided:

a. the agency employing the individual agrees and schedules the alternative day off in lieu of the holiday specified and the employing agency and employee's function is scheduled to operate on the specified holiday ~~alternative dates selected;~~ such agreement shall not be unreasonably withheld;

b. the alternative day off in lieu of the holiday, other than Christmas, must occur after the specified holiday. Preference days in lieu of Christmas may be taken before the holiday,

~~b~~c. the employee shall be paid on the holiday worked and deferred at his regular daily rate of pay;

~~c~~d. the commitment to schedule the personal preference day off shall be non-revocable under any circumstances. The employee must actually work on the holiday that he/she agreed

to work in exchange for the personal preference day in order to be entitled to the personal preference day. Moreover, under no circumstances shall there be compensation for personal preference days after retirement and employees shall be docked for any personal preference days that were utilized based upon the expectation of continued employment through the calendar year. Notwithstanding the foregoing, when an employee has already selected a personal preference day and worked the corresponding holiday as promised, and the employee gives at least ten (10) days written notice that he/she will be in no pay status for a period of at least twenty (20) days due to a documented medical condition, the employee may request that the personal preference day be rescheduled to a later date and such request shall be considered in light of operational needs;

~~d~~e. and provided further that if, due to an emergency, the employee is required to work on the selected personal preference day he shall be paid on the same basis as if it were a holiday worked~~.~~;

f. if an employee fails to honor his commitment to work the holiday for which he has taken a personal preference day he/she will be disqualified from taking a personal preference day for one year and any personal preference days scheduled within that calendar year may be revoked at the discretion of the agency. (withdrawn)

Where more requests for personal preference days are made than ~~can be accommodated~~for operational reasons within a work unit, the job classification seniority of employees in the work unit shall be the basis for scheduling the personal preference days which can be accommodated.

The State supports its first proposal by reference to the agreements that it made with PBA Local 105, NJSOLEA and SLEU. These agreements include the language that the State has proposed that deals with changing the time for submission of requests from September to November. The State argues:

> In the Department of Corrections alone, more than 5,000 employees submit requests for weekly vacation and personal preference days for the following year. (Tr. 12/19/13 at 149 (Green).) The State has determined that it will be more efficient to process those requests in one month, the month of November, for the following year's schedule.

> Doing so allows the Departments to schedule vacation and personal preference days for the following year for all 5,000+ employees at one time rather than doing so piecemeal. (Tr. 12/19/13 at 148-149 (Green).) Moving the time to November would be consistent with the PBA 105, NJSOLEA, and SLEU CNAs. (Tr. 12/19/13 at 209 (Green) ("having all three in November makes better sense than having two in November makes better sense than having two in November and one in September.").)

The second part of the State's proposal is to modify Section A of Article XVI to restrict the personal preference benefits to those employees whose departments or agencies operate on the specified holiday and who would otherwise be scheduled to perform their job function on the holiday. The State references Green's testimony that "in order for a personal preference day to make sense, the job function must function 24/7."

The third part of the State's proposal is to require personal preference days after the corresponding holiday, with the exception of Christmas. It would accomplish this objective through the addition of the new language it proposes in subsection (b). According to the State:

> The change will address the problem of employees getting the benefit of taking a personal preference day and not working the subsequent holiday, as agreed. "The inherent problem that occurs routinely with the Department is that people will bomb on the holiday if they get the PP day before. The word bomb means call off." (Tr. 12/19/13 at 146 (Green).) The proposed addition would solve that problem.
>
> Recognizing that this restriction would leave employees with only six (6) days to schedule a personal preference day after December 25th, the State's final offer continues to allow a personal preference day taken in lieu of Christmas to be scheduled at any time during the year. (Tr. 12/19/13 at 147 (Green).)
>
> The State's final offer requiring personal preference days to be

scheduled after the holiday is consistent with the changes agreed to by the PBA 105 unit (S-1B at 36 (Art. XVII, Sec. b)) and the SLEU unit (S-1E at 15 (Art. XVII, Sec. B).

The NJSOLEA unit did not agree to this change. Instead, the Lieutenants agreed to a "penalty provision." (Tr. 12/19/13 at 147-148 (Green).) If a Lieutenant fails to honor their personnel preference day commitment, their personal preference days for the remained of that year are cancelled and they are barred from the personal preference day benefit for one year. (Id.) The new language agreed to by the NJSOLEA unit is:

> If an employee fails to honor his commitment to work the holiday for which he has taken a personal preference day he/she will be disqualified from taking a personal preference day for one year and any personal preference days scheduled with that calendar year may be revoked at the discretion of the agency.

(S-1C at 19 (Art. XVI, Sec. e)). The State does not seek to add this penalty provision to the NJLESA CNA but instead proposes inclusion of the new Subsection b.:

b. the alternative day off in lieu of the holiday, other than Christmas, must occur after the specified holiday. Preference days in lieu of Christmas may be taken before the holiday.

The fourth change proposed by the State concerns the circumstances under which seniority is used to grant preference day requests. The proposal deletes the language "can be accommodated" and in its place adds "for operational reasons." According to the State, this language was agreed to by PBA Local 105, NJSOLEA and SLEU units and is intended to ensure that a department's or agency's operations will not be adversely affected due to many employees being absent on any given day. It appears on this record that the existing language was intended to apply when operational reasons dictated.

Award

NJLESA's proposal creates an exception for employees on military leave. This proposal is reasonable. There is no evidence that the proposal would interfere in any significant way on the operations of the respective departments. It also serves the interest and welfare of the public for an employee on military leave not to be negatively impacted during times of military service. The fact that it is not a benefit contained any in comparable state law enforcement unit is not sufficient grounds to deny the proposal. Accordingly, it is awarded.

I also award the State's proposal to change the time for the submission of personal day requests from the month of September to the month of November. Although comparability standing alone is normally not a sufficient basis to award a proposal, the uniformity that the State gains by the change in the date for submission of requests will promote efficiency and administrative convenience. The department's ability to schedule vacation and personal preference days can be accomplished for all of its 5,000 employees at one time. I also award the second part of the State's proposal which would modify Section (a). Green testified that the proposal is "clean up language." He noted that certain job functions are either not open or present during a holiday. Thus, an employee cannot agree to work on a holiday when the job that would be performed does not require work on that day. The clarification would mean that personal preference days are only to be used by employees who work in job functions that

actually operate or function on the holiday. Accordingly, I award the State's proposal with respect to Article XVI, Section (a).

The State's third proposal requires that an employee's alternative day off in lieu of the holiday to occur after the occurrence of the specified holiday with the exception of Christmas. The State's proposal recognizes that if its proposal were to apply to the Christmas holiday, employees would only have six days to schedule a personal preference day. The purpose of the proposal is to avoid an employee's ability to take a personal preference day and then not work the subsequent holiday with the consequential adverse effect on the department's operation. The State notes that PBA Local 105 and the SLEU unit agreed to this specific proposal. The State acknowledges that the NJSOLEA unit did not agree to the change but instead agreed to a penalty provision that disqualifies an employee who "bombs" the holiday from taking a personal preference day for one year and any other personal preference day that was scheduled during the calendar year. The State asserts that it does not propose the penalty provision in this case but that its proposal, without penalties, will accomplish the goals that it seeks. Green's testimony that the problem of "bombing" occurs routinely within the department was credible and was not rebutted. Uniformity of purpose concerning the use of personal preference day will further the administrative operations of implementing the benefit and will serve as a useful standard for employees to comply with. Accordingly, the State's proposal (except for the language that it withdrew) is awarded.

The State's fourth proposal concerns situations when there are more requests for personal preference days than can be accommodated. The substitution of the language "can be accommodated" for the language "for operational reasons," was agreed to by the PBA Local 105, NJSOLEA and SLEU units who also have the same provision that uses seniority as the factor when granting requests for personal preference days. A common provision on this subject furthers the interests and welfare of the public by eliminating the potential disparities that could exist because of different language that governs the same benefit.

Article XXVIII – Scheduling of Overtime

The State proposes to add a new section to the overtime provision. Its proposal would limit the remedy to an employee's grievance that has been sustained to granting the next overtime opportunity rather than payment for the shift not worked. The State contends that its proposal should be awarded because it was agreed to by PBA Local 105, NJSOLEA and SLEU.

In this instance, I do not give the significant weight to comparability that is sought by the State. The provision is only applicable if an officer who is at the top of the overtime list is improperly passed over for overtime. There is nothing in Article XXVIII that requires the award of pay to an employee who is passed over and apparently this remedy was awarded in an arbitration proceeding. The

State now seeks to confine such remedies in the future. The remedy of payment cannot, as indicated by the State, be characterized as a "windfall" because it is the employer's responsibility to avoid the potential for an award of lost compensation by adhering to the contract provision. Accordingly, the proposal is denied.

Article XXXIV – Safety

NJLESA proposes to add a shift overlap section to this article. It would read as follows:

> Custody Correction Sergeants and General Assignment Sergeants shall be given a ten (10) minute briefing period prior to the commencement of their shift, hereinafter referred to as "shift-overlap". This briefing period will allow officers to obtain and/or receive information pertaining to the daily operations of the institution and any and all issues associated therewith in preparation for the Sergeant's shift. This shift-overlap shall be paid to the Sergeants as compensatory time off.
>
> For purposes of this subsection, a Custody Corrections Sergeant is a Sergeant who is assigned to a particular tier or housing unit within an institution as defined and understood by the New Jersey Department of Corrections' and Juvenile Justice Commission's operational policies and procedures. A General Assignment Sergeant is a Sergeant who is not assigned to particular tier or housing unit within an institution, but is responsible for the transport of inmates and/or serves as a "floater" between a tier and/or multiple tiers within an institution as defined and understood by the New Jersey Department of Corrections' and Juvenile Justice Commission's operational policies and procedures.

The proposal is directed at Custody Corrections Sergeant and General Assignment Sergeant. Testimony in support of the proposal was offered by Sgt. Holliday. He testified that the proposal seeks to reinstitute a system of shift

overlap that previously had been provided in prior agreements and was later eliminated. Holliday believed that safety and security would be enhanced by information sharing by a Sergeant who is coming off of a shift to the one who would be beginning the next shift. He believes that the dynamics of working within a correctional institution makes shift overlap vital in dealing with situations such as gang activity, ongoing investigations and potential suicides.

The State contends that the proposal should be denied because it is a benefit not contained in any one of the comparable law enforcement units that negotiate with the State and further, because it is a non-salary economic issue that is not contained in the present Agreement and thus, runs afoul of the prohibition in N.J.S.A. 34:13A-16.7(b) that bars the arbitrator from awarding a new non-salary economic issue.

Award

I need not decide whether the statute prohibits the awarding of the proposal because I do not award the proposal on its merits. While Sgt. Holliday's testimony was credible as to information sharing, additional testimony reflects that information sharing can be conducted in the absence of a shift overlap provision. Moreover, there is a greater burden on a party that seeks to reinstitute a provision that over time had been negotiated out of the agreement. In this instance, this burden has not been met.

Article XXI – Leave of Absence Due to Injury

Article XXI covers leaves of absence due to injury and references the Sick Leave Injury ("SLI") program as referenced in Article XXI. That subject matter was challenged by the State in a Petition for Scope of Negotiations Petition that it filed on September 23, 2013. PERC held that Article XXI and LESA's proposed addition to Article XXI are illegal subjects for negotiation and may not be included in a successor collective negotiations agreement. Based upon PERC's order, I award the removal of Article XXI from the Agreement.

Article XIX – Compensatory Time Off

Both parties have proposed modifications to Article XIX – Compensatory Time off. For the purpose of understanding the parties positions, I have set forth the Compensatory Time Off provision in its entirety. It currently states:

> A. When employees accumulate compensatory time balances, the administrative procedures of the department involved shall be followed to assure the employee that such compensatory balances will not be taken away but will be scheduled as time off or alternatively paid in cash.
>
> B. Compensatory Time Requests
>
> 1. Employees requests for use of compensatory time balances shall be honored, so long as the request is received by the employer at least 48 hours in advance. Requests for use of compensatory time received less than 48 hours in advance may be granted when granting such request will not result in any overtime cost to the State. Otherwise, requests that are made on less than 48 notice shall, in the sole discretion of management, be rejected in all circumstances if this advanced notice is not provided, including circumstances that were previously referred to as "emergency comp time." Any

grievance resulting from management's discretion to reject a request for the use of comp time pursuant to this section shall not be subject to arbitration.

2. Notwithstanding the provisions set forth in subsection (1) above, when the rejection of an employee's request for use of compensatory time would force an employee into no pay status, but where the employee still has one (1) or more accrued comp days standing to his/her credit, the employee shall be permitted to utilize a compensatory day to be paid for the day. Notwithstanding the fact that the employee is paid for the day, the employee may still be subject to discipline in accordance with the department's attendance policy.

3. Priorities in honoring requests for use of compensatory time balances will be given to employees:

   1. where scheduled one (1) month in advance,
   2. where shorter notice of request is made.

   Requests for use of such time under 1 and 2 herein will be honored except where emergency conditions exist or where the dates requested conflict with holiday or vacation schedules.

C. An employee may be required to schedule compensatory time off in keeping with the needs within a work unit. Reasonable notice will be given to the employee.

D. Ordinarily, a maximum of one hundred (100) hours of compensatory time may be carried by any employee. Where the balance exceeds one hundred (100) hours, the employee and the supervisor will meet to amicably schedule such compensatory time off.

NJLESA seeks to amend Section D by replacing 100 hours of compensatory time with 480 hours of compensatory time. Its proposal further provides that when the employee and supervisor are unable to amicably schedule compensatory time off, that the employee would be entitled to receive a lump sum cash payment equivalent to the value of the compensatory time. The State seeks to amend Section D by the addition of language stating:

If the employee and the supervisor cannot agree on the scheduling, the supervisor shall have the discretion to schedule the compensatory time off.

The State proposes to add language to Section B(1) and Section D as reflected in the following underlined language that would be added to the existing Article:

> Employees requests for use of compensatory time balances shall be honored, so long as the request is received by the employer at least 48 hours in advance. Requests for use of compensatory time may, in the sole discretion of management, be rejected in all circumstances if this advanced notice is not provided, including circumstances that were previously referred to as "emergency comp time." Further, notwithstanding this notice, a request for compensatory time may be denied only in circumstances when it cannot be accommodated for operational reason. If denied, an alternate day may be requested and such request will be given preferential treatment but shall not require "bumping" another employee from a previously scheduled day off. Any grievance resulting from management's discretion to reject a request for the use of comp time pursuant to this section shall not be subject to arbitration. Priorities in honoring requests for use of compensatory time balances will be given to employees.

Award

Both parties offer vigorous objection to each other's proposals to revise this Article. As the record reflects, compensatory time off provisions are not easy to administer and can lead to disputes because of the difficulty of defining rights and limitations in clear and unambiguous ways. This conclusion is supported by the fact that the parties engaged in a grievance arbitration that concerned an interpretation dispute over Section B. The State's offer to modify Section B is intended to reflect the Arbitrator's interpretation of Section B. The State also

points out that the terms of its proposed Section B has been agreed to by PBA Local 105, NJSOLESA, FOP 174 and SLEU. The State's offer to include language in Section D is intended to codify the State's discretion to schedule compensatory time off when a supervisor and employee are unable to agree on its scheduling. The State points out that this language was included in the aforementioned comparable state law enforcement units.

I am persuaded that consistency in the manner in which compensatory time off is earned and granted furthers operational efficiency and eliminates potential conflicts between and among employees who serve a common mission. The State's proposal meets that goal while NJLESA's proposal would substantially deviate from the present contract article and the manner in which compensatory time off provisions are to be administered within the department and agencies. Accordingly, I award the State's proposed modifications and deny the proposals of NJLESA.

Article XIII – Salary and Compensation Plan and Program
Section B(3)

The State proposes to revise Article XIII, Section B(3). This section concerns pay adjustments upon promotion, otherwise known in N.J.A.C. 4A:3-4.9 as Advancement Pay Adjustments. The State's proposal is set forth in the strike-through and underline changes as reflected in the current provision as follows:

3. Salary Upon Promotion: ~~Effective as soon as practicable following issuance of the Interest Arbitration Award~~Pursuant to

> the 2011 amendment to N.J.A.C. 4A:3-4.9 by the Civil Service Commission, which applies to every employee promoted into this unit, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place them on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary that they were receiving at the time of the promotion. ~~Notwithstanding any regulation or authority to the contrary,~~ nNo employee shall receive any salary increase greater than the increase provided for above, upon promotion to any job title represented by NJLESA. By way of illustration, a Senior Corrections Officer ("SCO") is currently in Employee Relations Group "L", Range 18. If such SCO is at Step 9 as of the date of the his/her promotion and therefore earning a salary of $77,667.99 as shown on the salary guide effective ~~12/23/06~~07/13/2013, such employee, upon promotion to Corrections Sergeant (Employee Relations Group "2", Range 21) would move to Step 6 at $80,254.10, as this is the lowest salary on the Group "2", Range 21 salary scale effective 01/01/11 that is above the promoted employee's salary as of the date of promotion. [It is understood that the foregoing example is for illustration purposes only and is based upon the salary guide effective as of ~~12/23/06~~01/01/11 and that the salary at each step of the guide is subject to change as per the across the board salary increases that are awarded in the interest arbitration proceeding.

According to the State, its proposal is designed to change Section B(3) to comport with N.J.A.C. 4A:3-4.9. It supports its proposal with the following contentions:

> Both Art. XIII, Sec. B(3) and N.J.A.C. 4A:3-4.9 addresses the issue of salaries upon promotion. Effective August 15, 2011, N.J.A.C. 4A:3-4.9(a) was amended, in part, to include the following underlined language:
>
> > Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range, unless a different salary adjustment is established in a collective negotiations agreement, except that in no event shall such

adjustment result in a higher salary than that provided for in this section.

See 43 N.J.R. 903(A), 43 N.J.R. 2168(A).

To avoid the possibility of a conflict between Sec. B(3) and the revised regulation, it is necessary to revise Sec. B(3) as follows:

> **3.** Salary Upon Promotion: ~~Effective as soon as practicable following issuance of the Interest Arbitration Award~~Pursuant to the 2011 amendment to N.J.A.C. 4A:3-4.9 by the Civil Service Commission, which applies to every employee promoted into this unit, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place them on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary that they were receiving at the time of the promotion. ~~Notwithstanding any regulation or authority to the contrary, n~~No employee shall receive any salary increase greater than the increase provided for above, upon promotion to any job title represented by NJLESA. By way of illustration, a Senior Corrections Officer ("SCO") is currently in Employee Relations Group "L", Range 18. If such SCO is at Step 9 as of the date of the his/her promotion and therefore earning a salary of $77,667.99 as shown on the salary guide effective ~~12/23/06~~07/13/2013, such employee, upon promotion to Corrections Sergeant (Employee Relations Group "2", Range 21) would move to Step 6 at $80,254.10, as this is the lowest salary on the Group "2", Range 21 salary scale effective 01/01/11 that is above the promoted employee's salary as of the date of promotion. [It is understood that the foregoing example is for illustration purposes only and is based upon the salary guide effective as of ~~12/23/06~~01/01/11 and that the salary at each step of the guide is subject to change as per the across the board salary increases that are awarded in the interest arbitration proceeding.

The proposed should be awarded under criterion N.J.S.A. 34:13A-16g(2)(c) as these identical revisions were agreed to by NJSOLEA (See S-1C at 17 (Art. XIII, Sec. B(3).) There is no comparable provision in the PBA 105 or SLEU CNAs as those units cover entry level positions.

NJLESA urges rejection of the State's proposal. It offers extensive argument in support of rejection in its post-hearing submission as follows:

> Conversely, it is NJLESA's position that one of the State's proposals exceeds its lawful authority. Specifically, NJLESA submits the State's proposal seeking to remove certain language relating to an employee's salary upon promotion is contrary to existing law and, therefore, precludes the awarding of the same in this arbitration proceeding.
>
> As previously recounted, the State has offered the following proposal:
>
> > Salary Upon Promotion: **Pursuant to the 2011 amendment to N.J.A.C. 4A:3-4.9 by the Civil Service Commission, which applies to every employee promoted into this unit**, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place them on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary that they were receiving at the time of the promotion. **[Remove the following: Notwithstanding any regulation or authority to the contrary]**, No employee shall receive any salary increase greater than the increase provided for above, upon promotion to any job title represented by NJLESA.
>
> Under the New Jersey Employer-Employee Relations Act (hereinafter "the Act"), N.J.S.A. 34:13A-1 to -29, collective negotiations with public employees over terms and conditions of employment encompasses a broad variety of subjects, N.J.S.A. 34:13A-5.3, including compensation. In re IFPTE, Local 195 v. State, 88 N.J. 393, 403 (1982). However, the Act generally precludes negotiations concerning matters that are dictated by statute or regulation. As indicated by the New Jersey Supreme Court:
>
> > ...specific statutes or regulations which expressly set particular terms and conditions of employment...for public employees may not be contravened by negotiated agreement. For that reason, negotiations over matters so set by statute or regulations are permissible. We use the word "set" to refer to statutory or regulatory provisions which speak in the imperative and leave nothing to the discretion of the public employer. All such statutes and regulations which are applicable to the

> employees who compromise a particular unit are effectively incorporated by reference as terms of any collective bargaining agreement covering that unit. [State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978).]

In plain language, if a statute or regulation "speak[s] in the imperative," regarding a particular term of employment, it effectively preempts negotiation over that term, and is itself deemed to be incorporated into the employment agreement. State Troopers Fraternal Ass'n of New Jersey, Inc. v. State, 149 N.J. 38, 51 (1997).

An important exception to this general rule of preemption is that a regulation does not necessarily preempt negotiation when the regulation is promulgated by an agency that itself is a party to the collective negotiations. Council of State College Local v. State Bd. of Higher Educ., 91 N.J. 18, 28-29 (1982). This exception is rooted in the Act, which states that "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." N.J.S.A. 34:13A-5.3. This statutory prescription "prohibit[s] an employer from unilaterally altering the status quo concerning mandatory bargaining topics, whether established by [an] expired contract or by past practice, without first bargaining to an impasse." Bd. of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 22 (1996). The prohibition against unilateral changes encompasses a variety of terms and conditions of employment, including compensation. Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n, 78 N.J. 25, 47-52 (1978).

The determinative statue that pertains to the State's proposal is Civil Service regulation, N.J.A.C. 4A:3-4.9, entitled "Advancement pay adjustments: State Service." In pertinent part, the regulation provides:

> (a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range, **unless a different salary adjustment is established in a collective negotiations agreement**...This subsection shall apply when the following conditions are met...
>
> [N.J.A.C. 4A:3-4.9 (a) (Emphasis Added).]

More importantly, however, section (c) of N.J.A.C. 4A:3-4.9 provides:

> When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods,

> and the salary increases after the workweek adjustment would be less than two increments in the employee's previous range, the employee **shall** receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.
>
> [N.J.A.C. 4A:3-4.9(c) (Emphasis Added).]

It is clear and uncontroverted that the wording of N.J.A.C. 4A:3-4.9(c) speaks in the imperative by using the word "shall." Moreover, the regulation clearly dictates that employees who have been at the maximum of his or her previous salary range for at least thirty-nine (39) pay periods, and the salary increases after workweek adjustment would be less than two (2) increments in the employee's previous range, the employee **shall** receive an additional increment in the new range, providing the employee is not already at the maximum of the new range. Since N.J.A.C. 4A:3-4.9(c) speaks in the imperative, the State's proposal seeking to remove the language "Notwithstanding any regulation or authority to the contrary" is preempted and the administrative regulation itself is deemed part of the collective bargaining agreement between the parties. In other words, the State's proposal cannot be accepted by law and ultimately awarded because it is contrary to N.J.A.C. 4A:3-4.9(c), which expressly provides the mechanism and the formula by which advancement pay adjustments are determined when an employee has been at the maximum of his or her previous salary range for at least thirty-nine (39) pay periods.

During the course of the interest arbitration proceedings, the State took the position that section (c) of N.J.A.C. 4A:3-4.9 no longer has effect based upon the language contained in section (a), which states that advancement pay adjustments can be set in a collective negotiations agreement. Specifically, Director Cohen testified as follows:

> Q. And are you aware that there's language within that provision [N.J.A.C. 4A:3-4.9] that if employee upon being promoted was at the maximum salary range for 39 pay periods, that individual is to move forward two steps on the salary [guide] upon being promoted?
>
> A. I believe it's subparagraph C of that section.
>
> Q. It is. So you have read it then?
>
> A. You were testing me.
>
> Q. And with that being said, that particular paragraph, paragraph C, the language is not contained within the

actual submission of the State, it's the State's intention that that language be part of that proposal?

A. No. It's always been the State's position that the rule relaxation and subsequent rule change to 4A:3-4.9 that arose out of the insertion of this provision...Was that that amendment, although inserted to subparagraph A, was to apply to the entire section of 4.9...

[4T102:22-103:20.]

Director Cohen also testified that he wrote to the Civil Service Commission requesting clarification as to whether the provisions of section (c) were still operable in light of the language in section (a). (4T104:17-105:11). However, a response has not yet been received. Ibid. This notwithstanding, the State's position that section (c) of N.J.A.C. 4A:3-4.9 is no longer operable because of the existing language in section (a) is ridiculous to say the least.

Under the express wording of section (a) of N.J.A.C. 4A:3-4.9, an employee's salary adjustment upon promotion can be established by way of a collective bargaining agreement. This amendment to N.J.A.C. 4A:3-4.9 resulted from the numerous interest arbitrations settled and/or decided between 2007 and 2011, wherein the State successfully reduced the amount an employee could receive upon being promoted by instituting a new promotional formula. (4T103:11-20). In short, a rule relaxation was necessitated to permit the new promotional formula now codified in the various collective bargaining agreements to be implemented. This formula was contrary to the previous version of N.J.A.C. 4A:3-4.9, which mandated that the promotional salary increase be much higher.

While the provisions of N.J.A.C. 4A:3-4.9(a) were amended, notably, the provisions of section (c) were not. Therefore, it is clear that it was not the Civil Service Commission's intention to render section (c) inoperable and/or that the amendment was meant to apply to every other section of N.J.A.C. 4A:3-4.9. If that were the case, section (c) surely would have been deleted and/or the amendment would have clearly delineated the provisions contained therein were inoperable. It is more probable that the amendment to section (a) was limited to that section only and the provisions contained in section (c), which address the unique situation wherein an employee has been at the maximum step of his/her previous salary range for thirty-nine (39) pay periods and is subsequently promoted, remain unchanged. In other words, the provisions of section (c) work in conjunction with any salary adjustment contained in a collective bargaining agreement.

By way of summation, the State's proposal, if awarded, would change the statutory mandate delineated in N.J.A.C. 4A:3-4.9(c). Such an act

would be contrary to existing law and, thus, preempted. In short, N.J.A.C. 4A:3-4.9(c) sets an affirmative requirement that when an employee has been at the maximum of his or her previous salary range for at least thirty-nine (39) pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee **shall** receive an additional increment in the new range. Despite speaking in the imperative, the State's proposal seeks to ignore the mandates of N.J.A.C. 4A:3-4.9(c). As such, the State's proposals seeking to remove certain language relating an employee's salary upon promotion must be rejected as being in excess of the State's lawful authority.

In addition to the parties' submissions on the issue during the hearings and in the post-hearing briefs, the State, by letter dated January 13, 2014, requested that the record be supplemented to reflect impending action of the Civil Service Commission scheduled for January 15, 2014 to amend N.J.A.C. 4A:3-4.9 in a manner that supports the position taken by the State in this proceeding. The amendment is referenced as B-77 and states the following:

B-77 Proposed Amendment: N.J.A.C. 4A:3-4.9, Advancement Pay Adjustment: State Service

Submitted for the Commission's approval is a Notice of Proposal of an amendment to N.J.A.C. 4A:3-4.9. Advancement pay adjustments: State Service. The amendment would clarify that, where the State and a union agree to a promotional pay calculation that does not follow the rule but would not result in an amount greater than that allowed by the rule, the salary adjustment, per contract, applies to all subsections of N.J.A.C. 4A:3-4.9. Therefore it is recommended that this proposal be approved for publication in the New Jersey Register for public notice and comment.

On January 14, 2014, NJLESA responded urging that the submission not be considered or that it be rejected on the merits. NJLESA's submission states:

As you are aware, this office represents the New Jersey Law Enforcement Supervisors Association (hereinafter "NJLESA") in the above referenced interest arbitration. I have recently reviewed the

correspondence sent to your attention by the State of New Jersey, wherein it is requested the record be supplemented to include the "Agenda of the Civil Service Commission, January 15, 2014." For the reasons set forth below, we adamantly oppose the State's request.

According to the State, the agenda was downloaded from the Civil Service Commission's public website and addresses the Commission's intent to amend N.J.A.C. 4A:3-4.9 [Advancement of Pay Adjustments], an item at issue in the current arbitration. In short, the State asserts the proposed amendment is consistent with its position on its offer to revise Article XIII, Sec. B(3) to conform with N.J.A.C. 4A:3-4.9.

It is our position the State's request must be denied. Initially, in reviewing the Civil Service Commission's public website, it appears as if the January 15, 2014 Commission meeting has been cancelled due to the lack of a quorum. Given that the January, 15, 2014 meeting will not proceed as originally anticipated, the agenda the State seeks to introduce has become moot so to speak. Put another way, the Commission's determination as to the proposed amendment will not be considered at the January 15, 2014 meeting because no such meeting will be taking place. Further, it is unclear as to whether the proposed amendment will be considered at the Commission's next scheduled meeting of January 29, 2014. Quite simply, given that the January 15, 2014 meeting will not take place, the agenda of that meeting must not be considered.

Moreover, as alluded to above, the State stresses the importance of such an agenda, despite its irrelevance to the instant proceedings. While the Commission's agenda may include consideration of the proposed amendment to N.J.A.C. 4A:3-4.9, until such time as the Commission actually rules on the proposed amendment, the same does not support the State's position and provides nothing of substance to these proceedings. In simple terms, the agenda only indicates the Commission will be considering the proposed amendment. It does not provide that the Commission will be adopting the same unequivocally.

Next, the State fails to recognize that the Commission's consideration of the proposed amendment actually supports the position raised by the NJLESA in its post-hearing brief that the language the State seeks to remove from Article XIII, Section B(3) exceeds its lawful authority. Simply put, in considering a proposed amendment to circumvent the promotional formula contained in subsection (c) of N.J.A.C. 4A:3-4.9, the State is, in essence, conceding that subsection (c) is to be currently read in conjunction with the provisions of subsection (a) and, therefore, the terms of subsection (c) are currently operational. This was the exact argument raised by the NJLESA at the underlying hearing. Suffice it to say, given that a proposed amendment has been

raised to address this issue, it logically follows that the State's current proposal is preempted by the current version of N.J.A.C. 4A:3-4.9.

The NJLESA recognizes that if the proposed amendment is ultimately adopted, the same will be deemed part of the collective bargaining agreement going forward. Until that time, however, the NJLESA's argument holds true and the State's proposal is preempted as a matter of law. Taking this to its logical conclusion, the agenda of the Civil Service Commission is of no consequence at this juncture as the same does not actually implement the amendment, but merely advises the amendment will be considered.

Lastly, the agenda should be excluded as a matter of practicality. The forty-five (45) day deadline is quickly approaching. In seeking to supplement the record at this late hour, the State is seeking to unnecessarily cloud the record with superfluous material. The record closed on January 6, 2014 with the submission of post-hearing briefs. We submit it must remain closed until such time as the proposed amendment is actually adopted. In the event the amendment is adopted, it will be deemed part of the collective bargaining agreement as a matter of law. Therefore, the agenda the State seeks inclusion of is wholly unnecessary for consideration in the pending arbitration. Consequently, the State's request must be denied.

Award

The current status of this issue is that it is a negotiable subject that can be addressed through collective negotiations. There is no negotiability challenges to the contrary. The current rule recognizes this and the parties have addressed it in Article XIII, Section B(3). The State has not contested the issue as being a non-mandatory subject that is preempted by Rule. It implies, but does not contend, that Agenda Item B-77 would preempt the current language.

It is not in dispute that the January 15, 2014 Civil Service Commission meeting referenced to in the State's submission was not able to be held and it is not certain whether or when the rule will be approved for publication. Even then,

and assuming its ultimate adoption, as is evident from NJLESA's opposition, there will be a dispute over whether the rule would be preemptive.

Based upon all of the above, I do not award the State's proposal. As was the case with the SSI issue that was litigated before PERC and found to be preempted, nothing precludes the State from objecting to the negotiability of Article XIII, Section B(3) in the event of the adoption of a rule that the State believes would preempt the subject matter of the issue. Accordingly, and without prejudice to any negotiability argument that the State may advance in the future, I award a continuation of the present language.

Article XXV - Leave for Association Activity, Section A

The State and NJLESA both propose amendments to Article XXV, Section A in respect to annual number of leave days for delegates to attend Association activities. Currently, the Agreement provides 195 such days. The State seeks to reduce the days to 126 while NJLESA seeks to expand the days to 225. In addition, the State seeks to reduce the number of employees designated to serve as negotiation team members from 12 to 2. This is a reference to Article XXV – Section C(4)(c). Also, the State seeks to delete Section E, a provision referencing additional leave time for "delegates of the Association."

The State contends that the 16% reduction it seeks in leave days is identical to the percentage reduction in leave days agreed to by NJSOLEA and

FOP Local 174 and significantly less than the 28% and 22% reductions agreed to by PBA Local 105 despite the fact that PBA Local 105 has 6,000 members. The State submits that it does not want to limit NJLESA's ability to conduct union business but simply seeks to reduce the State's expense in the Union's providing that service.

NJLESA submits testimony from Sgt. Holliday and extensive argument in support of its proposal and the rejection of the State's. The Union submits the following:

> Sergeant Holliday testified on behalf of the NJLESA as to the need for additional union days. (1T58:17-61:25). In short, President Holliday explained why the NJLESA was in a unique situation that is different from any other law enforcement union within the State. Ibid. In particular, the NJLESA represents primary level supervisors employed by the New Jersey Department of Corrections, Division of Parole, Juvenile Justice Commission, Human Services Police, State Park Police, Campus Police, Palisades Interstate Parkway Police, Division of Fish, Wildlife and Game, amongst others. Within the Department of Corrections alone, employees are spread out through the State at thirteen (13) different penal institutions. Additionally, the Juvenile Justice Commission has employees located throughout the State and the College Campus Police are also spread out at six (6) different college campuses throughout the State. No other law enforcement labor union in the State has personnel working at so many different locations. These geographical peculiarities require the NJLESA executive board to utilize union leave days on a constant basis to properly represent the members of the NJLESA.
>
> In addition to the geographical restraints mentioned above, the NJLESA must administer and manage the union like every other law enforcement union in the State. While the NJLESA may have fewer members than P.B.A. #105, similar to P.B.A. #105, bank accounts need to be maintained, monthly membership meetings need to be held, union trustee meetings must take place, as well as every other ministerial duty associated with running a labor union.
>
> Notwithstanding the foregoing, however, the State is looking to reduce the number of union leave days as a result of a commission report,

which opined that union days should be reduced and/or eliminated. To support their position that the NJLESA's union leave should be reduced, the State drafted a document marked Exhibit S-4 that was placed into evidence. The document purports to demonstrate that many of the law enforcement unions that have members employed by the State voluntarily agreed to a reduction of union days in the last negotiated contract. While the union will agree that some of these law enforcement unions did voluntarily agree to a reduction in union days, the size of the reduction as represented in Exhibit S-4 is false and misleading. For that reason alone, Exhibit S-4 should be disregarded by the interest arbitrator or, at the very least, be given little weight due to the inaccuracies contained therein.

First, when Director Cohen was questioned on cross-examination regarding the union leave received and utilized by P.B.A. #105, he admitted that the union days were not reduced from 1,827 to 1,305 days for the first year of the contract as reflected on Exhibit S-4. (4T112:15-115:1). This was the first of several inaccuracies pointed out with P.B.A. #105 alone. Ibid. It is the position of the NJLESA that these additional union days were intentionally omitted from Exhibit S-4 in an effort to mask the fact that P.B.A. #105 did not concede the amount of union time to the State as they would have one believe.

Similarly, the SLEU group's union leave was tangentially reflected as being reduced in hours rather than days. (4T115:2-116:6). However, when the math is calculated, the SLEU was to receive one hundred fifty-seven and one-half (157 ½) union days, only five (5) days less than that proposed for the NJLESA despite the fact that the SLEU has less than one-half the membership of the NJLESA as admitted by Director Cohen. Ibid. What was provided to the SLEU unit for union leave as compared to what is being proposed for the NJLESA shows the inequity of the State's proposal.

However, putting all of the same aside, what truly demonstrates the arrogance of the State is the fact that they are looking to reduce the number of NJLESA employees that can attend contract negotiations sessions from twelve (12) to two (2). This reduction is proposed despite having the understanding that the NJLESA represents nine (9) separate groups of primary level supervisors that serve as law enforcement officers for various state agencies. Furthermore, while making this proposal, the State has provided not a scintilla of evidence to support the same.

Given the number of members that compose the NJLESA and the large amount of institutions that must be represented, the State's proposal should be rejected out of hand. In addition, the NJLESA proposal that requests an increase in union leave should be accepted given all the prevailing circumstances.

Award

I do not award NJLESA's proposal to expand the number of leave days to attend Association activities from 195 to 225. There is a clear trend in all of the comparable law enforcement units to reduce the number of days of union leave as evidenced by the recent reductions in all of the various contracts. Notwithstanding this, NJLESA has provided testimony and extensive argument differentiating its need for leave time from the other units. The reductions that have taken place do not appear to stem from a lack of usefulness of the leave days but are reflective of a policy understanding as to State funding of the benefit.

I award a reduction in days, but not to the extent sought by the State. NJLESA has offered justifications that relate to the diversity of its unit and its responsibility to administer to the needs of that diversity that spreads across the geography of the State and the various departments, institutions and occupational titles. The number of leave days in Article XXV, Section A shall be reduced to 175 commencing July 1, 2014.

I do not award the State's requested reduction from twelve (12) to two (2) employees to attend negotiations with the State without loss of pay. NJLESA has established that the existing provision serves the many different occupational titles, departments and agencies. The State expresses dissatisfaction with the

provision but has not offered sufficient justification that would serve to alter the present negotiated arrangement.

I award the State's proposal to delete Section E. Union testimony reflects that this provision is not utilized and that NJLESA does not have "delegates" to access the leave time that is provided therein.

Article XX – Sick Leave for Campus Police Sergeants

NJLESA proposes a new section to Article XX that solely concerns Campus Police Sergeants. The proposal is as follows:

> A Campus Police Sergeant who has been absent on sick leave for periods totaling fifteen (15) days in one (1) calendar year, specifically from January 1 to December 31, consisting of periods less than five (5) days shall submit acceptable medical evidence for any additional sick leave utilized in that year unless such illness is of a chronic and/or recurring nature requiring recurring absences of one (1) day or less in which case only one certificate shall be necessary for a period of six (6) months.
>
> For purposes of this subsection, a period shall be considered a call out. Specifically, if a Campus Police Sergeant calls out sick for an ongoing illness, it shall be considered one call out. For example, if a Campus Police Sergeant called out sick for three (3) days due to the same illness, that would be considered one (1) call out, not three (3) separate call outs.

NJLESA offers the testimony of Campus Police Sergeant Michael Bell to support its proposal. Sergeant Bell's main complaint is that there is no consistency among the six (6) colleges where Campus Police Sergeants are assigned. He does not seek more sick days but instead a definition of the actual

time period for which sick days are counted. His testimony reflects a belief that the sick day allotment that is provided on an annual basis has been subject to individual institutions setting their own "rolling" twelve month periods in which to count sick leave usage independent of the calendar year.

The State, in its cross-examination of Sgt. Bell and in its argument, questions the evidentiary basis for the claims, Bell offered in support of NJLESA's proposal.

Award

The concerns expressed by Sgt. Bell, in the abstract, raise a legitimate issue as to whether Article XX, a statewide provision, is being applied in a differentiated manner at the six (6) higher education institutions. Notwithstanding Sgt. Bell's concerns, there is insufficient evidentiary support for an award of the proposal. However, it would serve the parties and the public if the State clarified this issue in order to avoid the time and expense that could arise from unnecessary grievances over the counting of sick time. Accordingly, I award a procedure under which the State, within sixty (60) days of the Award, shall submit a written clarification of its policy to NJLESA in regards to the manner in which sick leave usage is calculated and applied as it affects Campus Police Sergeants.

Article XXVII - Overtime

NJLESA proposes to add language that defines "mandatory overtime." It proposes to add language to Section A stating:

> "Mandatory overtime" means a period of assigned, non-scheduled overtime on the day in which it is to be worked and for a period in excess of fifteen (15) minutes.

According to NJLESA, the term "mandatory overtime" is not defined in the Agreement and it varies from one correctional facility to another. Holliday testified to the circumstances surrounding mandatory overtime and its application through a "stick list." When an officer is required to work unscheduled overtime, Holliday testified that the officer goes to the bottom of the stick list. According to Holliday, some officers are removed off of the list if they work less time than others and the proposal would promote uniformity among the institutions.

Article XXVII, Sections A(2), (3) and (4) define the terms "scheduled overtime," "non-scheduled overtime" and "incidental overtime." These terms must be examined in conjunction with Section B(2), which provides for a guarantee of one (1) hour's work if an employee is assigned "non-scheduled" overtime in excess of fifteen (15) minutes. From this, it appears that the intent of the proposal is to require the Department to only place an employee to the bottom of the "stick list" if the employee qualifies for the overtime guarantee when the employee is forced to work in excess of fifteen (15) minutes and to disallow

the placement of an employee to the bottom of the stick list if the employee is only forced to work "incidental overtime" of less than fifteen (15) minutes.

Award

The proposal, as phrased, as well as the testimony, is not sufficiently clear to render an award that grants the proposal. While I agree that there should be a "bright line" that distinguishes between the two types of unscheduled overtime for the purpose of placing an employee to the bottom of the stick list, a new proposal that is precisely phrased in clear and unambiguous language may be submitted during the course of negotiations for the successor agreement to the one that expires on June 30, 2015. Accordingly, the proposal is not awarded.

Article IX, Section D – Printing of the Agreement

Section D now requires the State to reproduce the Agreement in sufficient quantity to provide each employee with a copy with additional reserve copies for distribution to employees hired during the term of the Agreement. The State proposes to eliminate its role in reproducing the Agreement for the purpose of distribution to employees and instead, proposes to only provide "an electronic downloadable version of the Agreement to the Association."

The State submits its justification for an award of its proposal:

> In past agreements, the State assumed responsibility to both print and pay for hard-copies of each units' CNA booklets for the State, the

representatives' leadership, and the represented employees. (Tr. 12/18/13 at 80 (Cohen).) For the 2007-2011 contract period the State printed 178, 503 contract booklets for fourteen (14) of its negotiating units at a total cost of $195,968.08. (S-6).

Recognizing the capability and reduced costs of current technology, the State proposed and thus far obtained voluntary agreement from twelve (12) of those units to substantially reduce or eliminate entirely the number of printed CNA booklets, and to maintain the Agreements electronically. As a result, the State has reduced from 178,503 to 81,995 the number of printed booklets for which it is responsible -- a 54% reduction. (S-6). For the eleven (11) units for which printing is complete, the State reduced its cost from $190,241.94 to $27,970.51 -- an 85% cost reduction.

Even PBA 105, which has approximately 6,000 members, (Tr. 12/18/13 at 83 (Cohen)), as compared to NJLESA's 665 members, (S-1Q), agreed to maintain its 2011-2015 CNA electronically, and to have the State print only 250 copies for PBA 105's use. (S-6 fn. 5); (S-1A at 2 (Art. X, Sec. D).)

In two of its law enforcement units (NJSOLEA (Lieutenants) and FOP 174 (Special Investigators)), and one of its civilian units (AFT Adjunct) the State negotiated voluntary agreements to eliminate industrial printing of the agreement entirely. Those contracts are now maintained electronically by the parties as PDF files. Each party prints their own copies as needed. (S-6) (Tr. 12/18/13 at 80 (Cohen).)

The State's final offer, to provide NJLESA with "an electronic downloadable version of the Agreement," is consistent with what appears in every settled agreement, and is identical to the provisions in the NJSOLEA, FOP 174, and AFT Adjunct Agreements. (S-6). As such, the final offer should be awarded under the criteria set forth in N.J.S.A. 34:13A-16(2)(b) and (c).

NJLESA objects to the proposal and offers the following arguments in support of its urged rejection:

It has been a longstanding article of the collective negotiations agreement between the State and the NJLESA that the State has undertaken the task and cost associated to compile and print copies of the collective bargaining agreement using the services of the government printing office. Under the current proposal, the State seeks to eliminate this practice by only providing the NJLESA with an electronic version of the contract. Thereafter, the NJLESA would then

be responsible for printing the agreement and absorbing the costs of the same. This is despite the fact that the State has agreed with other collective bargaining units to print "hard copies" of their agreement and absorbed the cost or, in the alternative, the parties have voluntarily agreed to a cost-sharing measure.

To support their proposal to eliminate the printing of the current contract, the State submitted Exhibit S-6, which was testified to by Director Cohen. (3T79:19-83:25, 4T119:7-121:19). Director Cohen testified that Exhibit S-6 was a compendium report compiled by his office with the assistance of counsel that illustrates the number of contracts printed by the State with various other unions and the costs associated with the same. However, when one examines the Exhibit in its entirety, the document, along with the testimony of Director Cohen, actually works to defeat the proposal on its face.

As previously recounted, Mr. Cohen stated under oath that their proposal seeks to modify the existing contractual provision by allowing the State to no longer print hard copies of the contract, but instead only provide the NJLESA with an electronic copy of the same. However, in examining Exhibit S-6, it becomes painfully clear that almost every other contract that was negotiated between the State and both civilian and law enforcement unions, some form of the negotiated contract was printed by the State and/or there was a cost-sharing measure put into place.

For instance, in the contract that was reached between P.B.A. #105 and the State, one thousand three hundred (1,300) copies of the contract were printed with the State absorbing the entire cost. Of these copies that were printed, two hundred and fifty (250) copies were provided to the union free of charge. (4T120:7-17). Additionally, the SLEU law enforcement unit was also provided with seventy-five (75) copies of the State-printed contract free of charge. (4T120:22-25). Both of these units are comprised of the rank-and-file membership of the same employee relations groups that comprise the NJLESA. Thus, for some inexplicable reason that was never articulated by either Director Cohen or any other witness, the State has made the conscious decision to attempt to eradicate this long-standing contractual provision by refusing to print the contract in hard form for the NJLESA, despite agreeing to do so with both P.B.A. #105 and the SLEU collective bargaining units.

Director Cohen testified that the State's proposal to no longer print the contractual agreement was precipitated as a cost-saving measure. However, the cost associated with printing these agreements, in light of the enormity of the New Jersey State budget, demonstrates that such a claim is disingenuous to say the least. To prove this point, one only needs to perform some perfunctory math utilizing the figures that are found on Exhibit S-6. In the case of P.B.A. #105, as previously

stated, one thousand three hundred (1,300) copies of the contract were printed. The cost associated with printing this number of agreements was one thousand one hundred forty seven dollars and six cents ($1,147.06). (4T120:12-17). Simple division demonstrates that the printing cost associated with a single copy of the contract is approximately eighty-eight cents ($0.88). Ibid. Thus, if the State were to print the same number of contracts for the NJLESA as it did for PBA 105, it would absorb a cost of approximately two hundred and twenty dollars ($220.00). Again, this is a miniscule expense in light of the enormity of the State's overall budget.

As such, the States proposal concerning the printing of the contract should be denied in its entirety or, at the very least, the State should absorb certain costs as they did with the rank-and-file units of P.B.A. #105 and the SLEU.

Award

I award a modification to Article IX, Section D but not to the extent sought by the State. NJLESA's objections to only receiving an electronic version of the agreement has merit. The manner in which this subject has been handled in the State's many negotiations units is relevant. An exhibit depicting the change in printing costs and in the number of contracts produced was submitted into evidence [S-6]. However, NJLESA offers persuasive argument that the comparisons to the few units that agreed to eliminate the industrial printing of the Agreement altogether should be given less weight than the weight to be given to the many more units, including PBA Local 105, whose members are supervised by NJLESA, that agreed only to a reduction in the amount of contracts that the State continues to reproduce.

The NJLESA unit contains members who are employed at numerous institutions and agencies and it is justifiable for the Union to continue to receive a

sufficient number of agreements that can be fairly distributed among the many workplaces throughout the State. I conclude that a reasonable reduction in the number of agreements is warranted based upon the presentation of the State and that the State's proposal to eliminate reproduction in its entirety be denied. I award the State's proposal to provide NJLESA with an electronic downloadable version of the Agreement as well as 125 hard copies of the Agreement. The Award shall state:

> The State shall provide NJLESA with an electronic downloadable version of the Agreement. The State shall also reproduce the Agreement in the amount of 125 hard copies. NJLESA shall be responsible for the distribution of the 125 copies provided to it by the State.

Side Letter of Agreement: Bidding and Tie-Breaker Pilot Program With Department of Corrections

The State and NJLESA currently operate under a procedure that awards job bid positions for non-specialized posts by job classification seniority. That procedure contains a process referred to as "tie-breaker scheme" in the event of a tie in job classification seniority for these positions. NJLESA proposes to codify within the contract (by Side Letter of Agreement) the bidding and tie-breaker pilot program that is and has been utilized by the New Jersey Department of Corrections. At the December 13, 2013 hearing, the State moved to strike the Union's proposal[7] as it was set forth in the final offer it submitted on December 11, 2013. The State's claim is that it was prejudiced by the alleged failure of the

[7] The State also moved to strike the new Section M to Article XXXIII that the Union had proposed. That motion was sustained.

Union to identify this issue in its Petition to Initiate Interest Arbitration. After providing the parties with relevant statutory and rule citations on this issue as well as prior case law, I asked for and reviewed separate submissions from the parties concerning the State's motion and rendered a decision on December 18, 2013 denying the State's motion to strike NJLESA's proposal. The decision stated the following:

> At the December 13, 2013 hearing, the State moved to strike two of the Union's non-economic proposals set forth in its final offer that was submitted on December 11, 2013. I reserved judgment on the objection pending review. Testimony was received on those issues and on December 16, 2013, I requested the Union to respond to the objections and provided the State with an opportunity to oppose. Those submissions have been received and reviewed and require the application of the relevant statutory and rule language as well as prior case law.
>
> The Union proposed to add a new Section M to Article XXXIII – Layoff and Recall stating:
>
> In the event of the elimination of, facility closures involving, or layoffs pertaining to the title Correction Sergeant, Juvenile Justice Commission, all eligible employees will be given an opportunity to transfer into the New Jersey Department of Corrections without any loss of salary.
>
> This proposal was not identified in the Union's Petition to Initiate Interest Arbitration. As a newly identified issue, I have determined that the proposal must be stricken, especially given the time constraints required by statue. The nature of the issue does not provide the State with the sufficient opportunity to fully respond to the proposal.
>
> The second proposal seeks to codify within the contract the bidding and tie-breaker pilot program utilized by the New Jersey Department of Corrections in a Side Letter of Agreement between the parties. I deny the State's motion to strike. The Agreement contains a notice provision at Article XLVII. The Union seeks to add this Side Letter into that section of the Agreement. The petition lists "Notices" as an article in dispute. The Side Letter was authenticated at hearing and its existence is not in dispute. The State is fully aware of its content and significance. The State is not prevented from responding to the proposal through testimony, documentation or argument. In the event

> that the State seeks an opportunity to supplement the record after the conclusion of the hearings this week, I will provide it with such opportunity. This ruling is confined only to the Motion to Strike and does not extend to a determination on the merits of the Union's proposal.

NJLESA offers the following argument in support of its proposal to include a Side Letter of Agreement concerning job bidding/tie-breaker:

> The NJLESA also seeks to codify within the collective bargaining agreement the job bidding and tie-breaker pilot program utilized by the New Jersey Department of Corrections in a Side Letter of Agreement between the parties. Presently, there are biddable posts within the Department of Corrections that are awarded through job bidding. (1T51:2-16). Typically, job bids are presently awarded by seniority. (1T51:17-20). However, the situation does arise when two (2) or more officers bid, who possess the same seniority, for the same custodial post. In that case, the Department has abided by a tiebreaker policy for many years so that a determination can be made as to who will be awarded the post. (1T51:24-52:7).
>
> The tiebreaker policy utilized by the Department was submitted into evidence as Exhibit P-2. Specifically, the job-bidding dispute is resolved by looking into an officer's time and grade first and then, if the tie remains, to their respective test score. (1T52:3-7). Through this proposal, the NJLESA merely seeks to codify the Department's long-standing practice. In fact, Sergeant Holliday indicated he cannot remember a time when this tie-breaker policy was not utilized during his twenty-three (23) years of service. (1T52:24-53:10). Moreover, codifying the Department's past practice would eliminate the potential of the same being eliminated going forward. Given the Department's long-standing practice in adhering to this tiebreaker program, the NJLESA proposal should be awarded as a matter of practicality.

Award

The record reflects that a formalized job bidding/tie-breaker pilot program began on October 24, 2007. A memo from the DOC's Director, Office of Employee Relations to union representatives dated July 24, 2009 makes reference to a pre-existing tie-breaking procedure that was provided for in a Pilot

Program and the need at that time to clarify that system in order to make it fairer and more efficient to administer. The memo concluded that "the modifications are consistent with our joint objective of providing a fair, objective tie-breaking system." The modifications to the system were set forth as follows:

> 1. The employee with the greater amount of continuous permanent service in the employee's current permanent title shall have priority;
>
> 2. The employee who ranked higher on the same eligible list for the title shall have priority;
>
> 3. The employee with greater continuous permanent service in the next lower custody law enforcement title shall have priority;
>
> 4. The employee with greater permanent continuous service in all custody law enforcement titles shall have priority;
>
> 5. Management discretion.

Subsequent to the aforementioned memo, the Deputy Commissioner of the DOC on August 6, 2009 issued a memo to department administrators setting forth the specifics of the modified tie-breaker scheme. The August 6, 2009 memo stated the following:

> This is to serve as a reminder that the Department is continuing the following process to be utilized in awarding job bid positions to Lieutenants and Sergeants, consistent with the October 24, 2007 pilot memorandum in this regard. Management, in its sole discretion, shall determine whether a job bid posting is a specialized or non-specialized posting.
>
> Specialized job bid postings shall be awarded at management's discretion.

Non-specialized job bid postings shall be awarded by job classification seniority. In the event of a tie in job classification seniority, the following tie-breaker scheme shall be used:

1. Test Score Current Rank
2. Job Class Seniority Previous Rank
3. Test Score Previous Rank
4. Job Class Seniority Previous Rank (if applicable)
5. Test Score Previous Rank (if applicable)
6. State Seniority
7. Management Discretion

Based upon the above, the record shows that there has been mutuality as to what procedure to employ when there is a tie in seniority for a job bid in a non-specialized posting. The procedure segregates specialized postings by indicating that such job bids shall be awarded at management's discretion. There is no dispute that this procedure exists, has been jointly accepted and has operated over a lengthy period of time. The procedure is limited to postings where the parties recognize that the nature of the non-specialized position is such that seniority is the determining factor for job bids and that there should be a tie-breaking scheme in the event of a tie in job classification seniority. Such tie-breaking schemes are common with respect to job bidding. There is no dispute as to the negotiability of this procedure.

Given all of the above, it is reasonable for NJLESA to seek a codification of the job bid/tie-breaking pilot program in order that notice is provided to employees as to the procedure to be used to break a tie in a bid between employees with the same seniority who are acknowledged to be qualified to fill the bid. Accordingly, I award the proposal to incorporate the bidding and tie-

breaker pilot program's procedures into the Agreement solely as a notice provision to employees who may be affected by the application of this longstanding procedure. Accordingly, NJLESA's proposal to include a Side Letter reflecting the bidding and tie-breaker pilot program into the Notices provision at Article SLVII is awarded.

Article XII, Section C(2) – Seniority

The State proposes to modify Article XII, Section C(2). It indicates that the purpose of the proposal is to comport its language with N.J.A.C. 4A:2-6.2. The State's final offer is as follows:

> 2. Pursuant to N.J.A.C. 4A:2-6.2, Aabsence without leave for five (5) or more consecutive days or failure to return from any leave of absence for five (5) or more consecutive business days shall be considered a resignation not in good standing.

The State refers to the language in N.J.A.C. 4A:2-6.2:

> (b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied. (Underline added).
>
> (c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied. (Underline added).

The State offers the following arguments in support of its proposal:

The language should be changed to specify: (1) that days are measured as consecutive days worked; (2) the duration of a failure to return from leave that will result in a resignation; and (3) that such resignation will not be in good standing. If this provision is to remain in the CNA, the proposal must be awarded under N.J.S.A. 34:13A-16g(9), as well as to avoid confusion and potential misunderstanding by NJLESA unit members as to what will result in resignation not in good standing.

Award

The State's contentions are supported by the rule that it has cited and the incorporation of the proposed language in the PBA Local 105, NJSOLEA and FOP 174 units. NJLESA appears to acknowledge the basis for the proposal. Accordingly, the proposal to modify Article XII, Section C(2) is awarded.

Article XIV, Sections C(1) and (2) – Vacation

The State proposes to modify Article XIV, Sections C(1) and (2). It indicates that the purpose of the proposal is to comport its language with N.J.A.C. 4A:6-1.5 and N.J.A.C. 4A:6-1.2(j). The State's final offer is as follows:

C. Payment For Vacation

1. Upon separation from the State, or upon retirement, an employee shall be entitled to vacation allowance for the current year on a prorated basis consistent with N.J.A.C. 4A:6-1.5 and N.J.S.A. 11A:6-2.~~upon the number of months worked in the calendar year in which the separation or retirement becomes effective and any vacation leave which may have been carried over from the preceding calendar year.~~

2. If a permanent employee dies having vacation credits unused vacation leave shall be paid to the employee's estate pursuant to N.J.A.C. 4A:6-1.2(j).~~a sum of money~~

~~equal to the compensation figured on his salary rate at the time of his death shall be calculated and paid to his estate~~

The State refers to the language in N.J.A.C. 4A:6-1.5(b), N.J.A.C. 4A:6-1.2(j) and N.J.S.A. 11A:16-2(f) as follows:

> N.J.A.C. 4A:6-1.5(b):
>
> An employee who leaves State service . . . before the end of the calendar year shall have his or her leave prorated based on time earned . . . . An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month. (Underline added).
>
> N.J.A.C. 4A:6-1.2(j) (Vacation leave):
>
> Upon the death of an employee, unused vacation leave shall be paid to the employee's estate. (Underline added).
>
> N.J.S.A. 11A:16-2(f) (Vacation leave; full-time State employees):
>
> Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken by an employee in the career and senior executive service in a given year because of duties directly related to a state of emergency declared by the Governor shall accumulate until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining. (Underline added).

The State offers the following arguments in support of its proposal:

> The statutory and regulatory provisions address how vacation leave must be prorated in an employee's final month of employment, and under what circumstances unused vacation may be carried over to and used in following years, some of which is specifically excluded from the negotiations process. The subject provisions of the NJLESA CNA either fail to address these subjects or address them inaccurately. As such, they should be corrected.

The language modifications should be awarded to comport with N.J.S.A. 34:13A-16g(9) and N.J.S.A. 11A:16-2(f), as well as to clarify and to avoid any dispute over how unused vacation payments are to be prorated upon an employee's separation, including separation due to the employee's death.

Award

The State's contentions are supported by the rule and statute that it has cited. NJLESA appears to acknowledge the basis for the proposal. Accordingly, the proposal to modify Article XIV, Sections C(1) and (2) is awarded.

Article XVII, Section C – Administrative Leave

The State proposes to modify Article XVII, Section C. It indicates that the purpose of the proposal is to comport its language with N.J.A.C. 4A:6-1.9(a). The State's final offer with deletions by strike-through and additions by underline is as follows:

> Consistent with N.J.A.C. 4A:6-1.9, priority in granting such requests shall be ~~(1) unscheduled absences, (2) observation of religious or other days of celebration but not holidays, (3) personal business, (4) other personal matters~~ (1) Emergencies, (2) Religious holidays (3) personal matters. Where, within a work unit, there are more requests than can be granted for use of this leave for one of the purposes above, the conflict will then be resolved on the basis of State seniority and the maximum number of such requests shall be granted in accordance with the first paragraph of C. Administrative leave may be scheduled in units of one-half (1/2) day, one (1) day or more than one (1) day.

The State refers to the language in N.J.A.C. 4A:6-1.9(a):

> Full-time State employees in the career and senior executive service . . . shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious

observances.

1. Priority in granting such leave requests shall be:

   i. Emergencies;
   ii. Religious holidays;
   iii. Personal matters. (Underline added).

The State offers the following arguments in support of its proposal:

> The current language is inconsistent with the applicable regulation in that it incorrectly states the reasons for which administrative leave may be used and the priority in which the leave may be granted. As such, the modifications should be awarded under N.J.S.A. 34:13A-16g(9), as well as to clarify the circumstances under which administrative leave may be taken and the priority that must be used in granting requests for such leave days.

Award

The State's contentions are supported by the rule that it has cited. NJLESA appears to acknowledge the basis for the proposal. Accordingly, the proposal to modify Article XVII, Section C is awarded.

Article XX, Section C – Sick Leave

The State proposes to modify Article XX, Section C. It indicates that the purpose of the proposal is to comport its language with N.J.A.C. 4A:6-1.4(d). The State's final offer with deletions by strike-through and additions by underline is as follows:

> Sick leave for absences of more than ~~ten (10)~~five (5)days must be requested by the employee in writing to his immediate supervisor. In addition, the employee must submit ~~This request must be accompanied~~

~~by~~ a written and signed statement by a personal physician prescribing the reasons for the sick leave and the anticipated duration of the incapacity to human resources.

The State refers to the language in N.J.A.C. 4A:6-1.4(d):

> An appointing authority may require proof of illness or injury when there is a reason to believe that an employee is abusing sick leave; an employee has been absent on sick leave for five or more consecutive work days; or an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period. (Underline added).

The State offers the following arguments in support of its proposal:

> The language modifications must be awarded under N.J.S.A. 34:13A-16g(9), as well as to correct the error that an employee's appointing authority may require proof of illness only after ten (10) consecutive days of sick leave. The regulation gives the appointing authority the right to do so after five (5) consecutive work days. The offer should also be awarded as it addresses the employees' privacy interests in that it provides for doctors' notes that identify the nature of the employee's illness to be given to human resources as opposed to an employee's direct supervisor.

Award

The State's contentions are supported by the rule that it has cited. Moreover, the proposal has been incorporated into the Agreement with NJSOLEA and PBA Local 105, the units containing officers who are superiors and subordinates of NJLESA members as well as the FOP Local 174 unit. Accordingly, the proposal to modify Article XX, Section C is awarded.

Article IX, Section F (Lateness) and Section G (Lateness Due to Weather Conditions)

The State has proposed to modify Article XI, Section F – Lateness and Section G – Lateness Due to Weather Conditions with deletions by strike-through and additions by underline as follows:

F. Whenever an employee is delayed in reporting for a scheduled work assignment, he shall endeavor to contact his supervisor in advance, if possible. An employee who has a reasonable excuse and is less than fifteen (15) minutes late is not to be reduced in salary or denied the opportunity to work the balance of his scheduled shift and he shall not be disciplined ~~except.~~ Where there is evidence of repetition or neglect or the employee incurs (3) such latenesses in a thirty (30) day period, the employee may be disciplined regardless of whether the employee has a reasonable excuse for such absence. In all circumstances the employee will be paid from the time he or she commences work. ~~A record of such lateness shall be maintained and may be charged against any compensatory time accrual where there is evidence of repetition or neglect.~~

Lateness beyond the fifteen (15) minute period above shall be treated on a discretionary basis. ~~However,~~This provision is not intended to mean that all lateness or each incidence of lateness beyond fifteen (15) minutes shall incur disciplinary action or loss of opportunity to complete a work shift or reduction of salary.

Consistent with the two paragraphs above, management shall maintain a record of lateness. This record may be used as the basis of disciplinary action, compulsory charge against an employee's compensatory time bank, or reduction in salary or any combination thereof. A record of such lateness shall be maintained and may be charged against any compensatory time accrual where there is evidence of repetition or neglect.

G. Lateness or Absence Due to Weather Conditions

1. Cases of inclement weather shall be handled in accordance with the State's inclement weather policy as issued by the Governor's office of Employee Relations. ~~When an employee is unable to get to his assigned work because of weather conditions, his absence may be compensated if he has a sufficient compensatory time balance, or if none is available, a charge may be made against vacation balance or administrative leave balance if requested by~~

~~the employee. Such absence will alternatively be without pay.~~

2. When the State of New Jersey or a County within New Jersey declares a state of emergency due to weather related conditions, an employee who has made a reasonable effort to report on time and ~~that~~ is less than one-hour late for duty due to delays caused by such weather related conditions shall not be disciplined for such lateness. Lateness beyond one (1) hour shall be treated on a discretionary basis. This provision is not intended to mean that all lateness or each incidence of lateness beyond one hour shall incur disciplinary action. ~~Employees late for duty due to delays caused by weather conditions and who made a reasonable effort to report on time may be given credit for such late time at the discretion of the appointing authority.~~

3. Every employee is required to adjust his/her regular preparations for travel to work upon reasonable knowledge of expected inclement weather forecasts. Such measures shall include, but not necessarily be limited to earlier travel times and reasonable advance vehicle and roadway preparations in anticipation of substantially longer commute times during times of expected inclement weather. ~~When the State of New Jersey or a County within New Jersey declares a state of emergency due to weather related condition, an employee that is late for duty up to thirty (30) minutes due to delays caused by such weather related conditions and who has made a reasonable effort to report on time shall not be disciplined for such lateness.~~

The State offers the follow argument in support of its proposals:

The State's final offer to modify Art. IX, Sections F and G are identical to the same provisions negotiated in the 2011-2015 CNAs with PBA 105 (S-1B at 13-14 (Art. X, Sec. F and G); and FOP 174 (S-1D at 9-10 (Art. IX, Sec. F and G).) As such, the modifications should be awarded consistent with N.J.S.A. 34:13A-16g(2)(c).

The modifications to the Lateness Article would bring the provision in line not only with the State's comparable law enforcement CNAs, but also with the Department of Corrections' Unexcused Lateness Policy. (S-10) (Tr. 12/19/13 at 139, 203 (Green).) That Policy, known as "Note 18" of Human Resources Bulletin (HRB) 84-17, has been in place since February 15, 1999. Id. Both the proposed modification and the Policy provide that any employee who is late by up to fifteen minutes, three times in a thirty-day period "may be disciplined." (Tr. 12/19/13 at 201 (Green).)

The new final paragraph merely restates the stricken last sentence at the end of the first paragraph, and clarifies that an employee is not entitled to compensation for the time he/she is not at work (i.e., a "reduction in salary"). As Mr. Green testified, the State does not permit, nor does this proposal suggest, that an employee could be fined for poor attendance or tardiness. (Tr. 12/19/13 at 204 (Green).)

The proposed change to Section G, Lateness or Absence Due to Weather Conditions, provides for adherence to the State's Inclement Weather Policy issued by the Governor's Office of Employee Relations. (S-11). The portions of that policy most relevant to this unit are: "Essential employees should always report to work, regardless of inclement weather situations;" and "Any essential employee who fails to report to work shall be charged the appropriate leave time." (Id.). The employees in this unit are essential and must report for work regardless of the weather. (Tr. 12/19/13 at 141, 194-195)(Green).) As Mr. Green testified, "the Department of Corrections is a 24/7 operation, regardless of the weather conditions...we function. The inmates don't go away.... [T]o insure that we're able to manage individuals and get them to work, to do their job, we need to make some changes." (Id.).

The current provision permits employees who are late for any duration due to a non-emergency-related weather condition, and who make a "reasonable effort to report on time," to be compensated for the time not worked via compensatory time, vacation, administrative leave, or "to be given credit for such time." When a weather-related state of emergency has been declared, the current provision further provides that an employee who is late to work, for any duration, and has made a "reasonable effort to report on time shall not be disciplined for such lateness."

The State's offer allows all employees who make the same reasonable effort to report on time during a declared weather-related State of emergency a one-hour grace period for which they would not be disciplined. Lateness of greater than one-hour under similar conditions may result in disciplinary action. Under no circumstance would an employee be compensated for time not actually worked.

The changes to paragraph three are intended to put employees on notice that, as essential workers, they must adjust their travel plans in the face of inclement weather to insure they arrive to work on time.

NJLESA opposes the State's proposed modifications to these provisions. It offers the following arguments:

The State has moved to modify the contractual provision that pertains to lateness. To support this proposed change, the State elicited the testimony of Kenneth Green, Director of Employee Relations for the New Jersey Department of Corrections. Mr. Green testified that this particular provision is the State's attempt to bring the contractual policy "in-line" with the policy the Department has been following for the past ten (10) years as well as to ensure that the Department's employees are only being paid for the time that they actually work. (4T:202:23-203:8).

As the contract currently stands, if an employee is late, he or she may be forced to forfeit compensatory time off that he or she has accrued. "Docking" or removal of this compensatory time is at the discretion of management. In this instance, the State is looking to remove this particular provision of the contract and actually give management further discretion to discipline an employee for lateness. While the NJLESA acknowledges that the current provision and the proposed change have discretionary language, it is the Union's position that the proposed change provides management with far too much discretionary disciplinary power. It is one thing to force an employee to utilize compensatory time off if he or she is late for work, however, management should not have the discretion to discipline an employee in this instance for lateness. Additionally, as the contract currently stands, the Department is not losing money by paying employees for time that they have not spent at work. Instead, if an employee is late, he or she may forfeit the compensatory time off that he or she previously earned by working. Clearly, there is no loss of money in such an instance.

Finally, the proposed addition of the final paragraph again provides management with far too much discretionary disciplinary power in regard to whether an employee will be fined, lose compensatory time off, and/or be disciplined in some other way if he or she is late for work. Whenever management is provided with discretion, such as it would be in this instance, it provides an opportunity and/or scenario where employees will be treated differently based on who they are and who in management is actually dolling out the disciplinary penalties. As the interest arbitrator is readily aware based on experience, consistency in the administration of discipline is vitally important to labor relations.

In essence, the State has not provided any compelling reason as to why this change has been proposed. As such, the interest arbitrator should reject the same and maintain the status quo.

...

Similar to the previously proposed modification to Article IX, Section F, the proposed modifications in this instance provide the State with far too much discretionary, disciplinary authority that will cause

employees to be treated differently by management. Under the provisions of the current contract, should an employee be unable to report to work due to weather related conditions, his or her absence may be compensated through the utilization of either compensatory time off, vacation time, or administrative time off from work. The State seeks to remove this language and replace it with discretionary, disciplinary language that allows management to discipline an employee if the employee arrives to work more than one (1) hour late. Again, this discretionary, disciplinary language has the propensity for employees to be treated and/or disciplined differently based on a myriad of reasons. Furthermore, the addition of the contractual language proposed in section G(3) adds nothing of substance to the contract, but instead riddles the contract with nothing but unnecessary commentary that will lead to expensive litigation through the grievance process.

Mr. Green testified on direct examination that this proposed change is meant to address weather related absences that the Department sometimes experiences. (4T141:4-144:16). In particular, Mr. Green testified that the Department was forced to incur two hundred and fifty thousand dollars ($250,000.00) in overtime expenses due to a weather related incident that occurred in 2010. Ibid. However, on cross-examination, Mr. Green testified that those overtime expenditures were recouped through fining employees that the Department believed unjustifiably missed work. (4T199:22-201:12). Thus, it cannot be denied that the Department already has at its disposal a disciplinary policy that it may use to address weather-related incidents and unjustifiable absences from work.

Finally, Mr. Green testified that it is important in his estimation that all of the corrections unions be uniform in regard to the policies and procedures that exist in their contract. (4T143:24-144:16). As such, he further stated that both P.B.A. #105 and the NJSOLEA agreed to the proposal concerning weather-related incidents. Ibid. However, this testimony must be rejected out of hand based on Mr. Green's testimony concerning the importance of uniformity as it applies to what is commonly referred to as the forty-five (45) day rule fully described later in this memorandum. The lack of uniformity and the alleged importance as it applies to this provision will be discussed in more detail below, however, suffice it to say, the State has made it a point to voluntarily agree to different contractual provisions in different custody contracts. Thus, this testimony is nothing more than a rouse proffered by the State to exercise "heavy-handed" tactics in an effort to get what it wants.

Again, in this instance like many of the others, the State did not present any compelling evidence that should cause the interest arbitrator to grant this proposal in its current form or any modification thereof.

Award

The objections of NJLESA have been given thorough consideration. It raises some legitimate concerns over the discretionary authority that would reside in the State's representatives to determine whether and when disciplinary action would be taken under both Sections F and G. NJLESA contends that the exercise of discretion could lead to disparate and discriminatory treatment, while well articulated, this objection cannot be sustained. This stated concern is also present in the existing language. Moreover, the ability to grieve disparate and discriminatory treatment is a frequently voiced basis to rescind improper disciplinary action. Further, the inclusion of this identical language in the NJSOLEA (Lieutenants) and PBA Local 105 agreements must be given substantial weight. These units represent those who are both superior and subordinate to NJSEA. In this instance, where, as here, the issue is one of supervisory control and conduct, the need for consistency of approach must be given substantial weight. Accordingly, the State's proposals to modify Sections F and G are awarded.

Salary

The parties are in sharp conflict over the issue of salary. The source of that dispute is the parties' dramatically different interpretations of the 2.0% cap that the legislature implemented on the amount that base salary items can be increased on an annual or aggregate basis (2% times the number of contract

years) [see N.J.S.A. 34:13A-16.7(b)] over the life of the four (4) year agreement that the parties have stipulated to as the duration of the new Agreement. Each party contends that its last offer on salary complies with the statutory limit or maximum amount of increase in base salary items over the four year life of their new agreement that commences on July 1, 2011 and expires on June 30, 2015. That amount is 8%. Notwithstanding their common position that their proposals comply with the relevant provisions governing the salary cap, the total amount of money asserted by NJLESA that is consistent with the salary cap differs from the State's calculation by almost $10 million over the four year contract period. The total dollar amount of the increase to base salary under NJLESA's final base salary offer is $14,048,418 in contrast to the total dollar amount of the increase to base salary under the State's proposal of $4,556,697. Exhibits and testimony concerning their respective interpretations of the salary cap were included in the record of this proceeding. The testimony was received from David Cohen, Director of Office of Employee Relations and Christopher Young, Economist with Tinari Economics Group.

Because of the significant differences in how each party has calculated the monies that are available under the cap on base salary items, I have included their extensive formal arguments in complete fashion[8] that contain reference to the exhibits and record testimony, the applicable statutory provisions, to PERC case law interpreting and applying the salary cap to individual awards that have been the subject to appeal, to the scattergram of unit employees and the cost-

[8] There are other references to the base salary cap in other documents and in the post-hearing briefs but this summation is an accurate reflection of their respective positions.

outs that each have made in support of their respective interpretations and why each party believes the other party's calculations are not consistent with the statutory requirements.

NJLESA

I. APPLICATION OF THE 2% CAP

Undoubtedly, the two percent (2%) cap has become the single most important criterion that must be evaluated by an arbitrator in an interest arbitration proceeding for purposes of rendering an economic award. While the statutory criterion still have vast applicability, the legislative imposition and application of the two percent (2%) cap has drastically altered the landscape upon which any economic award can be rendered.

The NJLESA submits that when all the relevant, financial evidence presented in this interest arbitration is applied to the wage proposals presented in each of the parties' final economic offers and, thereafter, reviewed against N.J.S.A. 34:13A-16.7(b) and the relevant decisional law interpreting the application of the two percent (2%) cap, the NJLESA's wage proposal must be awarded in its entirety. Suffice it to say, the NJLESA's wage proposal is entirely consistent and falls within the parameters established by N.J.S.A. 34:13A-16.7(b) and, thus, is expressly permitted by law. Moreover, an award of the NJLESA's wage proposal will ensure that NJLESA members receive a "true" two percent (2%) increase for each year of the successor collective bargaining agreement given the unique situation this unit is currently in. Preliminarily, it must be noted that based on a review of its economic proposal, the State concedes the members of the NJLESA are entitled to and should receive a two percent (2%) salary increase per year for the life of the four (4) year successor agreement.

Since it is clear the two percent (2%) cap applies to our analysis, it is imperative to understand how the Public Employment Relations Commission (hereinafter "PERC" or "the Commission") has interpreted how the two percent (2%) cap is to be evaluated and adhered to by an interest arbitrator. To this end, PERC has issued few decisions clarifying how the two percent (2%) cap is to be applied and/or calculated.

At the current time, PERC's decision in In the Matter of Borough of New Milford and P.B.A. Local 83, P.E.R.C. No. 2012-53 is the seminal authority in delineating how an interest arbitrator must determine and/or apply the two percent (2%) cap. In New Milford, the Borough appealed to PERC and argued that the wage proposal awarded in the interest arbitration proceeding exceeded the two percent (2%) cap when all the economic factors contained in the award were included. Alternatively, the PBA responded that the Borough's calculations ignored the savings it [the Borough] would realize from the prospective retirement of several officers.

First, in reviewing the New Milford decision, the Commission articulated and defined the calculations an interest arbitrator must perform in order to determine an award's compliance with the two percent (2%) cap:

> [W]e must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate

> for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

With this backdrop, PERC addressed the parties' competing arguments and ruled as follows:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter costs added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with [the 2% cap] is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments...[Emphasis Added.]

PERC clarified its holding later in the opinion in stating:

> We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs. It is an affirmative calculation based on the total 2011 base salary costs regardless of any changes in 2012. Likewise, the PBA will not be debited for any increased costs the employer assumes for promotions or other costs associated with maintaining its workforce.

Thereafter, PERC rendered a decision in In the Matter of City of Atlantic City and Atlantic City Police Benevolent Association Local 24, P.E.R.C. 2013-82 (hereinafter "Atlantic City I") further clarifying application of the two percent (2%) cap. In Atlantic City I, the parties submitted dueling scattergrams that contained differing base salary information and calculations. After evaluating each party's scattergram, the interest arbitrator chose the scattergram submitted by the PBA given that the City's scattergram was "indecipherable". On appeal, the City challenged the

arbitrator's decision to utilize the PBA's scattergram and the base salary information and calculations contained therein.

In its decision, PERC reaffirmed its holding in New Milford and remanded the award to the interest arbitrator for re-calculation in accordance with its directives. Of particular note, however, the Commission also imposed new requirements on a public employer in interest arbitration proceedings. Specifically, the Commission directed that all public employers in interest arbitration proceedings are to provide arbitrators with the required base salary information and calculations. According to PERC, the information must include, at a minimum, in an acceptable and legible formation, the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;

2. Costs of increments and the specific date on which they are paid;

3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid; and

4. The total cost of all base salary items for the last year of the expired agreement.

Subsequently, PERC clarified its holding in stating:

> We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only. [Emphasis Added.]

As set forth above, the New Milford and Atlantic City I decisions delineate how the two percent (2%) cap is to be applied, evaluated, and/or calculated by an interest arbitrator. Essentially, a baseline amount expended by the public employer on base salary items for the twelve (12) months immediately preceding the expiration of the collective bargaining agreement between the NJLESA and the State must be established. Pursuant to the holding in Atlantic City I, this baseline amount is to be calculated from information provided by the public employer, in this case, the State.

As described below, that baseline amount has been provided by the State and stipulated to be **$56,945,856.70**. In short, this was the amount expended by the State on NJLESA members for "base salary" items in Fiscal Year 2011 (hereinafter "FY11"). For your reference, FY11 represents the twelve (12) months immediately preceding the expiration of the collective bargaining agreement between the NJLESA and the State. This notwithstanding, the State and the NJLESA have submitted dueling scattergrams similar to the situation in Atlantic City I. As such, the initial inquiry that must be answered by the arbitrator becomes which scattergram should be utilized to calculate the "cost-out" of the economic portion of the agreement under the two percent (2%) cap.

A. Choice of Scattergram

In this case, the NJLESA and the State have submitted competing scattergrams for utilization, with the State's scattergram submitted as Exhibit A-6 and the NJLESA's scattergram submitted as Exhibit A-7. As described above, the choice of scattergram is vital in that it will largely determine any economic award given to the NJLESA membership since the scattergram chosen will be utilized to calculate the "cost-out" of such an award. For the reasons set forth below, we believe the scattergram submitted by the NJLESA is the proper scattergram to be utilized as the same is more accurate and in accord with PERC's decisional authority in New Milford and Atlantic City I.

The difference between the scattergrams submitted by the NJLESA and the State is quite simple. The scattergram submitted by the State indicates the baseline amount of **$56,945,856.70** for FY11. From there, the State simply moves all NJLESA members as of June 30, 2011 through the current salary guide irrespective as to whether a certain officer retired and/or if new hires were made. Put another way, the State speculates the amount of salaries to be paid to NJLESA members in FY12, FY13, FY14, and FY15 based upon the formula articulated in New Milford. Utilizing this methodology, the State indicates that NJLESA members will realize a 6.56% base salary increase merely by moving through the salary guide and awarding the increments contained therein.

Alternatively, the scattergram provided by the NJLESA is different in that it contains the actual salaries and/or monies that were paid to NJLESA members for the first two years of collective bargaining agreement (July 1, 2011 to June 30, 2012 and July 1, 2012 to June 30, 2013) being arbitrated as explained in more detail below. First, it must be recognized that the NJLESA scattergram was compiled by the State during negotiations and provided to the NJLESA on or about September 9, 2013. Notably, the scattergram was compiled, calculated, and produced after the conclusion of FY13. Similarly, the NJLESA scattergram indicates that the baseline salary amount of **$56,945,856.70** was paid to NJLESA members for FY11. This number is no different that the baseline salary figure reflected in the State's scattergram.

However, where the NJLESA scattergram differs from the State scattergram is that the NJLESA scattergram contains the actual base salary information and calculations of what was paid to NJLESA members for FY12 and FY13, which have already been completed. To this end, the scattergram indicates that **$55,807,399.79** was expended on base salary items for NJLESA members in FY12 and **$56,208,517.37** was expended on base salary items for NJLESA members in FY13. Thereafter, the scattergram follows the New Milford guidance and simply moves all NJLESA members as of June 30, 2013 through the current salary guide irrespective as to whether a certain officer retired and/or if new hires were made.* Utilizing the actual figures from FY12 and FY13 in addition to the New Milford methodology from June 30, 2013 to the conclusion of the four (4) year contractual period, the NJLESA scattergram indicates that members of the bargaining unit will realize a 5.07% base salary increase from FY12 through FY15 by moving on the salary guide.

*It is noted herein that "new hires" are actually officers promoted in state law enforcement units from the rank of officer to the primary supervisory level.

Suffice it to say, the NJLESA scattergram contains actual salary figures for FY12 and FY13, while the State's scattergram contains projected salary figures for FY12 and FY13 that both the State and the NJLESA agree, are inaccurate. Notwithstanding the fact that the actual figures are available for fiscal years 2012 and 2013, the State is requesting the arbitrator ignore this detail and use incorrect salary figures in "costing out" this agreement. In short, the competing scattergrams are a direct result of the NJLESA and the State possessing different interpretations

of PERC's decisional law regarding the application of the two percent (2%) cap. Therefore, in an effort to illustrate the NJLESA scattergram is one that should be utilized, a comprehensive review of the New Milford and Atlantic City I decisions is necessitated.

As previously indicated, PERC's decision in New Milford established a formula for determining compliance with the two percent (2%) cap given the speculative nature of projecting what an award will cost over an agreement's duration, which often lasts several years. Again, in an effort to avoid this speculation, the Commission held:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter costs added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with [the 2% cap] is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments...[Emphasis Added.]

However, to understand the Commission's holding in New Milford, one must examine the original arbitration award from which PERC's decision was based in conjunction with the Commission's decision in Atlantic City I. As articulated below, a thorough review of the circumstances surrounding PERC's decision in New Milford and the additional guidance from the Commission in Atlantic City I clearly demonstrates that when actual salary figures are available, the same must be utilized. Furthermore, PERC has made clear in its decisions that the formula articulated in New Milford applies only to those years of a collective bargaining agreement where the base salary expenditures are yet to be compiled.

The original interest arbitration award rendered in New Milford, which issued on or about February 27, 2012, reveals that the Borough and PBA were parties to a collective bargaining agreement that expired on December 31, 2011. Prior to the expiration of their collective negotiations agreement, the parties engaged in negotiations on the dates of November 4, 2011, November 22, 2011, and December 13, 2011. Unfortunately, a resolution was unable to be achieved and, consequently, the PBA filed a Petition to Initiate Compulsory Interest Arbitration on January 5, 2012, less than one (1) month after the collective bargaining agreement expired.

Of particular note, when one engages in a thorough reading of the arbitration award, it becomes apparent that during the course of the interest arbitration proceedings, the Borough sought modification of Article 50 of the collective negotiations agreement entitled "terminal leave." In short, this provision governed terminal leave policies and procedures for employees who retire from the bargaining unit. In support of its proposed modification, the Borough articulated that the article had to be modified due to the fact that "predicting" when an employee/officer will retire is problematic given that the same is typically and often based on "workplace gossip". The arbitrator ultimately agreed with the Borough's assertion that determining when an employee will retire is troublesome. To this end, the arbitrator stated:

> Emergencies, health conditions, family issues, opportunities, or simply being "worn out" may all influence when someone decides to end employment. Officers may not know until late in the game when retirement is prudent, or for that matter essential...[Page 34.]

Ultimately, the interest arbitrator rendered an economic award, which he believed was in compliance with the two percent (2%) cap. The Borough appealed, alleging that the wage increases awarded were in excess of the two percent (2%) cap. Eventually, PERC remanded the award to the interest arbitrator for the arbitrator to conduct the requisite calculations delineated above. Most importantly, however, the Commission opined on the speculative nature of the "cost-out" of arbitration awards given the employee "breakage" that can occur over a number of years. In rendering its decision, the Commission cited the interest arbitrator's language that he utilized in addressing the requested modification of Article 50, entitled "Terminal Leave." Notwithstanding the fact that the arbitrator did not intend such language to be applicable in regard to how he "costed out" his award, PERC utilized such reasoning in remanding the decision by stating:

> As the Arbitrator noted at page 34 of the award, "Emergencies, health conditions, family issues, opportunities, or simply being "worn out" may all influence when someone decides to end employment. Officers may not know until late in the game when retirement is prudent, or for that matter essential." Indeed, eligibility for retirement is not the equivalent of retirement, nor is retirement mandatory at the time of eligibility. Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter costs added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with [the 2% cap] is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments... [Emphasis Added.]

Simply put, the Commission took the position that it is impossible for an interest arbitrator to determine, going forward: (1) when an officer/employee may retire; (2) when new promotions are effectuated; (3) when new staff is hired; and (4) when new legislation may be enacted that will have an effect on the cost of wages and benefits paid to public employees. Thus, the Commission held that, in practicality, it is impossible to "cost-out" an arbitration award over an agreement's duration when such factors are taken into consideration. To avoid speculating on such "breakage" going forward, the Commission provided the aforementioned formula to determine the "cost-out" of an economic award.

The Commission's holding in New Milford was necessitated because the entire economic award of the interest arbitrator had to be "speculative" in nature so to speak. We know this to be true because the Petition to Initiate Compulsory Interest Arbitration was filed in January 2012, less than a month after the collective bargaining agreement between the parties expired and the award was rendered on February 27, 2012, less than two (2) months after the expiration of the prior agreement. Therefore, unlike the situation that is presently before the arbitrator in this case, there

were no "actual salary figures" for any year of a successor collective bargaining agreement that the New Milford arbitrator could utilize in costing out an award that would comply with the two percent (2%) salary cap.

In simpler terms, in this case, the parties have stipulated that the contract that is being arbitrated is to be effective for a period of four (4) years with a start date of July 1, 2011 and end date of June 30, 2015. Therefore, unlike New Milford, the arbitrator in this case does not need to speculate what was paid for the first and second years of the contract as this information is readily available and has been provided in the NJLESA scattergram. Moreover, in further considering New Milford, the Commission's decision was logical given the situation that the arbitrator was facing. In that case, unlike our situation, the interest arbitrator needed guidance as to how to calculate and/or apply the two percent (2%) cap for contractual years wherein actual salary information was not available.

Furthermore, the Commission's holding in Atlantic City I reaffirmed the formula articulated in New Milford. In addition to imposing certain requirements upon a public employer with regard to compiling and/or providing the requisite base salary information to an interest arbitrator, the Commission also indicated that the formula in New Milford applies to future or speculative retirements only. Specifically, the Commission stated:

> We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only. [Emphasis Added.]

In this passage of Atlantic City I, the Commission unambiguously indicates that the formula in New Milford applies to "future" retirements only. In other words, when actual "paid" salary data is available, the same must be utilized. Alternatively, wherein employee "breakage" is speculative, the formula in New Milford must be utilized.

When looking at it from a purely logical point of view, the NJLESA's scattergram is more accurate than the scattergram presented by the State. We know this to be true because the salary figures that appear on the State's scattergram for the first two years of the contract being arbitrated are inaccurate when viewed against the salary figures on the NJLESA scattergram, which demonstrate the amount actually paid to the members of the NJLESA during the first two years. Additionally, when one synthesizes the decisions of New Milford and Atlantic City I, it likewise reveals the NJLESA scattergram is more accurate than the one provided by the State. Therefore, in accordance with the Commission's holdings in these two cases, the NJLESA scattergram must be utilized by the interest arbitrator in calculating an award that fits within the two percent (2%) salary cap.

Quite simply, the NJLESA scattergram contains actual salary figures for FY12 and FY13. Thereafter, the salary figures for FY14 and FY15 have been projected in accordance with the Commission's guidance in New Milford. Put another way, the scattergram moves all NJLESA members in the bargaining unit as of June 30, 2013 through the current salary guide irrespective as to whether a certain officer retired and/or if new hires were made. Director Cohen confirmed this by testifying as follows:

Q. Okay. For purposes of comparison between A-6 [the State's scattergram] and A-7 [the NJLESA scattergram], could you tell us what the difference is between these two documents are?

A. As you'll see the base pay is exactly the same, meaning what occurred in Fiscal '11 is exactly the same. You will see the difference in Fiscal Year '12, in Fiscal Year '13 there is words "actual pay" there as opposed to projecting, so what happens in Fiscal '12 is that—is during fiscal year the actual amount of salary expended for both Fiscal '12 and Fiscal '13.

Q. And the last column on the top says---comes out to 5.07%?

A. Correct.

Q. For Fiscal '14 and '15, how was this document calculated? What does that reflect?

A. Similar to what we said on A-6, for those employees on payroll as of pay period 14 in 2013, they were projected forward through Fiscal '14 and Fiscal '15.

Q. Is it fair to say for Fiscal '14 and Fiscal '15, that's a static projection going forward from Fiscal '13 with the addition of increment costs?

A. That's correct. There is no breakage in or out on those two years.

[3T59:17-60:16.]

The State's scattergram, on the other hand, contains projected and/or speculative salary figures for FY12 and FY13. This is notwithstanding the fact that the actual base salary expenditures for NJLESA members during these fiscal years are available. The State, in relying upon the scattergram it presented, maintains that its calculations and the utilization of these projections are proper and consistent with the Commission's guidance in New Milford. In positing such an approach, the State reads New Milford in a "vacuum" and disregards the practicality of utilizing actual salary figures and expenditures when the same are available. As a matter of common sense, and in accordance with a well-settled principle of jurisprudence, when actual data and evidence is available, it is preferred over speculation, projection, and/or conjecture.

Moreover, to utilize the State's approach would be in direct contravention of Atlantic City I, wherein the Commission expressly held that the formula enunciated in New Milford was to apply to "future" retirements and/or breakage only. Contrary to the State's assertions, fiscal years 2012 and 2013 are no longer the future. They are the past. To this end, the State has compiled and the NJLESA has submitted the actual base salary expenditures for the NJLESA membership during these time periods. Therefore, the "breakage" that occurred during this time period is no longer speculative. Rather, it is actual, can be quantified, and the same has been calculated. Consistent with the Commission's guidance in New Milford and Atlantic City I, this actual data must be utilized in this proceeding.

By way of summation, the scattergram submitted by the NJLESA as Exhibit A-7 must be utilized by the interest arbitrator in this proceeding in calculating and/or "costing out" the award. As fully detailed above, the scattergram is more accurate in that it contains the actual base salary

expenditures for NJLESA members in FY11, FY12, and FY13. Thereafter, the scattergram abides by the Commission's holding in New Milford by moving all NJLESA members as of June 30, 2013 through the current salary guide irrespective as to whether a certain officer retired and/or if new hires were made. In other words, employee "breakage" is not taken into account for FY14 and FY15 pursuant to the guidance issued by the Commission. As such, it is entirely consistent with the applicable law and will provide a more accurate indication of the true "cost-out" of any economic award.

Alternatively, the State's scattergram represents the epitome of choosing "form over substance". The State, by its own concession, is relying upon projections rather than the actual data that is available. The scattergram presented by the State, while consistent with the formula set forth in New Milford, fails to recognize the actual salary expenditures and/or employee "breakage" which has occurred and has been calculated during FY12 and FY13. Therefore, it cannot be countenanced that the NJLESA scattergram is the more accurate of the two.

While the Commission's decision in New Milford provided much needed guidance to interest arbitrators on determining the "cost-out" of an economic award for the duration of a collective bargaining agreement to ensure compliance with the two percent (2%) cap, the decision was certainly not intended to allow public employers and/or collective bargaining units to disregard actual salary data when the same is available. If the State's scattergram is accepted, that is precisely what will happen here. Furthermore, if the interest arbitrator were to accept the State's scattergram and projected salary figures, the members of the NJLESA will never have the opportunity to obtain a full eight percent (8%) aggregate salary raise over the four (4) year contractual period. This is due to the fact that the actual salary paid to the members of the NJLESA from July 1, 2011 to June 30, 2013 was clearly much lower than the projected figures proffered by the State. Thus, using these fictional figures will prevent an award being issued that complies with the applicable law. Such a result must not be permitted.

Lastly, to illustrate the absurdity of the State's position that its scattergram compiled of projections should be utilized over actual data, we must look at a hypothetical scenario wherein which the actual salary figures for FY12 and FY13 reveal that the State paid well in excess of what is projected in its [the State's] current scattergram for NJLESA base salary items. If that were the case, the State surely would have argued the actual figures should be utilized, thereby reducing the overall monies available to NJLESA members for distribution. Unfortunately for the State, however, this was not the case. Instead, the actual figures revealed that the State paid much less on base salary items for NJLESA members than what was originally projected. The NJLESA must have the opportunity to reap the benefit of this downward trend and the additional monies that result therefrom in accordance with a strict reading of the two percent (2%) cap and the decisional law interpreting the same.

Consequently, for all the foregoing reasons, the NJLESA scattergram must be utilized by the interest arbitrator as the same is undoubtedly more accurate and, thus, will yield a much more accurate indication of the "cost-out" of any economic award rendered herein.

STATE

I. THE ARBITRATOR SHOULD AWARD THE STATE'S FINAL WAGE OFFER, AND MUST REJECT NJLESA'S FINAL WAGE OFFER

A. The Standard For Calculating The 2% Cap On Base Salary Increases Under N.J.S.A. 34:13a-16.7(b).

The Interest Arbitration Act was revised effective January 1, 2011 by P.L. 2010, c. 105. The revision, in part, prohibits an arbitrator from rendering an award which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the numbers of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiations agreement subject to arbitration . . . the arbitrator may decide[ ] to distribute the aggregate monetary value of the award over the term of the collective negotiations agreement in unequal annual percentages.

N.J.S.A. 34:13A-16.7(b).

In Borough of New Milford, P.E.R.C. No. 2012-53 (April 9, 2012), the Commission established the standard for application of the 2% base salary cap mandated by P.L. 2010, c. 105. The Commission stated:

> This is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary. Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated....Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded....Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

Borough of New Milford, at 12-14.

In simple terms, the arbitrator must establish the base year and then multiply it by 8% (in the case of a four (4) year agreement). The product of the base year times 8% is the gross amount available pursuant to the cap. Next, the arbitrator must calculate the cost of increment increases. The difference between the base year times 8% product and the increment costs is what is "available" for wage increases or lump sum payments should the Arbitrator decide to issue a wage award up to the cap amount.

Of great significance to the instant matter, is the Commissions pronouncement regarding how to calculate the cost of a proposal going forward. In Borough of New Milford, the Respondent Union maintained that an arbitrator should factor in the "savings" the Borough had realized from the retirement of two of its officers, post-contract expiration to establish that the award does not exceed the cap. (Id. at 14).

The Commission disagreed, stating:

> the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, **both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.**

(Id. at 15) (Emphasis added.)

Since Borough of New Milford, the Commission has ruled consistently that neither attrition from, nor additions to, a negotiations unit, or any impact those changes may have on a public employer's salary expenditure, may be considered when calculating the 2% base salary cap.

In Borough of Ramsey, P.E.R.C. No. 2012-60 (May 24, 2012), the Appellant Union, also maintained that "the arbitrator should have taken into account the retirement of a Lieutenant and two promotions in projecting salary costs for 2012," the first year of the new contract. (Id. at 9). The Commission again disagreed, holding:

> In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, **should not** affect the costing out of the award. N.J.S.A. 34:13a-16.7 (b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. **The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce**.

(Id. at 9)(Emphasis added.)

Thus, N.J.S.A. 34: 13A-16.7(b) requires that base salary increase calculations be computed using a scattergram that identifies the total base salary expended by the employer for all unit members in the twelve months immediately preceding expiration of the CNA. All unit employees employed on the final day of the expired CNA must be projected forward through the scattergram using the proposed salary increase, along with any salary incremental steps to which the employees are entitled, to determine whether the proposal fits within the 2% base salary cap. The standard set forth in the foregoing cases requires that unit employees employed on the final date of the expired CNA be projected through the scattergram and that the scattergram **not** be adjusted for attrition or additions to the unit, **actual or projected**.

As the foregoing demonstrates, the Commission specifically and repeatedly ruled that "savings" may not be factored when calculating the 2% cap. The State's scattergram, (A-6), upon which it bases it wage proposal and resultant calculation, complies fully with the Commission's standard.

B. The State's Final Salary Offer Should Be Awarded As It Was Calculated Under The Standard Promulgated by the Commission, and Provides An 8% Increase To Base Salary, The Maximum That May Be Awarded Under N.J.S.A. 34: 13A-16.7(b)

As previously stated, the State's scattergram, (A-6), complies with both N.J.S.A. 34:13A-16.7(b) and the standards promulgated by the Commission in Borough of New Milford and its progeny. The parties stipulated as to its accuracy. (Tr. 12/13/13 at 10-11 (Counsel)).

The column in A-6 labeled "FY11 $ Amount Base Year Actual Pay" identifies "the amount of base salary paid to members of the bargaining unit during the fiscal year which would be the last fiscal year of the expired contract." (Tr. 12/1/13 at 49 (Cohen)). The $56,945,856.70 total represents the total salary actually paid to all unit members who earned any salary during FY 2011, the final year of the expired CNA. (Id. at 49-50 (Cohen)). The $56,945,856.70 base year salary is not in dispute. The parties have stipulated to its accuracy, (Tr. 12/13/13 at 10-11 (Counsel)), and rely on it in their respective scattergrams. (See S-6 and S-7).

"Scenario 1" of A-6 projects each employee who was on the payroll as of the final pay period in 2011 forward through the final pay period in FY 2015 (the final year of the proposed new agreement). The projection progresses each employee through the salary scale as if they remained employed for the duration of the proposed CNA. The step increases are included during the pay period in which they actually would be implemented. The bold-faced dollar amounts in Scenario 1 appearing at the bottom of the columns for each successive fiscal year show the projected annual salary expenditure for the all unit members "as if they were earning their pay and progressing through the salary steps as they normally would." (Id. at 51-52 (Cohen)).

Eight percent (8%) of the stipulated base year salary is $4,555,668.53. The last column of Scenario 1, labeled "Increase % of Base," is the total projected cost increase from FY 11 to FY 15 (for step movement only). That amount is $3,734,295.58 or 6.56% of the base year salary (which is set forth in the last column, "Increase % of Base"). (Tr. 12/18/13 at 53 (Cohen)). Therefore, under the appropriate calculation pursuant to the revised statute, a maximum of 1.44% of the base year total (i.e. $821,327.95) remains for a wage increase or lump sum distribution.

Scenario 2 in A-6 uses the same projection method with the inclusion of a 1% base salary increase in FY 13 and a lump sum payment to each unit member who will be at the top step in the final pay period of FY 14. Under the Commission's calculation method, the State's proposal equals 8% of the FY11 base salary. (Tr. 12/18/13 at 55-58 (Cohen)).

Thus, as set forth in the chart below, the State's proposal represents the maximum an arbitrator can award under the revised statute.

Increase of the State's Final Base Salary Offer Projected through the A-6 Scattergram	
Continuation of step increases through the 2011-2015 life of the CNA	6.56% ($3,734,294.50)
1% across-the-board increase to all employees effective the first full pay period in FY 2015	1.00% ($606,753)
$475 one-time lump sum bonus paid to all unit members at the top of the pay	

scale at the end of FY 2014	0.44% ($215,650)
Total Percentage Increase to Base Salary	**8.00% ($4,556,697.50)**

C. NJLESA's Final Base Salary Offer Must Be Rejected As It Ignores Entirely The Commissions' Standard For Calculating Salary Increase Under N.J.S.A. 34: 13a-16.7(b), And Would Amount To A 26.67% Increase in Base Salary.

The scattergram used by NJLESA to calculate its base salary offer, (A-7), incorporates post-base year "savings" for the first two years of the successor CNA, a method which the Commission has specifically and repeatedly ruled may not be considered when calculating the 2% cap.

The State provided scattergram A-7 to NJLESA at its request. (Tr. 12/18/13 at 59 (Cohen)). Exhibit A-7 depicts the State's actual salary expenditures for FY12 and FY13, which actually were less than FY11total. Despite the fact that NJLESA had the data for several months, it did not bother to analyze the reasons for the decrease in total base salary. A reasoned explanation would have to include several factors including retirements and termination (which may or may not have been replaced with lower paid new hires) and leaves of absence and unpaid suspensions. As such, the A-7 scattergram takes into account the precise factors that the Commission determined are not appropriate under the revised statute. Any calculation based upon A-7 impermissibly would credit a party from being credited with savings from a post-base year reduction in salary expenditures, actual or projected. See Borough of Ramsey, P.E.R.C. No. 2012-60 at 9 ("The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs.") Therefore, scattergram A-7 is irrelevant for the purpose of calculating the financial impact of NJLESA's wage proposal.

Even if scattergram A-7 were appropriate, the increase to the base salary over the four years of the CNA is almost 25.0%.

Increase of NJLESA's Final Base Salary Offer Projected through the S-7 Scattergram	
$5,315,327.00 lump sum payment for the first two years of the CNA: ($56,945,856.70 (FY 11base) ÷ $5,315,327.00 (cost union's lump sum) (P-4 p.22-23)	9.33% ($5,315,327.00)
4.77% A-T-B increase in each of the last two years of the CNA, and continuation of step increases through the 2011-2015 life of the CNA projected through the scattergram (S-9)	15.34% ($8,733,091.33)
Total Percentage Increase to Base Salary	**24.67% ($14,048,418.33)**

Eight percent (8%) of the stipulated base year salary is $4,555,668.53. NJLESA's proposal would cost the State **$14,048,418.33, or three times the maximum permitted under the revised statute.**

D. The Union Expert's Report is Unreliable, Faulty, and is Based on an Incorrect

Interpretation of N.J.S.A. 34:13A-16.7(b).

Christopher Young may be an economics expert, but he is not a legal expert. As stated above, Young's misinterpretation of the law dramatically inflates the amount NJLESA unit could be awarded under the statute. In addition to Young's misinterpretation of the calculation method, Young also incorrectly opines that N.J.S.A. 34:13A-16.7(b) *requires* that the unit employees receive a 2% annual increase. ("We understand that the Union is entitled to a two percent yearly increase, based upon the law." Tr. 12/19/13 at 15)

Young carries his analysis that the statute requires a 2% per year increase to the extreme by couching the decrease in base salary in FY12 and FY13 as "back salary not paid." (Id. at 47); (P-4 at 22-23). Thus, to achieve Young's mandatory 2% per year salary increase, Young concludes that NJLESA must be awarded $5,315,327 to account for the "shortfall" in the unit's base salary in FY 2012 and FY 2013.

Young next advocates for an additional 4.77% across-the-board increase effective June 30, 2014 and a second 4.77% across-the-board increase on June 30, 2015 "in order to achieve a two percent yearly increase, across the board." (Tr. 12/19/13 at 46 (Young)); (P-4 at 27). Young's calculations that the 4.77% increase is within the statutory limits are faulty on two points.

First, Young makes the assumption that the reduction in base salary realized in FY 2012 and FY 2013 will continue in FY 2014 and FY 2015. (P-4 at 23). In FY 2012 the State's actual base salary expenditures for the NJLESA unit decreased from $56,945,857 to $55,807,400—a $1,138,457 reduction. (A-7). In FY 2013 the expenditure was $56,208,517—a $737,340 decrease from FY 2011. (Id.) Despite the fact that the decrease in base salary expenditures is trending at a decreasing rate, (Tr. 12/17/13 at 37 (Young)), Mr. Young projects the decrease to continue and even increase from FY14 to FY15.

In column number 4 of the chart at page 23, (P-4 at 23), Young lists the "Differences in Salaries" between columns 3 and 2. Column 3 lists projected salaries for the life of the successor Agreement assuming a 2% compounded yearly increase. Column 2 lists the actual salaries paid to NJLESA unit members in FY 2012 and FY 2013, and their projected salaries for FY 2014 and 2015. The actual difference for FY 2012 is $2,277,374, and for FY 2013 is $3,037,953, for a total actual difference of $5,315,327. Young then projects a $1,433,233 savings for FY 2014 ($60,431,399 – $58,998,166), and a $1,805,380 savings for FY 2015 ($61,640,027 - $59,834,647)--although for some unknown reason he does not list the numbers in column 4. The total difference Young projects in the column 4 numbers, both actual and projected, are $8,553,940. Young projected this decrease, increasing from FY 2014 to FY 2015, despite the fact that the decrease trends downward from FY 2012 to FY 2013.

Under Young's interpretation of the 2% cap law, the NJLESA unit-members are "owed" $8,553,940 as "back salary not paid." As such, in Young's opinion, its payment should be awarded but not be included in the 8% cap for the term of the CNA, thereby providing an unaccounted-for windfall to those employees who remain in the unit.

When making his calculations Young failed to take into account the step increment progression of the unit members in the last two (2) years of the Agreement, even though his client proposes that the increments be continued as part of its final offer.

> Q. Just one more question regarding this. The last two years of the agreement, where you're stating that the 4.77 percent should be added to the scale, did

you take that -- let's take the first fiscal year, July 2013 to July 2014, did you run the numbers at 4.77 increase to the base and run it through a scattergram to determine what the actual cost of that would be based on how it would be applied to each person in the negotiations unit?

A. No.

Q But wouldn't that number be different than the number that you are calculating as what the ultimate outcome would be here?

A. No.

Q. Your number doesn't account for a step movement, does it?

A. Yes, it does.

Q. How does it do that?

A. Because the State's scattergram accounts for step movements. And my numbers are higher than the State's. So if my numbers are higher than the State's, then my number has to include accounting for step movements.

Q. Only if people stayed in the same step?

A. No. [The] Scattergram that the State prepares shows that we have moved through the steps for the four-year.

Q. For the last two years?

A. Looks like for all the years. According to the scattergram, A-7, you moved through all of the steps from the beginning of the contract to the end of the contract. So my numbers include changes in steps.

(Tr. 12/19/13 at 50-51 (Young)).

Young however is incorrect. In calculating the impact of the 4.77% increase Young merely multiplied the FY13 salary by 4.77% in each of the last two years of the agreement. Young's calculation, therefore assumes a static negotiations unit with no step movement. The impact of the two 4.77% increases is therefore dramatically deflated.

To correctly calculate the actual cost of the 4.77% increase, Director Cohen had the 4.77% increases plugged into the exhibit A-7 scattergram upon which NJLESA relies. The 4.77% increases were run taking into account increment increases for FY14 and FY15. The 4.77% increases alone, (without accounting for NJLESA's $5,315,327 lump sum payment) results in a 15.34% increase to the FY11 base salary. (Tr. 12/19/13 at 77-78 (Cohen)). Thus, even under NJLESA's incorrect application of the revised statute, its final wage offer exceeds the cap by almost 12%. Young is proven incorrect by Exhibit S-9.

Mr. Young's calculation and projections of NJLESA unit members' health care premium costs under P.L. 2011, c. 78 must also be rejected. As Director Cohen testified on rebuttal, Mr. Young based his calculations and presumptions on information unrelated to the health care premium

costs for State employees covered under the State Health Benefit Program. (Tr. 12/19/13 at 70-77 (Cohen)). For his calculations, Mr. Young relied on information derived from a state Department of Banking and Insurance website he identifies at page 17 of his report. (P-4); (S-7), which provides information on the Individual Health Coverage Program (IHC). As Director Cohen pointed out, and as stated clearly at the start of that web-page: "The IHC Program was created to ensure that people without access to employer or government sponsored health care programs could purchase health coverage for themselves and their families from a variety of private carriers." (S-7)(Emphasis added); (Tr. 12/19/13 at 70-77 (Cohen)). NJLESA unit members are covered by the State Health Benefit Program. As such the information used by Mr. Young to estimate and project their health care premium costs for the HIS program is irrelevant. Mr. Young could easily have accessed the correct information at the publically accessible website operated by the State Division of Pension and Benefits for the State Health Benefits Program. (S-8); (Tr. 12/19/13 at 76-77 (Cohen)). The correct information cou Furthermore, any argument that health care premium contributions paid by unit members should serve as an offset to their base salary must be rejected. Base salary is defined by N.J.S.A. 34:13A-16.7(a) to specifically exclude "non-salary economic issues, pension and health and medical insurance costs." (Emphasis added.) Health care contributions are statutorily required and cannot be considered by the Arbitrator as an economic item to be counter balanced against any other aspects of the Award.

NJLESA's final wage proposal and its calculations must be rejected.

E. NJLESA's Calculation Methods Must Be Rejected As They Would Serve a Disservice to the Interest and Welfare of the Public and the Authority of the Employer

As stated above, Young's analysis is legally unsupportable. Young's analysis is also plainly wrong as a matter of policy and fiscal sanity. Young admitted that he did not provide an opinion on whether implementing NJLESA's wage proposal would be sound business practice. Young did not justify his proposal as sound business practice because he could not.

The intent of the 2% base salary cap would be frustrated if unions were permitted to account for salary cost savings that resulted from actual attrition. Attrition can occur for many reasons, including but not limited to layoffs, downsizing, reductions in force and furloughs. Such actions are often premised on cost reductions, including the reduction of salary expenditures. This dynamic occurs in the natural order of labor intensive businesses. Adopting NJLESA's method would result in the effective elimination of planned cost reductions as NJLESA's method requires that the savings be distributed to the remaining employees in the form of increased wages thereby negating any cost saving benefit to the public employer and its constituents, the general public. Clearly, such a dynamic was not the intent of the legislature when it passed the current statutory revisions

NJLESA's method also allows for, and may actually promote, gamesmanship in negotiations. Unions could time the filing of an interest arbitration petition based on a downturn in the unit headcount, thereby deflating actual salary expenditures and increasing the "savings." Public employers could time a filing to a point where a group of new hires, promoted employees, or academy cadets were added to the unit. The timing would show an increase its salary expenditure and decrease the money available under the statutory cap. Thus, the dollar amount available under the 2% cap would vary depending upon when the petition was filed.

Manipulation of the system in this way could negate the fiscal benefit intended by P.L. 2010, c. 105.

The parties have offered extensive evidence in support of their respective salary proposals. This includes wage comparisons based upon salary data from interest arbitration awards, from voluntary settlements, from internal settlements between both law enforcement and civilian units and the State and from law enforcement units in other jurisdictions within the State of New Jersey. in addition to comparability, evidence was introduced concerning the State's finances, the financial impact of an award of either party's proposals and the cost of living. A budget presentation was provided by Peden showing numerous charts and graphs concerning unemployment rates, revenues, fund balances, appropriations, pension payments and employee benefit costs. The parties' submissions are comprehensive and need not be fully summarized although they have been fully reviewed and considered.

The parties' positions can be characterized in different ways without sacrificing the factual accuracy of their proposals. For example, NJLESA's proposal has been calculated by the State as creating a 24.67% increase to base salary while NJLESA refers to the State's proposal as a three year freeze to the salary schedule followed by a 1% increase in the fourth year. Notwithstanding the characterization of each proposal, the parties agree that the revised statute includes a 2% cap on base salary increases is the controlling standard that is dispositive of the award on the issue of salary.

Because each party asserts that its proposal fully comports with the maximum amount that can be lawfully awarded, the statutory criteria is of less relevance in determining the wage increase to be awarded. Put another way, if the parties agree, as they do here, that the award must be consistent with what the law requires to be the limit, the other factors do not influence what that amount should be. By way of example, if the cost of living was higher or lower than the amount to be awarded, the award of the maximum amount allowable under law would be unaffected by that data. Comparability evidence would also not influence the outcome of a proceeding if the parties' positions, as here, agree that the award is dependent on what increases are allowable under the statutory cap on base salary increases. In this matter, both parties agree than an increase can be awarded that is consistent with what the cap allows but each party contends that its final offer meets the test of satisfying the maximum amount that is allowable under the cap. Given this, the criteria that are entitled to the greatest weight in this proceeding are the interests and welfare of the public [N.J.S.A. 34:13A-16(g)(1)] and the statutory restrictions imposed on the Employer [N.J.S.A. 34:13A-16(g)(9)]. Comparability [N.J.S.A. 34:13A-16(g)(2)(a), (b) and (c)] is also relevant only to the extent that the criteria influences the apportionment of the increases in a manner that, to the extent allowable, is harmonious with the terms of comparable units. This is not a proceeding that involves voluntary settlement in which case the cap on base salaries would not apply. Instead, because this is an interest arbitration proceeding, the statutory restrictions on the employer's ability to provide wage increases is paramount,

especially given the parties' positions that the appropriate award is one that is the maximum amount allowable by law.

I am required to apply the appropriate PERC case law in determining the monies that can be awarded. The first step in the application of the statutory cap is a determination as to what the total base salary was for the last year of the contract. This amount is equal to the actual funds the State expended on base salary items for all unit employees who were employed during the year that ends prior to contract expiration. This includes an employee employed for the entire year or one who was employed during any portion of that year. The State produced a scattergram [A. Ex. #6] for that contract year between July 1, 2010 through June 30, 2011. That scattergram produced a total amount of actual salaries expended for all employees in that year in the amount of $56,945,856.70. The State and NJLESA have stipulated to the accuracy of that amount. This satisfies the first step of the analysis.

The second part of the analysis that PERC requires is the application of the base year salary amount ($56,945,856) times 2% times the number of contract years which in this instance is four (4). The 2% amount is $1,138,917. When multiplying by four (4), the amount is $4,555,668. The multiplication is based upon a simple rather than a compound calculation. In other words, the 8% is off the original base and not 2% for each year off a new base. In accordance with PERC's relevant case law, this constitutes the maximum aggregate amount

of funds that can be awarded under the New Milford formula. That aggregate amount, under law, and as recognized by PERC, can be distributed in varying amounts over the four year period because "the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiations agreement in unequal annual percentages."

Significantly, the aggregate amount of what is the maximum allowable amount must be placed on the scattergram, or number of employees, who are employed as of the last date of the contract year of contract expiration on June 30, 2011. PERC then requires the aggregate amount to be distributed to that scattergram over the entire contract period as if all of the employees continued to be employed without any impact from new hires or retirements.

In this case, the State applied the "dynamic status quo" principle and chose to move the employees on the scattergram as of June 30, 2011 through the salary schedule as if they were to be employed throughout the four years of the contract. In other words, each employee entitled to step movement received his or her step in each year prior to this proceeding. The State's calculations of cost were based upon each employee being moved through the salary schedule over the four years by achieving annual step movement, or annual increments, pursuant to the salary schedule regardless of whether they continued to be employed beyond the date that the monies were projected to be spent.

According to the State, the projected costs of such step movement alone for employees as of June 30, 2011 through June 30, 2012 was $1,849,885, or 3.25% of the base salary amount of $56,945,856. From this, the State then calculates that the amount that it would spend in FY 2012 would be $58,795,741.34. It then projected the costs of step movement for these employees in FY 2013 as $1,003,414, or 1.76% of the original base salary amount. This resulted in the projected payment of $59,799,155 during FY 2013, the second contract year. Using similar methodology, the State then projected the costs of step movement for these employees during FY 2014, the third contract year, as $433,256, or 0.76% of the original base amount resulting in the projected expenditure of $60,232,411 during FY 2014. Finally, the State projected the costs of step movement for these employees during FY 2015, the fourth year of the contract as $447,740 or 0.79% of the original base salary amount resulting in a projected expenditure of $60,680,151. The projected cost of $60,680,151 for FY 2015, when measured against the expenditures of the original base salary amount of $56,945,856 during the base salary year of FY 2011 yields a projected cost of $3,734,295 or 6.56% of the original base salary amount. This projected cost is what the State contends is chargeable against the 8% limit on what can be awarded. During the first three year time period, the maximum steps of the salary schedule remained frozen with no expenditures under the State's proposal. Because the 8% that was calculated off of the original base salary amount of $56,945,856 amounts to $4,555,668, the State then projects that there is a remaining sum of $821,373 that can legally be

awarded above and beyond the projected step movement costs of $3,734,295 during the four contract years. The $821,373, when added to the $3,734,295 projected expenditures for the cost of step movements for employees on the June 30, 2011 scattergram equals the $4,555,688 amount that the State calculates as 8% of the original base salary amount of $56,945,856 that was expended on salaries for unit employees during FY 2011. The State then allocates the remaining $821,373, or 1.44% in two ways. It would provide the 454 employees that it projected to be at the top or maximum step 10 during FY 2015 with a $475 non-base one-time payment on pay period #14 of FY 2014 yielding $215,650 and a 1% across the board increase to all employees with a projected cost of $606,753, thus totaling $821,373. According to the State, the aggregate sum total of $4,555,688 or 8% of the original base salary expenditures of $56,948,856 fulfills its obligation as to the maximum dollar that meets the salary cap standard. The projected costs over the four years are said to override the actual costs that were incurred prior to the arbitration proceeding. The State contends that this methodology fully comports with PERC case law requirements set forth in New Milford and PBA Local 83, PERC No. 2012-53 and its progeny.

The Union sharply disagrees. It agrees with the original base salary expenditures of $56,945,856 during FY 2011 but asserts that the State's projections in A. Ex. #6 are speculative while its own in A. Ex. #7 represent the actual salary costs for FY 2012 and FY 2013, the first two years of the contract.

It accuses the State of ignoring the actual expenditures and using fictional figures in order to reach its claim to have offered 8% over the four years.

NJLESA's calculations are best described by the testimony and salary analysis exhibit providedby its financial expert. Mr. Young methodically explains the basis for the Union's calculations and compares its method with that of the State's. I have set forth that methodology in its pertinent part:

> We were provided a file (Scattergram) by the State that included the name of each NJLESA member, and the member's steps and salary on the salary guide for the years 2011 to 2015. The 2011, 2012 and 2013 salaries are those which were actually paid by the State, whereas the 2014 and 2015 salaries are projections. The salaries included on the Scattergram are based on the salary guides, and step progression of the previous contract. The table below presents the total salaries of NJLESA members for the years 2011 to 2015 (as determined by the State) and our projections of salaries of NJLESA members assuming a 2% yearly increase for the years 2011 to 2015.
>
> The Scattergram shows that when a NJLESA member reaches Step # 10 (highest step possible) on the salary guide, the member is not provided any increase from one year to the next. Although the table below shows that over the period July 1, 2011 to June 30, 2015, NJILESA members are projected to receive a yearly increase of 1.24% (based upon State projections), there are many members at Step #10 who would receive no yearly increase over the said period. Of the total 1,038 officers of NJLESA (included on the Scattergram), 269 (25.9%) of them (Step #10), are not provided any increase between 2011 and 2015. There are another 145 (14.0%) officers who transitioned to Step #10 sometime between 2011 and 2015 and who are scheduled to receive a portion of the total increase, based solely upon their step movements prior to attaining Step #10. The remaining 624 officers (60.1%) are shown to receive their increases based upon moving from Steps #1 through #10, based upon the step increases of the last contract.
>
> The Scattergram also demonstrates that during the period July 1, 2011 to June 30, 2013, the total salaries actually paid to NJLESA members amounted to less than the two percent (2%) maximum allowed by the State. As shown in our table, this results in a shortfall of $5,315,327

[$2,277,374 (2012) + $3,037,953 (2013)] from the salaries projected at two percent (2%) yearly increases.

Time Period	NJLESA Salaries from the State*	Projected Salaries [Assuming a 2% Compounded Yearly Increase]	Differences in Salaries [(3)-(2)]
(1)	(2)	(3)	(4)
July 1, 2010 to June 30, 2011	$56,945,857	$56,945,857	$ --
July 1, 2011 to June 30, 2012	$55,807,400	$58,084,774	$2,277,374
July 1, 2012 to June 30, 2013	$56,208,517	$59,246,470	$3,037,953
July 1, 2013 to June 30, 2014	$58,998,166	$60,431,399	**$5,315,327**
July 1, 2014 to June 30, 2015	$59,834,647	$61,640,027	
Total Salaries (2011-2015)	$287,794,587	$296,348,527	$8,553,940
Average Compound Yearly Increase (2011-2015)	1.24%	2.00%	0.76%

* Actual salaries paid for July 1, 2010 - June 30, 2013; the remaining years are projections.

The difference between the actual amount paid to NJLESA members and the 2% projections ($5,315,327), for the years 2012 and 2013, represents the amount of past salaries that would be required to be paid to NJLESA members, if the State's intentions were to provide a 2% yearly increase.

Additionally, we calculate that an increase in base salaries would be needed, starting July 1, 2013, if the State were to approve a 2% yearly increase. The increase would be $4,222,882, the difference between the actual June 30, 2013, salaries ($56,208,517) and the projected June 30, 2014 (effective date, July 1, 2013) salaries of $60,431,399. Lastly, NJLESA would need to receive another adjustment on July 1, 2014, of $1,208,628 [$61,640,027 (June 30, 2015 projections) - $60,431,399 (July 1, 2014 projections)], representing a 2% increase from the previous year salaries.

If these adjustments were to occur, the NJLESA, as a unit, would receive a yearly 2% increase over the life of the contract. **It is important to note that our calculations are based on compounded yearly salary growth that, we believe, is the most proper**

treatment of salary adjustments, based upon economic theory, and our interpretation of the N.J.S.A 34:13A-16 statute.

However, we have been asked to recalculate our salary projections using simple interest of 2%. Simple interest, in contrast to compounded interest, is based solely on the initial or starting figure. Based on the state-provided numbers for the year July 1, 2010 - June 30, 2011, we calculate simple interest of 2% to be $1,138,917 ($56,945,857 x 2.0%). We apply this yearly increase to each year of the contract term. The below schedule presents the new calculations.

Time Period	NJLESA Salaries from the State*	Projected Salaries [Assuming a 2% Simple Yearly Increase]	Additional Reserves for Salary Increases [(3)-(2)]
(1)	(2)	(3)	(4)
July 1, 2010 to June 30, 2011	$56,945,857	$56,945,857	$ --
July 1, 2011 to June 30, 2012	$55,807,400	$58,084,774	$2,277,374
July 1, 2012 to June 30, 2013	$56,208,517	$59,223,691	$3,015,174
July 1, 2013 to June 30, 2014	$58,998,166	$60,362,608	**$5,292,548**
July 1, 2014 to June 30, 2015	$59,834,647	$61,501,525	
Total Salaries (2011-2015)	$287,794,587	$296,118,455	$8,323,868
Average Compound Yearly Increase (2011-2015)	1.24%	1,94%%	0.70%

* Actual salaries paid for July 1, 2010 – June 30, 2013; the remaining years are projections.

The table above shows that if the State's intentions were to provide a 2% yearly increase off of the base year, using simple interest, the State would need to make a one-time payment of $5,292,548 to compensate NJLESA members for the differences in increases in past years. Similarly, the State would need to make a change in base salaries from $56,208,517 (as of June 30, 2013) to $60,362,608 [$4,154,091] so that future salaries are adjusted for an assumed 2% yearly increase. Lastly, the State would need to provide another increase of $1,138,917 on July 1, 2014 to adjust the salaries up by 2%.

Summary

In this report, we reported that the CPI increases in the State of New Jersey have averaged 2.8% the past years (2004-2010) and are expected to do the same in the next couple. We have also showed that during this period of time, NJLESA members experienced yearly increases that met CPI increases, if not slightly exceeded them. We also examined the increases of other uniformed personnel in New Jersey, showing that during the years 2005-2010, Rank and File Officers and Superior Officers in other organizations averaged 3.03% and 4.03% yearly increases, whereas NJLESA members experienced 2.96% average yearly increases during the same period. Moreover, we showed that with the adoption of Chapter 27, State employees would have a yearly increase in healthcare benefit costs somewhere between 0% and 13.9%. When factoring in these additional healthcare benefit costs, and assuming a 2% yearly salary increase, NJLESA members, particularly those at level #10 on the salary guide, would experience a reduction in total purchasing power.

If the intent of the State is to ensure a 2% yearly increase, the following summary table shows the total changes in salary and one-time adjustments needed to ensure that members of NJLESA receive, at the minimum, a 2% yearly increase from the base salary calculated by the State ($56,945,857) for the year July 1, 2010 to June 30, 2011.

Type of Adjustment	2% Compound Yearly Increase	2% Simple Yearly Increase
(1)	(2)	(3)
One Time Payment – Past Years	$5,315,327	$5,292,548
Change in Salaries Effective July 1, 2013	$4,222,882	$4,154,091
Change in Salaries Effective July 1, 2014	$1,208,628	$1,138,917
Average Change Per Year for July 1, 2013 and July 1, 2014	$2,715,755	$2,646,504
Average Change Per Year for July 1, 2013 and July 1, 2014 [Adjustments to Salary Guides]	4.77%	4.65%

We were requested to provide new salary guides, using the salary guides for the last year of the previous contract as our starting base. To do this, we were asked to provide an across-the-board salary

increase for all members of NJLESA for the July 1, 2013, and July 1, 2014 contract years.

The previous salary guides are currently being used by the State to determine the salary for each step NJLESA members take, while progressing through the ranks. It is this same salary guide that has contributed partially to the shortfall experienced by NJLESA members. As shown above, NJLESA members would need to receive a $2,646,504 increase, starting July 1, 2013, and again on July 1, 2014. This increase would have to be applied to the June 30, 2013, ending salaries of $56,208,517. We adjust the salary guides upward by 4.65% for the aforementioned years. Exhibit 5 presents the new salary guides.

Award

After thorough review and consideration of the parties' vigorous arguments as to how to apply the cap and base salary amounts that can be awarded, I am persuaded that the State's methodology must be selected as the one that is consistent with the PERC case law. Notwithstanding NJLESA's disagreement with that case law as applied herein by the State, I am bound by that methodology and will apply it to the salary award. While doing so, neither the statute nor the case law requires that the apportionment of the maximum aggregate amount of funds that can be awarded be identical to the specific terms that the State has proposed. As previously indicated, the statute states that "the arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiations agreement in unequal annual percentages."

Based upon the above analysis of the amount of funds available to be awarded beyond the step movement costs that the State projected would occur

over the four year period, that sum is $821,373. That amount, in addition to the $3,734,295 projected expenditures for the cost of step movements over the four year period equals the cap amount of $4,555,668. Given the conventional arbitration authority granted to me under law, and the latitude to distribute the funds consistent with the cap amount over the four year period, I have decided not to award the 1% across the board amount in FY 2015 for all unit employees nor the $475 one-time non-base payment during the 14th pay period of FY 2014 for those employees at the maximum step of the salary schedule. This 1.44% is calculated at $821,373. Instead, and for the purpose of achieving reasonable consistency with collective negotiations agreements reached between the State and its other law enforcement and civilian bargaining units over the 2011-2015 contract years, I have awarded a 1.25% increase in FY 2014 (contract year #3) and an additional 1.25% increase in FY 2015 (contract year #4) only for those employees who were projected to be placed at top step of the salary schedules for unit employees during these years based upon A. Ex. #6.

The calculations of cost for this portion of the award is $334,125 for FY 2014 as a result of a 1.25% increase only for employees at top step and an additional $423,708 for FY 2015 as a result of a 1.25% increase only for employees at top step. These increases would be effective the first pay period after each July 1 effective date. The distribution for both of the two years total $757,833 ($334,125 in FY 2014 and $423,408 in FY 2015) and is based off of an approximate top step salary average of $90,000 for all of the salary guides as of

the base salary year that ended on June 30, 2011 and the State's projections of the number of employees in all ERGs at Step 10 of 297 in FY 2014 and 372 in FY 2015. The amounts awarded are somewhat less than the $821,373 that would equal the maximum allowable but there is no basis for the expenditure of that requires any additional amounts.

The terms of the award are within the costs of the cap on base salary that are lawfully allowable and are reasonably consistent with the across the board wage increases that the State achieved with PBA Local 105, NJSOLEA and FOP Local 174 as set forth in the chart below:

Across-the-Board Wage Increases			
Effective Date	**Corrections Officers (PBA 105)**	**Lieutenants (NJSOLEA)**	**Special Investigators (FOP 174)**
July 2011	0%	0%	0%
July 2012	0%	0%	0%
July 2013	0% (Steps 1-9) 1.75% (Step 10)	1.25%	0% (Steps 1-9) 1.0% (Step 10)
July 2014	1.0% (Steps 1-9) 1.5% (Step 10)	1.25%	0%(Steps 1-9) 1.5% (Step 10)

The record reflects that internal comparability and reasonable consistency have been standards that have guided State of New Jersey negotiations.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

1. All proposals by the State and NJLESA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

2. Except as otherwise indicated, the modification to the Agreement as awarded are intended to be effective as of the date of the award.

3. **Duration**

   There shall be a four-year agreement effective July 1, 2011 through June 30, 2015.

4. **Stipulations**

   The following stipulations are incorporated into the Award:

   12. **Revise Existing Article III as follows:**

   Civil Service Regulations

   The administrative and procedural provisions and controls of the Civil Service law and Rules and Regulations promulgated there under are to be observed in the administration of this Agreement.

   **THE REFERENCES TO THE MERIT SYSTEM SHOULD BE REMOVED THROUGHOUT THE AGREEMENT

   13. **Modify Article IV [Non-Discrimination] as follows:**

   The provision of this Agreement shall be applied equally to all employees. The Association and the State agree there shall not be any discrimination including harassment based race, creed, color, national origin, nationality, ancestry, age, sex, familial status, marital status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, including perceived disability and AIDS and HIV status, domestic partnership, political affiliation, Association membership, or lawful membership activities or activities provided in this Agreement.

   14. **Modify Article V, Section B(3) as follows:**

   Quarterly Employee Relations Meetings with the Governor's Office of Employee Relations

D. Quarterly Employee Relations Meetings

1. A committee consisting of State and Association representatives may meet for the purposes of reviewing the administration of this Agreement, and to discuss problems which may arise. Said committee shall meet at least twice per year some time during the last week of February and November. At either party's request no more than two (2) additional meetings will be scheduled and take place. The additional meetings will be held some time in the last week of May and/or August. These meetings are not intended to by-pass the grievance procedure or to be considered contract negotiation meetings but are intended as a means of fostering good employee relations through regular communications between the parties.

2. Either party may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such a meeting. Written response to all agenda items shall be within thirty (30) days of each meeting.

3. A maximum of seven (7) employee representatives of the Association may attend such quarterly meetings.

4. The State shall provide to the Association semi-annually a list of names and addresses of all unit employees.

15. **Modify Article IX, Section E [Fringe Benefit Information] as follows:**

The State shall provide information describing the health benefits program, the life insurance and pension program and similar available information to all new employees when hired.

16. **Modify Article X, Section H(3) [Step Three Arbitration] to include the following underlined language between the existing eight (8th) and ninth (9th) sentences of the section. The existing 8th and 9th sentences of this article is included below for purposes of clarity:**

The fees and expenses of the arbitrator shall be divided equally between the parties. Either party may make a verbatim record through a certified transcriber, with the attendance fee of the court reporter shared between the parties. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including any attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including any attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost.

17. **Article XI, Section N(6) [Minor Discipline] add the following language to the end of this section:**

Either party may make a verbatim record through a certified transcriber, with the attendance fee of the court reporter shared between the parties. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties.

18. **Modify Article XIII, Section A(3) [Salary Compensation Plan and Program-Administration] as follows**:

    3. Overtime earnings shall be paid on the regular bi-weekly payroll.

19. **Modify Article XIV, Section C [Vacation] as follows**:

    E. Payment For Vacation

    1. Upon separation from the State, or upon retirement, an employee shall be entitled to vacation allowance for the current year on a prorated basis consistent with N.J.A.C. 4A:6-1.5 and N.J.S.A. 11A:6-2.

    2. If a permanent employee dies having vacation credits unused vacation leave shall be paid to the employee's estate pursuant to N.J.A.C. 4A:6-1.2(j).

20. **Article XV, Section A [Holidays]**:

    Eliminate Lincoln's Birthday as a holiday; change "Washington's Birthday" to "President's Day" and add new language as follows:

    New Year's Day
    Martin Luther King's Birthday (3rd Monday in January)
    President's Day (3rd Monday in February)
    Good Friday
    Memorial Day (Last Monday in May)
    Independence Day
    Labor Day
    Columbus Day (2nd Monday in October)
    Election Day
    Veteran's Day (November 11)
    Thanksgiving Day
    Christmas Day

    The statutorily prescribed holidays, including any subsequent amendments thereto shall be the holidays recognized for purposes of this agreement.

21. **Article XV, Section B [Holidays] modify existing section to read as follows**:

In addition to the aforementioned holidays, the State will grant a paid day off when the Governor, in his/her role as Chief Executive of the State of New Jersey, declares a paid day off by Executive Order.

22. **Modify Article XXVII [Overtime] as follows:**

b. Overtime will accrue and compensation will be made in compliance with the Civil Service Rules and Regulations. Eligible employees will be compensated at the rate of time and one-half (1 and ½) for overtime hours accrued in excess of the designated work week. These compensation credits shall be given in compensatory time or in cash.

1. For the purpose of computing overtime, all paid holiday, sick hours, and vacation hours, whether worked or not, for which an employee is compensated shall be regarded as hours worked. Overtime pay shall not be pyramided.

2. "Scheduled overtime" means overtime assigned prior to the day on which it is to be worked.

3. "Non-scheduled overtime" means assigned overtime made on the day on which it is to be worked.

4. "Incidental overtime" is a period of assigned non-scheduled overtime worked of less than fifteen (15) minutes.

5. When a scheduled work shift extends from one (1) day to the next, it is considered to be on the day in which the larger portion of the hours are scheduled and all hours of the scheduled shift are considered to be on that day.

* * * * *

5. **Article XIII – Salary Compensation Plan and Program** (including the reordering of fringe benefits from Article XIII to Article XXXV).

Sections C, D, E and G shall be deleted from Article XIII and addressed in Article XXXV [Health Insurance and Fringe Benefits]. The remainder of the Article shall be modified as follows:

Salary Compensation Plan and Program

A. Administration

1. The parties acknowledge the existence and continuation during the term of this Agreement of the State Compensation Plan which incorporates in particular, but without specific limit, the following basic concepts:

a. A system of position classification with appropriate position descriptions.
b. A salary range with specific minimum and maximum rates and intermediate incremental steps therein for each position.
c. The authority, method and procedures to effect modifications as such are required. However, within any classification the annual salary rate of employees shall not be reduced as a result of the exercise of this authority.

2. The State agrees that all regular bi-weekly pay checks be accompanied by a current statement of earnings and deductions and cumulative year-to-date earnings and tax withholdings.

3. Overtime earnings shall be paid on the regular bi-weekly payroll.

B. Compensation Adjustment

It is agreed that during the term of this Agreement for the period July I, 2011-June 30, 2015, the following salary and fringe benefit improvements shall be provided to eligible employees in the unit within the applicable policies and practices of the State and in keeping with the conditions set forth herein.

1. Wage Increases: Subject to the State Legislature enacting appropriations of funds for these specific purposes, the State agrees to provide the following benefits effective at the time stated herein or, if later, within a reasonable time after the enactment of the appropriation.

a) Effective the first full pay period after July 1, 2013, there shall be a one and one quarter percent (1.25%) increase applied to each negotiation unit employee who is at Step 10 of his/her appropriate salary range on or before the start of Pay Period 14 of 2013, and employed on the date of payment.

b) Effective the first full pay period after July 1, 2014, there shall be a one and one quarter percent (1.25%) increase applied to each negotiation unit employee who is at Step 10 of his/her appropriate salary range on or before the start of Pay Period 14 of 2014, and employed on the date of payment.

2. Salary Increments: Normal increments shall be paid to all employees eligible for such increments within the policies of the State Compensation Plan during the term of this Agreement:

a. Where the normal increment has been denied due to an unsatisfactory performance rating, and if subsequent performance of the employee is determined by the supervisor to have improved to the point which then warrants granting a merit increment, such increment may be granted effective on any of the three (3) quarterly action dates which follow the anniversary date of the employee, and subsequent to the improved performance and rating which justifies such action. The normal anniversary date of such employee shall not be affected by this action.

b. Employees who have been at the eighth step of the same range for 18 months or longer shall be eligible for movement to the ninth step providing their performance warrants this salary adjustment.

c. Employees who have been at the ninth step of the same range for 24 months or longer shall be eligible for movement to the tenth step providing their performance warrants this salary adjustment.

5. Article XXXV - Health Insurance and Fringe Benefits

Proposed Change: Replace with the following:

A. State Health Benefits Program

As with any provisions of this Agreement that reflect statutory or regulatory mandates, the provisions of paragraphs (A)(B)(C) and (G) of this Article, are for informational purposes only and provide an explanation which is subject to change due to legislative action.

1. The State Health Benefits Program is applicable to employees covered by this Contract. It is agreed that, as part of that program, the State shall continue the Prescription Drug Benefit Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. Through December 31, 2011, active eligible employees are able to participate in the prescription drug card program. Similarly, through December 31 2011, active eligible employees are able to elect to participate in the NJDIRECT 15 Plan (as it existed on June 30, 2011). In the alternative, through December 31, 2011, active eligible employees are able to elect to participate in an HMO which existed in the program as of June 30, 2011. Beginning January 1, 2012, the State Health Benefits Plan Design Committee shall provide to employees the option to select one of at least three levels of coverage each for family, individual, individual and spouse, and individual and dependent, or equivalent categories, for each plan offered by the program differentiated by out of pocket costs to employees including co-payments and deductibles. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the plan design, plan components and coverage levels under the program.

2. Effective July 1, 2003, new hires are not eligible for enrollment in the Traditional Plan. The Traditional Plan and the NJ Plus POS Plan have been abolished.

3. Medicare Reimbursement - Effective January 1, 1996, consistent with law, the State will no longer reimburse active employees or their spouses for Medicare Part B premium payments.

B. Contributions Towards Health and Prescription Benefits

1. Effective July 1, 2011, or as soon thereafter as the State completes the necessary administrative actions for collection, employees shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of health care benefits coverage for the employee and any dependent provided under the State Health Benefits Program in an amount that shall be determined in accordance with section 39 of P.L. 2011, c. 78, except that, in accordance with Section 40(a) of P.L. 2011, c. 78, an employee employed on July 1, 2011 shall pay:

   a) from implementation through June 30, 2012, one-fourth of the amount of contribution;
   b) from July 1, 2012 through June 30, 2013, one-half of the amount of contribution;
   c) from July 1, 2013 through June 30, 2014, three-fourths of the amount of contribution; and
   d) from July 1, 2014, the full amount of contribution, as that amount is calculated in accordance with section 39 of P.L. 2011 c. 78. After full implementation, the contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

2. The amount payable by any employee, pursuant to section 39 of P.L. 2011 c. 78 under this subsection shall not under any circumstance be less than the 1.5 percent of base salary that is provided for in subsection c. of section 6 of P.L.1996, c.8 (C.52:14-17.28b).

3. An employee who pays the contribution required under section 40 of P.L. 2011 c. 78 shall not also be required to pay the contribution of 1.5 percent of base salary under subsection c. of section 6 of P.L.1996, c.8 (C.52:14-17.28b).

4. The contribution shall apply to employees for whom the employer has assumed a health care benefits payment obligation, to require that such employees pay at a minimum the amount of contribution specified in this section for health care benefits coverage.

5. Should the necessary administrative actions for collection by the State not be completed by July 1, 2011, collection of the contribution rates set forth in section 39 of P.L. 2011, c. 78, and paragraph 1 above, shall not be applied retroactively to this act's effective date, provided, however, the employee shall continue to pay at least 1.5% of base salary during such implementation period.

6. The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan ("SHBP") and provide a certification to the State that he/she has other health insurance coverage, the State will waive the contribution for that employee.

7. An employee on leave without pay who receives health and prescription drug benefits provided by the State Health Benefits Program shall be required to pay the above-outlined contributions, and shall be billed by the State for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.

8. Active employees will be able to use pre-tax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be by deductions from pay.

C. Dental Care Program

1. It is agreed that the State shall continue the Dental Care Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. Through December 31, 2011, active eligible employees are able to participate in the Dental Care Program as described in the parties' July 1, 2007 – June 30, 2011 collective negotiations agreement. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the plan design, plan components and coverage levels under the program.

2. Participation in the Program shall be voluntary with a condition of participation being that each participating employee authorize a biweekly salary deduction as set by the State Health Benefits Design Committee.

3. Each employee shall be provided with a brochure describing the details of the Program and enrollment information and the required forms.

4. Participating employees shall be provided with an identification card to be utilized when covered dental care is required.

D. Eye Care Program

1. It is agreed that the State shall continue the Eye Care Program during the period of this Contract. The coverage shall provide for a $40.00 payment for regular prescription lens or $45.00 for bifocal lens or more complex prescriptions. Included are all eligible full-time employees and their eligible dependents (spouse and unmarried children under 23 years of age who live with the employee in a regular parent-child relationship). The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of $35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

3. Each eligible employee and dependent may receive only one payment for glasses and one payment for examinations during the period of July I, 2011 to June 30, 2013 and one payment for glasses and one payment for examination during the period of July 1, 2013 to June 30, 2015. This program ends on June 30, 2015. Proper affidavit and submission of receipts are required of the employee in order to receive payments.

E. The provisions of Sections (A), (B) and (C) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article X.

F. Insurance Savings Program

Subject to any condition imposed by the insurer, all employees shall have the opportunity to voluntarily purchase various insurance policies on a group participation basis. The policy costs are to be borne entirely by the employee selecting insurance coverages provided in the program. The State will provide a payroll deduction procedure whereby authorized monies may be withheld from the earned salary of such employees and remitted to the insurance company. The insurance company will provide information concerning risks covered, service offered, and all other aspects of the program to each interested employee.

G. Health Insurance in Retirement

Those employees who have 20 or more years of creditable service on the effective date of P.L. 2011, c.78, who accrue 25 years of pension credit or retire on a disability retirement on or after July 1, 2011 will contribute 1.5% of the monthly retirement allowance toward the cost of post retirement medical benefits as is required under law. In accordance with P.L. 2011, c.78, the Retiree Wellness Program no longer applies. The provisions of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article XI.

H. Temporary Disability Plan

All employees in this unit are covered under the State of New Jersey Temporary Disability Plan. This is a shared cost plan which provides payments to employees who are unable to work as the result of non-work connected illness or injury and who have exhausted their accumulated sick leave.

GI. Deferred Compensation Plan

It is understood that the State shall continue the program which will permit eligible employees in this negotiating unit to voluntarily authorize deferment of a portion of their earned base salary so that the funds deferred can be placed in an Internal Revenue Service approved Federal Income Tax exempt investment plan. The deferred income so invested and the interest

or other income return on the investment are intended to be exempt from current Federal Income Taxation until the individual employee withdraws or otherwise receives such funds as provided in the plan.

It is understood that the State shall be solely responsible for the administration of the plan and the determination of policies, conditions and regulations governing its implementation and use.

The State shall provide literature describing the plan as well as a required enrollment or other forms to all employees. It is further understood that the maximum amount of deferrable income under this plan shall be consistent with the amount allowable by law ~~twenty-five (25) percent or $7,500 whichever is less~~.

6. Article XXXVI - Uniform Allowance

Article XXXVI – Uniform Allowance shall be amended as follows:

The State agrees to provide a cash payment of $1535 on January 1, 2012, a cash payment of $1535 on January 1, 2013, a cash payment of $1535 on January 1, 2014, and a cash payment of $1535 on January 1, 2015 to all employees in the unit who have attained one (1) year of service as of December 31, 2011, December 31, 2012 and December 31, 2013 and December 31, 2014 with the exception of Correction Sergeants.

The State will continue its practice of making initial issues of uniforms to all new employees and will continue its practice of uniform allowances to all employee groups except Correction Sergeants. It is understood that employees who are promoted to any of the titles in this unit and who had been issued a uniform at another rank which is still the appropriate uniform, are not to be considered as "new" employees in the context of this article and they will be issued only new insignia and/or badge as required by the appointing authority.

In exception to the program outlined herein, Correction Sergeants will be granted, in lieu of any uniform allowances, cash payments of $917.50 in July, 2011; $917.50 in January, 2012; $917.50 in July, 2012; $917.50 in January, 2013; $917.50 in July, 2013; $917.50 in January, 2014; $917.50 in July, 2014 and $917.50 in January, 2015.

All members of the Association who were entitled to the uniform allowance/cash payments delineated above by being active employees at the time of the effective dates and have since retired in good standing and were on payroll on July 1, 2011 through retirement prior to the date of the Award shall receive the uniform allowance/cash payments delineated above retroactively up until the date of their respective retirement but only those payments that occurred on the effective dates that the payments were due prior to their retirements.

7. Article XLIV - Negotiations Procedures

Article XLIV – Negotiations Procedures shall be modified as follows:

A. Successor Agreement

The parties further agree to enter into collective negotiations concerning a successor Agreement to become effective on or after July 1, 2015, subject to the provision expressed in "Term of Agreement".

B. Procedure

The parties also agree to negotiate in good faith on all matters properly presented for negotiations. Should an impasse develop, the procedures available under law shall be utilized in an effort to resolve such impasse.

8. Article XL – Maintenance of Benefits

Article XL shall be modified to read as follows:

A. The fringe benefits, which are substantially uniform in their application to employees in the unit, and which are currently provided to those employees, including, but not limited to, the Health Benefits Program, the Life Insurance Program, the Prescription Drug Program and their like, shall remain in effect without diminution during the term of this Agreement unless modified herein, changed pursuant to statutory authority or by subsequent agreement of the parties.

B. Other substantial benefits, not within the meaning of paragraph A above, currently enjoyed by an employee or a group of employees which are not in contradiction to current State law, regulation or policy and which are not in contradiction with other provisions of this Agreement shall remain in effect during the term of this Agreement and the continuation of the employee in his present assignment, provided that the continuance of such substantial benefit is not unreasonable under all of the circumstances and provided that if the State changes or intends to make changes which have the effect of substantial modification or elimination of such substantial benefits, the State will notify the Association and, if requested by the Association within ten (l0) days of such notice or within ten (l0) days of the date on which the change would reasonably have become known to the employees affected, the State shall within twenty (20) days of such request enter negotiations with the Association on the matter involved providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and, further, if a dispute arises as to the negotiability of such matters that the procedures of the Public Employment Relations Commission shall be utilized to resolve such dispute.

It is further agreed that the State shall refrain from implementation of changes in the circumstances where the obligation to negotiate has been mutually agreed until such time as there has been a reasonable opportunity for the position of the parties to be fully negotiated in good faith.

It is further understood that the absence of mutual agreement as to the obligation to negotiate is not construed to be a waiver of any rights of the parties under the provisions of the Employer-Employee Relations Act as amended.

9. Article XXXVIII – Tuition Refund and Employee Training

Section A shall be eliminated and in its place the Agreement shall provide: The tuition aid program shall be administered consistent with N.J.A.C. 4A:6-4.6. A new Section C shall be added to include the terms of N.J.A.C. 4A:6-4.6 for the purpose of noticing unit employees as to the terms of the tuition refund plan.

10. Article XXXVII – Travel Regulations

Travel Regulation

Employees are not required to provide privately owned vehicles for official business of the State. However, when an employee is authorized to utilize his privately owned automobile for official business of the State, the employee, on a voluntary basis only may provide the use of said vehicle for the authorized purpose and will be reimbursed for mileage at a rate per mile provided by State law. The State requires each individual accepting such authorization to maintain insurance for personal liability in the amounts of $25,000 for each person and $50,000 for each accident and $10,000 property damage for each accident. The State will provide insurance coverage where such privately owned vehicles are used in the authorized business of the State covering the excess over the valid and collectible private insurance in the amount of $150,000 for each person and $500,000 for each accident for personal liability and $50,000 property damage for each accident unless and until legislation is passed which requires the State to indemnify and hold harmless their employees for personal injuries and property damage caused by the negligence of said employees while operating their privately owned vehicles on the authorized business of the State.

When an employee is authorized to utilize his own vehicle for travel on a temporary assignment, he shall be reimbursed for the mileage as provided by State law.

11. Article XXXIV, Section E

E. The State and the Association shall establish a Joint Safety and Health Committee consisting of four (4) members appointed by

each party. One meeting will be scheduled annually to discuss safety and health problems or hazards and programs and to make recommendations concerning improvement or modification of conditions regarding health and safety. The Association shall supply an agenda when requesting a meeting. Where reasonably possible, all committee meetings shall take place during working hours and employees shall suffer no loss of pay as a result of attendance at such meetings.

12. Article XI, Section L(5) [Discipline – 45 Day Rule]

L(5) deleted and replaced with the following:

5.a All disciplinary charges shall be brought within forty-five (45) days of the appointing authority reasonably becoming aware of the offense, except, effective after ratification of this agreement, where the employee is charged with conduct related to the following, in which case a 120 day rule will apply:

1) Removal charges related to any criminal matter of the third degree or higher, or any criminal matter of the fourth degree or higher where the matter touches upon or concerns the individual's employment, or where the facts underlying the proposed discipline could support a criminal charge.

2) Removal charges related to positive test result for Controlled Dangerous Substances.

3) Removal charges related to the introduction of contraband into a State Correctional Facility, or Juvenile Justice Commission-operated facility or program, which jeopardizes safety or security, including but not limited to cell phones and cell phone accessories.

4) Removal charges related to undue familiarity pursuant to the State's policy thereto.

5) Removal charges related to misconduct/inappropriate contact involving a student of a State College or University in which the employee is employed.

6) Removal charges related to uses of excessive force.

7) Removal charges related to incidents of workplace violence, violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy"), or findings of violations of State or Agency Codes of Ethics by the State Ethics Commission.

8) Removal charges related to matters where the employee becomes unfit to perform the duties of their title, including but not

limited to physical unfitness, mental unfitness or being prohibited from carrying a firearm.

9) Removal charges related to matters where the employee is participating in a county, state or federal government investigation. The 120 day time limit in this instance shall not commence until the conclusion of the employee's participation in the investigation.

Charges related to the above conduct constitute cause for major discipline and only will be brought under N.J.S.A. 4A:2-2.3 or, if applicable, investigated as criminal matters.

All EEO charges not meeting the description above must be brought within sixty (60) days of the appointing authority reasonably becoming aware of the offense.

In the aforementioned cases, the forty-five (45) day rule shall not apply. Where the forty-five (45) day or sixty (60) day rule applies, any charges issued after the applicable time frame will be dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty imposed.

5.b. For the purpose of this sub-section, the following individuals, or their respective designees, shall be the appointing authority for their respective Department or Agency: Administrator (Corrections); Vice-Chairman (Parole); Superintendent (Juvenile Justice); Director of Administration (Treasury); Human Resources Director (Human Services); Superintendent (Palisades Interstate Park Commission); Director of Human Resources (Environmental Protection); Superintendent (Law and Public Safety); Assistant Vice President of Labor Relations (Rowan University); and Vice President or Director of Human Resources (all other State Colleges).

5.c. The exceptions to the 45 day rule (Paragraph 4(A)), set forth in Paragraphs 4(A)(1)-(9)), will not be available to an appointing authority (as defined in Paragraph (4)(B)), for a period of one year, if that appointing authority issues removal charges under Paragraphs 4(A)(1) – (9) arising out of two (2) disciplinary events within a one year period(measured backwards from the date of issuance of discipline in the second event) and the removal charges are subsequently reduced by a final agency determination. The dismissal of charges is not considered "reduced" charges for purposes of the section.

13. Article XI, Section N(1) – Discipline

Section N(1) shall be modified to reflect the following:

The parties agree to establish a Joint Association Management Panel consisting of one (1) person selected by the State and one (1) person selected by the Association and a third party neutral mutually selected by the parties. Each panel member shall serve on an ad hoc or other basis. The purpose of this panel is to review appeals from the Departmental determinations upholding disciplinary

suspension of five (5) working days or less, excepting unclassified, provisional or probationary employees. All panel neutrals must agree, in advance as a condition for being selected for inclusion on a panel, to accept a fee of no more than $1,000 per day, and to impose a fee of no more than $500 for a cancellation by either party without good cause.

14. Article XVI – Personal Preference Days

Personal Preference Days

During the month of November in the preceding calendar year, of the preceding year, employees may submit requests for alternative holidays to those specified to be celebrated within the calendar year, which shall be dates of personal preference such as religious holidays, employee's birthday, employee anniversary or like days of celebration provided:

a. the agency employing the individual agrees and schedules the alternative day off in lieu of the holiday specified and the employing agency and employee's function is scheduled to operate on the specified holiday, such agreement shall not be unreasonably withheld;

b. the alternative day off in lieu of the holiday, other than Christmas, must occur after the specified holiday. Preference days in lieu of Christmas may be taken before the holiday,

~~b~~c. the employee shall be paid on the holiday worked and deferred at his regular daily rate of pay;

~~c~~d. the commitment to schedule the personal preference day off shall be non-revocable under any circumstances. The employee must actually work on the holiday that he/she agreed to work in exchange for the personal preference day in order to be entitled to the personal preference day. Moreover, under no circumstances shall there be compensation for personal preference days after retirement and employees shall be docked for any personal preference days that were utilized based upon the expectation of continued employment through the calendar year. Notwithstanding the foregoing, when an employee has already selected a personal preference day and worked the corresponding holiday as promised, and the employee gives at least ten (10) days written notice that he/she will be in no pay status for a period of at least twenty (20) days due to a documented medical condition, the employee may request that the personal preference day be rescheduled to a later date and such request shall be considered in light of operational needs;

~~d~~e. and provided further that if, due to an emergency, the employee is required to work on the selected personal preference day he shall be paid on the same basis as if it were a holiday worked.;

f. Where more requests for personal preference days are made than for operational reasons within a work unit, the job classification seniority of employees in the work unit shall be the basis for scheduling the personal

preference days which can be accommodated.

15. Article XIX – Compensatory Time Off

B. 1. Employees requests for use of compensatory time balances shall be honored, so long as the request is received by the employer at least 48 hours in advance. Requests for use of compensatory time may, in the sole discretion of management, be rejected in all circumstances if this advanced notice is not provided, including circumstances that were previously referred to as "emergency comp time." Further, notwithstanding this notice, a request for compensatory time may be denied only in circumstances when it cannot be accommodated for operational reason. If denied, an alternate day may be requested and such request will be given preferential treatment but shall not require "bumping" another employee from a previously scheduled day off. Any grievance resulting from management's discretion to reject a request for the use of comp time pursuant to this section shall not be subject to arbitration. Priorities in honoring requests for use of compensatory time balances will be given to employees.

2. Notwithstanding the provisions set forth in subsection (1) above, when the rejection of an employee's request for use of compensatory time would force an employee into no pay status, but where the employee still has one (1) or more accrued comp days standing to his/her credit, the employee shall be permitted to utilize a compensatory day to be paid for the day. Notwithstanding the fact that the employee is paid for the day, the employee may still be subject to discipline in accordance with the department's attendance policy.

3. Priorities in honoring requests for use of compensatory time balances will be given to employees:

1. where scheduled one (1) month in advance,
2. where shorter notice of request is made.

Requests for use of such time under 1 and 2 herein will be honored except where emergency conditions exist or where the dates requested conflict with holiday or vacation schedules.

D. Ordinarily, a maximum of one hundred (100) hours of compensatory time may be carried by any employee. Where the balance exceeds one hundred (100) hours, the employee and the supervisor will meet to amicably schedule such compensatory time off. If the employee and the supervisor cannot agree on the scheduling, the supervisor shall have the discretion to schedule the compensatory time off.

16. Article XXV –Leave for Association Activity, Section A

The number of leave days in Article XXV, Section A shall be 175 commencing July 1, 2014.

17. Article XX – Sick Leave for Campus Police Sergeants

The State, within sixty (60) days of the Award, shall submit a written clarification of its policy to NJLESA in regards to the manner in which sick leave usage is calculated and applied as it affects Campus Police Sergeants.

18. Side Letter of Agreement: Bidding and Tie-Breaker Pilot Program with Department of Corrections

The parties shall include a Side Letter of Agreement in the Notices article at Article XLVII codifying the Bidding and Tie-Breaker Pilot Program procedure.

19. Article XII, Section C(2) – Seniority

Article XII, Section C(2) shall be modified to comport its language with N.J.A.C. 4A:2-6.2 as follows:

2. Pursuant to N.J.A.C. 4A:2-6.2, absence without leave for five (5) or more consecutive days or failure to return from any leave of absence for five (5) or more consecutive business days shall be considered a resignation not in good standing.

20. Article XIV, Sections C(1) and (2) – Vacation

Article XIV, Sections C(1) and (2) shall be modified to comport its language with N.J.A.C. 4A:6-1.5 and N.J.A.C. 4A:6-1.2(j) as follows:

C. Payment For Vacation

1. Upon separation from the State, or upon retirement, an employee shall be entitled to vacation allowance for the current year on a prorated basis consistent with N.J.A.C. 4A:6-1.5 and N.J.S.A. 11A:6-2.

2. If a permanent employee dies having vacation credits unused vacation leave shall be paid to the employee's estate pursuant to N.J.A.C. 4A:6-1.2(j).

21. Article XVII, Section C – Administrative Leave

Article XVII, Section C shall be modified to comport its language with N.J.A.C. 4A:6-1.9(a) as follows:

Consistent with N.J.A.C. 4A:6-1.9, priority in granting such requests shall be (1) Emergencies, (2) Religious holidays (3) personal matters. Where,

within a work unit, there are more requests than can be granted for use of this leave for one of the purposes above, the conflict will then be resolved on the basis of State seniority and the maximum number of such requests shall be granted in accordance with the first paragraph of C. Administrative leave may be scheduled in units of one-half (1/2) day, one (1) day or more than one (1) day.

22. Article XX, Section C – Sick Leave

Article XX, Section C shall be modified to comport its language with N.J.A.C. 4A:6-1.4(d) as follows:

Sick leave for absences of more than five (5) days must be requested by the employee in writing to his immediate supervisor. In addition, the employee must submit a written and signed statement by a personal physician prescribing the reasons for the sick leave and the anticipated duration of the incapacity to human resources.

23. Article IX – Personnel Practices

Article IX, Section F – Lateness shall be modified to reflect the following:

F. Whenever an employee is delayed in reporting for a scheduled work assignment, he shall endeavor to contact his supervisor in advance, if possible. An employee who has a reasonable excuse and is less than fifteen (15) minutes late is not to be reduced in salary or denied the opportunity to work the balance of his scheduled shift and he shall not be disciplined. Where there is evidence of repetition or neglect

Lateness beyond the fifteen (15) minute period above shall be treated on a discretionary basis. This provision is not intended to mean that all lateness or each incidence of lateness beyond fifteen (15) minutes shall incur disciplinary action or loss of opportunity to complete a work shift or reduction of salary.

Consistent with the two paragraphs above, management shall maintain a record of lateness. This record may be used as the basis of disciplinary action, compulsory charge against an employee's compensatory time bank, or reduction in salary or any combination thereof. A record of such lateness shall be maintained and may be charged against any compensatory time accrual where there is evidence of repetition or neglect.

Article IX, Section G - Lateness or Absence Due to Weather Conditions shall be modified to read as follows:

1. Cases of inclement weather shall be handled in accordance with the State's inclement weather policy as issued by the Governor's office of Employee Relations.

2. When the State of New Jersey or a County within New Jersey declares a state of emergency due to weather related conditions, an employee who has made a reasonable effort to report on time and is less than one-hour late for duty due to delays caused by such weather related conditions shall not be disciplined for such lateness. Lateness beyond one (1) hour shall be treated on a discretionary basis. This provision is not intended to mean that all lateness or each incidence of lateness beyond one hour shall incur disciplinary action.

3. Every employee is required to adjust his/her regular preparations for travel to work upon reasonable knowledge of expected inclement weather forecasts. Such measures shall include, but not necessarily be limited to earlier travel times and reasonable advance vehicle and roadway preparations in anticipation of substantially longer commute times during times of expected inclement weather.

24. Article XXI – Leave of Absence Due to Injury

This provision shall be removed from the Agreement based upon the Order from PERC.

Dated: January 21, 2014
Sea Girt, New Jersey

James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 21st day of January, 2014, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014