

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest \*  
Arbitration between \*  
 \*  
 \* DECISION  
 \* AND AWARD  
STATE OF NEW JERSEY \*  
 \*  
 \*  
-and- \*  
 \* Docket No.  
 \* IA-2008-017  
NEW JERSEY LAW ENFORCEMENT \*  
SUPERVISORS ASSOCIATION \*  
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Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the State  
Genova, Burns & Vernioia  
By: Douglas E. Solomon, Esquire  
Carolyn Buccerone, Esquire

For the NJLESA  
Pellettieri, Rabstein & Altman  
By: Frank M. Crivelli, Esquire  
Donald C. Barbati, Esquire

**D E C I S I O N**

The State of New Jersey (the "State" or the "Employer") and the New Jersey Law Enforcement Supervisors Association (the "NJLESA" or the "Union") are parties [NJLESA as a successor organization] to a collective bargaining agreement which had a duration through June 30, 2007. Negotiations for a new agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter.

The Arbitrator met with the parties on April 14, 2008, June 2, 2008, July 22, 2008 and September 26, 2008, in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on December 3, 2008, December 17, 2008, December 22, 2008, January 12, 2009, January 15, 2009, January 21, 2009, March 18, 2009, March 27, 2009, March 31, 2009 and a final interest arbitration session on July 22, 2009.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. A remarkably extensive record was created over the course of nine days of hearing. Sixteen witnesses were examined and cross-examined. Several of the witnesses were called to present expert testimony. The parties have submitted volumes of documentary evidence. The record has also been supplemented with the addition of stipulations by the parties. Further, the Arbitrator has granted requests from each side to add certain significant and relevant documents to the record. In sum, the record at hand is quite extraordinary in scope, depth and detail. Both parties have submitted written, post hearing briefs that have presented detailed argument in support of their respective positions.

The entire record has been carefully considered. The evidence has been evaluated in light of the nine statutory criteria set forth in *N.J.S.A. 34:13A-16(g)* [see Statutory Criteria, delineated in the following section of this Decision and Award].

The parties failed to mutually agree to a terminal procedure. Therefore, under *N.J.S.A. 34:13A-(d)(2)* the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute. The entire dispute shall be resolved through the construction of a balanced resolution seeking to represent the most reasonable terms and conditions when the statutory criteria are applied to the evidence.

### Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall 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 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 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 economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by 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 other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations of

wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

**Final Offers of the Parties**Final Offer of the NJLESAEconomic Issues

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

**(Remove paragraph (a) relating to lump sum payment)**

(a) Effective **July 1, 2007**, there shall be a **five percent (5.00%)** across the board increase applied to the then current base salary for all employees in this unit.

**(Remove language referring to prospective application.)**

The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each Step of each salary range. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustments.

(b) Effective **July 1, 2008**, there shall be a **five percent (5.00%)** across the board increase applied to the base salary in effect on **June 30, 2008** for all employees in this unit. **(Remove language referring to prospective application.)** The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each Step of each salary range. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.



(c) Effective **July 1, 2009**, there shall be a **five percent (5.00%)** across the board increase applied to the base salary in effect on **June 30, 2009** for all employees in this unit. **(Remove language referring to prospective application.)** The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each Step of each salary range. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.

(d) Effective **July 1, 2010**, there shall be a **five percent (5.00%)** across the board increase applied to the base salary in effect on **June 30, 2010** for all employees in this unit. **(Remove language referring to prospective application.)** The State Compensation Plan salary schedule shall be adjusted in accordance with established procedures to incorporate these increases for each Step of each salary range. Each employee shall receive the increase by remaining at the step in the range occupied prior to the adjustment.

**2. Article XIII: Subsection B; Paragraphs 3,4**

**Employees who have been at the same step of the same range for 12 months shall be eligible for movement to the next step providing their performance warrants this salary adjustment.**

**3. Article XXXVII**

In exception to the program outlined herein, Correction Sergeants will be granted, in lieu of any uniform allowances, cash payments of **\$930.00** in July, **2007**; **\$967.50** in January, **2008**; **\$967.50** in July, **2008**; **\$1,005.00** in January, **2009**; **\$1,005.00** in July, **2009**; **\$1,042.50** in January, **2010**; **\$1,042.50** in July, **2010** and **\$1,117.50** in January, **2011**.

**4. Article XIII: Subsection B; Paragraph 2**

Full-time employees and eligible dependents shall be eligible for the State-administered Dental Care Program. **In addition, all retired employees and eligible dependents shall retain the State administered Dental Care Program at no cost to the retiree.**

Participation in the Program shall be voluntary with a condition of participation being that each participating employee shall authorize a bi-weekly salary deduction not to exceed fifty percent (50%) of the cost of the type of coverage elected, e.g. individual employee only, husband and wife, parent and child, or family coverage.

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

The current optional Group Dental programs will continue during the term of this agreement with the understanding that the providers comply with their contractual obligations to the State. Participation in the various group dental programs shall be voluntary with the condition that each participating employee authorizes a bi-weekly deduction not to exceed 50 percent of the cost of the coverage for a one year period. Employees may enroll in only one of the available programs, or choose not to participate.

**5. Article XIII: Subsection B; Paragraph 3**

Full-time employees and eligible dependents shall be eligible for the State-administered Eye Care Program. The program shall provide for each eligible employee and dependents to receive a **\$75.00** payment for prescription eye glasses with regular lenses and a **\$125.00** payment for such glasses with bi-focal lenses. Each eligible employee and dependent may receive only one payment during the **one (1)** year period that this program will remain in effect. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

Full-time employees and eligible dependents, as defined above, shall be eligible for a maximum payment of **\$50.00** or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

**6. Article XV (NEW ADDITION)**

**Employee utilization of recognized holidays and holiday pay shall be discussed across the table.**

**7. Article XXV: Subsection A**

The State agrees to provide leaves of absence with pay for delegates of the Association to attend Association activities. **A total of 270 days of such leave may be used in the year July 1, 2007 to June 30, 2008; A total of 270 days of such leave may be used in the year July 1, 2008 to June 30, 2009; A total of 270 days of such leave may be used in the year of July 1, 2009 to June 30, 2010; and a total of 270 days of leave may be used in the year of July 1, 2010 to June 30, 2011. At any time during the term of this agreement, the employees have the ability to engage in additional negotiations with the employer to increase the number of days allotted for attendance at Association activities. If such a request is made, it is the employee's responsibility to provide facts and circumstances to justify said request.**

**8. Article XVII (NEW ADDITION)**

**Bereavement Leave**

**A. Employees shall be entitled to two (2) days of bereavement leave with pay in each calendar year. Bereavement leave may be used by an employee who suffers the death of a spouse, child, parent, grandparent, grandchild, sibling, mother-in-law, father-in-law or any person with whom the employee resides or has a familial relationship.**

9. **Article XXVII: Subsection A**

Overtime will accrue and compensation will be made in compliance with the Merit System Rules and Regulations and Personnel Manual.

Eligible employees will be compensated at the rate time and one-half (1 and 1/2) for the overtime hours accrued in excess of the designated work week. **These compensation credits shall be given, at the employee's option, in compensatory time or in cash.**

10. **Article XXXII (NEW ADDITION)**

The continuation and utilization of association members for out of title work shall be discussed by the parties across the table.

Non-Economic Issues

1. **Article XXV (NEW ADDITION)**

The State agrees to provide leaves of absence with pay for executive board members and institutional vice presidents of the Association for convention leave. The executive board members and institutional vice presidents of the Association shall be entitled to convention leave in accordance with N.J.S.A 11A:6-10 and N.J.A.C. 4A:6-1.13.

2. **Article XXVI (NEW ADDITION)**

State Park Police Sergeants shall be employed on a normal work schedule of the four (4) consecutive ten (10) hours per day (forty (40) hours per four (4) day week) non-rotational shifts followed by three (3) consecutive days off. Each State Park Police Sergeant shall have thirty (30) minutes for meal time and one (1) fifteen (15) minute break within each work shift which shall be duty status.

State Park Police Sergeants who are required to work beyond their regular work shift shall receive an

additional fifteen (15) minute rest period when the period of work beyond their regular shift exceeds two (2) hours. State Park Police Sergeants who are required to work beyond their regular work shift shall receive an additional thirty (30) minute rest period when the period of work beyond their regular shift exceeds four (4) hours.

Final Offer of the State

Economic Issues

1. Term: Article XLVI - July 1, 2007 to June 30, 2011
2. Wages: Article XIII - Compensation Plan and Program

Base wage rates for all bargaining unit members shall be adjusted over the term of this agreement as follows:

Effective retroactive to first full pay period  
in July 2007 - 3.00%  
Effective retroactive to first full pay period  
in July 2008 - 3.00%  
Effective first full pay period  
in July 2009 - 0.00%  
Effective first full pay period  
in July 2010 - 3.50%

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

New subsection (d) as follows: "Notwithstanding the foregoing provisions, effective January 1, 2009 or as soon as practicable following the issuance of the Interest Arbitration Award and for a full calendar year thereafter, no employee shall be eligible for any step increments. During the one year term, eligible employees shall not move to the next step in the guide and the time worked during the one-year period shall not count toward time

needed for any increment including the 18-month period between step 8 and step 9 and the 24 month period between step 9 and 10."

3. Fringe Benefits: Amend Article XXXVI:

a. Healthcare Contributions:

For Employees Hired on or after July 1, 2007: Effective retroactive to the first full pay period of September 2007 and continuing through the term of the Agreement, all employees hired on or after July 1, 2007 shall be required to pay 1.5% of their annual base salary as a contribution to be used for the purpose of sharing the cost of health benefits provided by the State. The parties agree that there shall be no open enrollment period triggered by this contribution. The parties agree that should such an employee voluntarily waive all coverage under the State Health Benefits Plan ("SHBP") and provide a certification to the State that he/she has other health insurance coverage, the State will waive the 1.5% Health Insurance contribution for that employee.

For Employees Hired Prior to July 1, 2007: Effective retroactive to the first full pay period of September 2007 and continuing through the term of the Agreement, all employees hired prior to July 1, 2007 shall make a contribution, as a deduction from each paycheck, for the purpose of sharing the cost of health benefits provided by the State. The parties agree that there shall be no open enrollment period triggered by this contribution. The amount of the contribution per bi-weekly pay shall be as set forth below:

<u>Effective Date (First Full Pay Period Of)</u>	<u>Individual Plan</u>	<u>Parent/Child Plan</u>	<u>Family or Employee/ Spouse Plan</u>
September 2007	\$20.00	\$30.00	\$40.00
January 2009	\$26.00	\$39.00	\$49.00

The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan ("SHBP") and provide a certification to the State that he/she has other health insurance coverage, the State will not deduct the above-referenced Health Insurance contribution for that employee.

If an employee is on leave without pay from which the above-referenced deductions are made, the employee shall be required to contribute the above-referenced amount and shall be billed by the State. If payment is not made in a timely manner coverage will cease.

b. Establishment of PPO Plan: Effective as soon as practicable following issuance of the Interest Arbitration Award (and as soon thereafter as an open enrollment period is held by the SHBP), active eligible employees will be able to elect to participate in a PPO (referred to as "NJ Direct 15"), with a national network and the same benefit design as the current NJ Plus plan, except as modified in paragraph c below. Once active eligible employees are able to elect to participate in the NJ Direct 15 Plan, the NJ Plus Plan shall no longer be available to any bargaining unit employees. Thus effective as soon as practicable following issuance of the Interest Arbitration Award, employees will be able to elect to participate in either NJ Direct 15 or an HMO.

c. Co-Pays: Effective January 1, 2009, or as soon as practicable after issuance of the Interest Arbitration Award, in-network doctor visit co-pays, including specialist co-pays, will increase from \$10 to \$15. There will be a co-pay of \$15 for the first in-network prenatal visit; subsequent in-network prenatal visits are 100% covered. The emergency room co-pay will increase from \$25 to \$50, which is waived if admitted. These increases shall be imposed regardless of whether an open enrollment period allowing an election of NJ Direct 15 has been held; such increases, therefore, are applicable to all healthcare plans, including the existing NJ Plus and HMO coverage, as well as to NJ Direct 15 once applicable.

d. Prescription Drug Co-Pays: Effective January 1, 2009, or as soon as practicable after issuance of the Interest

Arbitration Award, the co-pays for prescription drugs shall be as follows:

	<b>Non-Mail Order</b>	<b>90-Day Mail Order</b>
Generics	<b>\$3.00</b>	<b>\$5.00</b>
Brand names where there is no generic equivalent and brand names where the employee's doctor certifies that the employee is medically unable to take the generic version of the medication	<b>\$10.</b>	<b>\$15.00</b>
Brand names where there is a generic equivalent, unless the employee meets the standard set forth above	<b>\$25.00</b>	<b>\$40.00</b>

**Dispute Resolution Mechanism for Generic Claims:**

In the event that an employee's physician certifies that the employee is medically unable to take the generic version of medication, said certification shall be sent to the employee's carrier for review utilizing procedures for approval of said certification that are consistent with those for the approval of treatment or services by the carrier. Appeals from the decisions by the carrier shall be consistent with the internal appeal process of each carrier. Any such decision is not subject to the grievance procedure in this contract.

**Retiree Health Benefits:**

1. Employees who accrue 25 years of pension credit service after June 30, 2007 and before June 30, 2011 or who retire on a disability pension after June 30, 2007 and before June 30, 2011, will be eligible to receive post retirement medical benefits ("PRM") in accordance with the terms set forth in the parties' 2007-2011 collective negotiations agreement. Such employees will be eligible to participate in NJ Plus, until it is replaced by a PPO (NJ Direct 15), and thereafter in the PPO (NJ Direct 15), or in an HMO



without paying for such coverage provided the employee participates in the Wellness program for retirees as set forth below.

2. Wellness Program: The employees shall be eligible to participate in a Retiree Wellness program, which shall provide for health assessments of the retiree to promote wellness and prevent disease. The Wellness program is to be established on or about April 1, 2008. When such a program is established, the employee who retires after having accrued 25 years of service on or after July 1, 2007 and before June 20, 2011 shall be required to Participate in the Wellness program. In the event the program is established and the retiree does not participate during a given year, the retiree shall be required to pay 1.5% of his/her monthly pension benefit as a contribution to the cost of health benefits to retain such coverage for the remainder of that year.

3. Employees who retire having accrued 25 years of pension service credit on or before June 30, 2007 shall receive post-retirement medical benefits without the requirement of participation in a Retiree Wellness program or without requirement to pay any contribution toward the cost of health benefits.

4. Uniform Allowance: Article XXXVII: Amend the uniform allowance to provide the amounts shown below for those bargaining unit employees with at least one (1) year of service as of the last day of the month preceding the following dates:

	<u>Corrections Sergeants</u>	<u>Non-Corrections Sergeants</u>
July 2007	\$855.00	\$1485.00
January 2008	\$855.00	
July 2008	\$855.00	\$1485.00
January 2009	\$855.00	
July 2009	\$867.50	\$1510.00
January 2010	\$867.50	
July 2010	\$880.00	\$1535.00
January 2011	\$880.00	

5. Article XIII, New Subsection: Promotions to Sergeants: Effective January 1, 2009, or as soon as practicable following issuance of the Interest Arbitration Award, whichever is later, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place them on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary that they were receiving at the time of the promotion. Notwithstanding any regulation or authority to the contrary, no employee shall receive any salary increase greater than the increase provided for above upon promotion to any job title represented by NJLESA.

By way of illustration, a Senior Corrections Officer ("SCO") is currently in Employee Relations Group "L", Range 18. If such SCO is at Step 9 as of the date of his/her promotion and therefore earning a salary of \$69,688.49 as shown on the salary guide effective 12/23/06, such employee, upon promotion to Corrections Sergeant (Employee Relations Group "2", Range 21) would move to Step 6 at \$72,008.90, as this is the lowest salary on the Group "2", Range 21 salary scale that is above the promoted employee's salary as of the date of promotion. [It is understood that the foregoing example is for illustration purposes only and is based upon the salary guide effective as of 12/23/06 and that the salary at each step of the guide is subject to change as per the across the board salary increases that are awarded in the interest arbitration proceeding].

**Stipulated: Resolved Non-Economic Items**

1. **Article VII, Section D (New):**

Add sub-paragraph (7) as follows: "Each Department/agency of the State that employs members of the Association may, in its discretion, provide bargaining unit representatives with access to an intranet page that shall serve as an electronic bulletin board to be used exclusively by the Association. Use of this intranet page shall be subject to all restrictions and requirements under this Section."

2. **Article IX, Section B(2): Promotions:**

Revise to state as follows:

When an employee has been certified for promotion and is scheduled to be interviewed by the Agency to which he/she may be promoted, he/she shall suffer no loss in pay to attend the scheduled interview, including travel time required, if during his regular work shift. Effective July 1, 2009, DOC and JJC employees scheduled for a promotion interview at a location other than the institution where they work shall have the option to have the interview held via video conference from the employee's institution so long as the employee provides adequate notice of his/her desire for a video conference alternative so that appropriate arrangements can be made.

3. **Article X, Section E(2): Grievance Procedures:**

Revise to state as follows:

"Where a grievance involves exclusively an alleged error in calculation of salary payments, the grievance may be timely filed within ninety (90) days of the time the individual should reasonably have known of its occurrence."

4. **Article XI(N) (2), JUMP Panel:**

Amend to state as follows:

"In order for a disciplinary appeal from the Association to be considered by the panel, the officer must submit his request to appeal to the Association President or his designee. The Association President or his designee must then submit a written notice of appeal with the Department (or Agency Head) or designee, who issued the decision upholding the disciplinary action. The State shall not be obligated or permitted to process any notice of appeal that is not submitted by the Association pursuant to the above process. Such written notice must be filed by the Association within ten (10) days of the issuance of such decision. The Department (or Agency Head) or designee will promptly forward a copy of such notice to the Office of Employee Relations and the Association together with a copy of the decision and any other documents that have been made a part of the record of the matter.

5. **Article XIV, Section B: Vacation:**

Add to the end of subsection (1):

"For all Non-Corrections employees, each Department shall have the option to handle vacation leave requests by granting such requests on a first-come first serve basis, with conflicts to be resolved on the basis of job classification seniority only when two requests are submitted simultaneously."

6. **Article XVI: Personal Preference Days:**

Revise first paragraph to state as follows:

"Between September 1 and October 1 of the preceding year, employees may submit requests for alternate holidays for the upcoming calendar year which shall be dates of personal preference such as religious holidays, employee birthday, employee anniversary or like days of celebration provided:"

7. **Article XVI: Personal Preference Days**

Amend sub-section (c) to state:

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

Add new sub-section (e) that states:

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

8. **Article XVII: Administrative Leave:**

Section C, First Paragraph:

Add the following sentence: "When an employee requests the use of administrative leave for unscheduled purposes, the employer can require that the employee provide documentation to support the unscheduled nature of the absence within 72 hours of return to work. So long as documentation is timely provided by the employee when required, leave shall not be denied." Section A, Second Paragraph and Section C, Second Paragraph, first sentence: change "emergencies" to "unscheduled absences".

9. **Article XVII, Section C(2): Administrative Leave:**

Replace second sentence of second paragraph of Section C with the following: "In the DOC and JJC, where, within a work unit, there are more requests for administrative leave for one of the purposes above submitted within the same calendar day than can be granted for a particular date, the conflict shall be resolved by job classification seniority and the maximum number of such requests shall be granted in accordance with the first paragraph of C."

10. **Article XIX, Section B, Comp Time:**

Amend to state as follows:

B. Comp Time Requests

1. Employee's requests for use of compensatory time balances shall be honored, so long as the request is received by the employer at least 48 hours in advance. Requests for use of compensatory time received less than 48 hours in advance may be granted when granting such request will not result in any overtime cost to the State. Otherwise, requests that are made on less than 48 hours notice shall, in the sole discretion of management, be rejected in all circumstances if this advanced notice is not provided, including circumstances that were previously referred to as "emergency comp time". Any grievance resulting from management's discretion to reject a request for the use of comp time pursuant to this section shall not be subject to arbitration.

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

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

(1) where scheduled one (1) month in advance, (2) where shorter notice of request is made. Requests for use of such time under (1) and (2) herein will be honored except where emergency conditions exist or where dates requested conflict with holiday or vacation schedules.

11. **Article XX, Section B(3): Sick Leave**

Revise last sentence:

"In addition, when the duration of the employee's absence is three or more consecutive work days, the employee shall be required to substantiate the basis for the sick leave by providing a personal physician's certificate, which must be provided to management within three days following the employee's return to work, not including the employee's regular days off."

12. **Article XXIX, Transfer and Reassignment Rights: [State Park Police]:**

Add new Section C as follows:

Involuntary transfers of State Park Police Sergeants shall be determined on the basis of job classification seniority and shall not be for a period of more than 180 days within a calendar year, except in cases of an emergency requiring a longer period of time. Also, no State Park Police Sergeants shall be involuntarily transferred more than once during any calendar year. Moreover, the State will use best efforts not to involuntarily transfer any State Park Police Sergeant out of region.

13. **Article XXX, Section A: Reassignments:**

Revise Section A to state as follows:

In the DOC and JJC, employees to be affected by a shift reassignment that will result in a change to the time the employee is to report to work (i.e. reassignment from 1st shift to 2nd shift or 3rd shift) shall be given five (5) days notice of the reassignment. The foregoing requirement shall be inapplicable to matters where the reassignment is effectuated due to EED investigations,

investigation revolving around alleged criminal misconduct, or where circumstances require immediate action. Outside of the DOC and JJC, employees to be affected by reassignment will be given maximum possible notice of the reassignment.

14. **Article XXX, Section A: Reassignments:**

The parties will sign a Side Letter of Agreement that states as follows:

The parties agree that should the State decide to abandon the use of the PILOT program relating to voluntary reassignments to non-specialized positions within the Department of Corrections, this decision will automatically trigger a limited reopener as to this issue, and the parties agree that they will meet to discuss, and attempt to reach a voluntary resolution of the matter.

15. **Article XXX, Section E: Reassignment and Job Posting:**

Add language that provides that each Department (not including DOC) shall have the option of posting all reassignment opportunities on their intranet site and via e-mail to the union as an alternative to posting paper copies on the bulletin board and faxing to the union so long as all employees have access to the intranet site.

16. **Article XXXI, Reassignments and Job Posting:**

Delete this Article in its entirety.

17. **Article XXXVIII: Travel Regulations:**

Amend first sentence as follows:

"Employees are not required to provide privately owned vehicles for official business of the State without reimbursement for mileage at a rate provided by the State Travel regulations.



18. **Other Non-Economic Issues:**

The parties stipulate that the Stipulation resolves all non-economic issues between the parties and that all non-economic issues that were submitted to interest arbitration before Arbitrator Joel Weisblatt shall be deemed withdrawn with prejudice and shall not be subject to an Award from Arbitrator Weisblatt, except for the NJLESA proposals relating to: (1) Convention Leave, (2) Audio taping of investigatory interviews, and (3) Work Schedule issues relating to the State Park Police Sergeants. Both parties retain any rights they may have to challenge the Arbitrator's authority to award any specific proposal relating to these two issues.

\* \* \* \* \*

Additionally, the parties have stipulated to the resolution of the issue of **Audio Recording of Disciplinary Interviews** as follows:

Article XI, Section L(2): Swap first and second paragraphs and revise to state as follows:

Where an employee is interrogated during the course of an investigation and when there is a reasonable likelihood that the individual being questioned may have formal charges proffered against him, the nature of those contemplated charges shall be made known to the employee who shall then, if he requests, be entitled to a representative of the Association, only as a witness or as an advisor, during subsequent interrogation concerning the charge provided that the interrogation process shall not be delayed and/or the requirement to expedite any official duty not be impaired. The employee shall be advised of the identification of all persons present during the interrogation.

In the event a formal charge of misconduct is made by the State against an employee and, if he so requests, he shall be entitled to a representative of the Association only as a witness or as an advisor during any subsequent

interrogation of the employee concerning such charge. During the investigatory process, there shall be no presumption of guilt and the employee shall be advised of the identification of all person present during the interrogation.

Insert new sub-section L(3) as follows (and re-number current sub-sections L(3) through L(7) accordingly):

Audio Recording of Certain Investigatory Interviews in DOC and JJC: The parties agree that in limited circumstances described in this sub-section, an employee that is being interrogated during the course of an internal investigation shall have the right to request that the State audio record the interview in accordance with the provision of this sub-section.

i. The provisions of this sub-section are solely applicable to interrogations of employees in the DOC and JJC;

ii. The provisions of this sub-section are solely applicable to interviews conducted by the Special Investigations Division ("SID");

iii. The provisions of this sub-section are solely applicable to situations where an employee is interrogated either: (a) during the course of an investigation where there is a reasonable likelihood that the individual being questioned may have formal charges proffered against him, or (b) after a formal charge of misconduct is made by the State against an employee;

iv. Where the conditions described in (i) through (iii) above are present, the employee may request the State of New Jersey to audio record the interview. In the event such a request is made, and where all the conditions precedent set forth above are present, the State of New Jersey shall audio record the interview.

v. At the conclusion of the audio recorded interview, the audio recording will remain in the possession of the State of New Jersey in accordance with its policies and procedures for maintaining and safeguarding evidence.

vi. At the conclusion of the investigation and any and all related investigations, a copy of the audio recording

will be provided to the Association and/or employee at their own expenses within seven (7) days of said request. No other recording of any investigatory interview shall be made by the employee or his representative.

vii. If the State denies any valid request by an employee to audio record an interview in accordance with this sub-section and the employee that was the subject of such interview is ultimately the subject of discipline, the union shall have the right to challenge the State's denial of the employee's request for an audio recording through the parties' Grievance Procedure. All such grievances shall be treated as non-contractual grievances pursuant to Article X, Section A(2), and shall not be subject to arbitration. Moreover, any such grievance shall automatically proceed to Step Two of the Grievance Procedure.

viii. If it is determined at Step Two of the Grievance Procedure that a valid request to audio record the interview was made in accordance with this sub-section, and it is further determined that the State failed to make such audio recording as required, the Step Two decision shall, as a sole remedy for such failure, preclude the individual that conducted the disputed interrogation, or any other management witness to said interrogation, from testifying at the employee's Departmental Disciplinary Hearing (Article XI, Section F) concerning any verbal statements made by said employee during the unrecorded interview. This shall not be interpreted, however, as precluding the individual that conducted the disputed interrogation, or any other management witness to said interrogation, from testifying at the Department Disciplinary Hearing with respect to anything other than the verbal statements made by said employee during the unrecorded interview.

ix. A copy of the Step Two decision shall be forwarded immediately to the Department or Agency Head, or designee, that is responsible for convening the Departmental Disciplinary Hearing pursuant to Article XI, Section F. This Step Two decision shall be adhered to in the Departmental Disciplinary Hearing.

x. The parties recognize that the State's willingness to agree to the provisions of this sub-section permitting audio recording of interviews in the above-described circumstances is based solely upon the limited number of

circumstances that the State anticipates will require the need for such audio recording. It is expressly understood that the State would not agree to this provision but for the relatively low volume of interrogation interviews that will require audio recording for members of a bargaining unit of this size or smaller.

## **Positions of the Parties**

### Position of the NJLESA

The NJLESA contends that its final economic and non-economic offers should be awarded in their entirety. It bases its positions and arguments on the specific statutory criteria.

The Union notes that the initial criterion, the **Interest and Welfare of the Public**, is always relevant in deciding an interest arbitration dispute. It asserts that the numerous elements of this criterion include: "(1) The services rendered by the employees at issue; (2) Fiscal responsibility; (3) The morale of the employees; and (4) The impact of this contract in the context of the overall labor relations process in the State of New Jersey."

The NJLESA emphasizes the importance of the job performed by bargaining unit members and the "unique difficulties" faced in the various employment positions held by these employees. The substantial demands of the 24 hour/7 day operations of correctional facilities are

particularly emphasizes. The threat of violence and other health dangers are noted as having been pointedly established in the record. This includes exposure to various diseases from inmates in a close environment. The dangers of the job are cited as a valid basis for selecting the Union's final offer.

The NJLESA suggests that the State's economic offer could lead members of the bargaining unit to leave for jobs in county government because that package "will not adequately compensate the members of the NJLESA for the rigorous tasks and dangers they face on a daily basis." The "givebacks" on health benefits are specifically noted as a potential problem, reducing the overall compensation of unit members. The Union characterizes any requirement that bargaining unit members "contribute to the cost of their healthcare" as a "wage cut." It opposes the negative impact on the overall compensation package.

In the alternative, the Union maintains that any contribution to healthcare costs should be limited to flat dollar contributions, which it describes as "more equitable to the employees who are required to pay." It emphasizes that the percentage contribution component of

the State's offer, relating to employees hired on or after July 1, 2007, requires the same level of contribution (1.5% of salary) irrespective of the coverage received. The NJLESA cites the expert testimony of its healthcare consultant, Mr. Della Penna, to support the finding that a flat dollar approach is "preferable." The Union suggests that the expert witness established that the percentage approach is unfair to employees with more years of service.

The NJLESA assails the impact that the State's final offer could have on the morale of bargaining unit members. It describes that offer as falling "below minimum expectations and/or the amounts already budgeted by the State."

The Union maintains that its offer "would be fiscally responsible." To support this position, it relies upon the testimony of its fiscal expert, Dr. Frank Tinari. The Union advances his findings that the impact of a 4% or 5% wage increase for this bargaining unit would only be about 0.2% of the total budget for the Department of Corrections. The expert witness testified that wage rate increases in this realm would serve, in combination with

healthcare contributions, to maintain the current standard of living for unit employees.

The Union argues that the compensation package it has proposed is "fair, affordable, and well-deserved based upon the significance and nature of the members' duties, responsibilities, and risks of employment." In summary, it asserts that the public interest criterion clearly supports the NJLESA final offer.

The NJLESA argues that the **Comparability** criterion warrants substantial weight in determining the terms and conditions of employment through interest arbitration. The comparisons it stresses include: with the private sector, generally; with the public sector, generally; with employees having the same employer; and with employees who perform the same or similar functions with comparable employers. The Union emphasizes "the duties required of unit members, training, job-related hazards, and overall working conditions" as factors that must be considered as part of the comparison analysis.

With respect to the private sector comparison, the Union cites what at the time of the hearing was the most



recent private sector wage survey conducted by the N.J. Department of Labor and published by PERC for consideration in the interest arbitration process. The NJLESA points out that in that survey, issued September 15, 2008, the private sector annual wage change from 2006 to 2007 was listed as 4.3% and the same figure for the period of 2005 to 2006 was 4.6%. The Union calls the State's offer "woefully inadequate" in light of these statistics.

The Union notes that the report prepared by Dr. Tinari (its economics expert) found wages generally in correctional institutions to have risen by an annual average of 3.47% from 2001 through 2007. That annual average figure is reported as 6.25% when narrowed to first-line supervisors and managers of correctional facilities and 4.07% when centered upon correctional officers and jailers. Comparisons drawn with county correction superiors units are presented to reveal a range of increases (from settlements and awards) from 3.75% to 6.10%. These comparisons include contracts for a similar period of time as the one at hand for correction superiors units in Warren, Somerset, Ocean, Monmouth, Mercer, Cumberland, Burlington and Sussex counties.

The NJLESA also identifies comparisons with certain State law enforcement units where contracts have been either settled or awarded. Initially, the Union points to the PBA-SLEU unit which reached a settlement with the State providing the following salary increases:

Effective July 2007 - 3.5%

Effective July 2008 - 3.5%

Effective July 2009 - 3.75%

Effective July 2010 - 3.75%

This wage package equals a total of 14.5% over 4 years. The Union compares this offer to the total of 9.5% offered to this bargaining unit for the same four year period.

The next comparison discussed by the Union is with the economic package awarded in interest arbitration for the PBA Local No. 105 bargaining unit, representing the rank and file corrections officers and parole officers. That award provided the following wage increase package:

Effective July 2007 - 3.5%

Effective July 2008 - 3.5%

Effective July 2010 - 2.0%

Effective January 2011 - 2.0%

While the NJLESA characterizes this package as "not necessarily favorable" in the eyes of the Union, it points out that it provides 11.0% increase over 4 years, substantially more than the State has offered herein.

The NJLESA assails the State's effort to assert a "pattern of settlement" with bargaining units of civilian employees. It argues, noting annual comparisons since 1999, that there is no historical pattern of bargaining applied between the NJLESA group and any of the civilian bargaining units. A specific statistical chart, comparing this unit and the AFSCME unit, is used to demonstrate this point.

The Union claims that the comparability criterion is a basis for the rejection of the State's position on healthcare contributions. It notes that comparisons with other law enforcement units do not support the changes proposed by the Employer. For example, the NJLESA contends that in only five of the twenty-one counties do corrections unit have premium sharing "for all plans and all employees." Further, it points out that of the 33 interest arbitration awards issued from 2007 through April 2009, only 4 included a premium sharing component. Of

those, none was on a percentage of salary basis. The Union insists that the State's position is based upon comparisons with civilian groups, where there has been no historic pattern of settlement.

The NJLESA draws upon the PBA 105 Award, issued in May of 2009, to assert that the State's healthcare proposal herein is not supported by the evidence. It emphasizes the fact that the PBA 105 Award implements premium contributions beginning in January of 2011, not earlier in the contract term. It also points out that the flat dollar contributions in that Award for current bargaining unit members are at a lower rate than those sought by the Employer in this proceeding. Further, the Union stresses that the Arbitrator in the PBA 105 Award rejected the percentage contribution component of the State's final offer, limiting premium sharing to the flat dollar element noted above. It points out that the comparison with the PBA 105 unit provides strong evidence that there be neither percentage nor retroactive contributions.

The NJLESA concludes that the comparability criterion fails to support the State's final offer but does favor

the final offer of the Union. It expresses the belief that this criterion supports the selection of the Union's proposals in their entirety.

With respect to the **Overall Compensation** criterion, the NJLESA contends that "there are certain areas in the overall benefit package which are lacking." It claims that it has advanced certain proposals designed to address what are perceived to be problem areas.

The initial problem area addressed by the Union involves uniform allowance. The Union notes that the State's offer falls short of the uniform allowance position arrived at in the PBA 105 Award, covering the rank and file employees supervised by members of this bargaining unit. It charts the shortfall, seeking a resolution herein.

Another benefit area where the Union claims to have a shortfall is bereavement leave. It asserts that none is currently designated in the contract and that the proposal for two days per year is reasonable. The NJLESA maintains that the State Troopers and the State Trooper NCO members have a bereavement leave benefit.

The Union also identifies paid leave for attending to Association business as an area where the overall benefit level needs improvement. It suggests that PBA 105 received an increase in time for Association business of 50 days. The Union points out that this change occurred as the bargaining unit was reduced by a splitting off of certain job titles into the separate SLEU bargaining unit. The NJLESA argues that its request for an increase to 270 days is warranted. It asserts that the leave sought "pales in comparison to the amount currently received by the State Troopers Fraternal Association as well as PBA 105."

Lastly under this criterion, the issue of the work schedule for New Jersey State Park Police is raised. The Union maintains that the four day, 10 hour schedule is universally used and has been for nearly three years. Its use before that was at least sporadic for a ten year period. The NJLESA proposal is for the codification of that schedule in the collective bargaining agreement. The Union also contends that its proposal relating to an addition break when working beyond the normal work day is reasonable and should be awarded.

The NJLESA notes that, under the **Stipulations of the Parties** criterion, the parties have been able to stipulate to the resolution of numerous non-economic issues originally in dispute. [Those items have been set forth in this Decision and shall be incorporated in the Award herein.]

The NJLESA places substantial emphasis on the **Lawful Authority of the Employer** criterion. It initially states that the awarding of its own proposals would be "fully within the parameters of the State's lawful authority." Conversely, the NJLESA argues that "some of the State's Final Economic Offers exceed its lawful authority."

The Union specifically identifies the component that addresses promotions to the Sergeant title and the proposed freeze of salary steps. Each of these elements of the State's economic package are said to be "contrary to existing law." The NJLESA maintains that as contrary to law, they are precluded from being awarded in interest arbitration.

The NJLESA, anticipating a procedural issue over the claim that these two items are not in accordance with the law, contends that it was not aware of the two proposals until November 24, 2008, well after the period had run for the filing of a scope of negotiations petition with PERC. It claims that learning of these specific proposals 14 months after the filing of the interest arbitration petition, at the outset of evidentiary hearings, placed seeking a determination of whether the proposals are lawful in an untimely realm.

Specifically, the Union argues that the two elements noted above are governed by statute and the positions advanced by the State are inconsistent with the statutory provisions. It claims that the statutes "speak in the imperative" regular each term of employment concerned and that, under *State v. State Supervisory Employees Ass'n*, 78 N.J. 54 (1978), the items are preempted from collective negotiations.

The Union claims support for its position in statute and cites the Administrative Code for the express language to which it wishes the State to be held. It relies upon N.J.A.C. 4A:3-4.9, relating to promotions and N.J.A.C.



4A:3-4.1, relating to step increments. It argues that each of these provision uses the term shall and speaks in the imperative, requiring the Employer to act consistently. The Union suggests that "the State's proposal changes the statutory mandates delineated in Title 4A and usurps the authority of the Commissioner to establish and make changes to the compensatory plan."

The NJLESA addresses the **Financial Impact** criterion by initially noting its importance in the interest arbitration process. It points to the need for the Arbitrator to consider:

[T]he impact on the governing body to: (1) maintain existing programs and services; (2) expand existing programs and services for which public monies have been designated by the governing body; and (3) initiate any new programs and services.

The Union suggests that "the State has not presented sufficient, substantial, and concrete evidence to establish an inability to pay the members of NJLESA the cost of living increases that have been requested." It relies upon the report of its economics expert, Dr. Frank Tinari, in reaching its assertions relating to the financial impact on the governing body and the taxpayers.

The NJLESA specifically cites the expert opinion that the Union's proposed salary increase would impact the Department of Corrections 2008 budget by only about 0.2%. Further, the Union points out that the renegotiated contract between the State and the Communications Workers of America, deferring the previously negotiated 3.5% wage increase scheduled for July 1, 2009 for 18 months and establishing ten unpaid furlough days, has saved the State approximately \$300 million. It further notes that the recent tax amnesty program generated about \$725 million in previously unrealized revenue. NJLESA also identifies anticipated federal stimulus money as an additional unanticipated source of revenue, bolstering the State's ability to fund the Union's proposals herein. The NJLESA concludes "that the State's view of economics is far too narrow and ignores the potential for near-term economic recovery." It maintains that "the financial impact criterion clearly supports the award of the NJLESA's economic proposals.

The Union argues that the **Cost of Living** criterion "weighs heavily in favor of awarding NJLESA's Final Economic Offers, especially with respect to their proposed across-the-board salary increase." Once again the Union

relies upon the report of its expert, Dr. Tinari. It points to his report on the Consumer Price Index ("CPI") as a measure of the cost of living. The NJLESA expresses the "bare minimum" expectations that wages continue to support the same purchasing power over time. It notes Dr. Tinari's computation, over time, of average annual growth in the CPI of approximately 3%. The Union argues that the State's offer will not support the continuation of purchasing power, especially noting the 0.0% salary increase proposed for July 2009.

The NJLESA contends that the implementation of its final offer will promote the **Continuity and Stability of Employment**. It describes the importance in the correction setting for a "career path" and claims that this is especially important to avoid unwanted turnover.

As ordinary and traditional factors in the determination of wages and benefits, the Union places emphasis on the need to maintain real wages and purchasing power. It also addresses the need to stay competitive in compensation rates, especially with other State law enforcement units. It notes the impact that

implementation of the percentage premium sharing might have on future hiring, since it is only to be applied to post-January 2007 hirees. The retention of qualified and competent employees is also recognized as an important factor. The Union projects some fear that, absent a fair compensation package, employees might be lost to jobs with less danger and greater compensation.

The NJLESA presents an argument that the proposal to have convention leave for delegates is important and useful. It suggests that, although it is not affiliated with the four organizations recognized by statute for leave, such a leave would still be warranted and valuable. It specifies that Corrections USA is an organization appropriate for attendance at an annual convention. The Union claims that the State does not have a rational basis for its denial of such leave. It seeks an award providing the same privilege afforded other law enforcement groups.

In conclusion, the NJLESA asserts that its final offer is supported by the statutory criteria. It seeks an Award of its final economic and non-economic offers in their entirety.

Position of the State

The State contends that the evidence supports a finding that "all aspects" of its final offer should be awarded by the Arbitrator. It further asserts that the Arbitrator should reject the NJLESA's final offer "in its entirety." It emphasizes the evidence that the State of New Jersey is "in the throws of a grave financial crisis." It further maintains that "this financial crisis continues to worsen."

The State presents its position, delineated by issue and its arguments applying the statutory criteria separately for each item in dispute. Its initial discussion relates to the State's final offer with respect to wage increases. At the outset of the discussion of the wage package, the State maintains that the wage offer is only reasonable as part of the overall package including health benefit changes, uniform allowance changes and the wage increase to be provided upon promotion to the unit. It emphasizes that although the various economic items are discussed individually, they should be treated as "components of an integrated package."

The first aspect of the statutory criteria addressed by the State, with respect to wages, is that of the comparison to other employees of the same Employer, a sub-section of the **Comparability** criterion. The State notes that the average salary for unit members is nearly \$23,000 higher than the average base salary for civilian employees. The Employer touches upon the **Overall Compensation** criterion as it points out that NJLESA unit employees have greater overtime opportunities than the civilian employees and they also have a "generous uniform allowance." The Employer takes note of evidence that the civilian bargaining agreements initially provided for wage increases of 3.0% in fiscal years 2008 and 2009 and 3.5% in fiscal years 2010 and 2011. However, the State stresses that the CWA agreed to a revision of the wage package, deferring the fiscal year 2010 increase of 3.5% for 18 months, until January 2011. In addition to the deferral, the revised package provided for 10 unpaid furlough days. These components established significant cost savings for the State.

The State acknowledges that the voluntary agreement it reached with the State Law Enforcement Unit (SLEU) PBA

on August 20, 2008 generated greater wage increases, totaling 14.5% over four years, than those in the civilian units. It emphasizes that the package did include substantial cost savings through the reduction of the entry rate salary and the freezing of that rate for the life of the agreement. Further cost savings, as with the civilian groups, were achieved through health care contributions, the elimination of the NJ Plus Plan (replaced by the Direct 15 PPO) and the increase of co-pays.

The Employer, in addressing the **Financial Impact** criterion, contends that the State need not "prove that it would suffer a 'substantially detrimental result' or that financial difficulties would be created or worsened." The focus, it argues, should be on the impact upon the governing bodies ability to provide program and services and the overall impact on the taxpayer.

The State relies to a significant extent upon the testimony presented from two expert witnesses as to financial matters. The first of these financial witnesses, Dr. Ranjana Madhusudhan, is an expert in revenue projections. She testified as to the

deterioration of the revenue projections for fiscal years 2009 and 2010 from June of 2008 to March 2009, when she appeared at the hearing. The testimony proceeded to describe the necessity to revise the forecast as the fiscal crisis spread not only across the State by across the nation as well. The State characterizes her testimony as establishing the fact that the State was now "in the midst of a major financial crisis." It argues that "the depth of this crisis cannot be overlooked or underestimated in this proceeding."

The second financial expert, Charlene Holzbaur, is the Director of OMB and is responsible for preparing the annual budget message and the State's audited financial statements. Her testimony focused on the increased reliance by the State on the use of surplus reducing continuing surplus levels, the pressure on operating expenses causing a need to cut Executive Branch Departmental expenses, and the need to spend substantial sums to make the pension funds more stabile.

The Employer argues that the **Public Interest** criterion requires the Arbitrator to take note of the "unprecedented" nature of the current economic "tailspin."



It urges that great weight be given to evidence of a fiscal crisis "comparable in size and scope only to the Great Depression." It asserts that the 0.0% increase proposed for fiscal year 2010 is necessitated by unique and dramatic circumstances. The dramatic increases in the State's unemployment rates are also noted as an element of the public interest criterion. This presents a setting in which the impact of the other financial problems are magnified as they affect the public and the taxpayers.

The State claims that the drastic revenue shortfall already realized has led to revised fiscal year 2010 projections in which further revenue reductions are expected. These are tied to the national economic environment, the suffering employment rate and the slowing of economic activity. The practical implication of this revenue shortfall is the need to reduce the State's spending in fiscal year 2010 by billions of dollars.

The Employer, returning to consideration of the comparability criterion, argues that a valid comparison is to examine corrections sergeants salaries at the State level in comparison to those of the counties where State

DOC facilities are located. It suggests that these are "the most comparable jurisdictions."

The Employer insists that the wage freeze in fiscal year 2010 must also include a freeze on incremental step movement. This will affect 55% of the bargaining unit, those who have not yet achieved Step 10 on the salary schedule. The Employer calculates the cost of step movement for the NJLESA unit as over \$1.2 million for fiscal year 2010. It stresses that this increment freeze was awarded to the PBA 105 bargaining unit and was voluntarily agreed to by the Fraternal Order of Police ("FOP") unit representing the investigators in the Department of Corrections.

The State expresses specific recognition of the terms of the PBA 105 Award, issued on May 5, 2009. This unit of corrections and parole officers has approximately 6,600 employees. The Employer delineates the details of the wage package as follows:

Fiscal year 2008 - 3.5%

Fiscal year 2009 - 3.5%

Fiscal year 2010 - 0.0%

Fiscal year 2011 - 2.0% 7/2010; 2.0% 1/2011;

The State maintains that the Arbitrator in that proceeding, James W. Mastriani, "highlighted the deteriorating economic situation and the inability of the State to support wage increases for FY-10." The State suggests that its lesser proposals herein should be awarded since the economic landscape has continued to deteriorate.

The Employer also notes that the Arbitrator in the PBA 105 dispute provided for numerous health care changes including the PPO Plan, contributions and increased co-pays, and new Prescription co-pays; a modest improvement in clothing allowance; and the reduction and then freezing of the entry level salary rate for the life of the agreement. The significance of these additional savings are stressed by the State as "an integral part of the State's Final Offer."

The State also presents a detailed examination of the voluntary agreement with FOP Lodge 174, concerning approximately 112 DOC investigators. The across-the-board wage increases in that agreement are identical to those in the PBA 105 Award. This agreement also provided for a

step movement freeze for the 26 bi-weekly pay periods following ratification of the contract. It also embodied the same health care changes as the PBA 105 Award. FOP 174 also agreed to an adjustment to the initial salary rate of employees when they are first promoted into the bargaining unit. The State maintains that this adjustment is similar in cost savings to the treatment of the entry level salary rate in the PBA 105 rank and file unit. The Employer also notes agreement by the FOP to increase the clothing allowance exactly as the State proposes it be adjusted in the dispute at hand.

The State characterizes its proposals with respect to health benefits as "an essential component of the State's Final Offer." The Employer explains that the changes sought in the health plan "are extremely important in curtailing the escalating costs of providing health care to State employees." The Employer stresses that health plan costs have "skyrocketed" and points out that 88% of State employees have already reached agreement to the changes proposed by the State herein. It claims that application of the changes to the remaining State employees will save approximately \$115.6 million, a 9.4% decrease in costs.

The State urges the Arbitrator to reject the uniform allowance proposal of the Union, in favor of its own, more modest, offer. It insists that the current benefit levels are very high, noting that they are well above the benefits found in county correction units. The State characterizes the NJLESA's proposed increase of \$450 over the life of the agreement as "exorbitant" and notes that the increase would cost the Employer over \$337,500 per year [presumably once it reaches the \$2,160 level]. Selection of the State's offer is claimed to be warranted based on comparability and the high level of the current benefit.

The Employer maintains that its proposal concerning the salary upon future promotion into the bargaining unit "constitutes a crucial element of the overall package" and must be included in the Award. Currently, an employee promoted into the unit would receive a step increase and then be placed on the next highest salary step on the guide. The proposal is to simply place the newly promoted sergeant on the next higher step on the salary guide. The Employer argues that this change is needed to balance the

package, which does not otherwise reflect the savings generated by reducing and freezing the entry level salary rates in the PBA 105 contract and the SLEU PBA contract. It is the contention of the Employer that this is a parallel component, keeping the overall packages among the law enforcement units relatively equal. Further, the settlement with the FOP 174 unit implemented similar savings through the same promotional salary device.

The State emphasizes that the proposed change will not affect any current NJLESA unit members as its application is only prospective. The Employer stresses that it is not seeking any additional concessions from this unit that it did not achieve in contracts with the other law enforcement bargaining units.

The Employer urges the Arbitrator to reject the Union's final wage offer as excessive in light of the evidence of the "significant economic downturn" that has occurred since September and October of 2008. Specifically, the State assails the 5.0% and 5.5% wage rate increases proposed and also the shortening of the time to attain the 9th and 10th steps of the salary guide.

It simply describes these proposals as unjustified in the face of a \$7 billion budget gap for fiscal year 2010.

The State contends that there is no evidence to support an increase in the NJLESA's union leave provision. It points out that the current level of 195 days a year is generous and that there is nothing to indicate that it is insufficient and in need of expansion. It maintains that an increase of 75 days would create overtime costs that are not reasonable or warranted. The Employer urges the rejection of this proposal as unsupported.

Similarly, the State asserts that the NJLESA proposal to establish two bereavement days per year is not supported by any evidence of an inability to attend to bereavement needs under existing leave provisions. It characterizes this proposal as "unnecessary" and seeks to have it rejected by the Arbitrator.

Once again the State argues, with reference to the effort to change overtime compensation methods, that the NJLESA has proposed a change that is not supported with any evidence. It expresses the administrative need to control whether overtime is compensated with comp time or

pay depending on the cost implications. The rejection of this part of the Union's offer is sought.

The Employer seeks the rejection of the NJLESA's proposal to specify a work schedule for Park Police Sergeants in the contract, specifically a four day, 10 hour schedule. It argues that the Director of the State Park Police testified that the Union's proposal was "not operationally feasible." He expressed concern that he could not properly staff the parks under the proposal.

The State asserts that the NJLESA's convention leave proposal must be rejected. It stresses the fact that the other law enforcement groups enjoying convention leave, do so under a statutory provision that expressly identifies affiliation with four organizations to qualify. The NJLESA is not affiliated with any of those organizations. The Employer argues that the 195 days of Union leave is sufficient to provide member access to any convention they seek to attend. It insists that the proposal for this additional leave be rejected.

The State concludes by expressing the belief that it "does not have the resources to fund the Union's



exorbitant wage increases, and other economic proposals in this time of fiscal crisis." It contends that the record supports that the State's Final Offer be awarded in its entirety.

### **Discussion and Analysis**

The NJLESA represents a cross-section of supervisory titles, all law enforcement personnel employed by the State of New Jersey. The job titles in the bargaining unit are as follows:

1. Correction Sergeant
2. Correction Sergeant, Juvenile Justice
3. State Park Police Sergeant
4. Sergeant Campus Police
5. Police Sergeant Human Services
6. Assistant District Parole Supervisor
7. Assistant Dist Parole Supv, Juvenile Justice
8. Conservation Officer 2
9. Supervising Interstate Escort Officer

There are approximately 750 employees in the bargaining unit. Of these, about 600 serve in the capacity of either a Correction Sergeant or Correction Sergeant, Juvenile Justice [Exhibit E-69].

Members of this bargaining unit supervise the members of PBA 105, the rank and file Correction Officers unit, and also they supervise the members of the SLEU PBA unit,

employees formerly represented by PBA 105 but now in a separate bargaining unit.

The parties have made constructive efforts at reaching a voluntary resolution of this dispute. Indeed, they have stipulated to the resolution of numerous non-economic issues that had been in dispute. Some of these items were hotly contested through negotiations and ultimately the subject of mutual agreement, as noted earlier in this Decision and Award.

The impasse has persisted with respect to several critical issues that are the subject of this Discussion and Analysis. The parties' differences on these remaining items in dispute may be quite stark and the divergence with respect to certain positions is of considerable magnitude. As previously noted, the evidentiary record is quite remarkable; the issues remaining in dispute shall be resolved through the application of the statutory criteria to the evidence presented. That process is summarized as follows.

The **Interest and Welfare of the Public** is always a relevant criterion in resolving an interest arbitration

dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. Consider that the services rendered by the employees at issue are a particularly important aspect of providing for the public safety. The State's ability to attract, retain and promote qualified law enforcement primary level supervisors has an impact on the quality of life of its residents, measured in terms of safety and the effectiveness of the correctional system and other areas served by unit personnel. Fiscal responsibility is another component of the public interest that is directly and particularly relevant to the considerations in this interest arbitration. Additionally, the morale of employees is an important factor as also is the impact of this contract resolution upon the overall labor relations process and bargaining structure in State employment.

The bargaining unit employees perform important, indeed, essential functions for the citizens of the State of New Jersey. It is recognized from the outset that the security and protection provided by these law enforcement

supervisors constitute a public service on a 24 hour a day, 7 day a week basis.

The Arbitrator agrees with the Union that it is first necessary to understand the unique difficulties and dangers associated with employment in these jobs, especially in the corrections setting, in order to apply the public interest criterion thoroughly. As noted above the services performed by unit members are essential in nature. There is no down time in a correction setting, the operation presents potential challenges at all times. The primary level supervisors have regular, direct interaction with inmates. The record includes some dramatic testimony that the current inmates have become: younger; more aggressive; less respectful of authority; and more likely to be gang affiliated. Further testimony, which was quite credible, discussed that the job poses certain health threats due to exposure to diseased inmates who may carry contagious illnesses. Of specific note in this testimony was exposure to MRSA. The fact that unit personnel work under such a difficult and dangerous environment must be given meaningful recognition under the public interest criterion.

The fiscal responsibility element of the public interest criterion must be given substantial weight in the case at hand. The record includes very convincing evidence that the State of New Jersey is facing a fiscal crisis of enormous impact, such as the post-Depression generations have never experienced before. The details of this financial crisis will be addressed with more depth under the financial impact criterion, however it is important to emphasize the enormous revenue shortfall experienced by the State during the course of the negotiations for this contract. The record provides expert testimony that the FY 2009 revenue projections required a major downward revision based on weak and worsening revenue experience, comparing anticipated versus realized amounts.

The evidence further established the general weakening of the national economy, indicating a continued problem with respect to revenues. This weakening was reflected in a sharp downturn in the GDP (an indicator of economic activity) and in corporate profits (which drive tax revenues and are also indicative of economic health). The generally weak overall economy provides a basis for projecting continuing problems with respect to the

immediate future for State revenues. The revenue shortfall for fiscal year 2010 was projected to be more problematic than for the previous year. The revenue projections are an important function for the State in reaching its budget; the projections are largely based on historical trends. The difficulty at hand was compounded by the unusual and unexpected speed of the revenue downturn.

The practical implications of the unprecedented drop in revenues required the State government to turn to "solutions." The concept of solutions relate to making changes of course with respect to both revenues and expenditures. It became necessary for the State to seek new revenue sources and to reduce its spending, simultaneously. This drive for fiscal responsibility manifested itself with great impact within the realm of the negotiations process with State employee bargaining units. Consider that the resolution of the negotiations with the SLEU PBA unit [Exhibit E-30] provided for increases of 3.5% (July 2007 and July 2008) and of 3.75% (July 2009 and July 2010). This package, reflecting an increase of 14.5% over four years, was reached on August 20, 2008, before the revenue downturn took hold. Compare

this to the ultimate resolution of the contract between the State and PBA 105 in an interest arbitration award issued on May 5, 2009. The revenue shortfall had by now taken hold and become problematic for the State. Its impact is reflected in the wages increase pattern for PBA 105: 3.5% (July 2007); 3.5% (July 2008); 2.0% (July 2010); and 2.0% (January 2011). The total package reflects an increase of 11.0% over four years and includes effective dates providing the Employer with some further cost containment measures as well. It is proper to point out that some of the salary rate reduction applied to PBA 105 was offset by delaying the effective date of its health benefit premium sharing provision.

The significance of this sequence of events is particularly meaningful in understanding the public interest in fiscal responsibility. The parties have responded to the dramatic turn of events with respect to the State revenue flow. It is unusual for the process to respond in a single negotiations cycle to evolving fiscal matters, however, this was not an "evolution" with respect to finances. The State was presented with, and continues to deal with, a truly unprecedented fiscal crisis and the bargaining process has responded. The circumstances



presented a need for a shift in approach to respond to the public interest in fiscal responsibility.

This response is further evidenced by the FOP 174 Investigators unit voluntary settlement [Exhibit E-89]. That settlement, reached August 31, 2009, reinforced the responsive nature of the PBA 105 Award. The FOP 174 settlement is parallel to the PBA 105 Award, in general, and it is identical with respect to salary rate increases. Both units also participated in the major adjustment to health benefits implemented across State bargaining unit lines. There is direct evidence that the negotiations process has responded to the dramatic shift in the financial situation, driven by the need for fiscal responsibility. This reflects the impact of an element of the public interest.

Additionally, the record reveals that the largest group of civilian State employees, those represented by the CWA, have engaged in the extraordinary act of revising a settled contract, fully in place and operational, in order to establish some substantial cost containment components for the Employer. In this case, the State and the CWA negotiated the deferral of 3.5% of across-the-

board salary increases for 18 months and agreed to 10 unpaid furlough days, providing significant cash flow savings to the State. In exchange, the CWA received certain guarantees related to layoffs and some future changes related to time off. This was truly an unprecedented response to the State's fiscal crisis.

The facts establish a time line which maps the impact of the fiscal crisis upon contract negotiations. Prior to the sudden, steep downturn in State revenues, the parties negotiated moderate contracts with annual wage increases and significant health care cost containment features. Following the inception of the crisis, cost-reduction mechanisms were implemented through the bargaining process and interest arbitration which reflected the public interest in fiscal responsibility.

The evidence at hand, relating to fiscal responsibility and the public interest, absolutely requires that the resolution of the economic issues in dispute herein be parallel to the contracts for PBA 105 (Corrections rank and file) and FOP 174 (Corrections Investigators). The result is also reflective of the extraordinary efforts of the State and the CWA in revising

the terms their contracts. This aspect of the public interest criterion weighs quite heavily in support of the package awarded herein. It also is noteworthy that the NJLESA position is simply at odds with the public interest concept of fiscal responsibility under the dramatic evidence in this record as to the sudden, substantial and fully unexpected financial crisis upon which the State was thrust.

The Arbitrator finds that the economic package awarded herein shall serve to maintain the morale of employers. Several problematic elements, as identified by the Union, have been modified. For example, the State's wage offer, below the corresponding packages implemented for the PBA 105 and FOP 174 units, was not awarded herein; rather, the wage increase package is identical to those two other comparable units. Further, the proposal for a percentage contribution to health insurance premiums for future hires was not awarded, matching the health care components of the other two units noted above.

The economic package awarded herein shall continue to maintain the State's ability to promote and retain qualified first line supervisors. The compensation

package remains reasonably good and highly competitive in the labor marketplace. Although there is a modification of initial salary rate upon promotion, the advancement through the salary schedule, even delayed one year as awarded, and the solid benefit package will keep a steady career path for those in the bargaining unit.

The final aspect regarding the interest and welfare of the public relates to the impact of the resolution of this impasse upon the overall labor relations and bargaining structure in State employment. The context of the inter-relationship of the negotiations in various bargaining units requires careful consideration, especially with an employer the size of the State of New Jersey. There must be a balance to the various contracts. There is not always a true pattern of settlements. Sometimes contract terms are similar but not identical. They may vary by job responsibility, by location, by time of resolution and time of duration. They may reasonably vary for any number of important factors, but the relative relationship must always be considered, often with determinative weight, and always balanced for rational purposes.

In the case at hand, the evidence clearly establishes that, for many reasons, there be a close relationship in the contract resolution packages of the PBA 105 unit, the FOP 174 unit and the NJLESA unit. The swiftly developed, unusual and pressing circumstances the parties are facing are similar; the timing and duration of the contracts are very nearly the same; and the nature of the employees' work responsibilities are quite comparable. Imagine the impact on the negotiations system if this Award were to provide a significantly higher wage increase or reject the very comparable health insurance components of the other packages. That set of events would undermine the consistency and predictability of the process to the detriment of the public interest. Consistency and predictability support the concepts of sound labor relations, enhancing the continued effectiveness of labor-management relations. The Award set forth herein is rational, consistent and carefully structured to be balanced in the context of the overall labor relations process in State government.

The evidence presented includes a broad spectrum of data relating to the **Comparability** criterion. This evidence relates to comparisons with the private sector,

in general [note that there are no employees who perform the same or similar functions in private employment]; with the public sector, in general; with employees performing the same or similar functions with comparable employers; and with other employees of the State of New Jersey.

The most commonly used tool for comparing private sector wages in New Jersey for the purpose of interest arbitration is New Jersey Average Annual Wages survey, compiled by the Department of Labor and Workforce Development and published by the Public Employment Relation Commission for use in interest arbitration proceedings. The last three surveys have revealed that from 2005 to 2006 the average private sector net wage change was 4.6%. The same figure for the change from 2006 to 2007 calculates the net private sector wage increase to average 4.3%. The most recent data was published in September of 2009 and reveals the net private sector wage change from 2007 to 2008 to be an average increase of 2.5%. The trend is unmistakable. It is downward and with a steep curve beginning in 2008. The wage increases awarded herein are in balance with this evidence, reflective of the trend and also of the expert testimony

that there is a reasonable expectation for some recovery in the 2010 and 2011 calendar years.

The same documents noted above do not follow the same trend with respect to state and local government wages. The year to year increases for local government wages stay very steady in the 3.3% to 3.5% range from 2005 through 2008. The figures for state government wages actually increases from a very modest average of 2.1% from 2005-2006 to 5.0% and 5.8% covering the next two years. The Arbitrator does not place substantial weight in the general survey figures for state government wages due to the presence in this record of extensive and much more specific data which is of greater relevance to the issues presented herein. The specific data is more meaningful and deserving of greater weight in this analysis.

Comparisons with other law enforcement bargaining units in State government is a particularly important factor in determining the resolution of the negotiations impasse herein. This compares the supervisors represented by the NJLESA with other law enforcement employees of the State, recognizes that those other employees are cast in essentially the same economic circumstances as each other.

There are marked differences relating to the timing of various contract resolutions that must be considered, on a qualitative adjustment of the quantitative evidence. However, the most recent results would present the most relevant and meaningful comparisons. Consider that there are three law enforcement units with contracts resolved for the term at issue for the NJLESA. Those units represent the Correction and Parole Officers (PBA 105); other state law enforcement rank and file titles, formerly in that unit (SLEU PBA); and the Correction Investigators (FOP 174).

The wage increase resolutions among those three resolved units can be compared with the two final offers herein as follows:

	7/1/07	7/1/08	7/1/09	7/1/10	1/1/11
SLEU PBA	3.5%	3.5%	3.75%	3.75%	-
PBA 105	3.5%	3.5%	0.0%	2.0%	2.0%
FOP 174	3.5%	3.5%	0.0%	2.0%	2.0%
NJLESA OFFER	5.0%	5.0%	5.0%	5.0%	-
STATE OFFER	3.0%	3.0%	0.0%	3.5%	-



The Union's wage proposal is considerably above even the highest settlement, that reached with the SLEU PBA bargaining unit [Exhibit U-2,D.] on August 20, 2008. The timing of that resolution is critical in applying the results in comparison to the issues presented herein. That SLEU PBA settlement was reached before the onset of the fiscal crisis intertwined throughout the record in this arbitration proceeding. It is a benchmark of an earlier era and must be discounted somewhat in light of subsequent financial and collective bargaining events.

The playing field is particularly well-defined in examining the change in circumstance between that settlement and the issuance of the PBA 105 Interest Arbitration Award [Exhibit E-72] on May 5, 2009 and the voluntary resolution of the FOP 174 Correction Investigators contract [Exhibit E-89] on August 31, 2009. Of special note are the changes in the magnitude and timing of the wage increase package. These changes are obviously a response to the evidence presented relating to the financial impact of the loss of revenues to the State. It is interesting to note here, to be discuss in greater detail under the Financial Impact criterion, that the record establishes that funds were budgeted and in place

to accommodate the fiscal year 2007 and 2008 increases. Further, following the freeze in fiscal year 2009, there was expert testimony of a projected improvement in the revenue picture in calendar years 2010 and 2011.

An aspect of the comparison with the PBA 105 and FOP 174 contract resolutions that has not yet been discussed but warrants careful analysis is the fact that both of those contracts applied a freeze in step movement for one year. The PBA 105 Award provided for the freeze in fiscal year 2010, beginning July 1, 2009. For the Correction Investigators settlement, the implementation was devised to occur "as soon as practical following the ratification." This incremental movement freeze is an integral part of the compensation packages for the other two units. For all the same reasons that the wage increases herein should be in complete balance with those of the two closest and most relevant internal comparison units, the step movement structure should also reflect the direct comparison with the Correction Officers rank and file unit and the Correction Investigators unit. Implementation of that step movement freeze shall be awarded herein and the comparability criterion warrants very substantial weight (along with the public interest

and financial impact criteria) supporting that component. [Note: the lawful authority considerations raised by the Union have been considered and will be discussed under that criterion.]

It is particularly important to note that both the PBA 105 Correction and Parole Officers unit and the FOP 174 Correction Investigators unit work in the same environment as the vast majority of the NJLESA unit, the corrections system. The comparisons could not be any more relevant, these are the closest groups for comparison, with respect to relevancy to the impasse at hand. It is true that a number of the NJLESA unit members supervise employees in the SLEU PBA unit, but a dominant number supervise employees in the PBA 105 rank and file unit. It is significant to also point out that the FOP 174 Correction Investigators unit is, as is the NJLESA unit, a promotional unit filled mostly from the ranks of PBA 105 unit members. This marks another element of the relevancy of the comparison. Substantial weight has been attributed to the comparison of the wage increase awarded herein to those of the other three law enforcement units in the record. As noted, due to the clearly significant timing

of events, this comparison is especially weighted toward the more recent resolutions.

The internal comparison of wage negotiations between the State and the CWA are also worthy of consideration and evaluation for resolving the impasse at hand. The relevance of this negotiations is significant because the CWA represents the largest group of unionized employees of the State and provides an indication of certain trends in State bargaining. On February 21, 2007, the State and the CWA reached a settlement of their negotiations for the contract period of July 2007 through June 2011 [Exhibit E-31]. That agreement provided for wage increases of 3.0% in July of 2007 and July of 2008; and wage increases 3.5% in July of 2009 and July of 2010. The health benefit components of this contract settlement were of substantial importance but will be addressed separately from wages.

It is obvious that that settlement is greater than the one offered by the State herein, but once again timing and intervening events place the comparison in an entirely different light. The original Memorandum of Agreement [Exhibit E-31, noted above] was executed on February 21, 2007, well before the onset of the fiscal crisis. That

crisis was sufficiently real and difficult as to become the basis for the CWA to negotiate and agree to certain modifications in its existing and enforceable contract, out of the necessity to protect the long term interests of its members. On June 3, 2009, the CWA and the State reached agreement [Exhibit U-9] to modify a number of components of their economic package. Of primary significance is the deferral of the July 2009 wage increase for a period of 18 months. This reduced the State's payout cost of the CWA agreement by about 5.25% (3.5% X 1.5 years). Since the increase was deferred, rather than eliminated, CWA members would eventually reach the wage rates originally negotiated but the State would get important payout cost containment equal to 5.25% of payroll, from July of 2009 through January 1, 2011.

Further, the CWA agreed to 10 unpaid furlough days to be used before July 1, 2010. This would also provide significant payroll cost containment during fiscal year 2010, that identified by the State's expert witnesses as the most problematic. The unprecedented mutual agreement to these modifications dramatically illustrates that necessity drove the changes in the State's labor relations position and the reasonableness of the emphasis on

comparisons with the later, rather than the earlier, law enforcement unit contract resolutions.

The internal unit comparisons are worthy of very substantial weight with respect to the health benefit issues in dispute. The implementation of cost containment factors has been a universal element in collective bargaining in the current cycle of State contracts. Its initial form, as embodied in the CWA contract dating from February of 2007 [Exhibit E-31], saw the replacement of the Traditional Plan and the NJ Plus Plan (effective 1/1/2008), by a comprehensive PPO with a national network, now known as NJ Direct 15. This negotiated set of changes also modified co-pays, prescription co-pays, and provided for the contribution toward premiums for all employees. It used 1.5% of salary as the mechanism to calculate premium contribution levels.

While the concept of cost containment has been universal, it has taken a variety of forms and used different effective dates within State contract negotiations. Certain factors remain universal; all the contracts have premium contributions for all participating employees, all units have implemented increases in the

various co-pays, and all units have eliminated the existence of the Traditional and NJ Plus Plans.

The most recent examples of the implementation of the health benefit cost containment provisions have occurred in the PBA 105 and FOP 174 units. These two approaches are identical to each other and, for the reasons expressed earlier, they are the most relevant to resolving the dispute at hand. Consider that these two bargaining units both replaced the Traditional and NJ Plus Plans with the NJ Direct 15 PPO Plan. The two bargaining units have both limited premium contributions to flat dollar amounts and implemented these contributions, effective January 1, 2011. Both of these units have raised certain co-pays for doctors visits and emergency room care. Both bargaining units will have modifications in the prescription benefit, increasing certain co-pays and creating a different treatment in specific instances of brand name drugs where a generic version is available. They also have identical retiree and wellness program provisions.

Application of the comparisons with the two most recent contract resolutions, implementing the changes set out above, is most reasonable under the comparability

criterion. These changes are parallel and reasonably consistent with all bargaining units, and should be applied identically herein with the two most relevant comparison units. The internal comparison criterion warrants great weight in determining the most appropriate resolution of the health benefit issues in dispute in this interest arbitration.

The Arbitrator has considered the considerable documentary evidence relating to the comparisons of terms and conditions of employment for the NJLESA bargaining unit with those of county correction officer units, both rank and file and supervisory. These comparisons are quite valid as they represent employees performing the same or similar functions in the next level of government service, the county level. They also perform these functions in essentially the same labor market as unit employees. All of the county facilities fall within some reasonable commute of State facilities and the state-wide measure is a valid one.

Consider the following comparison of maximum level salaries [note that some are reached during the calendar



year identified, not necessarily on January 1st] for the Correction Sergeant title in each jurisdiction, applying the wage increases awarded herein for the NJLESA salary:

<b>County</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2,010</b>
Bergen	98,838	102,791	106,903	111,340	115,960
Passaic	97,892				
Morris	90,217				
Union	86,324	86,324	90,640	95,172	
Monmouth	85,000	96,384	107,768	119,152	
Hudson	84,143	87,508	91,008	94,648	
Ocean	83,364	89,298	92,870	96,585	
Mercer	82,745	86,261	89,928		
Middlesex	81,051	84,293	87,664		
Somerset	80,154	84,963	89,636	94,432	
Essex	77,613	80,717			
Sussex	72,566	76,631	80,880	84,317	
Camden					
Atlantic	63,909	66,785	69,657		
Gloucester	63,659	66,428	70,002	72,544	75,358
Warren	62,546	65,017	71,366		
Cumberland	62,371	65,490	68,764	72,202	75,812
Cape May	61,925	65,021	68,267	74,768	78,408
Burlington	61,475	64,754	67,883		
Salem	54,350	60,674	66,997		
Hunterdon					
<b>Average</b>	<b>77,544</b>	<b>79,292</b>	<b>83,549</b>		
<b>NJLESA</b>	<b>83,356</b>	<b>86,273</b>	<b>89,293</b>	<b>89,293</b>	<b>91,079</b>

It is quite clear that the salaries for NJLESA unit members are competitive and will remain competitive upon the implementation of this interest arbitration resolution. Historically, this rate has not been equal to the highest in county government but it will remain well above average. Note that there is no evidence of the Department of Corrections having difficulty in attracting qualified recruits at current salary rates. The comparison of salary levels, placed in evidence, for employees performing the correction sergeant function in county correctional facilities is meaningful and has been given some weight herein. While this is not a determinative factor in and of itself, it fully supports the package awarded herein.

The Arbitrator has also considered the evidence presented in the Union's expert report from Dr. Tinari, Exhibit U-6. This documents a range of salary rate increases for county correction sergeants in terms of percentage increases. For the years 2007 and 2008 they are a little higher than those awarded herein. Additionally, of course in calendar 2009, the percentage increases in this document are all above the zero awarded herein. The Arbitrator has considered this aspect of the

comparisons and although it is clearly relevant and worthy of consideration it is out-weighted by the more immediate comparisons with the PBA 105 and FOP 174 units. Further, there is no indication that these other jurisdictions have faced the unexpected and drastic revenue shortfalls endured by the State, placing the comparison in a different context altogether.

The **Overall Compensation** currently received by unit employees is competitive and reasonable in scope and scale. As the comparative data suggests, the salary element of the compensation package is competitive enough to attract and retain qualified employees. The salary schedule is not excessive, nor is it substandard. It appears reasonably related to other State wages, in balance with job responsibilities, noting the difficult and dangerous factors dealt with by bargaining unit employees on a daily basis. It is in balance with the rank and file employees that bargaining unit members supervise.

The current contract [Exhibit U-2,A.] provides excellent leave benefits. The vacation benefit is quite competitive; it is an important component especially for

employees working in a corrections environment. The contract provides for 3 administrative leave days that can be used for emergencies or other personal needs. The sick leave benefit is appropriate and sufficient. This contract has always included outstanding health benefits. Although there will be some modifications of the nature and the cost to the employees of these health benefits as a result of this Award, excellent quality health benefits shall continue to be a component of the NJLESA contract. The existing benefit package has become outdated by comparison and the continued participation in the State Health Benefits Plan (with options) shall maintain a premium level of coverage and care.

The Union argues that there is a shortfall in the current benefit package with respect to the absence of bereavement leave. It draws a comparison to NJ State Police Sergeants, whose contract allows 3 bereavement days. It also suggests that the existing number of paid release days for association business is insufficient, noting the level currently provided under the State Trooper Fraternal Association and PBA 105 as the benchmarks.

The Arbitrator concludes that the current compensation package for NJLESA bargaining unit members is clearly a good one. It is reflective of the important law enforcement, security and public safety functions performed by the employees. This package is in reasonable balance. It is neither overly generous nor substandard, meaning that the overall compensation criterion provides a meaningful context for the application of the other criteria, but it is not a determinative factor in and of itself.

The **Stipulations of the Parties** criterion has significant application in the proceeding at hand. As noted earlier, and reflected in the Award herein, the parties have reached a stipulated resolution to nearly all of the non-economic issues originally in dispute at impasse. They have truly done yeoman's work to accomplish that end. Further, there were certain factual elements that were the subject of stipulations. For example, they reached an understanding as to how the record shall reflect the implications of the State's tax amnesty program of March to July of 2009. The stipulations of the parties shall be afforded appropriate weight and, where relevant, shall be further discussed under other criteria.

At the outset of the discussion of the **Lawful Authority of the Employer** criterion, it is important to point out that all references to Title 40A, *N.J.S.A.* 40A:4-45.1 et.seq., are not relevant to the proceeding at hand. That statutory title relates to municipal and county governments and is not applicable to the Employer herein, the State of New Jersey. The statutory criteria for interest arbitration address the CAP Law provisions that are a function of local government budgets. They do not apply to the State itself. However, as discussed in the public interest and financial impact criteria, that does not diminish the importance of many important budgetary considerations and limitations with respect to the issues presented in this interest arbitration.

The Union raises two significant arguments with respect to the lawful authority criterion and the issues in dispute herein. It has also suggested that the Statutory Restrictions criterion applies to this position. Initially it raises questions over whether the State's proposal regarding the promotional process is in conflict with its lawful authority and secondarily the Union

questions the Employer's proposal concerning the salary step freeze as a posing a conflict with the law.

The State's proposal with respect to the advancement of employees into the bargaining unit provides that the method of establishing the initial salary rate of a sergeant be changed so as to advance directly to the next higher existing step on the appropriate sergeant's salary guide. The proposal to freeze step advancement for one year is just that, a deferral of step advancement for 26 pay periods.

The Union maintains that it did not follow the normal procedure of filing a Scope of Negotiations Petition with the NJ Public Employment Relations Commission due to the timing of the formal presentation of these items in the Employer's Final Offer, dated November 24, 2008, a date well past the October 1, 2007 filing of the Petition to Initiate Compulsory Interest Arbitration. The Arbitrator finds this argument as to the failure to seek a scope of negotiations determination from PERC to be without merit. The Union never attempted to file a scope petition; it had the State's proposal on November 24, 2008 but the transcribed formal record in this matter did not open

until December 3, 2008. Further, when the impact of the new proposals was learned, no effort was made to seek leave for the filing of the scope petition under special or changed circumstances. It is quite likely that this Arbitrator would have allowed such a request and that PERC would have agreed to rule on the negotiability question. It is important to note that the formal hearing process continued through March 31, 2009; the record continued to remain open for documentary supplementation beyond the last meeting with the parties on July 22, 2009; and the record remained open through the submission of briefs into the Fall of 2009. Opportunities existed for the Union to seek a determination from PERC on the lawful authority question. PERC is clearly the preferred forum for deciding issues of the scope of negotiations.

However, since the Union has chosen to forego the standard route of having PERC determine the negotiability of the State's proposals, the Arbitrator shall consider the arguments presented in the context they arrive, under the lawful authority criterion of the interest arbitration statute. The crux of the Union's arguments are that the two proposals deal with terms and conditions of employment where there is statutory limitation, of an imperative



nature. It claims that the law renders salary placement upon promotion and advancement on the step system as controlled by state law in the imperative, because the term "shall" is used in the statutory language. The Arbitrator does not find that argument to be persuasive or convincing.

The issues presented in the State's proposals deal exclusively with compensation, specifically, with salary rates of bargaining unit members. Salary is unmistakably a negotiable term and condition of employment. The Public Employment Relations Act presents the authority, truly the responsibility, of public employers and public employee representatives to negotiate salary; it does so in imperative terms, using the term "shall" in the process. Therefore, the Regulations relied upon by the Union and the PERC Statute must be read in *para materia*, rather than in conflict, in order to make true sense of the statutory scheme. To illustrate, consider that the NJLESA cites N.J.A.C. 4A:3-4.1 which states:

In State service, the Commissioner shall establish, maintain and approve changes in a compensation plan for all employees in the career and unclassified services...

Followed by indications that there shall be established pay rates, salary ranges and that the "pay shall be adjusted in accordance with this subchapter, except as otherwise provided by law...." In this case the statutory collective negotiations process, and by extension the interest arbitration process, are the means by which the pay rates are to be determined and then they are to be administered by the Commissioner. To make any sense of the process, the statutory provisions must be read together.

In light of the fact that there has been no Agency determination that the proposals are outside the scope of negotiations, and that the practical reading of the law makes the negotiations of salary rate determination within the parties' lawful authority, the Arbitrator finds that the lawful authority of the employer is not problematic with respect to the State's proposals that the NJLESA unit include the same cost containment devices, with respect to step increment movement as already implemented in the PBA 105 and FOP 174 bargaining units. Further, the Arbitrator refrains from blocking the cost containment components relating to salary rates for future bargaining unit

members, identical to the FOP 174 unit and parallel to the PBA 105 unit.

There is an additional, more practical side to the determination above. Had the NJLESA convinced this Arbitrator that it was correct that the lawful authority criterion prevented the awarding of the State's promotional placement and step freeze proposals it would have been necessary for the Arbitrator to redesign the compensation package. This would have been done to keep it in balance with the Correction Officers rank and file unit and the Correction Investigators unit.

Consider that such a result might have required cost containment to be implemented with a less desirable impact on the unit members. For example, it might have been necessary to reduce or delay the across-the-board salary rate increases to balance the overall package with the other two units. Ironically, this would affect all current bargaining unit members, potentially with a long term impact. Understand that the cost containment proposals attacked by the Union, as inconsistent with the lawful authority, have only a temporary impact on current bargaining unit members and, with respect to the

promotional placement proposal, only an impact on future bargaining unit members. The Arbitrator finds that the overall package herein is more reasonably structured as awarded than it would have been had the Union been correct about the 5th statutory criterion, causing the possible result of a negative adjustment somewhere else in the compensation package awarded.

In light of the failure of the Union to attain any determination that the two specific cost containment proposals of the State are outside the proper scope of negotiations, and no clear statutory prohibition, the Arbitrator does not place determinative weight on the lawful authority criterion.

The **Financial Impact** criterion addresses the impact upon the governing body, its residents and its taxpayers. In the case at hand, the evidence as to the State's financial circumstances is of great importance and very significant weight in deciding the issues at hand. There can be little argument with the finding that the State has experienced a fiscal crisis of enormous proportions that has required a response within this proceeding.

It is worth noting that the discussion of the financial impact factor in the PBA 105 Interest Arbitration Award [Exhibit E-72] is particularly well-presented and thorough. It's findings are echoed herein. That is not surprising since much of the factual record in the two proceedings is the same.

The key expert witness with respect to the State's revenue experience was Dr. Ranjana Madhusudhan, who heads the Office of Revenue and Economic Analysis in the Treasury Department's Division of Taxation. She identified the "big three" sources of income for the State as: the gross income tax; the sales tax; and the corporate business tax.

Dr. Madhusudhan testified that the original revenue projections for fiscal year ("FY") 2009 (beginning July 1, 2008 and extending through June 30, 2009) were for \$32.368 billion dollars. That amount was projected at \$1.36 billion dollars less (0.4% less) than the certified revenue figures for FY 2008. The testimony established that such a reduction in projected revenue was a reflection, in June of 2008, that there would be a weakening of the economic picture for revenues. The

witness identified a disturbing trend in the Gross Domestic Product [Exhibit E-39] representing a downturn in the economy of steep and deep proportions, a severe recession.

Exhibit E-45 tracks annual percentage changes in the gross income tax revenues for the State. While that revenue measure grew by 7.5% in FY 2008 it dropped by 10.8% in FY 2009, based on figures through March of 2009. This revenue factor had actually been projected to rise by 0.8% in the original preparations for the FY 2009 budget. This equated to a \$1.7 billion dollar gap in the gross income tax revenue source between the anticipated revenue and the actual. This is only the third occasion in the last 14 years that the actual gross income tax revenues have not matched or exceeded expectations [Exhibit E-45]. The revenue picture for FY 2010 is quite bleak. Revenues are already depressed and the economic indicators provide no basis to expect a better picture in FY 2010. Unemployment is at unprecedented high levels and climbing [Exhibit E-49] giving little reason to expect an immediate turn around in the income tax revenue trends. The expert testimony projects that without "solutions" the revenue for FY 2010 would fall by an additional 6.7%. Even with

the solutions (increased revenues through certain changes in policy) the projection is for a \$339 million drop in revenues, the bulk of which is projected in corporate taxes. The witness did testify to an expected improvement some time during the 2010 calendar year.

The State's Director of the Office of Management and Budget, Charlene Holzbaaur, appeared as an expert witness. She testified with great specificity as to the impact of the State's fiscal crisis on the expenditure side of the budget equation. Ms. Holzbaaur initially established that the State had reduced its fund balance from \$1.1 billion to \$600 million from FY 2008 to FY 2009 [Exhibit E-38]. The point was made that this reflects a reduction in fund balance to less than 2%, where 5% is the preferential amount to satisfy rating agencies. The witness explained that numerous difficult cuts were made in spending, including aid to hospitals and higher education. The rising impact of debt service, as a function of the budget, was discussed. Ms. Holzbaaur testified that the expenditure "solutions" needed for the FY 2010 budget included a freeze in salary increases for all State employees. She pointed out that the FY 2010 budget

reduced overall expenditures by \$3.4 billion dollars, about 10.2%.

Ms Holzbaaur did acknowledge, on cross-examination that there was 3.7% budgeted for salary increases in the FY 2008 budget and an additional 3.75% budgeted in FY 2009. It was also confirmed that the legal authority still exists to spend those amounts for salary increases in those fiscal years. She emphasized that there is no money budgeted for any salary increases in the area of prison operations for FY 2010, beginning July 1, 2009. The testimony on cross-examination also identified about \$7 billion in expected stimulus money to be distributed through the budget over the FY 2009 through FY 2011 period.

The record includes a stipulation of fact with respect to the tax amnesty program that has meaning under the financial impact criterion. The stipulation establishes that the tax amnesty program of March 2009 originally anticipated collections of \$100 million. By May of 2009 that figure was revised by the State Treasurer to \$200 million and as of July 8, 2009, approximately



\$725 million had been collected under the program. \$426 million of that amount was used for property tax relief.

The Arbitrator is not persuaded by the Union that the approximately \$300 million cost reduction from the mid-term contract modifications negotiated by the CWA and the State provides a revenue source for the NJLESA proposals in this proceeding. Those savings simply should not properly provide a revenues stream for the salaries and benefits at issue herein.

A summary of the financial impact criterion must emphasize that this is not a routine record with respect to finances. To the contrary, the evidence proves an unprecedented fiscal crisis has occurred. The most substantial element of that crisis is the extraordinary drop in State revenues, but it has been coupled with a drastic rise in unemployment and a substantial drop in economic activity. With clear and convincing evidence, the State has proved the facts asserted about the revenue experience. Further, it has shown the attempts at solutions to the budgetary issues on both the revenue and expenditure sides of the ledger. The PBA 105 interest arbitration award, working with a very similar record,

established a balanced and rational response to the revenue and expenditure issues. It provided a most reasonable platform for the direction of future bargaining, especially for employees involved in the correctional service and related services. This is not simply a matter of comparisons; the PBA 105 award is an excellent example of a particularly well-crafted response to the financial impact criterion. The Correction Investigators unit represented by FOP 174 recognized the validity of the earlier arbitration and voluntarily agreed to essentially the same terms. This package's central components, with moderate increases in the retroactive years (increases already funded and available), a salary and step freeze in the current year, FY 2010 (beginning July 2009), and several changes in health insurance which will provide extensive cost containment to the Employer, provides a reasonable and balanced result which addresses the financial impact issues from an expenditure perspective. The financial impact criterion weighs quite heavily in support of the economic package awarded herein.

The **Cost of Living** criterion has been given consideration and is worthy of some limited weight in determining the resolution of the issues presented in this

interest arbitration. The Union submitted evidence [Exhibit U-7] establishing that the cost of living in the region (measured by the CPI) has increased by about 3% annually, over the 10 year period from 1998 through 2007. That figure breaks down to 3.02% in the New York, Northern New Jersey region and 2.86% in the Philadelphia, Southern New Jersey area. The package awarded herein is competitive and reasonable under these figures.

The CPI figures on the record are dated, extending only through the end of 2007. They need to be placed in context. The Arbitrator takes arbitrable notice of the March 2009 Bureau of Labor Statistics Report with respect to the then current CPI data. The March 2009 "all items" CPI for the Northeastern region of the United States had increased by only 0.2% from March 2008. The cost of living data for the entire year 2008 was at reduced levels and the picture was quite different than that of the prior 10 year span. The package awarded herein is quite reasonable in light of the cost of living criterion.

The **Continuity and Stability of Employment** criterion also addresses factors that are ordinarily or traditionally considered in determining terms and

conditions of employment. The Arbitrator is quite certain that the economic package awarded herein will support stability and continuity of employment. It provides balance within the package to implement competitive compensation terms without losing sight of the financial challenges faced by the Employer. Where funding existed and was available, moderate retroactive increases were provided, keeping pace with the relevant comparison bargaining units. In response to a fiscal crisis, a wage and step freeze was implemented, as warranted. In response to growing health benefit costs, the plan was modified to maintain excellent benefits, mirror the cost containment of other employees and to provide a reasonable and fair cost-sharing system. Finally, in the out year of the contract, pay rates were again adjusted, timed to provide the State with some cash flow assistance in meeting those costs. This approach is consistent with the goal of maintaining the continuity and stability of employment in the bargaining unit.

The above assessment also provides an understanding of the application of several ordinary and traditional factors in the bargaining process. The fact that the package is in keeping with the experience in other

bargaining units is a standard, frequently inescapable result in bargaining. It is especially important that the relative relationship between bargaining units in the Department of Corrections be in balance. The Arbitrator recognizes that certain NJLESA unit members supervise employees in the SLEU PBA unit and there is some internal variation with those relationships. That result was unavoidable due to the timing of events and bargaining unit composition. For the most part, the package herein is in balance with bargaining on the broader scale, an important element of traditional considerations in resolving a negotiations impasse.

The ninth criterion, **Statutory Restrictions Imposed on the Employer**, is generally applied with full emphasis on the CAP Law, as it effects local governments. In that context, it is not applicable to this dispute involving State government and the NJLESA. However, the language of the criterion is such that it appears to parallel that of the lawful authority criterion. To that extent, the Arbitrator finds that the earlier discussion and analysis under that 5th criterion is designed to be applied to the statutory restriction criterion as well.

The Arbitrator has calculated the net economic change from year to year in the terms and conditions of employment of the bargaining unit as a result of the economic package implemented. This is not an exact science. For the purposes of such calculations, one must project that the number of members in the bargaining unit will remain essentially the same, using Exhibit E-69 as the basis for personnel and salary projections. Further, certain costs and savings must be projected over expectations based on the evidence presented. They will remain reasonably accurate, given the size of the operations at hand.

The net economic change for the initial contract year, July 2007 through June 2008, will have a net increase in cost for the bargaining unit of about \$2.103 million. This is computed by applying the salary increase rate of 3.5% to the prior base salary set out in Exhibit E-69 and adding in the uniform allowance increase for those eligible.

For the second contract year, 2008-2009, the net economic change can be calculated as approximately \$2.192

million in increase. This applies the percentage salary increase to the recalculated total unit base salary, and adds the increased uniform allowance cost for those eligible.

In the third contract year, 2009-2010, there is no salary increase. The health benefit changes will be implemented for nearly one-half the year; the cost containment is calculated from Exhibit E-9 as about \$2.502 million, generated by changes in the plan structure. The timing dictates that about half of that cost savings will be realized in the 2009-2010 contract year and the other half in the fourth contract year. Based upon the figures in Exhibit E-28, the Arbitrator estimates that the step movement freeze will have a cash flow cost reduction to the State of about \$1.0 million, half realized in 2009-2010 and half the following year. The Arbitrator calculates the net change as a reduction in costs of about (\$1.747 million) in 2009-2010, accounting for the partial impact of the health benefit savings, the step movement freeze and some cost for uniform allowance for those eligible. There can be an element debate as to whether the step increment freeze is truly a cost reduction or just the deferral of a previously established cost

increase, however, it does present considerable cost containment to the Employer that must be given meaningful credit.

The fourth contract year, 2010-2011, presents a number of factors to consider in the calculation of the net economic change. There are two wage increases during that year, 2% having a full year's impact and 2% having a half year's impact. Further, \$1.251 million in health benefit savings from the plan structural change has its impact in 2010-2011. The premium contribution component, saving about \$604,240 [see Exhibit E-67] begins on January 1, 2011, having a payout cost reduction of \$302,120 during the final year of the contract (since it impacts for only half the contract year). The cost containment factor of the step increment freeze has an impact of a projected \$500,000 in 2010-2011. There is also a clothing allowance increase in that year to be added into the total. The above elements compute to a net change of about (\$89,000) in reduced costs in the final contract year.

Several issues in dispute at interest arbitration warrant special note. The Arbitrator has implemented the uniform allowance changes exactly as implemented through



the PBA 105 award. The NJLESA unit and the Correction Officers rank and file unit had identical uniform allowance benefits in the prior contracts, Exhibits U-2,A. and U-5,D. The increases for this benefit, as proposed by the Union, are found to be greater than that warranted by the evidence. For consistency and practical balance, maintaining parallel benefits is most reasonable under the public interest, comparability and stability of employment criteria.

The Union proposes an increase in the contractual leave to attend to NJLESA business. The PBA 105 award provided the PBA with an additional 20 days for organizational business [Exhibit E-72]. That raised the contractual leave under the PBA 105 Agreement from 155 to 175 days Exhibit U-5,D. The Union's contention that the PBA 105 leave was raised to 205 days is not supported in the record. Had that been the case, an addition of 10 days herein might have been warranted. The FOP 174 contract agreement added 50 days to leave for Association business, effective July 1, 2009. However, that increased the number of such contractual leave days from 10 to 60 days. The NJLESA contract already provides for 195 days per year to attend to Association activities. Nothing in

this record proves that that is an inadequate allotment of time. It must be noted that the larger, PBA 105 unit has more than 8 times the number of members to represent than NJLESA and fewer days for this purpose. The evidence does not support the awarding of the Union's proposal to increase Association leave time.

The NJLESA proposes to establish a new paid leave of absence provision for executive board members and institutional vice presidents of the Union to attend convention leave in accordance with N.J.S.A. 11A:6-10. It points out that the PBA and FOP affiliated bargaining units enjoy this leave and it seeks the same benefit. The statute clearly anticipates the affiliation with one of four, named employee organizations (FOP; PBA; FMBA or IAFF representing law enforcement employees or fire fighters) in order to qualify for the convention leave.

The NJLESA is not affiliated with any of the four, named organizations. The Union is positioned most like the State Troopers Fraternal Association, which is also not affiliated with any of the four organizations. The STFA contract does not provide for the convention leave benefit as sought by the Union herein. The Arbitrator

must conclude that the NJLESA has not presented persuasive evidence to support its proposal; it must be rejected in the award herein.

The Arbitrator finds that the evidence on the record does not support the awarding of the Union's proposals: to revise the step movement guide; to add retiree and retiree dependent coverage to the dental benefit; to improve the eye care program; to add bereavement leave; to revise the overtime compensation method; and to add a new provision relating to the Park Police work schedule. Absent persuasive evidence in support of proposed contract changes, the Arbitrator finds it most reasonable to reject the proposed changes.

In conclusion, the package awarded herein is a carefully constructed balance: providing moderate and competitive wage rate increases in a retroactive time frame, where funds were budgeted and are still available; freezing wage rates and step increment movement to correspond to the harsh impact of a fiscal crisis; modifying the structure of health benefits to provide cost containment while still maintaining an excellent plan with a national network; adding reasonable flat dollar premium

contributions in the last year of the contract to provide further cost containment in the health benefits area; modifying the determination of the initial salary placement upon promotion for future unit members; and improving the clothing allowance as awarded in the rank and file unit. The record presented to the Arbitrator is quite extraordinary. The fiscal crisis faced by the State was proven to be unexpected and truly unprecedented in terms of its impact on revenues, residents and taxpayers. It has been cause for "solutions" relating to both revenues and expenditures. The resolution of the issues in dispute herein is a package of inter-related components that are designed to be in balance with each other. As such they must be viewed individually but only in the context of the total package. This set of terms and conditions of employment is found reasonable under the evidentiary record presented, giving due weight to the statutory criteria.

**A W A R D**

For the forgoing reasons IT IS HEREBY ORDERED that all issues in dispute at interest arbitration, Docket No. IA-2008-017, be resolved as follows:

1. All proposals by the State and the NJLESA not awarded herein are denied and dismissed. All the terms and conditions of the existing contract shall remain in full force and effect except as modified by the terms of this Award.

2. **Term**: Article XLVI - July 1, 2007 to June 30, 2011.

3. **Wages**: **Article XIII - Compensation Plan and Program**

Base wage rates shall be increased over the term of this Agreement as follows:

Effective retroactive to first full pay period in  
July 2007 - 3.5%

Effective retroactive to first full pay period in  
July 2008 - 3.5%

Effective first full pay period in  
July 2009 - 0.0%

Effective first full pay period in  
July 2010 - 2.0%

Effective first full pay period in  
January 2011 - 2.0%

Amend Section B(2) as follows: "Normal increments shall be paid to all employees eligible for such increments within the policies of the State Compensation

Plan during the term of this Agreement, except as set forth in sub-section (d) below:"

New subsection (d) as follows: "Notwithstanding the foregoing provisions, effective as soon as practicable following the issuance of the Interest Arbitration Award and for a full calendar year thereafter, no employee shall be eligible for any step increments. During the one year term, eligible employees shall not move to the next step in the guide and the time worked during the one-year period shall not count toward time needed for any increment except for the 18-month period between step 8 and step 9 and the 24 month period between step 9 and 10 for those employees who were at step 8 or step 9 on the first day of the above-described 26 pay-period term."

All economic terms, unless provided otherwise, are retroactive to each effective date for those presently employed and those who were employed on each effective date and retired on ordinary or disability pension prior to the date of the Award.

**4. Fringe Benefits: Amend Article XXXVI**

a. Healthcare Contributions:

Effective the first full pay period of January 2011 and thereafter, all employees shall make a contribution, as a deduction from each paycheck for the purpose of sharing the cost of health benefits provided by the State. The parties agree that there shall be no open enrollment period triggered by this contribution. The amount of the contribution per bi-weekly pay shall be as set forth below:

Effective Date (First Full Pay Period of)	Individual Plan	Parent/Child Plan	Family or Employee/ Spouse Plan
January 2011	\$20.00	\$30.00	\$40.00

The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan ("SHBP") and provide a certification to the State that

he/she has other health insurance coverage, the State will not deduct the above-referenced Health Insurance contribution for that employee.

If an employee is on leave without pay from which the above-referenced deductions are made, the employee shall be required to contribute the above-referenced amount and shall be billed by the State. If payment is not made in a timely manner coverage will cease.

b. Establishment of PPO Plan: Effective as soon as practicable following the issuance of this Award, and as soon thereafter as an open enrollment period is held by the SHBP, active eligible employees will be able to elect to participate in a PPO (referred to as "NJ Direct 15"), with a national network and the same benefit design as the current NJ Direct 15 Plan, except as modified in paragraph c below. Once active eligible employees are able to elect to participate in the NJ Direct 15 Plan, the NJ Plus Plan shall no longer be available to any bargaining unit employees. Thus, effective as soon as practicable following issuance of the Interest Arbitration Award, employees will be able to elect to enroll in either NJ Direct 15 or an HMO.

c. Co-Pays: Effective as soon as practicable after issuance of the Interest Arbitration Award, in-network doctor visit co-pays, including specialist co-pays, will increase from \$10 to \$15. There will be a co-pay of \$15 for the first in-network prenatal visit; subsequent in-network prenatal visits are 100% covered. The emergency room co-pay will increase from \$25 to \$50, which is waived if admitted. These increases shall be imposed regardless of whether an open enrollment period allowing an election of NJ Direct 15 has been held; such increases, therefore, are applicable to all healthcare plans; including the existing NJ Plus and HMO coverage, as well as the NJ Direct 15 once applicable.

d. Prescription Drug Co-Pays: Effective as soon as practicable after issuance of the Interest Arbitration Award, the co-pays for prescription drugs shall be as follows:

	Non-Mail Order	90-Day Mail Order
Generics	\$3.00	\$5.00
Brand names where there is no generic equivalent and brand names where the employee's doctor certifies that the employee is medically unable to take the generic version of the medication	\$10.00	\$15.00
Brand names where there is a generic equivalent, unless the employee meets the standard set forth above	\$25.00	\$40.00

Dispute resolution mechanism for generic claims:

In the event that an employee's physician certifies that the employee is medically unable to take the generic version of medication, said certification shall be sent to the employee's carrier for review utilizing procedures for approval of said certification that are consistent with those for the approval of treatment or service by the carrier. Appeals from the decisions by the carrier shall be consistent with the internal appeal process of each carrier. Any such decision is not subject to the grievance procedure in this contract.

e. Retiree Health Benefits:

(1) Employees who accrue 25 years of pension credit service after June 30, 2007 or who retire on a disability pension after June 30, 2007, will be eligible to receive post-retirement medical benefits ("PRM") in accordance with the terms set forth in the parties' 2007-2011 collective negotiations agreement. Such employees will be eligible to participate in NJ Plus, until it is replaced by a PPO (NJ Direct 15), and thereafter in the PPO (NJ Direct 15), or in an HMO without paying for such coverage provided the employee participates in the Wellness Program for retirees as set forth below.



(2) Wellness Program: The employees shall be eligible to participate in a Retiree Wellness Program, which shall provide for health assessments of the retiree to promote wellness and prevent disease. The Wellness Program was established on or about April 1, 2008. An employee who retires after having accrued 25 years of service on or after July 1, 2007 and on or before June 30, 2011 shall be required to participate in the Wellness Program. In the event the program is established and the retiree does not participate during a given year, the retiree shall be required to pay 1.5% of their monthly pension benefit as a contribution to the cost of health benefits to retain such coverage for the remainder of that year.

(3) Employees who retire having accrued 25 years of pension service credit on or before June 30, 2007 shall receive post-retirement medical benefits without the requirement of participation in the Retiree Wellness Program or without requirement to pay any contribution toward the cost of health benefits.

**5. Uniform Allowance - Article XXXVII:**

Amend the uniform allowance to provide the amounts shown below for those bargaining unit employees with at least one (1) year of service as of the last day of the month preceding the following dates:

<u>Effective Date</u>	<u>Corrections Sergeants</u>	<u>Non-Corrections Sergeants</u>
July 2007	\$867.50	\$1,485
January 2008	\$867.50	
July 2008	\$892.50	\$1,485
January 2009	\$892.50	
July 2009	\$892.50	\$1,510
January 2010	\$892.50	
July 2010	\$917.50	\$1,535
January 2011	\$917.50	

**6. Promotions to Sergeants: Article XIII, New Subsection:**

Effective as soon as practicable following issuance of the Interest Arbitration Award, any employee who is promoted to any job title represented by NJLESA shall receive a salary increase by receiving the amount necessary to place them on the appropriate salary guide (Employee Relations Group "2" or "K") on the lowest Step that provides them with an increase in salary from the salary that they were receiving at the time of the promotion. Notwithstanding any regulation or authority to the contrary, no employee shall receive any salary increase greater than the increase provided for above upon promotion to any job title represented by NJLESA.

By way of illustration, a Senior Corrections Officer ("SCO") is currently in Employee Relations Group "L", Range 18. If such SCO is at Step 9 as of the date of his/her promotion and therefore earning a salary of \$69,688.49 as shown on the salary guide effective 12/23/06, such employee, upon promotion to Corrections Sergeant (Employee Relations Group "2", Range 21) would move to Step 6 at \$72,008.90, as this is the lowest salary on the Group "2", Range 21 salary scale that is above the promoted employee's salary as of the date of promotion. [It is understood that the foregoing example is for illustration purposes only and is based upon the salary guide effective as of 12/23/06 and that the salary at each step of the guide is subject to change as per the across the board salary increases that are awarded in the interest arbitration proceeding].

\* \* \* \* \*

**7. Stipulated Incorporation of Resolved Issues**

(1) **Article VII, Section D (New):**

Add sub-paragraph (7) as follows: "Each Department/agency of the State that employs members of the Association may, in its discretion, provide bargaining unit representatives

with access to an intranet page that shall serve as an electronic bulletin board to be used exclusively by the Association. Use of this intranet page shall be subject to all restrictions and requirements under this Section."

(2) **Article IX, Section B(2): Promotions:**

Revise to state as follows:

When an employee has been certified for promotion and is scheduled to be interviewed by the Agency to which he/she may be promoted, he/she shall suffer no loss in pay to attend the scheduled interview, including travel time required, if during his regular work shift. Effective July 1, 2009, DOC and JJC employees scheduled for a promotion interview at a location other than the institution where they work shall have the option to have the interview held via video conference from the employee's institution so long as the employee provides adequate notice of his/her desire for a video conference alternative so that appropriate arrangements can be made.

(3) **Article X, Section E(2): Grievance Procedures:**

Revise to state as follows:

"Where a grievance involves exclusively an alleged error in calculation of salary payments, the grievance may be timely filed within ninety (90) days of the time the individual should reasonably have known of its occurrence."

(4) **Article XI(N) (2), JUMP Panel:**

Amend to state as follows:

"In order for a disciplinary appeal from the Association to be considered by the panel, the officer must submit his request to appeal to the Association President or his designee. The Association President or his designee must then submit a written notice of appeal with the Department (or Agency Head) or designee, who issued the decision upholding the disciplinary action. The State shall not be

obligated or permitted to process any notice of appeal that is not submitted by the Association pursuant to the above process. Such written notice must be filed by the Association within ten (10) days of the issuance of such decision. The Department (or Agency Head) or designee will promptly forward a copy of such notice to the Office of Employee Relations and the Association together with a copy of the decision and any other documents that have been made a part of the record of the matter.

(5) **Article XIV, Section B: Vacation:**

Add to the end of subsection (1):

"For all Non-Corrections employees, each Department shall have the option to handle vacation leave requests by granting such requests on a first-come first serve basis, with conflicts to be resolved on the basis of job classification seniority only when two requests are submitted simultaneously."

(6) **Article XVI: Personal Preference Days:**

Revise first paragraph to state as follows:

"Between September 1 and October 1 of the preceding year, employees may submit requests for alternate holidays for the upcoming calendar year which shall be dates of personal preference such as religious holidays, employee birthday, employee anniversary or like days of celebration provided:"

(7) **Article XVI: Personal Preference Days**

Amend sub-section (c) to state:

"the commitment to schedule the personal preference days off shall be non-revocable under any circumstances. The employee must actually work on the holiday that he/she agreed to work in exchange for the personal preference day in order to be entitled to the personal preference day. Moreover, under no circumstances shall there be compensation for personal preference days after retirement and employees shall be docked for any personal preference

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

Add new sub-section (e) that states: "These provisions shall only be applicable to employees that work in institutions that are required to be manned 24 hours per day, seven (7) days per week."

(8) **Article XVII: Administrative Leave:**

Section C, First Paragraph: Add the following sentence:

"When an employee requests the use of administrative leave for unscheduled purposes, the employer can require that the employee provide documentation to support the unscheduled nature of the absence within 72 hours of return to work. So long as documentation is timely provided by the employee when required, leave shall not be denied." Section A, Second Paragraph and Section C, Second Paragraph, first sentence: change "emergencies" to "unscheduled absences".

(9) **Article XVII, Section C(2): Administrative Leave:**

Replace second sentence of second paragraph of Section C with the following:

"In the DOC and JJC, where, within a work unit, there are more requests for administrative leave for one of the purposes above submitted within the same calendar day than can be granted for a particular date, the conflict shall be resolved by job classification seniority and the maximum number of such requests shall be granted in accordance with the first paragraph of C."

(10) **Article XIX, Section B, Comp Time:**

Amend to state as follows:

B. Comp Time Requests

1. Employee's requests for use of compensatory time balances shall be honored, so long as the request is received by the employer at least 48 hours in advance. Requests for use of compensatory time received less than 48 hours in advance may be granted when granting such request will not result in any overtime cost to the State. Otherwise, requests that are made on less than 48 hours notice shall, in the sole discretion of management, be rejected in all circumstances if this advanced notice is not provided, including circumstances that were previously referred to as "emergency comp time". Any grievance resulting from management's discretion to reject a request for the use of comp time pursuant to this section shall not be subject to arbitration.

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

3. Priorities in honoring requests for use of compensatory time balances will be given to employees: (1) where scheduled one (1) month in advance, (2) where shorter notice of request is made. Requests for use of such time under (1) and (2) herein will be honored except where emergency conditions exist or where dates requested conflict with holiday or vacation schedules.

(11) **Article XX, Section B(3): Sick Leave**

Revise last sentence:

"In addition, when the duration of the employee's absence is three or more consecutive work days, the employee shall be required to substantiate the basis for the sick leave

by providing a personal physician's certificate, which must be provided to management within three days following the employee's return to work, not including the employee's regular days off."

(12) **Article XXIX, Transfer and Reassignment Rights:**  
**[State Park Police]:**

Add new Section C as follows:

Involuntary transfers of State Park Police Sergeants shall be determined on the basis of job classification seniority and shall not be for a period of more than 180 days within a calendar year, except in cases of an emergency requiring a longer period of time. Also, no State Park Police Sergeants shall be involuntarily transferred more than once during any calendar year. Moreover, the State will use best efforts not to involuntarily transfer any State Park Police Sergeant out of region.

(13) **Article XXX, Section A: Reassignments:**

Revise Section A to state as follows:

In the DOC and JJC, employees to be affected by a shift reassignment that will result in a change to the time the employee is to report to work (i.e. reassignment from 1st shift to 2nd shift or 3rd shift) shall be given five (5) days notice of the reassignment. The foregoing requirement shall be inapplicable to matters where the reassignment is effectuated due to EED investigations, investigation revolving around alleged criminal misconduct, or where circumstances require immediate action. Outside of the DOC and JJC, employees to be affected by reassignment will be given maximum possible notice of the reassignment.

(14) **Article XXX, Section A: Reassignments:**

The parties will sign a Side Letter of Agreement that states as follows:

The parties agree that should the State decide to abandon the use of the PILOT program relating to voluntary

reassignments to non-specialized positions within the Department of Corrections, this decision will automatically trigger a limited reopener as to this issue, and the parties agree that they will meet to discuss, and attempt to reach a voluntary resolution of the matter.

(15) **Article XXX, Section E: Reassignment and Job Posting:**

Add language that provides that each Department (not including DOC) shall have the option of posting all reassignment opportunities on their intranet site and via e-mail to the union as an alternative to posting paper copies on the bulletin board and faxing to the union so long as all employees have access to the intranet site.

(16) **Article XXXI, Reassignments and Job Posting:**

Delete this Article in its entirety.

(17) **Article XXXVIII: Travel Regulations:**

Amend first sentence as follows:

"Employees are not required to provide privately owned vehicles for official business of the State without reimbursement for mileage at a rate provided by the State Travel regulations.

\* \* \* \* \*

8. **Audio Recording of Disciplinary Interviews**

Additionally, the parties have stipulated to the resolution of the issue of Audio Recording of Disciplinary Interviews as follows:

Article XI, Section L(2): Swap first and second paragraphs and revise to state as follows:



Where an employee is interrogated during the course of an investigation and when there is a reasonable likelihood that the individual being questioned may have formal charges proffered against him, the nature of those contemplated charges shall be made known to the employee who shall then, if he requests, be entitled to a representative of the Association, only as a witness or as an advisor, during subsequent interrogation concerning the charge provided that the interrogation process shall not be delayed and/or the requirement to expedite any official duty not be impaired. The employee shall be advised of the identification of all persons present during the interrogation.

In the event a formal charge of misconduct is made by the State against an employee and, if he so requests, he shall be entitled to a representative of the Association only as a witness or as an advisor during any subsequent interrogation of the employee concerning such charge. During the investigatory process, there shall be no presumption of guilt and the employee shall be advised of the identification of all person present during the interrogation.

Insert new sub-section L(3) as follows (and re-number current sub-sections L(3) through L(7) accordingly):

Audio Recording of Certain Investigatory Interviews in DOC and JJC: The parties agree that in limited circumstances described in this sub-section, an employee that is being interrogated during the course of an internal investigation shall have the right to request that the State audio record the interview in accordance with the provision of this sub-section.

- i. The provisions of this sub-section are solely applicable to interrogations of employees in the DOC and JJC;
- ii. The provisions of this sub-section are solely applicable to interviews conducted by the Special Investigations Division ("SID");
- iii. The provisions of this sub-section are solely applicable to situations where an employee is interrogated either: (a) during the course of an investigation where there is a reasonable likelihood that the individual being

questioned may have formal charges proffered against him, or (b) after a formal charge of misconduct is made by the State against an employee;

iv. Where the conditions described in (i) through (iii) above are present, the employee may request the State of New Jersey to audio record the interview. In the event such a request is made, and where all the conditions precedent set forth above are present, the State of New Jersey shall audio record the interview.

v. At the conclusion of the audio recorded interview, the audio recording will remain in the possession of the State of New Jersey in accordance with its policies and procedures for maintaining and safeguarding evidence.

vi. At the conclusion of the investigation and any and all related investigations, a copy of the audio recording will be provided to the Association and/or employee at their own expenses within seven (7) days of said request. No other recording of any investigatory interview shall be made by the employee or his representative.

vii. If the State denies any valid request by an employee to audio record an interview in accordance with this sub-section and the employee that was the subject of such interview is ultimately the subject of discipline, the union shall have the right to challenge the State's denial of the employee's request for an audio recording through the parties' Grievance Procedure. All such grievances shall be treated as non-contractual grievances pursuant to Article X, Section A(2), and shall not be subject to arbitration. Moreover, any such grievance shall automatically proceed to Step Two of the Grievance Procedure.


viii. If it is determined at Step Two of the Grievance Procedure that a valid request to audio record the interview was made in accordance with this sub-section, and it is further determined that the State failed to make such audio recording as required, the Step Two decision shall, as a sole remedy for such failure, preclude the individual that conducted the disputed interrogation, or any other management witness to said interrogation, from testifying at the employee's Departmental Disciplinary Hearing (Article XI, Section F) concerning any verbal statements made by said employee during the unrecorded interview. This shall not be interpreted, however, as

precluding the individual that conducted the disputed interrogation, or any other management witness to said interrogation, from testifying at the Department Disciplinary Hearing with respect to anything other than the verbal statements made by said employee during the unrecorded interview.

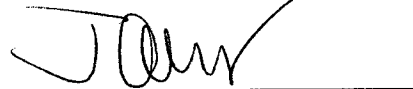
ix. A copy of the Step Two decision shall be forwarded immediately to the Department or Agency Head, or designee, that is responsible for convening the Departmental Disciplinary Hearing pursuant to Article XI, Section F. This Step Two decision shall be adhered to in the Departmental Disciplinary Hearing.

x. The parties recognize that the State's willingness to agree to the provisions of this sub-section permitting audio recording of interviews in the above-described circumstances is based solely upon the limited number of circumstances that the State anticipates will require the need for such audio recording. It is expressly understood that the State would not agree to this provision but for the relatively low volume of interrogation interviews that will require audio recording for members of a bargaining unit of this size or smaller.

Dated: December 28, 2009  
Skillman, N.J.

  
\_\_\_\_\_  
Joel M. Weisblatt  
Arbitrator

On this 28th day of December, 2009, before me personally came and appeared Joel M. Weisblatt, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

  
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Attorney-at-law