



STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

Office of Labor Relations

March 25, 2009

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Mr. Thomas P. Sheridan
Clerk of the Senate
State Capitol
Hartford, CT 06106

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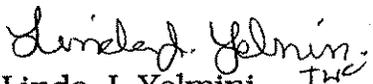
SUBJ: Interest Arbitration Award between the State of Connecticut and the Connecticut Employees Union Independent, Inc. **(CEUI) (NP-2 Bargaining Unit)**

Dear Mr. Sheridan:

In accordance with Section 5-278(b) of the Connecticut General Statutes, the Office of Labor Relations hereby files with the Clerks of the House of Representatives and of the Senate, an Interest Arbitration Award between the State of Connecticut and the Connecticut Employees Union Independent, Inc. (SEUI) on behalf of its members. The award represents the conclusion of negotiations in the matter of a new contract effective July 1, 2008 through June 30, 2011.

Also enclosed is the Office of Policy and Management's statement of the estimated costs necessary to implement the award and an updated Supersedence Appendix, which identifies those provisions of the award, which are in conflict with any statute, or regulation of a State agency.

Very truly yours,


Linda J. Yelmini ^{THE}
Director of Labor Relations

Robert Genuario, Secretary, OPM
John Bacewicz, OPM
Brenda Halpin, Comptrollers' Office
Office of Fiscal Analysis
Ron McLellan-CEUI



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AMERICAN ARBITRATION ASSOCIATION

In the Matter of Interest Arbitration Between:

STATE OF CONNECTICUT

And

OPINION AND AWARD

**CONNECTICUT EMPLOYEES
UNION INDEPENDENT, INC.,
LOCAL 511, SEIU**

No. 12 300 00245 08
(2008-SBA-NP-2 Bargaining Unit)

APPEARANCES

For the State:

Ernest Lowe
Diane Fitzpatrick.

For the Union:

Cara J. Wachsman, Esq.
Edward Lynch, Esq..

INTRODUCTION

Connecticut Employees Union Independent, Inc, SEIU, Local 511 ("the Union") represents service and maintenance employees employed by the State of Connecticut ("the State"). Many of its members are employed by the Department of Transportation ("DOT"). The bargaining unit encompasses a range of blue collar job classifications, ranging from semi-skilled to highly skilled service and maintenance employees.

This proceeding is held under the auspices of Connecticut General Statutes Section 5-276 (a) (5). The statute provides allows the parties to invoke interest arbitration in the event their bargaining does not produce a successor collective bargaining agreement. The parties have accumulated substantial frequent flier miles

under this statute, as they have only succeeded in reaching agreement one time, without invoking the statute, once since 1988.

The statute mandates a last best offer, issue by issue arbitration process. That is, following hearings at which the arbitrator receives evidence, each party submits its last best offer on any unresolved issues. The arbitrator must pick one of those offers and cannot award anything in the proverbial middle. The statute directs the arbitrator to award the "most reasonable" proposal, taking the following factors into account:

1. The history of negotiations between the parties;
2. The existing conditions of employment of similar groups of employees;
3. The wages, fringe benefits and working conditions prevailing in the labor market.
4. The overall compensation paid to the employees involved in the arbitration proceedings, including direct wages compensation, overtime and premium pay, vacations, holidays, and other leave, insurance, pensions and hospitalization benefits, food and apparel furnished and all other benefits received by such employees..
5. The ability of the employer to pay.
6. Changes in the cost of living.
7. Interests and welfare of the employees.

The arbitrator's award on non-economic issues is binding. The Connecticut legislature has the right to reject economic awards "by a two thirds vote of either house if it determines that there are insufficient funds for full implementation of the award."

The parties commenced negotiations for the 2008-2011 agreement that is the subject of this proceeding in September 2007. As could be predicted from their prior history, those negotiations reached impasse, resulting in the convening of this proceeding. Four days of hearing were held on September 26, October 3, October 10 and November

7, 2008. Initially, almost sixty issues presented for resolution. Thanks to some hard work by the parties, with the arbitrator's sometimes less than gentle encouragement, that number was reduced to thirty one. A large number of those issues, however, twenty seven to be precise, are based upon the Union's economic proposals. Some of those require offers for each year of the contract. Thus the actual number of economic issues is substantially less than twenty seven.

After the submission of their last best offers ("LBO's"), the parties, as agreed, submitted primary briefs and reply briefs of considerable bulk. Because there were some extensions involved, the record was not closed until approximately one month after what had been originally scheduled.

Prior to the submission of the briefs, there was a dust-up when the Union sought to reopen the record to introduce evidence of an LBO made to another non-professional bargaining unit the same day as the LBO's in this proceeding. Because accepting that evidence could have further delayed proceedings and this arbitrator considered the record ample, the Union's request was denied.

When the reply briefs were submitted, the Union strenuously objected to the State's citation of evidence that was not in the original hearing record. Many of these were newspaper articles relating to the State's financial condition and its unemployment rate. It also objected to the State's citing a recent interest arbitration award by Arbitrator Larry Foy that had not been made part of the hearing record.

The reply briefs, not to mention portions of the main briefs, are both replete with vitriolic arguments characterizing the positions and the actions of the other party. As will

be evident and discussed more fully in a closing section, such rhetoric reflects the nature of the parties' labor relation. As will be evident, the arbitrator believes this must end.

Getting back to the main point, the arbitrator would like to represent that he paid no attention to the sources complained about by the Union. The arbitrator, however, has not been living in a cave since the close of the hearings. As will be apparent in the course of this Opinion, arbitral notice has been taken of some post-hearing events. The arbitrator cannot compartmentalize his memory to keep his knowledge of current affairs separate and distinct from the deliberative process. Failing to acknowledge consideration of these factors would undermine the Opinion's integrity.

While all of this was occurring, the deadline for legislative submission of this Award did not move. Thus, it is incumbent upon the arbitrator to resolve the issues in dispute as quickly and succinctly as possible. Enough trees have already died for this case. To simplify the presentation, the arbitrator will first consider the parties' contract language proposals. After each proposal, the positions of the parties will be reviewed, after which the arbitrator's analyses and decision on each issue will be set forth.

Thereafter, the discussion of the economic issues will be preceded by a global discussion of the economic issues relating to the statutory factors and the parties' arguments about those factors. That section will conclude with a decisional framework that will be applied to the resolution of the disputed economic issues. To reduce the length of this Opinion, there will not be a separate section discussing the parties' arguments on each issue, since many of their arguments will have been addressed in the economic overview. The discussion section for the economic issues, grouped by issue

and contract year, will address those arguments that were not discussed in the economic overview, along with the arbitrator's analysis and decision on each of the LBO's.

Some preliminary observations are necessary. When the parties commenced these negotiations in September 2007, the Dow Jones industrial average was over 11,000. Unemployment was at acceptably low levels and there were only hints about the problems presented by something called subprime mortgages. By December 2007, we now know, the country had entered into what was become a historically deep recession.

While this proceeding was ongoing, the economic world changed. Significant numbers of defaults on sub-prime mortgages triggered a crisis in financial markets, both in the United States and abroad. As this is being written, the Dow Jones is around 7,000. Unemployment is north of 8% and projected to approach ten percent within the next twelve months. Venerable financial institutions like Lehman Brothers have disappeared and others, like Merrill Lynch, have been taken over by big banks, themselves subject to concerns about their solvency. The symbol of the country's industrial might, General Motors, is verging on bankruptcy. The concept of a capital gain on the sale of an asset, stock or otherwise, is a matter of hope, not current reality.

These events impact these proceedings. A significant portion of the State's wealth is derived from the financial services industry. Its capital, of course, is a legendary home of the insurance industry. It is now one of the State's most impoverished municipalities. Many executives of previously high flying financial service firms based on Manhattan live in southern Connecticut. Their ordinary income, bonuses and capital gains have, in most cases shrunken substantially, assuming such executives are still employed in the financial services industry.

It has been said that timing is everything. Had this proceeding been concluded in the first half of calendar year 2008, the arbitral and legislative consideration of the issues and the Award would have occurred prior to the start of the fiscal meltdown. That did not happen and instead, when the economic issues are considered, the fiscal impact on the State of that meltdown will have to be taken into account.

CONTRACT LANGUAGE ISSUES

To facilitate the understanding the differences between the parties' 2005-2008 agreement and their respective language proposals, the proposed changes will be italicized.

1. State Proposals.

ISSUE# 11

ARTICLE 15 TRANSFERS

State's LBO: Section One. A transfer is defined as a change in an employee's job location or job assignment. A change in the location at which a job assignment is performed at the same State facility shall not be deemed a transfer so long as the employee continues to perform the same type of assignment at the new location at the facility. A facility shall mean an individual building, connected buildings, ~~or~~ *and/or campus.*

If a transfer is for disciplinary reasons, the employer shall so state in writing; disciplinary transfers are governed in Article 17.

Union's LBO: - No Change

Positions of the Parties:

The State proffered this proposal to permit it to change the assignments of custodians at the various college and university campuses without that action being deemed a transfer. The State explains that it enjoys similar rights with all of the other job classifications in the Union's bargaining unit and thus believes that it should enjoy

similar authority over custodians. Although the State recognizes that there are differences between custodial work in academic buildings and dormitories, it also contends that the work is not all that different and that many buildings are effectively connected to one another. During the hearing, the State also sought to justify the proposal by its need to have more flexibility to cover long term leaves of absence.

The Union says that the State's power to make temporary assignment changes has been expanded in the last two contracts and that it failed to demonstrate the need for more flexibility. It also claims that the State's real purpose was to achieve an "unfettered right of assignment", a power to which the Union would not agree. The Union also notes that the other job classifications cited by the State cannot feasibly be assigned to single buildings, thus distinguishing their situation from the custodians'.

Discussion:

On the surface, the State's view has some merit. After all custodian work is custodian work and many of the buildings at its colleges are separated by no more than a few feet, thus rendering them indistinguishable from connected buildings to which reassignments are already permitted.

If the analysis were to stop there, the statutory factors would strongly support the granting the State's proposal. Complicating the issue, is the shift in the State's position that became evident in the hearing and the post-hearing briefs.

Originally, the arbitrator understood that the proposal was prompted by the State's need to have more flexibility to temporarily to reassign custodians to cover positions in which employees were on long term leaves of absence. The State claimed that its powers to make such assignments, under Section 6 of Article 15 of the Agreement, had proven to

be inadequate. During the hearing, however, one of the proposal's sponsors indicated that the proposal was designed to grant the State the unlimited power to make assignment changes. That power, the witness stated, would afford it the ability to match the strengths and weaknesses of specific custodians with the building to which they are assigned, suggesting also that it would enable the State to "highlight" certain custodians.

On this record, therefore, the superficial logic behind the State's proposal is undercut by the hidden agenda. Indeed, that hidden agenda weakens the State's own arguments. By discussing the need to match particular custodians to particular work settings, the State's witness impliedly recognized differences in custodial work that vary with the type of building to which custodians are assigned. The State's witness effectively supported the Union's view that the various assignments are not fungible.

The State's claimed purpose of equalizing the treatment of custodians with other bargaining unit employees does not justify granting its LBO. As noted by the Union, the comparison is inapt, because custodians are the only job classification with building specific assignments. Moreover, the bargaining history, if one may call it that, shows that the state has secured more flexibility in the past two contract cycles. The Union would be unlikely ever to accede to the State's true purpose..

Given the testimony, context and history, statutory factors 1, 2 and 7, the **UNION's** LBO is granted. The State's proposal would result in its achieving in interest arbitration something it was unlikely to achieve in collective bargaining. For this very reason, the State's own briefs assert that the party seeking to change the status quo in arbitration bears a heavy burden. In this instance, the State has not met that burden.

ARTICLE 16
GRIEVANCE PROCEDURE SECTION SIX (B)

State's LBO: *Section Six. (b) Once the State and Union have either resolved and/or scheduled the pending backlog of discharge grievances, current discharge grievances (discharge grievances less than one year old) shall be scheduled for arbitration in accordance with the following:*

In the assignment of cases, discharge cases shall be scheduled with an arbitrator before any other cases. All other cases will be scheduled with an arbitrator in order of filing, first filed, first scheduled. For discharge cases resulting from progressive discipline, any grievance filed as a result of such discipline shall be either combined with the arbitration on the discharge or heard separately by the same arbitrator after agreement between the parties. In the absence of an agreement between the parties, the grievances shall be consolidated.

Union's LBO- No Change.

Positions of the Parties:

The State contends that its proposal is necessary to reduce the sixty case backlog in discharge cases, some dating back as far as 2003, and to prevent such a backlog from recurring. Recognizing the risk of loss in the arbitration of employee dismissals, the State argues that the current system unreasonably aggravates its potential back pay liabilities. It also claims that its ability to sustain its burden of demonstrating just cause erodes with the passage of time. Under these circumstances, the State says, the Union's insistence upon scheduling cases in the order of their filing is unreasonable. It also contends that the parties' recent agreement to triage all outstanding grievances will not fully resolve the problem, much less prevent its recurrence.

According to the Union, the parties' recent Memorandum of Agreement provides an appropriate vehicle for dealing with the State's concerns. More critically it says, the

perpetual movement of discharge grievances to the front of the line would inhibit the Union's ability to police the State's compliance with other provisions of the Agreement.

Discussion:

Two things are demonstrably clear from the record. First, the parties have a distressed grievance procedure. Second, they are both responsible for it.

The State's policy arguments have considerable force. The question is whether they should have force in interest arbitration. The grievance arbitration process is a creature of the parties' agreement. Arbitration cannot without their agreement and the grievance procedure presumably was designed to meet their needs. What happens, however, when those needs seem to be going unmet and the system breaks down?

Considering statutory factors 1 and 7, the answer is that the parties must fix it. For an interest arbitrator to swoop in and change the parties' grievance procedure on the unilateral request of one party, and over the opposition of other, would be repugnant to the voluntary nature of the grievance arbitration process. The voluntary quality of the grievance arbitration process has accounted for its widespread acceptance in workforces that have designated bargaining representatives.

The State, though well intentioned, should consider the wisdom of asking for something because they might get it. If the State's proposal were granted, it would set a precedent for arbitral modification of the grievance procedure. Thus, if the Union subsequently proposed changes favorable to it, the precedent could enhance the probability of a subsequent arbitrator's willingness to consider and perhaps grant a Union proposal to change the procedure in its favor. Conversely, an award denying the proposal would put the resolution of the problems where it belongs – in the hands of the parties.

The parties have taken a first, albeit seemingly tepid, first step towards resolving the problem. That first step is necessary to permit the second to be taken. The parties can agree to additional ways of expediting their grievance arbitration process during the term of this Agreement. They, however, must have the willingness to do so without the course of events being influenced by this Award.

The UNION's LBO is granted.

ISSUE# 18

ARTICLE 18 – HOURS OF WORK, WORK SCHEDULES AND OVERTIME SECTION EIGHTEEN (A)

State's LBO: Section Eighteen. (a) Such schedules consisting of shifts of at least seven and one-half (7½) hours shall be a minimum of one week to a maximum of six months in duration, and will start and end sometime between 7:00 p.m. and 7:00 a.m. the next day, and may include weekends. A minimum of two weeks' notice will be provided to establish such a shift.

Assignments to such schedules shall first be sought ~~only be~~ on a voluntary basis and may be from one or more garages within a District. If there are not enough qualified volunteers for the work to be performed, involuntary assignments will be made from one or more garages within a District (or from the nearest location of the qualified employee(s)) by inverse seniority, by class specification, and by specialty (i.e. welding, electrical, special equipment operator, et cetera).

In the event that involuntary assignments are located outside of the qualified employee(s) District, the Department will provide the affected employee(s) round-trip transportation from his/her regular reporting location to the location where work is to be performed.

If a 4-day, ten (10) hour per day, work week is implemented by the Department, time and one-half will not be paid until after 40 hours in the work week or after ten hours in the work day. Leave time will be taken on an hour for hour basis, with holidays based on the standard work day.

Union's LBO: No change.

Positions of the Parties:

The State contends that this proposal must be granted because the growing need to perform night work on its roadways cannot be efficiently met under the current system. Specifically, the State says, under the current contract language, it must rely upon volunteers to staff the work at normal rates. Absent sufficient volunteers in the right job classifications, the State continues, it must have employees work at overtime rates. Its efforts to solve this problem by offering a four day work schedule and a shift premium to employees for such night work has not, the State continues, generated sufficient numbers of volunteers. But, it says, the same employees will accept the assignment at overtime rates. Its proposal, the State says, it precisely tailored to achieve its goals.

The Union opposes the State's position. It claims that the evidence failed to demonstrate the State's need for the change and that the State's proposal ignores, other methods, such as training incentives, for securing the necessary number and type of volunteers. More critically, it says, the State's position ignores the adverse effect of such a change on the health and family lives of DOT employees who must be available for snow and ice work for one half of the year. The Union also claims that such night work is more hazardous, evidenced by the Legislature's making it a crime for a driver to endanger highway workers.

Discussion:

This is a tough issue. The DOT employees already work under strenuous conditions, most notably during the winter months when they are on perpetual call for snow and ice work. Increasing the numbers of occasions during and outside that period

in which they might be summonsed adds stress tot their lives and that of their families.

Arguably, night work is more dangerous..

Notwithstanding these concerns, factors 1, 2, and 5 compel granting the State's proposal. We can start with some obvious truths. Our country's infrastructure is a mess and thus the Union must be responsive to the State's need to maintain and improve that infrastructure. During the parties' relationship, there has been a significant increase in the utilization of the State's roads during the day. Given that increase, it is not surprising that the State has found that necessary work can be more readily performed during the evening and night hours.

We now get to the rub. Under the current system, absent sufficient numbers of qualified volunteers, the only way the State can assure having the right number of qualified employees to perform night work is by having employees work on an overtime basis. The evidence demonstrated that the State had difficulties recruiting the right number of qualified volunteers and that is not surprising. The current system provides a perverse incentive for employee's to refuse to volunteer for work at straight time rates. Absent sufficient numbers of volunteers, the same employees than have the prospect of performing hat same work under the same conditions at overtime rates.

Governments are inherently resource constrained and in the current economic climate, even more so than usual. The parties thus find themselves in a situation in which the State is required to pay a premium to have vital infrastructure work performed during the time of the day that it is most readily performed. At some point, rational parties in the collective bargaining process would conclude that such a situation was untenable.

There is also a critical safety aspect to the State's proposal. Under the current system, employees performing the night work on overtime report to their regular day shifts. That can involve them working more than sixteen consecutive hours, itself a hazard. Any system that would incent such a result, rather than utilize the more feasible, well tailored alternative proposed by the State, should not be perpetuated.

The STATE's LBO is granted.

ISSUE# 19

ARTICLE 18 – HOURS OF WORK, WORK SCHEDULES AND OVERTIME SECTION EIGHTEEN (C)

State's LBO: Section Eighteen. (c) Temporary Night Shift Differential. A shift premium of **\$2.50** per hour will be paid in lieu of any other shift or weekend differential to employees who are assigned to such temporary shifts for all such hours worked or on paid leave. This premium shall also be paid for any eligible overtime hours worked on such established shifts, but the premium itself shall not be paid at the one and one-half rate.

Union's LBO: Section Eighteen. (c) Temporary Night Shift Differential. A shift premium of **\$4.00** per hour will be paid in lieu of any other shift or weekend differential to employees who are assigned to such temporary shifts for all such hours worked or on paid leave. This premium shall also be paid for any eligible overtime hours worked on such established shifts, but the premium itself shall not be paid at the one and one-half rate.

Positions of the Parties:

This issue is relevant only if, as has occurred, the arbitrator granted the State's LBO on Issue #18. The State has proposed increasing the applicable shift differential by .50 per hour. Because it had to anticipate the possibility of that proposal's being granted, the Union has proffered its own alternative of \$4.00 per hour.

The State contends that its proposed increase is reasonable, particularly when viewed in light of its fiscal conditions. It points out that the Union's proposal would cost the State some \$100,000 more per crew for the typical thirty day period such shifts would

be utilized. The Union responds by characterizing the State's offer as unreasonably low, especially when viewed in light of the fact that the night shift differential has not increased since 1994. Given the dramatic change this can wreak on the lives of DOT employees, the Union claims that the State's proposal is not reasonable.

Discussion:

This is one proposal in which neither party distinguished itself, preferring instead to use the gaming aspects of last best offer arbitration to their seeming advantage. Despite having achieved a significant change, the State is attempting to get that change on the cheap by proposing an unreasonably small increase in the shift premium. Anticipating the possibility of the prior proposal's being granted, the Union decided either to get greedy or make the State suffer for having sought a reasonable change in working conditions, by proposing to double the shift premium.

Neither proposal is reasonable. The arbitrator, however, cannot drop ten and kick, but must instead choose one proposal or the other. In this instance, the arbitrator must choose the least unreasonable proposal. One would hope that the parties' successor agreement will rectify this problem or that this arbitrator's successor will have the opportunity to bring this differential close to where it should have been- \$3.00 per hour.

While the arbitrator's figure is closer to the one proposed by the State, factors 1 and 7, support granting the Union's LBO, albeit reluctantly. The State's proposal enables it to avoid it having to pay overtime rates to perform to highway infrastructure work at night. Because its costs for performing this work were substantially reduced, a rational collective bargaining process would result in some portion those savings being shared with the impacted employees. Moreover, if as the arbitrator believes, the Union would

ultimately have been required to agree to abandon a system with perverse incentives, it is unlikely to have done so for a fifty cent per hour increase in a shift differential that has remained unchanged since 1994. Thus, while the Union's proposal is much higher than the arbitrator would have preferred, it is preferable to a proposal that is divorced from the realities of collective bargaining.

The UNION's LBO is granted.

2. Union's Contract Proposal.

ISSUE# 47

**ARTICLE 29- SICK LEAVE
SECTION ELEVEN**

Union's LBO – The parties agree that from time to time, on an as needed basis, NP-2 bargaining unit members may donate their accrued vacation, personal *and/or sick leave* to a fellow bargaining unit member who has at least six (6) months of State service and has achieved permanent status and has exhausted his/her own accrued paid time off, who is suffering from a long term or terminal illness or disability. Such donation may occur between different employing agencies. *No employee may donate more than five (5) days of sick leave in a calendar year.*

Said benefit shall be subject to review and approval by the Commissioner of Administrative Service Services and shall be applied in accordance with uniform guidelines as may be developed by such Commissioner.

State's LBO - Retain current language.

Positions of the Parties:

The Union's proposal seeks to add sick days to the paid time off its members can donate to colleagues in distress. Such a change, the Union argues, would put its members on par with employees in two other bargaining units, not to mention the sick leave banks enjoyed by employees in six other units. Unlike its prior attempt to secure such a provision, the Union observes, it has sought to limit the State's financial exposure by limiting the number of sick days that can be donated by its members. Indeed, it says, the

arbitrator in the prior case indicated that the Union's LBO might have been granted had such a limit been included.

The State contends that sick days are different than vacation and personal days because an employee suffers no detriment by donating a sick day the employee was not intending to utilize. Moreover, it contends, because sick leave functions as the equivalent of short term disability policy, an employee making such a donation assumes a financial risk if those days are ultimately needed and donors are nowhere to be found. The sick leave banks in the bargaining units relied upon by the Union are different, the State contends, because they are "funded" by one day donations from each member and, it says, those banks are replenished at the similarly reduced rate. Absent evidence of the need for the change and, given the demonstrable increase in the State's financial exposure, the State seeks retention of the current contract language.

Discussion:

Factors 1 and 7 compel granting the Union's proposal. In the parties' most recent interest arbitration, Arbitrator Larry Foy suggested that the Union's proposal on this issue might have been granted if it contained the five day limit now present. That suggests that the Union's LBO is consistent with the history of the parties' negotiations.

What can't be doubted is that the granting of the Union's LBO is most consistent with the health and welfare of the employees it represents. As acknowledged by the State, public employers use sick leave accumulation as a substitute for short term disability insurance. The Union's proposal assures that the collective can benefit from the insurance concept, as well as individual employees. That employees may, as the State suggests, make imprudent decisions in donating their unused sick leave does not

change that fact. The amount of such potential imprudence is limited by the terms of the Union's proposal. Moreover, the Union's members are adults and do not need the State or this arbitrator making decisions for them that they are capable of making themselves.

The State's claim that the Union has not demonstrated a need of this change is not relevant. After all, one hopes that illnesses of the kind permitting an employee's resort to the bank will be few and far between. If they do occur, however, it would be tragic for a person in need to seek help from the bank only to find it insolvent because employees were unduly limited in being able to make deposits.

To be sure, there is some potential increased cost to the State. However, it already has such costs in two other bargaining units. If the State had made a less costly counterproposal that addressed the Union's concerns, it would have received serious consideration. The State, however, did not do so, and elected to stay with the status quo. The Union's LBO is more reasonable than the State's.

The **UNION's** LBO is granted.

ECONOMIC ISSUES.

We now consider the Union's economic proposals. Although the list appears foreboding at first glance, it is artificially inflated by the fact that some of the proposals require separate LBO's for each year of the agreement. To prevent this Opinion from becoming an arbitral version of *Gone with the Wind*, the arbitrator will treat the proposals in related groups, making a separate award on each proposal.

Overview:

Considering the economic proposals necessarily requires considering each party's economic presentation. An overview of those presentations will be discussed in this

section, with shorter discussions devoted to each group of proposals. Although the parties' briefs and reply briefs address the seven statutory criteria, in the interests of brevity, this Opinion will consider those the arbitrator considers to be most relevant.

Examining the parties' economic presentations is like listening to the proverbial five blind people describing the elephant. The Union produced considerable evidence that its members' compensation grew at a slower rate than that of their counterparts in State service. It also introduced evidence of comparable settlements that, it claims, are consistent with its economic proposals. It believes that the State's has the ability to pay and proffered evidence about why the arbitrator should view the State's claim skeptically.

The State does not quarrel with the Union's comparables, but claims instead that a different measure, the growth of the compensation of the State's workforce, is a better measure of comparison. More critically, it produced considerable evidence concerning the State's ability to pay, especially in light of recent economic developments. We shall examine these issues in turn.

1. Internal and External Comparables.

The bargaining unit, once as large as 8,000 employees, is projected to have an employee compliment hovering around 4,000 for FY 2009. Despite its shrinkage, the workload on the unit, most notably that of the large number of members in the DOT, has increased significantly during the time of the parties' relationship.

That relationship, of course, has been marked by frequent use of interest arbitration process to resolve bargaining impasses. Most recently, in the proceeding producing the parties' 2005-2008 Agreement, Arbitrator Foy granted the State's LBO of 0% for the first year and the Union LBO's of 3.5% for the final two years of the Agreement. Despite

those increases, the arbitrator observed, the compensation of unit employees was still lagging behind the rate of increase in the Consumer Price Index ("CPI"). In both the workplace and their lives, the unit employees were being asked to do more with less.

If one compares the Union's history with that of its statewide counterparts, there are, not surprisingly, parallel patterns. In the period commencing with FY 2001 and ending with FY 2008, the Union's annual base wage increased 16%, despite its having received no increase in FY 2006. Its rate of increase was equal to that of the P-04 unit, and slightly higher than the other non-professional units. Viewed another way, between 2001 and 2007, the Union's increases, in each year, exceeded the Statewide average in the other bargaining units.

Some of those units have agreements extending though June 30, 2009 and were thus reached prior to the current economic crisis. In all cases, the final years of those agreements provide for between and 3% and 3.55 annual increase. The NP-1 unit had an agreement running between 2007 and 2010. The first year increases in various steps were, in some cases were smaller than, and in other cases, larger than the Union's 3.5% increase in that period. During what would be the first year of this Agreement, employees in the NP-1 unit received 3% increases, while the third year calls for step based increases of between 2.55 and 3.%%. Two units on a similar contract cycle had reached agreements by the time this proceeding commenced. The State and the NP-5 unit agreed to 3% across the board increases for each year, while the P-5 unit agreed to a 9.5% increase over the life of the agreement.

The bargaining pattern in the universe of municipalities cited by the Union and relied upon by previous arbitrators is not dissimilar. Many of those municipalities have

settled with their blue collar units for something akin to 3% across the board increases. The Union's expert testimony demonstrated that the least senior employees in the bargaining unit were, on average, paid 9.2% less than their municipal counterparts, while their more senior colleagues lagged by only .6%. The expert concluded, however that maintaining any kind of parity would require an across the board increase of 4.9% on top of any increase attributable to the cost of living. Moreover, because of the lag resulting from lack of any wage increase for 2005-2006, the expert concluded that the Union's increases lagged 6.8% behind the cost of living.

The expert also compared NP-2 employees by job classification (custodians, skilled maintainers, DOT maintainers, automobile mechanics and electricians) to their counterparts in municipal bargaining units. In a total of 25 instances, the lowest paid State employees were more highly compensated than their counterparts at the lower steps of the municipal salary schedule. In the other eighty three cases, the municipal employees were more highly compensated. Indeed, with respect to each classification measured, the State's pay was found to be inferior to that of the compared municipalities.

At the maximums, the gap narrows, with the State's compensation superior in fifty cases, while the municipal compensation trumped in 58 of the cases. Based upon this data, the expert has said that the appropriate wage award is 4.9% for each of the next three years. The Union has requested a 3% adjustment for each of those years.

The State has a different view of comparability. It says that the proper measure of comparison is the rate of income growth among its total workforce, both Union and non-Union. In fact, that rate of growth appears to be about 1%, way below the rate of growth among the workforces surveyed in the Union's comparables.

As will be more fully discussed below, the State's comparison universe is not acceptable in an interest arbitration involving a unionized workforce. Thus, the comparability factor favors the Union.

2. Cost of Living.

There is no doubt that the State's proposal would erode the pay of employees because, with the exception of one month, the Consumer Price Index has been increasing during calendar year 2008. The extent of that erosion, however, is unclear. For much of calendar 2008, the Index has been increasing at a rate of 4% or more, with a significant drop to 1% in November 2008. Much of the increase was driven by rising energy prices and their impact on the price of other goods and services, notably food.

While there is much uncertainty, policy makers are anxious to avoid even a hint of deflation. It is thus more reasonable to assume that the Index will increase over the life of the Agreement. Even if the increase is relatively small, the Union's expert testimony demonstrated that the wages of NP-2 employees failed to keep pace with the CPI in recent years, in large part due to the 0% increase in 2005. If even one of the State's requested zeros for this cycle were granted, that erosion would continue and the existing gap might even get bigger. With even one zero, and two increases, the gap between the present value of their income, compared to increase in the CPI will remain. Thus, on this record, the cost of living factor, like the comparable factor, favors the Union.

3. Ability to Pay.

This is truly the crux of the case. The internal and external comparables appear to make the Union's request for a 3% across the board increase in each of three years more reasonable. Those same factors also weight against accepting some of the State's

proposed givebacks, such as proposals 27 and 27A, absent evidence of similar givebacks in either the internal or external comparables. Anticipated increases in the cost of living that can erode the value of an employee's income weigh heavily in the Union's favor on its wage proposals and, to a lesser extent, the increases it is seeking in the meal allowance and cost of work boots, lest their value be eroded by inflation.

The Union, of course, takes issue with the State's claim of inability to pay, characterizing it as a tired litany, heard in all previous arbitrations, without good empirical evidence to support the State's claim. The State, on the other hand, does not disclaim its prior advocacy, but notes that the current economic situation is distinctive. We must first examine the State's position.

The State's inability to pay claim is based upon numerous factors. It thus points out that the current fiscal year's budget is running a deficit of over \$300,000,000 and that the deficit is projected to increase to two billion dollars in FY 2010. As a result of the slowing real estate market, the State experienced a decrease in the receipts for Real Estate Conveyance taxes in excess of thirty percent and a decline in investment income of more than forty percent. Notably, given the state of the capital markets, it is also projecting a more than fifty percent decrease in capital gains taxes. The decrease in consumer spending has obvious implications for the State's sales tax revenues.

Rising unemployment will also reduce the State's personal income tax receipts which have, in the past, comprised some forty two percent of its General Fund Revenue. The increasing unemployment rate does not even tell the full story. The recession is hitting people at all levels. Yet, much of the State's wealth is based upon the personal income taxes paid by financial services executives living in the southern part of the State.

Despite all the recent and deserved publicity about executive compensation, certain facts remain. A lot of those executives are no longer working, as their places of employment, such as Bear Stearns and Lehman Brothers, have ceased to exist. Such individuals, of course, will pay lower income taxes as a result.

There is also widespread acknowledgement that their bonuses, while still obscene in many cases, have also decreased, thus reducing the tax yield. Just as New York City has found itself impacted by these developments, so too is the State. The evidence indicates that the State is doing more than crying wolf. Estimated payments were shown to have decreased by more than three hundred million dollars during calendar year 2008, while withholding tax receipts decreased by almost four percent.

The State also notes that it is subject to a statutory and constitutional spending cap prohibiting expenditures in excess of projected revenues. In some respects, this is a truism since states cannot print money and thus must have balanced budgets. The State's spending cap has some exceptions, but they are quite narrow, such as paying bondholders, complying with court mandates and the like. It also provides an exception for spending from its Budget Reserve fund. Not only is that fund currently stressed, but there is no evidence of its having been used to fund normal operations, such as those performed by the unit's members.

These last two factors do not weigh heavily in the analysis. As noted by the Union, the spending cap is not listed as one of the statutory factors and thus apparently should not be considered by the arbitrator. More critically, it is a cap on total State spending, not a programmatic limitation. As for the Budget Reserve fund, it may be stressed, as claimed by the State or fine, as claimed by the Union. There is no evidence

that the Fund has been used to fund routine operating expenses, like the pay of state employees. Moreover, its use for such purposes would be imprudent.

Connecticut is a relatively wealthy state. That is good news and bad news. The good news is that it is relatively wealthy. The bad news is that its tax burden, notwithstanding the Union's counterarguments, is amongst the highest in the nation when all of the taxpayer burdens are factored in. On the other hand, the amount of money it receives back from the federal taxes paid by its residents is among the lowest in the nation because those funds are targeted towards less affluent states.

The State budget is also subject to the usual stresses of increasing Medicaid costs, paying off bonded indebtedness, unfunded pension liabilities and the like. These, however, are long standing factors that have existed in the past and will likely persist into the future. They are very much unlike the issues raised by the fiscal meltdown and, therefore, do not weigh heavily in the resolving the State's ability to pay claim.

The Union attempted to rebut many of these claims. Its expert testified that the State's employment base was relatively recession proof. That might be true in normal times, but not today. There have been dramatic declines in business at the State's two casinos. Its defense industry is under pressure and likely to come under more pressure as the result of new directions in the Pentagon's budget. This was made clear by United Technology's recent announcement of its intention to shrink its workforce. Pfizer, in what might have been thought to be the recession proof pharmaceutical industry, has announced substantial domestic and worldwide layoffs following its acquisition of Wyeth Laboratories. The crown jewel of the State's economy, General Electric, is under financial pressure because of problems in its GE Capital unit, evidenced by the reduction

in the Company's credit rating. As to the State's other large financial service companies, such as The Hartford and Bank of America, what more need be said.

The Union has some powerful rebuttals. It suggests that the State's agreement to 3% increases in two bargaining units, evidences the reasonableness of its LBO. It also claims that the State has can raise additional revenues through tax and fee increases.

The Union also notes other factors enhancing the State's ability to pay. Besides its residents, the Union says, the State can anticipate receiving funds from the new federal stimulus package. Already, the Union says, the State is reaping savings from declining oil prices and falling interest rates. Indeed, it says, economic principles suggest that the State should be receptive to the Union's proposals as a stimulus measure.

4. Interests and Welfare of the Employees.

This requires little discussion. The arbitrator has yet to encounter a situation in which employee welfare would not be enhanced by a raise or harmed by a freeze. This factor is relevant, but carries no significant weight on its own.

5. A Framework for the resolution of the Economic Issues.

Although each of the economic proposals will be discussed specifically, a general framework must be established. The factors upon which those awards will be based are numbers 1, 2, 5, 6, and 7. The impact of each factor will be set forth below.

Based upon the history of the parties' negotiations, a factor that must weigh heavily is the zero increase the Union received in 2005-06. As noted by the Union's expert witness, it has produced a continuing lag in the growth of the unit's income when measured against increases in the CPI. The internal and external comparables, factor 2, are fully consistent with the Union's LBO's on the across the board wage increase.

The State's attempt to justify its LBO by reference to the overall rate of income growth in the State's workforce must be rejected. That data encompasses both union and non-union jobs. Including the non-union jobs thus dilutes the impact of the former. Unions are designed to permit employees to aggregate their individual economic power under a collective entity. It is, in effect, a reordering of the otherwise free market. Thus, the only comparable wage structures are those in other unionized workplaces.

The likely increases in the CPI, factor 6, are also inconsistent with the Union's LBO's. It is also fair to say that the interest and welfare of its members, factor seven, are also consistent with the Union's LBO's.

To this point, it looks like a slam dunk for the Union. The arbitrator believes, however, that the State has made a convincing demonstration that it is subject to fiscal limits in the first year of the proposed contract. The economy and its tax receipts are declining at rates that have little historic precedent. The shock to the system occurred rather suddenly, beginning with the credit market freeze and stock market declines in October 2008 and continuing through the time the arbitrator is writing this Award. As of this date, the trend is still downward, although experience teaches there will be an upswing. The only question is when.

In determining which LBO's are most reasonable, the issues in the first year, are considerably different than in years two and three. Given the sudden and precipitous nature of the decline and the fact that we are well into the fiscal year, the Legislature will not have the opportunity to formulate a timely response to an award which mandates a substantial retroactive payment in the first fiscal year of the Agreement. Even with whatever reserves there are for collective bargaining in the State budget, the budgetary

assumptions have been rendered worthless by significant decreases in State's revenues fiscal meltdown. If the parties were negotiating this Agreement under these circumstances on this date, they would likely have recognized that a retroactive wage increase in the first year was not practical.

In the subsequent years, however, the timing issue will not provide the legislature with an excuse. It must thus be required to make what is ultimately the political decision to fund what are otherwise reasonable pay increases or refuse to fund the Agreement. The Legislature is entitled to time to establish priorities. In interest arbitration, the impact of accepting an employer's ability to pay claim should eliminate the employer's attempts to balance the budget on the backs of its employees, such as those represented by the Union. Granting all of the State's LBO's would leave the unit's employees with their actual income and the value of their disposable income significantly reduced by the end of this Agreement. After all, if the one zero in 2005-06 has a continuing effect, what would be the impact of two zeroes and an uncertain reopener? An Award producing such a result is not reasonable, leaving it to Legislature to set priorities.

Thus, we will be using a framework that balances the interests of the parties. The State will get more room for 2008-2009 simply because it is the most reasonable response to the sudden onset of the economic crisis. More room, however, does not translate into carte blanche. If the Union has to pay a price, those should not include any give backs, nor should it include erosion in the value of existing benefits. Conversely, given the economic conditions, it is equally unreasonable for the Union to expect that some of its prior concessions will be reversed in this contract cycle or expect any increases in certain stipends provided by the Agreement. We now turn to the specific issues.

1. Across the Board Wage Increases (Proposals 22, 23 and 24).

ISSUE# 22

**ARTICLE 20 – COMPENSATION
SECTION ONE (A)**

Union's LBO: Section 1. General Wage Increase

(a) Effective July 1, 2008, the base salary for bargaining unit employees shall be increased by three per cent (3%).

State's LBO: Section One. General Wage Increases.

(a) The salary schedule in effect during 2007-2008 shall remain in effect during 2008-2009.

ISSUE# 23

ARTICLE 23 – COMPENSATION

SECTION ONE (B)

Union's LBO: Section 1. General Wage Increase

(b) Effective July 1, 2009, the base salary for bargaining unit employees shall be increased by three per cent (3%).

State's LBO: Section One. General Wage Increases.

(b) The salary schedule in effect during 2008-2009 shall remain in effect during 2009-2010.

ISSUE# 24

**ARTICLE 20 – COMPENSATION
SECTION ONE (C)**

UNION'S LBO:

(c) Effective July 1, 2010, the base salary for bargaining unit employees shall be increased by three per cent (3%).

State's LBO: Section One. General Wage Increases.

(c) The salary schedule for 2010-2011 shall be determined by a wage re-opener.

Discussion:

The framework discussed above enables observers to predict the outcome. By the time this Award issues, virtually three quarters of the fiscal year will have passed. It is a fiscal year in which the State's budget will run at a significant deficit because of steep and sudden revenue declines. Confronting the legislature with a request to fund an increase with a large retroactive component under these circumstances is not reasonable.

On the other hand, the Legislature will have ample warning for the next two fiscal years and will likely have a better handle of the amount of money the State will receive from the various stimulus programs, as well as the overall revenue picture. The stimulus funds will provide the State with some relief from Medicaid costs, while the DOT is likely to benefit from increased infrastructure and transportation funding. Thus, it will have the information necessary to make the political decision on funding the Agreement. Moreover, granting the State's final two LBO's would effectively convert an emergency into an occasion for using interest arbitration to help balance the budget on the backs of the NP-2 employees. That is not consistent with the statutory scheme or a proper outcome for the interest arbitration process.

1. The **STATE's** LBO on Issue #22 is granted.
2. The **UNION'S** LBO on Issues #23 and #24 is granted.

2. Entry Level Compensation (Proposals 25 and 26).

ISSUE# 25

**ARTICLE 20 – COMPENSATION
SECTION ONE (D)**

Union's LBO: Delete the following:

Section One General Wage Increases.

- (d) The entry level rates for salary groups 1 through 12 shall continue to be ten percent (10%) below Step 1 for each group in each year of this Agreement for employees in their initial Working Test Period. Upon completion of the Working Test Period the employee shall advance to Step 1 of the salary schedule and be paid accordingly.

State's LBO: Retain current language and rate.

ISSUE# 26

**ARTICLE 20 – COMPENSATION
SECTION ONE (F)**

Union's LBO: Delete the following contact language.

- (f) The entry level rates for Durational employees for salary groups one (1) through twelve (12) shall be ten percent (10%) below Step 1 for each group in each year of this Agreement for the first 979 hours of work (excluding overtime). After 979 hours of work Durational employees will be paid the full amount of Step one (1) and if employment continues will be eligible for annual increase to the same extent as a permanent employee.

State's LBO: Retain current language and rate.

Discussion:

As a general matter, this arbitrator dislikes two tier wage schedules that differentiate among employees based upon their dates of hire. The provisions which the Union wants deleted are less noxious than most because their impact is only temporary and occur only during the early months of an individual's employment when the value of their services is reduced by their need to learn the job. On the other hand, as the Union

points out, this impacts primarily the lowest paid employees in the bargaining unit. The State notes that the contested language has been in the Agreement since the parties 1988 interest arbitration with Arbitrator Arvid Anderson and that numerous bargaining units have comparable language in their agreement.

Many factors argue against granting the Union's LBO's. These provisions have been in the Agreement for some time period and the Union's attempts to secure their deletion have apparently not been successful. The Union's inability to secure the change in better economic climates hardly suggests that the change should be made in the current economic cycle. Moreover, the new employees represented by the Union are in no worse shape than their counterparts in other State bargaining units. If there is to be a change in a status quo, negotiation, not arbitration is the preferred method of impasse resolution.

The STATE's LBO's on Issues #25 and #26 are granted.

3. Step Changes.

ISSUE# 27A

ARTICLE 20 – COMPENSATION SECTION TWO (A)

Union's LBO:

The Union is seeking deletion of the italicized language.

Section Two. (a) Employees hired between January 1 and June 30 of any year shall receive their first annual increment in the January next following the date of hire. Employees hired between July 1 and December 31 of any year shall receive their first annual increment in the second next January following the date of hire. Employees will continue to be eligible for and receive annual increments in accordance with existing practice and paid accordingly in the pay period which would include July 1 and/or January 1, based upon the employee's anniversary date, in each year of this Agreement, *except that annual increments shall not be paid for 2005-2006.*

State's LBO: The State proposes deleting the reference to 2005-2006 and substituting the italicized language:

Section Two. (a) Employees hired between January 1 and June 30 of any year shall receive their first annual increment in the January next following the date of hire. Employees hired between July 1 and December 31 of any year shall receive their first annual increment in the second next January following the date of hire. Employees will continue to be eligible for and receive annual increments in accordance with existing practice and paid accordingly in the pay period which would include July 1 and/or January 1, based upon the employee's anniversary date, in each year of this Agreement, *except that annual increments shall not be paid for 2008-2009, 2009-2010, 2010-2011*

Discussion:

As is customary in public sector agreements, the Agreement contains a step system, in this case ten steps, through which employees progress on a yearly basis, so long as their job performance is not deemed substandard. On its face, the State's proposal, to effectively freeze step increases for the entire period covered by the Agreement is not reasonable. Such increases have been part of their fabric of the parties' relationship for many years, subject to the exception in 2005-2006. Unlike the across the board wage increases, these increases were predictable and presumably factored into the planning for the budget cycle coinciding with the first year of the 2008-2011 Agreement.

The State's justified its LBO based on its ability to pay. In its reply brief, also suggests that step increases are different than other types of wage provisions. That claim is not persuasive as applied to costs that were reasonably anticipated during the budget making process. In making the argument that step increases a different than other elements of employee compensation, the State cites a statute dealing with expired labor contract which, in fact, makes such a differentiation. The statute, however, does not envision a three year suspension of step increases or support such a step.

Granting one or both of these proposals, or the next one in line, would result in an actual reduction in employees' compensation. Based upon history, those employees had a reasonable expectation of receiving that compensation in all or most years of the Agreement. The State's LBO, however, would freeze these adjustments for the three year life of the Agreement. There is nothing in the parties' bargaining history supporting such a result. Moreover, granting the State's LBO would likely strengthen its hand in the next contract cycle if it sought a similar freeze. As noted, the State's brief says that a party seeking a change in the status quo in interest arbitration has the burden of demonstrating the need for a change, lest arbitration become the preferred vehicle for impasse resolution. When circumstances warrant, such as the case with the DOT night work, change is appropriate. Where, however, the economic issue has been part of the fabric of the parties' agreement no change is warranted.

The UNION's LBO on Issues 26 and 27A are granted.

4. Lump Sum Payments.

ISSUE# 27B

ARTICLE 20 – COMPENSATION SECTION TWO (B)

Union's LBO: The Union proposes deletion of the first paragraph of this section, thus leaving only the following:

Effective July 1, 2007, employees at their top steps shall receive a lump sum payment equal to two and one-half (2 ½%) of their base annual salary in each contract year in which they do not receive an annual increment. The lump sum shall be paid on the paycheck dates when increments are paid (e.g., January 1 or July 1) and may be denied for "less than good" service rating.

State's LBO: Section Two. (b) ~~Effective July 1, 2005, through June 30, 2007, employees at the maximum step of the salary plan shall be eligible for a lump sum payment of five hundred (\$500) dollars. The payment shall be made as of the date~~

~~the increment would have applied (e.g. January 1 or July 1) and may be denied for a "less than good" service rating.~~

~~Effective July 1, 2007 employees at their top step shall receive a lump sum payment equal to two and one half (2 ½ %) of their base annual salary in each contract year in which they do not receive an annual increments. The lump sum shall be paid on the paycheck dates when increments are paid (e.g. January 1 or July 1) and may be denied for a "less than good service rating". For the duration of the 2008-2011 Contract no lump sum payments will be made to employees at the maximum step of the salary plan or otherwise.~~

Discussion:

This issue is a natural outgrowth of Issue #27A. The current language deals with the compensation of employees who have reached the top step. The provision is designed to incent employees at the top step to perform satisfactorily by providing a lump sum payment to those employees who qualify.

Under the 2006 Foy Award, the \$500.00 lump sum payment that existed on July 1, 2005 was replaced with a percentage formula, similar to those found in other statewide collective agreements utilizing a ten step salary scale. The State's proposal would result in the unit's most highly compensated unit employees taking a pay cut. These employees are similarly situated to the employees on the step system to whom the State sought unsuccessfully, to deny step increases for the three year duration of this Agreement.

The same reasons for granting the Union's LBO on Issue #27 compel the same result in this case. Some form of compensation of employees at the top step appears to have been a consistent feature of this Agreement, as well as the State's agreement with other bargaining units. The employees at the top step have thus reasonably relied upon the additional compensation and the amount of compensation was predictable during the budget making process. Thus, this is another area where the State's ability to pay claim

is not persuasive. Nothing in the parties' bargaining history provides any basis for predicting a three year suspension of the payment.

The UNION's LBO is granted.

5. Inflation Impacted Benefits (Issue # 28, 29 and 30) and Meals Allowances (Issues #50, 51 and 52.)

ISSUE# 28

**ARTICLE 20 – COMPENSATION
SECTION THREE**

The parties' LBO's on this issue were identical and thus need not be addressed.

ISSUE# 29

**ARTICLE 20 – COMPENSATION
SECTION THREE**

Union's LBO: .

(a) Effective July 1, 2009, the current safety shoe allowance shall be increased by ten (\$10.00) dollars.

State's LBO: Retain current language.

ISSUE# 30

**ARTICLE 20 – COMPENSATION
SECTION THREE**

Union's LBO: **a)** Effective July 1, 2010, the current safety shoe allowance shall be increased by ten (\$10.00) dollars.

State's LBO: Retain current language.

ISSUE# 50

**ARTICLE 42– MEALS POLICY
SECTION TWO**

The parties' LBO's on this issue were identical and thus need not be addressed.

ISSUE# 51

**ARTICLE 42– MEALS POLICY
SECTION TWO**

Union's LBO: Effective July 1, 2009, the meal allowance shall be increased by \$1.00 for each meal.

State's LBO: Retain current language and benefit.

ISSUE# 52

**ARTICLE 42– MEALS POLICY
SECTION TWO**

Union's LBO: Effective July 1, 2010, the meal allowance shall be increased by \$1.00 for each meal

State's LBO: Retain current language and benefit.

Discussion:

The arbitrator has grouped these two issues together because they raise a common issue. As noted in the discussion of the analytical framework, one goal of this Award is to inhibit the erosion of the value of existing benefits like these by inflation. Both parties have submitted evidence over the cost of safety shoes and they have quibbled about the actual value of the benefit. The Union's presentation on the meals policy actually included menus of restaurants frequented by State employees entitled to the allowance.

Rather than review that evidence in a fashion trivializing this process, it is easier to cut to the chase. History would suggest that the cost of work boots and food will increase during the life of the Agreement. If that does not happen and the economy goes into a deflationary spiral, none of this will matter. To balance the State's interest in saving money and the Union's interest in preserving the value of the benefit, a split approach seems prudent. The parties have already agreed to freeze the value of the

benefit during 2008. It thus seems reasonable to grant the Union's request for those increases to be effective on July 1, 2009, while granting the State's proposal for freezing those benefits in the last year of the Agreement.

The UNION's LBO's on Issues #29 and #51 are granted.

The STATE's LBO on Issues #30 and 52 are granted.

6. Longevity.

ISSUE# 32

**ARTICLE 22 – LONGEVITY
SECTION TWO**

This issue need not be addressed since both parties submitted identical LBO's.

7. Shift and Working Condition Differentials.

i. Night Differentials

ISSUE# 33

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION ONE, PARAGRAPH ONE**

This issue need not be addressed since both parties submitted identical LBO's.

ISSUE# 34

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION ONE, PARAGRAPH ONE**

Union's LBO: Effective July 1, 2009 the shift differential payment shall be increased by five (\$.05) cents per hour.

State's LBO: Retain current language.

ISSUE# 35

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION ONE, PARAGRAPH ONE**

Union's LBO: Effective July 1, 2010 the shift differential payment shall be increased by

ten (\$.10) cents per hour.

State's LBO: Retain current language.

Discussion:

The Union's proposal is important to its members, it says, because much of their work must be done at night. Thus, it contends, the differentials in other units are not relevant since few of those employees ever qualify for their receipt. More relevant, it claims, are the night differentials paid to comparable municipal employees, most of which are more generous than what is being sought by the Union. The State relies upon its inability to pay claim and the treatment of other executive branch bargaining units.

The parties have already agreed to freeze the differential for the first year of the Agreement. The Union's evidence of the practice in comparable municipalities suggests that at some point a raise in the evening differential would have been agreed to by the parties. Once again, a split approach, balancing the parties' interests and recognizing inflation erosion seems most appropriate under the statutory factors. Unlike the prior issues, however, it seems more reasonable to spread increased costs over the life of the Agreement. The Union's LBO for the fiscal year commencing July 1, 2009 will be granted, while the State's LBO freezing the status quo for 2010 will be granted.

The **UNION's** LBO on Issue #34 is granted.

The **STATE's** LBO on issue #35 is granted.

ii. **Weekend Differentials**

ISSUE# 36

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION FOUR (D)**

The parties' LBO's on this issue were identical and thus this issue need not be addressed.

ISSUE# 37

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION FOUR (D)**

Union's LBO: Effective July 1, 2009, the weekend shift differential payment shall be increased by ten (\$.10) cents per hour.

STATE'S LBO: Retain current language.

ISSUE# 38

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION FOUR (D)**

Union's LBO: Effective July 1, 2010, the weekend shift differential payment shall be increased by ten (\$.10) cents per hour.

State's LBO: Retain current language.

Discussion:

The parties' positions on these issues are similar to the group previously discussed, with the exception that the Union does not rely upon any comparables in the municipalities it surveyed. The State relies upon the weekend differentials received by other executive branch units, reasonably excluding the health care units which are demonstrably a different breed of cat on an issue like this.

The Union's current weekend differential, \$.60 per hour is comfortably between the \$.40 differential paid to the NPO-1 unit and the \$.75 differential payable to NP units.

4, 5 and 3B. On this record, there is no justification for adjusting the weekend differential. The parties can revisit the matter in their next negotiations.

The STATE'S LBO's on Issues #37 and #38 are granted.

ISSUE# 50

iii. Working Condition Differentials.

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION FIVE**

The parties' LBO's on this issue were identical and thus need not be addressed.

ISSUE# 40

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION SIX (A)**

The parties' LBO's on this issue were identical and thus need not be addressed.

ISSUE# 41

**ARTICLE 23 – SHIFT AND OTHER SALARY DIFFERENTIALS
SECTION SIX (B)**

Union's LBO: Effective July 1, 2008, the shift differential shall be increased by ten (\$.10) cents per hour.

State's LBO: Retain current language.

Section Six. (b) The extra compensation paid to Department of Transportation employees with fire and crash standby assignments at airports, shall be eighty (\$.80) cents per hour.

Discussion:

The Union seeks the adjustment in this working premium primarily because it has not increased since 2004. The State contends that the Union has not shown a justification for the increase and objects to the administrative burdens that would result from its retroactive application.

There is nothing in the parties' bargaining history suggesting they would fund a special interest benefit like this at times of fiscal distress. While the sums paid may be small, they are best devoted to the larger interests of the bargaining unit.

The STATE'S LBO's on Issues #40 and 41 are granted.

d. Snow and Ice Differential

ISSUE# 56

ARTICLE 53- SNOW & ICE PREMIUM PAY

Union's LBO: Effective July 1, 2008 the snow and ice premium payment shall be increased by ten (\$.10) cents.

State's LBO: Retain current language and benefit.

ISSUE# 57

ARTICLE 53- SNOW & ICE PREMIUM PAY

Union's LBO: Effective July 1, 2009 the snow and ice premium payment shall be increased by ten (\$.10) cents.

State's LBO: Retain current language and benefit.

ISSUE# 58

ARTICLE 53- SNOW & ICE PREMIUM PAY

Union's LBO: Effective July 1, 2001 the snow and ice premium payment shall be increased by ten (\$.10) cents.

State's LBO: Retain current language and benefit.

Discussion:

Citing the obvious importance of the snow and ice removal work performed by NP-2 employees, the Union is seeking to increase the present \$1.60 premium to \$1.90 over the life of the Agreement. The State objects, citing the Union's receipt of a \$.10

increase in the last contact cycle and the failure of many municipalities to pay such a premium for the equally important work performed by their employees.

Given this winter, the arbitrator is emotionally inclined to grant the Union's LBO's. The arbitrator's reaction to this winter is not one of the relevant statutory factors and will not be considered in the analysis.

More relevant is the stated desire to preserve current wages from being eroded by inflation. The Union's entire proposal would raise the differential by close to 20% over the terms of the Agreement and it thus excessive and not reasonable when compared to projected increases in the cost of living. A \$.10 increase in the snow and ice differential, roughly a six percent increase, is reasonable. By making it effective in 2010, the parties can revisit the issue using the most current data.

The STATE'S LBO's on Issues #56 and #57 are granted.

The UNION's LBO on Issue #58 is granted.

SOME FINAL THOUGHTS

When an arbitrator finishes his or her work in a proceeding, it is with the hope that they have not made the situation worse and with the sometimes naïve hope that maybe that have made it better. Both parties are represented by bright, principled, decent people. They represented their parties with great professionalism and the written work product from both parties was first class.

How is it then, that these parties have a labor relationship in name only? They have resolved precisely one agreement without arbitration since 1988. This case consumed four long hearing days, a short time by the parties' historical standards. The paper exhibits fill one large file box and would have filled more had it not been for the

submission of some bulky exhibits in electronic format. The briefs total some four hundred pages. This Award could have been a lot longer if time permitted.

A lot of work and energy was thus devoted to resolving a dispute that should be resolved in bargaining. The resources devoted to this proceeding could have been used to reduce the grievance backlog or address other issues of concern. Why did this not happen? The answer lies in their history.

Last best offer arbitration should scare both parties because there is no middle ground. Experience has taught, however, that such arbitration can have a narcotic effect, by permitting both parties to delegating the resolution of contentious issues to an arbitrator, thus freeing the representatives from the burden of having to make difficult decisions. When the arbitrator decides, neither of the constituencies can yell at them other, than perhaps, for having selected the wrong arbitrator. Because the burden of accountability is thus removed, last best offers can often represent extremes.

The reliance on interest arbitration, rather than bargaining, also minimizes the problem solving function of collective bargaining. When one must choose between competing language proposals, last best offer is a blunt instrument, that either leaves the problem intact or solves it with an over correction. The discussion rejecting the State's LBO to change the grievance procedure is one illustration of this shortcoming.

If any good is to come out of this proceeding, other than closure, the arbitrator hopes that it prompts the parties to kick their addiction and resolve to agree on the terms of a collective bargaining agreement, rather than on the identity of the interest arbitrator. Such a commitment entails the willingness to make difficult decisions. It would, however, give the parties a control that they now lack, afford them the opportunity to

engage in finely honed problem solving and conserve scarce resources that could otherwise be put to better use. Interest arbitration should be the tool of last resort, rather than the default mechanism that it has become in the parties' labor relation.

The parties' ability to reduce the number of issues necessary for resolution suggests that they have the ability and willingness to resolve disputes in a more consensual fashion. The arbitrator hopes the trend continues, lest there be instant replay of this proceeding in 2011 or 2012.



Marc D. Greenbaum, Arbitrator
Dated: March 14, 2009

OFFICE OF POLICY AND MANAGEMENT
Cost Estimate of Arbitration Award
Dated March 14, 2009

Bargaining Unit: NP-2 Maintenance and Service
 Period of Contract: July 1, 2008 through June 30, 2011

Number of Full Time Employees:	All Funds	4211
	General Fund	2012
	Special Transportation Fund	1551

Total Annual Wages (26 pay periods) All Funds ⁽¹⁾ :	\$202,044,518
Total Value of Fringe Benefits ⁽²⁾ :	\$80,837,477

	Annualized Basis (26 Pay Periods for All Years)				
	Percent Increase				
	<u>Salary</u>	<u>Gen'l Wage Increase</u>	<u>AI's & Lump Sums</u>	<u>Other</u>	<u>Total</u>
Average Full Time All Funds:					
Prior to New Contract:	\$47,980				
1st Year Contract: 2008-2009	\$48,775	0.00%	1.64%	0.01%	1.66%
2nd Year Contract: 2009-2010	\$50,911	2.93%	1.38%	0.07%	4.38%
3rd Year Contract: 2010-2011	\$53,083	2.90%	1.21%	0.15%	4.27%

FULL-TIME COMPENSATION SUMMARY

	Annualized Basis (26 Pay Periods)			
	<u>Prior to Agreement</u>	<u>1st Year 2008-09</u>	<u>2nd Year 2009-10</u>	<u>3rd Year 2010-11</u>
All Funds				
Total Wages and Related Items	\$202,044,518	\$3,345,826	\$8,994,400	\$9,147,700
Fringe Benefits				
Value of Current Items	<u>\$80,837,477</u>	<u>\$589,534</u>	<u>\$1,584,813</u>	<u>\$1,611,825</u>
TOTAL WAGES AND BENEFITS	282,881,995	3,935,360	10,579,213	10,759,525

(1) Total Annual Wages include: Base Salary, Longevity Payments, Lump Sum Bonuses at Maximum, Shift Differentials, Weekend Differentials, Meal Allowances, On-Call/Stanby Pay, Hazardous Duty Pay, Snow and Ice Premium Pay, Skill Differentials, and Safety Shoe Allowances.

(2) Fringe Benefits include: Social Security, Normal Cost of Pension Contributions and Health and Life Insurance.

(3) The percentage increase for AI's & Lump Sums for FY 09 only reflects the lump sum increase over FY 08, not the total lump sum cost in FY 09.

SUPERSEDEDENCE NP-2 2008-2011

PROVISION	CONTRACT REFERENCE	STATUTE/REGULATION AMENDED
General Wage Increases effective 7/1/2010 and 7/1/2011	Article 20, Section 1(b&c)	CGS 5-200(k) CGS 5-200(m)
Annual Increments: On time in 2008-09; 2009-10 & 2010-2011	Article 20, Section 2(a)	CGS 5-200(k) CGS 5-200(m) CGS 5-210
Lump sum payment for employees at salary maximum equal to 2 ½% of base annual salary.	Article 20, Section 2(b)	CGS 5-200 (k) CGS 5-200 (m)
Increase in shift differential to \$.90 per hour 7/1/09	Article 23, Section 1	Q-424



STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT RECEIVED
Office of Labor Relations

2009 MAR 26 AM 11:56

OFFICE OF THE HOUSE CLERK
GAREY E. COLEMAN, CLERK

March 26, 2009

Mr. Garey E. Coleman
Clerk of the House
State Capitol
Hartford, CT 06106

SUBJ: Corrected Supersedence Appendix for the interest arbitration award between the State of Connecticut and the Connecticut Employees Union Independent, Inc. **(CEUI) (NP-2 Bargaining Unit)**

Dear Mr. Coleman:

Enclosed please find the Office of Policy and Management's corrected supersedence appendix for the interest arbitration award which was submitted on March 25, 2009. We apologize for any inconveniences this may have caused.

Very truly yours,

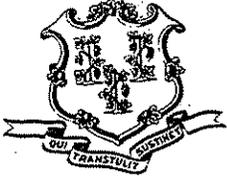
Handwritten signature of Linda J. Yelmini in cursive, with the initials "TLK" written below it.

Linda J. Yelmini
Director of Labor Relations

Robert Genuario, Secretary, OPM
John Bacewicz, OPM
Brenda Halpin, Comptrollers' Office
Office of Fiscal Analysis
Ron McLellan-CEUI

SUPERSEDEENCE NP-2 2008-2011

PROVISION	CONTRACT REFERENCE	STATUTE/REGULATION AMENDED
General Wage Increases effective 7/1/2009 and 7/1/2010	Article 20, Section 1(b&c)	CGS 5-200(k) CGS 5-200(m)
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STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT
Office of Labor Relations

March 26, 2009

Mr. Thomas P. Sheridan
Clerk of the Senate
State Capitol
Hartford, CT 06106

SUBJ: **Corrected Supersedence Appendix** for the interest arbitration award between the State of Connecticut and Connecticut Employees Union Independent, Inc. (CEUI (NP-2 Bargaining Unit))

Dear Mr. Sheridan:

Enclosed please find the Office of Policy and Management's corrected supersedence appendix for the interest arbitration award which was submitted on March 25, 2009. We apologize for any inconveniences this may have caused.

Very truly yours,

Linda J. Yelmini
TK

Linda J. Yelmini
Director of Labor Relations

Robert Genuario, Secretary, OPM
John Bacewicz, OPM
Brenda Halpin, Comptrollers' Office
Office of Fiscal Analysis
Ron McLellan-CEUI

SUPERSEDEENCE NP-2 2008-2011

PROVISION	CONTRACT REFERENCE	STATUTE/REGULATION AMENDED
General Wage Increases effective 7/1/2009 and 7/1/2010	Article 20, Section 1(b&c)	CGS 5-200(k) CGS 5-200(m)
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