



# STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

Office of Labor Relations

January 14, 2009

SENATE CLERK'S OFFICE  
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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 American Federation of State and Municipal Employees (AFSCME) (NP-4 Bargaining Unit)

Dear Mr. Sheridan:

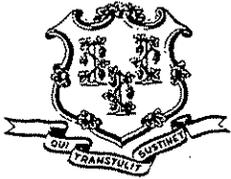
In accordance with Section 5-278(b) of the Connecticut General Statutes, the Office of Labor Relations hereby files with the Clerks of the House of Representatives and of the Senate, a Collective Bargaining Award between the State of Connecticut and the American Federation of State and Municipal Employees (AFSCME) 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  
Director of Labor Relations

Robert Genuario, Secretary, OPM  
John Bacewicz, OPM  
Brenda Halpin, Comptrollers' Office  
Office of Fiscal Analysis  
Albert Chiucarello-AFSCME Council 4



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RLC

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**In the matter of the  
Arbitration Between:**

**STATE OF CONNECTICUT  
EXECUTIVE BRANCH**

**-and-**

**AMERICAN FEDERATION  
OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES,  
Council 4, AFL-CIO  
Locals 387, 391 and 1565**

**Re: Successor Collective Bargaining  
Agreement (NP-4 Corrections Unit)**

CGS 5-267a Interest Arbitration

Connecticut State Board of Mediation and  
Arbitration

Case No. 2008-SBA-4

J. Larry Foy, Esq.,  
Arbitrator

January 5, 2008

Appearances:

Paul Bodenhofer, Labor Relations Specialist  
For the State

Albert J. Chiucarello, Chief Negotiator  
For the Union

## **Arbitration Award**

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## II. The Proceedings

This dispute between the State of Connecticut Executive Branch (the State) and the American Federation of State, County and Municipal Employees, Council 4, AFL-CIO, Locals 387, 391 and 1565 (the Union) arose from the collective bargaining negotiations for a successor contract to the parties' July 1, 2004 through June 30, 2008 collective bargaining agreement (J. Ex. 1). The negotiations commenced in September, 2004. In January, 2008 interest arbitration was initiated in accordance with CGS Sec.276a.

Between February 8 and May 1, 2008 the parties appeared before the arbitrator for nine (9) days of hearings at which the parties were accorded a full opportunity to adduce evidence, examine and cross-examine witnesses and make argument concerning the numerous disputed issues for the successor contract. A voluminous evidentiary record was produced. During the hearings the parties submitted waivers of statutory time limits for the arbitration proceeding (e.g., J. Ex. 34).

On May 30, 2008 the parties submitted last best offers on the disputed issues. On July 25, 2008 the parties submitted extensive and detailed initial post-hearing briefs. On August 15, 2008 the parties submitted reply briefs. By request of the arbitrator and by mutual agreement of the parties the award is to be issued before the regular session of the General Assembly which commences January 7, 2009.

It is noted that the duration of the successor contract was a disputed issue (Union Issue 66). The Union proposed a four year contract covering July 1, 2008 through June 30, 2012. The State proposed a three year contract covering July 1, 2008 through June 30, 2011. The State's last best offer for a three year contract was awarded (Issue 66). Accordingly, any proposals or

parts thereof which addressed terms for a fourth year of the new contract (July 1, 2011 through June 30, 2012) have been rendered moot since there will be no fourth year to the new contract.

## II. Statutory Factors

CGS 5-276 (e) (5) requires arbitrators to consider the following factors in arriving at a decision.

- (1) The history of negotiations between the parties including those leading to the instant proceedings;
- (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, medical 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 and;
- (7) the interests and welfare of the employees.

Additionally, CGS 5-276a (e) (4) provides that, "The arbitrator (A) shall give a decision as to each disputed issue considered, (B) shall state with particularity the basis for such decision as to each disputed issue and the manner in which the factors enumerated in subdivision (5) of this subsection were considered in arriving at such decision, (C) shall confine the award to the issues submitted and shall not make observations or declarations of opinion which are not directly essential in reaching a determination, and (D) shall not affect the rights accorded to either party by law or by any collective bargaining agreement nor in any manner, either by drawing inferences or otherwise, modify, add to, subtract from or alter such provisions of law or agreement."

### III. Overview of the Case

While there are a number of important non-economic issues to be decided in this case, the most numerous and significant issues are economic and financial ones. Much has occurred this year in the state and national economy and most of those events will impact the state's budget and ability to pay, state employee cost of living and the issues to be resolved in this case. Many of the trends were evident during the first half of the year but fully blossomed only in the second half. Other economic and financial events were unexpected or their magnitude and depth were a surprise to many observers. Whether expected or unexpected they all significantly affect state employees and the state budget for the term of the proposed NP-4 collective bargaining contract.

The Corrections NP-4 bargaining unit whose contract is at issue in this case is the largest in the state with approximately 10% of the state's full time employees in the unit. The differences between the State's economic proposals and the Union's is \$109 million under a three year contract and \$76 million under a four year contract. With state employee costs being the most significant factor in the state's budget, this contract and award undoubtedly will receive the highest scrutiny by the General Assembly in conjunction with its budget deliberations. The legislature will surely consider the most recent economic events affecting the national and state economy and their impact on the state budget and the prudence of approving or rejecting this interest arbitration award. For that reason, this award thus must address these issues and because doing so is required by the statutory factors governing this award (See, Statutory Factors on p.8)

## 1. Economic Conditions

The state, national and international economies and financial markets dramatically weakened this year, especially during the second half of the year. A summary of the year's important economic and financial trends include these:

- The national economy, as measured primarily by Gross National Product and employment, was in recession all year and deepened as the year progressed;
- The housing market continued its decline and the rise of mortgage defaults fueled by the recession, combined with the packaging of mortgages as securities, spread the virus of bad mortgages throughout the financial system;
- The stock market plummeted 40% resulting in hundreds of billions of equity value lost to its owners, including pension funds;
- Major banks, security trading firms, insurance companies and other financial institutions went bankrupt or were purchased in distressed sales, often with federal government assistance;
- Oil prices plummeted by 75% from a high of \$147 a barrel in the summer to a low of almost \$35 a barrel late in the year and gasoline prices reached a five year low;
- Interest rates declined, led by the Federal Reserve bank which lowered its prime lending rate to the range of 0.0% to 0.25% by the end of the year

The deterioration of the economy and financial system during the year is evident by the chronology of events set out below.

**March 16: Bear Stearns** is acquired for \$2 a share by JP Morgan Chase in a fire sale avoiding bankruptcy. The deal is backed by the Federal Reserve providing up to \$30 billion to cover possible Bear Stearns losses.

**May 6: UBS AG**, whose American operations are headquartered in Stamford, announced plans to cut 5,500 jobs by the middle of 2009.

**September 7: Fannie Mae and Freddie Mac**, which at that point owned or guaranteed about half of the nation's \$12 trillion mortgage market, are taken over by the federal government, effectively nationalizing them.

**September 14: Merrill Lynch** is sold to Bank of America amidst fears of a liquidity crisis.

**September 15:** Lehman Brothers files for bankruptcy protection.

**September 17:** The US Federal Reserve loans \$85 billion to American International Group (AIG) to avoid bankruptcy.

**September 19:** Treasury Secretary Paulson unveils his \$700 billion financial rescue plan.

**September 25:** Washington Mutual is seized by the Federal Deposit Insurance Corporation, and its banking assets are sold to JP Morgan Chase.

**October 3:** President George W. Bush signs into law the Emergency Economic Stabilization Act creating a \$700 billion Troubled Assets Relief Program to purchase failing bank assets.

**October 6-10:** Worst week for the stock market in 75 years. The Dow Jones lost 22.1 percent, its worst week on record, down 40.3 percent since reaching a record high of 14,164.53 on October 9, 2007.

**October 6:** The Federal Reserve announces it will provide \$900 billion in short-term cash loans to banks.

**October 7:** The Federal Reserve makes emergency move to lend around \$1.3 trillion directly to companies outside the financial sector.

**October 21:** The Federal Reserve announces it will spend \$540 billion to purchase short-term debt from money market mutual funds.

**November 24:** The federal government agrees to rescue Citigroup after an attack by investors caused the stock price to plummet 60% over the previous week under a detailed plan that included injecting another \$20 billion of capital into Citigroup bringing the total federal infusion to \$45 billion.

**November 25:** The Federal Reserve pledges \$800 billion more to help revive the financial system. \$600 billion will be used to buy mortgage bonds issued or guaranteed by Fannie Mae, Freddie Mac, Ginnie Mae, and the Federal Home Loan Banks.

**December 1:** The Business Cycle Dating Committee of the National Bureau of Economic Research formally announced that the national economy had been in recession since December of 2007 and relies primarily on employment and GDP data.

**December 16:** The Federal Reserve cuts its benchmark interest rate to a record low of 0% to 0.25% and stated that it will employ "all available tools" to revive the economy.

After reviewing similar economic and financial data, this arbitrator concluded in a municipal interest arbitration award early last month, “To an objective person with basic literacy in economics, the disaster to the private economy and public sector finances almost certainly will be unequalled in the last 30 years. (Since the late 1970s and early 1980s.)”<sup>1</sup>

## **2. The Impact of State and National Economic Conditions on the State Budget and the State’s Ability to Pay**

The dramatic economic and financial news outlined above could not fail to affect the Connecticut economy and state budget. Not only is Connecticut affected by the general economic conditions affecting the entire nation, it is also disproportionately affected by weakness in financial institutions and markets because,

- 1) many state residents, especially in Fairfield County, receive their income from large financial institutions in New York City;
- 2) there are many insurance companies and financial institutions located in Connecticut<sup>2</sup>; and
- 3) as the richest state in the nation, many residents are heavily invested in the financial markets.

At the time of the testimony in this case, the current fiscal year (2009) budget was in balance. But by the end of the calendar year, less than half way through the budget year, the Governor had called for two special sessions of the legislature to address estimated budget

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<sup>1</sup> *In the Matter of the Arbitration Between DANBURY BOARD OF EDUCATION and DANBURY SCHOOL ADMINISTRATORS ASSOCIATION* (December 1, 2008) CGS 10-153f Interest Arbitration

<sup>2</sup> The Union’s economic and ability to pay witness on April 14, 2008 testified that Connecticut’s largest employers, with exception of Bank of America, are “relatively recession proof” and that “insurance companies don’t have the same kind off—they have virtually no sub-prime exposure such as many banks do. And their stocks have not taken the big hit such as you’ve seen in the banks...” (Tr. April 14, 2008, pp. 54-55). This testimony was before the nation’s largest insurance company, AIG, was bailed out by the federal government to prevent its bankruptcy because of its “sub-prime exposure” and the shares of the Hartford Insurance Group lost 82% of their value.

deficits of over \$300 million.<sup>3</sup> The General Assembly's Office of Fiscal Analysis on November 14, 2008 stated,

The FY 09 General Fund deficit is projected at \$391.8 million. General Fund current services shortfalls are projected for FY 10 (\$2,495.3 million), FY 11 (\$3,215.2 million) and FY 12 (\$3,321.3 million).

That adds up to \$9.4 billion dollars of estimated budget deficits for the current fiscal year and the following three years. These deficits dwarf the size of the State's budget reserve ("rainy day") fund which is about \$1.38 billion<sup>4</sup>. The projected deficits are a product of lower than expected revenues from a wide variety of state taxes and the use of \$368 million of one-time revenues in the current budget year. When the State presented its ability to pay witness in April 2008, eight significant revenue streams were already coming in at less than projected levels.<sup>5</sup> These revenue sources are likely to decline further as the recession deepens and the full impact of the financial markets' decline are factored into the state's revenue picture.<sup>6</sup>

There are many landmines in the State's finances caused by the dramatic fall of the economy and financial markets that have only begun to be explored. The State's economic and ability to pay testimony and exhibits, for instance, vividly demonstrated the importance of large unfunded pension liabilities (\$14.8 billion in 2006 for state employees and teachers) and the

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<sup>3</sup> Different official estimates have come from the Governor's budget office, the State Comptroller and the General Assembly's Office of Fiscal Analysis, but they have all been over \$300 million.

<sup>4</sup> State Ex. 21 at p. 18 states the Budget Reserve Fund balance was \$1,381.7 million as of April 14, 2008.

<sup>5</sup> Tr. 4/18/08 and State Ex. 21, p. 43 which shows declines in revenues for investment income, Indian gaming and sales of commodities and tax receipts from the following taxes: Corporation, Public Service, Inheritance and Estate, Insurance Companies and Real Estate Conveyance.

<sup>6</sup> But cf., A *Hartford Courant* story reported on December 25, 2008 which states, "A new estimate from Rell's budget office shows the deficit for the current fiscal years...may be \$193 million instead of \$356 million because of some unanticipated increases in revenue. For example, The Office of Policy and Management estimates the state's estate tax will raise \$20 million more than expected." The estate tax revenue increase may be the product of the timing of the death of a few very rich individuals which may have occurred before the stock market collapse.

increasing annual payments the State is making for state employee pensions (\$717 million in FY 2008) and public school teacher pensions (\$519 million in FY 2008).<sup>7</sup> But neither the State nor Union witnesses nor any exhibits submitted by the parties explain what happens to these large unfunded liabilities when the stock market falls 40% as it has this year<sup>8</sup>. Massachusetts, for instance, has recently reported that its state employee pension fund lost \$16.1 billion this year<sup>9</sup> and large losses are likely to Connecticut's two major pension funds for state employees and teachers.

Such large pension fund losses mean that if contributions are based on actuarial assumptions, the State's annual contributions must be significantly increased to refill the fund to levels necessary to pay future employee pensions. Traditionally, state government has made pension contributions largely based on what legislators believed was politically and economically expedient and actuarial assumptions and recommendations were only one input into the equation. The pressure has always existed to put off adequate funding of pensions to another legislative year or generation so that current needs could be funded more generously. The routine succumbing to that pressure is why public employee pensions in Connecticut and other states have traditionally been underfunded. But times and laws have changed. Public Act 07-086, increased State indebtedness by \$2 billion to reduce the teacher pension unfunded

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<sup>7</sup> Tr. 4/18/08 and State Ex. 21, pp. 9-14.

<sup>8</sup> As of December 27, 2008, the Dow industrials have lost 35.8% for the year; the S&P 500 is down 40.6%; and the Nasdaq Composite has fallen 42.3%.

<sup>9</sup> See *Bloomberg News*, 12/25/08, ("The Massachusetts state pension fund lost \$2 billion last month, bringing its loss for the year to \$16.1 billion, the worst performance since it was formed, officials said yesterday. The drop brings the assets under management in the fund, which is controlled by state Treasurer Timothy Cahill, to \$37.6 billion, according to a memo from Stan Mavromates, the chief investment officer. The return on the fund, which is used to pay the pensions of public sector retirees, is down 30.1 percent for the year through the end of last month, according to Mavromates. Prior to this year, the worst year on record was 2002 when the assets under management dropped 8.9 percent, according to information obtained from the treasurer's office.")

liability by that amount. But most significantly, the law increased the State's obligation to fund the teacher pension system based on actuarial estimates of the appropriate annual contribution. Section 8 of Public Act 07-086.<sup>10</sup> No longer can political and budgetary considerations routinely be the primary consideration in making annual contributions to the teacher pension fund. This is a major change which combined with the fall in the value of the pension fund holdings is likely to have a significant impact on the ability of the State to meet other budgetary needs.<sup>11</sup>

When the record economic and financial testimony and exhibits are fully considered along with subsequent economic and financial events, it is painfully clear that the State of Connecticut's ability to pay is less than at any time in recent memory and likely to get worse. This is not the time for substantial improvement in employee compensation or new or increased benefits without proof of compelling need and consistency with the statutory factors. The State simply cannot afford it in these trying times.

### **3. Consideration of Events Occurring After the Close of Record and Briefs**

As is evident from the recitation of events and facts above, I have considered matters that

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<sup>10</sup> Section 8 of PA 07-086 provides in relevant part: "The state of Connecticut does hereby pledge to and agree with the holders of any bonds issued under sections 1 to 8, inclusive, of this act and any refunding bonds that...no public or special act of the General Assembly shall diminish such required contribution until such bonds, together with the interest thereon, are fully met and discharged, provided nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such bonds, or if and when the Governor declares an emergency or the existence of extraordinary circumstances, in which the provisions of section 4-85 of the general statutes are invoked, and at least three-fifths of the members of each chamber of the General Assembly vote to diminish such required contribution during the biennium for which the emergency or existence of extraordinary circumstances are determined, and the funded ratio of the Connecticut teachers' retirement system is at least equal to the funded ratio immediately after the sale of bonds pursuant to sections 1 to 8, inclusive, of this act in accordance with the actuarial method used at the time."

<sup>11</sup> The State Treasurer early last month pointed out this significant change in a press release of her letter to the editor of *Pension & Investments* magazine ("What was missing from the editorial was the fact that the most significant feature of the Connecticut plan is that we created a covenant to bondholders that the state would make the actuarially-recommended contribution during the life of the bonds.")  
<http://www.state.ct.us/ott/pressreleases/press2008/PR12092008a.pdf>

occurred after the close of hearings in this matter on May 1, 2008 and the receipt of the parties' last briefs on August 15, 2008. Because the receipt of the parties' briefs extended beyond the last legislative session<sup>12</sup> it was inevitable that the General Assembly would have to consider this award after all the intervening events cited above had occurred. Consideration of matters after the close of the record would be inappropriate in grievance arbitration adjudications but in interest arbitration under the circumstances of this case and the relevant statutory guidelines it would be inappropriate to ignore these compelling facts for the reasons stated below.

**A. The Nature of Interest Arbitration.** Interest arbitration is different than grievance or rights arbitration which litigates issues over the interpretation and administration of an existing collective bargaining contract. Public sector interest arbitration concerns itself instead with what the terms of a collective bargaining agreement should be; on reconciling the conflicting interests of the parties and the public pursuant to specific statutory standards. The evidentiary standards and procedures are thus different and “[a]rbitration of interest disputes may be viewed more as an instrument of collective bargaining than as a process of adjudication.”<sup>13</sup> The arbitrator’s function in interest arbitrations is thus different than an arbitrator in grievance arbitrations or a judge in civil litigation. As stated in *How Arbitration Works*, “In a very real sense, the function of an interest arbitrator is to legislate for the parties.”<sup>14</sup>

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<sup>12</sup> The parties’ signed a waiver of the statutory timelines in order to produce a voluminous record of testimony and briefs in support of their respective positions. Joint Ex. 34.

<sup>13</sup> *How Arbitration Works*, Elkouri and Elkouri, 6<sup>th</sup> Ed., 2003, Alan Miles Ruben, Editor-in-Chief (hereinafter *How Arbitration Works*) at p. 1350.

<sup>14</sup> *Id.*, at p. 1358. See also *New York Shipping Ass’n*, 36 LA 223, 225 (“our task here is to search for what would be, in light of all relevant actors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.”) and *Twin City Rapid Transit Co.*, 7 LA 845, 848 (“Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing

Whether the task of the arbitrator is to determine what the parties “would have” agreed to or to “legislate” the terms of the agreement, in either case the rules of evidence and formalities of adjudication rules do not limit the matters appropriate for consideration. Collective bargaining negotiators and legislators consider facts from similar authoritative sources that have been cited above and relied upon by both parties. It is equally an arbitrator’s duty to consider all current relevant facts, especially where there has been a considerable lapse of time and dramatic and highly relevant facts bear on the statutory factors the arbitrator is mandated to consider.

**B. The Required Statutory Review by the Legislature** Interest arbitration under the State Employee Relations Act does not end with the arbitrator’s award, for the statute specifically provides for review of the award by the state legislature.<sup>15</sup> Within 10 days of the issuance of the award the State must forward it to the clerks of the Senate and House of Representatives “together with a statement setting forth the amount of funds necessary to implement such award.”<sup>16</sup> The General Assembly then “may reject any such award as a whole by a two-thirds vote of either house if it determines that there are insufficient funds for full implementation of the award.” The bargaining history of this bargaining unit shows the General Assembly has twice exercised that power to reject NP-4 interest arbitration awards, in 1994 and 1997. As a result of those rejections the NP-4 bargaining unit members had years with no wage increases.<sup>17</sup> It therefore does bargaining unit employees represented by the Union no favor if the

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contract rights; the former calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights out to be.” These cases are quoted with approval in *How Arbitration Works* at pp. 1358-1359.

<sup>15</sup> C.G.S. Secs. Sec. 5-276a (e) and Sec. 5-278 (b).

<sup>16</sup> C.G.S. Sec. 5-278(b)

<sup>17</sup> See, e.g. State Ex. 15, “Mass Salary Increases 1990 to Present” and Union Brief, Introduction at p. 5 “HISTORY OF NEGOTIATIONS BETWEEN THE PARTIES FROM FY 93/94 TO PRESENT.”

arbitrator ignores or minimizes negative economic, financial and budgetary facts that will inevitably be considered by the General Assembly. Ignoring open and notorious current relevant facts would only increase the chances of the award's rejection and would render the arbitration process futile.

Moreover, ignoring world shaking changes in economic, financial and budgetary facts is simply inconsistent with the statutory criteria which requires an interest arbitrator to consider the ability to pay of the State and other statutory factors and to choose the most reasonable offer.

#### **4. Other Statutory Factors**

There are many issues in this case and the statute requires all the statutory factors to be considered for each issue. To avoid endless duplication of analysis of the facts applicable to "ability to pay" the foregoing discussion has been provided. A similar summary treatment of common considerations applicable to the other statutory factors is provided below, so the discussion of specific proposals can focus on the specifics applicable to those issues rather than the general impact of the statutory factors.

**(1) The history of negotiations between the parties including those leading to the instant proceedings;**

There is nothing remarkable concerning the current negotiation cycle of the contract in issue here other than the many issues remaining in dispute and the fact that the Union, as it happened, chose an extraordinarily difficult economic and financial year to pursue major breakthroughs in many new and improved benefits. In its brief the Union does emphasize the long history of negotiations and contracts going back to the early 1990s and the two rejections of interest arbitration awards by the General Assembly in that period which led the bargaining unit to fall somewhat behind other state units.

**(2) the existing conditions of employment of similar groups of employees;**

The Union introduced considerable evidence that the working conditions of Corrections employees are more adverse than other employees. I personally viewed the working conditions on a site visit to two correctional facilities with the parties. The Union also presented a DVD of working conditions with narration at the hearing.<sup>18</sup> Corrections employees certainly face adverse conditions and must cohabitate facilities with and control hardened criminals with severe behavioral problems. We all appreciate their valuable service and the risks they must take on the public's behalf.

The State introduced evidence that Corrections Officers are adequately compensated for those conditions by pay and benefits, especially by the very favorable pension provisions because they are classified as hazardous duty employees.<sup>19</sup>

In these difficult economic times one of the most valuable aspects of this bargaining unit's conditions of employment is unusually strong job security. Unemployment is rising in the private economy, already to its highest level in five years. The extreme budgetary pressures documented above will put great pressure on the State and municipal employers to implement reductions in force as a means of saving money because of reductions in expected revenue streams. The Corrections Department NP-4 bargaining unit is less likely to suffer reductions in force as a result of these powerful economic forces for two reasons: 1) court orders require minimum staffing levels and 2) a highly publicized murder of a Connecticut family by parolees has created great political pressure to keep inmates in jail that otherwise may have been released

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<sup>18</sup>Union Ex. 4 and Tr. 3/3/2008, pp. 64-77, testimony of Corrections Officer Lawrence Tyler. Much of the tape presentation was of events that occurred more than a decade ago.

<sup>19</sup> Joint Exs. 50 and 51.

on parole. Thus, the prison population is unlikely to be significantly reduced and the manning levels are thus likely to continue at historically high levels. This factor also has another important impact. Because of the severely limited resources any new compensation or benefit awarded to this bargaining unit may result in some other state employee losing his or her job.

**(3) the wages, fringe benefits and working conditions prevailing in the labor market;**

The Union introduced as evidence many exhibits<sup>20</sup> and considerable testimony<sup>21</sup> designed to establish that bargaining unit members, especially Corrections Officers, received inferior pay and benefits compared to their peers in other Northeast states, they were falling behind inflation, and if their pay and benefits were adjusted for the relative wealth of Connecticut they would be at the bottom of the heap in the Northeast. Some of the exhibits did not prove the points asserted. Some compared Corrections Officers to non-comparable positions. The fact that Connecticut has the highest per capita income or highest cost of living does not mandate that it must pay its employees more than any other states, especially when the other statutory factors are considered and weighed. It also must be recognized that statewide figures are averages or medians. The highest per capita income and cost of living are in Fairfield County where few Corrections employees live, since few Corrections facilities are located there. Moreover, there was no evidence that in the most recent years Connecticut's Correction Officers have been falling behind in their relative ranking compared to other states.

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<sup>20</sup> See, e.g., Union Exhibits 7 through 21.

<sup>21</sup> The Union's primary testimony on wage and benefit comparability was AFSCME labor economist Michael Messina who testified on April 8, 2008 (Tr. 4/8/08 pp. 8-51)

Significantly, the State also presented convincing evidence that the State had no problem finding recruits to fill Correction Officer vacancies and that there was relatively little turnover of Correction Officers.<sup>22</sup> The recruitment and retention information undercut the Union's claim that the present wages and benefits were not competitive.

- (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, medical and hospitalization benefits, food and apparel furnished and all other benefits received by such employees;**

I have considered the overall compensation paid to the employees of this bargaining unit and many of the specific factors mentioned in this statutory factor are in issue in this arbitration. Taken as a whole, the overall compensation of this bargaining unit is better than most private sector security counterparts (especially with regard to benefits) and not clearly inferior to other state and municipal employees.

- (5) **the ability of the employer to pay;**

The discussion above, especially "The Impact of State and National Economic Conditions on the State Budget and the State's Ability to Pay," deals with this statutory factor. This factor must be weighted heavily because of the gravity of the budgetary restraints and the severe downward trajectory of economic, financial and budgetary events. Thus Union proposals for wages or benefits that are in excess of the current contract and/or the State's proposals have a heavy burden to overcome.

- (6) **changes in the cost of living;**

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<sup>22</sup> See, e.g. the testimony of the Corrections Department Director of Human resources on Correction Officer recruitment and retention. Tr. 4/28/08, pp. 51-60. This included testimony that in recent years those leaving in good standing was less than 1%.

There is some good news for bargaining unit employees regarding the cost of living this year. Oil prices have fallen dramatically to \$35.35 per barrel the day before Christmas for light sweet crude for February delivery; a 75% reduction from this past summer. This is reflected in much lower gasoline and home heating oil prices. Interest rates have also fallen to some of the lowest on record. In December Freddie Mac reported that the 30 year mortgage rate had fallen to 5.14%, the lowest since the weekly survey began in April 1971 and the eighth straight week of decline. Since most of the unit employees have over 10 years of service they are likely to own their own homes and may be able to avail themselves of these advantageous rates to refinance their houses.

**(7) the interests and welfare of the employees.**

This statutory factor, if considered alone or heavily weighted versus the other statutory factors, usually argues for acceptance of Union proposals. But not necessarily in this case. Acceptance of substantial Union economic proposals adding more large new costs during the term of the new contract will likely invite legislative rejection of the arbitration award and could lead to the fate the bargaining unit faced in the 1990s when legislative rejection led to no general wage increases for a number of years.

#### **IV. Last Best Offers, Discussion and Award on Unresolved Issues**

**UNION ISSUE 1**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE - ARBITRATION**

**Last Best Offer of the Union.**

**Section 9. Arbitration.** Thirty (30) days following the effective date of this Agreement; Within forty (40) days from receipt of a Step III response, or if no response within forty (40) days of the due date, grievances during the life of this Agreement, shall be submitted for arbitration as follows:

**A. Dismissals**

1. Submission shall be to the Connecticut Board of Mediation and Arbitration by letter, postage prepaid, addressed to the Board; a copy of such letter will also be mailed concurrently to the Office of Labor Relations by certified mail.

**Last Best Offer of the State.**

**Section 9. Arbitration.** Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

1. **Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.

**Discussion**

**Current Language:**

**Section 9. Arbitration.** Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

- 1) **Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.

There are 11 proposed revisions to the collective bargaining contract in this case dealing with Article 12, Section 9, which concerns the parties' grievance arbitration procedure. The first 10 proposals of the Union concern this section of the contract as does State Issue 5. The Union divides its proposals to modify Section 9 in a confusing manner but both parties discuss the most

significant of the relevant issues regarding Section 9 in one section of their respective briefs.

The State brief summarizes the major issue separating the parties on Section 9 as follows:

The current language involves two separate processes depending on the nature of the grievance. All disciplinary dismissals are submitted to the Connecticut State Board of Mediation and Arbitration (SBMA) while all other cases, whether involving discipline or contract interpretation, are submitted to a closed panel of arbitrators established under the provisions of this Article. Both the State and the Union are proposing a single process for all grievances and each is proposing use of one of the existing procedures but, obviously not the same one for each proposal.

(emphasis added) (State Brief at p. 56)

The Union groups most of its discussion of these issues together in its brief and states that,

Through proposals U-3—U-10, the Union is simply bringing the contract interpretation grievances and the discipline grievances, other than dismissals, back to the SBMA.

(Union Brief at p. 11<sup>23</sup>)

Under the current contract the bulk of grievances, those relating to contract interpretation and discipline short of termination, are adjudicated by the closed panel of arbitrators selected by the parties. Each case is heard by a single neutral arbitrator. The arbitrators are paid their published rates and the costs are divided equally between the State and Union. Currently only grievances over dismissals go to the State Board of Mediation and Arbitration (SBMA). The SBMA operates by tripartite panels of three arbitrators and their rates are set by the SBMA, although the parties' previously had negotiated a preferential rate which the SBMA is not willing to continue in the future.<sup>24</sup> Scheduling the time of three arbitrators versus one arbitrator can result in more delays in processing cases. At one time all the bargaining unit grievances were heard by the

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<sup>23</sup> The Union provided a hard copy of its briefs that did not have page numbers. It also provided an electronic version of its initial brief in separate parts with the main section with its arguments and evidence labeled "Union ARBITRATION ARTICLES." Unless otherwise stated, the page number references to the Union Brief will be to the pages in the "ARBITRATION ARTICLES" section of the brief.

<sup>24</sup> See Union Ex. 37 and testimony of SBMA Administrator Catherine Serino, Tr. 5/1/08 at p. 18.

SBMA, but over the years, by mutual agreement between the parties, more of the grievances were moved to the private closed panel of arbitrators. When all the bargaining unit's cases were heard by the SBMA a large backlog of cases developed. That backlog still exists.

For the reasons stated below, with the exception of the two issues upon which there is agreement, I am awarding the State's last best offers concerning Article 12, Section 9, including State Issue 5. Both parties are proposing a change to a uniform arbitration tribunal for deciding grievances. The State's selection of tribunal (the private panel) is more consistent with the statutory factors. My reasons are as follows:

1. The Union proposes the most radical change, eliminating the tribunal where most grievances are now heard (the private panel agreed to by the parties) and substituting the State Board of Mediation and Arbitration (SBMA) to hear all cases.
2. The past bargaining history between the parties supports the trend of moving grievance cases away from the SBMA to the private closed panels.
3. No other state bargaining unit has their cases heard by the SBMA.<sup>25</sup>
4. There is a large backlog of cases and the SBMA appears less likely to be able to resolve the backlog in an expeditious fashion.
5. The Union's proposal creates disincentives to settlement and could encourage frivolous arbitrations by minimizing the costs of arbitration and shifting most of financial costs onto the State.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 1**

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<sup>25</sup> Testimony of SBMA Administrator Catherine Serino, 5/4/08 Tr. at p. 20.

**UNION ISSUE 2**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE – COSTS & ARBITRATOR SELECTION & REMOVAL**

**Last Best Offer of the Union.**

2. Thirty (30) days following the effective date of this Agreement submission of all arbitrations shall be done per the State Board of Mediation and Arbitration rules and regulations. All dismissal cases submitted up to 30 days following the effective date of this Agreement shall be submitted under the rules in effect at the time of their submission. Said submissions shall be in accordance with the provisions of the Collective Bargaining Agreement(s) under which they were filed.

**Last Best Offer of the State.**

1. **Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
2. **Costs.** The parties shall share equally in the expenses of the arbitrator.
3. **Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.
4. **Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

**Discussion**

**Current Contract Language.**

- 1) **Cost Allocation.** Effective July 1, 1994, and for each year of this Contract, the State shall allocate \$5,000.00 to cover the cost of arbitration at a rate of \$250.00 per case. Unexpended funds in any contract year shall carry over into the next contract year. Should the yearly allocation and the carry over funds combined be insufficient to pay for cases in any contract year, the parties agree to share equally in the per case cost;

- 2) **Arbitrators.** Arbitrators assigned to hear cases under this provision shall be mutually agreeable to the parties;
  
- 3) **Cases Submitted Under Previous Agreement.** For cases already submitted to the Board under previous contract provisions, those involving suspensions of fifteen (15) days or more shall remain with the Board. All other cases shall be processed under B. below. In the assignment of cases, discharge cases will be assigned first, all other cases will be assigned in the order of the date of filing, first filed, first assigned. Cases shall be assigned on a rotating basis to the arbitrators. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.

This issue highlights the differences between the parties as to Article 12, Section 9. Both parties propose changes to the current contract. They disagree over the selection of arbitration tribunals and responsibilities for and the amount of payment for arbitrators.

For the reasons discussed above, including the Discussion of Union Issue 1 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 2**

## **UNION ISSUE 3**

### **ARTICLE 12, SECTION 9**

#### **SUBJECT: GRIEVANCE PROCEDURE – COSTS & ARBITRATOR SELECTION AND REMOVAL**

##### **Last Best Offer of the Union.**

###### **B. Other Discipline and Contract Interpretation**

1. Thirty (30) days following the effective date of this Agreement submission shall be to the Connecticut Board of Mediation and Arbitration in accordance with their rules and regulations by letter, postage prepaid, addressed to the Board; a copy of such letter will also be mailed concurrently to the Office of Labor Relations by certified mail.

##### **Last Best Offer of the State.**

2. **Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
3. **Costs.** The parties shall share equally in the expenses of the arbitrator.
4. **Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.
5. **Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

#### **Discussion**

##### **Current Language**

2. **Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
3. **Costs.** The parties shall share equally in the expenses of the arbitrator.
4. **Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same

arbitrator.

5. **Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

For the reasons discussed under Union Issue 1 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 3**

**UNION ISSUE 4**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE – COSTS OF ARBITRATION**

**Last Best Offer of the State.**

3. **Costs.** The parties shall share equally in the expenses of the arbitrator.

**Last Best offer of the Union.**

No such language.

**Discussion**

For the reasons discussed under Union Issue 1 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 4**

**UNION ISSUE 5**

**ARTICLE 12, SECTION**

**SUBJECT: GRIEVANCE PROCEDURE – CASES PREVIOUSLY SUBMITTED TO SBMA**

**Last Best Offer of the Union.**

Thirty (30) days following the effective date of this Agreement cases already submitted to OLR and not yet scheduled shall be resubmitted by letter to the State Board of Mediation and Arbitration for arbitration services under the SBMA rules and regulations. Cases that have been already scheduled shall be adjudicated in accordance with the provisions of the Collective Bargaining Agreement(s) in which they were filed.

**Last Best Offer of the State.**

4. **Cases Submitted Under Previous Agreement.** Dismissal cases already submitted to the Connecticut Board of Mediation and Arbitration will remain with the Board in accordance with the prior contract provisions. Effective upon legislative approval of this Agreement, the State shall allocate \$5,000.00 to cover the cost of arbitration at the rate of: \$225 for day one of the hearing; \$150 per day for each additional hearing date; and \$175 for writing the arbitration award. Unexpended funds shall revert to the State. Should the yearly allocation be insufficient to pay for all remaining cases, the parties will share equally in the per case cost.

**Discussion**

**Current Contract Language.**

2. **Cases Submitted Under Previous Agreement.** Dismissal cases already submitted to the Connecticut Board of Mediation and Arbitration will remain with the Board in accordance with the prior contract provisions. Effective upon legislative approval of this Agreement, the State shall allocate \$5,000.00 to cover the cost of arbitration at the rate of: \$225 for day one of the hearing; \$150 per day for each additional hearing date; and \$175 for writing the arbitration award. Unexpended funds shall revert to the State. Should the yearly allocation be insufficient to pay for all remaining cases, the parties will share equally in the per case cost.

For the reasons discussed under Union Issue 1 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 5**

**UNION ISSUE 6**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE –ARBITRATION SUBMISSION**

**Last Best Offer of the State.**

**Section 9. Arbitration.** Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

**1. Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.

**Last Best Offer of the Union.**

The Union hereby withdraws Union Proposal Arbitration Number Six (6).

**Discussion**

Since this item has been withdrawn by the Union, no discussion is necessary.

**UNION ISSUE 7**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE - ARBITRABILITY**

**Last Best Offer of the Union.**

- C. **Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing. This provision shall only be applicable until such time that the rules and regulations of the State Board of Mediation and Arbitration are enacted.

**Last Best Offer of the State.**

**Numbered appropriately.**

**Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing.

**Discussion**

**Current Contract Language.**

**Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing.

In this provision the Union seeks to change the procedural rules for raising arbitrability from the current contract language to the SBMA rules. The State proposes to continue current language.

For the reasons discussed under Union Issue 1 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 7**

**UNION ISSUE 8**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE – EXPEDITED CASES**

**Last Best Offer of the State.**

Expedited cases. No language.

**Last Best Offer of the Union.**

No such language.

**Discussion**

The Union is seeking removal of the existing contract language on expedited cases. The State agrees there should be no language on expedited cases. There is no substantive disagreement.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on Union Issue 8**

**UNION ISSUE 9**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE – RESOLUTION OF PENDING CASES**

**Last Best Offer of the Union.**

**Pending Cases.** The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration cases with the goal of resolving, thereby reducing, the numbers of same.

**Last Best Offer of the State.**

**Numbered appropriately.**

**Pending Cases.** The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration case with the goal of resolving, thereby reducing, the numbers of the same.

**Discussion**

This is another issue relating to Section 9 on which the parties agree. The Union has proposed that the parties meet after approval of the contract by the General Assembly to discuss the ways and means of reducing the large backlog of pending arbitration cases. The State agrees with this proposal.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on Union Issue 9**

**UNION ISSUE 10**

**ARTICLE 12, SECTION 9**

**SUBJECT: GRIEVANCE PROCEDURE - POSTPONEMENTS**

**Last Best Offer of the Union.**

No such language.

**Last Best Offer of the State.**

**Numbered appropriately.**

**Postponements.** In any individual arbitration case, each party will be allowed one postponement. Thereafter, postponements shall only be by mutual consent of the parties.

**Discussion**

**Current Language:**

**G. Postponements.** In any individual arbitration case, each party will be allowed one postponement. Thereafter, postponements shall only be by mutual consent of the parties.

The Union's proposal would delete the current language which provides that both parties have the right to one grievance arbitration hearing postponement. The Union thus has the burden of proving why the change is needed. (This proposed Union change in Section 9 is not necessarily related to its change to the SBMA as the sole arbitration forum.)

The Union in its testimony and briefs does not specifically address this issue. The State has this to say:

The closed panel postponements have been primarily requested by the Union, while those involving the SBMA have varied between all the parties, with many of them actually postponed on behalf of the Board itself. Nonetheless, it is apparent that both parties to this

contract benefit from the ability to postpone scheduled arbitrations and there is no reason to remove the language specifically allowing one postponement by either party without the consent of the other.

The State's position is reasonable and supported by current contract language and bargaining history. The Union has supplied no persuasive reason to adopt its proposal.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 10**

**UNION ISSUE 11**

This issue was withdrawn by the Union and thus requires no discussion.

**UNION ISSUE 12**

**ARTICLE 13, NEW SECTION**

**SUBJECT: DISCIPLINE – JUST CAUSE STANDARD AND SUSPENSIONS DELAYED UNTIL STEP 3**

**Last Best Offer of the Union.**

Implementation of a Suspension. Effective July 1, 2009 the implementation of a suspension action by the employer shall be forestalled until the Step III Response has been rendered regarding the grievance filed under Article 13 of the grievance process.

**Last Best Officer of the State.**

Retain current language as follows:

**Section 3. Discipline.** No employee who has completed the working test period shall be disciplined or discharged except for just cause. In determining just cause, the regulations of the Blue Book governing disciplinary action as defined above are hereby incorporated by reference.

**Discussion**

The Union proposes that new language be added to the contract which would prevent Corrections Department management from implementing an employee disciplinary suspension until it has been approved by the State Office of Labor Relations in Step 3 of the grievance procedure. The State wants to retain the current language. Accordingly, the Union has the burden of proving its proposed change is required and justified by the statutory factors.

The Union argues that many disciplinary suspensions are reduced by agreement of the parties at Step 3 of the grievance procedure and its proposal therefore would save the State money by not having to pay the suspended employee and a replacement employee for the same day. The State argues that the Union is infringing on a core management right, that most suspensions are not reduced at Step 3 and no other State bargaining unit has this right to delay

disciplinary suspensions. The Union cited no examples of bargaining units outside of State service which have such contract provisions.

The Union has the burden of proof on its proposed change since the State proposes current contract language. That burden has not been met. There are no comparable provisions in State or other public sector contracts that the Union offered. Management has a right to discipline employees and unions have a concomitant right to contest suspensions based on the just cause standard. Delaying the implementation of discipline may also disrupt order in the work place and give incentives for delay in the grievance resolution process.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 12**

**UNION ISSUE 13**

**ARTICLE 17, SECTION 1A (1)**

**SUBJECT: COMPENSATION - GENERAL WAGE INCREASE (Year 1)**

**Last Best Offer of the Union.**

- (1) Effective and retroactive to the pay period including July 1, 2008, the base annual salary of all employees shall be increased by three and a quarter percent (3.25%).

**Last Best Offer of the State.**

**Section 1. Salaries.**

- 1) Effective July 4, 2008, the base annual salary of all employees shall be increased by three percent (3.0%).

**Discussion**

As set forth in detail in the "Overview" section of this decision, and particularly the subsection on "The Impact of State and National Economic Conditions on the State Budget and the State's Ability to Pay," supra, this is the least most opportune time for significant economic advances for State employee collective bargaining contracts. Issues 13, 14, and 15 cover the general wage increases (GWI) to be provided in each respective year of the new contract. The State has made reasonable proposals for general wage increases. They should be adopted in all three years. The State's proposed Year 1 (2008-2009) 3% GWI is consistent with other state employee bargaining unit increases awarded or agreed upon for that year. The State's 2.5% GWIs for Year 2 (2009-10) and Year 3 (2010-11) are lower than other state employee units for those years, but there are few covering those years and they were awarded or agreed upon before the great deterioration of the economy and public finances occurred. Most significantly, that deterioration must be given great weight as previously discussed.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 13.**

**UNION ISSUE 14**

**ARTICLE 17, SECTION 1A (2)**

**SUBJECT: COMPENSATION - GENERAL WAGE INCREASE (Year 2)**

**Last Best Offer of the Union.**

- (1) Effective and retroactive to the pay period including July 1, 2009, the base annual salary of all employees shall be increased by three and a quarter percent (3.50%).

**Last Best Offer of the State.**

- 2) Effective June 24, 2009, the base annual salary of all employees shall be increased by three percent (2.5%).

**Discussion**

For the reasons discussed under Union Issue 13 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 14**

**UNION ISSUE 15**

**ARTICLE 17, SECTION 1A (3)**

**SUBJECT: COMPENSATION - GENERAL WAGE INCREASE (Year 3)**

**Last Best Offer of the Union.**

- 3) Effective the pay period including July 1, 2010, the base annual salary of all employees shall be increased by three and a half percent (3.50%).

**Last Best Offer of the State.**

- 3) Effective June 23, 2010, the base annual salary of all employees shall be increased by two and one-half percent (2.50%).

**Discussion**

For the reasons discussed under Issue 13 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 15**

**UNION ISSUE 16**

**ARTICLE 17, SECTION 1A (4)**

**SUBJECT: COMPENSATION - GENERAL WAGE INCREASE (Year 4)**

**Last Best Offer of the Union.**

- 4) Effective the pay period including July 1, 2011, the base annual salary of all employees shall be increased by three and a half percent (3.50%).

**Last Best Offer of the State.**

- 4) Effective July 1, 2011, the base annual salary of all employees shall be increased by three percent (3.0%).

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Union Issue 16 is one such issue.

**UNION ISSUE 17**

**ARTICLE 17, SECTION 2.1**

**SUBJECT: COMPENSATION - ANNUAL INCREMENTS (Year 1)**

**Last Best Offer of the Union.**

1. Annual increments shall be retroactive for 2008-2009 year and shall be on time.

**Last Best Offer of the State.**

1. Annual increments for 2008-2009 shall be delayed six months. Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 46] lump sum payment.

**Discussion**

The Union proposes that bargaining unit employees receive the annual increment on time in each year of the new contract (Union Issues 17, 18, 19 and 20). The State is proposing that each year's increment be delayed by six months.

A combination of statutory factors argues for adoption of the Union's proposal in the first year of the contract, which is in the current State fiscal year. The State bases its proposal primarily on the economic costs. The State does not argue convincingly that the other statutory factors militate against the Union's proposal.<sup>26</sup> The State's economic and budgetary projections show that the first year of the new contract (Union Issue 17) is the least difficult of the three years of the new contract. Furthermore, in years 2 and 3 the State's proposal to delay step movement is being awarded (Issues 18 and 19). This is a significant financial concession. While the State's financial circumstances are dire, on time step movement is normally provided.

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<sup>26</sup> See the State Brief at p. 104.

Departure from that norm is justified in the majority of the three years of the new contract (years 2 and 3) but not in all three years.<sup>27</sup>

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on Union Issue 17**

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<sup>27</sup> It is noted that Year 1 annual increment is the proper subject of Union Issue 17. The State, however, also references Year 1 annual increment in its last best offer on Union Issue 46 by including the sentence "Annual increments for 2008-2009 shall be delayed six months." That sentence improperly appears in the State's last best offer on Union Issue 46. The only part of the State's last best offer on Union Issue 46 which may be considered is the sentence that addresses a lump sum payment for employees at the top of the pay scale. Accordingly, there is no contradiction between awarding the Union's last best offer on Union Issue 17 and the State's last best offer on Union Issue 46. Union Issue 17 controls Year 1 annual increment. Union Issue 46 controls Year 1 lump sum payment to top step employees.

**UNION ISSUE 18**

**ARTICLE 17, SECTION 2.2**

**SUBJECT: COMPENSATION - ANNUAL INCREMENTS (Year 2)**

**Last Best Offers of the Union.**

2. Annual increments for 2009-2010 shall be on time.

**Last Best Offer of the State.**

2. Annual increments for 2009-2010 shall be delayed six months. Employees at the top step of the pay scale shall receive [subject to award on Issue No. 47] lump sum payment.

**Discussion**

The cost to the State of NP-4 employees receiving the annual increments on time as proposed by the Union versus delayed six months as proposed by the State is approximately \$1.5 million. During years 2 and 3 of the contract the State is projected to have huge budget deficits, exceeding \$2 billion each year. The six month delay in increments proposed by the State is more reasonable than the Union proposal given this fiscal situation and the statutory factors.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 18**

**UNION ISSUE 19**

**ARTICLE 17, SECTION 2.3**

**SUBJECT: COMPENSATION - ANNUAL INCREMENTS (Year 3)**

**Last Best Offer of the Union.**

3. Annual increments for 2010-2011 shall be on time.

**Last Best Offer of the State.**

**Section 2. Annual Increments.**

3. Annual increments for 2010-2011 shall be delayed six months. Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 48] lump sum payment.

**Discussion**

For the reasons discussed above, including the Discussion of Union Issue 18 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 19**

**UNION ISSUE 20**

**ARTICLE 17, SECTION 2.4**

**SUBJECT: COMPENSATION - ANNUAL INCREMENTS (Year 4)**

**Last Best Offer of the Union.**

4. Annual increments for 2011-2012 shall be on time

**Last Best Offer of the State.**

4. Annual increments for 2011-2012 shall be delayed six months. Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 49] lump sum payment.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Union Issue 20 is one such issue.

**UNION ISSUE 21**

**ARTICLE 17, SECTION 4 (A)**

**SUBJECT: COMPENSATION – LONGEVITY PAY**

**Last Best Offer of the Union.**

The longevity schedule is appended under Appendix B (1), and shall be effective on July 1, 2009.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 4. Longevity.** The longevity schedule based on the pay plan effective on June 30, 1977 shall remain unchanged in dollar amounts during the life of this Agreement, and is appended.

**Discussion**

The Union proposes to break a 40 year tradition of longevity payment amounts payable to state employees. The State proposes to retain the current contract language and benefit level. This bargaining unit receives the same longevity payments as all other state employees.<sup>28</sup> No compelling reason has been given why this long bargaining history and comparability should be broken. The Union proposes to double the amount of the current payment, hardly a modest increase. This would cost the State more than \$2 million a year. The Union has the burden of proving the need for this change and its consistency with the statutory factors. That burden has

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<sup>28</sup> See Joint Exs. 9-19.

not been met. (Note: This issue is dispositive also of Union Issue 67, which concerns the actual longevity appendix.)

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 21**

**UNION ISSUE 22**

**ARTICLE 17, SECTION 6 B**

**SUBJECT: COMPENSATION - NIGHT SHIFT DIFFERENTIAL (Year 1)**

**Last Best Offer of the Union.**

- B. Effective and retroactive to the pay period including July 1, 2008, the night shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 6. Night Shift Differential.** All employees who are in this bargaining unit and who are eligible to receive shift differential in accordance with current practice and whose assigned work shift begins any time after 2:00 P.M. and before 6:00 A.M. shall receive a night shift differential of eighty (80) cents per hour. Shift differential will only be paid when an employee is actually working.

- A. Effective June 18, 2010, the night shift differential shall be increased to ninety (90) cents per hour. Shift differential will only be paid when an employee is actually working.

**Discussion**

The Union seeks to increase the night shift differential in each year of the contract (See also Union Issues 23, 24 and 25). The current level of night differential is generally comparable with other bargaining units. The State proposes an increase, but in a later year of the contract (the third year). The State explains in its brief:

The general economic forecast is such that it would be best to delay any increase in night shift differential until the out years of this contract, and such is the State's recommendation. In the third year of the contract, the State is offering an increase in night shift differential to ninety (90) cents an hour, an amount higher than any other unit presently gets, but is asking the Arbitrator to award no increase in years one and two.

(State Brief at pp. 116-117)

The State's proposal is more reasonable and consistent with the statutory factors than the Union's proposed increases.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 22**

**UNION ISSUE 23**

**ARTICLE 17, SECTION 6 C**

**SUBJECT: COMPENSATION - NIGHT SHIFT DIFFERENTIAL (Year 2)**

**Last Best Offer of the Union.**

C. Effective the pay period including July 1, 2009, the night shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 6. Night Shift Differential.** All employees who are in this bargaining unit and who are eligible to receive shift differential in accordance with current practice and whose assigned work shift begins any time after 2:00 P.M. and before 6:00 A.M. shall receive a night shift differential of eighty (80) cents per hour. Shift differential will only be paid when an employee is actually working.

A. Effective June 18, 2010, the night shift differential shall be increased to ninety (90) cents per hour. Shift differential will only be paid when an employee is actually working.

**Discussion**

For the reasons discussed under Issue 22 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 23**

**UNION ISSUE 24**

**ARTICLE 17, SECTION 6 D**

**SUBJECT: COMPENSATION - NIGHT SHIFT DIFFERENTIAL (Year 3)**

**Last Best Offer of the Union.**

D. Effective the pay period including July 1, 2010, the night shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 6. Night Shift Differential.** All employees who are in this bargaining unit and who are eligible to receive shift differential in accordance with current practice and whose assigned work shift begins any time after 2:00 P.M. and before 6:00 A.M. shall receive a night shift differential of eighty (80) cents per hour. Shift differential will only be paid when an employee is actually working.

A. Effective June 18, 2010, the night shift differential shall be increased to ninety (90) cents per hour. Shift differential will only be paid when an employee is actually working.

**Discussion**

For the reasons discussed under Issue 22 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 24**

**UNION ISSUE 25**

**ARTICLE 17, SECTION 6 E**

**SUBJECT: COMPENSATION - NIGHT SHIFT DIFFERENTIAL (Year 4)**

**Last Best Offer of the Union.**

- E. Effective the pay period including July 1, 2011, the night shift differential shall be increased by ten (10) cents per hour

**Last Best Offer of the State.**

Retain current language as follows:

**Section 6. Night Shift Differential.** All employees who are in this bargaining unit and who are eligible to receive shift differential in accordance with current practice and whose assigned work shift begins any time after 2:00 P.M. and before 6:00 A.M. shall receive a night shift differential of eighty (80) cents per hour. Shift differential will only be paid when an employee is actually working.

- A. Effective June 18, 2010, the night shift differential shall be increased to ninety (90) cents per hour. Shift differential will only be paid when an employee is actually working.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Union Issue 25 is one such issue.

**UNION ISSUE 26**

**ARTICLE 17, SECTION 7 B. (2)**

**SUBJECT: COMPENSATION - WEEKEND DIFFERENTIAL (Year 1)**

**Last Best Offer of the Union.**

- B. (2) Effective and retroactive to the pay period including July 1, 2008, the weekend shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 7. Weekend Differential.** For the purposes of this Section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

**A. Minimum.** The weekend differential shall be paid for working a minimum of six (6) hours on a shift defined in Section 7 above.

**B. Rate.** The rate shall be fifty-five (55) cents an hour.

- (1) Effective June 18, 2010, the weekend differential shall be increased to sixty-five (65) cents an hour.

**Discussion**

The Union seeks another compensation improvement by increasing the weekend pay differential in each year of the new contract (see also Union Issues 27, 28 and 29). The State is willing to increase the weekend pay differential, but only in the third year of the contract:

The general economic forecast is such that it would be best to delay any increase in weekend differential until the out years of this contract, and such is the State's recommendation. In the third year of the contract, the State is proposing an increase in weekend differential to sixty-five (65) cents an hour, an amount higher than all but three bargaining units receive, but is asking the Arbitrator to award no increase in years one, two or four (if applicable).

(State Brief at pp. 125-126)

Under the circumstances of this case the State's offer is more reasonable and consistent with the statutory factors than the Union's proposed increases.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 26**

UNION ISSUE 27

ARTICLE 17, SECTION 7 B. (3)

SUBJECT: COMPENSATION - WEEKEND DIFFERENTIAL (Year 2)

**Last Best Offer of the Union.**

- B. (3) Effective the pay period including July 1, 2009, the weekend shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 7. Weekend Differential.** For the purposes of this Section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

**A. Minimum.** The weekend differential shall be paid for working a minimum of six (6) hours on a shift defined in Section 7 above.

**B. Rate.** The rate shall be fifty-five (55) cents an hour.

- (1) Effective June 18, 2010, the weekend differential shall be increased to sixty-five (65) cents an hour.

#### **Discussion**

For the reasons discussed under Union Issue 26 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 27**

**UNION ISSUE 28**

**ARTICLE 17, SECTION 7 B. (4)**

**SUBJECT: COMPENSATION - WEEKEND DIFFERENTIAL (Year 3)**

**Last Best Offer of the Union.**

- B. (4) Effective the pay period including July 1, 2010, the weekend shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 7. Weekend Differential.** For the purposes of this Section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

A. **Minimum.** The weekend differential shall be paid for working a minimum of six (6) hours on a shift defined in Section 7 above.

B. **Rate.** The rate shall be fifty-five (55) cents an hour.

- (1) Effective June 18, 2010, the weekend differential shall be increased to sixty-five (65) cents an hour.

**Discussion**

For the reasons discussed under Union Issue 26 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 28**

**UNION ISSUE 29**

**ARTICLE 17, SECTION 7 B. (5)**

**SUBJECT: COMPENSATION - WEEKEND DIFFERENTIAL (Year 4)**

**Last Best Offer of the Union.**

- B. (5) Effective the pay period including July 1, 2011, the weekend shift differential shall be increased by ten (10) cents per hour.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 7. Weekend Differential.** For the purposes of this Section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

- A. **Minimum.** The weekend differential shall be paid for working a minimum of six (6) hours on a shift defined in Section 7 above.

- B. **Rate.** The rate shall be fifty-five (55) cents an hour.

- (1) Effective June 18, 2010, the weekend differential shall be increased to sixty-five (65) cents an hour.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Union Issue 29 is one such issue.

**UNION ISSUE 30**

**ARTICLE 17, SECTION 9 B (2)**

**SUBJECT: COMPENSATION – MEAL REIMBURSEMENT RATE (Year 1)**

**Last Best Offer of the Union.**

- B. (2) Effective and retroactive to the pay period including July 1, 2008, the meal reimbursement rate shall be increased by two (2) dollars.

**Last Best Offer of the State.**

- B. Rate.** Effective July 4, 2008, the meal reimbursement rate shall be \$8.50 for each shift actually worked

**Discussion**

Both parties propose an increase in the meal reimbursement rate but the Union's proposal is much more significant and costly in both the first year and subsequent years (See also Union Issues 31, 32 and 33). These differences are noted in the State's brief:

The current meal reimbursement rate has been in effect for three years and the State acknowledges that it is appropriate to increase it. However, the Union's proposed \$2.00 increase is simply too much, particularly with the current state of the economy. Such an increase will cost more than \$2,186,000.00 for the first year and over \$2,274,000.00 in each succeeding year while the State's proposal will only cost \$546,700.00 in the first year and about \$20,000.00 more in the succeeding years.

(State Brief at p. 134)

The State's proposal on this economic issue is more reasonable and consistent with the statutory factors than the Union's proposal.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 30**

**UNION ISSUE 31**

**ARTICLE 17, SECTION 9 B. (3)**

**SUBJECT: COMPENSATION – MEAL REIMBURSEMENT RATE (Year 2)**

**Last Best Offer of the Union.**

- B. (3) Effective the pay period including July 1, 2009, the meal reimbursement rate shall be increased by one (1) dollar.

**Last Best Offer of the State.**

- B. Rate. Effective July 4, 2008, the meal reimbursement rate shall be \$8.50 for each shift actually worked.

**Discussion**

For the reasons discussed under Issue 30 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 31**

**UNION ISSUE 32**

**ARTICLE 17, SECTION 9 B. (4)**

**SUBJECT: COMPENSATION – MEAL REIMBURSEMENT RATE (Year 3)**

**Last Best Offer of the Union.**

- B. (4) Effective the pay period including July 1, 2010, the meal reimbursement rate shall be increased by one (1) dollar.

**Last Best Offer of the State.**

- B. **Rate.** Effective July 4, 2008, the meal reimbursement rate shall be \$8.50 for each shift actually worked. Effective June 18, 2010, the meal reimbursement rate shall be \$9.00 for each shift actually worked.

**Discussion**

For the reasons discussed under Issue 30 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 32**

**UNION ISSUE 33**

**ARTICLE 17, SECTION 9 B. (5)**

**SUBJECT: COMPENSATION – MEAL REIMBURSEMENT RATE (Year 4)**

**Last Best Offer of the Union.**

- B. (5) Effective the pay period including July 1, 2011, the meal reimbursement rate shall be increased by one (1) dollar.

**Last Best Offer of the State.**

- B. **Rate.** Effective July 4, 2008, the meal reimbursement rate shall be \$8.50 for each shift actually worked. Effective June 18, 2010, the meal reimbursement rate shall be \$9.00 for each shift actually worked.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Union Issue 33 is one such issue.

**UNION ISSUE 34**

**ARTICLE 17, SECTION 9 C. (1)**

**SUBJECT: MEAL REIMBURSEMENT - ELIGIBILITY**

**Last Best Offer of the Union.**

- B. (1) Effective July 1, 2009, in lieu of the meal being provided, employees will be paid the full meal reimbursement rate when working unanticipated overtime after a regular shift.

**Last Best Offer of the State.**

Retain Current language as follows:

**C. Eligibility.** The minimum time for eligibility for such reimbursement shall be equal to one-half (½) of the shift, except unanticipated overtime after a regular scheduled shift the employee shall be provided with a sandwich and a beverage, prepared by a staff member.

**Discussion**

The Union seeks to change the method by which employees are provided sustenance when they are required to serve unanticipated overtime from the current method by which the State provides a sandwich and beverage to a full meal allowance. Since the Union proposes a change in the existing contract and the State does not, the Union has the burden of proof. To meet its burden the Union offered the testimony of Corrections Officer Rudy Demira<sup>29</sup> which is summarized in its brief:

His testimony included a number of reasons as to why a mandatorily held employee should receive the meal reimbursement money instead of a sandwich and a beverage. He offered that the sandwiches were not provided more often than not, and that the provided sandwiches were substandard. One of the sandwiches was offered to Mr. Arbitrator. CO Demiraj offered that on numerous occasions "held staff" had to buy meals from the vending machines or send out for food. Due to such there is a financial cost. When a CO is working unanticipated overtime, they do not bring a meal or a beverage.

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<sup>29</sup> Tr. 4/23/08 at p. 67-79.

(Union Brief at p. 30)

The Union claims there will be minimal cost for this proposal, - only \$34,000 a year. The State Office of Policy and Management states in its costing document that providing a meal allowance of \$11 to every employee who works unanticipated overtime will cost \$1,007,200 in the first year the Union is requesting the new benefit (2009-2010). The State also claims the language of the Union proposal is ambiguous and defective:

It also appears that the Union proposal creates some confusion in regard to how long an employee must work to be eligible for the allowance. The current language requires at least one-half (1/2) of a shift, and there is no such limitation in the Union proposal. If it were their intention to simply remove the sandwich and beverage, the appropriate proposal would have been to remove the current language. Instead, this proposal would have the effect of requiring ½ of a shift for all employees except those working unanticipated overtime, as there is no limitation in the proposed language. This makes the Union proposal defective and it should not be awarded.

(State Brief at pp. 143-144)

I find the Union's argument unpersuasive, including the claims that 1) employees will not bring meal money for unanticipated overtime unless he/she is provided a meal allowance and 2) the State commonly fails to provide the contractually required sandwich and beverage when employees work unanticipated overtime. I am also concerned about the large difference in estimated costs for this item.<sup>30</sup> The Union has not met its burden of proof on this issue.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 34**

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<sup>30</sup> I estimate that the real net cost is more than the Union claims and less than what the State claims.

**UNION ISSUE 35**

**ARTICLE 17, SECTION 11. (A)**

**SUBJECT: COMPENSATION - TOP STEP ADJUSTMENT**

**Last Best Offer of the Union.**

A. The top step of all pay classifications shall be increased in the following manner.

**Last Best Offer of the State.**

No new language.

**Discussion**

This is the introductory paragraph for a series of Union proposals to increase the compensation at the top step of every salary grade. This is another significant new economic benefit the Union is seeking in each year of the new contract (See also Union Issues 36, 37, 38 and 39). The State Office of Policy and Management estimates that this new benefit will cost the State almost \$5 million in the first year, rising to \$6.4 million by the Union's proposed fourth year of the contract. In support of this costly new compensation increase the Union argues past negotiating history and comparable pay data support its proposals:

The Union points to the history of negotiations between the parties over the last 17 years. It is well referenced in this brief under Factor I Union Argument that the NP-4 Unit has lost numerous GWI's and Annual Increments due to the rejection by the Legislature of two NP-4 Agreements. The Union believes that those historical proceedings have caused inequities and deficiencies in the pay grid salaries of NP-4 members.

(Union Brief at p.33)

The Union also points to the wages of State Police Officers and Judicial Department Probation Officers for the proposition that Corrections Officers are paid less and step adjustments are therefore necessary for them to catch up. There are two obvious flaws in the Union's arguments.

First, the cause it claims of its historical “inequities and deficiencies,” the rejection of past NP-4 arbitration awards, one by this arbitrator, may occur again if the Union’s economic requests are granted. In these very difficult times with a dramatically reduced State ability to pay, the award of costly new benefits simply is not justified under the statutory ability to pay factor.<sup>31</sup> Second, it is not clear that Corrections Officer’s and State Police Officers have comparable education requirements or official duties such that arbitrators should link their pay scales in any parity relationship. The Union has the burden of proving any new departure from the contract is justified. Again, in these exceptionally difficult times, that burden is especially difficult to meet.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State’s last best offer is awarded on Union Issue 35**

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<sup>31</sup> An interest arbitrator’s duty is to apply the statutory criteria and not rest any decisions on predictions of legislative action. On each issue I have applied the statutory criteria and have not relied on prognostications of subsequent action by the General Assembly. However, in the historic time that currently exists, all parties to the collective bargaining process must be cognizant of the institution that has the final say. For that institution “ability to pay” is likely to be a compelling issue for the three year period to be covered by the new contract.

**UNION ISSUE 36**

**ARTICLE 17, SECTION 11. A. (1)**

**SUBJECT: COMPENSATION - TOP STEP ADJUSTMENT (Year 1)**

**Last Best Offer of the Union.**

- (1) Effective and retroactive to the pay period including July 1, 2008, immediately following the application of the General Wage Increase, the top step shall be increased by three percent (3%).

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 35 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 36**

**UNION ISSUE 37**

**ARTICLE 17, SECTION 11. A. (2)**

**SUBJECT: COMPENSATION - TOP STEP ADJUSTMENT (Year 2)**

**Last Best Offer of the Union.**

(2) Effective the pay period including July 1, 2009, immediately following the application of the General Wage Increase, the top step shall be increased by two and a half percent (2.5%).

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 35 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 37**

**UNION ISSUE 38**

**ARTICLE 17, SECTION 11. A. (3) (4)**

**SUBJECT: COMPENSATION - TOP STEP ADJUSTMENT (Year 3)**

**Last Best Offer of the Union.**

(3) Effective the pay period including July 1, 2010, immediately following the application of the General Wage Increase, the top step shall be increased by two percent (2%).

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 35 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 38**

**UNION ISSUE 39**

**ARTICLE 17, SECTION 11. A.(4)**

**SUBJECT: COMPENSATION - TOP STEP ADJUSTMENT (Year 4)**

**Last Best Offer of the Union.**

(4) Effective the pay period including July 1, 2011, immediately following the application of the General Wage Increase, the top step shall be increased by two percent (2%).

**Last Best Offer of the State.**

No new language.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Union Issue 39 is one such issue.

**UNION ISSUE 40**

**ARTICLE 17, SECTION 12. A.**

**SUBJECT: COMPENSATION - TOP STEP ADJUSTMENT (Additional Steps)**

**Last Best Offer of the Union.**

A. Employees shall receive additional steps as follows:

**Last Best Offer of the State.**

No new language

**Discussion**

The Union in Issue 40 and in the subsequent Union Issues 41, 42, 43 and 44 seeks four additional top steps of the salary schedule, one added in each year of the Union's proposed contract term. The State proposes to retain the number of steps in the current contract. The Union thus has the burden of proving its proposed new steps are supported by the statutory factors. The Union makes essentially the same argument for this new benefit as it does for increasing top step compensation under Issues 35-39 supra and also claims that other state bargaining units have been granted added steps to their salary schedule and the NP-4 unit has not received any new steps "during the 2000 decade."<sup>32</sup>

The State counters that the cost of the Union's additional step proposals is prohibitive in these times of severely restricted ability to pay and that current NP-4 steps are comparable to other bargaining units:

The Union has not demonstrated a need for any additional steps to be added to the NP-4 pay plan, particularly since they compare quite favorably to comparable classifications in other bargaining units. In addition, current economic conditions strongly indicate that it would be inappropriate to incur additional liability for the State at this time. Assuming a four year contract, adding a step 11 in the first year will cost almost 10 million dollars. A step 12 added

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<sup>32</sup> See Union Brief at pp. 35-36.

in the second year costs 7 ½ million and a step 13 in the third year is 9 million. An added step in the fourth year will cost 6 ½ million.

The State again has the more reasonable position primarily because the ability to pay statutory factor must be heavily weighted under current and foreseeable economic and budgetary conditions during the term of the new contract. The Union also has not proven its current contractual steps are manifestly inferior to other State employee groups.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 40**

**UNION ISSUE 41**

**ARTICLE 17, SECTION 12. A. (1)**

**SUBJECT: COMPENSATION - ADDITIONAL STEP (Year 1)**

**Last Best Offer of the Union.**

- (1) Effective the last pay period of the first year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than Step Ten (10).

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 40 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 41**

**UNION ISSUE 42**

**ARTICLE 17, SECTION 12. A. (2)**

**SUBJECT: COMPENSATION - ADDITIONAL STEP (Year 2)**

**Last Best Offer of the Union.**

- (2) Effective the last pay period of the second year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than the existing top step.

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 40 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 42**

**UNION ISSUE 43**

**ARTICLE 17, SECTION 12. A. (3)**

**SUBJECT: COMPENSATION - ADDITIONAL STEP (Year 3)**

**Last Best Offer of the Union.**

- (3) Effective the last pay period of the third year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than the existing top step.

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 40 supra , and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 43**

**UNION ISSUE 44**

**ARTICLE 17, SECTION 12. A. (4)**

**SUBJECT: COMPENSATION - ADDITIONAL STEP (Year 4)**

**Last Best Offer of the Union.**

- (4) Effective the last pay period of the fourth year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than the top step.

**Last Best Offer of the State.**

No new language.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Issue 44 is one such issue.

**UNION ISSUE 45**

**ARTICLE 17, SECTION 13. A.**

Subject: **LUMP SUM TOP STEP EMPLOYEES**

**Last Best Offer of the Union.**

A. Employees shall receive a lump sum if they are at their top step as follows:

**Last Best Offer of the State.**

No new language.

**Discussion**

The Union in this issue and Union Issues 46, 47, 48 and 49 seeks to increase the lump sum payment for employees on the top step of their respective salary schedules from \$500 to a percentage of their annual base salary. That State proposes a 50% increase in this benefit from \$500 to \$750. The State does not believe the lump sum payment should be based on a percentage of base salary and argues the Union's proposal would cost much more:

The Union's proposal will cost \$12,507,100.00 over a three year contract and \$17,581,500.00 over four years. The State's proposal will cost \$2,055,000 over three years and \$2,740,000 for four years.

(State Brief at p. 174)

The more modest State increase in this benefit is appropriate in these economic times and consistent with the statutory factors. Most State bargaining units have top step lump sum payments defined by dollar amounts rather than percentage payment. Accordingly, comparability also argues in favor of the State's proposal.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 45**

**UNION ISSUE 46**

**ARTICLE 17, SECTION 13. A. 1**

**Subject: LUMP SUM TOP STEP EMPLOYEES (Year 1)**

**Last Best Offer of the Union.**

1. Commencing and retroactive the first year of this Agreement (July 1, 2008 to June 30, 2009), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

**Last Best Offer of the State.**

**Section 2. Annual Increments.**

1. Annual increments for 2008-2009 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.

**Discussion**

For the reasons discussed under Union Issue 45 supra, and based upon the entire record of this case and the statutory factors:<sup>33</sup>

**The State's last best offer is awarded on Union Issue 46**

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<sup>33</sup> As noted under Union Issue 17 supra, the proper subject matter of Union Issues 46-49 is limited to lump sum payments to top step employees. The State's last best offer on Union Issues 46-49 includes a separate reference to a six month delay in annual increments. That is inappropriate for Union Issue 46 and cannot be recognized as part of the State's last best offer. Union Issue 17 is determinative of Year 1 annual increment (2008-09) and Union Issues 18 and 19 determined Years 2 and 3 annual increment.

**UNION ISSUE 47**

**ARTICLE 17, SECTION 13. A. 2**

**Subject: LUMP SUM TOP STEP EMPLOYEES (Year 2)**

**Last Best Offer of the Union.**

2. Commencing and retroactive the second year of this Agreement (July 1, 2009 to June 30, 2010), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

**Last Best Offer of the State.**

**Section 2. Annual Increments.**

2. Annual increments for 2009-2010 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.

**Discussion**

For the reasons discussed under Union Issue 45 supra, and based upon the entire record of this case and the statutory factors:<sup>34</sup>

**The State's last best offer is awarded on Union Issue 47**

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<sup>34</sup> See footnote under Union Issue 46 infra.

**UNION ISSUE 48**

**ARTICLE 17, SECTION 13. A. 3**

Subject: **LUMP SUM TOP STEP EMPLOYEES (Year 3)**

**Last Best Offer of the Union.**

3. Commencing and retroactive the third year of this Agreement (July 1, 2010 to June 30, 2011), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

**Last Best Offer of the State.**

**Section 2. Annual Increments.**

3. Annual increments for 2010-2011 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.

**Discussion**

For the reasons discussed under Union Issue 45 supra, and based upon the entire record of this case and the statutory factors:<sup>35</sup>

**The State's last best offer is awarded on Union Issue 48**

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<sup>35</sup> See footnote under Union Issue 46 infra.

**UNION ISSUE 49**

**ARTICLE 17, SECTION 13. A. 4**

**Subject: LUMP SUM TOP STEP EMPLOYEES (Year 4)**

**Last Best Offer of the Union.**

4. Commencing and retroactive the fourth year of this Agreement (July 1, 2011 to June 30, 2012), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

**Last Best Offer of the State.**

**Section 2. Annual Increments.**

4. Annual increments for 2011-2012 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Issue 49 is one such issue.

**UNION ISSUE 50**

**ARTICLE 17, SECTION 14. A.**

Subject: **REVISED PAY PLAN**

**Last Best Offer of the Union.**

A. Employees shall receive revised pay plan rates as follows:

**Last Best Offer of the State.**

No new language.

**Discussion**

The Union in this issue and Issues 51, 52, 53 and 54 proposes increases to the NP-4 pay plan that would further increase costs to the State. Union Issue 51 increases all pay grades and steps by \$1,000 in the first year of the contract before application of the GWI and Union Issues 52 through 54 raises the top three steps of all the pay grades \$1,000 in the second year and \$2,000 in the third and fourth years of their proposed contract term. The Union makes the same arguments of historical inequities and deficiencies and lack of comparability that it makes for its earlier salary issues.

The State opposes any new language or economic benefits as included in Union Issues 50 through 54 and offers the following as its rationale:

Please see the general economic discussion. As in U-40 et seq, the Union has not demonstrated a need for any increase to the existing step of the current pay plan, again since they compare quite favorably to comparable classifications in other bargaining units. In addition, current economic conditions strongly indicate that it would be inappropriate to incur additional liability for the State at this time. Over the course of the contract, the cost of these proposals will be over 41 million dollars over a four year contract if done in the first

year, an additional 30 million if added in the second year, over 39 million in the third year and over 17 million for the fourth year.

(State Brief at p. 187)

Even though the State may be inflating the costing of Issues 51-54, the costs to the State for these increases are very substantial and cannot be justified under the statutory criteria at this time.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 50**

**UNION ISSUE 51**

**ARTICLE 17, SECTION 14. A. (1)**

Subject: **REVISED PAY PLAN (Year 1)**

**Last Best Offer of the Union.**

- (1) Effective and retroactive to the pay period including July 1, 2008, each step of each NP-4 pay grade shall be increased by \$1,000 prior to the 2008-2009 GWI being implemented.

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 50 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 51**

**UNION ISSUE 52**

**ARTICLE 17, SECTION 14. A. (2)**

Subject: **REVISED PAY PLAN (Year 2)**

**Last Best Offer of the Union.**

(2) Effective the pay period including July 1, 2009, the top three steps of each NP-4 pay grade shall be increased by \$1,000 prior to the 2009-2010 GWI being implemented.

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 50 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 52**

**UNION ISSUE 53**

**ARTICLE 17, SECTION 14. A. (3)**

Subject: **REVISED PAY PLAN (Year 3)**

**Last Best Offer of the Union.**

(3) Effective the pay period including July 1, 2010, the top three steps of each NP-4 pay grade shall be increased by \$2,000 prior to the 2010-2011 GWI being implemented.

**Last Best Offer of the State.**

No new language.

**Discussion**

For the reasons discussed under Union Issue 50 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 53**

**UNION ISSUE 54**

**ARTICLE 17, SECTION 14. A. (4)**

**Subject: REVISED PAY PLAN (Year 4)**

**Last Best Offer of the Union.**

(4) Effective the pay period including July 1, 2011, the top three steps of each NP-4 pay grade shall be increased by \$2,000 prior to the 2011-2012 GWI being implemented

**Last Best Offer of the State.**

No new language.

**Discussion**

On Union Issue 66 infra the State's proposal for a three year duration is awarded for the new contract. Accordingly, all proposals concerning terms for the fourth year are moot and shall not be addressed. Issue 54 is one such issue.

**UNION ISSUE 55**

**ARTICLE 17, SECTION 15**

**Subject: COMPENSATION FOR CARRYING RESPONSE DEVICE**

**Last Best Offer of the Union.**

Effective the pay period including July 1, 2009, employees carrying a state issued response device during off-duty hours will be compensated at the rate of fifty dollars (\$50.00) per pay period.

**Last Best Offer of the State.**

No new language.

**Discussion**

The Union proposes a new benefit of \$50 per pay period for those employees who carry a response device during off-duty hours. The State proposes no new language or benefit and leaves the Union to its proof. The Union summarizes its testimony, exhibits and argument in its brief:

CO Frank Collier testified that NP-4 CERT members, NP-4 SOG members, NP-4 K-9 members and Parole Officers do carry response devices during off hours 24/7. He testified that they receive no compensation for such.

Michael Messina testified that Correction Officers in other states do receive response compensation. This is illustrated in the Standby Pay Document (X U-19)

Albert Chiucarello testified that in Connecticut a number of the State Units have contractual language whereby they are compensated for carrying a State issued response device Document Standby/Response Device (X U-22).

(Union Brief at p. 43)

The State in response offered the testimony of Richard Miele, Director of Tactical Operations and Transportation, who in his tactical capacity oversees the Correctional Emergency

Response Team (CERT), the Special Operations Group (SOG) and the SITCON hostage negotiations group,<sup>36</sup> and Joseph Chapdelaine, Deputy Warden for Operations and Canine Commander who supervises the canine unit.<sup>37</sup> Both of these Corrections Department officials testified that the regular employees who were issued response devices volunteered for the elite units; that the units have no shortage of volunteers (70 to 80 volunteers for every vacancy in one of the units); that employees were paid for their training and paid when their units were called out to duty; and there is no penalty if they fail to answer their response device (pagers, Nextel phones, etc.) although it may be considered as a factor in whether their membership in the elite volunteer units would continue. The testimony was that there has never been a problem with employees failing to respond to calls. In addition to the units mentioned, employees volunteering for the honor guard and fife and drum corps also were issued response devices and similar practices were followed with those units.

As the State notes in its brief, it is a tribute to the professionalism of Department employees that they enthusiastically volunteer for these important specialized units. Since they are volunteers and are fully compensated when they are called out for duty, there does not appear to be a compelling rationale for additional compensation and a new benefit. Moreover, the Union exhibits on standby pay (Union Ex. 19 and 22) are not convincing because (1) a majority of corrections departments elsewhere in the Northeast receive no standby pay (2) many of the employees receiving standby pay are required to be on standby (e.g., professional Judicial

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<sup>36</sup> Tr. 3/11/08 at pp. 26-46

<sup>37</sup> Tr. 3/11/08 at pp. 56-80

Department employees) and (3) it is not clear whether other variables were comparable to the situation of the Correction Department special units that carried response devices.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 55**

**UNION ISSUE 56**

**ARTICLE 25, SECTION 1. (a)**

Subject: **VACATION**

**Last Best Offer of the Union.**

a) The following vacation leave shall apply for all NP-4 members vacation accruals:

Effective July 1, 2009, employees shall be entitled to:

**YEARS OF SERVICE VACATION**

Zero (0) to five (5) years: One (1) day per month.

Over five (5) and under sixteen (16) years: One and a quarter (1.25) days per month.

16 years: 16 days

17 years: 17 days

18 years: 18 days

19 years: 19 days

20 years: 20 days

21 years: 21 days

22 years: 22 days

23 years: 23 days

24 years: 24 days

25 years: 25 days

Vacation leave beyond fifteen (15) days is granted as bonus day(s) each January 1st of the calendar year.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 1. Schedule.** Employees who were hired prior to July 1, 1997 shall continue to accrue vacation at the rate of one and one-quarter (1-1/4) days per month, except that employees who have completed twenty (20) years of service shall earn paid vacation at the rate of one and two-thirds (1-2/3) work days for each calendar month of service. For employees who were hired on or after July 1, 1977, the following vacation leave shall apply:

Years of Service	Vacation
Zero (0) to five (5) years	One (1) day per month
Over five (5) and under twenty (20) years	One and one-quarter (1-1/4) days per month
Twenty (20) or more years	One and two-thirds (1-2/3) days per month

### **Discussion**

The Union proposes that employees with over 15 years of service receive more vacation on a graduated scale of from one to ten more days a year than under the current contract. The State proposes no change in contract language or benefits. The Union's position is summarized in its brief:

Mike Messina testified that the NP-4 vacation accruals were substandard to other Correctional employees in Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont.

The Union offered a Vacation Accrual document (X U-18). The document shows that after 10 years, all are getting more vacation time than Connecticut and that after 20 years Connecticut is not competitive.

The Union offers that the State does have the ability to pay in that there is no cost to the State. Dan Callahan testified that the DOC vacancy rate was at about 2%. With a 98% staffing rate, DOC should have more than enough staff available to fill the posts without a cost to the Agency.

(Union Brief at p. 47)

The State's response is that the benefit level proposed by the Union is not comparable to other Connecticut state employees and it will cost more money, an annualized cost of \$1,570,600 to provide the new benefit level:

No other bargaining unit, with the exception of the NP-8 Unit (to be discussed below), has a vacation accrual rate any different than the current language of the NP-4 contract and NP-8 is different only because some bargaining unit members were managerial employees before the formation of this unit.

(State Brief at p. 195)

The State also argues that the comparison to other states is not valid because the work schedule of Connecticut Corrections Officers gives them more days off each year and they receive 18 more days off than most Connecticut state employees because of their work schedule (State Brief at p. 196). Based on the comparison evidence and the cost to the State, the Union has not met its burden of proof on adding or significantly expanding the vacation benefit.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 56**

**UNION ISSUE 57**

**ARTICLE 27, SECTION 3. B. AND 6**

Subject: **UNIFORMS AND CLEANING STIPEND**

**Last Best Offer of the Union.**

- B. Uniformed Personnel.** Effective the pay period including July 1, 2009, the Department of Correction shall provide uniforms in accordance with Appendix E, "Uniform Specification and Allotment," except that the Commissioner of Correction may change the color and style of the uniform upon notice to the Union. Uniforms shall only be worn as provided in this Directive. No portion of a uniform shall be worn with any other clothing not authorized herein. Uniforms shall not be worn while off duty except as necessary to travel to and from the employee's worksite, fulfill family responsibilities, or while volunteering and officially representing the Department of Correction. The consumption of alcohol while in uniform is strictly prohibited.
6. Stipend. Effective the pay period including July 1, 2009 and annually thereafter, in lieu of the request for dry cleaning, NP-4 members shall receive a stipend of six hundred dollars (\$600.00) to maintain personal appearance and to clean their work clothing.

**Last Best Offer of the State.**

Retain Current Language as follows:

- B. Uniformed Personnel.** The Department of Correction shall provide uniforms in accordance with Appendix E, "Uniform Specification and Allotment," except that the Commissioner of Correction may change the color and style of the uniform upon notice to the Union. Uniform items which require dry cleaning shall be maintained by the Department through a designated vendor. A limit of three (3) pairs of uniform pants per week and one (1) Department issued winter coat per year, shall be maintained by the Department. Uniforms shall only be worn as provided in this Directive. No portion of a uniform shall be worn with any other clothing not authorized herein. Uniforms shall not be worn while off duty except as necessary to travel to and from the employee's worksite, fulfill family responsibilities, or while volunteering and officially representing the Department of Correction. The consumption of alcohol while in uniform is strictly prohibited.

No New Section 6 providing for a stipend to wear clean clothes.

## Discussion

The Union proposes in this issue to replace the existing provision whereby the State provides dry cleaning services for State issued uniforms. The Union proposes a \$600 cleaning allowance and having the employees wash and/or dry clean their State issued uniforms. The State proposes no change in contract language or benefits on this issue. The Union thus has the burden of proof. The Union argues in its brief that since the employees have an obligation to maintain their appearance at work the State should pay for it:

I point to the existing NP-4 Agreement (X J-1). Specifically Article 27, Sections 1, 3, 3 B.1, 4, 4 B (1, 2, 3, 4) of the Agreement call for personnel to maintain a neat and clean appearance while on duty/or in uniform. There are financial costs to maintain the appearance that DOC calls for under Article 27 of the Agreement.

(Union Brief at p. 49)

The State argues the Union's proposal would cost \$3 million and has no merit. The State minces no words in its brief:

There are two other Executive Branch contracts, NP-1 in Article 19, Section Thirteen (J-9) and NP-5 in Article 20, Section Six (b) (J-12) that provide for a clothing/cleaning allowance but in both cases it applies only to employees who would normally wear a uniform but are assigned to duties that preclude wearing of the uniform. No contract provides for an allowance to be paid to employees who are fully clothed at the expense of the State.

In almost every single employment situation, whether public or private, employees are expected to come to work clothed. They are also expected to provide and maintain their own clothing and to wear appropriate clothing. Here, the members of the NP-4 unit are given everything they need to wear and there is absolutely no reason why they should not be responsible for throwing their uniforms in a washing machine along with all the other clothing that they wear when not at work.

In the absence of any evidence in support of the need for special compensation to clean the wash-and-wear uniforms issued to the employees and any evidence indicating how \$600.00 is related to the actual costs of cleaning the uniforms, this can be regarded only as what it is, that is a blatant attempt to get money for nothing.

(State Brief at pp.200 -201)

The comparison evidence clearly does not support the Union's position. No testimony or exhibits

were introduced to support this issue that demonstrated the existing uniform cleaning and replacement arrangements were inadequate. I must agree with the State that the Union has not met its burden of proof.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 57**

**UNION ISSUE 58**

**ARTICLE 28, SECTION 1. (A.)**

**Subject: PAID LEAVE DRILLS**

**Last Best Offer of the Union.**

1. A. Effective July 1, 2009, a full-time permanent employee who is a member of the Armed Forces of the State or any reserve component of the Armed Forces of the United States shall be entitled to military leave with pay for required field training, provided such leave does not exceed two (2) calendar weeks in a calendar year, in addition to up to fourteen (14) days of military leave for weekend drills. Additionally, any such employee who is ordered to active duty as a result of an unscheduled emergency (natural disaster or civil disorder) shall be entitled to military leave with pay not to exceed thirty (30) calendar days in a calendar year. During such leave the employee's position shall be held, and the employee shall be credited with such time for seniority purposes.

**Last Best Offer of the State.**

Retain current language as follows:

**Section 1. Paid Leave for Drills, Emergencies.** A full-time permanent employee who is a member of the armed forces of the State or any reserve component of the armed forces of the United States shall be entitled to military leave with pay for required field training, provided such leave does not exceed two (2) calendar weeks in a calendar year, in addition to up to seven (7) days of military leave for weekend drills. Additionally, any such employee who is ordered to active duty as a result of an unscheduled emergency (natural disaster or civil disorder) shall be entitled to military leave with pay not to exceed thirty (30) calendar days in a calendar year. During such leave the employee's position shall be held, and the employee shall be credited with such time for seniority purposes.

**Discussion**

In this proposal the Union seeks to increase the number of days of paid military leave from 7 days to 14 days for weekend drills. The State proposes to retain the current language and benefit level. Thus the Union has the burden of proof. The Union presented testimony from some

employees who stated that seven (7) paid days is insufficient and they sometimes could not use other accrued time to cover the weekend drill so were not paid for it and not credited for the day for pension purposes. Other employees stated they preferred not to use their accrued time because they wanted to use it for vacation or a larger retirement payout. In its brief the Union states that the new benefit would cost little. The Union also asserts that new State provided statutory benefits to employees serving in the military are not sufficient or relevant:

The Union offers that the difference between 14 days and 7 days is not a monetary deal breaker for the State. The State offered a number of documents (X S-16, S-17 and S-18) that showed financial enhancements that the State gave to activated State employees. The time is right for non-activated NP-4 members to be taken care of regarding paid weekend drills. The Union LBO #58 goes a long way to righting a wrong.

(Union brief at p. 51)

The State presented evidence that the Union's claim that an employee's pension would suffer if they were not paid for the military service was incorrect (Testimony of Suzanne Smedes, Human Resources Manager, Tr. 3/11/08 at pp.136-147.) The State also submitted exhibits showing the State had recently expanded benefits for state employees serving in the military by providing those benefits as a statutory entitlement (State Exs. 16-18). Finally, the State submitted evidence that as a result of the Corrections Department "swapping policy" employees on weekend military duty could swap their days with other employees and thus get paid for the days without using accrued leave time (Testimony of Joseph Chapdelaine, Tr. 3/11/08 at pp. 52-53 and State Ex. 12).

The Union has not met its burden of proof on this issue. The State of Connecticut and this arbitrator highly value the volunteer military service and training of state employees and the risks they take for their country when called up to active duty, but the need for this expanded benefit is not proven.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 58**

**UNION ISSUE 59**

**ARTICLE 33, SECTION 2. A.**

**Subject: TUITION REIMBURSEMENT FUND AMOUNT (Year 1)**

**Last Best Offer of the Union.**

2.A. Effective July 1, 2008 there shall be \$75,000 appropriated for the purpose of tuition reimbursement.

**Last Best Offer of the State.**

**Section 2. Fund Amount.** Effective July 1, 2008, there shall be \$80,000 appropriated for each year of this Agreement for the purpose of tuition reimbursement. Funds committed for reimbursement in one fiscal year shall carry over into the next fiscal year in order to allow payment of tuition reimbursement claims for prior year courses.

**Discussion**

Both parties are proposing an increase in the tuition reimbursement fund. The State proposes to increase the fund from \$60,000 to \$80,000 for each year of the contract. The Union proposes increasing the fund to \$75,000 the first year, remaining at \$75,000 in the second year, and then increasing to \$85,000 in the third year (Union Issue 61). The Union also proposed language for \$90,000 in a fourth year. The parties proposed increasing the fund because the tuition reimbursement amount an employee may claim was increased by 50% (see Article 33, Section 3A and 3B in Joint Ex. 6). The Union explains the rationale for its proposal as follows:

The Union predicated their dollar amounts in the third and fourth year of the Agreement to the fact that the per credit reimbursement amounts were raised by 50% by the parties during negotiations for this successor agreement. The NP-4 Agreement (X J-1) called for a tuition reimbursement appropriation of \$60,000 effective July 1, 2007. The Union rationale was to backload due to the fact that the parties agreed to a 50% higher per credit reimbursement. Once more employees are aware of this factor, the funds would, based on this equation, expire much more rapidly.

(Union Brief at p. 53)

The State's position is that this bargaining unit has under utilized the tuition reimbursement fund in the past and the additional money requested by the Union therefore is unnecessary:

State Exhibit 36 demonstrates that over the four years of the previous contract, (J-1) the fund has carried a balance into the following year. In the first year, the balance was minimal (\$547.75) but the following year it was over \$29,000.00 with the third year showing an almost \$50,000.00 carry over. As of April 14, 2008, the unused balance was in excess of \$78, 000.00, although final payments had not been made.

This issue presents a close question and it does not involve much money or any important principle. While the tuition reimbursement program has been under utilized in the past causing fund balances to be carried over into the following contract years, two factors argue for a change in this trend: (1) the draws on the fund even at existing usage levels will be 50% higher and (2) the Union says it will be publicizing this benefit more in an effort to increase utilization. The tough economic times ahead may also provide incentives for employees to prepare themselves for the future by enhancing their education and training. On balance the Union has made the better case.<sup>38</sup> Under the awards which follow, only one year (Year 3) will have a higher fund than the State proposed (See the Discussion of Union Issues 61 and 66 infra) and if utilization is less than hoped for the money will be returned to the State at the end of the contract term (See the Discussion of Union Issue 62 infra).

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on Union Issue 59**

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<sup>38</sup> As noted in the discussion under Union Issue 61 infra, the Union's proposed Year 4 increase cannot be awarded.

**UNION ISSUE 60**

**ARTICLE 33, SECTION 2. B.**

Subject: **TUITION REIMBURSEMENT FUND AMOUNT (Year 2)**

**Last Best Offer of the Union.**

2.B. Effective July 1, 2009, there shall be \$75,000 appropriated for the purpose of tuition reimbursement.

**Last Best Offer of the State.**

**Section 2. Fund Amount.** Effective July 1, 2008, there shall be \$80,000 appropriated for each year of this Agreement for the purpose of tuition reimbursement. Funds committed for reimbursement in one fiscal year shall carry over into the next fiscal year in order to allow payment of tuition reimbursement claims for prior year courses.

**Discussion**

For the reasons discussed under Union Issue 59 supra, and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on Union Issue 60**

**UNION ISSUE 61**

**ARTICLE 33, SECTION 2. C**

**Subject: TUITION REIMBURSEMENT FUND AMOUNT (Year 3)**

**Last Best Offer of the Union.**

**2.C.**

1. Effective July 1, 2010, there shall be \$85,000 appropriated for the purpose of tuition reimbursement.
2. Effective July 1, 2011, there shall be \$90,000 appropriated for the purpose of tuition reimbursement.

**Last Best Offer of the State.**

**Section 2. Fund Amount.** Effective July 1, 2008, there shall be \$80,000 appropriated for each year of this Agreement for the purpose of tuition reimbursement. Funds committed for reimbursement in one fiscal year shall carry over into the next fiscal year in order to allow payment of tuition reimbursement claims for prior year courses.

**Discussion**

The ruling on Union Issue 66 awarded a three year duration for the new contract. Therefore, while the \$85,000 tuition benefit for Year 3 is awarded, the Union's Year 4 proposal for \$90,000 (Paragraph 2. C, 2) is moot and is not awarded.

For the reasons discussed above, including the Discussion of Union Issue 59 supra, and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on Union Issue 61 (Paragraph 2. C. 1 only)**

**UNION ISSUE 62**

**ARTICLE 33, SECTION 2. D.**

**Subject: TUITION REIMBURSEMENT ROLLOVER**

**Last Best Offer of the Union.**

2. (D) Tuition funds not expended during the life of this Agreement shall roll over into the successor to this Agreement under the provisions of this Article.

**Last Best Offer of the State.**

This is a non-mandatory subject of bargaining. Union must withdraw.

**Discussion**

In this issue the Union seeks to have any unexpended tuition reimbursement funds rolled over into the following fiscal year even though that year will be governed by a successor contract. The State proposes to retain the current language and asserts the Union proposal is a non-mandatory subject of bargaining and must be withdrawn. There is no need to rule on the State's statutory claim that this issue is a non-mandatory subject of bargaining. The Union has the burden of proof on this issue and I find that it has not been met. The Union has not demonstrated a need for this new provision. Indeed, because I ruled in the Union's favor in the previous issue (Union Issue 61 supra) to increase the State's annual appropriation to \$85,000 in the third year of the contract and employee usage levels may or may not increase, an additional reason not to require a rollover of funds is the increased probability they may not be needed.

For the reasons discussed above, including the Discussions of Union Issues 59 and 61 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 62**

**UNION ISSUE 63**

**ARTICLE 35, SECTION 15**

**Subject: MEAL MONEY FOR PAROLE OFFICERS**

**Last Best Offer of the Union.**

Effective the pay period including July 1, 2009, NP-4 members working in the classification of Parole Officer II, Parole Officer I, Parole Officer Trainee and Parole Officer Aide shall receive the meal reimbursement for each shift worked at the rate cited under Article 17 of the NP-4 Agreement.

**Last Best Offer of the State.**

No new language.

**Discussion**

The Union proposes new contract language and creating a new financial benefit. The State proposes to retain the existing contract provisions which provide no meal allowance for probation officers. The Union thus has the burden of proof. For the following reasons that burden not been met.

The State explains in its brief the history of the meal allowance for Corrections Officers. At one time there was a practice of Correction Officers using the inmate cafeteria. That practice resulted in a deplorable incident perpetrated by inmates that convinced the State and Union of a need for an alternative. The State in its brief explains why the restrictions on Corrections Officers freedom to get a meal do not apply to Parole Officers:

Parole employees are not restricted to the secure area of a facility, are not required to be available at all times to supervise inmates and do not in any way have job requirements that would justify receipt of the cash meal allowance that facility based employees receive.

(State Brief, p. 222)

The State makes a convincing argument on the merits.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 63**

**UNION ISSUE 64**

**ARTICLE 35, SECTION 15**

**Subject: MEAL MONEY FOR COMMUNITY SERVICE COUNSELORS**

**Last Best Offer of the Union.**

Effective the pay period including July 1, 2009, Counselors working in Community Service shall receive the meal reimbursement for each shift worked at the rate cited under Article 17 of the NP-4 Agreement.

**Last Best Offer of the State.**

No new language.

**Discussion**

In this proposal the Union seeks for Community Service Counselors the same meal reimbursement benefit as Corrections Officers. The State proposes no new contract language or benefits. The Union thus has the burden of proof on this issue and like Issue 63 that burden has not been met. Community Service Counselors are not confined to correctional facilities like Corrections Officers and are free to get their meals like any other state or private sector employees. For the same reasons stated in Union Issue 63 supra, the Union has not made a convincing case on the merits.

For the reasons discussed above, including the Discussion of Union Issue 63 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 64**

**UNION ISSUE 65**

**APPENDIX D, SECTION 1) A.**

Subject: **PAROLE OFFICER PAGERS**

**Last Best Offer of the Union.**

1) A. Effective the pay period including July 1, 2009, the compensation rate shall be set at one and a half (1.5) hours of compensatory time.

**Last Best Offer of the State.**

Retain Current Language as follows:

**PAROLE - PAGERS**

- 1) When a Parole Officer is paged during their non-work hours by a Parole Supervisor or by the answering service, the Officer shall be eligible for one (1) hour of callback compensatory time if required to make phone calls/faxes;
- 2) If the Parole Officer is paged during their non-work hours by a Parole Supervisor or by the answering service, the Officer shall be eligible for a minimum four (4) hours of callback compensatory time if required to take further action such as picking up a parolee, going to a police station or going to court;
- 3) Should a Parole Officer be paged during their non-work hours by a Parole Supervisor or by the answering service on a State holiday, Article 21 "Holidays," shall apply for the accrual of callback compensatory time. This shall not be used for the purpose of earning any additional pay;
- 4) The Board shall continue its practice of providing tinted windows for cars that have cages as long as DAS Fleet Services permits.

**Discussion**

The Union proposes to increase the compensatory time given Parole Officers when they are called during off duty hours from one hour to one and a half hours. The State proposes no change to the contract or benefits regarding Parole Officer compensatory time. The Union bases its case largely on the testimony of one Parole Officer:

The Union offered the testimony of Parole Officer John Duca. He testified that one hour of compensatory time was insufficient if he was paged and had to make phone calls or send faxes. He testified that within the last year the dynamics have changed regarding what a Parole Officer has to do when responding to a call during off duty hours. The average time is one hour in general for responding to the page inquiry, if we have the best case scenario. He testified that there are occasions when the Parole Officer is not home. The Officer has to go home from where they are and respond immediately. He testified that they are driving their own vehicle home. All of this takes time and money.

(Union Brief, pp. 59-60)

The State provided evidence from a former Parole Officer who now is a manager who stated most off duty calls take less than an hour for a Parole Officer to handle and if they are not at home and would have to go home to adequately respond, they could call their supervisor and have another employee handle the matter (Testimony of Richard Anderson, Tr. 3/11/08, at pp. 61-74) In its Brief the State also makes the argument that the Parole Officers are doubly compensated for off duty work because they are provided a state owned and maintained car for such work:

Parole Officers are assigned state owned and maintained vehicles which they use for commuting to and from work, as well as in the normal course of their duties. If they are called out after regular hours, they have the right to use their vehicles and further have the right to make incidental stops for personal business, including dropping off or picking up a child at child care on the way to and from work. (see Article 35, Section 7). Section 7 A. makes the assignment of the vehicle contingent upon the employee being available for contact assignment on a 24-hour basis, except when on authorized leave.

The Union has the burden of proof on this issue and I find they have not proved the need for the additional compensatory time based on the record before me and the statutory factors.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 65**

**UNION ISSUE 66**

**ARTICLE 38, SECTION 1**

Subject: **DURATION**

**Last Best Offer of the Union.**

Section 1. **Effective Date.** Although this Agreement covers the period July 1, 2008 to June 30, 2012, the provisions contained herein shall not be effective until legislative action under the State Employees Relations Act, unless a specific provision is stated to the contrary.

**Last Best Offer of the State.**

**Section 1. Effective Date.** Although this Agreement covers the period July 1, 2008 to June 30, 2011, the provisions contained herein shall not be effective until legislative action under the State Employees Relations Act, unless a specific provision is stated to the contrary.

**Discussion**

The Union proposes that the term of the collective bargaining contract be four years. The State proposes three years. The State summarizes its reasoning in its brief:

It is very clear that due to the current economic situation both parties will be better off with a shorter rather than longer term for the contract. Up to this point, the economic forecast presented by Secretary Genuario in his testimony on April 14 has not only been right on the money but, if anything, was more conservative than events have shown (see S-21). It would be irresponsible to commit to a four-year term when all the evidence demonstrates a failing economy and if by some miracle things turn around quickly, the Union can make its case for appropriate action in the next round of negotiations.

(State Brief, p. 230)

The Union argument appears to be that since the parties are already half way through the first year of the new contract, a three year contract would bring them back to negotiations too soon:

A 3 year Agreement retroactive to July of 2008 and up to June 30, 2011 is problematic.

The parties will be back in negotiation for a Successor Agreement in August or September of 2010.

(Union Brief, p. 61)

A three year contract is more normal for state employees and public sector employees in Connecticut. I agree with the State that the current uncertain economic situation argues strongly for the three year term. That would mean returning to the bargaining table in two years. In two years the economic situation hopefully will have improved. If so, it will be a more favorable time than the present to collectively bargain wages, hours and conditions of employment.<sup>39</sup>

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 66**

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<sup>39</sup> It is noted that many issues in this case concerned terms for a fourth year. Since only a three year duration is awarded on Issue 66, all proposals concerning benefits, salaries, etc. for a fourth year (2011-12) are rendered moot.

**UNION ISSUE 67**

**APPENDIX B (1)**

Subject: **LONGEVITY SCHEDULE**

**Last Best Offer of the Union.**

**APPENDIX B (1)**

**LONGEVITY SEMI-ANNUAL PAYMENT**

**EFFECTIVE JULY 1, 2009 AND ANNUALLY THEREAFTER**

<u>SALARY</u>	<u>10</u>	<u>15</u>	<u>20</u>	<u>25</u>
<u>GROUP</u>	<u>YEARS</u>	<u>YEARS</u>	<u>YEARS</u>	<u>YEARS</u>
CO 1	225.00	450.00	675.00	900.00
CO 2	225.75	451.50	677.25	903.00
CO 3	276.00	552.00	828.00	1,104.00
CO 4	284.25	568.50	852.75	1,137.00
CO 5	292.50	585.00	877.50	1,170.00
CO 6	301.50	603.00	904.50	1,206.00
CO 7	309.75	619.50	929.25	1,239.00
CO 8	318.00	636.00	954.00	1,272.00
CO 9	327.00	654.00	981.00	1,308.00
CO 10	335.25	670.50	1,005.75	1,341.00
CO 11	344.25	688.50	1,032.75	1,377.00
CO 12	352.50	705.00	1,057.50	1,410.00

CO 13	370.50	741.00	1,111.50	1,482.00
CO 14	388.50	777.00	1,165.50	1,554.00
CO 15	406.50	813.00	1,219.50	1,626.00
CO 16	424.50	849.00	1,273.50	1,698.00

**Last Best Offer of the State.**

**Appendix B**

**Longevity Semi-Annual Payment**

**Collective Bargaining Unit Np-4**

**Effective July 1, 2008 Through June 30, 2011**

<b>Salary Group</b>	<b>10 Years</b>	<b>15 Years</b>	<b>20 Years</b>	<b>25 Years</b>
<b>CO-1</b>	<b>\$75.00</b>	<b>\$150.00</b>	<b>\$225.00</b>	<b>\$300.00</b>
<b>CO-2</b>	<b>75.25</b>	<b>150.50</b>	<b>225.75</b>	<b>301.00</b>
<b>CO-3</b>	<b>92.00</b>	<b>184.00</b>	<b>276.00</b>	<b>368.00</b>
<b>CO-4</b>	<b>94.75</b>	<b>189.50</b>	<b>284.25</b>	<b>379.00</b>
<b>CO-5</b>	<b>97.50</b>	<b>195.00</b>	<b>292.50</b>	<b>390.00</b>
<b>CO-6</b>	<b>100.50</b>	<b>201.00</b>	<b>301.50</b>	<b>402.00</b>
<b>CO-7</b>	<b>103.25</b>	<b>206.50</b>	<b>309.75</b>	<b>413.00</b>
<b>CO-8</b>	<b>106.00</b>	<b>212.00</b>	<b>318.00</b>	<b>424.00</b>
<b>CO-9</b>	<b>109.00</b>	<b>218.00</b>	<b>327.00</b>	<b>436.00</b>
<b>CO-10</b>	<b>111.75</b>	<b>223.50</b>	<b>335.25</b>	<b>447.00</b>
<b>CO-11</b>	<b>114.75</b>	<b>229.50</b>	<b>344.25</b>	<b>459.00</b>
<b>CO-12</b>	<b>117.50</b>	<b>235.00</b>	<b>352.50</b>	<b>470.00</b>
<b>CO-16</b>	<b>141.50</b>	<b>283.00</b>	<b>424.50</b>	<b>566.00</b>

## Discussion

This issue was fully discussed under Union Issue 21 supra, which concerned the introductory language in Article 17, Section 4 (A) defining the longevity benefit. Union Issue 67 sets forth the longevity appendix awarded under Union Issue 21. Since the State's last best offer was selected on Issue 21, its last best offer necessarily must be selected on Issue 67.

For the reasons discussed above under Union Issue 21 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on Union Issue 67**

**STATE ISSUE 1**

**ARTICLE 10, SECTION 2, C, (1)**

**Subject: SENIORITY - TRANSFER LIST EMPLOYEES ON WORKERS'  
COMPENSATION**

**Last Best Offer of the State.**

**(1) Transfer List.** As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision, but only if the anticipated return to work date is within ninety (90) calendar days of the date of transfer. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. [Such list will be updated quarterly. (This language subject to proposal A2S below.)]

**Last Best Offer of the Union.**

**(1) Transfer List.** As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated quarterly.

## Discussion

The State proposes to change contract language to restrict the transfer rights of employees out on Workers Compensation leave by the following language:

An employee on Workers' Compensation leave will be eligible to transfer under this provision, but only if the anticipated return to work date is within ninety (90) calendar days of the date of transfer.

This would replace current language that states "An employee on Workers' Compensation leave will be eligible to transfer under this provision." The Union proposes to continue current language without change. The State thus has the burden of proof on this issue. To meet that burden the State provided testimony of three witnesses, Daniel Callahan, Director of Human Resources for the Corrections Department (Tr. 2/25/08, pp. 9-14), Richard Miele, Director of Tactical Operations and Transportation (Tr. 3/11/08, pp. 12-17) and Linda Fowler, Human Resource Specialist for Manson Youth Institution (Tr. 2/25/08, pp. 84-87). In its brief the State explains the bargaining history of this proposal and its purpose:

Prior to the 2001-2004 contract (J-20) this section of the contract was silent regarding transfer rights of employees not fit for full duty but the practice was that such employees could not transfer unless and until they were fit for duty. In the 2001-2004 contract, the parties agreed to add the specific language at issue which permitted unrestricted transfer rights to otherwise eligible employees on worker's compensation status. The purpose of this proposal is not to return to the days of no transfer ability but rather to establish a conditional right that gives a reasonable assurance that the facility to which the employee transfers will be getting someone who will shortly be able to return to full duty status.

(State Brief, p. 24)

The exact reasons for the State proposal are somewhat hard to understand. In its brief the general reason stated is that the current rights can slow down the administrative process for filling positions:

As Ms. Fowler indicated, there is an administrative process that allows an overlap in a position if the regular incumbent is unable to work for an extended period of time and it

is used with some regularity for extended worker's compensation situations. This is not an automatic process and it takes some time to set up the overlap and to hire an employee to take the position. If the incumbent transfers to another facility, the overlap authorization does not transfer with the employee and the receiving facility will be required to start the authorization process from scratch.

(State Brief, p. 25)

In addition there are special reasons for this proposal related to the Transportation unit:

Because this unit has the special requirement that employees have a valid Commercial Drivers License (CDL) there is a time critical training program administered by the Agency to get new employees qualified and if an employee cannot participate in the program there is a significant gap in staffing.

(State Brief, p. 25)

In its brief the Union argues that this proposal needlessly penalizes its members on Workers Compensation and maintains that the testimony of the Department's Director of Human Resources, Mr. Callahan, was not convincing:

He offered no substantive numbers depicting the number of times DOC encountered problems due to NP-4 members being transferred while they were out on Workers' Compensation leave.

(Union Brief, p. 67)

During cross-examination of Mr. Callahan the Union asked if this restriction on transfer rights applied to other employees on long term leaves of absence, such as those on extended personal, sick or military leave and Mr. Callahan stated that it did not (Tr. 2.25.08 at p. 26-28).

Although it is a close question, I find the State has not met its burden of proof on this issue. I could not discern from the evidence the number of people on Workers Compensation leave who exercised this right during the 90 day period, the extent of the administrative burden this presented to the Corrections Department, the costs it imposed on the Department or how the burdens of employees on Workers Compensation exercising the existing contract right differed in material ways from other employees on long term leave. In addition, since this language was

recently changed by agreement of the parties rather than imposed by arbitration, it is not clear that the parties have spent enough time trying to make the new system work.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on State Issue 1.**

## **STATE ISSUE 2**

### **ARTICLE 10, SECTION 2, C, (1)**

#### **Subject: SENIORITY - TRANSFERS DONE TRI-ANNUALLY**

##### **Last Best Offer of the State.**

(1) **Transfer List.** As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. [An employee on Workers' Compensation leave will be eligible to transfer under this provision (This language subject to Proposal 1 above).]. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated thrice-yearly on January 1, May 1 and September 1 of each year.

##### **Last Best Offer of the Union.**

(1) **Transfer List.** As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated quarterly.

#### **Discussion**

In this issue and the next the State proposes to change contract language to provide facility (State Issue 2) and shift (State Issue 3) transfer lists three times a year instead of the

current four times a year. The Union proposes no change in the current language on either issue. Accordingly, the State has the burden of proof. The State's main argument is that its proposal would save paperwork and employee time in composing the lists three times a year instead of four times (See testimony of Human Resources Specialist Patricia Meskers, Tr. 3/4/08 at pp. 6-48 and Daniel Callahan, Tr. 2.25.08 at pp. 15-23).

Patricia Meskers (Id at pp. 38-48) and Jon Pepe, Corrections Officer and President of Local 391 (Tr. 3/11/08 at pp 78-82) testified to a meeting in 2003 in which the Union worked with the State to reduce the administrative burdens of the transfer lists. In that meeting the Union agreed that an employee who does not respond to an inquiry from the State within 24 hours the employee would not stay on the list and if the employee were on vacation or leave he/she had to leave a number where they could be reached. If the employee did not respond, he/she would be removed from the list. Both measures agreed to by the Union reduced the State's administrative time to finish the transfer lists. There also was testimony indicating much of the work on the transfer lists was ongoing throughout the year as employees requested to be placed on the list.

Composing the list one more time as the current contract provides does not seem a large and costly task for the State and the Union has been helpful in trying to reduce the time for the task. These facts and the fact that the burden of proof is on the State weigh in favor of the Union on this issue.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on State Issue 2.**

**STATE ISSUE 3**

**ARTICLE 10, SECTION 10**

**Subject: SENIORITY -SHIFT TRANSFERS LISTS**

**Last Best Offer of the State.**

**Section 10. Shift Transfer Lists.** Each facility shall maintain a shift transfer list which will be updated on a thrice-yearly basis on January 1, May 1 and September 1 of each year. An employee on Workers' Compensation shall be eligible for shift transfer under this provision.

**Last Best Offer of the Union.**

**Section 10. Shift Transfer Lists.** Each facility shall maintain a shift transfer list which will be updated on a quarterly basis. An employee on Workers' Compensation shall be eligible for shift transfer under this provision.

**Discussion**

The State notes in its brief:

This proposal is directly related to State issue A2S and is simply to conform the frequency of updating of the facility shift transfer list to the inter-facility transfer list.

State Issue 2 was awarded to the Union and therefore State Issue 3 also must be awarded to the Union.

For the reasons discussed above, including State Issue 2 supra, and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on State Issue 3.**

**STATE ISSUE 4**

**ARTICLE 26, SECTION 3**

Subject: **SICK LEAVE MEDICAL CERTIFICATE**

**Last Best Offer of the State.**

**Section 3. Medical Certificate.** If an employee is absent on sick leave for three (3) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence. When continued absences from work constitute an abuse of sick leave, the employee and the Union shall be notified in writing. After such notification, the Employer may deny sick pay. Such denial of sick pay is subject to the grievance and arbitration provision of this Agreement. Continued abuse of sick leave will subject the employee to progressive discipline.

**Last Best Offer of the Union.**

**Section 3. Medical Certificate.** If an employee is absent on sick leave for five (5) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence. When continued absences from work constitute an abuse of sick leave, the employee and the Union shall be notified in writing. After such notification, the Employer may deny sick pay. Such denial of sick pay is subject to the grievance and arbitration provision of this Agreement. Continued abuse of sick leave will subject the employee to progressive discipline.

**Discussion**

This is one of the more difficult issues in this case. The State is proposing a contract change that would require an employee absent on sick leave for three (3) or more consecutive work days to submit a medical certificate stating the reasons for his/her absence. The current contract requires a medical certificate after an absence on sick leave of five (5) days.

The reasons for the State's proposal are the well documented high level of sick time use by Corrections Department employees and the pattern of that sick leave use which indicates

abuse of the sick time (i.e., that employees actually are absent for reasons other than sickness). Corrections Department employees use 17.4 days of sick time a year, which is higher than any other large bargaining unit in the State (State Exs. 1 and 2 and testimony of Daniel Callahan, Tr. 2/25/08 pp. 29 – 35) and the average usage is higher than the contract's annual 15 day accrual of sick time. The level of sick time usage also has been increasing over the years. The pattern of abuse evidence is that the sick time is (1) taken disproportionately around December holiday and summer and school vacation times (Daniel Callahan testimony at Tr. 2/25/08 at pp 38-42) and (2) taken in groups of three to four days (State Exs. 27-33 and testimony of Callahan, Tr. 4/23/08 at pp. 12-20). The State says the three day requirement is not arbitrary; it comes from the federal Family and Medical Leave Act (State Exs. 26 and 27).

The Union's case against the State's proposal is that (1) the current provision applicable to the NP-4 bargaining unit has been in existence for 30 years, (2) all the other state bargaining units have a similar five day medical certificate requirement (Union Ex. 3) , (3) the State has a statute applicable to non-bargaining unit personnel which sets the state policy on this subject at a five day medical certificate requirement (Union Ex. 37), and (4) there are other means to curb sick time abuse within the current contract (Article 26, Section 3) and through administrative directives which allow the State to impose a medical certificate on employees suspected of abuse and discipline employees for abuse of sick time ( Joint Exs. 41 and 42).

There is no doubt that the Corrections Department has a problem with excessive sick time usage by its employees. This creates issues with staffing and results in excessive overtime costs to the State. The State claims that its existing administrative directive (2.11) which allows it to discipline employees for a pattern of sick time abuse and the current contract provision which

allows it to discipline employees suspected of abuse are inadequate because the Union would just file grievances when those management rights are exercised. The State introduced no evidence on the number of times the State exercised those rights, the number of grievances filed in response or the results from the grievance procedure. Moreover, both the bargaining history and comparability data are in favor of the Union, consistent with the state statute applicable to non-bargaining unit employees which sets a state policy of a five day certificate requirement. Because of these factors and the burden of proof on the State, I am not convinced that the State has made a diligent enough pursuit of existing means to remedy sick time abuse to warrant this significant change in the contract.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on State Issue 4.**

## STATE ISSUE 5

### ARTICLE 12, SECTION 9

Subject: **GRIEVANCE PROCEDURE**

#### **Last Best Offer of the State.**

**Section 9. Arbitration.** Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

- 1) **Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.
- 2) **Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
- 3) **Costs.** The parties shall share equally in the expenses of the arbitrator.
- 4) **Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.
- 5) **Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.
- 6) **Cases Submitted Under Previous Agreement.** Dismissal cases already submitted to the Connecticut Board of Mediation and Arbitration will remain with the Board in accordance with the prior contract provisions. Effective upon legislative approval of this Agreement, the State shall allocate \$5,000.00 to cover the cost of arbitration at the rate of: \$225 for day one of the hearing; \$150 per day for each additional hearing date; and \$175 for writing the arbitration award. Unexpended funds shall revert to the State. Should the yearly allocation be insufficient to pay for all remaining cases, the parties will share equally in the per case cost.
- 7) **Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing.

8. **Pending Cases.** The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration cases with the goal of resolving, thereby reducing, the numbers of the same.
9. **Postponements.** In any individual arbitration case, each party will be allowed one postponement. Thereafter, postponements shall only be by mutual consent of the parties.

**Last Best Offer of the Union.**

There shall be no such language.

**Discussion**

This issue was fully discussed under Union Issue 1 supra. The discussion under Issue 1 hereby is incorporated into the discussion of this issue.

For the reasons discussed under Union Issue 1 supra, and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on State Issue 5.**

**STATE ISSUE 13**

**ARTICLE 17, SECTION 11**

**Subject: COMPENSATION -MAINTENANCE ON-CALL STANDBY PAY**

**Last Best Offer of the State.**

**Section 11 (new). Maintenance On-call/Standby.** Effective thirty (30) days following legislative approval, management may establish a procedure to designate qualified employees in Correctional Maintenance positions by job classification and function as on-call/standby status. Management will solicit volunteers and provide any necessary training for the performance of on-call duties, which will be rotated among the volunteers. Such designation obligates the designated employee to be available and to respond in the event of a call. Employees designated to this on-call/standby status shall be compensated at the rate of \$1.00 per hour for each hour so assigned. Notwithstanding the duration of any on-call/standby assignment, such compensation shall not exceed \$100.00 per work week. Employees so designated shall be issued cell phones or similar equipment.

- A. An employee who is required to take or respond to a call while on such status shall receive one-hour's compensation at the applicable rate.
- B. An employee who is required to report for duty shall be compensated in accordance with the Overtime Article (Article 15).

**Last Best Offer of the Union.**

There shall be no such language.

**Discussion**

The State's proposal would establish a system of standby pay for maintenance employees to increase incentives for them to respond to emergency calls. The State relies primarily on the testimony of David Batten, Director of Facilities Management and Engineering (Tr. 3/4/08 at pp. 53-56). The State describes its purpose and impact in its brief:

David Batten, Director of Facilities Management, testified that they have had significant problems getting employees to respond to after-hours calls. The potential impact of this is that serious maintenance problems, such as heating system breakdowns, water leaks,

malfunctioning toilets and loss of electrical systems may not be evaluated and addressed until many hours have passed, creating a significant impact on the facilities and health and safety issues for inmates and employees. In addition, the longer maintenance problems are unaddressed the more potential there is for greater damage. The purpose of this proposal is to provide an incentive for employees to make themselves available after hours by providing compensation both for simply being available and for taking or responding to a call without having to leave home. Obviously, if the employee has to report for duty, he or she will be paid in accordance with already existing contract language.

The Union's response to this proposal is that it undermines the overtime provisions of the contract and is not needed because Batten could recall only one instance when the emergency situation lasted longer than 24 hours.

This proposal seems designed to address a very occasional problem but a serious one nevertheless. If maintenance problems endanger the health and safety of both employees and inmates the State should be provided all the tools necessary to remedy the problem. Apparently, in some of the smaller facilities with a smaller pool of maintenance employees to draw from, the current system has not worked well. I am not convinced by the Union's arguments that this proposal undermines the overtime contract provisions. If the employee is contacted and called in to work he will receive overtime. In addition, the fact that only one emergency maintenance problem lasted longer than 24 hours is no argument against the proposal; emergency situations lasting one hour may be significant. The State proposal is not taking anything away from the Union or imposing a mandatory new obligation on employees; it is providing new compensation to bargaining unit employees to provide an incentive for greater availability to address significant health and safety issues.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The State's last best offer is awarded on State Issue 13.**

## STATE ISSUE 14

### ARTICLE 37, SECTIONS 2 THROUGH 8

Subject: DRUG TESTING

#### **Last Best Offer of the State.**

**Section 2. Probable Cause.** An employee shall be subject to an immediate drug test if probable cause of drug use exists as determined by his/her supervisor, Warden, or designee.

**Section 3. Random Drug Testing.** All bargaining unit members will be subject to random drug testing. During any contract year up to twenty-five percent (25%) of bargaining unit members may be so tested. No employee shall be subject to more than two (2) random drug tests in any contract year.

Upon notification that an employee is scheduled for random drug testing, such employee will appear as required at the location specified for drug testing. The random selection shall be made by computer-generated numbers for each employee covered by this Agreement. Such computer-generated program shall be performed by an outside contractor hired by the State after consultation with the Union and which specializes in such function. Each random selection shall be made from the full complement of bargaining unit members, by Agency, covered by this Agreement.

**Section 4. Refusal to Take Test.** An investigation will result if the employee refuses to be administered the test or if it is indicated that the sample has been tampered with. Termination will result if the employee for either refusing to take the test or being found culpable for tampering with the sample.

**Section 5. Post-incident drug testing.** An employee may be subject to an immediate post-incident drug test when involved in any incident which results in the death of or injury to a person.

**Section 6. Drug Testing Procedures.** Drug testing shall be administered by a qualified physician of the Employer's choice. The initial method of testing shall use an immunoassay. All specimens identified as positive on the initial test shall be confirmed using the chromatography/mass spectrometry test. If such test is again positive, a third more complex test on the same specimen can be administered at the request and expense of the employee. All initial tests shall be paid for by the Employer.

**Section 7. Consequences of a Positive Test.** Any test that indicates a positive presence of any prohibited drug shall result in the employee being relieved of duty and placed on

sick or vacation pay, if the employee has sufficient accruals, or authorized leave without pay, pending completion of an Agency approved drug rehabilitation program. Termination of the employee will result if he/she refuses to participate in or to complete such program.

**Section 8. Return to Duty.** After return to duty following successful completion of the drug rehabilitation program, the employee will be subject to a maximum of three directed drug screens for the first eighteen (18) months following return to duty, in addition to drug screening based on probable cause or random selection. Any employee refusing to be administered a directed, random or probable cause drug test, as appropriate, shall be terminated.

### **Last Best Offer of the Union.**

**Section 2. Probable Cause.** An employee shall be subject to an immediate drug test if probable cause of drug use exists as determined by his/her supervisor, Warden, or designee. Such drug testing shall be administered by a qualified physician of the Employer's choice. The initial method of testing shall use an immunoassay. All specimens identified as positive on the initial test shall be confirmed using the chromatography/mass spectrometry test. If such test is again positive, a third more complex test on the same specimen can be administered at the request and expense of the employee. All initial tests shall be paid for by the Employer.

**Section 3. Refusal to Take Test.** Termination will result if the employee refuses to be administered the test. Positive findings from both the drug tests administered will result in the employee being relieved of duty and placed on sick or vacation pay, pending completion of departmental-approved drug rehabilitation program.

**Section 4. Rehabilitation Program.** Termination of the employee will result if he/she refuses to participate in or to complete such program.

**Section 5. Return to Duty.** Upon return to duty after successfully completing the drug rehabilitation program, the employee will be subject to a maximum of three random drug screens for the first eighteen (18) months following return to duty,

in addition to drug screening based on probable cause for a period of two years during which time if the employee tests positive for drug use he/she will be subject to termination. Any employee refusing to be administered either a random or probable cause drug test during the time frames indicated above, as appropriate, when requested to by his/her supervisor, Warden, or designee, based on probable cause, shall be terminated.

## **Discussion**

The State proposes that it be given the right to perform random drug testing on employees of this bargaining unit. The State says it needs to go beyond its current ability to impose drug testing for "probable cause" because (1) probable cause is a high standard (David Callahan testimony, Tr. 4/23/08 at p.44), (2) some Corrections Officers have been arrested for drug related offenses while off duty (State Ex. 34), (3) a high proportion of the inmates are incarcerated for drug related offenses and smuggling, bribery, discipline and other issues arise with employee drug use (Callahan testimony at p. 42-50), and (4) employees in the transportation unit are subject to random drug testing because of federal licensing and some of them test positive for drugs (Callahan testimony at p. 49-50).

The Union argues the State has sufficient rights under the current contract, including most significantly the right to immediately perform drug testing on employees who they have probable cause to believe are on drugs. The Union also points out that the overwhelming majority of bargaining units do not have a random drug test.

The State has the burden of proof on this proposal. I am not convinced that the burden has been met. I awarded the State the right to perform random drug testing for a select group of NP-2 employees, those who operated drawbridges and worked alone most of the time and receive very little supervision, because there was little opportunity for the State to make a probable cause assessment combined with the public safety risks if the employees were mentally

impaired on drugs<sup>40</sup>. In the Corrections unit supervisors have an opportunity at the start of a shift and during a shift to make an assessment of whether employees are high on drugs or otherwise mentally impaired. The drug proclivity of the inmate population, the unique problems of employee drug dependence in close contact with those inmates and the off duty drug arrests of corrections officers (although relatively few) are important factors. But stronger evidence is required than was presented on this record to make a significant change in contract rights and a new intrusion on the privacy of employees.

For the reasons discussed above and based upon the entire record of this case and the statutory factors:

**The Union's last best offer is awarded on State Issue 14.**

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<sup>40</sup> See State of Connecticut and Connecticut Employees Union Independent (NP-2) Interest Arbitration decision dated April 15, 2006 at pp. 215-217.

## **V. Award on Resolved Issues**

### **Award on Resolved Issues**

Attached are a series of documents which evidence the parties agreement on new contract language (Joint Exhibit 6) and the continuation of existing contract language not contested in this proceeding (Joint Exhibit 7). Joint Exhibit 7 states that "all current language in the 2004-2008 NP-4 Contract that is not subject of a proposal before the Arbitrator will be brought forward in its present form to the successor agreement." In addition during the course of the proceedings the parties withdrew some of their proposals, some of which are reflected in the award above (e.g., Union Issues 6 and 11) and other issue withdrawals were evidenced by letters introduced during the hearings. Thus State Exhibit 14 withdraws State Issues 7 and 8 and State Exhibit 38 withdraws State Issues 9, 10, 11 and 12. Finally, Joint Exhibit 40 submits agreed upon language of what formerly was State Issue 6, on Article 15, Section 10. If the proposals withdrawn as evidenced by these exhibits concern 2004-2008 NP-4 contract language then the agreement of the parties reflected in Joint Exhibit 7 makes the current contract language a part of the new three year contract.

1226

## AGREED UPON LANGUAGE CHANGES

Article 3, Section 4  
Article 7, Section 8  
Article 10, Section 1  
Article 10, Section 1, A  
Article 10, Section 1, B  
Article 10, Section 2, A  
Article 12, Section 6, Step III  
Article 12, Section 11  
Article 16, Section 1  
Article 16, Section 3  
Article 16, Section 4  
Article 16, Section 5  
Article 17, Section 11  
Article 18, Section 1  
Article 18, Section 2  
Article 21, Section 2  
Article 21, Section 4  
Article 21, Section 5  
Article 21, Section 6  
Article 21, Section 8, A  
Article 23, Section 1, A  
Article 23, Section 1, B  
Article 26, Section 2  
Article 26, Section 2, E  
Article 33, Section 3, A and B  
Article 35, Section 7  
Article 35, Section 11, B  
Article 35, Section 11, C (1, 2, 3, 4)  
Article 35, Section 12, A, 3  
Article 35, Section 13

Article 36, Section 2

Article 36, Section 6

Article 36, Section 8

Appendix D, Leave Donation

ARTICLE 3

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 4. Americans with Disabilities Act. Notwithstanding any provision of this agreement to the contrary, the Employer will have the right and duty to take all actions necessary to comply with the provisions of the Americans with Disabilities Act, 42 U.S.C. 2101, et seq. (ADA). Upon request the Employer will meet and discuss specific concerns identified by the Union; however, this shall not delay any actions taken to comply with the ADA.

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ant ce dh 10/30/07  
For the Union Date

Paul Bull 10/30/07  
For the State Date



ARTICLE 10  
SENIORITY

Section 1. Seniority for Length of Vacation and Longevity. For the purpose of computing longevity and length of vacation leave, seniority shall be defined as indicated below service, with the inclusion of CGS Sections 5-255 and 256, including military service.

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A. Total Service, Longevity. The calculation of service for purposes of longevity benefits shall be based upon total State service, including paid leave and war service.

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B. Continuous Service, Vacation Accrual. The calculation of service for purposes of vacation accrual eligibility shall be based on length of continuous State service including paid leave, war service, up to six (6) months of unpaid leave and/or up to one (1) year of any period of continuous layoff provided the employee is reemployed within three (3) years.

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ant ee ee 10/30/07  
For the Union Date

Paul Bolle 10/30/07  
For the State Date

Housekeeping: Union #2

Article 10, Section 2 (A.)

Article 10, Section 2 (A.)

- A. **Vacation Scheduling.** In the event of conflicting schedules of vacation leave as determined by the operating needs of the facility or institution, class seniority shall be the determining factor. Ties shall be broken utilizing the employee's employee number. **[The employee first hired and assigned an employee number by the State of Connecticut has the higher seniority.]**

The parties have agreed to the above-cited language

Quintessa E. [Signature] 10/30/07  
Union

Paul B. [Signature] 10/30/07  
State



**ARTICLE 16**  
**TEMPORARY SERVICE IN A HIGHER CLASS**

**Section 1. Temporary Assignment to Higher Class.** An employee who is assigned to perform temporary service in a higher class shall, commencing with the thirty-first consecutive work day, be paid for such actual work retroactive to the first day of such work at the rate of the higher class as if promoted thereto, provided such assignment is approved by the Commissioner of Administrative Services or designee.

Deleted: Director of Personnel and Labor Relations

**Section 3. Notice of Assignment.** An appointing authority making a temporary assignment to a higher class shall issue the employee written notification of the assignment and shall immediately forward the appropriate form seeking approval of the assignment from the Commissioner of Administrative Services or designee in writing.

Deleted: Director of Personnel and Labor Relations

**Section 4. Reassignment to Former Position.** If on or after the thirty-first consecutive working day of such service, the Commissioner of Administrative Services or designee has not approved the assignment, the employee upon request shall be reassigned to his/her former position, subject to the provisions of Section 5, "Appeal Procedure," of this article.

Deleted: Director of Personnel and Labor Relations

**Section 5. Appeal Procedure.** In the event the Commissioner of Administrative Services or designee disapproves the requested assignment on the basis of his/her judgment that the assignment does not constitute temporary service in a higher class, the employee shall continue working as assigned with recourse under the appeal procedure for reclassification as provided in Article 12. The form certifying the assignment will specify the rights and obligations of the parties under Sections 4 and 5.

Deleted: Director of Personnel and Labor Relations

Paul A. Bell 10/30/07  
For the Union Date

Paul Bell 10/30/07  
For the State Date

Proposal: Union 14 – State Counter Proposal

Article 17 (New Section)

New Section of Article 17 (Compensation):

License Fees. The Employer shall reimburse employees in all classifications for the cost(s) of licenses and/or certificates required by the Employer as a condition of employment except that the cost of a Class ~~1~~<sup>1C</sup> driver's license (non-CDL) shall not be reimbursed. Requests for reimbursement shall be processed upon presentation of a validated license and proof of costs and payment.

The parties have agreed to the above-cited language.

see chudo 10/30/07  
Union

Paul B. Ball 10/30/07  
State



Proposal: State #4

Article 21, Section 4

**ARTICLE 21  
HOLIDAYS**

**Section 4. Work on Holidays Other than Thanksgiving, Christmas.**  
Effective upon legislative approval of this Agreement, each employee whose job requires him/her to work on a holiday other than Thanksgiving, Christmas, New Year's Day, Martin Luther King Day, Lincoln's Birthday, or Washington's Birthday, and who works as scheduled on a holiday which falls on his/her regular work day shall receive a compensatory day off or a day's pay at straight time in addition to his/her regular week's pay. On or about May 1st, prior to At the beginning of each fiscal year, the employer will provide a list on which an employee shall elect cash or time off for all such holidays. If an employee fails to make an election by June 1, s/he will receive cash for all such holidays.

The parties have agreed to the above-cited language.

\_\_\_\_\_ 10/30/07  
Union

Paul Boland 10/30/07  
State

Article 24

Section 6. Work on Martin Luther King Day, Lincoln's Birthday . . Each employee whose job requires him/her to work on Martin Luther King Day, Lincoln's Birthday, or Washington's Birthday shall be paid at the rate of time and one-half for all hours worked on the holiday in addition to his/her regular pay for the day. The employee may take compensatory time off in lieu of the holiday pay.

Deleted: Effective upon legislative approval of this Agreement, c

Section 8. Holiday Dates of Observance.

A. Seven Day Coverage. Employees who are assigned to areas that require seven (7) day coverage, for purposes of this Article shall observe holidays as follows:

Christmas Day \_\_\_\_\_ December 25th  
New Year's Day \_\_\_\_\_ January 1st  
Independence Day \_\_\_\_\_ July 4th

All other holidays shall be observed on the dates designated by the State.

Deleted: December 25th  
January 1st  
July 4th

[Signature] 10/30/07  
For the Union Date

Paul Bodeh 10/30/07  
For the State Date



Article 26

Section 2. Insurance and Leaves. Except where varied in this Agreement <sup>PB ASC</sup> ~~or this article~~, the State will continue in force its written rules and regulations presently in effect with reference to:

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E. Death benefits. Upon death of an employee on the active payroll who has completed ten (10) years of State service, the Employer shall pay to the beneficiary one-fourth (1/4) of the deceased employee's daily salary for each day of sick leave accrued to his/her credit as of his/her last day on the active payroll, up to a maximum payment equivalent to sixty (60) days pay.

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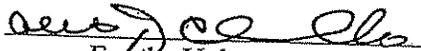
DELE QR Qa 10/30/07  
For the Union Date

Paul B. Hill 10/30/07  
For the State Date

**Article 33, Section 3. Application for Reimbursement**

- A. Reimbursement for Credit Courses.** For credit courses at accredited institutions of higher education, one hundred (100%) percent of the cost of tuition, laboratory fees and community college service fees up to a maximum of \$150.00 per credit for undergraduate courses and \$180 per credit for graduate courses.
- B. Reimbursement for Other Courses.** For other courses or programs, there shall be fifty (50%) percent tuition reimbursement to a maximum of \$75.00 per credit for undergraduate courses and \$90.00 per credit for graduate courses.

11/3/08

  
For the Union

 11/3/08  
For the State

ARTICLE 35  
BOARD OF PAROLE

Section 7. Vehicles.

A. Field Services Division. The assignment of vehicles to employees in the Field Services Division is contingent upon the employee available for contact assignment, via beeper, on a twenty-four (24) hour basis, except when on authorized leave.

Gene C. Deo 10/30/07  
For the Union Date

Paul Bull 10/30/07  
For the State Date

Proposal: Union #29

Article 35, Section 11b

The assignment shall be made in advance by a supervisor. and the employee shall be assigned field work.

The parties have agreed to the above-cited language.

[Handwritten Signature] 10/30/07  
Union

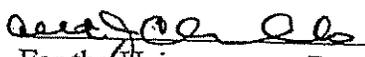
Paul Bell 10/30/07  
State

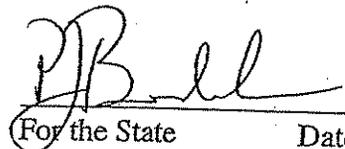
ARTICLE 35  
BOARD OF PAROLE

Section 11. Weekend Assignments.

C. Days Off

- (1) An employee assigned to work on a Saturday shall be given either the preceding Friday or the following Monday off, at the employee's discretion.
- (2) An employee assigned to work on a Sunday shall be given either the preceding Friday or the following Monday off, at the employee's discretion.
- (3) The employee shall notify the supervisor of his/her election of days off at the time the assignment is made.
- (4) The election of days off for a weekend assignment shall not be the basis for additional compensation.

 11/5/07  
For the Union                      Date

 11/5/07  
For the State                      Date

Proposal: State #14

Article 35, Section 12 (A.) and 13

**Section 12.**

**A. Evening Assignments.**

3. No ~~fewer~~ more than two (2) persons assigned to each District ~~shall~~ may be scheduled to work on the same evening ~~unless a supervisor pre-approves such a schedule.~~ Evening work shall begin after 2:00 p.m. and before 4:00 p.m., except that a supervisor may pre-approve an earlier or later start time.

**Section 13. Hours of Work for Board Employees.** The hours of work and unscheduled workweek currently in effect for the Board employees shall continue, in effect except that a second and/or third shift may be established, with core hours to be determined upon establishment. Not less than thirty (30) days prior to the establishment of a second and/or third shift the Union will be notified and will be afforded all rights to negotiate the impact and implementation of the establishment of these shifts.

The parties have agreed to the above-cited language.

Gene DeLoe 10/30/07  
Union

Paul Bolch 10/30/07  
State



ARTICLE 36  
GENERAL PROVISIONS

Section 6. Hazardous duty. The Union, and not any individual employee, shall, upon request, be granted a hearing by the Commissioner of Administrative Services or designee concerning a claim for hazardous or unpleasant duty pay differential. Disputes under this Section shall not be subject to the Grievance and Arbitration Article.

Deleted: Director of Personnel and Labor Relations

Section 8. Transporting Inmates. In clarification of CGS Section 5-173(a), persons employed in the Department of Correction with the "Correction" in their job title who, as a regular part of their job, transport prisoners or parolees to or from any institution listed in said Section shall be deemed to be engaged in guard or instructional duties at any such institution.

ant ce llo 10/30/07  
For the Union Date

Paul Bolle 10/30/07  
For the State Date

APPENDIX D  
MEMORANDA OF UNDERSTANDING

LEAVE DONATION

From time-to-time, on an as needed basis, bargaining unit members may donate their accrued vacation and/or personal 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. Said benefit shall be subject to review and approval by the Commissioner of Administrative Services, and shall be applied in accordance with uniform guidelines as may be developed by such Commissioner.

Deleted: Director of Personnel and Labor Relations

Deleted: Director

[Signature] 10/30/07  
For the Union Date

Paul Boll 10/30/07  
For the State Date

*[Handwritten initials]*

STATE OF CONNECTICUT  
STATUTORY INTEREST ARBITRATION  
BEFORE  
HONORABLE LARRY FOY, ARBITRATOR

In the matter of	)	
	)	Case# 2008-SBA-4
STATE OF CONNECTICUT	)	NP-4 Bargaining Unit
	)	
and	)	AAA Case 12 390 00717 07
	)	
AMERICAN FEDERATION OF STATE	)	February 8, 2008
COUNTY AND MUNICIPAL	)	
EMPLOYEES, Council 4	)	
Locals 387, 391 and 1565, AFL-CIO	)	

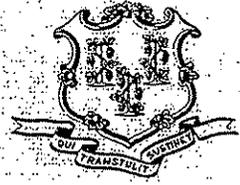
MEMORANDUM OF UNDERSTANDING

It is hereby agreed between the parties that all current language in the 2004-2008 NP-4 Contract that is not the subject of a proposal before the Arbitrator will be brought forward in its present form to the successor agreement.

*[Signature]*  
\_\_\_\_\_  
For the State

*[Signature]*  
\_\_\_\_\_  
For the Union

Post-it® Fax Note	7671	Date	2/10/08	# of pages	5
To	Paul Bodenhorn		From	J. Baerzki	
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			



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

state ER 14

April 8, 2008

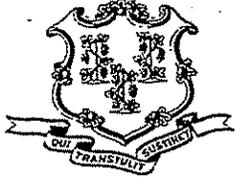
Mr. Albert J. Chiucarello  
Chief Negotiator for NP-4  
AFSCME Council 4  
444 East Main Street  
New Britain, CT 06051

Dear Mr. Chiucarello:

This is to notify you that the State is withdrawing proposals A7S (Article 21) and A8S (Article 26) in regard to the present Interest Arbitration for a successor agreement to the current NP-4 Contract.

Sincerely,

Paul Bodenhofer  
Chief Negotiator for the State



STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

Office of Labor Relations

*State E-238*

April 23, 2008

Mr. Albert J. Chiucarello  
Staff Representative  
Chief Negotiator  
NP-4 Bargaining Unit  
AFSCME Council 4  
444 East Main Street  
New Britain, CT 06051

Re: Interest Arbitration for a successor NP-4 Agreement  
Case # 2008-SBA-4

Dear Mr. Chiucarello:

This is to notify you that the State of Connecticut is withdrawing proposals A9S, A10S, A11S and A12S from consideration in the referenced matter.

Sincerely,

Paul Bodenhofer  
Labor Relations Specialist  
Chief Negotiator for the State

JEX 40

PROPOSAL A6S:

**ARTICLE 15  
OVERTIME**

Section 10. Overtime for Normal Operations. No overtime shall be allowed at any designated work unit other than by employees assigned to the designated work unit for the purpose of normal operations, except in emergency situations and except as follows for Maintenance employees. General Maintenance Officers assigned to Central Office as Fire Safety Officers shall be assigned to one particular facility for the purpose of equalizing overtime and will be permitted to sign up for overtime only at that facility. All overtime worked by an employee, no matter where worked, shall be counted toward equalization.

[Signature] 4/14/08  
For the Union Date

[Signature] 4/14/08  
For the State Date

**VI. Arbitration Award Signature Page**

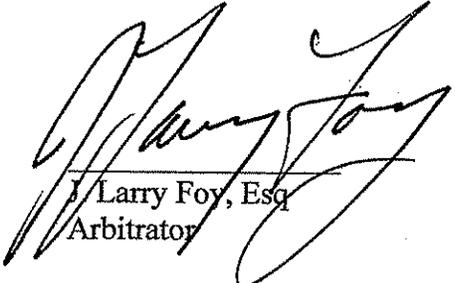
**STATE OF CONNECTICUT  
(Executive Branch)**

**-and-**

**AMERICAN FEDERATION  
OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES,  
Council 4, AFL-CIO  
Locals 387, 391 and 1565**

**Re: NP-4 Corrections Unit, Successor Collective Bargaining Agreement**

January 5, 2009  
Date

  
Larry Foy, Esq  
Arbitrator

**OFFICE OF POLICY AND MANAGEMENT**  
**Cost Estimate of Arbitration Award**  
**Dated January 5, 2009**

Bargaining Unit: NP-4 Corrections  
 Period of Contract: July 1, 2008 through June 30, 2011

Number of Full Time Employees: All Funds 5202  
 General Fund 5127

Total Annual Wages (26 pay periods) All Funds <sup>(1)</sup>: \$275,174,326  
 Total Value of Fringe Benefits <sup>(2)</sup>: \$103,099,591

Average Full Time All Funds:	Annualized Basis (26 Pay Periods for All Years)				
	Percent Increase				
	Salary	Gen'l Wage Increase	AI's & Lump Sums	Other	Total
Prior to New Contract:	\$52,898				
1st Year Contract: 2008-2009	\$55,288	2.76%	1.53%	0.23%	4.52%
2nd Year Contract: 2009-2010	\$57,248	2.30%	1.25%	0.00%	3.55%
3rd Year Contract: 2010-2011	\$59,447	2.29%	1.12%	0.43%	3.84%

**FULL-TIME COMPENSATION SUMMARY**

	Annualized Basis (26 Pay Periods)			
	Prior to Agreement	1st Year 2008-09	2nd Year 2009-10	3rd Year 2010-11
All Funds				
Total Wages and Related Items	\$275,174,326	\$12,434,500	\$10,195,900	\$11,439,500
Fringe Benefits				
Value of Current Items	\$103,099,591	\$2,190,959	\$1,796,518	\$2,015,640
Arbitrated Improvements		\$15,000		\$10,000
<b>TOTAL WAGES AND BENEFITS</b>	<b>378,273,917</b>	<b>14,640,459</b>	<b>11,992,418</b>	<b>13,465,140</b>

(1) Total Annual Wages include: Base Salary, Longevity Payments, Lump Sum Bonuses at Maximum, Shift Differentials, Weekend Differentials, Meal Allowances, and Working Condition Stipends.

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

**OFFICE OF POLICY AND MANAGEMENT**  
**NP-4 Corrections Bargaining Unit**  
**Arbitration Award Dated January 5, 2009**

Contract Items	All Funds Requirement - 26 pay periods <sup>(a)</sup>			
	2008-2009	2009-2010	2010-2011	2010-2011 Annualized
<b>FIRST YEAR 2008-2009</b>				
(1) 3% General Wage Increase Effective 7/4/08	\$7,010,200	\$7,594,300	\$7,594,300	\$7,594,300
(2) Annual Increments On Time	\$2,291,000	\$3,450,500	\$3,450,500	\$3,450,500
(3) Lump Sums Bonuses at Maximum at Previous Amount <sup>(b)</sup>	\$1,359,500	\$1,359,500	\$1,359,500	\$1,359,500
(4) Increase Lump Sum Bonuses at Maximum by \$250/year	\$679,800	\$679,800	\$679,800	\$679,800
(5) Increase Meal Allowance by \$.50 on 7/4/08	\$517,700	\$560,800	\$560,800	\$560,800
(6) Add On-call/Stanby Pay at \$1.00/hour	\$19,300	\$62,100	\$62,100	\$62,100
(7) Increase Tuition Reimbursement Fund by \$15,000	\$15,000	\$15,000	\$15,000	\$15,000
<b>SUBTOTAL CONTRACT ITEMS - 1ST YEAR <sup>(c)</sup></b>	<b>\$11,892,500</b>	<b>\$13,722,000</b>	<b>\$13,722,000</b>	<b>\$13,722,000</b>
<b>SECOND YEAR 2009-2010</b>				
(1) 2.5% General Wage Increase Effective 6/24/09		\$6,260,100	\$6,604,900	\$6,604,900
(2) Annual Increments Delayed 6 Months		\$704,700	\$3,357,100	\$3,431,200
(3) Additional Lump Sums Bonuses at Maximum		\$159,800	\$159,800	\$159,800
<b>SUBTOTAL CONTRACT ITEMS - 2ND YEAR</b>		<b>\$6,964,800</b>	<b>\$9,962,000</b>	<b>\$10,036,100</b>
<b>THIRD YEAR 2010-2011</b>				
(1) 2.5% General Wage Increase Effective 6/23/10			\$6,450,300	\$6,805,600
(2) Annual Increments Delayed 6 Months			\$707,200	\$3,168,400
(3) Additional Lump Sums Bonuses at Maximum			\$173,300	\$173,300
(4) Increase Shift Differential Payments by \$.10/Hour			\$519,800	\$540,600
(5) Increase Weekend Differential Payments by \$.10/Hour			\$183,400	\$190,800
(6) Increase Meal Allowance by \$.50 on 6/18/08			\$539,200	\$560,800
(7) Increase Tuition Reimbursement Fund by \$10,000			\$10,000	\$10,000
<b>SUBTOTAL CONTRACT ITEMS - 3RD YEAR</b>			<b>\$8,583,200</b>	<b>\$11,449,500</b>
<b>TOTAL CONTRACT ITEMS - ALL FUNDS</b>	<b>\$11,892,500</b>	<b>\$20,686,800</b>	<b>\$32,267,200</b>	<b>\$35,207,600</b>
<b>IMPACT ON PART TIMERS</b>	<b>\$5,400</b>	<b>\$10,200</b>	<b>\$15,800</b>	<b>\$16,100</b>
<b>IMPACT ON OVERTIME AND HOLIDAY PREMIUM PAY</b>	<b>\$2,606,800</b>	<b>\$4,534,400</b>	<b>\$7,072,800</b>	<b>\$7,717,300</b>
<b>SOCIAL SECURITY COST</b>	<b>\$1,109,600</b>	<b>\$1,930,200</b>	<b>\$3,010,700</b>	<b>\$3,285,000</b>
<b>TOTAL COST OF CONTRACT - ALL FUNDS</b>	<b>\$15,614,300</b>	<b>\$27,161,600</b>	<b>\$42,366,500</b>	<b>\$46,226,000</b>
<b>ESTIMATED GENERAL FUND COST</b>	<b>\$15,407,600</b>	<b>\$26,792,400</b>	<b>\$41,798,500</b>	<b>\$45,598,200</b>
<b>ESTIMATED OTHER FUND COST</b>	<b>\$206,700</b>	<b>\$369,200</b>	<b>\$568,000</b>	<b>\$627,800</b>

- (a) This cost analysis is based on annual costs equaling the payment of 26 payrolls.
- (b) \$87,000 of this amount represents the cost of employees receiving their lump sum at maximum payment for the first time in FY 09. Only this \$87,000 is reflected as a percentage increase on the front page of this cost estimate.
- (c) A new section of the contract was added which codifies a prior agreement between the parties to reimburse employees for the cost of required licenses and certificates. As such, this does not represent an additional cost.

**SUPERSEDEDENCE APPENDIX  
CORRECTIONS (NP-4) BARGAINING UNIT CONTRACT  
JULY 1, 2008 THROUGH JUNE 30, 2011**

<b>PROVISION</b>	<b>CONTRACT REFERENCE</b>	<b>STATUTE/REGULATION AMENDED</b>
General Wage Increases Effective 6/20/08, 6/19/09 And 6/18/10	Article 17, Section 1 (A.1, 2 and 3)	CGS 5-200(k) CGS 5-200(m)
Annual Increments: On time in 2008-2009, delayed six months in 2009-2010 and 2010-2011.	Article 17, Section 2 (1, 2 and 3).	CGS 5-200(k) CGS 5-200(m) CGS 5-210
Lump sum payment for employees at salary maximum of \$750.00	Article 17, Section 2 (1,2 and 3).	CGS 5-200(k) CGS 5-200(m)