

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

**STATE OF NEW JERSEY
(DIVISION OF STATE POLICE)**

“Public Employer”

and

Docket No: IA-2010-039

STATE TROOPERS FRATERNAL ASSOCIATION

“Union”

and

Docket No: IA-2010-040

**STATE TROOPERS NCO ASSOCIATION
OF NEW JERSEY**

“Union”

and

Docket No: IA-2010-041

**STATE TROOPERS SUPERIOR OFFICERS
ASSOCIATION OF NEW JERSEY**

“Union”

**INTEREST ARBITRATION
DECISION AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Steven W. Sufas, Esq.
William K. Kennedy, Esq.
Ballard Spahr, LLP

For the Unions:

Richard Loccke, Esq.
Loccke, Correia, Schlager,

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission on December 23, 2009 in accordance with P.L. 1995, c. 425, in matters involving the State of New Jersey, Division of State Police [the "State"] and State Troopers Fraternal Association, State Troopers NCO Association of New Jersey, Inc. and the State Troopers Superior Officers Association of New Jersey [the "Unions"]. The labor agreements between the State and these three employee organizations expired on June 30, 2008. The parties engaged in direct negotiations subsequent to the arbitration appointment until their mutual recognition of impasse required third party intervention.

Pre-interest arbitration mediation sessions were ten held with all parties on August 16 and 31, 2010. Because the issues were not resolved in mediation, formal interest arbitration hearings were held on a consolidated basis on November 16, December 3 and 6, 2010, January 11, 12 and 19, 2011. At the hearings, the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from Detective David Jones, President, State Troopers Fraternal Association – Detective Sergeant James P. Kiernan, Vice President of Resolutions, State Troopers NCO Association – Detective Sergeant First Class James P. Gaffigan, President, State Troopers NCO Association – Frank Rodgers, Lieutenant Colonel (Retired) and Deputy Superintendent of Investigations (Retired), Division of State Police – Jeffery Keefe, Ph.D., Associate Professor of Labor and Employment Relations,

School of Management and Labor Relations, Rutgers University, Charlene Holzbour, Director of the Office of Management and Budget ["OMB"], Major Carl Kleeberg, Commanding Officer - Administration, Division of State Police, Daniel Foster, Administrator - Department of Law and Public Safety (Retired), Lieutenant Colonel Thomas Gilbert, Chief of Staff, Division of State Police, and David Cohen, Director, Governor's Office of Employee Relations. Transcripts of the proceeding were taken. Post-hearing briefs were received and transmitted to the parties on or about April 6, 2011.

The petitions before me were not formally consolidated. However, all parties recognized that the goals of economy and efficiency would be met by receiving evidence that was common to each negotiating unit during the course of combined hearings without having to independently resubmit documentary or testimonial evidence in duplicate fashion. It was also agreed that a single decision would issue covering all three units. Absent an agreement to utilize an alternative terminal procedure, the mandatory procedure of conventional arbitration was utilized. Under this procedure, the arbitrator has the authority to fashion an award that may not adopt the last offer of either party on any proposed issue.

On November 16, 2010, the initial day of hearing, the parties submitted their last and final offers as is required by statute, but stipulated that each party reserved its right to revise its last offer prior to the close of hearings. The

hearings then commenced and were held through January 19, 2011 when, on that date, the State submitted a revised final offer. The respective offers are as follows:

FINAL OFFERS OF THE PARTIES

INITIAL FINAL OFFER NOVEMBER 16, 2010 STATE OF NEW JERSEY

1. **Term:** Three (3) year agreement – 7/1/2008 through 6/30/2011
2. **Salary Increases:** Effective upon issuance of Award:
 - 3.5% (7/1/08);
 - 0% (7/1/09);
 - 2% (7/1/10);
 - 2% (1/1/11)
 - a. Salary increases will not be retroactive
 - b. Salary increases will not apply to maintenance allowance
3. Eliminate unlimited sick leave for non-work-related injuries
4. **Health Benefits:**
 - a. Effective immediately, the NJ Plus Plan shall be closed as to all current and future members of the bargaining units. The administrative methodology for effectuating this change shall be determined by the State.
 - b. Eliminate the Well Trooper Program.
4. Amend Article X(G) of STFA agreement to provide for Special Compensation between the hours of 12:00 midnight and 7:00 a.m.

REVISED FINAL OFFER JANUARY 19, 2011
STATE OF NEW JERSEY

1. **Term:** Four (4) year agreement – 7/1/2008 through 6/30/2012

2. **Salary Increases:** Effective upon issuance of Award:
 - a. 5.86% compounded increase in base salary
 - b. No retroactive payment of base salary increases
 - c. Increment freeze in FY11
 - d. Eliminate Clothing Allowance Effective 7/1/11
 - e. 0% increase to maintenance allowance in FY09 (7/1/08), FY10 (7/1/09) and FY12 (7/1/11). 2% increase effective 7/1/10, retroactive to that date.

3. **Health Benefits:**
 - a. Elimination of NJ Plus Plan: Once active eligible employees are able to elect to participate in NJ Direct 15, the NJ Plus Plan shall no longer be available to any current or future bargaining unit employees.
 - b. The State will not seek to increase the contributions made by employees in these three bargaining units toward the cost of health benefits through June 30, 2012.
 - c. Eliminate the Well Trooper Program.

4. **Shift Differential:**
 - a. Amend Article X(G) of STFA agreement to provide for Special Compensation between the hours of 12:00 midnight and 7:00 a.m.

5. **Holidays**
 - a. Pursuant to NJSA 11A:6-24.1, effective January 1, 2012, eliminate Lincoln's Birthday from the list of holidays.

**STATE TROOPERS FRATERNAL ASSOCIATION
STATE TROOPERS SUPERIOR OFFICERS ASSOCIATION
STATE TROOPERS NCO ASSOCIATION**

1. The Associations each propose a five (5) year contract to commence July 1, 2008 which will continue the prior contract which expired June 30, 2008 in all terms and conditions except as is proposed in this Last Offer Position.
2. An annual wage increase is proposed to be effective on July 1 of each respective fiscal year of the contract in the amount of 3.5% across-the-board in all ranks, steps and positions. This raise is meant to be applicable to both base and maintenance. All increases to be retroactive to date of retirement or death which occurs during the prior of retroactive application.
3. It is proposed that the Step Guide for Troopers be reduced by two (2) Steps.
4. The night differential for the NCO Association is proposed to be modified to match those same hours as currently exist for the STFA.
5. It is proposed that the NCO & SOA Agreements be modified to provide the same overtime rights and conditions as appear in the STFA contract.
6. It is proposed that the NCO & SOA contracts be modified by the adding of fifty (50) Association days to those currently available under the contract.

BACKGROUND

The labor agreements between the State of New Jersey and the three employee organizations in this proceeding all had expiration dates of June 30, 2008. A chart setting forth the bargaining unit personnel for all three units was submitted into evidence and reflects the following roster for each classification and rank at time of hearing:

**Total Combined Sworn Personnel
in Bargaining Units (STFA,STNCO, STSOA)**

| | | |
|--------------------------------|-------------|--|
| Lieutenant | 202 | State Troopers Superior Officers Association |
| Sergeant First Class | 187 | State Troopers NCO Association |
| Detective Sergeant First Class | 106 | State Troopers NCO Association |
| Detective Sergeants | 174 | State Troopers NCO Association |
| Sergeant | 360 | State Troopers NCO Association |
| Staff Sergeant | 136 | State Troopers NCO Association |
| Detective I | 126 | State Troopers Fraternal Association |
| Detective II | 117 | State Troopers Fraternal Association |
| Detective | 55 | State Troopers Fraternal Association |
| Trooper I | 251 | State Troopers Fraternal Association |
| Trooper II | 254 | State Troopers Fraternal Association |
| Trooper | 902 | State Troopers Fraternal Association |
| | | |
| Total Bargaining Units | 2870 | |

A significant amount of testimony and documentary evidence was devoted to the organization, the mission of the Division of New Jersey State Police and the scope, depth and quality of the work performed by the State Troopers, NCOs and Trooper Superior Officers. With respect to such evidence, there is no dispute as to the professionalism and excellence of the Division, its professionals nor the inherent dangers of the work that they perform. The record clearly reflects a mutual recognition that the State Police has very broad statutory authority, powers that match or exceed those in any comparable law enforcement agency in the United States of America and that they are trained to perform, and do perform, duties and functions that extend to virtually every possible challenge that exists in the arena of public safety and security. This mutual recognition was best summarized in the uncontradicted testimony of retired Lieutenant Colonel Frank Rodgers who, after extensive testimony on the

training, efficiency, diversification, proficiency, performance, experience and expertise of the State Police, concluded that the State Police is “the best qualified, the best trained, the most diversified law enforcement agency in the United States of America.” Lieutenant Colonel Rodgers further testified¹ to the existence of an international accreditation agency, the Commission on Accreditation for Law Enforcement Agencies [CALEA]. This agency sets stringent national standards for policing and evaluates whether a police agency has met 464 national and 112 core standards. Under such review, New Jersey is one of only two state level organizations² to have an international accreditation. He offered testimony in support of his conclusion as to why the New Jersey State Police is the most diversified police force in the country:

Unlike most state law enforcement agencies, or law enforcement agencies in general across the country, New Jersey is one of only two where the superintendent also serves as the Director of Office of Emergency Management, Michigan being the second. But whether it be casino gaming or air ambulance services, maritime operations, the special operations capabilities that we have we provide to our allies throughout the state, our investigative responsibilities, our regional operations and intelligence center, which is currently commonly known as the ROIC, being one that is held up to be emulated nationally, there is no other organization like it in the country.

The ROIC was described as a “giant umbrella” that oversees all operations that necessitate a public safety response from the Troopers such as flooding, terrorist attacks and other such major emergencies.

¹ At hearing, Lieutenant Colonel Rodgers was acknowledged as an expert in the field of law enforcement policy, procedures, training and supervision.

² The other is Pennsylvania.

David Jones, STFA President, offered detailed testimony concerning the uniqueness of the New Jersey State Police. He noted that the Division operates under its own statute, New Jersey Statutes Title 53, that the hiring process is extremely selective with high objective standards and that recruits undergo rigorous training at the State Police Academy where, unlike training academies for municipal police, they train in residence. After completion of the Academy, the Trooper must complete a Trooper Coach program involving a 480 hour training period with a more senior Trooper to apply in practice what has been learned in the Academy. A Trooper is subjected to a two-year review period upon graduation where performance is reviewed that results in continued employment or dismissal upon notification. According to President Jones, this process repeats itself in the fourth year and the Trooper does not become tenured until entering the fifth year of employment. At that point, a Trooper is only entitled to limited due process review upon dismissal. This five year process is referred to as "reenlistment process" that is unique to the Division compared to the one-year probation period for law enforcement generally in New Jersey. President Jones further testified to a Trooper's obligation to maintain high level of standards in order to remain as a Trooper. This includes physical fitness testing pursuant to maintaining a BFOQ³, physical and medical examinations, qualifications training in many individual areas of expertise and forced retirement at the age of 55.

³ Bona Fide Occupational Qualification.

President Jones further testified as to other unique characteristics of the Division. One is that a sworn member of the Division is the only law enforcement person in the State of New Jersey who can enforce all laws at all levels of government. Another is the high degree of integration and legal authority the Division has with other jurisdictions. Among these are Interstate Compacts and Executive Orders between New York and New Jersey, executive orders linking the Division with Homeland Security, New Jersey Transit, border patrol agreements between the State and the Commonwealth of Pennsylvania and liaison with Secret Service. The Division also provides local law enforcement services, sometimes referred to as Rural Policing, requiring full-time patrol in 98 local jurisdictions that have no local law enforcement operation. His testimony detailed the breadth of specialized training and the designation of over 100 such units. Among these include the Executive Protection Unit, Governor's Security Unit, EEO Investigative Unit, Internal Affairs, Office of Forensic Science, Homeland Security, Fatal Accident Unit, Atlantic City International Airport, Giant Stadium and Meadowlands facilities, State House Complex Security, Garden State Parkway, Casino Gaming Bureau, Computer Crimes and High Technology Surveillance Bureau, Cargo Theft, Drug Trafficking, Aviation Unit, Hazardous Materials Response Unit, Medivac and Marine Services Bureau. The Division also maintains the role of Emergency Management which is headed by the Superintendent.

Lieutenant Colonel Thomas Gilbert, the Chief of Staff in the Division of State Police, also offered testimony as to State Police operations. Col. Gilbert serves as second in command to the Superintendent of the Division. Col. Gilbert distinguished between different types of State Police models within the United States; one being a highway patrol model and the other a broader general policing model. He placed the Division in this latter group. He expressed the view that other such departments with broadness of function exist in Maryland, Illinois, Delaware, Pennsylvania, New York and Michigan. Col. Gilbert confirmed the testimony offered by President Jones and Lt. Col. Rodgers as to the professionalism, training, qualifications, diversity of functions and services offered by the Division. He testified that the Division offers unique specialized services that, due to lack of resources, cannot be met by local jurisdictions such as a State Police helicopter, specialized forensics, technology and intelligence and partnerships with urban centers that assist in the patrol of high crime areas. His testimony also detailed the geographical distribution of locations where Troopers reside on a statewide basis.

The State and the Associations have made comprehensive submissions concerning all of the criteria. Included among the evidence are wage and benefit comparisons for employees in the various civilian and law enforcement negotiations units that negotiate with the State of New Jersey, for law enforcement employees employed in jurisdictions outside the State and in jurisdictions below the State of New Jersey, data relating to the State's budgetary

and financial condition, the cost of providing health benefits as well as programmatic changes to the health insurance plans, overall levels of compensation and benefits currently received, testimony and documentation concerning non-base salary issues such as shift differentials, holidays, overtime, and union leave and the clothing and maintenance allowance. The scope and depth of the parties' expert presentations will not allow for a comprehensive summary of all of the evidence that has been submitted. However, all such evidence has been reviewed and considered even if not reflected herein by way of summary or analysis.

The main focus of the State's presentation was on its budgetary and financial condition as well as evidence asserting that Troopers are the highest compensated in the country. The State notes that the N.J.S.A. 34:13A-16g(6) requires consideration of the financial impact that the Award will have on the State and its taxpayers, including how the Award will impact the State's ability to maintain existing programs and services. In addition to extensive documentary evidence, the State offered the testimony of Charlene Holzbaur, Director of the Office of Management and Budget ["OMB"]. Ms. Holzbaur has a central role in the budgeting and appropriations process and monitors State spending during the course of a budget year. She testified that between 2008 and 2010, gross income tax revenues decreased by approximately \$2.5 billion due mainly to increases in unemployment. Due to the expiration of the "millionaire's tax," an additional \$1 billion of additional revenue was no longer realized resulting in an

actual decrease in gross income tax revenues over the 2008 to 2010 period of approximately \$3.5 billion. She further testified that the funds the State received from the American Recovery and Reinvestment Act of 2009 (ARRA) will no longer be received as of July 2011. The State received \$753 million of ARRA fund in FY2009, \$2.3 billion in FY2010 and \$1 billion in FY2011. In addition, the generally poor economic environment negatively affected other main sources of revenue such as the sales tax and corporate taxes. According to Ms. Holzbaaur, because of the constitutional requirement to achieve a balanced budget at the beginning of each fiscal year, the downturn in revenues made the task of balancing the budget very difficult.

In its post-hearing submission, the State summarized some of the main details that were reflected in its financial presentation at hearing which also included the State's Budget Presentation:

The State adjusted the FY09 Appropriations Act downward by \$1 billion and utilized \$501 million in surplus funds to support the appropriations of \$32.9 billion. (State Budget's Presentation (S-12), at 22; Tr. 1/13/11 at 17-18 (Holzbaaur)). At the time the FY09 Appropriations Act was passed, the State projected \$32.3 billion in revenues and \$32.8 billion in expenditures. (State's Budget Presentation (S-12), at 19). In actuality, revenues falls short by \$4 billion, and expenditures increased by \$237 million, for an overall FY09 budget deficit of \$4.3 billion leading into FY10. (State's Budget Presentation (S-12), at 23). [underline in original]

For FY10, appropriations were reduced by an additional \$3.9 billion from the levels in the FY09 Appropriations Act. (State's Budget Presentation (S-12), at 25). The State anticipated \$28.8 billion in revenues and \$28.9 billion in expenditures. Revenues again fell short by \$1.4 billion, and expenditures increased by \$780 million. (State's Budget Presentation (S-12), at 26). Coupled with a

reduction in opening surplus of \$121 million, the State faced an additional \$2.23 billion deficit to close FY10. (State's Budget Presentation (S-12), at 26).

Heading into FY11, it was apparent that the State was suffering from a ballooning budget gap. From 2000 through 2009, the State budget steadily increased by several billion dollars annually. (State's Budget Presentation (S-12), at 14). In fact, Ms. Holzbaaur testified that if the State's budget had continued to grow from FY09 through FY11 at the rate it did in the early and mid-2000's, the State's projected spending obligations would approach an astonishing \$40 billion. (Tr. 1/13/11 at 11-13; State's Budget Presentation (S-12), at 14). As a result, the FY11 Appropriations Act was set at \$28.4 billion – a further reduction of \$1.4 billion from FY10 levels and lower than 2005 expenditures – while projected FY11 revenues are \$28.2 billion – the lowest since 2006. (State's Budget Presentation (S-12), at 14, 29-30).

Another factor that the State raises as having a negative impact on its financial ability is the increase in overall State debt between 2001 and 2010 which rose from \$17 billion to \$58 billion. The State attributes two major sources for the rise in debt as increased pension obligations and increased healthcare costs. Acknowledging that the New Jersey State Police employees belong to its own pension fund that is not currently underfunded, it submits that the overall pension liabilities are relevant because they affect the State's overall economic health and impact upon the State's ability to balance the budget, including the Department of Public Safety and the Division of State Police who falls within the Department. Ms. Holzbaaur testified to a large underfunding of the State's pension plans and that the State's long-term pension liability was increased as a result of having to redirect funds originally allocated for pension contributions as well as having to not budget or appropriate funds towards pensions because of

the constitutional requirement to balance the budget. Holzbaaur also testified that healthcare costs grew from \$3.2 billion 2008 to \$8.4 billion in 2010.

Based upon budget documents and the testimony of Dan Foster, the former Administrator of the Department of Law and Public Safety, the record shows that the Department experienced \$96.4 million in reductions since FY08. Though the number of troopers grew by 53 between FY06 and FY10, 1100 positions in the Department of Law and Public Safety were eliminated, including attorneys, investigators and administrative staff. According to Foster, a \$40 million budget reduction for the Department in FY11 required a reduction in the Division's overall budget by \$12.4 million. \$8.3 million was saved by cancelling the 151st Recruit Class. According to the State's Operations Presentation, "the remainder of the \$12.4 million in reduced appropriations was achieved by the proposed sale of helicopters, eliminating a non-recurring line of credit, moving work from outside contractors to State employees at a lesser cost, reducing overtime, eliminating funding for State-funded physicals under the Well Trooper program, and reducing State aid." The State also offered the testimony of Major Carl Kleeberg, the Commanding Officer of the Administrative Section of the Division. He testified that \$256 million of the Division's FY10 appropriation of \$293 million was allocated to salary with the remaining 12% going to line item expenses, special purpose accounts, capital improvements and State aid. For this reason, Major Kleeberg concluded that when budget cuts are required "there is not a whole lot of margin." The documents and testimony reflect that the

Division has been newly required to balance its budget internally rather than seeking financial assistance from the Division of Law and Public Safety generally. An example of this recent budget balancing was the consolidation of the Division's Turnpike and Parkway operations which required the merging of all staff into a single Troop with a single command center.

The Associations do not challenge the facts reflected in the documentary evidence nor the testimony of Ms. Holzbaur concerning the State's budgetary and financial condition. They do note that a press statement on revenue collections issued by the Department of Treasury just prior to the conclusion of these hearings reflected that the State's fiscal condition may be undergoing a recovery. The statement observed that gross income tax collections were up 29.9%, corporate banks and financial institutions were over budget by over 373.8%, insurance premium collections were up 44.4% over projections, corporate business tax was up by 37.2% and income tax projections were shown to be 12.7% above projections.

The Associations also emphasize that there is little impact on the total State of New Jersey appropriations budget caused by salaries for State Police. Based upon documents in evidence, the Associations engage in the following calculations on this specific point:

In the first instance, all Executive Operations expenditures (including funding for all Executive Departments, including the Department of Law and Public Safety and, of course, the State

Police) only represent about twelve (12%) percent of the entire State Budget expenditure (S-11, p.4). The total fiscal year 2011 Budget Appropriations, as established in the FY2011 Balanced Budget Appropriations Act (S-11, p.31) is Twenty-Nine Billion Seven Hundred Seventy Million Forty-Six Thousand Dollars (\$29,770,046,000.00). The total State Police portion of the salaries and wages of all sworn personnel, including non-bargaining unit personnel, of One Hundred Eighty-Seven Million Nine Hundred Seven Thousand Eight Hundred Eighty-Five Dollars (\$127,907,885.00) represents just over six-tenths of one percent of the 2011 Budget appropriations. If one takes away the twenty-five (25%) percent which is paid for by the toll roads and the federal agencies as is described by the Employer at S-11, p. 7, the resultant impact on the State Budget of all State Police salaries, including non-bargaining unit sworn Police personnel is 0.00047%. The value of a percentage point of all State Police sworn salaries is 0.00047%. This budgetary impact, if divided among the households across the State for the eight million (8,000,000) residents or more in the State is indeed imperceptible.

The Associations urge that notice be taken of the uniqueness of the State Police operation which it views as a self-supporting agency requiring minimal taxpayer money and support. During the hearings, the Association produced evidence in support of this point. The Associations also refer to the testimony of Acting Lt. Col. Kleeberg and documents reflecting that approximately 25% of salary expenses are assigned to dedicated, reimbursable positions such as the New Jersey Turnpike, the Garden State Parkway, the AC Expressway, the Delaware River Joint Toll Bridge Commission, Meadowlands Stadium, and Rutgers University. The Associations apply this 25% to the total salary cost and calculate that \$46,976,000 of salary cost is in reimbursable positions. The Associations also refer to documents and testimony of Detective Sergeant James P. Kiernan who testified concerning the recording of overtime and the allocation of this cost for billing purposes. According to Sgt. Kiernan's presentation,

approximately 62% of overtime recorded by the Division of State Police has been paid for by reimbursement by outside sources.

The Associations point to other revenue sources related to State Police operations which go directly into the State of New Jersey General Fund. These include some \$30 million in annual fines collected from motor vehicle enforcement by members of the State Police which are directly forwarded to the Department of Treasury. Reference is also made to 2006 legislation that adds an additional \$1 fee to all New Jersey Motor Vehicle Fees. This money is dedicated to fund new State Police Trooper classes and yielded \$9.5 million in 2010, although this figure was reduced to \$4.9 million in 2011. The Associations further note that the Division of State Police provides full-time law enforcement service to 86 municipalities and part-time service to 12 municipalities at a cost which the State Attorney General estimated in 2007 to be worth approximately \$80 million for the jurisdictions who receive this service. The Associations acknowledge that an attempt by the State of New Jersey to charge these municipalities for what these "rural state police services" was unsuccessful and that the value of these services are not directly realized by the State of New Jersey. However, they contend that the services provided by the Division directly relate to local tax impact on the governing bodies and their taxpayers and residents. An additional financial factor, according to the Associations, is that there has been a recent loss of 222 sworn personnel during the pendency of the arbitration proceeding. Noting that this reduction has occurred during a time

period where demands for services have been increasing, the Associations translate the cost savings for direct personnel in salary and maintenance alone to be approximately \$22 million.

According to the Associations, there are additional sources of revenue received by the Division in connection with grant money received, some of which goes directly toward funding the Division's operation and revenues as well as seized assets. On this latter point, the Associations acknowledge that such seized assets which totaled almost \$9 million in 2010 are not taken directly into State Police for its use but the allotment of that money into the Attorney General's Law Enforcement Forfeiture Account is directed for law enforcement purposes that indirectly support the State's budget.

In response to the Associations' presentation on finances, the State submits that the budgetary evidence that it provided reflecting the State's financial difficulties has not been rebutted by the Associations and, in fact, has been ignored. The State responds that the cost of providing rural policing services is irrelevant because such services have been an institutional component of the Division's budget historically and the services provided generate little or no revenue to the Division. The State further rejects the Associations' presentation concerning the dedicated, reimbursable positions. The State notes that it does not receive full reimbursements for such positions, does not turn a profit and because many of the dedicated positions fall within

other State funded programs, the reimbursement is actually “a recycling of scarce State dollars from other State entities which are under the same mandate to slash costs.” Pointing to the testimony of Acting Lt. Col. Kleeberg, the State asserts that reimbursements from federal funding sources are uncertain and are not guaranteed. The State also rejects the Associations’ suggestion that seized assets could be considered as a source of funding for the labor agreement. On this point, the State makes the following argument:

[T]he State proved that the allocation of seized assets is subject to strict federal and state guidelines, and the majority of such assets are unavailable to the State Police until years after the initial seizure, if at all. (State’s Operations Presentation (S-11), at 11). Moreover, seized assets are not liquid and cannot be simply allocated to different programs whenever the need arises. The Division of State Police and Criminal Justice must keep available a minimum of \$2.3 million from forfeitures at the beginning of the year just to address the “confidential account,” which is dedicated to witness relocation and other similar programs. (S-4; Tr. 1/1/11 at 98 (Foster)). Beyond that, funds from seized assets and forfeitures are pre-allocated to other specified programs. Presently, the State shows a balance of \$2.6 million, which leaves little room for those other programs that rely on this source funding. (S-4). “That money is slowly but surely diminishing, in that if some of these [criminal] cases don’t close and there is no money available, we’re going to have problems with these ongoing costs.” (Tr. 1/11/11 at 97 (Foster)). In short, the funds available through seizures and forfeitures are already earmarked and cannot provide financial support for increased State Police salaries.

The parties have also submitted substantial evidence into the record regarding internal and external comparability from which they draw sharply different conclusions. The Associations’ commence their comparability presentation by attempting to define the “appropriate universe of comparison.” The Associations submit comparability evidence with troopers employed by the

State of New York and the Commonwealth of Pennsylvania where the State of New Jersey has inter-jurisdictional agreements, certain law enforcement agencies across the State, who have working relationships with the Division and interstate or bi-state agencies such as the Port Authority of New York and New Jersey. According to the Associations, when comparisons are made, special notice must be given to the asserted fact that a trooper is compensated almost exclusively in base pay with additional and various forms of compensation that are typically available in law enforcement agreements. Such examples of compensation not received include senior officer pay, personal use of cars, longevity, regional or area differential pay and prep time allowances. Pointing to contracts in evidence, the Associations submit a chart reflecting various non-base wage benefits that are available to other law enforcement agencies but not to the Division of State Police:

**Miscellaneous Non-Base Wage Benefits Available
In Contracts Placed In Evidence by Associations**

| | |
|---------------------------|--|
| Port Authority PBA | Longevity Maximum 15% Shift Differential 12.5% Any Shift Starting After 2 PM 15 Minute Daily Prep Time Allowance Clothing All Calculated at 3% of Base Association Leave President, 1 st and 2 nd Vice Presidents – Full-Time Off Plus 262 Tours at President's Discretion 243 Work Schedule (5/2, 5/2, 4/3) for Patrol (1946 Annual Hours) |
| New York State Police | Expanded Duty Pay \$7,452 Location Pay \$1,536 Maximum Supplemental Location Pay (Metro) \$2,239 Longevity Pay \$12,050 at 25 years \$110 Per Member Physical Fitness Fund \$159 Employees Benefit Fund Per Member \$92,400 Professional Development Fund |
| Pennsylvania State Police | 28% Longevity Maximum at 28 Years Shift Differential Noon Start 5% 10 PM Start 6% |

| | |
|-----------------------------|--|
| | Four (4) Personal Days Per Year Unused Sick Time Buy Out Program \$500 Clothing Maintenance Allowance/In Addition to Clothing Allowance |
| Connecticut State Police | Stress Fund Annual Payment Night Shift Differential Start After 2 PM 5-3 Work Schedule 228 Shifts Per Year Meal Allowance - \$21.74 Maximum Hazardous Duty Stipend \$100 Per Month Resident Trooper Stipend \$100 Per Month Canine Stipend F.T.O. Stipend Longevity Starts at 10 Years (\$131) to 25 years at \$525 Per Year |
| NY/NJ Waterfront Commission | Longevity to 3.5% Per Annum Night Shift Differential at 4 PM 5 Days Personal Leave Per Year |
| New Jersey Transit | Longevity to 5% |
| New Jersey Corrections | Uniform Allowance \$1,535 |

The Associations also contend that no law enforcement agency in evidence has a work schedule longer than what is worked by the New Jersey State Police and that many have shorter annual work charts. It points to the Trooper work schedule set at 2,080 annual hours and compares this with the Port Authority whose contract provides for 243 eight-hour shifts of work per year (1,946 hours), the Connecticut State Police contract where the work schedule is a 5/3 providing for 228 shifts per year, and the State Police of Massachusetts who work a 4/2 work schedule, generating 1,946 hours per year.

Another area of comparison offered by the Associations concerns the length of time in which it takes a Trooper to reach Top Step Non-Supervisory Pay. Pointing to the fact that a non-supervisory sworn member requires 12 years to reach top step pay, the Associations conclude that a New Jersey Trooper is in a poor relative position in relation to comparable agencies:

Annual Steps to Reach Maximum Non-Supervisory Pay Based on Association Exhibits

| | |
|--|-------------------|
| Port Authority PBA of NY and NJ (E57 Tab1) | 6 Years |
| Pennsylvania SP | 12 Years |
| NYSP | 5 Years |
| Connecticut SP | 11 Years |
| NY/NJ Waterfront Commission | 10 Years |
| NJ Transit | 5 Years |
| | |
| Average | 8.16 Steps |

In addition to the labor agreements that it has selected for comparison purposes, the Associations argue that the contracts submitted into evidence by the State with its various bargaining units have 10 step salary guides rather than the 12 year guide for the Troopers. These include the CWA contract for Administrative and Clerical Services, the CWA contract for Primary level Supervisors and CWA units for Higher Level Supervisors and Professionals Unit, the IFPTE contracts, the AFSCME and Health, Care and Rehabilitation Services unit, and State agreements with the State Law Enforcement unit, Local 105, the New Jersey law Enforcement Commanding Officers Association, the Special Investigation Division and the Primary level Supervisory Law Enforcement Unit. The Associations assert that all of the above evidence concerning the length of salary schedules supports its proposal to reduce the step guide for Troopers by two steps.

Noting that the last salary increase received by the Troopers was on July 1, 2007, the Associations submit that its salary proposal for 3.5% annual

increases is consistent with base wage increases received in the labor agreements it has submitted for comparison purposes. The Associations submit a chart reflecting the wage increases received in those units:

**Base Wage Increases
Based on Association Evidence**

| | 2008 | 2009 | 2010 | 2011 |
|-----------------------------|--------------|--------------|--------------|-------------|
| Port Authority PBA | 4 | 4 | | |
| NYSP | 3 | 3 | 4 | |
| Pennsylvania SP | 3 | 3 | 4 | 4 |
| Connecticut SP | 3.25 | 3.5 | | |
| NY/NJ Waterfront Commission | 4 | 4 | 4 | |
| NJ Transit | 4 | 3.9 | | |
| NJ Corrections | 3.5 | 3.5 | 4 (2/2) | |
| Trenton PBA | 3.5 | 3.75 | 3.75 | |
| | | | | |
| Averages | 3.53% | 3.58% | 3.35% | 4% |

In response, the State argues that none of these units compare favorably with Trooper salaries.

In addition, the Associations submit PERC calculations showing the average salary increase of all interest arbitration awards as 3.77% in 2007, 3.73% in 2008, 3.75% in 2009 and 2.43% in 2010, followed by the "Average Salary Increase of Reported Voluntary Settlements" as 3.97% in 2007, 3.92% in 2008, 3.6% in 2009 and 2.43% in 2010. This evidence is said to support the Associations' salary proposals and serve as a basis to reject the State's proposals.

In further support of its salary proposals, the Associations offered the testimony of Professor Jeffrey Keefe, an Associate Professor of Labor and Employment Relations at the School of Management and Labor Relations at Rutgers University. Dr. Keefe was accepted as an expert in the field of labor economics. Dr. Keefe testified that New Jersey is a high income state which also bids up its cost of living and that both factors contribute to law enforcement in New Jersey being paid more than those working in other states where income and the cost of living is less. Dr. Keefe cited government statistics reflecting that New Jersey ranks second⁴ in the nation in median family income and median household income and is the top ranked state in the region followed by Connecticut, Delaware, New York and Pennsylvania. Dr. Keefe offered testimony concerning occupational employment statistics showing that New Jersey ranks first in earnings for median management occupations, third in regard to business and financial operations, seventh in computer and mathematical science (but number one in the region), sixth in architecture and engineering, second in life, physical and social science, fourth in health care occupations and seventh in legal occupations. Using what he referred to as a "Multivariate Regression Technique," Dr. Keefe constructed a measure of metropolitan density that ranks New Jersey as number one in the nation. He testified that this ranking reflects higher costs of living. He offered his opinion that these factors are linked to having a higher level of professional standards for policing. Dr. Keefe utilized standard wage equations from which he concluded that police weekly earnings in New Jersey are 18% above average nationally but

⁴ The first is California.

after placing appropriate controls on this data for making national comparisons by individual state, he concluded that New Jersey police "are probably underpaid." Dr. Keefe also offered his opinion that research reflects that education is a major driver in salary determination and that New Jersey State Police have a higher level of education than typical state and local government workers based upon evidence that 83% of Troopers are in a "college plus" category. Dr. Keefe offered his opinion that wage increases of 5%, 5%, 4.5% and 3.5% over four years would be required to attain and retain relative position with respect to wage compensation for the New Jersey State Police.

The State responds that Dr. Keefe's opinions and conclusions must be rejected contending, among other things, that he relied upon generic, outdated figures, that he failed to consider any of the statutory criteria and that he failed to account for recent negative economic trends in New Jersey or the actual or projected revenues for the State. Turning to his opinions based upon New Jersey being a high income and most metropolitan state in the country, the State observes that Dr. Keefe did not account for the distribution of income across the specific locations within the State of New Jersey where the Troopers reside. The State further argues that he did not consider the ability of the State to pay an award at the level he suggested nor ability of the Division to maintain existing programs or services based on the bunds that would be required to support his suggested award.

The State offers a different view than the Associations concerning wage comparisons. In its view, the New Jersey State Police are the best compensated law enforcement unit in the region, that the State's wage proposal is fair and reasonable and would allow Trooper wages to remain competitive. The State derives a comparison group among various state police organizations through documents and the testimony of Lt. Col. Thomas Gilbert, the Division's Chief of Staff. Lt. Col. Gilbert testified that:

The way the New Jersey State Police is constructed we have an urban, suburban, rural type environment where you have different types of physical environments that are policed. We handle some of that as a sole jurisdictional oversight. We work with other jurisdictions within the state. And geographically, if you look around New Jersey in this region of the country, states such as Maryland, Delaware, Pennsylvania and the New York State Police having kind of similar physical geography where you have variance in density and population, and philosophies of how the agencies operate, in the same ballpark as we are as how they approach their missions and delivery of services.

Because Connecticut is among state police departments that provide full service law enforcement operations, the State also offers Connecticut within this comparison group. Interpreting the relevant collective negotiations agreement in evidence that cover these states, the State offers the following chart from which it concludes that New Jersey State Troopers receive compensation far in excess of officers in the comparable organizations:

| | 1 YOS | 10 YOS | 20 YOS | 25 YOS | 30 YOS |
|------|----------|----------|------------|--------------------|--------------------|
| NJ | \$64,862 | \$95,155 | \$101,076 | \$101,076 | \$101,076 |
| PA | \$59,149 | \$74,589 | \$82,997 | \$86,460 | \$88,526 |
| CT | \$50,011 | \$72,992 | \$83,510 | \$83,728 | \$83,728 |
| DE | \$49,740 | \$57,828 | \$72,220 | \$72,220 | \$72,220 |
| MD* | \$66,131 | \$61,725 | \$72,009** | data not available | data not available |
| NY** | \$64,586 | \$84,955 | \$91,255 | \$94,505 | \$94,505 |

* All figures provided for Maryland are for the Trooper First Class job classification.

** This figure is after 18 years of service; data was not available past this length of service.

*** The data provided for New York State troopers excludes the data for troopers in the Nassau/Suffolk locality, because those employees are given an additional duty/location compensation component which is not compatible with the wages received by any other neighboring jurisdiction. Moreover, this Arbitrator should not compare the wages of the Nassau/Suffolk Troopers received as a result of the location compensation because, as demonstrated below, the bulk of New Jersey's Troopers live in moderate-income counties and thus are not subject to the highest costs of living that justify location compensation in the Nassau/Suffolk locality.

The State takes particular notice of the fact that Pennsylvania is the only other state police organization in addition to New Jersey to achieve CALEA accreditation. Pointing to Association testimony that Pennsylvania State Troopers earn longevity while none exists in New Jersey, the State responds that a New Jersey State Trooper with 9 years of service earns over \$7,000 more per year than a Pennsylvania State Trooper with 28 years of service.

In respect to internal comparables within State of New Jersey employment, the State contends that the record establishes that wages and benefits paid to Association members exceed the salaries of State employees in other State bargaining units including those in other law enforcement units. The

State offers a chart reflecting comparisons in average salaries for contract year 2010:

| Bargaining Unit | Average Salary (CY2010) |
|---|--------------------------------|
| State Police SOA (Lieutenants) | \$125,799 |
| NJLECOA (Corrections Captains) | \$116,349 |
| Managerial – State Police | \$114,829 |
| State Police NCOA (Sergeants First Class) | \$113,944 |
| State Police NCOA (Sergeants) | \$104,374 |
| Managerial | \$101,179 |
| NJSOLEA (Lieutenants – Corrections) | \$100,898 |
| STFA (Trooper 1) | \$100,589 |
| STFA (Trooper 2) | \$91,693 |
| Exempt – Higher Level Supervisors | \$91,392 |
| CWA – Higher Level Supervisors | \$86,861 |
| NJLESA (Corrections Sergeants) | \$85,796 |
| Deputy Attorneys General | \$85,603 |
| PBA Local 105 (rank and file non-corrections) | \$81,839 |
| STFA (Trooper) | \$76,703 |
| PBA Local 105 (rank and file corrections) | \$70,121 |
| CWA – Primary Level Supervisors | \$69,772 |
| CWA – Professional | \$69,466 |
| Exempt – Administrative & Clerical | \$55,446 |
| IFPTE – Crafts | \$52,717 |
| CWA – Administrative & Clerical | \$43,799 |
| AFSCME | \$41,424 |
| IFPTE – Operations, Maintenance, and Service Unit | \$40,631 |

According to the State, the salary comparisons above are the result of the New Jersey State Police receiving wage increases in excess of what was received by other State employees, including those in law enforcement, for many years. The State submits evidence of this through a comparison of wage increases in other state law enforcement units between 2000 and 2008 reflecting that the State Police received 32% in wage increases compared to 29% received by the other law enforcement units.

New Jersey Law Enforcement Wage History

| FY | PBA 105 | Investigators | NJLES (DOC, JJC SIEO) | NJLESA (all other) | NJSOLEA (DOC, JJC) | NJSOLEA (all other) | NJLCOA (DOC) | NJLECOA (all other) | State Troopers (all units) |
|---------------------------------|-----------------|---------------|-----------------------------|-----------------------|-----------------------|------------------------|-----------------|------------------------|----------------------------------|
| 2001 | 3.5% (split) | 3.5% (split) | 4% (delayed) | 3.5% (split) | 4% (split) | 3.5% (split) | 4% (split) | 3.5% (split) | 4% |
| 2002 | 4% (split) | 4% (split) | 4% (delayed) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% |
| 2003 | 4.5% (split) | 4.5% (split) | 4% (delayed) | 4% (split) | 4% (split) | 4.5% (split) | 4% (split) | 4.5% (split) | 4% |
| 2004 | 2% | 2% | 2% | 2% | 2% | 2% | 2% | 2% | 4% |
| 2005 | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 2.9% | 4% |
| 2006 | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% |
| 2007 | 4.6% (split) | 4.6% (split) | 4.6% (split) | 4.6% (split) | 4.6% (split) | 4.6% (split) | 4.6% (split) | 4.6% (split) | 4% |
| 2008 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 4% |
| 2001- 2008 Total | 29% | 29% | 29% | 29% | 29% | 29% | 29% | 29% | 32% |

The State also concludes that the State Police receive better benefits than other State employees including having their own pension plan that is more generous than the other pension plans and mileage reimbursement for those who use their personal vehicles to commute to and from their place of employment.

David Cohen, Director of the Governor's Office of Employee Relations offered detailed testimony concerning the terms of various collective bargaining agreements between State of New Jersey and its various bargaining units including both civilian and law enforcement units. He testified that he is familiar with all of the settlements and awards that were reached in recent past, although they were from a prior administration and that he did not negotiate them. The many labor agreements he identified were submitted into evidence. Cohen testified that all civilian units, on or about July 2007, began to contribute 1.5% of base salary towards health insurance as a result of voluntary agreements. The

civilian units concluded agreements that were effective between July 1, 2007 and June 30, 2011. The contracts in evidence reflect the following wage agreements reached:

New Jersey Civilian Labor Agreements July 1, 2007 – June 30, 2011

| FY | CWA, Administrative & Clerical | CWA, Primary Level Supervisory | CWA, Higher level Supervisory | CWA, Professional | AFT, State Colleges/ Universities | IFPTE, Local 195, Operations Maintenance and Crafts and Local No. 518, Inspection & Security | AFSCME Council 1, Healthcare |
|---------|--------------------------------|--------------------------------|-------------------------------|-------------------|-----------------------------------|--|------------------------------|
| 2007-08 | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% |
| 2008-09 | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% |
| 2009-10 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |
| 2010-11 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |

Director Cohen testified that due to declining fiscal conditions, all of the State and the civilian units entered into agreements which amended certain of the economic portions of their agreements for the purpose of cost savings. One element of the amendments caused a deferral of the 3.5% increase that would have gone into effect on July 1, 2009 to the date of January 1, 2011. In addition, the civilian units agreed to take ten (10) furlough days without pay between July 1, 2009 and June 30, 2010. In return, the State provided a no layoff pledge. Director Cohen also testified that all of the agreements in evidence eliminated the NJ Plus Benefit Plan and went with the NJ Direct 15 plan as the PPO option. This is the same proposal that the State has made with all of the Associations in this proceeding. He further testified that all non-represented Majors, Lieutenant Colonels and the Colonel in the Division of State Police have made that same switch in health insurance plans in late January 2011.

Turning to comparisons with New Jersey private sector employees, the State asserts that compensation levels for the Division of State Police compare very favorably. It points to the PERC Private Sector Report and compares that data with State Police Pay:

[P]rivate sector employees suffered through sustained reductions in salary in 2008 and 009, while public sector employees received increases in the same period. (S-52). The average loss in the private sector for years 2008 and 2009 was .7%; State Police received a 4% increase in FY08. (S-52). The total average annual wage for the private sector in 2008 was \$55,282 and \$55,173 in 2009. (Id.). By contrast, the minimum wage a first year Trooper collected in 2007 was \$64,862, almost \$10,000 more than the average annual wage in the private sector. And the average annual wage for a Trooper in 2010 was \$100,589 – close to double the salary of an average private sector employee. (Id.).

The State further contends that its proposal is reasonable when considering the overall compensation level of the Troopers. Among the overall benefits received are a \$12,674 annual maintenance allowance which the Troopers receive as a base pay benefit, unlimited sick leave, twelve (12) to fifteen (15) days of annual vacation leave with a one year accrual and the ability to cash out unused vacation days upon retirement or separation from service, and educational incentives in the amount of \$500 annually for an Associate's Degree, \$1,000 annually for a Bachelor's Degree and \$1,500 annual for a Master's Degree or above. Referring to the testimony of Dr. Keefe as to the number of Troopers who hold degrees, the State points out that it is paying 87% of Troopers over and above their base salary for higher education attainments at an annual cost of \$2.5 million per year.

The Associations have submitted additional proposals in addition to salary. They propose that the night differential for the NCO Association be modified to match those same hours as currently exist for the STFA. The NCO Association seeks consistency with the Trooper agreement which, at Article X, Section G, provides for a night differential to be paid between the hours of 9 p.m. and 7 a.m. The Troopers agreement at Article X, Section G provides for the following:

G. Special Compensation

Employees who are scheduled or authorized to work between the hours of 9:00 p.m. and 7:00 a.m. shall be granted special compensation computed at the rate of seven percent (7%) of their base hourly rate for each full or quarter hour worked. This special compensation shall be accumulated and paid in December of each year of this Agreement. This special compensation shall not become part of base salary for the computation of premium payments.

The NCO Association, at Article XIII, Section H, has the identical provision to the above except that the special compensation, or night differential, is granted between the hours of 12:00 midnight and 7:00 a.m. The NCO's proposal would move the time up for receiving special compensation from 12:00 midnight to 9:00 p.m., similar to the Trooper agreement.

According to the testimony of NCO Association President and Detective Sergeant First Class James Gaffigan, a Sergeant performing as a supervisor of a

Trooper could actually be paid at a lower rate than the Trooper between 9 p.m. and midnight due to the different start times for the shift differential. The Associations submit that no labor agreement in evidence that covers any state police organization, provides for a disparity between ranks with respect to the start time of a shift differential. The State opposes this proposal contending that the Associations have not met their burden for showing the need for this change.

In addition to urging rejection of the NCO Association proposal regarding the time for eligibility for shift differentials, the State proposes to revise Article X, G of the STFA agreement. The State's proposal would change the existing provision for Troopers that provides the shift differential between 9:00 a.m. and 7:00 a.m. to a new schedule between the hours of 12:00 midnight and 7:00 a.m. consistent with what exists for the Sergeants. According to the State, its proposal would unify the shift differential systems between the Troopers and Sergeants while reducing overtime costs to the Division of State Police.

The SOA also proposes that its agreement be modified to provide the same overtime rights and conditions as they appear in the STFA contract. In support of these proposals, the Associations offer the testimony of NCO President Gaffigan and SOA President Stephen Sternik. Their testimony reflects that the STFA provision, at Article V(G)(3), calls for overtime within a seven (7) day work cycle⁵ while the NCO agreement at Article V(C) calls for a 160 hour, twenty-eight (28) day calendar cycle. The SOA agreement is silent on the issue

⁵ The seven day work cycle alternates between a 36 and 44 hour workweek schedule.

of overtime. Both the STFA and the NCO agreements provide for a procedure in which overtime hours under their respective cycles and calculations are "returned." While not contractually defined, a return is the give back of time to the employee without the State incurring an actual overtime cost, either through cash or compensatory time. In the STFA agreement, at Article V(G)(4), overtime may be returned within the seven day work cycle providing 48 hours notice is made. In the NCO agreement at Article V(B), an employee's work hours can be adjusted by up to ten (10) extra hours for hours worked beyond those scheduled on a particular day and those hours may be adjusted, within the twenty-eight (28) day work cycle. Hours above the ten (10) extra hours can be banked. A Sergeant is automatically paid if the bank exceeds a 120 day maximum. The NCO agreement does not use the term "returned" but instead uses the term "adjustment" which, based upon the testimony, has the same meaning. According to Sgt. Gaffigan, the seven (7) day cycle for Troopers allows for the additional hours to be quickly resolved within the week while the twenty-eight (28) day cycle for the Sergeants requires the additional hours to be accumulated and they are then built up over the cycle causing inconvenience to the Sergeants. According to Lt. Sternik, Lieutenants work on a 40 hour, 7 day cycle, similar to the Troopers. He testified that if a Lieutenant works in excess of forty (40) hours per week, hours are normally returned within a week afterwards on an hour-for-hour basis. The SOA proposal is very limited in nature and would only be implemented when a Lieutenant is required to work more than the fixed hours of a normal work assignment rather than for calls received at home. Lt. Sternik

testimony reflects that the SOA's proposal would require time and one-half for work beyond normal shift hours and for double shifts occasioned by regularly-occurring monthly inspections.

The State urges rejection of these overtime proposals and offers the following arguments:

The NCOA and SOA have utterly failed to present any justification for the proposed changes to the longstanding overtime systems for Sergeants and Lieutenants, other than that they want to increase compensation, and thus have failed to meet their statutory burden. Moreover, the proposals of NCOA and SOA must be rejected because they will impose an undue burden on administration and would result in additional costs that the State cannot afford. With respect to NCOA, the current overtime system exists because Sergeants fill supervisory positions in which job responsibilities often transcend specific shift times. The 28-day cycle for sergeants provides the requisite flexibility needed by the State to adjust sergeants' schedules to provide time off to offset these times when supervisory responsibilities require prolonged shifts. The NCOA has offered no justification for this change that will undoubtedly make scheduling harder, in addition to significantly increasing costs.

Furthermore, expanding the overtime system to compensate sergeants and lieutenants for hours in excess of 40 per 7-day cycle would significantly increase already excessive overtime costs. In FY10, overtime paid to Division of State Police personnel and charged against the State funded salary accounts totaled \$20,397,829. (State Operations Presentation (S-11) at 24). That number nearly doubles when taking into account overtime paid to Division of State Police personnel charged against all Division accounts (including the Turnpike, Parkway and Division of Gaming Enforcement). (State's Operations Presentation (S-11) at 24). And these numbers account for the \$2 million that the Department of Law and Public Safety vowed to save in response to the \$12.4 million budget reduction. (Tr. 1/11/11 at 44 (Kleeberg)). Controlling overtime pay is a frequently used vehicle to reduce costs without reducing staff. For the reasons mentioned above, the State cannot afford to expand compensation for sergeants and lieutenants

beyond its Final Offers, which contemplate no increase to the current overtime compensation systems.

The Associations have also requested that the NCO Association and SOA agreements be modified to add fifty (50) Association Days. All three agreements contain a Memorandum of Understanding concerning paid Association leave. Each MOA is by letter form. They provide for 150 days of paid Association leave for the STFA, 50 days for the NCO Association, and 25 days for the SOA. As phrased, the proposals would cause the Association Days to reach 100 and the SOA days to reach 75. No testimonial evidence was offered in support of these proposals and the State urges their rejection on the basis that the burden to show the need for any change has not been met.

The State has offered several proposals in addition to wage increases. It seeks to eliminate the \$900 annual clothing allowance effective July 1, 2011. The State's proposal to eliminate the clothing allowance is based on the State's view that it provides a Trooper's entire uniform without cost and its financial obligation should end at that point. According to the State, there is no reason to continue a program that has no legitimate objective other than to provide additional non-salary compensation. In respect to the maintenance allowance currently set at \$12,674.50 per year, the State seeks to freeze that allowance for the first two years and increase it by 2% only in Fiscal Year 2011, retroactive to July 1, 2010. According to the State, the Associations have not presented any logical or compelling reason for any increase in the maintenance allowance nor

presented any evidence that the State has the ability to absorb annual increases to this allowance in the like amount of any base salary increases.

The Associations urge rejection of the State's proposals. The Associations assert that the testimony of all witnesses and the documentary evidence support the fact that there has been a longstanding policy and practice for salary adjustments to include increases to both the base salary and the maintenance allowance as a single concept. Because salary increases have always included adjustments to base and maintenance and both have been considered as part of gross salary cost, the Associations seek a continuation of that practice and the denial of the State's proposal. The Associations also urge rejection of the State's proposal to eliminate the clothing allowance asserting that the State has not met its burden to eliminate this longstanding payment.

The State's proposals also include modifications to its medical benefits plan. Currently, unit members receive medical benefits pursuant to the "NJ Plus" plan. The State seeks to replace the NJ Plus plan with the NJ Direct 15 plan as the PPO option. The State sees the NJ Direct 15 plan as being almost identical to the NJ Plus plan and the change that it seeks would place the members of the State Police into the same medical plan that presently covers every other employee group in State employment including both civilian and law enforcement categories. According to the State, its proposal is consistent with its overall goal to fight increases in healthcare costs. It currently pays \$15 million per month to

maintain the NJ Plus plan for the State Police alone and the awarding of its proposal would offset cost and eliminate administrative inefficiencies caused by having to operate a stand alone healthcare plan just for the State Police. The State is also required to make an administrative fee payment monthly just to maintain this plan for the State Police.

The State also seeks to eliminate the Well Trooper Program. That Program required the State to pay for an annual physical for each member of the State Police by contracting with the UMDNJ for this service. That contract had a \$750,000 expense. That contract has lapsed due to the State's non-renewal of the contract due to the absence of funding in the State budget for the program. The State now proposes that the annual physical be conducted by each officer's personal physician under each employee's health insurance plan. Unit members, as was the case before, would still receive time off to undergo the annual physical.

The Associations oppose the elimination of the Well Trooper program. It not only opposes the change in the benefit itself, but asserts that the State's proposal is not awardable based upon the following arguments:

The maintenance of the Division of State Police and standards of performance are implemented pursuant to New Jersey Statutes Title 53. This statutory Title is unique to State Police and reserves unique powers to the Superintendent of State Police unlike any other State Law Enforcement Program. All County and Local Police are covered under Title 40A. Pursuant to these statutory powers, the Office of the Superintendent of State Police issues

from time to time Directives in the form of SOPs. SOPs form the standard of performance and expectation from the Office of the Superintendent consistent with statutory authority. The Employer position here to eliminate the "Well Trooper Program" directly conflicts with SOPs. SOP C-33 provides for the regular implementation of a "Well Trooper Program" physical examination. There are special standards and criteria done on a direction of State authorized medical personnel to meet those specific requirements and unique standards required to perform as a sworn member of the Division of State Police. Upon being approved and passing the standards in an examination as prescribed by SOP C-33, one then progresses to the required physical fitness examination provided by SOP C-20. Completion and attainment of the standard set at SOP C-20 is a condition of employment at the State Police. It is a predicant to promotion and transfer. One cannot take the C-20 exam without passing the C-33 pre-physical testing medical review. None of this was taken into consideration apparently by somebody who put together this type of proposal to eliminate the "Well Trooper" examination. It is in direct conflict with SOPs and Division Policy and Procedure. Further, it runs in conflict with the statutory authority of the Office of the Superintendent of State Police. An additional consideration is that the physical fitness standards deemed necessary and appropriate by the Office of the Superintendent are part of the establishment of the *Bona Fide* Occupational Qualification (BFOQ) standards which have existed for decades within the State Police. The standards have been tested through the Federal Courts from an initial decision of Federal Judge Marilyn Trump-Barry which was ultimately upheld at the U.S. Court of Appeal, *cert. denied* at the United States Supreme Court. Thus, the Employer's position in this case not only runs afoul of Title 53, the power of the Office of the Superintendent of State Police, the needs of the public as determined by SOP C-33 and C-20 as issued by the Division of State Police, the requirements to be a New Jersey State Trooper for the last many decades, but in addition it creates conflict with the BFOQ Standards as established through the Federal Courts. In addition, and almost as a footnote, it is in conflict with the HIPPA laws in that the Employer position apparently is to have the multi-faceted physical set to personal physicians, which personal physicians would have to give information on their patient to the Employer. On direct examination of OER Director Cohen he acknowledged potential HIPPA conflicts but did not know the answer to the question. He said, "My answer is I don't know. I leave that to the appropriate people." (See Tr. 01/11/2011; p. 82, 1.24 to p.84., 1.7). This exchange was considered earlier in this Brief at pages 5 and 6, *supra*. In brief, the Employer position here is unawardable. If the party advancing the

proposal does not know how it will be implemented or even how basic considerations will be met, there is an indication that even the Employer does not know what it is doing here.

The State has also proposed to eliminate Lincoln's birthday from the list of holidays effective January 1, 2012. Because the collective negotiations agreement and the award must be consistent with State law, the State contends that its proposal must be awarded because Lincoln's birthday will, pursuant to N.J.S.A. 11A:6-24.1, be eliminated from the list of holidays for all State employees, including the Division of State Police, effective January 1, 2012.

DISCUSSION

I am required to make a reasonable determination of the above disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. The State and the Associations have each made thorough and expert submissions supported by substantial evidence that touches upon all of the criteria. 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).

After consideration of the entire record of this proceeding, I have concluded that all of the statutory factors are relevant but not all are entitled to the same weight. The Associations have contended that N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9) are not relevant based upon the following arguments:

The Cap Laws, both "Appropriation Cap and Levy Cap" are only applicable to municipalities and counties, not the State of New Jersey. The statutory references specifically stated in criteria g(5) and g(9) both commence with a Title 40A reference. Title 40A is captioned "Municipalities and Counties". There is no coverage for the State in this Chapter. Further, the specific references in the quoted statutes relate only to local government and counties. The referenced statute at criteria g(5) is 40A:4-45.1 et seq. The statement of legislative policy set forth at 40A:4-45.1 has as its first sentence:

It is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be

controlled to protect the homeowners of the State and enable them to maintain their homesteads. [Emphasis supplied].

The following sequential statutes in this law all reference municipal and county government. Criteria g(9) of the applicable statute references the "Levy Cap" which is specifically stated by applicable law, Title 40A:4-45.45. Again, as with the "Appropriation Cap" here the "Levy Cap" has as its first statutory line the following language; "In the preparation of its budget the amount to be raised b taxation by a local unit shall not exceed ...". Again, the State was specifically exempted from any such limitation.

While the Associations' arguments with respect to the Title 40A references are accurate as well as the fact that the State is not subject to either the Appropriation Cap or the Tax Levy Cap, this does not necessarily render N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9) irrelevant. This is so because the first sentence in each of these factors stands separate and apart from the application of both of the Cap laws. N.J.S.A. 34:13A-16g(5) requires consideration of "the lawful authority of the employer" and this reference to law is not limited to the law regarding the Appropriations Cap. N.J.S.A. 34:13A-16g(9) requires consideration of any "statutory restrictions imposed on the employer" and also is not limited to the statutory restrictions that concern the Tax Levy Cap. Thus, the arbitrator is compelled to conclude that these two statutory criteria are relevant independent of the fact that the Appropriations and Tax Levy Caps do not apply to the State of New Jersey.

I also apply two commonly accepted principles which I regard as being incorporated into N.J.S.A. 34:13A-16g(8). This factor requires consideration of

those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Among these traditional considerations is that the party proposing a change in an employment condition bears the burden of justifying the proposed change rather than simply seeking change without sufficient evidentiary support. Another is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. A disregard of this latter concept would give no meaning to the totality of a negotiated result.

Normally, no single factor can be isolated and be dispositive of the terms of an entire award. The interests and welfare of the public N.J.S.A. 34:13A-16g(1) is not only always relevant, but must be given the most weight because it is a criterion that embraces many, if not all, of the other factors. It also recognizes that there are interrelationships among all of the statutory criteria. For example, the public interest is furthered by the productivity, efficiency and high morale of the New Jersey State Police as evidenced by the enormity of its mission that touches upon virtually all of the major areas of public concern and safety. The scope and depth of these services and the skills, training and competence with which they are performed, are not in dispute, nor is the danger that is associated by this work as shown by the exhibit detailing the 66 Troopers who have lost their lives while engaging in official duties. The public interest also recognizes that the budgetary expense of operating the New Jersey State Police

is significant and must be properly funded but this factor requires that an award must consider its financial impact [N.J.S.A. 34:13A-16g(6)] on the Department of Law and Public Safety, the State's ability to fund all of its responsibilities and obligations as well as its effect on taxpayers. Evidence on internal and external comparability [N.J.S.A. 34:13A-16g(2)(a), (b) and (c)] is relevant and requires a review of how changes in compensation compare internally with civilian and other law enforcement units within State employment as well as with like law enforcement units in other jurisdictions. How the State has treated its own employees over common contract years is an indicator of reasonableness and funding abilities over those years. The overall compensation presently received [N.J.S.A. 34:13A-16g(3)] is relevant in assessing the totality of existing contract terms and the reasonableness of proposals for change. Contract changes must also assess how they impact upon the continuity and stability of employment [N.J.S.A. 34:13A-16g(8)] of unit members. The cost of living factor [N.J.S.A. 34:13A-16g(7)] is a measure that is not dispositive but it is a standard in which to evaluate the merits of increased expenditures within the context of the broad economy.

As I proceed to consider the merits of the parties' proposals, I note that no proposal of either party can be presumed to be valid on its face. The measure of merit to a proposal relates less to the importance that a party attaches to the change that it seeks and more to the requirement that there be sufficient credible evidence in support of its proposal. The parties' may have competing claims as

to which criteria are more relevant or entitled to greater weight or they may agree on the criteria but draw different interpretations as to their application. What represents a reasonable determination of the issues falls within the discretion and judgment of the interest arbitrator so long as the award is based upon a reasoned explanation that is consistent with the arbitrator's statutory obligations.

In this matter, all of the parties' proposals, except for duration, are economic in nature. They include salary, health benefits, shift differential, holidays, clothing allowance, maintenance allowance, overtime, Association Days and salary related proposals that deal with salary guide structure and retroactivity.

The terms of this award will cover contract years 2008-2009, 2009-2010, 2010-2011 and 2011-2012, all with July 1 commencement dates and June 30 expirations. The Associations have proposed an additional year that would cover contract year 2012-2013. Because of the lengthy delays in the parties' negotiations process, there is some appeal in to having an additional contract year that would expire on June 30, 2013 in order to avoid a prompt return to negotiations. However, there are considerations that dictate against an agreement that would extend through a fifth year. Among them include the uncertainties surrounding the national and state economy which could impact the State's finances. Another consideration is that the history of negotiations in these units, as shown in the record of this proceeding, shows past contract

periods that have had a one year stagger in relation to the expiration dates of the State's many other labor agreements that expired on June 30, 2011 which are in negotiations. I do not find any evidence in the record that should cause a change in the parties' established negotiation cycle. Accordingly, I award a contract duration that covers the time period between July 1, 2008 and June 30, 2012.

I next address the parties' positions that concern health insurance. There are three components of the health benefit issues, all of which have been proposed by the State. The first is to eliminate the NJ Plus plan for current or future bargaining unit employees once active eligible employees are able to elect to participate in the NJ Direct 15 plan as a PPO option. The State asserts that its proposal is consistent with the agreements that it has made with all of its other employee organizations, civilian and law enforcement. The State Police is the only group to maintain eligibility in the NJ Plus plan. The State's proposal does not require the Troopers to enroll in NJ Direct 15 but dictates that the NJ Plus plan would no longer be available, thus making NJ Direct 15 as the only remaining PPO option. Consistency in the health insurance plans will yield administrative convenience and financial efficiencies⁶. The interests and welfare of the public will benefit by awarding the State's proposal which, while providing economies, will also insure that broad and comprehensive health insurance benefits will continue to exist for all Troopers who choose to remain in a PPO option. Accordingly, I award the following language:

⁶ According to the testimony of Director Cohen, the State's proposal would eliminate a \$15,000 per month administrative fee needed to maintain the NJ Plus option which is only available to the Troopers.

Once active eligible employees are able to elect to participate in NJ Direct 15, the NJ Plus Plan shall no longer be available to any current or future bargaining unit employees.

The State has also proposed that it will not seek to increase the contributions made by employees in these three bargaining units toward the cost of health benefits through June 30, 2012. This proposal was based upon the fact that members of the State Police began contributing 1.5% of salary toward their health care benefits on May 21, 2010 pursuant to P.L. 2010, Chapter 2 as was required by that law. As the State points out, this contribution was a result of legislative action and was legally mandated. Subsequent to the close of this record after the filing of post-hearing briefs, there was additional legislative action addressing the issue of health insurance cost contributions. The Governor signed P.L. 2011, Chapter 78 into law on June 28, 2011 pursuant to that legislation.

I award the State's proposal as a reflection of the law at the time that the record was closed. However, because this award must be consistent with law, and because N.J.S.A. 34:13A-16g(5) and (9) requires the arbitrator to consider the State's lawful authority and statutory restrictions, I will accompany the awarding of the State's proposal with language that would avoid any potential for the award to be inconsistent with what the State's lawful authority may be under P.L. 2011, Chapter 78. Accordingly, I award the State's proposal coupled with additional language as follows:

The State's proposal concerning health insurance contributions is awarded. To the extent that the proposal may be inconsistent with the lawful authority of the State of New Jersey pursuant to P.L. 2011, Chapter 78, enacted on June 28, 2011, the language awarded is not intended to be inconsistent with that lawful authority.

The third element of the State's health insurance proposal is the elimination of the Well Trooper Program. I have previously set forth the parties positions on this issue. The arbitrator kept the record of the proceeding open to allow the State to further clarify and define its proposal on the Well Trooper issue in response to questions raised by the Associations on cross-examination of the State's witness. On February 2, 2011, the State clarified its proposal by submitting language in support of its general proposal. The proposal reads as follows:

1. Delete Article XXVI(D) from the STFA agreement in its entirety and re-letter remaining paragraph.
2. Replace Article XIII G. Physical Examinations in the NCO contract and replace with the following, and include a similar provision in the other two agreements – STFA and SOA (deletions in brackets, additions in bold):

Article III G. Comprehensive Annual Physical Examinations.

Employees in this unit shall undergo a comprehensive annual physical examination. For those employees participating in the State Health Benefits Plan, that comprehensive annual physical examination shall be provided in accordance with the particular health benefit plan utilized by the employee. Employees in this unit will be responsible for any co-payments or other charges associated with the comprehensive annual physical examination. Pursuant to any Division policy or operating procedure, employees shall be required to release to the Division results of the comprehensive annual physical examination on a form provided by the Division for completion

by the physician(s) performing the comprehensive annual physical examination. [~~Such examination will be given annually to the employees forty (40) years of age and over and bi-annually to employees under the age of forty. The physical examination shall include but not be limited to a chest x ray, blood analysis, and EKG, blood pressure testing and urinalysis. The examination shall be conducted by a State Police physician.~~] Attendance shall not result in a loss of pay. The employee will not be required to make his appointment on a non-duty day **except that no employee will be afforded more than one day of duty time to complete the comprehensive annual physical examination, any additional time which may be required to complete said comprehensive annual physical examination shall be scheduled and taken as sick leave.**

Eliminate the Memorandum of Understanding II in the NCO contract. The proposal is that the current Well Trooper program, previously provided through a contract with UMDNJ, will not be provided as the comprehensive annual physical examination which is part of the employee's health coverage. Similarly, the bracketed language is proposed for deletion because the examination was not performed by the State Police in the past and will not be performed by the State Police Physician in the future. The plan handbooks will be changed to allow for the comprehensive annual physical examination for enlisted members of the State Police to be covered, even though it is employer-mandated. Unit members will be responsible for any co-pays or other charges. Unit members will have one day of duty time to complete comprehensive annual physical examination, which they will be responsible for scheduling. Any time in excess of one day which is required must be charged to sick time.

Division SOP C33 and possibly elements of SOP C20 (physical fitness) will be modified as necessary to allow for the comprehensive annual physical examination to be conducted by the member's physician. Note that the "other charges" language refers to the potential charge for filling out the Division's form or for other co-pays if the employee has to go to a second doctor.

The reference in the State's submission to the Articles in the STFA and NCO agreements is to language in their agreements that state the following:

STFA

ARTICLE XXVI – COMPLETE AGREEMENT

- D. The Division of State Police will include a request for an annual medical examination for all Troopers over the age of thirty (30) years in its fiscal year budget submission for each year covered by this Agreement.

NCO

ARTICLE XIII – SALARY, MAINTENANCE AND FRINGE BENEFITS, JULY 1, 2004 TO JUNE 30, 2008

- G. Physical Examinations

Employees in this unit shall undergo a comprehensive physical examination. Such examination will be given annually to the employees forty (40) years of age and over and bi-annually to employees under the age of forty. The physical examination shall include but not be limited to a chest x-ray, blood analysis, and EKG, blood pressure testing and urinalysis. The examination shall be conducted by a State Police physician. Attendance shall not result in a loss of pay. The employee will not be required to make his appointment on a non-duty day.

The annual physical examination for a Trooper is an essential requirement for maintaining employment. Under the present departmental SOPs, the Superintendent of State Police requires an annual physical examination as a condition precedent to taking of a very rigorous physical fitness examination.⁷

In my evaluation of the State's proposal, I observe that it does not cause the comprehensive annual physical examination previously conducted by UMDNJ to be any less comprehensive. The proposal so states. The State represents that Plan Handbooks of the health insurance plans will be changed to

⁷ See SOP C-20 and SOP C-33.

specify that the exam will be covered. Duty time up to one day will be provided with any time in excess to be covered by sick time, which currently has no limit. The physical will require an employee responsibility for the "co-pay" which under the Direct 15 Plan is 100% after a \$15 co-payment per visit and for "other charges." The State represents that the "other charges" refers to a potential charge for filling out the Division's form or for other co-pays if the employee has to go to a second doctor rather than for the cost of the physical examination. In addition, the State represents that Division SOPs (C-33 and C-20) will be modified by the Superintendent to allow for the comprehensive annual physical examination to be conducted by the member's physician. This will meet the Association's concern that the substance of the examination meet, the conditions that precede the taking of the physical fitness requirements. Moreover, the contract under which the Well Trooper Program was administered in the past has been eliminated due to the absence of funding in the State budget.

Under all of these circumstances, I find it reasonable to award the State's proposal. I do so based upon the detailed proposal submitted on February 2, 2011 that supplemented its last offer and the representations made by the State therein.

The State has proposed to eliminate Lincoln's birthday from the list of holidays effective January 1, 2012. Because the collective negotiations agreement and the award must be consistent with State law, the State contends that its proposal must be awarded because Lincoln's Birthday will, pursuant to

N.J.S.A. 11A:6-24.1, be eliminated from the list of holidays for all State employees, including the Division of State Police, effective January 1, 2012. Because this award must be consistent with the State's lawful authority and must recognize statutory restrictions that are imposed on it, the State's proposal is awarded.

The Associations propose that the NCO and SOA contracts be modified by the adding of fifty (50) Association days to those currently available under the contract. I do not award these proposals given the insufficiency of evidence that would justify the doubling of NCO days and the tripling of SOA days.

Both parties have submitted proposals regarding shift differential. Currently the Troopers, at Article X – Section G, are provided Special Compensation between the hours of 9:00 p.m. and 7:00 a.m. at the rate of 7% of the base hourly rate. The NCO agreement has similar language at Article XIII, Section H, except that the hours eligible for the night differential only are between 12:00 midnight and 7:00 a.m. The underlying rationale for each proposal is to provide consistency and uniformity between the two units. The Associations seek to accomplish that goal by having an expansion of eligible hours in the NCO agreement to have them coincide with the STFA agreement. The State seeks to accomplish that goal by contracting the hours of eligibility in the STFA agreement to have them coincide with those in the NCO agreement.

There is logic to having the hours that are eligible for special compensation be the same for both units. There is an incongruity in both units having this benefit but not having the Sergeant eligible for the same payment being received by the Trooper that the Sergeant supervises between the hours of 9:00 p.m. and 12:00 midnight. As Sgt. Gaffigan testified, the Sergeant can be placed in a situation of where the Sergeant may be earning less money than the Trooper that is being supervised. This concern would be satisfied by the adoption of either party's proposal but I am persuaded that an expansion of the hours for the NCOs is the more appropriate modification to achieve this goal rather than achieving it through a reduction in a longstanding benefit in the STFA agreement. Further, unlike the overtime conditions that I will review next, there are no operational issues that weigh against the award of the Association's proposal. Accordingly, the Associations' proposal to amend the night differential for the NCO Association to match the hours set forth in Article X, Section G of the STFA agreement is awarded.

The Associations have also proposed that the NCO and SOA agreements be modified to provide the same overtime rights and conditions as appear in the STFA contract. Both Sgt. Gaffigan and Lt. Sternik have testified in support of this proposal. Each testified concerning the contractual provisions and overtime procedures that exist for the Troopers, Sergeants and Lieutenants. The STFA provision appears at Article V – Section F(3), the NCO provision at Article V-Section B, while the SOA agreement is silent on the issue of overtime.

As stated above, the goal of the Associations' proposal is to provide the same overtime rights for Sergeants and Lieutenants that exist in the STFA agreement. While this proposal has some appeal in that its thrust is to have consistency and uniformity in the overtime system, the testimony on this issue reflects that each of the three units, through negotiations and practice, have each arrived at their own system which is locally administered and, unlike the shift differential procedure, the record reflects that the overtime process in each unit is linked to the operational uniqueness of each rank. For example, the Lieutenants, in the absence of contract language, have hours worked beyond 40 in a workweek returned generally within a week afterwards on an hour for hour basis. Lt. Sternik's testimony also reflects that Lieutenants are seeking to be paid overtime at time and one-half for any work performed beyond a normal shift. It appears that this proposal for the SOA represents a broader right to overtime than that which presently exists in the STFA agreement and the NCO agreement. Under the NCO agreement, there is a 28-day cycle with ten hours adjusted or returned during the cycle with the remaining hours above being paid at the premium rate of time and one-half. Of these hours, an employee may select cash or compensable time for one half of these overtime hours with the Division selecting cash or compensable time for the other half. The NCO proposal would have the cycle reduced to seven days with all overtime hours returnable within the seven day work cycle.

There is insufficient evidence that the more uniform overtime proposals for all units can be accommodated without significant impact on the Division's operational needs with respect to the assignment of its personnel. After thorough review of the testimony on this issue, I am not persuaded that the Associations have met their burden to have a uniform overtime system awarded for all three units. Accordingly, the proposal is denied and the existing provisions shall remain.

On January 19, 2011 the State submitted a revised final offer that contained a new proposal to eliminate the clothing allowance from the STFA agreement effective July 1, 2011. On cross-examination, Director Cohen testified that the proposal was directed towards Article X, Section 10(A) and 10(B). Section 10(A) provides for a clothing allowance in the amount of \$900 annually commencing fiscal year 2004-2005. Section 10(B) provides for a uniform maintenance allowance of \$800 annually also commencing fiscal year 2004-2005. The uniform maintenance allowance in Section 10(B) is paid to employees of the STFA unit who are not eligible for the clothing allowance provided in 10(A). The payments are not duplicative. There is no additional testimony in support of this proposal but in its formal post-hearing argument, the State submits that the benefit should be eliminated because the State provides a Trooper's entire uniform without cost. Director Cohen's testimony acknowledged that there was no elimination of clothing allowance in the many other agreements that the State has negotiated and that several of the agreements actually

increased the amount of clothing allowance, including a voluntary agreement between the State and the New Jersey Superior Officers Law Enforcement Association that was executed on June 16, 2010. His testimony acknowledged that the Troopers have standard uniforms that have to be maintained by each individual Trooper and he acknowledged that certain items are required to be purchased. I conclude that there is insufficient evidentiary support to award the State's proposal to eliminate this existing contractual benefit. Accordingly, this proposal is denied.

I next proceed to consider the parties' salary and salary related proposals. Because the testimony of all witnesses shows that the maintenance allowance has traditionally and consistently been treated as part of base salary for adjustment purposes, my evaluation of the proposals that concern the maintenance allowance are properly part of salary review as well as the Association's proposal to reduce the step guide for Troopers by two steps.

On the initial day of hearing, November 16, 2010, the State and the Associations stipulated that each reserved the right to revise the last offers submitted into evidence on that day through the close of the hearing. The Associations initially proposed a five year agreement calling for increase of 3.5% annually effective on July 1 of each respective fiscal year of the contract to be applied to all ranks, steps and positions. The increase would be applied to both base salary and maintenance and be retroactive to each effective date. The

Associations did not revise their final offers prior to the close of hearing. The State then proceeded on the record to explain its final offer. The State initially proposed a three year agreement with a 3.5% increase on July 1, 2008, zero percent on July 1, 2009, 2% on July 1, 2010 with an additional 2% on January 2011. Under the State's proposal at that time, none of the salary increases would be retroactive but they would be effective on a cumulative basis on the date of the award. The proposed increases would not apply to the maintenance allowance.

On January 19, 2011, the last day of hearing, the State elected to revise its final offer consistent with the parties' stipulation that either party could do so prior to the close of hearing. On that date, Director Cohen offered testimony explaining the elements of the State's revised final offer. According to Director Cohen, the revised proposal was intended to eliminate any confusion that might exist over the application of the State's salary proposal. There would be a four year agreement effective July 1, 2008 through June 30, 2012, a 5.86% compounded increase in base salary effective on the date of the award with no retroactivity, a freeze in salary step movement for fiscal year 2011 and a zero increase in the maintenance allowance in FY2009 (July 1, 2008), FY2010 (July 1 2009) and FY2012 (July 1, 2011). There would be a 2% increase in the maintenance allowance effective and retroactive to FY2011 (July 1, 2010). He explained that the State arrived at the 5.86% figure by assuming hypothetically that there would be a 2% increase on July 1, 2008, a 1.75% increase on July 1,

2009, a 2% increase on July 1, 2010 and no increase thereafter through the June 30, 2012 expiration date. A compounding of these numbers would then calculate to the State's proposed 5.86% increase following zero increases in years 2008, 2009 and 2010. Because there would be no retroactivity and the increase would be effective upon the date of the issuance of an award there would be no recalculation of any prior benefits such as pension that would otherwise have been effective upon a salary increase having been awarded in any of the years prior to the actual date of the award.

I am persuaded, based upon the entire record of this proceeding, that the interests and welfare of the public is the criterion to be given the most weight and that the public's interest will be best served by an award that weighs and balances the evidence that concerns the award's financial impact on the governing unit, its residents and taxpayers, comparisons with public employees employed by the same jurisdiction, in this case the State of New Jersey, and with employees performing the same or similar services in this and other jurisdictions.⁸ The remaining criteria are also relevant but I accord less weight to them.

I commence this analysis with an examination of the evidence on internal comparability because the Associations' units are three of the many units that the State maintains negotiations relationships and contracts. This includes the terms

⁸ This subsection of the statutory criteria would allow for the consideration of comparisons with other law enforcement employees employed in other jurisdictions within New Jersey and State Police units in other states.

of the agreements the State voluntarily achieved with all of its other collective negotiations units, interest arbitration awards affecting the State and its other law enforcement units over years of common contract duration and longer term comparisons in the wage adjustments that have been made between the State and the Associations compared with the other State law enforcement bargaining units. The record includes documents and testimony referencing this negotiations history.

When engaging in internal comparisons, the years of comparison that are the most important are the years that are in common. An examination of agreements for all of the other State bargaining units (civilian and law enforcement) all show contracts of a four year duration but the commencement and expiration dates differ from the State Police agreements as reflected in this model chart.

| Contract Years | State of New Jersey and All Other Bargaining Units | State of New Jersey and State Police Bargaining Units | Contract Years |
|----------------|--|---|----------------|
| 7/1/07-6/30/08 | | | -- |
| 7/1/08-6/30/09 | | | 7/1/08-6/30/09 |
| 7/1/09-6/30/10 | | | 7/1/09-6/30/10 |
| 7/1/10-6/30/11 | | | 7/1/10-6/30/11 |
| -- | | | 7/1/11-6/30/12 |

Based upon the above, 2007-2008 was the first year of the labor agreements for all of the State's bargaining units other than the State Police and it was the last year of the expired agreement for the State Police. Contract year

2011-2012 will be the first contract year for all of the next labor agreements for all of the State's bargaining units other than the State Police and it will be the last year of the new agreement for the State Police. The common contract years are 2008-2009, 2009-2010 and 2010-2011.

As previously indicated, the labor agreements between the State and all of its civilian bargaining units show an identical pattern in respect to wage increases:

New Jersey Civilian Labor Agreements July 1, 2007 – June 30, 2011

| Contract Year | CWA, Administrative & Clerical | CWA, Primary Level Supervisory | CWA, Higher level Supervisory | CWA, Professional | AFT, State Colleges/ Universities | IFPTE, Local 195, Operations Maintenance and Crafts and Local No. 518, Inspection & Security | AFSCME Council 1, Healthcare |
|---------------|--------------------------------|--------------------------------|-------------------------------|-------------------|-----------------------------------|--|------------------------------|
| 2007-08 | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% |
| 2008-09 | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% | 3.0% |
| 2009-10 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |
| 2010-11 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |

The contract year that is not in common with the State Police Associations was 2007-2008. There were increases of 3% negotiated with all of the civilian labor agreements in their first year of their agreements while the units represented by the Associations received a 4% increase in the last year of their agreements. In the years that are in common, all of the civilian labor agreements had negotiated increases of 3%, 3.5% and 3.5% in 2008-2009, 2009-2010 and 2010-2011 while the wage increases for the Association are to be determined by this proceeding. The civilian agreements also all included a voluntary agreement to make a 1.5% of salary health insurance contribution effective the first full pay period of July

2007 while the Associations did not begin to make the 1.5% contribution until required by legislation that was effective on May 21, 2010. In addition, as testified to by Director Cohen, the civilian agreements set forth above were amended mid-term to include an 18-month deferral of the 3.5% July 1, 2009 increase. Employees were also required to take ten furlough days without pay. These amendments were due to financial declines in the State's budget and the reduced payouts were intended to assist the State's requirement to balance its budget. The ten furlough days caused a significant reduction in take home pay but did not disturb the negotiated rates of increase going forward.

The State's law enforcement agreements, other than the State Police, also had the same contract years as the civilian bargaining units. The terms of those agreements are as follows:

**New Jersey Law Enforcement Labor Agreements
July 1, 2007 – June 30, 2011**

| Contract Year | PBA 105* | Investigators | NJLES (DOC, JJC SIEO) | NJLESA (all other) | NJSOLEA (DOC, JJC) | NJSOLEA (all other) | NJLCOA (DOC) | SLEU | NJLECOA (all other) |
|---------------|------------|---------------|-----------------------|--------------------|--------------------|---------------------|--------------|-------|---------------------|
| 2007-08 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |
| 2008-09 | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% | 3.5% |
| 2009-10 | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 3.75% | 0% |
| 2010-11 | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 4% (split) | 3.75% | 4% (split) |

As reflected in the testimony of Director Cohen, the first of the law enforcement units to settle was the SLEU. SLEU negotiated a 3.5% increase in the first year (2007-2008) of its agreement while the units represented by the Associations received a 4% increase in the last year (2007-2008) of their

agreements. The next year is a year that is in common (2008-2009). All of the other law enforcement units negotiated increases of 3.5% for that year. SLEU then received 3.75% increases in both 2009-2010 and 2010-2011 but the remaining law enforcement units thereafter containing the vast majority of employees in the overall units reached different and lesser salary terms for those two years, primarily as a result of interest arbitration awards in the PBA Local 105 unit, the largest of the units, and the New Jersey Law Enforcement Supervisors Association unit. According to Director Cohen's testimony and the substance of the awards that were submitted into evidence, changed and declining financial circumstances caused the 2009-2010 and 2010-2011 years for all of the other law enforcement units to differ with the terms reached earlier in the SLEU unit and resulted in a 0% increase for 2009-2010 followed by a 2%/2% split in 2010-2011. Another major difference in the terms of the law enforcement unit agreements is that the SLEU unit voluntarily accepted a 1.5% health insurance contribution in 2007-2008 while the other law enforcement units who later received lesser wage terms did not make retroactive health insurance contributions back to 2007, did not make the 1.5% health insurance contribution and instead made lesser dollar amount contributions towards health insurance that did not commence until January 1, 2011, some three and one-half years later than SLEU began to make the 1.5% contribution.

The evidence on internal comparability suggests that the negotiations outcomes during common contract years, or negotiations cycles, have been

influenced by a general pattern showing reasonable consistency among the civilian bargaining units and the law enforcement bargaining units.

The other comparability evidence relates to law enforcement in municipal units in New Jersey and to other state police units elsewhere in the country and, in particular, to those state police units who perform comprehensive functions. This evidence has been reviewed and summarized earlier in this decision and there are so many facets to this comparability evidence that all cannot be detailed herein. Among the areas for review, in general terms, are the actual levels of compensation and benefits as they are set forth in existing labor agreements, changes to those levels through collective negotiations and arbitration during common contract years and competing contentions over what represents the appropriate field for making the comparisons. It is important to note here that both the State and the Associations have submitted substantial evidence and argument concerning internal and external comparability. This reflects their own acknowledgement that law enforcement comparability is a relevant factor to be considered along with the other criteria, although the parties strongly disagree over what comparability evidence is more relevant and the weight that should be given to this evidence.

The general conclusions that flow from the evidence on external comparability show that the levels of compensation and benefits for the Associations in 2007-2008, the last year of their expired agreements, compare

very favorably to all other state police organizations with the limited exception of New York State Troopers who happen to live in the Nassau/Suffolk locality and receive an "additional duty/location compensation" component. This additional compensation component cannot be deemed to be an appropriate compensation measure given the evidence that the New Jersey Troopers live throughout the State of New Jersey including in moderate income counties. This makes the special location compensation in the Nassau/Suffolk locality far less relevant for comparison purposes. The Associations accurately observe that many such organizations have contracts that provide certain types of supplemental compensation and non-base wage benefits that are not enjoyed by the Association units but this evidence must be balanced by the fact that the Associations receive additional compensation in the form of a \$12,674.56 maintenance allowance that is not received elsewhere. When all of these variables are considered, a top step Trooper is at the top of compensation levels among all of the Trooper contracts in evidence. There is no credible evidence that negotiations outcomes for Troopers in states such as New York, Connecticut, Michigan, Maryland and Delaware in the past have been given significant weight on wage determinations in New Jersey and this fact is more apparent given the record evidence that places the most emphasis on the State's finances and internal comparability. I also find little significance in the fact that Troopers in New Jersey are at the top level of compensation in their profession given the evidence that Troopers have high education levels, receive intense training, are highly qualified in diverse skill areas and are considered to be the

“premier” force of Troopers in the country as recognized by witnesses for the State and the Associations.

The municipal labor agreements in evidence show that some receive greater overall compensation and benefits while others receive less and that wage changes during the common contract years at issue show increases that are more in line with the Associations’ proposals than the State’s. It cannot be disputed that the State Police operates at the highest level of law enforcement and that there is strong operational integration between the State and the municipalities. But because there are so many dramatic differences between these jurisdictions, valid comparisons to municipal police officers whose pay varies widely in comparison to the State Trooper cannot be made. Troopers work and live on a statewide basis, there are significant differences in funding sources, size of operation, and in the differences in the scope of overall governmental responsibilities and obligations between the State and the various municipalities. To the extent that wage trends are relevant, such trends show a level of increase in 2008 and 2009 that are more consistent with the Associations’ proposals but they also show a decline in the amount of wage increases being received by municipal police officers over the time period between 2009 and 2012 due to the declining state of the national and state economy and in public finance throughout the State of New Jersey. These considerations weigh heavily against an award at the levels proposed by the Associations.

I have also reviewed other comparability evidence as it concerns private sector employment. Such evidence shows that Troopers receive greater compensation than the average annual wages of private sector employees in New Jersey, but there is no accurate profile of what constitutes the “average” private sector employee. The business recession has also caused a downward trend in private sector salaries. From 2008 to 2009, these wages declined by 0.7%. From 2009 to 2010 they increased by 2.2%. The value of such comparisons is limited by the difficulty in comparing the skill levels, educational achievement, inherent job dangers and work responsibilities between the private sector employee and the State Trooper. In short, there are few, if any, areas in private employment that are comparable to the mission, nature and the scope of the work performed by the Troopers. Private sector wages are informative as to the overall performance of the economy but they are less dispositive than the general framework of the wages that have been set in the State’s own bargaining units over the relevant time period and the State’s financial condition.

The overall comparability evidence here is relevant and an important factor to be weighed. However, it cannot be unduly emphasized nor overly relied upon in this wage determination because comparability evidence cannot be weighed independently of the financial impact that would be caused by relying solely on comparability data. The comparisons that are entitled to the most weight in this proceeding are those that fall within the State of New Jersey’s own

collective negotiations units and especially those that include law enforcement. This is so because the record establishes that there has been reasonable consistency in the collective negotiations outcomes between the Associations and the other State law enforcement units. The documentary evidence and the labor agreements in evidence support this conclusion. Between 2000-2001 and 2007-2008, the Troopers received wage increases totaling 32% while the other law enforcement units received 29%. When averaged over this time period, the Associations have received higher wage increases than the other units but over the course of time, the average difference is not significant and there are clearly internal relationships in wage treatment although the data does not compel a continuation of the trend that the Associations should receive a greater wage increase over this contract term. The reasonable consistency in the past cannot be attributed to mere happenstance but rather to the goal of maintaining labor relations stability by providing for similar, although not identical, treatment among the State's various bargaining units.⁹ With the exception of one unit (SLEU) the law enforcement units all received across the board increases totaling 7.5% over the three contract years that are in common with the Association's contract years but those terms also included a salary freeze in 2009-2010. While the SLEU unit received higher wage increases than the other law enforcement units, that unit represented fewer employees and was alone in the law enforcement units in paying 1.5% of base salaries annually towards health insurance commencing on July 1, 2007. Turning to the civilian units, in the three contract years that are in

⁹ See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008).

common with the Association's contract years, the civilian units received a 10% increase (3.0% in 2008-09, 3.5% in 2009-10 and 3.5% in 2010-11). But, as the record shows, these agreements were reached prior to the recession and through later amendment there was an 18 month deferral of the July 1, 2009 3.5% increase and unit members received 10 furlough days without pay. These concessions sharply reduced the actual amount of pay that was received in the last two years of those contracts.

The evidence on internal comparability strongly suggests that wage increases be awarded that give due weight to the general substance of the internal agreements but also consider present circumstances. These agreements, including the mid-term amendments, all reflect the fact that the State's declining financial circumstances over the course of the contract years, in one way or another, was factored into their results. The financial evidence clearly shows that the state of the economy and the State's revenues and appropriations were robust during the beginning of the State's negotiations cycle but trended downward between one and one-half years later and have not rebounded. It is significant that all of the agreements with the State reflect an integration between negotiated and arbitrated terms containing improved compensation levels with specific offsets that were responsive to the State's budgetary circumstances and, in particular, to those budgetary circumstances as they changed over the course of the contract durations. This framework

continues to be a valid context in which to evaluate the terms to be awarded herein.

I am compelled to conclude, based upon the entire record of this proceeding, that neither final offer of either party represents a reasonable determination of the salary issues in dispute. The Association's proposal of 3.5% annual increases applied to base salary and maintenance is beyond the wage increases provided for in the voluntary agreements with the civilian units and the arbitrated and negotiated results in the law enforcement units over the common contract years. Moreover, the Association's proposals place little, if any, significance on the State's declining revenues and the State's obligation to respond with reduced appropriations over the course of the last few years in order to balance its budget. The State's proposal gives little, if any weight to the internal comparisons over the common contract years and the ability of the State to provide modest increases in pay levels over the course of time that contract changes were made in all of its other bargaining units. Moreover, the testimony of State witnesses show that insufficient consideration was given during the initial contract years to whether there would be any financial obligations that could result from ongoing negotiations with the Associations' units as compared to other law enforcement units where the testimony shows that funds were specifically earmarked for wage increases in those units.

When all of the evidence is weighed and balanced, I conclude that the parties, and the interests and welfare of the public, are best served by an award that modifies the Associations' salary schedules in a manner that yields similar results in the increases in the rates of pay over the first three years of this contract to that negotiated in its other law enforcement units. But also, because of budgetary issues within the Department and the Division and the ongoing revenue declines that affected the negotiated terms for all of the State's other bargaining units, the terms to be awarded must also contain reductions or offsets to the salary payouts over the first three years of this agreement. Accordingly, I award a July 1, 2008 increase of 2.75%, a July 1, 2009 increase of 2.50%, a July 1, 2010 increase of 2.25% and no additional across the board increase (0%) through the June 30, 2012 expiration date of the agreement.¹⁰ This yields an average rate increase of 1.8%. With respect to the latter year, there are no negotiated agreements or interest arbitration awards that would cause an analysis over the applicability of any pre-existing agreed upon terms in any other negotiating units for 2011-2012. The evidence for that contract and fiscal year shows the continuing ongoing stress between revenues and appropriations. Revenues in FY2011 were slightly below FY2006 levels and FY2011 spending was almost \$6 billion less than FY2008, a reflection of a revenue drop from \$32.6 billion in FY2008 to \$27.8 Billion in 21010. It is appropriate under these circumstances, even with the 18 month bar to retroactivity detailed below, to provide no across the board increase for the 2011-2012 contract year.

¹⁰ The record reflects that the step increases have been paid annually and nothing herein shall alter those payments, although the impact of those payouts calculated at 1.6% has been considered in the fashioning of the terms of the award.

In order to provide similar offsets to payouts as was accomplished in all of the other units, the July 1, 2008 and July 1, 2009 increases shall not be effective January 1, 2010 with no retroactivity. This will result in no retroactivity for the 2008-2009 contract year nor any retroactivity for the first six months of the 2009-2010 contract year. While the Associations correctly argue that the testimony of the State's budget witnesses acknowledged that none of the other State agreements restricted retroactivity, the Associations attach no weight to the similar types of reductions or offsets in pay that were implemented in all of the State's other bargaining units and are similarly required here.

I have considered and factored into the award the testimony Major Carl Kleeberg, Daniel Foster, Colonel Thomas Gilbert and Office of Management and Budget Director Charlene Holzbaaur relating to the finances of the Department, the Division and the State. The testimony is persuasive as to denying the Associations' proposals but I am not convinced that the statutory criteria warrants an awarding of the State's proposal.

The evidence does reflect that the Division is far less dependent and reliant upon the Department of Law and Public Safety for the financial support that it has received in the past. For example, Major Kleeberg testified that the Department no longer allows the Division to balance out its budget at the end of the year by use of surplus from the other nine (9) divisions in Law and Public

Safety. The Division has had to deal with budget pressures which have, among other things, caused a cancellation of a Trooper class and the consolidation of the Troopers servicing the highway authorities which has resulted in a \$3,000,000 reduction in reimbursements from the Turnpike Authority. The Associations contend that this practice is at variance from the contractual relationship that exists and has existed for many years, a fact confirmed by State testimony, but nevertheless the decline in reimbursements represents the present reality of the funding relationship and has been considered in the structuring of the terms of this award. The Division has recently been operating with 221 less Troopers from which some \$20 million has been unexpended.

The record reflects that the Division's funding has been and remains as a complex and fluid matrix where funding has been achieved through direct appropriations and revenue receivables outside of those direct appropriations. There is discretionary oversight by the OMB who, as the testimony shows, decides how much money to allocate to the Division for salaries and from the Motor Vehicle registration surcharge. The testimony also shows that there is an indirect account that makes money available to the Division from billings that are made to the Authorities, monies that may be made available to the State Police from the Attorney General from the forfeiture account and from the \$30,000,000 in ticket revenues that goes into the general fund revenues but are subject to other appropriations as may be directed by the OMB. The record depicts a funding operation that is unique and dependent upon direct budgeting to the Division as

well as from several indirect multi-source revenue streams. I am satisfied that the monies required to fund the terms of the award, as it has been structured, can be met within the State's resources and financial abilities without adverse impact on its overall financial obligations.¹¹

An additional compensation component must be considered the maintenance allowance. The evidence clearly shows a longstanding negotiated arrangement that salary and maintenance allowance have been treated as one whenever there has been a salary adjustment. This is confirmed by the testimony of witnesses from both the Associations and the State and is reflected as such in the labor agreements. The State seeks a two year freeze with a 2% increase on July 1, 2010. I do not find sufficient evidence that would support a departure in the manner in which the State and the Association have traditionally and consistently treated the relationship between salary and maintenance allowance. Accordingly, I award the application of the across the board increases to base salary to the maintenance allowance. However, in response to the budgetary evidence presented by the State, all increases to the maintenance allowance shall be deferred on a compounded basis without retroactivity to an

¹¹ An assessment of total annual economic change as a result of the terms of the Award cannot be precise for many reasons. One is that the payroll cost for Troopers has declined by \$22 million since 2009 as a result of the reduction of 221 Troopers. Another is that the salary cost for all sworn personnel is \$245 million but due to outside funding sources, the State pays \$188 million of this sum which is further offset by approximately 25% from reimbursable positions. Utilizing the \$245 million figure, the increases, if fully implemented, would yield costs of approximately \$6.7 million in 2008-2009, \$6.2 million in 2009-2010, \$5.7 million in 2010-2011 and zero in 2011-2012. The 18 month retroactivity freeze would reduce the annualized payouts above by \$6.7 million in 2008-2009 and another \$3.1 million in 2009-2010 with these costs commencing on January 1, 2010 and flowing through to the remainder of the agreement.

effective date of January 1, 2012 when, at that time, the longstanding relationship between salary and maintenance allowance shall be equalized.

A final compensation issue is the Associations' proposal to reduce the salary schedule in the STFA agreement by two steps. The State urges rejection of this proposal based upon the costs that would be created by a reduction in the steps on the salary schedule. The Associations offer insufficient evidence to support this proposal. Thus, it is rejected.

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

AWARD

1. All proposals by the State and the Associations 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. **Duration**

There shall be a four-year agreement effective July 1, 2008 through June 30, 2012.

3. **Health Insurance**

a. **Elimination of NJ Plus Plan:** Once active eligible employees are able to elect to participate in NJ Direct 15, the NJ Plus Plan shall no longer be available to any current or future bargaining unit employees.

b. The State's proposal concerning health insurance contributions is awarded. To the extent that the language is inconsistent with the lawful authority of the State of New Jersey pursuant to P.L. 2011, Chapter 78, enacted on June

28, 2011, the language awarded is not intended to be inconsistent with that lawful authority.

- c. The Well Trooper Program shall be implemented by the Division of State Police consistent with the language and representations set forth in the State's submission on pages 50 and 51 of this decision.

4. **Holidays**

Pursuant to NJSA 11A:6-24.1, effective January 1, 2012, eliminate Lincoln's Birthday from the list of holidays.

5. **Night Differential** Article XIII, Section H of the NCO Agreement

Article XIII, Section H of the NCO Agreement shall, effective January 1, 2012, be modified to provide special compensation between the hours of 9:00 p.m. and 7:00 a.m.

6. **Salary and Maintenance Allowance**

The salary schedules for all three units current employees shall be increased at each step and rank by 2.75% in contract year 2008-2009, by 2.5% in 2009-2010, and by 2.25% in 2010-2011. The increases shall be effective on July 1 of each contract year except that there shall be no retroactivity for the first 18 months and no compensation adjustments of any kind until the first full pay period following January 1, 2010. There shall be no across the board increase for contract year 2011-2012.


The maintenance allowance shall be adjusted by the same across the board increases but all such increases shall be deferred without retroactivity until the first full pay period following January 1, 2012.

Dated: September 21, 2011
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 21st day of September, 2011, 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
77 Commission Expires 4/30/2014

Rec'd 9/21/11
@ PERC