

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between

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STATE OF NEW JERSEY	:	
	:	
"State"	:	
	:	
AND	:	INTEREST
	:	ARBITRATION
NEW JERSEY SUPERIOR OFFICERS	:	AWARD
LAW ENFORCEMENT ASSOCIATION	:	(1999-2003)
	:	
"Union"	:	
	:	
PERC DOCKET NO. IA-2001-3	:	
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The State and Union have been parties to a series of Collective Bargaining Agreements, the most recent of which expired on June 30, 1999.

The bargaining unit covered by this Agreement has two components. The primary component consists of approximately 310 Correction Lieutenants working for the Department of Corrections and Juvenile Justice. The other component consists of approximately 30 individuals working for other State departments in a variety of supervisory titles ("Unit J"). Those titles include, but are not limited to, Conservation Officer 1, District Parole Supervisor, Lieutenant Campus Police, Police Lieutenant Health Care Facility, Supervising Inspector ABC, and Supervisor of Enforcement Weights and Measures.¹

¹ Notwithstanding the existence of these different titles, for the sake of simplicity all employees in the bargaining unit are hereinafter collectively referred to as "Lieutenants".

PROCEDURAL HISTORY

The undersigned was appointed as interest arbitrator through the procedures of the New Jersey Public Employment Relations Commission ("PERC"). When informal mediation sessions did not lead to a new Contract, a formal hearing was conducted. That hearing spanned eight hearing dates, during which an extensive record was developed. Throughout the proceeding, the Union was represented by Mario Iavicoli, Esquire. Beth A. Hinsdale, Esquire, with David S. Fish, Esquire on the brief, represented the State.

Both parties filed post-hearing briefs. On September 4, 2002 the Union filed a reply brief and the record in this matter was then closed.

This proceeding has been governed by the Police and Fire Interest Arbitration Reform Act, P.L. 1995 c. 425 ("Act" or "Statute"). As the parties have not agreed to the contrary, the terminal procedure in this case is conventional arbitration.

STATUTORY CRITERIA

The statute requires the arbitrator to:

Decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(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, that 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 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 P.L.1976, c. 68 (C.40A:4-45.1 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 of 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 a 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. (N.J.S.A. 34:13A-16g)

FINAL OFFER OF THE UNION

1. Term: 7/01/99 to 6/30/03

2. Wages:

The following increases are added to the base salary step, retroactive to the effective date:

7/01/99 - 4%

7/01/00 - 4% (2% on 7/01/00; 2% on 1/01/01)

7/01/01 - 4% (2% on 7/01/01; 2% on 1/01/02)

7/01/02 - 4%

3. Health Benefits:

As presently in Contract, i.e., no co-payments, or no premium payments.

4. Hours Work:

Shift overlap remains as presently in effect, i.e., 20 minutes per day above an 8 hour day.

5. Union Leave:

Same days of leave as PBA Local 105 Contract.

6. Disciplinary Charges When Brought:

Same as PBA Local 105 Contract, i.e., 45 days, except for EEO charges which must be brought within 60 days.

7. Clothing Allowance:

Two Hundred Dollar (\$200.00) increase over term of Contract. Increases \$25.00 at beginning of each fiscal year and an additional Twenty Five (\$25.00) at the mid point of each fiscal year.

8. Continued Contract:

All other provisions of the Contract that expired on 7/01/99 remain in effect.

9. Union Ex Board:

The Lieutenant Union's Executive Board must be placed on first shift and have part of the weekend off as do the Institutional Representatives.

FINAL OFFER OF THE STATE

1. Term of Contract: July 1, 1999 through June 30, 2003

2. Wages:

7/1/99	2.5%
7/1/00	3.5% (2.0% payable on 7/1/00, 1.5% payable on 1/1/01)
7/1/01	4.0% (2.0% payable on 7/1/01, 2.0% payable on 1/1/02)
7/1/02	4.5% (2.0% payable on 7/1/02, 2.5% payable on 1/1/03)

No wage increases shall be made retroactively.

3. Article XXXVI, Uniform Allowance:

Revise the provision as follows:

The State agrees to provide a cash payment of

\$1,435 on January 1, 2002 and a cash payment of \$1,435 on January 1, 2003 to all employees in the unit who have attained one (1) year of service as of December 31, 2001 and December 1, 2002 with the exception of Correction Lieutenants.

Paragraph two - to remain unchanged.

In exception to the program outlined herein, Correction Lieutenants will be granted in lieu of any uniform allowances, cash payments of \$805 in January 2002, \$805 in July 2002, and \$805 in January 2003.

Paragraph four - to remain unchanged.

4. Health Benefits: Article XXXV shall be modified to incorporate the following:
 - A. The State of New Jersey Manager Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.
 - B. Effective on the first day of the next open enrollment period, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
 - C. Effective on the first day of the next open enrollment period, employees who elect coverage in an HMO plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
 - D. Active employees will be able to use pre-tax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be deducted from pay.
 - E. Employees who retire on or after January 1, 2002 will be required to contribute to their health coverage under the same terms as above.

5. Hours of Work: Article XXVI, eliminate sections H, I, and J, and add the following as the new Section H.

Effective immediately upon issuance of the Award, Correction Lieutenants serving in positions involving custody of inmates shall be employed on a normal work schedule of eight (8) hours per day (40 hours per 5 day week). Each officer shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond these normal work schedules.

6. Discipline: Revise Article XI, Section L(4) as follows:

All disciplinary charges shall be brought within six (6) months of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within six (6) months, the charge shall be considered dismissed.

The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed.

CONTRACT PROVISIONS 1995-1999

Article XI - Discipline

* * *

L. General Provisions

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4. All disciplinary charges shall be brought within 30 days of the appointing authority reasonably becoming aware of the offense or in the absence of the institution of the charge within that time, the charge shall be considered dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed.

Article XXVI - Hours of Work

* * *

H. Correction Lieutenants serving in positions involving custody of inmates shall be employed on a normal work schedule of eight (8) hours and thirty (30) minutes per day (forty-two (42) hours and thirty (30) minutes per five (5) day week). Each Lieutenant shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond these normal work schedules. However, it is understood that Correction Lieutenants who work at least forty (40) hours in any work week shall be compensated at the premium rate (one and one-half (1 1/2) times) for all of the time accumulated as a result of working the daily thirty (30) minutes beyond the basic eight (8) hours in the work shift. It is further understood that this assignment of thirty (30) minutes is in exception to the provisions of Article XXVII, Section B.

I. Effective January 1, 1998, Correction Lieutenants shall be employed on a normal work schedule of eight (8) hours and twenty-five (25) minutes per day (forty-two (42) hours and five (5) minutes per five (5) day week). Each officer shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond these normal work schedules. However, it is understood that Correction Lieutenants who work at least forty (40) hours in any work week shall be compensated at the premium rate (one and one-half (1 1/2) times) for all of the time accumulated as a result of working the daily twenty-five (25) minutes beyond the basic eight (8) hours in the work shift. It is further understood that this assignment of twenty-five (25) minutes is in exception to the provisions of Article XXVII, Section B.

J. Effective July 1, 1998, Correction Lieutenants shall be employed on a normal work schedule of eight (8) hours and twenty (20) minutes per day (forty-one (41) hours and forty (40) minutes per five (5) day week). Each officer shall have thirty (30) minutes per meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond these normal work schedules. However, it is understood that Correction Lieutenants who

work at least forty (40) hours in any work week shall be compensated at the premium rate (one and one-half (1 1/2) times) for all of the time accumulated as a result of working the daily twenty (20) minutes beyond the basic eight (8) hours in the work shift. It is further understood that this assignment of twenty (20) minutes is in exception to the provisions of Article XXVII, Section B.

Article XXXV - Fringe Benefits

A. Health Insurance

1. State Health Benefits Program

a. During the term of this Agreement the State shall continue to provide and to pay the full cost of the current State Health Benefits Program of New Jersey Blue Cross/Blue Shield which shall be the series "1420" plan, including Rider "J", and Major Medical Benefits for all eligible employees in the unit.

As defined under the State Health Benefits program, employees' eligible dependents who are enrolled in the Program shall be covered without cost to the employee.

b. The State will extend to a maximum period of ninety (90) days the health insurance coverage for eligible employees and their covered dependents enrolled in the State Health Benefits Program upon exhaustion of such employee's accumulated sick and vacation leave and who are granted an approved sick leave without pay, with the State paying the cost.

In those instances where the leave of absence (or and extension of such leave) without pay is for a period of more than ninety (90) days, the employee may still prepay Health Benefits premiums at the group rate provided to the State for the coverage provided in paragraph a. for the next two hundred and seventy (270) days of the approved leave of absence following the period of ninety (90) days paid for by the State as provided in the paragraph above.

2. Health Maintenance Organization

Pursuant to N.J.S.A. 26:2J-1 through 30, employees may opt to receive medical coverage from approved Health

Maintenance Organizations, when available, in lieu of the normal coverage under the State Health Benefits Program. Eligibility requirements and administrative procedures are governed by the State Health Benefits Commission. Pursuant to N.J.S.A. 26:2J-1 through 30, "...the State shall not...make a contribution for any employee greater than the contribution which would otherwise be made to the State Health Benefits Program." Therefore, as determined by the Health Benefits Commission, employees opting to participate in a Health Maintenance Organization will be required to contribute the difference in the cost for such participation.

3. Prescription Drug Program

It is agreed that the State shall continue the Prescription Drug Benefit Program during the period of this Agreement. The Program shall be funded and administered by the State. It shall provide benefits to all eligible unit employees and their eligible dependents. Each prescription required by competent medical authority for Federal legend drugs shall be paid for by the State from funds provided for the Program subject to a deductible provision as provided by law per prescription or renewal of such prescription and further subject to specific procedural and administrative rules and regulations which are part of the Program.

Each employee shall be provided with an authorization and identification card and a brochure describing the details of the Program. It is further agreed that the brochure shall incorporate on its title page the joint State and Association initiative and participation in this Program.

4. Insurance Savings Program

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

The insurance company will provide information concerning risks covered, service offered, and all other aspects of the program to each interested employee.

Article XXXVI - Uniform Allowance

The State agrees to provide a cash payment of \$1435 on January 1, 1996, a cash payment of \$1435 on January 1, 1997, a cash payment of \$1435 on January 1, 1998, and a cash payment of \$1435 on January 1, 1999 to all employees in the unit who have attained one (1) year of service as of December 31, 1995, December 31, 1996, December 31, 1997, and December 31, 1998 with the exception of Correction Lieutenants.

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

In exception to the program outlined herein, Correction Lieutenants will be granted, in lieu of any uniform allowances, cash payments of \$805 in July, 1995; \$805 in January, 1996; \$805 in July, 1996; \$805 in January, 1997; \$805 in July, 1997; \$805 in January, 1998; \$805 in July, 1998; and \$805 in January, 1999.

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

POSITION OF THE UNION

Article XXVI, Section J, of the Agreement, whereby Correction Lieutenants are scheduled to work eight (8) hours and twenty (20) minutes per day, should be carried over into the new Collective Bargaining Agreement. The Union has provided overwhelming evidence that this "shift overlap" among Lieutenants is necessary.

Gary Hilton, an expert called by the Union to testify on the

overlap issue, has impeccable qualifications and reputation. Hilton testified that "Lieutenants do indeed need and require a shift overlap to exchange information and data with the off-going shift." When Hilton became the Warden of Monmouth County Jail, he instituted a shift overlap. His testimony remained unchallenged and unrefuted by the State.

Chief (Acting) Robert Henken, also called to testify on the shift overlap issue, also has impressive credentials and credibility. Chief Henken testified that shift overlap is needed for the free flow of information, for safety of the staff of the Department of Corrections, and for all the inmates therein. Henken further testified that the elimination of the overlap for Lieutenants would adversely effect the operations and safety of the institution. Henken further testified that since the overlap has been eliminated for Senior Correction Officers ("SCOs"), the Chiefs rely on the Lieutenants, who still have the overlap (including the Sgts.) to provide information to the incoming SCOs. Moreover, the outgoing Officers also do stay after their shifts, even though the overlap has been eliminated, to convey information to the incoming Officers. Thus, the State's goal is being accomplished of getting free shift overlap. This is the same goal the State seeks in removing the Lieutenants' shift overlap.

Robert Balicki, who also testified on the overlap issue, had the training, experience, skill and knowledge of a uniformed employee and of a non-uniformed employee unmatched by any witness in the proceedings. Balicki testified that when he started in

1973, there were 8,000 inmates. Today, there are 28,000 inmates. Balicki further testified that in the late 1970s and early 1980s the Department of Corrections implemented a shift overlap, and that he was a Lieutenant when the shift overlap was in effect. According to Balicki, information must be quickly and accurately communicated to the Lieutenant at the commencement of his/her shift and without it Lieutenants would not be able to do their job. Balicki noted that Lieutenants are the highest ranking persons in institutions on the third shift and most of the second shift. Balicki was one of the Union representatives that negotiated the overlap as a part of the Collective Bargaining Agreement. He testified that before it became part of the Contract, the Lieutenants were working shift overlap but were not getting paid for the work performed.

The Department of Corrections knows that overlap is needed for Lieutenants. It would not have been approved as a Contract provision for more than twenty years if it was not needed. The DOC has not explained why the shift overlap is no longer needed and how the Lieutenants will function safely, efficiently and effectively without the shift overlap. It is obvious that the State wants the shift overlap language eliminated because it knows full well that Lieutenants, who are career orientated, will continue to stay beyond their shifts even absent pay for the work performed.

A witness called by the State to testify on shift overlap, Scott Faunce, did not present any evidence upon which the Arbitrator should rely. Faunce testified to a plan for the

elimination of the shift overlap that was not reviewed and approved by the DOC, but was his own personal plan. Furthermore, Faunce's personal plan was obviously not well thought out and is unworkable in practice. While Faunce did admit that it is very important for the incoming and outgoing Lieutenants to meet and discuss information, "face to face", he suggested it only takes a "minute or two" to pass a report on and explain a piece of the report, something that he apparently believes Lieutenants are to do on their own time. Moreover, Faunce advocated that Lieutenants come in early on their own time to read posted information from the previous shift because it would be in the best interest of themselves and the safety of the system that the Lieutenant be aware of that information. Finally, notwithstanding his testimony at this arbitration hearing, Faunce thought a shift overlap was of such importance in the safe and efficient operation of the Hudson County Jail that when he briefly became Acting Superintendent at that facility he implemented a shift overlap.

Lt. Walter Plechner gave further testimony supporting the Union's position on shift overlap. Lt. Plechner testified that he could not function as an area Lieutenant without being briefed by the outgoing Lieutenant.

The State misleadingly asserted that it is not seeking to eliminate the shift overlap, that it only is seeking to remove it as mandatory Contract language. This is underscored by the State's computations concerning the savings from overlap elimination. Those computations clearly indicated that the State intended not

only to eliminate Contract language but also eliminate the shift overlap for every Lieutenant for the entire length of the Contract.

It is apparent that the Office of Employee Relations made its argument on this matter without input from custody experts in the DOC as to the custody need for the shift overlap. No one from DOC testified about the removal of the shift overlap and what would be the DOC's plan if the shift overlap was to be eliminated.

In addition to retaining the 20 minute shift overlap, the Arbitrator should accept the Union's final proposal concerning wages and health benefits. This is true for a number of reasons.

Consideration of the "comparison" statutory criterion supports the position of the Union. The primary comparison to be made with Lieutenants represented by this Union are with State Police Lieutenants. Both are law enforcement. Both supervise law enforcement individuals. In addition, the members of this bargaining unit, as the State Troopers, have specialized units. There has also been testimony that State Police Lieutenants do receive overtime.

Although employees represented by the State Law Enforcement Conference ("SLEC"), including Correction Officers represented by PBA Local 105 and other individuals represented by a variety of other PBA Locals, are law enforcement personnel, they do not perform "the same or similar service" as do the Correction Lieutenants. The SLEC Contract is, however, more closely related to the Correction Lieutenants Contract than any of the other non-uniform employee Contracts of CWA, IFPTE and AFSCME. These non-

uniform employees do not have the same conditions of employment and do not perform the same or similar services as the Lieutenants. Thus, the CWA, IFPTE, and AFSCME Contracts, which contain 14-1/2 % increases over four years, should have almost no impact on these proceedings.

The State Police Lieutenants' current Contract provides for raises in the base pay and maintenance allowance of 4% per year commencing in year 2000 and completing in the year 2004. The Contract does not provide for premium sharing of medical coverage. Moreover, the Contract adds a new benefit for extra compensation if an individual obtains a certain educational level. The rank and file non-commissioned State Troopers and Sergeants received the same increases and new benefits as did the State Police Lieutenants.

The State/SLEC interest arbitration Award should have little bearing on the instant case. Arbitrator Mastriani issued his Award prior to the State Police contracts being signed and therefore did not have the benefit of those contracts when he rendered his decision. Had he had those contracts, without a doubt he would have rendered a higher Award. The State Police contract provides for percentage increases better than the State/SLEC Award without any "give backs". Moreover, in the PBA's final proposal to Arbitrator Mastriani, there is no mention of a shift overlap.

The elimination of shift overlap in the State/SLEC Award cannot be used as a basis for the removal of shift overlap from the Lieutenants' Contract. The Senior Correction Officer position is

different from the Correction Lieutenant position. In addition, while no evidence was presented to Arbitrator Mastriani to justify an overlap for SCOs, the Correction Lieutenants have produced overwhelming evidence to justify the overlap. Thus, the Union's final proposal in the instant case is essentially the Mastriani Award applied to all its members, with a modification that the hours worked language shall provide for a daily 20 minutes shift overlap for all outgoing shift Lieutenants who will be replaced by an incoming shift Lieutenant. That final proposal is fair and reasonable and this Arbitrator should adopt it.

David Kehler gave compelling testimony as an expert concerning economic issues. Kehler testified that the last Contract that the Lieutenants received, which expired on June 30, 1999, did not keep up with inflation. Kehler further testified that if the Lieutenants Union were to receive the base percentage salary increases as contained in the Union's final proposal, those provided increases would not have kept up with inflation up to October 2001, the last CPI figures available to him when he testified. Thus, the Lieutenants' buying power, as measured not only by the Consumer Price Index but also by the Implicit Price Deflator, which is a second measure of inflation, has been reduced in the years from July 1, 1995 to date. The Union is comparing the terms of the past Contract and the present final proposal with the cost of living because it was during the last Contract that the State indicated that the Lieutenants should accept that Contract for State fiscal reasons and that the Lieutenants would "fare a lot

better" in the future Contract.

The Lieutenants' final proposal compares well with the cost of living that the Lieutenants are confronted with in New Jersey. If the Union's final proposal were adopted, the Lieutenants' buying power will remain about the same throughout the Contract as it was at the beginning of the Contract.

Kehler also testified that the increases requested in the Union's final proposal, when compared to the State's budgets, e.g. 22.9 billion dollars, "is a very tiny amount, and would not be considered significant...relative to the aggregate size of the State Government budget." Kehler further testified that the State can easily fund the Correction Lieutenants' final Contract proposal. The State's per capita income ranks second in the country and its median household income ranks first in the nation. Despite the recent economic downturn, there probably has been little permanent damage to the State's long term economic future. In addition, the citizens of New Jersey live in one of the highest cost of living areas in the Country and New Jersey has one of the highest cost of housing indexes in the United States, in that New Jersey State governmental employees are the second highest paid State employees in the nation.

While much has been made of the Lieutenants' overtime, it must be recognized that discretionary overtime is controlled by the DOC. Since discretionary income is in exclusive control of the DOC, it should not be a factor in this arbitration.

The settlement between the State and Internal Affairs Officers

also has no bearing on this arbitration proceeding. While those Officers received a 14-1/2% across-the-board increase from 1999 to 2003, the State further agreed to having these employees move up at least one range in their pay scale. This is a unique and unusual result that is inconsistent with that which was received by any other employee of the State.

There should be no premium sharing for medical coverage by the Lieutenants. The State Troopers are not compelled to participate in premium sharing. Neither are the Correction Officers. The Lieutenants should not be the only uniformed law enforcement unit to be compelled to participate in paid premium sharing for medical coverage. While a small number of plainclothes Internal Affairs Investigators premium share, those employees' hours and conditions of employment are more similar to office workers covered by non-uniformed Unions.

Concerning retroactive wages, the State has made an unprecedented proposal that there be no wage increases for more than three years in the Contract. If the term of the Contract is to commence on July 1, 1999, then all provisions of the Contract should commence on that date. The State seeks to punish the Lieutenants simply because they exercised their rights to proceed to interest arbitration. Moreover, the Lieutenants' have not delayed the arbitration process.

The Lieutenants should be provided with 500 days of Union leave. The Contract which just expired provides for 35 days of Union activity and the Union needs additional days. Lt. Coughlan

credibly testified that approximately 500 Union days per year are needed, and described the need for such days. The Union's request is reasonable when compared to Local 105 being awarded and given 800 days per year, with an additional 150 days being given to them by the Governor. Moreover, the Local 105 institutional representatives dedicate an entire week to Union business in every institution, an additional 3000 days.

The time in which disciplinary charges may be brought should be extended as provided in the Union's final proposal, that is, 45 days and 60 days for EEO complaints. The Mastriani Award provides for the same language as in the Lieutenants Union's final proposal.

Every member of the Lieutenants' Union should be treated the same as to wage increases and health benefits coverage. While the arbitration before Mastriani involved various local unions, one of which was PBA 105, the present entity before the Arbitrator is one Union with Lieutenants who are not only Correction Lieutenants but Lieutenants who are Conservation Officers, District Parole Supervisors, Lieutenant Campus Police, Lieutenants with health care facilities, etc. As these Lieutenants are no less law enforcement than the Lieutenants in Corrections, they should receive the same wage increases, health benefits coverage, etc. as do Correction Lieutenants. Nonetheless, as testified to by members of these disciplines, some receive base wage packages less than Correction Lieutenants.

The Lieutenants' Union should also be granted the uniform clothing allowance as provided for in its final proposal. That

proposal is exactly the same as in the Mastriani Award. Moreover, Lt. Coughlan testified that he spends more on his uniforms than that which is provided in the old Contract and that which is provided for in the Union's final proposal.

Many of the arguments made by the State need to be rebutted. Those rebuttals are as follows.

It is simply not so, as the State seemingly claims, that the Lieutenants "are far better compensated than other (New Jersey) State employees." State Police Lieutenants earn far more than Lieutenants represented by this Union. A Lieutenant's top base pay step as used by the State was \$69,569.62. The top base pay step plus average overtime which the State asserts for a hypothetical Correction Lieutenant is \$89,284.98. By contrast, State Police Lieutenants' top base pay step as of June 30, 2000, including the paid maintenance allowance, was \$92,910.18, without overtime. The disparity between the State Police Lieutenants and Lieutenants represented by this Union is even greater when comparing their base earnings from July 1, 2000 to June 30, 2004. What is even more insulting to Lieutenants in this bargaining unit is that the ordinary non-commissioned Troopers make more base earnings than they do. This disparity occurs despite the Troopers' highest pay range being Range 19 when the highest pay range for Lieutenants in this Union is Range 27. The Troopers therefore have a higher top base pay at a much lower pay range.

The State has no cogent argument as to why the State Police Troopers' Contract, the State Police Sergeants' Contract, and the

State Police Lieutenants' Contract should not be controlling of the outcome of this interest arbitration. Those three State Police contracts are so much better than the Union's final proposal yet the State simply ignores them. The State's arguments to distinguish Lieutenants involved in the instant proceeding from Trooper Lieutenants are simply not persuasive.

During the same time period covered by the years at issue in the instant case, State Police Lieutenants receive 17% increases while the Union's final proposal seeks 16% raise increases with split raises in the second and third Contract years. The State Police raises are even greater than the raises sought by the Union when compounded, because in the second and third years of the Lieutenants Contract the raises are splits, whereas the State Police raises are not, plus the State Police receive a 5% (split) raise in the 12 month time period commencing on July 1, 1999. In short, all three of the State Police contracts are far better than the Union's final proposal. Clearly, the Union is not seeking the best Contract of any State employees as claimed by the State. It is also misleading for the State to argue that every Contract it has negotiated provided for employee contributions, since none of the three State Police contracts provided for such. The State unpersuasively tried to explain why there were no "give backs" in the State Police contracts by citing "morale" problems. Moreover, the State Police contracts provide for a new educational compensation package that was not sought or offered to the Correction Lieutenants.

The State budgets that relate to the Union's final proposal has been balanced, therefore there is no budget crisis. The budget crisis exists on the pages of the State's brief and no where else. Moreover, the raises sought by the Lieutenants in this interest arbitration are insignificant when compared with the State's budget.

As has occurred in every State labor contract, the Contract provisions in question must commence on the initial Contract date, i.e., be retroactive. To do otherwise would produce a result that has never occurred in any other Contract in the history of New Jersey, at least not since 1980. The State has not been able to point to one State Contract that has not provided that any provisions do not commence with the beginning date of the Contract. To adopt the State's proposal would produce zero percent increases for the Contract fiscal years of 1999, 2000 and 2001, with an effective 10.8% raise for fiscal year 2002 since three months of that fiscal year will have expired. The State's position of no retroactive contractual benefits is arbitrary, capricious and unreasonable. It would also have a chilling effect on all other State public entity labor unions in their rightful pursuit of interest arbitration. It would create drastic labor unrest.

The State argues inconsistently about elimination of the shift overlap. It first argues that this is no more than the removal of language, not removal of the overlap, and then makes the argument that the overlap will be a savings when removed. However, the State did not produce any evidence that the DOC could remove the

Correction Lieutenants' overlap safely. Overlap removal for Lieutenants is a custody decision and not an economic decision. No custody evidence is in this record.

Overtime is not a consideration when determining increases in wages and benefits. The Lieutenants are compelled to work overtime at the DOC's discretion and are basically working mandated second jobs. As no one knows if the policy will continue in the future, mandated overtime in the DOC's discretion should not be a factor in the determination of what are fair raises and benefits for the Lieutenants.

The Mastriani Award is not controlling on the Correction Lieutenants' interest arbitration since the State Police Contracts were not before that arbitrator. If they had been, no doubt the outcome of his decision would have been different, since those Contracts would have established a pattern for law enforcement raises and benefits greater than those in the non-uniform employees' contracts. While the State argues that Mastriani was greatly influenced by the pattern established in the non-uniform employee contracts, the State shields the fact that the pattern established for the uniform law enforcement employees were the three State Police Contracts which had far better terms than the Mastriani Award. Arbitrator Mastriani therefore erred by indicating that 1-1/2% of the 16% raise Local 105 received was for elimination of the shift overlap. Local 105 was entitled to the 16% raise over four years without the removal of the overlap. State Police received 17% in raises over the same four year period,

and the State Police gave up nothing for the 17% raise.

Uniform law enforcement employees historically have received better wage increases and benefits than non-uniform employees. The Union's final proposal must therefore be compared with other law enforcement units such as the State Police Contracts.

The State has admitted that shifts need to exchange information. Therefore, the shift overlap must be retained since that is the most efficient method of exchanging information between shifts, and the DOC has not provided any alternative to the Lieutenants' shift overlap to exchange such information. An elimination of the Lieutenants' overlap will totally impede the flow of information not only to the Lieutenants but also to the Correction Officers. Such would be a disaster waiting to happen. Overlap will not occur in the future on an "as needed" basis as the State maintains. Rather, Lieutenants will be compelled to participate in shift overlaps without compensation. Unlike in the SLEC arbitration, the record in the instant case contains overwhelming evidence that the Lieutenants' shift overlap cannot and should not be eliminated.

The case law and statutory law clearly provides that if an employee must engage in activities before or after his/her normal eight hour work day, for his/her safety and/or job performance, then the employee must be paid whether or not the employer orders the employee to engage in the activities beyond the normal eight hour day. Such is the case herein concerning the Lieutenants' safety and job performance. The overlap must be contractually

continued for the safety and job performance of the Lieutenants.

The Lieutenants Union's Board should be placed on the first shift and receive part of the weekend off. The non-uniform custody staff works the day shift which is a Correction Lieutenant's first shift.

While the State argues that its final proposal is fair, equitable and promotes a pattern of uniformity, and will increase continuity and stability in employment, a comparison of the State's final proposal with other uniform law enforcement contracts proves otherwise. The State's final proposal is so grossly unfair and unconscionable that the State compelled the Union to litigate the Lieutenants' rights in this interest arbitration.

POSITION OF THE STATE

The State's final offer to the Lieutenants' Unit is consistent with the Statewide negotiations package for the 1999-2003 Contract term agreed to by over 50,000 Union represented State employees during 1999, and used as a template by Arbitrator Mastriani in his June, 2000 Interest Arbitration Award involving the SLEC, comprised of approximately 6,000 Corrections Officers and 1,000 other employees in various law enforcement titles. With regard to the viability of a Statewide negotiations package, Arbitrators J. J. Pierson and James Mastriani, in successive 1997 and 2000 interest arbitration Awards involving the SLEC unit, placed their respective stamps of approval on the State's practice of drawing on a negotiations strategy of uniform economic proposals to develop

consistency in results. Both men also approved of the practice of grouping corrections units with civilian units.

The "State Package" now applicable, developed during a time of relative economic prosperity in New Jersey, provides wage increases which more than adequately compensate all Correction Lieutenants. It also furthers the public interest by eliminating excessive and unjustifiable Contract terms which heretofore have been provided without legitimate reason.

An examination of the respective final offers of the State and Union, applying the statutory criteria, yields only one conclusion: the State's final offer is the only reasonable offer and must be awarded in its entirety. More specifically, the negotiations pattern heretofore established by the State provides for a four year deal with base wage increases (and/or equivalent bonus payments) of approximately 14.5% over the Contract term, and some form of employee contribution to offset wage increases. As testified to without contradiction by Philip Whitcomb, Director of the Governor's Office of Employee Relations and lead negotiator, each and every employee group with the Contract term of July, 1999 through June 2003 was offered and, with the exception of three supervisory correction and law enforcement units, has received a package designed around this wage and benefit scheme. Specifically, during July through September, 1999, the State's major Union-represented civilian employee groups, as well as the Corrections Internal Affairs unit, voluntarily agreed to wage increases of approximately 14.5% in exchange for contributions to

health insurance premiums of 25% for the traditional plan, 5% for the HMO plan, and 0% for the New Jersey plus plan. The timing of these settlements allowed the State to receive the benefit of employee contributions beginning in July, 2000, when the new health benefit contribution levels were implemented.

Shortly thereafter, in June, 2000, Arbitrator Mastriani issued his Award in the SLEC unit. This Award, which covers the closest comparators to the Correction Lieutenants, provided for aggregated increases of 16% for Corrections Officers and 14.5% for non-correction members. According to Mastriani, the difference in wage increases between the two groups was motivated by the fact that rank and file Corrections Officers were required to eliminate 20 minutes of contractually mandated shift overlap per day, resulting in savings to the State of over 12 million dollars per year. In light of this significant employee contribution, Mastriani reasoned that the additional wage increases fell well within the confines of the State package. Non-correction unit members, who did not have mandatory shift overlap provisions to eliminate, were awarded increases of 14.5% and were required to contribute to the cost of health benefits for newly admitted members of the unit. At the core of the Mastriani Award was a ratification of the State's consistent and uniform approach to negotiations.

Because the Mastriani decision was issued in June, 2000, only one year into the new Contract period, and at the beginning of the State's new fiscal year, the State was able to achieve significant savings as a result of the elimination of shift overlap - savings

of approximately 38.5 million dollars for the remaining three Contract years. Considering these savings, the balancing by Mastriani, based upon offsetting actual cost savings to the State with corresponding salary increases, preserved the State's pattern of settlement. It is precisely this type of balancing that is called for in the instant matter, and it is precisely this balancing that is undertaken by the State in formulating its final offer to the Lieutenants.

Because a considerable portion of the Contract term has passed, however, the balance in this case must yield markedly different results. Specifically, whereas in the Mastriani Award the additional increases to base salary were awarded as a result of substantial savings actually received by the State over three of four Contract years, in the instant matter the State would not receive the benefit of the elimination of shift overlap until the fourth year. Indeed, based on the realities of interest arbitration, the State is not likely to see this elimination take effect until the end of 2002, leaving only six months remaining in the Contract. Consequently, in order to preserve the uniform approach to negotiations developed and successfully implemented by the State in 1995 and 1999, the interest Arbitrator in the instant matter must offset any increase in base salary by the actual cost to the State of providing shift overlap to Corrections Lieutenants for three and one-half of the four Contract years. Otherwise, there will cease to be a State pattern, as the Lieutenants' unit will have obtained a wage and benefit package far superior to that

of their approximately 56,000 State/Union-represented employee counterparts who either agreed to or were awarded the State package.

The State's offer proposes to eliminate shift overlap as soon as possible after the Award is issued, require health care contributions from all Lieutenants, both correction and non-correction, and limit uniform allowance payments to January, 2002 forward, in return for an Award of 14.5% non-retroactive wage increases. Accordingly, Lieutenants will still receive base wage increases of 14.5% (15.4% compounded) thereby keeping pace with other State employee groups, but will not be provided any retroactive payments in light of their continued receipt of shift overlap payments during at least three and one-half of four Contract years.

Any result awarding the Lieutenants more than the established State pattern will most assuredly have a destabilizing effect on the work force, will promote labor unrest, and will be unfair not only to the State, but also to the many State employees who accepted or were awarded the State package in 1999 and 2000, and who have made employee contributions for the past two and one-half years. Any deviation from the State pattern would therefore not be in the interest or welfare of the public. Such a result would permit Lieutenants to circumvent the uniform approach developed by the State on behalf of its taxpayers. This approach was developed in order to create a more balanced and equitable system of collective negotiations for all employee groups, both civilian and

law enforcement. This approach, both for the 1995 and 1999 negotiations, affirmatively and adamantly rejects the outdated notion that law enforcement, or interest arbitration units, should receive more than civilian units simply because they have recourse to a statutorily binding arbitration procedure.

The package awarded to the Lieutenants by this Arbitrator cannot and should not be formulated without consideration of the current condition of the State's economy. Unlike when Mastriani rendered his Award to Corrections Officers, there is no question but that the State is in the midst of a severe financial crisis. While Mastriani considered the State's economy at the time of his Award to be "booming", it is anything but booming now. The State is currently operating under the most serious budget shortfall in its history, requiring drastic cost cutting measures throughout every department of State government, including line-by-line analysis of department budgets, hiring freezes and layoffs of certain unclassified employees. In addition, the State has had to "pay down" its budget surplus below all previously established levels.

When resolution of contractual negotiations is delayed, both parties run the risk of being adversely effected by changes in economic conditions. In the instant case, an economy which was considered "booming" two years ago is now severely suffering. The Union must not be held exempt from such a deterioration in the economy. Nonetheless, the State is offering wage increases to Lieutenants which are still in line with the State pattern. The

Union, by contrast, is requesting greater economic benefits than received by any other unit of State employees to date, and is not willing to provide any employee contributions.

In order to assist the Arbitrator in undertaking the comparative analysis required by the Statute, the State has submitted necessary evidence. Examination of that evidence leads to one manifest conclusion - members of the Lieutenant unit: (1) are far better compensated than other State employees; (2) are the most highly compensated correction lieutenants in the United States by a considerable margin; and (3) are more generously compensated than their counterparts in both private and public sectors, generally. Moreover, the Union's relative standing will improve under the State's final offer. Any increases in wages or benefits to Lieutenants beyond those contained in the State's final offer is therefore completely unjustified and will serve only to exacerbate an already inequitable system.

The Union's economic demands would result in far more cost to the State than would occur if the State's final offer were granted. An Award of the State's final offer in this case is mandated by the loss of shift overlap and health benefits contributions savings, the adverse economic and budget realities in New Jersey and the necessity to maintain equity among the State employee bargaining units.

The Union's reliance upon the contract agreement reached between the State and State Police Lieutenants is misplaced. The Lieutenants in the instant case and State Police Lieutenants are

distinguishable from one another in many ways and, consequently, the Lieutenants' attempted reliance on the State Police settlement is fundamentally flawed and wholly unpersuasive. First, negotiation patterns for the two units substantially differ, both procedurally and substantively. For example, the term of all State Police contracts (including rank and file and superior officers) is different and historically has always been different than for Correction Officers, thereby resulting in an entirely different negotiation schedule. Second, although the Correction Lieutenants attempted to show similarities between themselves and State Police Lieutenants, no such similarities exist. The duties performed by Correction Lieutenants are custodial in nature, whereas the duties performed by State Police Lieutenants involve significantly more complex patrol, law enforcement and investigation functions. In addition, Correction Lieutenants have historically been compared to Correction Officers for purposes of settling terms and conditions of employment, not to State Police or State Police Lieutenants. In fact, a review of the evidence reveals that the Lieutenants' unit has traditionally received the same economic package, not as State Police or State Police Lieutenants, but as Senior Correction Officers, represented by Local 105. Finally, State Police Lieutenants are NL (non-limited hours) employees who, unlike Correction Lieutenants, do not receive overtime compensation for hours worked beyond eight in one day or 40 in one week. Consequently, not only do State Police Lieutenants receive less in wages, but State Police management has a great deal of flexibility

in scheduling State Police Lieutenants beyond their normal work week for any variety of reasons without incurring a single dollar in overtime expense. By contrast, Correction Lieutenants are entitled to pay at the overtime rate for every minute worked beyond their regular shift. Because of these profound differences between Correction Lieutenants and State Police Lieutenants, the State's agreement with State Police Lieutenants is simply not relevant to a determination of the relative merits of the State's and Union's final offers in the instant matter.

The compensation of Lieutenants in the current case has far exceeded increases in the cost of living and will continue to provide "real dollar gains" under the State's final offer. The State introduced compelling evidence demonstrating that Lieutenants have significantly outpaced the CPI since 1980, and will continue to do so under the State's final offer. Even excluding step and promotional increases, Lieutenants' across the board raises outpace the cost of living. Since 1980, Lieutenants have received compounded base wage increases totaling 206% (excluding increments) compared to a CPI increase of 89.9% over the same time period. The State's final offer continues this historic pattern of exceeding the cost of living. Given a CPI increase of 2.0%, 3.1% and 2.5% for 1999, 2000 and 2001, the State's final offer exceeds the cost of living index by 2.4%. Moreover, even the Union's own expert, David Kehler, testified that the CPI is a "standard measure" used by economists to gauge inflation and that it is appropriate to compare the rise in CPI over a period of years with the percentage

increases in one salary for that same period in order to assess that individual's buying power. The Union's determination to limit CPI analysis to the years 1995-1999 is entirely erroneous, as is each and every conclusion flowing therefrom.

The State's final offer promotes the continuity and stability of employment. The Union cannot seriously claim that its proposal is necessary to insure the continuity and stability of employment of unit members. The Union has presented no evidence which even suggests that unit members might leave State employment to seek better wages and benefits if their final offer is not awarded. No such evidence was presented because none exists, as there is no better compensation and benefit package offered for comparable work in New Jersey or elsewhere in the United States. In addition, the State offers an unblemished record of employment stability for Lieutenant unit members, as they have never suffered a layoff. Moreover, in light of the severe fiscal crisis currently facing the State, the continuity and stability of employment for all State employees may be eroded if the interest Arbitrator grants the Union any increases beyond those set forth in the State's final offer.

As the Statute requires that the Arbitrator consider the financial impact of the parties' respective offers, it is important to note that the State is currently in a budget crisis. This crisis compels the Arbitrator to act conservatively when it comes to spending the State's money. Indeed, as testified to by the State's Director of the Office of Management and Budget, Charlene Holzbaur, the State is operating under the most serious budget

shortfalls in its history, requiring drastic cost-cutting measures throughout every department of State government, including line by line analysis of department budgets, hiring freezes, layoff of certain unclassified employees, etc. In addition, the State has had to "pay down" its budget surplus below all previously established levels. Due to the depleted surplus, the State's bond rating has already been downgraded.

It should be noted that the State has a projected \$5.3 billion deficit for fiscal year 2003. Since Director Holzbaur testified, the fiscal year 2003 budget was completed and contains a \$6,000,000 shortfall and a budget surplus of only \$100 million. It is clear that the fiscal crisis in New Jersey has only worsened, making funding for any wage increases or other benefits more problematic. In light of these significant financial concerns, which place the State in a very different situation than existed in 1999 and 2000, the State's final offer to this unit, which is within the confines of the State package designated when New Jersey's economy was "booming", is more than fair.

The interest and welfare of the public is achieved by an Award of the State's final offer. As testified to by Philip Whitcomb, the State's overall negotiations' objectives in 1999 focused on providing a fair economic package to employees, while simultaneously providing for a level of employee contributions to help offset the costs of enhanced employee wages and benefits. Hand in hand with these general objectives was the overriding desire to maintain equity among employee groups, and to insure that

the public money was not misspent on benefit with no logical basis. This approach has been praised by other arbitrators, including J. J. Pierson.

If the Arbitrator awards the Union's final offer, he will be providing the Union better Contract terms than received by any other State unit, simply because the Union held out the longest. This result would not only offend the principle of uniformity espoused by Pierson and Mastriani, it would create a dangerous precedent of rewarding employee representatives for their unwillingness to accept a pattern of settlement. Indeed, the message sent to employees will be that failing to accept an established fair pattern of settlement will be rewarded with the most generous economic package of any of the State's negotiation units. Such a result is unconscionable and clearly outside the public interest and welfare.

As to wage increases, stripped to its essence the non-retroactive 14.5% increase to both Correction and non-Correction Lieutenants is dictated by the State's inability to realize employee contributions from Lieutenants in a timely fashion and in a time frame in line with all other employee groups. Also due to the timing of the interest arbitration Award and the corresponding absence of any employee contributions since the expiration of the prior Contract, the State's final offer seeks payment towards premiums for both Correction and non-Correction Lieutenants. Any other result would reward Lieutenants for the delay, disavow the State of its right to receive employee contributions in accordance

with its established pattern, and ignore the adverse economic realities currently facing the State. Such a result would be unconscionable and not justified by the statutory criteria.

The State also properly includes in its final offer to the Lieutenants the elimination of shift overlap which is currently provided to every Correction Lieutenant on every shift regardless of need. Significantly, the State's proposal does not seek to prevent Lieutenants from working beyond their shift as overtime when there is legitimate need. The State's proposed elimination of mandated shift overlap for Lieutenants is identical to that for Correction Officers. Arbitrator Mastriani found that the "[e]limination of the shift overlap, by removing unnecessary overtime, would create greater efficiencies and is in the interest and welfare of the public." The State seeks the same efficiency improvements with the Lieutenants.

The Union attempts to divert the Arbitrator's consideration away from the true nature and purpose of the State's proposal regarding shift overlap by labeling the issue as one of safety and characterizing the State's goal as the elimination of a Lieutenant's ability to communicate necessary information from shift to shift. The Union's argument is painfully simplistic and completely without support in the record. Indeed, the Union misses the point of the State's proposal entirely. The State is not proposing the elimination of communication between Correction Lieutenants at shift change. Rather, in an attempt to promote efficiency, the State's proposal envisions that Lieutenants will

work shift overlap on the basis of need, rather than entitlement, and will be paid on a minute by minute basis at the overtime rate, for all time worked beyond the regular eight hour work day. Simply stated, the provisions of a mandatory 20 minutes of shift overlap for every Correction Lieutenant on every shift is wasteful, inefficient, and unnecessary.

The Union's own witnesses conceded that it is not necessary for every Lieutenant to work shift overlap. The only individual to testify that all Correction Lieutenants need shift overlap on every shift was Union President Coughlan, currently working as a training Lieutenant. His testimony was unpersuasive. Moreover, Union witnesses admit that the portion of the 20 minute shift overlap spent by Correction Lieutenants exchanging information with the oncoming shift "varies every day". In light of these admissions, it would be unjust for the Arbitrator to require the State to continue this costly and unnecessary practice while it is suffering the worst budget crisis in its history and while 6,000 rank and file officers have already given up the benefit without harm. The Union improperly seeks to perpetuate the unjustified expense of contractually mandated shift overtime, which costs the State approximately \$1,342,507 per year and constitutes approximately 22% of the already exorbitant overtime costs attributable to this unit of only 310 employees.

In support of its position that contractually mandated shift overlap can be eliminated without harm, the State presented the compelling testimony of Scott Faunce, Deputy Commissioner of the

Department of Corrections. Faunce testified that the 20 minutes of shift overlap after every shift was unnecessary and wasteful. He also disputed the Union's claim that such a contractual provision is necessary to communicate effectively information between shifts or maintain the safety of officers. Faunce further testified that the routine information which must be exchanged between outgoing and incoming Correction Lieutenants could easily be relayed in ways other than shift overlap. Finally, Faunce specifically testified that the State's proposal would not impact negatively on the safety of any officer, nor would it impede the effective flow of information between shifts. Indeed, since elimination of shift overlap for Correction Officers, there has been a decrease of crime within institutions.

The testimony of Gary Hilton, called by the Union in opposition to the elimination of contractually mandated shift overlap, failed to make the Union's case. A thorough review of Hilton's testimony reveals only that in his opinion Correction Lieutenants, in general, must exchange information from shift to shift. The State has never disputed the need to exchange information between shifts. In addition, when specifically asked whether the elimination of contractually mandated shift overlap would impact negatively on the safety of staff and/or inmates, Hilton deliberately limited his responses to the possible effects of such a change at the Monmouth County Jail where he is currently Director of Corrections and Youth Facilities. He passed absolutely no judgment regarding the effectiveness of such a change within the

New Jersey Correctional System. This omission by Hilton is significant in light of the marked differences between County Correctional facilities and State Correctional Institutions. Although the State acknowledges Hilton as an expert in the general area of corrections, his testimony specifically regarding the State's proposed elimination of contractually mandated shift overlap is incomplete and, therefore, fails to support the Union's position.

Shift overlap is, as it always has been, an economic benefit. The State's recent determination to eliminate it for Lieutenants, like it did for Corrections Officers, falls squarely within its pattern of settlement. Equity demands its elimination in this interest arbitration.

The Arbitrator should also grant the State's proposal to extend time limits for bringing disciplinary charges from the existing 30 days to six months from when the appointing authority becomes aware of the offense. The 30 days currently provided under the Contract is simply not sufficient to complete some disciplinary investigations. Even the Union, in its own final offer, acknowledges that an extension of time limits for bringing disciplinary charges is needed. The extension of the time limits it proposes, however, is insufficient to complete the necessary investigations.

In addition to granting the State's final offer in its entirety, the Arbitrator must also reject the Union's final offer in its entirety. The proposals for increasing uniform allowance

and leave for Association activity are not only outside of the pattern established by the State, they are completely unsupported by the record.

The Union's proposal that its current entitlement of 35 days of paid sick leave annually be increased to 800 days annually is an increase of 2,185%. Thomas Sawuey, Director of the Office of Employee Relations for the Department of Corrections, however, explained that none of the uses listed by the Union in support of their need for additional leave days is actually charged against their annual allotment of 35 Association days. Many activities are provided by the Department, without limitation, that are not chargeable against the allotted 35 Association days. The only days charged against the Union's allotted 35 days are those days used by the Union to conduct internal Union business in the absence of any management representative.

Rather than cite any specific need for additional days, the Union instead focused on their general desire to be treated in the same manner as the members of Local 105, which is provided with 955 Union days. Unlike the Lieutenants' Union, however, all of Local 105 activities are charged against those 955 days. Moreover, Local 105 is allotted 955 days in order to serve its membership of approximately 7,000 correction officers, as compared to the Lieutenants' Unit which is seeking 800 days to serve the needs of only approximately 340 members.

Sawuey testified that, based upon his experience, 35 days is more than adequate to accommodate the Union's need for leave to

attend to Association business. The Union completely failed to address or rebut this testimony, leaving the Arbitrator with only one reasonable result - rejection of any increase in Association days.

As to uniform allowances, the Union seeks an increase in the bi-annual payment of \$200 per officer over the course of the 1999 - 2003 Contract term, resulting in a total additional payout to each officer of \$900. Under the Local 105 Contract, Correction Officers receive only a one time increase in the bi-annual payment of \$25 over the 1999 - 2003 Contract term, resulting in a total additional payout to each officer of \$200. The Union has offered no evidence in support of its membership's need for a single dollar more than the existing bi-annual uniform allowance payment of \$805; nor has it presented any evidence to support its position that its membership should receive a greater uniform allowance than was provided to the rank and file Correction Officers under the 1999 - 2003 Contract. In the absence of any evidence on this issue, the Arbitrator has no choice but to reject the Union's proposal.

Finally, the Union has presented no evidence to support its proposal that Union Executive Board members be assigned only to first shift, with a part of the weekend off. The Arbitrator must therefore also reject this proposal. Moreover, the SLEC Contract does not set forth any set schedule for Executive Board members.

ANALYSIS

I have decided this dispute based upon a reasonable determination of the unresolved issues. I have given due weight to each of the statutory criterion, considering each one important and entitled to substantial weight unless otherwise specified.

As a result of this analysis, I make the following determinations: The guaranteed shift overlap will be completely eliminated effective immediately for Correction Lieutenants. Because of that elimination, wage increases of Correction Lieutenants will yield a total of 16% over four years and there will be no change in health benefits. Wage increases of the remaining members of the bargaining unit (Unit J) will yield a total of 14.5% over four years, with certain changes in health benefits taking place only for persons hired after the date of this Award. All wages will be fully retroactive. Clothing allowance for Correction Lieutenants will be increased to \$830 bi-annual payments. Unpaid Union leave will be increased to 105 days. Time limitations for imposition of discipline will be increased. All other proposals will be denied.

I now turn to an analysis of this Award pursuant to each of the individual statutory criterion.

Interests and Welfare of the Public

The interest and welfare of the public is best served by an Award which is based upon a reasonable determination of the issues involved. It is important to understand, however, that in

determining what is reasonable, and therefore fair to both the Lieutenants and State, the criteria I apply is not my own unrestricted sense of reasonableness and fairness. Rather, I am obligated to decide this case based upon the statutory criteria.

It is further important to understand how I am to apply that statutory criteria. The Statute sets forth eight different criteria, some with subdivisions. I am to give consideration to each criterion which is relevant for resolution of this specific dispute. Each relevant criterion is not, however, to be given equal weight in my decision making process. Rather, I am entitled, indeed obligated, to assign weight to each relevant criterion.

In order to determine which criterion is entitled to be weighed heavily, it is important to place this interest arbitration proceeding in the proper context. There were many bargaining units of State employees who, like the Lieutenants, had Collective Bargaining Agreements expiring on June 30, 1999. Of these units, only the Lieutenants, as well as units of Correction Sergeants and Correction Captains, have not yet achieved new Contracts. Units represented by CWA, IFPTE, AFSCME, AFT and FOP achieved new Collective Bargaining Agreements, running from July 1, 1999 to June 30, 2003, through negotiated settlements. A sixth unit, SLEC, which has separate components of Correction Officers represented by PBA Local 105 and non-Correction Officers represented by various other Locals, achieved a new Contract for the same time period through the Award of Arbitrator Mastriani. While the following summary of settlements and Award, as set forth in the State's

brief, does not cover every detail of every settlement and Award ², it is nonetheless generally instructive:

	CWA	IFPTE	AFSCME	FOP (Int. Aff.)	PBA (Local 105)	PBA (Non-Corr.)
<u># of Represented Employees</u>	<u>34,000</u>	<u>5400</u>	<u>8400</u>	<u>200</u>	<u>6000</u>	<u>1000</u>
<u>Date Settled/ Award Issued</u>	<u>7/23/99</u>	<u>8/4/99</u>	<u>9/28/99</u>	<u>10/10/99</u>	<u>6/30/00</u>	<u>6/30/00</u>
<u>FY 1999</u>	<u>2.5%</u>	<u>2.0%</u>	<u>2.5%</u>	<u>2.5%</u>	<u>4.0%</u>	<u>2.5%</u>
<u>FY 2000</u>	<u>2.0% (7/00)</u> <u>1.5% (1/00)</u>	<u>3.0%</u>	<u>2.5%</u>	<u>2.0% (7/00)</u> <u>1.5% (1/01)</u>	<u>2.0% (7/00)</u> <u>2.0% (1/01)</u>	<u>2.0% (7/00)</u> <u>1.5% (1/01)</u>
<u>FY 2001</u>	<u>2.0% (7/01)</u> <u>2.0% (1/02)</u>	<u>2.0% (7/01)</u> <u>2.0% (1/02)</u>	<u>2.0% (7/01)</u> <u>2.0% (1.02)</u>	<u>2.0% (7/01)</u> <u>2.0% (1/02)</u>	<u>2.0% (7/01)</u> <u>2.0% (1/02)</u>	<u>2.0% (7/01)</u> <u>2.0% (1/02)</u>
<u>FY 2002</u>	<u>2.0% (7/02)</u> <u>2.5% (1/03)</u>	<u>2.0% (7/02)</u> <u>2.5% (1/03)</u>	<u>2.0% (7/02)</u> <u>2.5% (1/03)</u>	<u>2.0% (7/02)</u> <u>2.5% (1/03)</u>	<u>4.0%</u>	<u>2.0% (7/02)</u> <u>2.5% (1/03)</u>
<u>TOTAL</u>	<u>14.5%</u>	<u>13.5%</u>	<u>13.5%</u>	<u>14.5%</u>	<u>16.0%</u>	<u>14.5%</u>
<u>Employee Contributions</u>	<u>Health contr. Beginning 7/2000</u>	<u>Health contr. Beginning 7/2000</u>	<u>Health contr. Beginning 7/2000</u>	<u>Health contr. Beginning 7/2000</u>	<u>Elimination of shift overlap eff. 7/2000</u>	<u>Health contr. For new hires eff 1/2001</u>

In order to place the Lieutenants' situation in its full context, it is also important to note that there were three units of State employees with Contracts expiring on June 30, 2000. All three of those units involved State Police personnel and all of

² For example, as further noted by the State, in addition to base wage increases, IFPTE members received a \$450 bonus in 1999 and 2000, and for all four years of the agreement, a formula based bonus for employees earning less than \$30,000 per year. In addition to base wage increases, AFSCME members received a \$450 bonus in 1999 and 2000, and for all four years of the Agreement, a formula based bonus for employees earning less than \$30,000 per year. The approximately 5000 AFT members received increases of 14.5% and were required to contribute to health benefits as of January 2000. Moreover, after entering into the 1999-2003 Agreement, the Internal Affairs Investigator received an upgrade in salary raises. The parties now dispute the connection, if any, there was between this upgrade and the Contract settlement for this unit.

these units have entered into new Collective Bargaining Agreements running from July 1, 2000 to June 30, 2004. The Trooper NCO's Agreement was entered into on or about September 15, 2000, the Trooper SOA Agreement was entered into on or about October 14, 2000 and the STFA Agreement was entered into on or about March 29, 2001. All three of these new Agreements provided for wage increases of 4.0% on July 1, 2000, 2001, 2002 and 2003 and did not require any "give backs" by bargaining unit members.

Given this wealth of context, I have determined that the criterion of comparison, and in particular internal comparisons with other State employees, is entitled to great weight in the case now before me. In addition, I determine that the single most important piece of evidence in making these internal comparisons is the Award issued by Arbitrator Mastriani involving the State and SLEC. The SLEC bargaining unit, like the Lieutenants unit, is largely, although not completely, comprised of employees who work in correctional facilities. The Correction Officers who comprise the majority of the SLEC unit and the Correction Lieutenants who comprise the majority of the Lieutenants unit therefore share similar working conditions and work in similar environments. They also work with the same inmates and face similar dangers arising from the criminal behavior of those inmates. It also appears that the non-Correction Officers in the SLEC unit and the non-Correction Lieutenants in the Lieutenants unit likewise share similar working conditions and work in similar environments.

Moreover, Arbitrator Mastriani gave close consideration to the

pattern of settlement which he found concerning the other units of State employees which had Collective Bargaining Agreements running from 1999 to 2003. Arbitrator Mastriani was able to do this because these other units had resolved their Contracts before he wrote his Award. Indeed, Arbitrator Mastriani was careful to note that he structured his Award to fall within a pattern of settlement involving other State employees, as he considered such an internal pattern to be a legitimate consideration worthy of great weight.

This is an important component of the Mastriani Award. It is well settled that an internal pattern of settlement is an important consideration in interest arbitration. While no criterion is alone entitled to controlling weight, an internal pattern should not be lightly disregarded.

I reject contentions by the Union that the Mastriani Award is not entitled to substantial weight because it was written prior to the State Police settlements occurring. As the State Police settlements involve years which in part overlap the years involved in the instant case, they must be, and will be, considered in my decision. Nonetheless, as the Mastriani Award covered years which identically coincide with the years at issue in the instant case, on this basis the Mastriani Award is entitled to greater consideration than the State Police settlements.

Moreover, I find that the working conditions of the Correction Lieutenants are more akin to the working conditions of Correction Officers than they are to State Police personnel. While those individuals who work in correctional institutions and within the

State Police are both law enforcement personnel, they do not share the same working conditions or work in similar environments. They do not deal with criminals in similar fashions and therefore do not share similar dangers arising from the criminal propensities of those persons. While there may be disagreement about whether Correctional or State Police personnel have the more difficult and demanding jobs, the undisputed fact of the matter is that their work is substantially different.

While I recognize that Correction Lieutenants and State Police Lieutenants have certain similarities due to their common supervisory status, those commonalities of interest do not make them better suited for comparison purposes than the commonality of working conditions shared by Correction Lieutenants with Correction Officers. This conclusion is well supported by consideration of empirical data.

More specifically, over an extended period of time, the Correctional Unions have adhered closely to a pattern of settlement involving economic issues. Since at least 1980, the SLEC unit and the Lieutenants unit have received identical wage increases in every year. The same thing can be said concerning comparisons of wage increases for the Lieutenants with Corrections Captains and Sergeants. Although Correction Captains were not organized prior to 1993, between then and when their last Contract expired in 1999, wage increases received by Captains and Lieutenants were identical. Similarly, since 1980, in virtually every year Corrections Sergeants have received the same wage increases as Lieutenants.

The same comparability holds true for the Correction Internal Affairs unit. The same pattern does not, however, hold true for State Police employees in general, and State Police Lieutenants in particular. A long-term comparison of wage increases received by Trooper NCOs, Trooper SOAs, and STFA reveals that they have generally received somewhat higher wage increases than the Lieutenants. Clearly, the parties themselves have over the years acted in a fashion demonstrating that the most direct comparisons to be made with Correction Lieutenants is with the other correctional units rather than any of the State Police units, including State Police Lieutenants.

Having placed the Mastriani Award in its proper context, I now turn to an analysis of the Award itself. As previously noted, Arbitrator Mastriani found there to be a pattern of settlement among State employees and was careful to place his Award within that pattern. In addition, it is apparent that Arbitrator Mastriani found that for the bargaining unit before him there were three interrelated primary issues: shift overlap, wages and health care.

More specifically, Arbitrator Mastriani wrote that "[t]he State accurately quotes the [1995-1999] Award as recognizing the importance of a pattern of settlement and this assertion must be accorded great weight". Arbitrator Mastriani then noted that the "State Package" involving other settlements for Contracts covering the 1999-2003 period provided increases totaling between 13.5% and 14.5%, with the only State law enforcement settlement [Internal

Affairs] totaling 14.5%. Arbitrator Mastriani then determined that the wage increases for members of the SLEC bargaining unit (non-Correction Officers) who did not have shift overlap [F Unit] should "...be set at the highest levels of the State Package at 14.5%...". As to health care, although Arbitrator Mastriani did not award any change in health benefits for current employees in the F Unit, he did direct that any new employees hired into the F Unit after the date of his Award would have a new health benefits plan containing certain changes favorable to the State. Concerning the members of the SLEC bargaining unit (Correction Officers) who did have shift overlap ["L Unit"], Arbitrator Mastriani determined that the contractual entitlement to this benefit should be completely eliminated. He reasoned that "[e]limination of the shift overlap, by removing unnecessary overtime, would create greater efficiencies and is in the interest and welfare of the public." Arbitrator Mastriani then reasoned that due to the economic impact of guaranteed shift overlap being eliminated, "...the salary and benefits provided in this Award must exceed the salary increases and benefits in the State Package to provide a fair exchange for the elimination of the shift overlap...". For this reason, Arbitrator Mastriani determined that Correction Officers in the L Unit would receive wage increases totalling 16%, rather than 14.5%, from 1999 to 2003. Finally, after giving due consideration to the elimination of guaranteed compensation for shift overlap overtime, as well as other factors, Arbitrator Mastriani determined not to make any changes in health benefits for L Unit members, including

those who would thereafter join the bargaining unit.

I find Arbitrator Mastriani's Award to be a reasonable determination of the issues before him. I have read his Award in its entirety and note that he considered each and every one of the statutory criteria in reaching his conclusions. I further conclude that Arbitrator Mastriani logically and fairly applied each criterion in making his determination.

It follows that the Mastriani Award provides a framework for my Award. The same three interrelated primary issues addressed by Arbitrator Mastriani - shift overlap, wages and health care - are present in the instant case. While the record of testimony and evidence before me is of course not the same as that before Arbitrator Mastriani, and I of course cannot now structure an Award which has terms and impact identical to that of the Mastriani Award, that Award still provides the best framework for analyzing the case before me.

Concerning those Lieutenants in this bargaining unit who do not have shift overlap [J Unit], I conclude that they should, like their counterparts in the SLEC, receive the highest level of wages applicable under the pattern of settlement for State employees with Contracts running from 1999-2003. More specifically, they shall receive wage increases of 14.5% over the term of the new Agreement, payable under the same schedule as that received by SLEC members. As to health benefits, those Lieutenants in the bargaining unit who have not had shift overlap will retain their current health care coverage. For individuals hired into such Lieutenant positions

after the date of this Award, however, a new health care plan will be made available to them, containing the same components favorable to the State, as that received by their counterparts in the SLEC unit. While actual cost savings to the State cannot now be calculated due to this change, it is likely that over time it will generate some benefit for the State.

Concerning the Correction Lieutenants in the bargaining unit who do have contractually guaranteed shift overlap, the pivotal question is whether or not this economic benefit should be discontinued. This is a serious issue with important implications for all concerned.

After considering all the evidence and argument on this issue, I am persuaded by the State that Article XXVI (Hours of Work) should be modified so as to remove the guarantee of twenty (20) minutes of shift overlap each day. It is important to understand, however, that I am not hereby ruling that shift overlap should not occur. Rather, I am simply concluding that the guaranteed aspect of shift overlap should be discontinued. The record is clear that not every Correction Lieutenant who currently receives shift overlap for 20 minutes each day in fact needs that period of time each day to communicate effectively with colleagues on the incoming shift. It follows that the inevitable result of continuing the guaranteed shift overlap which currently exists would be to perpetuate a system that requires the State to pay for unnecessary overtime. Conversely, as stated by Arbitrator Mastriani, "[e]limination of the shift overlap, by removing unnecessary

overtime, would create greater efficiencies and is in the interests and welfare of the public". While it would be difficult to require the State to maintain a costly and inefficient benefit under any circumstances, that is particularly true given the State's current fiscal condition.

Furthermore, the evidence does not establish that the Correction Lieutenants must maintain guaranteed shift overlap for safety reasons. I recognize that the Union called an impressive array of witnesses testifying as to the benefit of shift overlap, with all expressing the opinion that shift overlap should be continued so as to provide for effective communication between shifts. Nonetheless, while everyone agrees that effective communication between Correction Lieutenants on shifts is necessary for proper operation of the correctional system, everyone does not agree that contractually guaranteed shift overlap is the only way to meet that need. Indeed, Scott Faunce, Deputy Commissioner of the Department of Corrections, explicitly testified that in his opinion the correctional facilities could be run effectively and safely without contractually guaranteed shift overlap. Faunce further gave assurances that if contractually guaranteed shift overlap was eliminated but a Lieutenant requested to work overtime to convey necessary information to the oncoming shift, the request would be approved if the Lieutenant justified the need.

I reject the Union's assertion that Faunce was not a competent witness. At the time of his testimony, Faunce was employed by the Department of Corrections in a high administrative position with

responsibility for matters such as facility administration. He also recently held the position of Head Administrator in the Bayside Correctional Facility, serving in that position after shift overlap was eliminated for Correction Officers. While it is true, as stressed by the Union, that Faunce's testimony concerning a plan for communication between shifts in place of guaranteed shift overlap was not an official DOC plan, Faunce nonetheless testified as a DOC representative. Moreover, it appears that at the time Faunce testified there was no overall DOC approved plan because guaranteed shift overlap had not yet been eliminated. Furthermore, the State apparently intends to allow some latitude to individual correctional facilities as to how it will provide for effective communication between shifts after elimination of guaranteed shift overlap.

While it is also true that Faunce's suggested plan appears to have flaws, it does not follow that in practice any plan would be unworkable in the absence of guaranteed shift overlap. Indeed, evidence presented concerning practices in other correctional facilities outside the State system indicates that a correctional system can be run without Correction Lieutenants receiving contractually guaranteed shift overlap. More specifically, both the Union and State presented surveys they had done which contained information on shift overlap or lack thereof in other correctional systems. While both surveys had shortcomings in methodology and/or ambiguity as to their conclusions, in general terms the findings of these surveys were not incompatible. More specifically, both

surveys revealed that while shift overlap exists in a number of correctional systems, there are also a number of correctional systems where contractually guaranteed shift overlap for Correction Lieutenants does not exist.

Insofar as the State's system is concerned, no one can now say for certain how communication between shifts will work at every facility until guaranteed shift overlap is actually eliminated. What is now certain, however, is that if mandated shift overlap is not eliminated and the State is not given the opportunity to run the Correctional system without it, the State will continue to be obligated to pay large amounts of overtime, involving considerable costs, regardless of the situation and regardless of whether on any individual day a specified amount of overlap is needed.

In this regard, State Exhibit 61 is instructive as to the extent of possible cost savings associated with the elimination of contractually guaranteed shift overlap. While this document does not accurately reflect what will be the true cost savings potential resulting from elimination of contractually guaranteed shift overlap, as it includes certain assumptions not realistic in practice, such as Correction Lieutenants working 52 weeks a year, it nonetheless demonstrates that the amount of money involved is substantial. Even if more realistic assumptions are made, such as a Correction Lieutenant working 47 weeks a year, in 1999 a Correction Lieutenant at top step of the guide still could have made close to \$4,000 in overtime pay attributable to the shift overlap.

For all these reasons, I am persuaded by the State that it should now be given the opportunity to run its correctional facilities without the financial burden of contractually guaranteed shift overlap. It should be clearly understood, however, that elimination of mandatory shift overtime will not result in the elimination of paid preparation time which Correction Lieutenants who work as shift Commanders currently receive. Preparation time will continue to be received by a substantial number of members in this bargaining unit and will continue to be an important vehicle for communication of information from shift to shift.

It is also important to note that even with the elimination of guaranteed shift overlap the State remains obligated to follow proper pay practices and maintain safe working conditions. Correction Lieutenants cannot be required to work shift overlap for free. Any system put in place by the State must require that Lieutenants are paid for time they are directed to work, and the State has given assurances that this will in fact be the case. In addition, Article XXXIV (Safety) specifies in paragraph A that the State will continue to make safe and reasonable provisions for the safety and health of its employees during their hours of employment and will provide a reasonably safe and healthful place of employment. Furthermore, Paragraph B, Paragraph D of Article XXXIV specifies that Lieutenants are not required to work under conditions which are determined to present an imminent hazard to safety.

Having determined that mandatory shift overlap should be

eliminated, I now turn to the issues of wages and health benefits for Correction Lieutenants. Because of the elimination of shift overlap, Correction Lieutenants, like their counterparts among Correction Officers, are entitled to receive salary increases which exceed the salary increases of the pattern for new Contracts covering the 1999-2003 period. More specifically, Correction Lieutenants are entitled to wage increases of 16% over that time, with individual increases being credited according to the same schedule as Correction Officers. In addition, in light of the elimination of contractually guaranteed shift overlap, Correction Lieutenants, like Correction Officers, will not be required to have any changes in current health coverage. This includes future Correction Lieutenants as well as current ones.

This brings me to the question of whether or not the wage increases I have granted should be made retroactive. I also believe this to be a serious issue with important implications for all concerned.

After considering all of the evidence and argument on this issue, I am persuaded by the Union that all wage increases should be fully retroactive. While I recognize that the State has also made legitimate arguments against retroactivity, including but not limited to the adverse economic and budget realities in New Jersey, the circumstances of this specific case still compel me to conclude that the arguments in favor of retroactivity must prevail.

More specifically, every settlement involving State employees which is of record in this matter has, like my Award, provided for

full retroactivity of the wage increases. This holds true for all of the 1999-2003 Contract settlements, notwithstanding that all of these Contracts were resolved after expiration of the predecessor Contracts on June 30, 1999.

Moreover, the Mastriani Award itself provides for full retroactivity of wage increases. Arbitrator Mastriani made this determination notwithstanding that he did not issue his Award until June 30, 2000 and, according to testimony presented at the arbitration hearing, other units began making health care contributions six months earlier, on January 1, 2000. While I recognize that over two additional years have now passed since issuance of the Mastriani Award, and that this passage of time has resulted in the loss of shift overlap savings for the State, this fact does not alter my conclusion that I, like Arbitrator Mastriani, should make wage increases fully retroactive.

Of considerable importance to me in reaching this conclusion is that I do not believe this to be a situation where the Lieutenants acted in bad faith for the purpose of delaying the elimination of an economic benefit. Rather, I believe that the Lieutenants pursued interest arbitration rather than entering into a voluntary settlement with the State because they honestly, although incorrectly, believed that they could persuade me to maintain guaranteed shift overlap in the new Collective Bargaining Agreement. Indeed, the Union presented extensive testimony, evidence and argument on the shift overlap issue. It's position was far from frivolous and I observed no evidence of the

Lieutenants seeking to delay or hinder issuance of this Award. The fact that I have respectfully disagreed with the Lieutenants on the shift overlap issue does not in any way negate the good faith with which the Lieutenants acted.

The Union argues persuasively that it could have a chilling effect upon the exercise of rights under the interest arbitration Statute were I here to find that wages were not retroactive. It is one thing to hold that a party which acts in bad faith to delay resolution on a new Collective Bargaining Agreement is not entitled to retroactive wages; it is quite another to find that a party which acts in good faith and does not seek to delay a proceeding is not entitled to retroactive wages. A realistic understanding of the realities of negotiations and the interest arbitration process leads to the conclusion that there will inevitably be times where, as here, there are delays in completing the process despite the good faith and best efforts of all those concerned.

Moreover, this is not a situation where since expiration of the old Contract the Correction Lieutenants have been reaping the benefit of a retained contractual provision without doing any service beyond that which they would have performed had the provision been promptly eliminated upon expiration of the old Contract. Rather, the Correction Lieutenants have actually worked an extra 20 minutes each day in order to receive the additional compensation which has come from working contractually guaranteed shift overlap.

Nor is this a situation where the State has received no

benefit from Correction Lieutenants working these additional 20 minutes per day. To the contrary, the State makes it clear that it has not been seeking to eliminate all shift overlap, only contractually guaranteed aspect of shift overlap, and that when it believes a legitimate need for shift overlap occurs, it will authorize it on an as needed basis. While it is now speculative how much shift overlap Lieutenants would have been authorized to work since 1999 if contractually guaranteed shift overlap had been eliminated upon expiration of the old Contract, it cannot now be said that no shift overlap would have been worked by the bargaining unit.

Finally, it is on the issue of retroactivity that it is fair and appropriate that I give consideration to the State Police settlements. While for reasons I previously set forth I have determined that the Mastriani Award is entitled to primary weight in determining the pattern of settlement for State employees during the 1999-2003 Contract term, it does not follow that the State can in the instant case completely avoid the existence of the State Police settlements. While the years involved in the State Police settlements are not identical to the years involved in the 1999-2003 settlements and Mastriani Award, three of the four involved years do overlap. While for reasons I previously set forth I believe that Correction Officers, not the State Police Lieutenants, provide the best internal comparison with the Correction Lieutenants involved in this proceeding, the State Police settlements, particularly State Police Lieutenants, are far from

irrelevant. It is therefore significant to me that the State Police settlements provided across the board wage increases of 4%, effective on July 1 of each of the four years of the Agreements, and that there were no "give backs" whatsoever. This provides further justification for making the Lieutenants wage increases fully retroactive, notwithstanding that the "give back" they have been required to make will not take effect until the present time.

For all these reasons, and for the reasons which follow elsewhere in this Award, the Award I have fashioned is fair and reasonable for all concerned in this proceeding. It therefore benefits the interest and welfare of the public.

Comparisons

Much of my analysis concerning the comparative criterion has already been set forth in the above section on the Interest and Welfare of the Public. In this section I do not attempt to repeat that analysis, but rather to expand it into areas of relevant comparisons which I have not previously addressed.

Concerning internal comparisons, the State has established that the Lieutenants are highly compensated. In 1999, the top base pay for a Correction Lieutenant was \$69,569.62. As 209 of the 281 Correction Lieutenants were at the top step of the Guide, 67 at Step 8, and the remaining 5 at Step 7, it is apparent that the average pay for a Correction Lieutenant was near the top base pay amount. In addition, the average overtime for a Correction

Lieutenant in 1999 was \$19,715.36.

Even if the Correction Lieutenant's overtime compensation is excluded from consideration, and only base pay is considered for purposes of comparison, the Lieutenants are still highly compensated when contrasted with other State employees. A review of the Collective Bargaining Agreements placed into evidence in this case reveals that with the notable exception of State Police personnel, the pay of Lieutenants exceeds that of other unionized employees in the State. Furthermore, the Lieutenants receive significantly more than other employees in comparable title ranges in the State system. The following chart, constructed by the State, which contrasts Correction Lieutenants with various State employees who do not receive extra compensation for work beyond eight hours in a day and 40 hours in a week, is instructive in this regard:

Title	Range	Top Base Pay (1999)	With OT
Correction Lieutenant	24	\$69,569.62	\$89,284.98
Asst. Deputy Public Defender 3	25	\$57,700.51	-
Clinical Psychologist 1	27	\$63,338.99	-
Engineer Structures Plans and Specs	27	\$63,338.99	-
Radiation Physicist 2	25	\$57,700.51	-

My Award will at the very least preserve the gap in base salary compensation between the Correction Lieutenants and other State employees. The Correction Lieutenants are receiving base salary increases totaling 16% over four years, which is 1.5% beyond the highest level of the "State Package" and 2.5% beyond the lowest

level of that package. Only the Correction Officers and State Police personnel will keep pace with the Lieutenants between 1999 and 2003. Moreover, while the Correction Lieutenants would by virtue of this Award lose in the future a sizeable portion of the overtime compensation attributable to guaranteed shift overlap, the Correction Officers have also lost that guaranteed shift overlap. It also must be recognized that, unlike most State employees involved in negotiations for a 1999-2003 Collective Bargaining Agreement, no Lieutenant who is currently in this bargaining unit will have a detrimental change in his/her health care coverage.

As persuasively argued by the Union, however, it is overreaching to contend that, without exception, the Correction Lieutenants are far better compensated than all other New Jersey State employees. State Police personnel receive compensation at least comparable to, and arguably superior to, that of Correction Lieutenants. According to a chart in an appendix contained in the State/State Police Lieutenants 1996-1999 Contract, the top step base salary as of June 20, 1998 was \$79,626.36, as of June 19, 1999 was \$82,413.32 and as of January 1, 2000 was \$83,649.52. These figures are of course higher than base salaries for Correction Lieutenants for the same time periods. Moreover, a "maintenance allowance" received by all State Police Lieutenants was in the amount of \$8,815.77 as of July 1, 1998, \$9,124.32 as of July 1, 1999 and \$9,261.18 as of January 1, 2000. When the maintenance allowance is coupled with the State Police Lieutenants' base wage, it appears that the total compensation of State Police Lieutenants

exceeded even the total compensation of the average Correction Lieutenant with overtime included. Furthermore, the relative compensation of Correction Lieutenants will in no way be disadvantaged under the new Collective Bargaining Agreements, as the State Police Lieutenants are receiving annual wage increases of 4%, with no "give backs", until 2004.

Turning to external comparisons, the record evidence reveals that Correction Lieutenants have been, and will continue to be, generously compensated. The testimony of the State witness George Camp, accompanied by a report titled "Comparative Analysis of the Terms and Conditions of Employment of Sergeants and Lieutenants in State and Federal Prisons", established that the Correction Lieutenants' wages and benefits are superior, in many instances far superior, to Correction Lieutenants in other States across the country. While the evidence in this regard may not be precise, and it is not totally clear that Correction Lieutenants in other jurisdictions perform precisely the same work as Correction Lieutenants in New Jersey, there can be no doubt the Correction Lieutenants in New Jersey are among the highest paid professionals who perform similar work. Moreover, there is no evidence that the Award I render will negatively impact upon the New Jersey Correction Lieutenants' superior standing relative to these other Correction Lieutenants.

Similarly, the evidence establishes that Correction Lieutenants are well paid compared to public employees in general. Instructive in this regard is the most recent wage survey compiled

by the New Jersey Department of Labor and distributed by PERC. The portion of that Report titled "New Jersey Average Annual Wages For Jobs Covered by Unemployment Insurance By Major Industries Division" reveals that between 2000-2001 there was an overall total government wage increase of 3.3%. It is also notable that these percentages were based on wages for 2001 that were far below those received by the Correction Lieutenants, specifically \$49,186 in federal government, \$47,920 in State government and \$43,714 in local government.

It is also notable that, despite the fact that numerous Collective Bargaining Agreements were placed into evidence involving public sector settlements which in whole or part covered the years 1999-2003, neither side has attempted to argue that economic terms similar to those I here award falls outside the general mainstream of these settlements and Awards. My own review of these documents confirms that the economic terms I do award generally falls within the economic mainstream.

Insofar as the private sector is concerned, the same New Jersey Department of Labor survey noted above reveals that between 2000 and 2001 the statewide private sector increase was just 1.2%, with the base 2001 salary being \$44,153.

In summary, I have given the comparison criteria great weight in reaching my Award. While the primary piece of comparative evidence is the pattern of settlement for 1999-2003 Contracts in general, and the Mastriani Award in particular, I have considered all relevant comparative categories in my analysis. On balance, my

Award comports well with this criterion.

Overall Compensation

An examination of the most recent State/Union Collective Bargaining Agreement reveals that bargaining unit members enjoy many benefits. Fringe benefits include a health benefits program, life insurance, pension program, vacations, holidays, personal preference days, administrative leave, special time off, compensatory time off, sick leave, leave of absence due to injury, special leave, uniform allowance, and tuition refund. As previously noted, the Lieutenants also are generously compensated in terms of wages, and I have determined to make the wage increases in this Award fully retroactive. It is within this context, as well as the context of the State's economic condition, that I consider the demands of the Union for increased compensation in areas other than wages.

Concerning Uniform Allowance, I have determined that Article XXXVI of the parties' Contract should be amended to update the schedule of payments and to provide an enhanced benefit to Correction Lieutenants. More specifically, the first paragraph of that Article will be amended to read as follows:

The State shall provide a cash payment of \$1435 on January 1, 2000, a cash payment of \$1435 on January 1, 2001, a cash payment of \$1435 on January 1, 2002 and a cash payment of \$1435 on January 1, 2003 to all employees in the unit who have attained one (1) year of service as of December 31, 1999, December 31, 2000, December 31, 2001 and December 31, 2002, with the exception of Correction Lieutenants.

In addition, Paragraph Three of this Article will be amended to read as follows:

In exception to the program outlined herein, Correction Lieutenants will be granted, in lieu of any uniform allowances, cash payments of \$830 in July, 1999; \$830 in January, 2000; \$830 in July, 2000; \$830 in January, 2001; \$830 in July, 2001; \$830 in January, 2002; \$830 in July, 2002 and \$830 in January, 2003.

Paragraphs two and four of Article XXXVI will not be amended and will remain in the new Collective Bargaining Agreement as set forth in the 1995-1999 Agreement.

The record evidence supports these changes to Article XXXVI. Lt. Coughlan testified that the bargaining unit could definitely use a higher uniform allowance than that which was provided in the old Contract. Moreover, the enhancement in benefits I have granted, and those I have refrained from granting, are consistent with the determination and rationale of Arbitrator Mastriani in his initial Award, as well as in his "Clarification of Interest Arbitration Award", issued December 17, 2000.

My determination to make the benefits set forth in Paragraphs One and Three retroactive to July, 1999 is in part similar to my reasoning for making wage increases retroactive to July, 1999. More fundamental, however, is the fact that since 1999 there has been no diminution of these uniform requirements for which the Uniform Allowance benefit is provided. It therefore logically follows that the uniform benefit should be provided to bargaining unit members during all years of the Contract.

Finally, the increase in benefit for Correction Lieutenants set forth in Paragraph Three of Article XXXVI will be limited in

cost to the State of \$50 per year for each Correction Lieutenant in the bargaining unit. Based upon 281 Correction Lieutenants as of July 1, 1999, the initial adjustment is \$14,050 for the bargaining unit. While I once again recognize that all new expenditures are significant to the State and its taxpayers, I have here limited the financial impact of the \$25 increase I have granted in Paragraph Three by making what was a constant \$805 bi-annual payment a constant \$830 bi-annual payment over the term of the Agreement. If, as the State feared, I had granted eight successive increases of \$25 culminating in a \$200 increase, the financial impact would have been far more severe.

Concerning Union Leave, the Union's proposal is "same days of leave as PBA Local 105 Contract". Article XXVI of the SLEC Contract currently provides in Section A for 955 days of leave of absence with pay and in Paragraph E for 400 days of leave of absence without pay. While the Union's proposal understandably focuses on an increase in the leave of absence with pay, it is incumbent upon me to also consider the number of days provided for leave of absence without pay.

I reject the Union's request for an increase in paid Union leave, as provided in Paragraph A of Article XXV, beyond the 35 days currently allotted. In this regard, it must be recognized that while Arbitrator Mastriani increased the overall number of paid Union leave days for the SLEC, he did not thereby simply grant a Contract enhancement. Rather, he considered this issue within the context of Article VIII, Section B of the State/SLEC Contract,

which provided for unlimited paid release time to attend to day to day Union business. The State proposed to eliminate this provision for unlimited paid release time and replace it with more generous Union leave. Arbitrator Mastriani endorsed that proposal, concluding that "[s]uch a modification would balance the PBA's need to represent its employees with the State's interest in cost savings and efficiencies and would therefore be in the interest and welfare of the public." No similar considerations of cost savings and efficiency are present in the Union's proposal to increase the number of paid Union leave days. Rather, the Union's proposal is simply for an enhancement of this benefit at full cost to the State.

Moreover, the State argues persuasively that in any event comparisons with the number of paid leave days received by SLEC are not an appropriate basis to increase the number of paid leave days for the Lieutenants Union. While the SLEC receives a far greater number of days, it has a far greater number of members. Testimony further established that the Union and the SLEC are not required to use their paid Union leave days for the same purposes, further negating any legitimate comparisons before the two groups.

Indeed, it appears that there has not been complete clarity of the purposes for which the Union is required to use paid leave days for Union business. As noted by the State, Thomas Sawuey, Director of the Office of Employee Relations for the Department of Corrections, testified that the following activities are provided by the Department, without limitation, and are not chargeable

against the allotted 35 Association days: 1) meeting with management representatives; 2) grievance meetings; 3) negotiation meetings; 4) departmental disciplinary hearings; 5) Weingarten interviews; 6) interest arbitration hearings and; 7) representation at appeals to the Merit System Board and/or the Office of Administrative Law. Sawuey further clarified that the only days charged against the Union's allotted 35 Association days are those days used by the Union to conduct internal Union business in the absence of any management representative, such as "monthly Union meetings with the Union membership or Executive Board meetings or things of that nature."

I conclude that there is insufficient justification to require the State to bear the cost of increased paid Union leave for these purposes. As I have previously stated, given the State's current fiscal condition any new expenditure of money cannot be imposed lightly. Accordingly, Article XXV, Section A of the Contract shall continue to provide annually for 35 days of leave of absence with pay, with the only changes to this provision being the updating of years involved.

In response to the Union's concerns, however, I will provide for an increase in the number of days allotted in Paragraph E of Article XXV for leave of absence without pay. That provision has previously provided for 35 days of leave of absence without pay every year for delegates of the Association to attend activities approved by the State. An increase of 300% in the number of unpaid leave days allotted, to 105, will enable the Union increased

flexibility to conduct its business without requiring the State to directly bear the cost of that improvement. This modification will balance the Union's need to represent its members with the State's interest in avoiding direct additional expenses and will therefore be in the interest and welfare of the public.

Stipulation of the Parties

There were no substantive stipulations of significance between the parties other than the length of the new Contract. Accordingly, I have not afforded weight to this criterion.

Lawful Authority of the State

The Award I have granted will not require the State to exceed its lawful authority. Accordingly, I have not granted this criterion weight.

Financial Impact on the Governing Unit, Residents and Taxpayers

The increases I have awarded, yielding 16% over four years for the Correction Lieutenants and 14.5% over four years for the other members of the bargaining unit, will in absolute terms have a negligible impact upon the State's overall budgets during the years at issue. As testified to by David Kehler, when compared to New Jersey's budgets, which are in excess of 23 billion dollars, wage increases of 4% or less per year for the Lieutenants are "...a very tiny amount, and would not be considered significant... relative to the aggregate size of the State government budget."

The Union also has established that the State has the ability to fund the increases I have awarded. The testimony of Kehler, which on this point was not disputed by the State's primary witness on finances, was that the State's budget has sufficient flexibility in funds to pay for this increase.

The Union further correctly notes that the 2002 and 2003 fiscal year budgets have been balanced. This alone is hardly surprising or probative of the State's true fiscal condition, however, as the State is required by law to have a balanced budget. The true test of the State's fiscal condition is not whether budgets are balanced, but what it was necessary for the State to do in order to achieve that balance.

After considering all of the steps recently taken by the State, I reject the Union's assertion that a budget crisis exists nowhere except on the pages of the State's brief. While the budget crisis is richly detailed in the State's brief, it was the testimony of Charlene Holzbaaur, Director of the Office of Management and Budget (OMB) for the State, which largely established the State is currently facing extraordinary fiscal pressures.

More specifically, as set forth in the State's brief, Holzbaaur testified that the State is operating under the most serious budget shortfalls in its history, requiring drastic cost cutting measures throughout every department of State government, including line-by-line analysis of departmental budgets, hiring freezes and layoffs of certain unclassified employees. In addition, the State has had

to "pay down" its budget surplus below all previously established levels. According to Holzbaur, budget shortfalls for fiscal years 2002 and 2003 are the largest they have ever been in New Jersey history.

Holzbaur further testified that in order to address this shortfall, the State has needed to reduce expenditures for fiscal year 2002 by \$3,000,000,000. As a result, the State required the State colleges and universities to forego a portion of the appropriations that they had been promised in fiscal year 2002; diverted money away from several fund sources; undertook a line-by-line analysis with each department's budget to look for areas where there might be cuts or costs that might be delayed or diverted to subsequent years; and, instituted a statewide hiring freeze, with the exception of law enforcement and institutional direct care employees. In addition to these measures, the State was forced to spend approximately \$800,000,000 of its budget surplus, reducing it from \$1,300,000,000 at the close of fiscal year 2001 to a projected \$500,000,000 by the close of fiscal year 2002. Holzbaur testified that while rating agencies like to see anywhere from a 4.5 to 5.5% surplus, \$500,000,000 represents only a 2% surplus.

With regard to the projected \$5,300,000,000 deficit for fiscal year 2003, the State has enhanced revenues by \$2,900,000,000 and curtailed spending by \$2,400,000,000. As to curtailment of spending, OMB has required each department to come up with management efficiencies, i.e. reduce spending by 5%. In addition, a continued hiring freeze was imposed, along with a freezing of all

management increases. Furthermore, the State withheld funding from municipalities and local school districts. Nonetheless, it is projected by OMB that the surplus at the close of fiscal year 2003 will be only \$525,000,000.

Thus, even if I use the fiscal figures as testified to by Holzbaur and not, as the State urges, fiscal numbers concerning fiscal year 2003 which have been developed since her testimony and purportedly reveal that the State's fiscal situation has worsened, it is apparent to me that the State now faces severe financial pressures. Clearly, there is a different fiscal situation now than existed several years ago.

As to the total net economic changes, on certain matters in dispute I have made calculations and assumptions which are favorable to the State so as to illustrate that the amount involved in my Award is an amount which, even given the State's economic condition, will not have undue economic impact in relationship to the State's overall budget. More specifically, I have used the State's costing model as set forth in State Exhibits 63A and 63B, with 63B being modified to reflect the fact that for Unit J I have granted wage increases yielding 14.5% rather than the 16% which had been requested by the Union. These models account for across the board increases in dollars, deferred across the board increases in dollars, and contain a proxy increment of 1%. Among other information, State Exhibits 63A and 63B reveal that the total additional salary payment in the first year of the new Contract will be approximately \$1,027,000; in the second year approximately

\$879,000; in the third year approximately \$1,141,000; and, in the fourth year approximately \$1,430,000. In addition, approximately \$23,000 will be chargeable in the first year of the successor agreement.

I recognize, of course, that the retroactive wage increases in this Award will also have an impact upon overtime compensation. Because the Lieutenants work a considerable amount of overtime, as detailed in State Exhibits 52A/B, 53A/B and 54A/B, this is a considerable cost. For example, State Exhibit 52A/B established that in calendar year 1999 Correction Lieutenants received \$6,072,330.35 in overtime wages. When deductions from this amount are made for money earned prior to the new Collective Bargaining Agreement taking effect on July 1 of that year, the 4% increase in wages results in increased overtime expense of approximately \$113,500 in the first six months of the new Contract. In the following years, overtime costs will likewise increase due to the wage increases. Nonetheless, the amount of money involved still will not have a significant financial impact upon the State's budget.

As to the monetary implications of the removal of guaranteed shift overlap from the Contract, the actual cost savings cannot now be calculated with any precision. It does not follow from removal of the contractual guarantee to shift overlap that henceforth no shift overlap will be worked by the Correction Lieutenants. To the contrary, the State has represented that it will authorize shift overlap for Lieutenants when it believes it to be necessary. While

the State has apparently seldom authorized shift overlap for Correction Officers since the guarantee of shift overlap was removed from the State/SLEU Contract, I do not take that as evidence that no shift overlap will be authorized for Lieutenants. Thus, while the potential cost savings in the remaining term of this Contract resulting from elimination of mandatory overtime is substantial, the actual savings is unknown.

Cost of Living

The Consumer Price Indicator (CPI) is well recognized as a standard measure used by economists to gauge inflation. It is therefore appropriate to compare the CPI with increases in the Lieutenants' compensation in relevant years to determine whether or not their compensation is keeping pace with the cost of living.

For the years covered by my Award (1999-2003), it appears likely that increases in base salary will outpace increases in the cost of living as measured by the CPI. Correction Lieutenants will receive raises yielding 16% and other members of the bargaining unit will receive raises yielding 14.5%. By contrast, for Northern New Jersey the CPI increased 2.0% in 1999, 3.1% in 2000 and 2.5% in 2001. On a national level, the CPI increases have been 2.7% in 1999, 3.4% in 2000 and 1.6% in 2001.³ While the exact cost of living for the entire year of 2002 and the first part of 2003 is of

³ Kehler noted in his testimony that these CPI figures actually record increases from December to December. Kehler further testified that while these figures, as presented by the State, differed somewhat from the annual increases, the differences were not dramatic.

course currently unknown, there is no evidence in the record establishing that it will substantially increase or decrease beyond the range of the previous three years.

The Union argues persuasively, however, that when comparisons are made between the CPI and base wage increases for the years covered by the previous Collective Bargaining Agreement (1995-1999), as well as the years covered by the current Collective Bargaining Agreement which have already elapsed, increases in base salary have somewhat fallen behind increases in the cost of living. More specifically, Kehler credibly testified to that effect, noting that from July, 1995 through October, 2001 in North Jersey the CPI increased 15.7% and in South Jersey it increased by 15.1%. Even though Kehler acknowledged on cross examination that in making his calculations he did not take into account various factors such as compounding and the \$250 bonus received by Correction Lieutenants in fiscal year 1997, the fact remains that during the period of time considered by Kehler members of this bargaining unit have not fared particularly well in relationship to the cost of living.

In its behalf, the State argues persuasively that when comparisons are made between the CPI and base wage increases for the years since 1980, the salary increases have far outpaced the cost of living. In this regard, the State presented compelling evidence concerning the salary histories of three individuals, labeled as Officer A, B and C.

As detailed by the State in its brief, Officer A started his career in 1982 and received a promotion to Sergeant in 1988 and a

promotion to Lieutenant in 1993. From hire date through June, 1998, Officer A's salary increased by 420%, compared to a CPI increase of 68.8%. Officer A's wages outpaced the cost of living by 351% or 20.65% per year for 17 years. Similarly, Officer B started his career in 1980 and received a promotion to Sergeant in 1992 and a promotion to Lieutenant in 1997. From hire date through June, 2000, Officer B's salary increased by 402%, compared to a CPI increase of only 93%. Officer B's wages outpaced the cost of living by 309% over 20 years or 15.45% per year. Finally, Officer C started his career in 1985 and received a promotion to Sergeant in 1990 and a promotion to Lieutenant in 1993. From hire date through June, 1999, Officer C's salary increased by 278.8% compared to a CPI increase of 56.5%. Officer C's wages outpaced the cost of living by 222.4% over 14 years or 15.89% per year. Moreover, even excluding step and promotional increases, since 1980 the across the board raises received by Correction Lieutenants have outpaced the cost of living. Since that time, Correction Lieutenants have received compounded base wage increases totaling 206%, excluding increments, compared to a CPI increase of 89.9%.

The statute does not dictate any particular period of time to analyze the cost of living. Therefore, no particular period of time is either completely "correct" or "incorrect". I believe, however, that the period covered by the Award itself is most important, with other periods of time deserving secondary consideration.

Given this framework, the Award I have fashioned is generally

consistent with this statutory criterion. The Award modestly increases the base wages of the Lieutenants in relationship to the cost of living. That modest increase is, however, justified in light of the fact that the Lieutenants would lose a substantial amount of income in overtime compensation for the remainder of the Contract term due to elimination of mandatory shift overlap.

Finally, while the Union relies in part upon a measure of cost of living called the Implicit Price Deflator, I do not understand this to be a standard measure of cost of living in the interest arbitration context. As testified to by Kehler, the Implicit Price Deflator is for State and local government purchases of goods and services and is a measure of those items which are purchased by entities of that sort rather than by individual consumers. It reflects a weighing of those costs which are typically incurred by such units of government. By contrast, the CPI acts as a measurement of a representative basket of goods and services that would be purchased by an urban consumer. That representative basket of goods and services is benchmarked periodically to weigh, in the most precise way that analysts can weigh it, the relative emphasis placed on consumers of various goods and services. Those items include food, beverages, housing, apparel, transportation, communication such as telephone costs, medical, entertainment, fuel and utilities. Nonetheless, even if the Implicit Price Deflator is considered, the conclusions I have set forth above would not be seriously altered.

Stability of Employment

The Lieutenants enjoy exceptional stability of employment. They have not been subjected to threats of layoff or even hiring freezes. Indeed, their numbers have increased in recent years.

The State correctly notes that there is no evidence of record that if the Union position is not accepted in totality then it will create instability in the work force. Indeed, it would appear that there are few if any other places for Correction Lieutenants to go within their profession and obtain better compensation than they have received, and will continue to receive, from the State. While I recognize that the Lieutenants will be disappointed to lose the guaranteed shift overlap, it is certainly not unprecedented for there to be an economic benefit removed from a Collective Bargaining Agreement in return for higher wage increase. That is what happened in the Mastriani Award and that is all that has happened in the instant case.

NON-ECONOMIC PROPOSALS

I grant the Union's request that the timing for disciplinary charges be amended to reflect 45 days except for EEO charges which must be brought within 60 days. While the State requests additional time for the bringing of charges beyond that requested by the Union, I find insufficient evidence in the record to justify the extent of increase requested by the State. Notably, the increase requested by the Union is consistent with that awarded by Arbitrator Mastriani to Local 105. While the State contends that

these extended time limits have proven inadequate, I find insufficient evidence to support that conclusion.

I reject the Union's request that the executive board be placed on first shift and have part of the weekend off as do institutional representatives. I find insufficient evidence in the record to support this proposal. There is little, if any, evidence of undue difficulty concerning the current scheduling practices. Moreover, the State notes that Local 105 does not have any similar language in its collective bargaining agreement.

Conclusion

Neither the final offer of the Union nor that of the State best effectuates the totality of statutory criteria. That result only occurs by finding middle ground between the positions of the parties. The Award I have fashioned takes into account all statutory considerations, assigns weight to the statutory criteria as appropriate, and reaches a reasonable and fair result for all concerned. It is therefore the Award I grant.

AWARD

(1) Term of Contract: July 1, 1999 through June 30, 2003.

(2) Wages

Correction Lieutenants:

The following increases are added to the base salary step, retroactive to the effective date:

7/01/99 - 4%
7/01/00 - 4% (2% on 7/01/00; 2% on 1/01/01)
7/01/01 - 4% (2% on 7/01/01; 2% on 1/01/02)
7/01/02 - 4%

Non-Correction Lieutenants [J Unit]:

The following increases are added to base salary retroactive to the effective date:

7/01/99 - 2.5%
7/01/00 - 3.5% (2.0% payable on 7/01/00;
1.5% payable on 1/01/01)
7/01/01 - 4.0% (2.0% payable on 7/01/01;
2.0% payable on 1/01/02)
7/01/02 - 4.5% (2.0% payable on 7/01/02;
2.5% payable on 1/01/03)

(3) Hours of Work:

Article XXVI: Eliminate sections H, I, and J, and add the following as the new Section H.

Effective immediately upon issuance of the Award, Correction Lieutenants serving in positions involving custody of inmates shall be employed on a normal work schedule of eight (8) hours per day (40 hours per 5 day week). Each officer shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond these normal work schedules.

(4) Health Benefits:

Article XXXV shall be unchanged for all persons who are members of the bargaining unit as of the date of this Award. For all members of the bargaining unit hired after the date of this Award into non-Correction Lieutenant positions [Unit J], Article XXXV shall be modified to incorporate the following:

A. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.

B. Effective on the first day of the next open enrollment period, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

C. Effective on the first day of the next open enrollment period, employees who elect coverage in an HMO plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

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

(5) Clothing Allowance:

The first paragraph of Article XXXVI will be amended to read as follows:

The State shall provide a cash payment of \$1435 on January 1, 2000, a cash payment of \$1435 on January 1, 2001, a cash payment of \$1435 on January 1, 2002 and a cash payment of \$1435 on January 1, 2003 to all employees in the unit who have attained one (1) year of service as of December 31, 1999, December 31, 2000, December 31, 2001 and December 31, 2002, with the exception of Correction Lieutenants.

In addition, Paragraph Three of this Article will be amended to read as follows:

In exception to the program outlined herein, Correction Lieutenants will be granted, in lieu of any uniform allowances, cash payments of \$830 in July, 1999; \$830 in January, 2000; \$830 in July, 2000; \$830 in January, 2001; \$830 in July, 2001; \$830 in January, 2002; \$830 in July, 2002 and \$830 in January, 2003.

Paragraphs two and four of Article XXXVI will not be amended and will remain in the new Collective Bargaining Agreement as set forth in the 1995-1999 Agreement.

(6) Union leave:

Article XXV (Leave for Association Activity) shall be amended as follows:

A) 1. The State agrees to provide leaves of absence with pay for delegates of the Association to attend Association activities. A total of thirty-five (35) days of such leave may be used in the year July 1, 1999 to June 30, 2000, thirty-five (35) days of such leave may be used in the year July 1, 2000 to June 30, 2001, thirty-five (35) days of such leave to be used in the year July 1, 2001 to June 30, 2002, thirty-five (35) days of such leave to be used in the year July 1, 2002 to June 30, 2003.

2. The total number of days of such leave which may be used in each year shall be exclusive of leave provided under the provisions of New Jersey law and ordinarily granted under that statute.

Paragraph E of Article XXV shall be amended as follows:

In addition, the State agrees to provide leave of absence without pay for delegates of the Association to attend Association activities approved by the State. A total of thirty-five (35) of such leave of absence without pay may be used during the period July 1, 1999 to June 30, 2000, thirty-five (35) days of such leave may be used during the period July 1, 2000 to

June 30, 2001, thirty-five (35) days of such leave may be used during the period July 1, 2001 to June 30, 2002 and one hundred and five (105) days of such leave may be used during the period July 1, 2002 to June 30, 2003. This additional leave of absence without pay is to be used under the same conditions and restrictions expressed in connection with the leaves of absence with pay.

There shall be no change in the language of Paragraphs B, C and D of this Article.

(7) Discipline:

Revise Article XI, Section L(4) as follows:

All disciplinary charges shall be brought within forty five (45) days of the appointing authority reasonably becoming aware of the offense, except for EEO charges which must be brought within sixty (60) days.

The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed.

(8) All other proposals made by either side are denied.

(9) Unless eliminated or modified by this Award, all provisions of the State/Union Contract which expired on June 30, 1999 shall remain in effect.

Signed this 31st day of October, 2002.

State of New Jersey
County of Camden
Mattia R. Kazius

MATTIA R. KAZIUS

NOTARY PUBLIC, COUNTY OF CAMDEN
My Comm. Expires Dec. 5, 2004

Scott E. Buchheit
SCOTT E. BUCHHEIT, ARBITRATOR