

IN THE MATTER OF THE INTEREST ARBITRATION, CONDUCTED PURSUANT TO CONNECTICUT GENERAL STATUTES SECTION 5-276A, BETWEEN:

STATE OF CONNECTICUT : INTEREST ARBITRATION
 HARTFORD, CONNECTICUT : OPINION AND AWARD
 :
 AND : EDUCATIONAL ADMINISTRATORS
 : P-3A BARGAINING UNIT
 CONNECTICUT STATE EMPLOYEES ASSN :
 P-3A EDUCATION ADMINISTRATORS : AWARD DATE JUNE 27, 2001
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APPEARANCES:

For the State: Christine Cieplinski, Labor Relations Specialist
 Robert L. Curtis, Assistant Director of
 Labor Relations
 For CSEA: Robert J. Krzys, Esq., Counsel
 Robert Rinker, Executive Director

BACKGROUND:

The undersigned Arbitrator, Marcia L. Greenbaum, was mutually selected by the State of Connecticut (hereinafter the "State") and the Connecticut State Employees Association (hereinafter "CSEA" or the "Union") pursuant to Connecticut General Statutes, Section 5-276a (d). Hearings were held on March 13, April 24 and 26, 2001 at the Hartford office of CSEA and on April 11, 2001 at the State Office of Labor Relations in Hartford. The parties' Last Best Offers (hereinafter "LBOs") were exchanged on May 2, 2001. Excellent post-hearing briefs were received on May 18, 2001 along with costing estimates. Reply briefs were filed on May 23, 2001.

COMPOSITION OF THE UNIT:

There are 258 professional education administrators in the P-3A bargaining unit, including about 195 in the State Department of Education (SDE), 23 in the Board of Education and Services for the Blind (BESB), and others in the Department of Social Services, the Bureau of Rehabilitation Services (BRS), the Department of Mental Retardation (DMR) and the Labor Department. The Department of Education has jurisdiction over the school systems in all 169 Connecticut cities and towns, and works with them to carry out educational programs.

The predominant number of titles are "unclassified," that is, exempt from the classified service. Of the 258 employees 125 (48%) are Education Consultants and 65 (25%) are Associate Education Consultants, with the overwhelming majority in the SDE. The Education Consultant is responsible for planning and executing "programs of extensive difficulty and scope for the improvement of education in the State...." The Associate Education Consultant is responsible for assisting in planning and executing such programs.

In addition, there are 23 Education Service Specialists, 19 Education Consultants 1, 2 and 3 in BESB, nine Education Service Assistants, nine Education Support Technicians, three CCT Education Administrators, three Education Project Coordinators, two Education Supervisors and four Vocational Rehabilitation District Directors. (State Ex. #17.) All are exempt from job evaluation and OJE under the SCOPE Agreement except for the Educational Projects Coordinator in BESB and the Education Technical Assistant. (Jt. Ex. #39.)

Most P-3A employees work in either the SDE Division of Teaching and Learning, which has five main bureaus (the Bureau of Certification, the Bureau of Research and Teacher Assessment, the Bureau of Professional Development and the Bureau of Curriculum), the Division of Educational Program and Services, which has four bureaus, or the Vocational Technical School System, which encompasses 17 schools and more than

10,000 full-time students.

Unit members have a wide range of responsibilities and perform many different functions, including: maintenance and revision of teacher certification requirements, administration of programs to improve and/or maintain teacher standards and skills, the development of tests and programs to monitor the progress of students in Connecticut public schools, provision of continuing education for teachers and educational administrators, and development of curricula for students to enable them to reach high standards of education. They also are involved in development and administration of specials programs and services such as those for children with disabilities, including special programs for the blind; those in special education, early childhood education; and at the other end of the spectrum, programs in adult education as well. Their success at these endeavors is demonstrated by the reputation of Connecticut as a state with one of the highest educational achievement levels in the United States.

The current salary range for Education Consultants is a minimum of \$70,102 to a maximum of \$86,951 in an eight-step schedule, with an average for those in salary group EA 36 of \$85,877 as of January 19, 2001. For Associate Education Consultants the salary range is \$64,647 to \$80,666 in an eight-step schedule with an average of \$74,019 for those in salary group EA 34. These salaries are the result of annual increments (AIs), general wage increases (GWIs) and upgrades negotiated or awarded in prior arbitration cases since 1977. Some 145 employees or 56.2% are at step 8 with eleven or 4.3% at step 7--a total of 60% of the unit. The average annual salary for P-3A unit members is \$74,804. (State Ex. #7.) The minimum hourly rate of Education Consultants is \$38.37, the maximum is \$47.59, and the average is \$47.

RESOLVED ISSUES:

The parties have agreed that the new Agreement shall be effective July 1, 2001, but have not resolved the duration. They have agreed to the following "Resolved Issues," which are attached hereto as Jt. Ex. #1 and incorporated herein by reference:

- Preamble
- Article 1 Recognition
- Article 2 Entire Agreement
- Article 3 Supersedence
- Article 4 Management Rights
- Article 5 Union Rights
- Article 6 Union Security and Payroll Deductions
- Article 7 Employee Bill of Rights
- Article 8 Non-Discrimination
- Article 9 No Strikes - No Lockouts
- Article 10 Personnel Records
- Article 11 Performance Evaluation
- Article 12 Working Test Period, Probationary Period and
Tenure
- Article 13 Discipline, Demotion and Dismissal
- Article 14 Order of Layoff or Reemployment
- Article 15 Grievance Procedure
- Article 16 Seniority
- Article 17 Professional Development
- Article 18 Hours of Work and Work Schedules
- Article 19 Temporary Service in a Higher Classification
- Article 20 Permanent Part-Time Employees
- Article 21 Safety
- Article 22 Labor Management Committee
- Article 23 Indemnification
- Article 24 Legislative Action

Article 25 Transfer
 Article 26 Outside Employment
 Article 27 Compensation (except Sections One, Two, Three, and Seven)
 Article 28 Method of Salary Payment
 Article 29 Group Health Insurance
 Article 30 Holidays
 Article 31 Vacations
 Article 32 Pregnancy, Maternal and Paternal Leave
 Article 33 Sabbatical Leave
 Article 34 Sick Leave
 Article 35 Miscellaneous
 Article 36 Retirement
 Article 37 Savings Clause

Appendix A Job Sharing Guidelines

Memorandum of Agreement - Article 15 Grievance Procedure
 Panel of Arbitrators

Memorandum of Agreement - Article 15 Grievance Procedure
 Mediation

Memorandum of Agreement - Article 18 Hours of Work

Memorandum of Agreement - Article 27, Section Six Unit
 Coordinators

Memorandum of Agreement - Article 35, Section One
 Printing of the Agreement

Memorandum of Agreement - Time off for Special Events

Memorandum of Agreement - BESB Summer Work

Memorandum of Agreement - Group Life Insurance

Memorandum of Agreement - Letter Concerning Continuing
 Education Units and Continuing
 Education Unit Equivalents

The parties initially presented 26 unresolved issues. However, to their credit, they continued to seek to reach agreement throughout the interest arbitration process. They were able to resolve nine matters leaving the following 17 unresolved issues:

Issue #8: Article 19, Section Three
 Issue #9: Article 27, Section One
 Issue #10: Article 27, Section One b
 Issue #11: Article 27, Section One c
 Issue #12: Article 27, Section One d
 Issue #13: Article 27, Section One e new
 Issue #14: Article 27, Section Two a
 Issue #15: Article 27, Section Two b
 Issue #16: Article 27, Section Two c

Issue #17: Article 27, Section Two d
 Issue #19: Article 27, Section Four
 Issue #20: Article 27, Section Seven
 Issue #21: Article 34, Section Three b
 Issue #22: Article 35, Section Three
 Issue #23: Article 35, Section Six
 Issue #24: Article 38, Section One
 Issue #25: Memorandum of Agreement, p. 51, third paragraph

Since all the evidence was introduced using these issue numbers, in the interest of consistency and avoiding confusion, I shall continue to use them here, notwithstanding that some have been resolved, and are incorporated in Jt. Ex. #1.

STATUTORY CRITERIA: This process is governed by Connecticut General Statutes, Section 5-276 A. Section 276(e)(4) provides:

...in making such award, the arbitrator shall select the more reasonable last best offer proposal on each of the disputed issues based on the factors in subdivision (5) of this subsection. 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...

In subdivision (5) it sets forth the following factors to be considered by an arbitrator in arriving at a decision:

1. The history of negotiations between the parties including those leading to the instant proceeding;
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.

No one factor is given more weight than another. Obviously some have more importance than others in weighing the various issues depending on their nature, particularly where an issue is monetary as opposed to one involving language. I now turn to a discussion of these factors, all of which have been carefully considered in the writing of this Award.

NEGOTIATING HISTORY:

The State of Connecticut and CSEA, which represents some 4,000 employees in four bargaining units including P-3A, the Educational Administrators, have had a long-term relationship starting in 1977. Since that time CSEA and the State have settled and/or arbitrated some eight P-3A collective bargaining agreements. This proceeding will result in the ninth contract between the parties.

The first Collective Bargaining Agreement covering the P-3A unit was negotiated in 1977 and effective from July 1, 1977 to June 30, 1979. Subsequently, three successor Agreements were entered into: July 1, 1979 - June 30, 1982, July 1, 1982 - June 30, 1984, and July 1, 1984 - June 30, 1987 without the need for arbitration.

Thereafter, the parties had difficulty reaching agreement on a successor contract, and went to interest arbitration, where the Union argued that the principles of the 1986 Education Enhancement Act should apply to the P-3A unit just as they statutorily were applied to local school districts. The State opposed this. Arbitrator Peter Adomeit issued an Award (Case No. 8687-SBA-7, Jt. Ex. #9) on March 18, 1988 covering some 44 issues. He concluded that the salary increases in Connecticut public schools brought about as a result of the 1986 Education Enhancement Act must be given "substantial weight" in deciding salary increases and upgrades for those in the P-3A unit, who also are responsible for the quality of public school education. He stated:

The salary levels of teachers and administrators employed by local boards of education are entirely relevant in considering what those employed by the State Department of Education should be paid. (Jt. Ex. #9, p. 41.)

This Award included a 5% increase in the first year of the contract, 4% increases in the second and third years, as well as salary upgrades for a number of positions within the unit. It was codified in an Agreement effective from July 1, 1987 through June 30, 1990.

The parties began negotiations for a successor contract, but were unable to resolve all matters, and went to arbitration on four issues. On November 19, 1990 Arbitrator J. Larry Foy issued an Award in Case No. 89/90-SBA-37. A successor contract was negotiated to run from July 1, 1990 through June 30, 1993 with general wage increases of 4% for the first year, 5% for the second year, and 4.5% for the third year, along with a salary group upgrade in January, 1991. This was done to maintain parity with other State employees and also with the salaries paid to administrators in local school districts. Also on July 1, 1990, the Special Committee on Merit Evaluation and Pay of the SDE issued a "State Department of Education Professional Staff Planning and Evaluation System Including Merit Pay Provisions" for the P-3A Unit.

However, as the 1990s began, an economic recession hit the country and Connecticut, especially hard. When he took office in 1991, new Governor Lowell P. Weicker Jr. faced a \$2 billion shortfall, \$1 billion for that fiscal year, and \$1 billion for the next. As a result he sought help from State employees and their unions whom he asked to come together to work on the deficit. A State Employee Bargaining Agent Coalition (SEBAC) was formed in response to a law, which required that pensions be negotiated by a coalition of unions representing State employees.

In 1991, the State sought to reduce costs by implementing a two-phase layoff in which the P-3A Unit was scheduled to have ten employees laid off effective October 24, and sixteen effective November 8, 12, and 13, 1991, for a total of 26.

On February 3, 1992, the parties entered into a series of Concession Agreements. SEBAC I was negotiated by the State and CSEA to apply to employees in the following units: P-3A, Education Administrators; P-3B, Education Instructors; and P-4, Engineering and Scientific Employees. It dealt with layoffs and furloughs, wages and wage related savings, workers' compensation, labor-management committees, voluntary leaves and schedule modifications, unit agreements, which extended collective bargaining agreements and implemented wage changes and other means of savings, and a variety of general provisions. According to the Office of Policy and

Management (OPM), these Agreements included concessions amounting to \$354 million for 1991-92, and \$186 million for 1992-93, as well as other improvements.

Appended to this was a Memorandum of Agreement covering the P-3A Unit, extending the 1990-93 Agreement to June 30, 1994. It read:

In furtherance of the Agreement between the State of Connecticut and the State Employees Bargaining Agent Coalition, (SEBAC), the State of Connecticut (the "State") and Connecticut State Employees Association (the "Union"), agree as follows:

1. The ...agreement between the State and the Union which is currently in force is hereby extended to June 30, 1994. Article 39 of the contract is therefore revised to provide for an expiration date of June 30, 1994.

2. Article 27, Section One of the contract is deleted and the following substituted thereof:

(a) Effective July 13, 1990, the base annual salary for all bargaining unit employees shall be increased by four percent (4%).

(b) Effective July 12, 1991, the base annual salary for all employees shall be increased by five percent (5%).

(c) Effective December 13, 1991, the base annual salary for all employees shall be decreased by two and one-half percent (2.5%).

(d) Effective July 10, 1992, the base annual salary shall be increased by two and one-half percent (2.5%).

(e) Effective May 14, 1993, the base salary for all employees shall be increased by four and one-half percent (4.5%).

(f) This agreement will be reopened for the purposes of negotiating the amount of any general wage increase and the effective date thereof for the final year of the agreement (1993-94).

3. Article 27, Section Two... is revised to read:

Employees will continue to be eligible for and receive annual increments during the term of this contract in accordance with existing practice; provided, however, the annual increment will not be paid for the contract year 1992-93.

4. Article 14, Section Four... shall provide as follows:

In lieu of layoff, an employee with more than three (3) years of continuous state service may bump into a lower class for which qualified within the bargaining unit within an agency....

5. In all other respects, the provisions of the 1990-93 contract remain in effect. Economic provisions such as, but not limited to, tuition funds, conference funds, night shift differential and weekend differential shall continue in 1993-94 at the same rates as established for the 1992-93 contract year.

Notwithstanding the above, the State will provide \$185,000 for fiscal year 1991-92 for the purposes of implementing the Merit Evaluation Program rather than \$200,000.

6. Furloughs. Each bargaining unit member shall take five furlough days (the equivalent of five days of pay) during the 1991-92 fiscal year. Employees may credit the furlough days taken as a result of the Expense Reduction Plan towards the five furlough days. Credit for furlough days for purposes of pension, longevity, leave accruals and other benefits shall be treated in the same manner as leave under the Voluntary Leave Section of this Agreement. Any employee laid off and recalled to work will not have to take furlough days....

The Agreement was approved by the General Assembly, and on May 14, 1993 the employees received a 4.5% wage increase, but did not receive annual increments. Thus, P-3A unit members gave back 2.5% of the 1991-92 5% increase for one-half year, deferred their 4.5% increase from July 1992 to May 14, 1993, and took five voluntary furlough days in 1991-92, which amounted to the loss of about one week's pay. Those eligible for an annual increment in 1992-93 also skipped that increment. In addition, some twenty unit members were laid off from November 1991 to January 1992. These concessions, which constitute a significant part of the bargaining history of this unit, helped the State solve some of its budgetary problems.

The parties also entered into the SEBAC II Agreement, which dealt with pensions, health insurance, and their relation to layoffs and other concessions. It allowed the State to reamortize the unfunded pension liability for 1991-96, and it allowed savings, which the Union claims were directly related to the enactment of the Economic Recovery Fund notes spanning the same period. On February 10, 1992, the Estimated Budget Requirements for the P-3A Memorandum of Agreement were set forth by OPM. On February 11 OPM issued a Summary of the SEBAC Agreements for "General, Transportation, and Industry Supported Funds," and "Personal Services Savings by Bargaining Units." With respect to the P-3A Unit, it reads:

<u>Bargaining Unit</u>	<u>Fiscal Year Fiscal Year</u>	
	<u>1991-92</u>	<u>1992-93</u>

Education Administrators P-3A	(252,361)GF	(395,459)GF
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On June 11, 1992, the parties entered into the SEBAC III Memorandum of Agreement, which dealt with pension funding and negotiations, health and welfare benefits, job security, a number of grievance provisions, and other issues. In January, 1993, SEBAC issued "Working so Connecticut Works: A State Employee Reference Guide", which covered a number of subjects including information about the State employee unions, how State employees are part of the solution particularly in view of savings from Concession Agreements, efforts to control health care costs, and details of State employee contracts, including binding arbitration, pay equity, and objective job evaluation (OJE).

This booklet also includes data from the U.S. Census Bureau and other sources, which show: 1) that government (State and local) spending in Connecticut (as a percent of personal income) is below the U.S. average; 2) that Connecticut spending is lower than the national average and far below nearly all northeast states; and 3) that Connecticut has fewer public employees than the national average and fewer than nearly all neighboring states.

On March 23, 1994, the State of Connecticut and the State Coalition on Pay Equity, reached Agreement, pursuant to General Statutes 5-200c, which requires that all inequities, including sex-based inequities identified by the Objective Job Evaluation study be eliminated. Equity was established based on the new maximum salaries for each classification. As a result many bargaining units had additional step increments added to their pay plan as well as having positions upgraded. In some units 100% of the employees were upgraded. In the largest unit, NP-3 Administrative Clerical, 94% of the employees were upgraded. However, the points to pay relationship established under this Agreement does not apply to P-3A classifications, because CSEA chose not to take part in this OJE. Similarly, the OJE was not applicable to the SUOAF unit at Connecticut State University where the Board of Trustees elected not to take part in the OJE process.

The State and CSEA met on a monthly basis beginning in March, 1994 to discuss a number of language issues, most of which were resolved through the mutual gains process. However, they reached impasse over the matter of the 1993-94 P-3A wage reopener. In April, 1994, they participated in interest arbitration hearings before Arbitrator Jonas Aarons, who issued an Award on June 13, 1994. CSEA's Last Best Offer was a 3.25% base annual salary increase for all bargaining unit members effective December 24, 1993. The State's Last Best Offer was that the base annual salary in effect on June 30, 1993, based on the salary plan effective May 14, 1993, remain in effect during contract year 1993-94, or in other words, no increase. The Arbitrator, after considering the statutory criteria, concluded that CSEA's Last Best Offer was more reasonable than that of the State, and awarded it.

Because of the timing of the proposal, this would have meant an actual cost of \$243,227 for that year, and an annualized cost thereafter of \$486,454. There also would have been a compounding effect on the annual increments and merit pool payments. However, this Award was subsequently rejected by the legislature, as were five other Awards in 1994, including one by Arbitrator Arnold Zack for the NP-6 and the P-1 Units represented by New England Health Care Employees, District 1199, and those involving the Connecticut State University Board of Trustees, the AAUP and the SUOAF units.

In November, 1994 Governor Rowland was elected and the composition of the General Assembly changed. On January 18, 1995 the Senate considered twelve arbitration awards, and rejected all (including that for P-3A) but one, on the basis of "insufficient funds." The only award that survived was that of Arbitrator Zack in the Health Care Units, and it did so by reason of non-action.

Also relevant to the negotiating history is that on February 8, 1995 the Health Care Cost Containment Committee, and the Office of the State Comptroller, Nancy Wyman, issued a report entitled: "Labor and Management's Health Care Cost Containment Efforts:

History, Recent Developments and Future Prospects for Connecticut" (CSEA ex. #17), which demonstrates the slowdown in the growth rate of the State's health care costs. The change to a preferred provider organization (PPO) resulted in a cost decrease of 2.3%, which represented \$100 in savings per State employee.

Annual increments amounting to \$106,900 were paid for fiscal year 1993-94. After the legislature rejected the Aarons Award, the parties agreed to include the subject of the 1993-94 wage reopener in the successor contract negotiations. When they were unable to agree on a new contract, the reopener became one of the issues for interest arbitration.

On April 21, 1995, the undersigned arbitrator issued an Interest Arbitration Award (Jt. Ex. #15) involving 24 issues, including: effective January 1, 1994, a continuation of the salary plan in effect on June 30, 1993, saving the State more than \$1.6 million over the term of the Agreement; effective October 1, 1994, a continuation of the salary plan in effect on June 30, 1994, saving the State more than \$1.2 million over the term of the Agreement; effective July 1, 1995, a 3% increase in the base salary for all bargaining unit employees; effective July 1, 1996, a 3% increase in the base salary for all bargaining unit employees; and employees to continue to be eligible for and receive annual increments in 1994-95, 1995-96, and 1996-97 in accordance with existing practice.

The 1997-2001 Interest Award (Jt. Ex. #16) issued by this arbitrator provided for general wage increases over a four-year period of 2%, 2%, 2% and 3.5% for a total of 15.5%, with annual increments paid "on time."

The parties started negotiations for a successor contract early, on November 8, 2000. After some nine formal negotiating sessions, an impasse was reached, and the parties entered into interest arbitration.

The negotiating history shows that the P-3A Educational Administrators have made substantial gains over the years, particularly in salary, and they have also made economic sacrifices in the form of significant concessions to help the State reduce its deficits. They are the highest paid unit in the executive branch sometimes earning as much or more than managers who supervise them. The parties have recognized the valuable

contribution to the State's mission made by members of the P-3A unit and paid salaries that reflect that value and the overall labor market for education professionals.

Costing Analysis

In costing the current contract, the Union used wage information provided in State Ex. #7 and other joint exhibits. The starting cost base is \$19,753,651. It tracks the costs of the Union's economic offers over four years on both a cash and annualized basis, showing percentage increases in each year as well as total cash and annualized dollar amounts. The Union calculates the total cash cost and annualized cost over four years with merit pay offsets of \$53,144 in the first year, and \$49,989 in the second year. Included is the parties' negotiated agreement to increase the stipend of the Unit Coordinator to \$1200, and to include a \$5,000 tuition reimbursement fund. With regard to its proposal to increase steps the Union notes:

...the implementation of a step in year one and of a second step in year two have a direct impact on reducing the State's cost regarding merit pay. Merit pay is a concept instituted in the 1984-87 contract. Then, a pool was established to be distributed to unit employees based on their annual performance. Employees on Steps 1-7 would either receive a 2.0% or 1.5% merit pay bonus. Employees at the top step, or Step 8, would get a 4.5%, 3.5% or 2.5%.

Thus, in item (4) of the Union's costing for year one and year two, merit pay is shown as a savings to the State, or an offset. This is because employees at top step receive payments of 4.5%, 3.5%, or 2.5% depending on performance while those below top step receive only 2.0% or 1.5% for the same performance. Accordingly, if the Union's position is awarded on Issue #13, no one will be at top step in either of the first two years. (See Jt. Ex. #4, pp. 12-13.) (Union Brief, pp. 9-10.)

The Union bases this savings estimate on the assumption that in future years employees will be rated "outstanding" and "excellent" in the same numbers (ratios) as in 1999-2000, which was 55 and 94 respectively. It goes on to state:

It is important to note that this methodology is the same methodology employed by Mr. McDonough when he costed out the Administrative and Residual contract (P-5). There, an extra step was added to each P-5 pay plan in the second year by the Arbitrator. Since that additional step resulted in no one being at top step in that year and thus not qualifying for a 2.5% lump sum bonus in that year, Mr. McDonough reported this fact as a savings to the State in the second year of the P-5 contract to the tune of \$562,400. (See State Ex. #7, Section on "Other Cost Sheets," P-5 Award of April 24, 2000, page two, Second year, item (3). "Add Eighth Step (Including lump sum at Max offset).")

The State does not agree and, as stated in its Reply Brief:

While...in the event of steps, "no one will be at top step for two years," the Union's conclusion that merit payments will actually result in a "savings" to the State in those years is INCORRECT. Simply put, the \$200,000 merit pool provided for in Article 11, Section 5(c), p 13, will be spent in these years in its entirety in spite of the fact that no one will be a top step in the first two years of the contract if steps are awarded. The lack of savings from adding steps becomes apparent when one considers that under the State's FY 2001/02 proposals, the unit's total payroll will be approximately \$20.1 million (currently \$19.3 million). Thus, a payout of even 1% of the payroll will be over the \$200,000 pool...

The State also notes that the Union's numbers for those rated as "outstanding" or "excellent" are slightly lower than what is reflected in Jt. Exs. #46, 47 and 50, which show a total of 237 employees who received ratings. If these figures are carried forward into FY 2001/02, even without anyone on the top step, in accordance with Article 11, approximately 24% of the unit rated as "outstanding" would continue to be eligible for a 2.0% lump

summer merit pay supplement and about 44% of the unit rated as "excellent" would continue to be eligible for a 1.5% merit pay supplement.

Applying these figures to a base payroll of \$20.1 million indicates that the State will not realize any "savings" from the merit pay pool of \$200,000, because it will be exhausted. Moreover, if the Union's proposals are awarded, the pool will be exhausted more quickly because the merit payouts will be calculated on the higher salaries proposed in Issues #9-#13. Even if there were a "savings" in the pool, it would not be an "offset," because the contract provides that unused funds are carried forward to the next year. According to the State, the Union's conclusions regarding merit pay offset are at best misleading.

In any event, the cash cost of a ninth step at 2.75% for the first year without offset is calculated by the Union to be \$165,431, with an annualized cost of \$330,893, and annualized percentage of 1.67%. In the second year the addition of a tenth step without merit pay offset costs \$171,122 and \$342,443 respectively with an annualized percentage of 1.64%.

In total the Union's cost estimate of its proposals is a total contract cost of \$892,187 in the first year, \$2,192,343 in the second year, \$3,331,395 in the third year, \$4,265,642 in the fourth year, and \$4,412,875 in the fifth year of 2005-06. The State calculates the cost of its proposals (without any offsets) as a total contract item amount of \$547,000 in the first year, \$1,380,700 in the second year, \$2,133,700 in the third year, \$2,759,000 in the fourth year, and \$3,173,900 in the fifth for a total of 15.28%. (It is not clear why it costed five years.)

EXISTING CONDITIONS OF EMPLOYMENT OF SIMILAR GROUPS OF EMPLOYEES:

Educators in Connecticut public schools: The State contends that the evidence presented by the Union fails to demonstrate that there is any substantial similarity between the responsibilities and duties of local education association (LEA) principals or Vocational-Technical Administrators, on the one hand, and the employees in P-3A, on the other. Richard Wilber, Chief of the Bureau of Human Resources for SDE since 1986, who is intimately involved with the V-T Administrators, testified that they have substantially greater responsibilities even as compared with principals in local school districts. He attributes this to the fact that the V-T Administrators have all of the underlying responsibilities of a principal, in addition to the burdens attendant to a trade school environment, including safety issues related to production work, and off-site programming and customer issues that involve the exchange of monies for services rendered.

Mr. Wilber distinguished the responsibilities of the Voc.-Tech. Administrators and local school principals from those of P-3A classifications such as Education Consultant, who generally do NOT have budgetary responsibilities to the degree of principals; nor do they have the burdens of hiring, firing, evaluating teachers, addressing transportation and plant facility issues, or dealing directly with parental concerns. P-3A employees are not on call 24 hours a day; nor do they work daily in front-line, crisis-oriented environments as do school principals and Voc.-Tech. Administrators.

In contrast, P-3A Education Consultants work more stable hours in a behind-the-scenes environment. The State argues that comparing P-3A employees to principals is like comparing the daily routine of a family practitioner to that of an ER practitioner—it is an unbalanced comparison. While the State does not dispute that P-3A members have a "relationship with and to public school educational administrators" (Jt. Ex. #16), they do not share the depth and range of responsibilities required of those in the latter positions.

The State contends that this conclusion is supported by Jt. Exs. #42, #43 and State Ex. #14. For example, Jt. Ex. #42 shows that one of the Education Consultant's with the SDE's Division of Education and Research, School Accountability and Support Unit has the limited or focused responsibility of:

Data collection, analysis, interpretation, and reporting for the purposes of program evaluation, policy making, school accountability, school and district profiles, and test development.

Other Education Consultants have similar limited or focused responsibility, such as coordination of CT Administrator Test, development and scoring, technical assistance, etc.

The narrow, and technical responsibilities of these Education Consultants is very different from the extensive responsibilities held by a middle school principal, who joined SDE in June, 2000. As reflected on her resume, as a principal, she was not only responsible for conducting research and designing programmatic goals, but also had additional responsibilities of overseeing the academic, fiscal, supervisory and interpersonal functions of a school system; supervising, recruiting, training and evaluating new and existing personnel; overseeing all curricular areas, including supervision, budgeting, goal creation and designing, implementing new programs; and budgeting for multiples of departments as well as short-term projects. (State Ex. #14, Hiring Rate Package for Kristina Elias-Staron.) Even though her responsibilities were less as a P-3A member, her P-3A salary (\$86,951) remained comparable to that which she held as a principal (\$85,691) after she was placed at step 8 on the schedule.

The State asserts that the Union's salary data, regarding LEA superintendents (Union Ex. #13), should be wholly disregarded, primarily because it presented absolutely no evidence to suggest that the position of superintendent of an entire school district is in anyway comparable to the responsibilities of P-3A members. The fact that P-3A employees may provide advice and consultation to superintendents does not establish that they share the same levels of responsibility and therefore are deserving of the same level of compensation. The State is concerned about this analysis, which seems to have been promulgated since Arbitrator Adomeit's 1988 Award. The State asks that this arbitrator analyze the evidence presented on comparability and reach the conclusion that the most appropriate comparison group for P-3A members is between the State executive branch and other employees in similar classifications employed by the State.

The State asserts that even if the arbitrator looks at the salary ranges and increases of local education associations, those of P-3A administrators are competitive and the State's GWI proposals more reasonable. For example, the Director of Pupil Services in Avon has a salary range for FY 2000-01 of \$81,538 to \$86,538. By comparison, for the same period, P-3A Education Consultants have a range of \$70,102 to \$86,951. While that for this unit is broader than that of Avon, this unit has a higher maximum. An analysis of the 17 contracts in State Ex. #9 establishes that for these districts, GWIs fall between 2.5% and 3.0%. The pay schedules for Education Consultants compare favorably with those of the majority of high school assistant principals, whose positions entail substantially great responsibilities than those of employees in this unit. (Union Ex. #11.)

Arbitrators have deemed teachers and administrators in Connecticut public schools positions comparable to those in the P-3A unit. That is not to say that there are no pertinent differences and adjustments should not be made for different job titles, duties and responsibilities. Teachers and school administrators are required to be certified, while employees in this unit are not.

Moreover, superintendents and principals, especially, have higher levels responsibilities and duties because they are accountable for the safety of students and others who work in the school environment. They also have human resource functions of hiring, evaluating, disciplining and discharging teachers and others, which are not shared by P-3A employees. Moreover, they are responsible for budgeting and the operation of a school system and/or building, including the physical plant, which P-3A members are not. As such, their rates are sometimes higher as they should be.

This not to say that there is no relationship between the two kinds of administrators, and that an arbitrator should ignore comparable titles in local school districts, particularly where they have an historical relationship to each other. The majority of employees in the P-3A unit provide information, advice and consultation to school administrators, particularly principals, superintendents, and their central offices, statewide. Thus, they do have a relationship with and to public school educational administrators. However, they are not the equivalent of school superintendents.

Arbitrator Aarons found that "...it does appear that administrators in local districts are receiving increases, and that further, the overall salaries of this bargaining unit do not enjoy advantage over comparable salaries of analogous administrators in the local school districts." (Award, 6/13/94, p. 13.) It is not clear which group of administrators he considered more analogous. I find that comparable positions in local districts are to be taken into account, but not necessarily weighed equal to State bargaining units. Nor need the two sets of comparable be given the same weight on every issue. Non-State units are another source of information to assist an arbitrator in determining which is the more reasonable LBO, and I have used them for that purpose.

Other State bargaining units: The evidence shows that the total percentage wage increases for the P-3A unit have been tied to those bargaining units whose contracts are negotiated by the State Office of Labor Relations. Since 1985 almost all State bargaining units have received similar general salary/wage increases (not including annual increments or upgrades). Effective May, 1993 almost all units received an increase of 4.5%. In FY 1995-96 when no general wage increases were paid to a number of units, P-3A received a 3% general wage increase (GWI). A 3% GWI was also paid in 1996-97. Nearly all units received a 2% GWI in 1997-98, 1998-99, and 1999-00. Notwithstanding that these units do not necessarily have a community of interest with those in the P-3A unit, they have been used as comparable, presumably because they all have the same employer and/or derive at least some if not all of their funding from the State budget. Therefore, I have also carefully considered the Awards and Settlements in other State bargaining units in each of the contract years.

The minimum hourly rate of Education Consultants, who officially work a 35-hour week is \$38.37, the maximum is \$47.59, and the average is \$47. This compares favorably with Education Bureau Chiefs, who supervise P-3A units members and work a standard 40-hour week. Their hourly rates amount to \$38.91 at the minimum and \$49.92 at the maximum--a negligible difference.

P-3A Education consultants are also paid favorably compared with Vocational-Technical School Administrators. The State points out that when the rates and increases (3.0% and 1.5%) of these school administrators are considered in light of their significantly greater job responsibilities as attested to by Mr. Wilber, the P-3A Education Administrators are compensated substantially better and will continue to be so under the State's GWILBOs.

Awards and Settlements: The details of all the awards and settlements to date were summarized in a lengthy report prepared by and attested to by Shaun C. McDonough, Compensation and Benefits Manager, OPM, Budget and Financial Management, Methods and Controls Unit. He did an excellent job of summarizing the various changes and costing the contracts. The following is a compilation of that testimony and what is contained in the various contracts and arbitration awards placed in evidence.

The **NP-1 State Police** contract expired on June 30, 1999. Since then the parties have reached a negotiated settlement for a new five-year agreement that expires on June 30, 2004. The wage base includes items, which are not applicable to P-3A or other units. However, the fringe benefits are comparable. All annual increments are to be paid on time. The contract also includes a Salary Schedule Increment Adjustment in four of five contract years. In the prior contract there was a provision that the meal allowance, which is \$14.50 plus per shift, would increase in accordance with any general wage increase for the unit. The meal allowance, which is included in base pay, even for purposes of OJE, is a substantial part of their remuneration. While P-3A opted out of the SCOFE negotiations, the State police have participated in that and OJE as well. The step adjustments make the rate 6% higher than it would have been if this was not built in. The State gave an increase to the highest step for a trooper. The trade off was no increase in the meal allowance for the first two years of the contract. Such increases had previously been guaranteed. However, there is one in the ensuing three years. Thus, the State saved money in first two years of the contract and spent it on the step adjustment.

In his recent Award for health care employees, Arbitrator Healy noted the State Police Unit (NP-1) settlement, which gave substantial increases in the top step of one of the most populated classifications had the effect of revising the top rate by 16.3%. (Jt. Ex. #51.)

The contract for **NP-2 Maintenance and Services** unit expired on June 30, 1999, and there is no successor agreement as yet. However, since then Arbitrator Jonathan Liebowitz has issued an Award covering some 127 issues, most of which do not relate to P-3A. What is noteworthy is that in the new contract, to run from July 1, 1999 to June 30, 2002, he awarded 4.0% effective July 1, 1999, 2.0% effective January 1, 2000, 3.75% effective July 1, 2000, as well as \$500.00 to those at maximum, and 4.0% effective July 1, 2001. To date this Award has not yet been approved by the legislature. It is the State's position that the Award has little relevance to the merits of the P-3A interest arbitration given the limited duration of the NP-2 contract and the fact that NP-2 is a blue-collar bargaining unit.

The contract for the **NP-3 Administrative Clerical** unit expired on June 30, 1999. The parties have since negotiated a successor agreement to run from July 1, 1999 to June 30, 2002, which is similar to P-3A in the sense that mostly GWIs and AIs make up the increases, which are similar to what others are getting (3.5% and 3.0%). This unit, however, had a six-month delay in annual increments in both years as a trade off for a \$500 lump sum payment to employees at maximum. There also will be a work week increase from 35 to 40 weeks in gradual increments.

The contract for the **NP-4 Corrections** unit expires on June 30, 2001. Their total annual wages include meal allowances. These employees received 3.0% general wage increases in each of four years, and a delay of annual increments.

The contract for the **NP-5 Protective Services** unit expired on June 30, 1999. Employees had received a 1.5% general wage increase in some years and none in others. However, they received an additional 1.5% in a supplemental agreement for a total of 6%. As the result of an arbitration award their current agreement runs from July 12, 1999 to June 30, 2004, with five years of GWIs and AIs on time in all years. The impact of adding steps to the pay plan in the first and second years is a 4% increase to the maximum. Only 6% in GWIs left those in NP-5 4% behind other units, and this was a way to make up the 4%, and less costly than giving a general wage increase. Both sides expected this go up 2% and 2%.

The contract for the **NP-6 and P-1 Health Care** units, which bargain together, expires on June 30, 2001. On May 16, 2001, Arbitrator James J. Healy issued an Award in the Interest Arbitration between the State of Connecticut and New England Health Care Employees Union District 1199, which represents employees in these units. (Jt. Ex. #51.) A number of their 48 outstanding issues are the same as those raised here. I shall discuss each of those as the issue is considered. Mr. McDonough noted while in most units shift differential is usually 65 cents per hour, in these units they substantial, amounting to 5% of their step one rate for most employees and 15% of the step one rate for all nurses. They work in direct patient care and provide round the clock coverage.

The **P-2 Social & Human Services** contract expired June 30, 1999. This contract is similar to NP-3, with delayed annual increments, and a work week increase from 35 to 40 hours per week gradually. The new negotiated agreement, which is effective from July 1, 1999 to June 30, 2002, has a 2.0% increase in January, 2000, the same as for the clerical unit. The same GWI is effective in 2000-01, but on June 30, 2000. However, there is no six-month delay in the payment of annual increments, as in the clerical group. The same applies in the third year of the contract. There is no \$500 lump sum bonus for those at maximum.

The **P-3B Professional Educators** unit, which is also represented by CSEA, had a negotiated settlement effective from July 1, 1997 to June 30, 2001. The parties reached an impasse in their recent negotiations, and that unit is now in arbitration.

The **P-4 Engineering, Scientific and Technical Unit**, also represented by CSEA had the same wage pattern for its 1997-2001 contract, which expires on June 30, 2001. It has reached impasse and is not yet in arbitration.

The **P-5 Administrative and Residual** unit contract expired June 30, 1999. While originally there were no general wage increases, delayed annual increments, and an increase in only the work week, the State reopened

bargaining for this unit and there was a supplemental agreement wherein a commitment was made that if anyone else negotiated an agreement with GWIs, they would benefit and in the end they received three 2% increases and 2% on annual increments. The parties went to arbitration and were awarded a new contract effective from July 1, 1999 to June 30, 2003 with the following increases: 2% on June 18, 1999 and 2% on Dec. 31, 1999, then 3.5%, and 3.0%, with annual increments paid on time. This unit also received a 3% 8th step in the second year of the contract, which resulted in a savings to the State because it had a lump sum 8th step, which was paid for an entire year, and this 8th step was effective for only half a year.

The **Vocational-Technical School Teachers** had a contract which is negotiated by the Connecticut Board of Education. It expired on August 26, 1999 after having had no general wage increase, and then was reopened to receive GWIs of 2% in various years. On March 29, 2000 Arbitrator David Bloodworth issued an Award in the Interest Arbitration between the Connecticut Board of Education and the State Vocational Federation of Teachers, Local 4200A, AFT, AFL-CIO for a successor contract effective from August 27, 1999 to August 28, 2003. (Jt. Ex. #34.) He awarded general wage increases of 2.0% effective on 8/27/99 and 2% on 1/14/00, 3.5% effective September 1, 2000, and 3.0% effective on September 1 of each of the following years, 2001 and 2002, for a total of 13.5%. Regarding ability to pay, he stated:

The State has weathered the fiscal crisis that it underwent in the early 1990's and now is in the midst of an economic boom as is much of the country. Prudently, however, it still operates under a spending cap designed to protect it from the types of budgetary deficits that have occurred in the past.

He noted the Union's argument that the State's ability to pay was enhanced by an ever-growing budget surplus, and that the State provided a rebate to taxpayers in excess of \$96 million for the fiscal year. In that case the Union had proposed consolidation of steps on the salary schedule from twelve to eleven. The arbitrator chose the State's Last Best Offer, which retained the twelve-step schedule, because a change was not warranted.

The contract of the **Vocational-Technical School Administrators** expired June 30, 1999. While there were no GWIs during the term of that initial contract, it was reopened, and employees were given 2.0% in 1997-98 and 2.0% in 1998-99. In the new contract effective from 1999 to 2003 the amount of GWIs (3.0% or 1.5%) received by employees is dependent on their certification level. Those at the higher "92" advanced level certification will receive 3.0%, and will add an additional step valued at 2.0% in the 4th year.

WAGES, FRINGE BENEFITS AND WORKING CONDITIONS IN THE LABOR MARKET:

As noted above, public school administrators, some of whom are in the same labor market as employees in this unit, have salaries comparable to those in this unit, and in some cases, high school principals earn more than Educational Consultants. The State's argument that it is inappropriate to compare this bargaining unit to administrators of local school districts, whose duties are decidedly different, was addressed above. The State introduced State Ex. 9, which is a sampling of 17 school districts statewide for comparison purposes. The Union also put in evidence some exhibits showing what salaries are earned by administrators and compared them with those in P-3A. These have been considered with respect to the particular issues to which they pertain to the extent they are comparable.

OVERALL COMPENSATION PAID TO EMPLOYEES INVOLVED IN THE ARBITRATION:

P-3A unit members have similar fringe benefits and working conditions to other State employees. Annual increments worth an average of more than 2% of payroll (more than 3% for Educational Consultants) were paid to members of the P-3A bargaining unit. However, P-3A unit members have more vacation days and their compensation package is somewhat different.

It consists not only of an annual salary, and annual increments for those not yet at maximum, but also, a merit pay supplement. For those at maximum, it amounts to 2.5% for those rated "fully successful," 3.5% for those rated "excellent," and 4.5% for those rated "outstanding." There also is a merit pay supplement for those not at maximum, which amounts to 2.0% for those rated "outstanding" and 1.5% for those rated "excellent."

In addition, in the past unit members have been entitled to receive reimbursement for tuition, and for attendance at certain conferences, such as those allowable under the BESB Fund. There also is a Unit Coordinator stipend, which was raised to \$1200.

Members of the P-3A bargaining unit already have more vacation time (eight days during the first five years of service and six to seven days for six to twenty years of service, and an additional five days for more than twenty years of service) than other executive branch units. In addition, P-3A employees have a 35-hour work week, unlike other units who work a standard 40-hour work week.

ABILITY OF THE EMPLOYER TO PAY:

The majority of the unresolved issues before me are monetary in nature, involving a cost to the State. Unlike the prior interest arbitration, where the State was not raising a claim of inability to pay the increases sought by the Union, or to continue to fund the money benefits, including annual increments, contained in the contract, here the State has made a plea that the operation of the statutory spending cap restricts its ability to spend its revenue and thus absorb the total costs of the Union's proposals. A significant portion of the hearing was devoted to a consideration of the state of the economy in general and in Connecticut in particular.

On behalf of the State Marc S. Ryan, Secretary of the office of Policy and Management (OPM) since November, 1998, made a powerpoint and paper presentation entitled, "Ability to Pay—P-3A Educational Administrators, April 11, 2001." (State Ex. #2.) While all of it need not be reiterated, I shall review the highlights.

Secretary Ryan noted that the State's financial situation has changed dramatically since the mid to late 1980s, and that any financial decisions, including those with respect to wage increases, must recognize the impact of the following factors:

One of the worst recessions since the Great Depression leading to the passage of the first personal income tax in Connecticut;

The ratification of a constitutional amendment to limit expenditure growth; and

The continued demands and pressures for continuation, if not increases, in State expenditures from various sources.

He noted that in 1987 the State had a budget surplus of \$365 million, but within four years had a cumulative budget deficit in 1991 of \$965 million. This deficit, of almost \$1 billion from a \$6 billion budget, was the largest in the State's history, representing 14.5% of the fiscal 1990-91 expenditures. In order to address this massive deficit, the State borrowed money by issuing Economic Recovery Notes, that were intended to be repaid in five years.

The biggest factor affecting the State's ability to pay was the 1991 enactment of the personal income tax of 4.5% with the establishment of a statutory spending cap. The 1991-92 budget included substantial cuts in spending (about \$1 billion in current services) and about \$1 billion in new taxes from the personal income tax. In order to garner the needed votes for the budget and to address public concerns, the legislature included a statutory spending cap and provisions for holding a statewide voter referendum on enacting a spending cap as a constitutional amendment, which was passed by the voters in November, 1992.

Secretary Ryan testified that while the spending cap (State Ex. #3, CGS Sec. 2-33A) allows the State to spend more money each year, it restricts the amount of the increase to the greater of the increase in personal income defined as the average of the annual increase in personal income in the state for each of the preceding five

years; or the percentage increase in inflation, defined as the increase in the Consumer Price Index (CPI) for urban consumers during the preceding twelve-month period. In addition, he explained that the spending cap applies only to certain types of expenditures and others are exempt or "uncapped." None of the uncapped expenditures have any significant relation to the salary issues in this arbitration. As noted by the State, the increases in the costs associated with funding this agreement are subject to the spending cap and are limited by it.

In addition to the statutory spending cap, the constitutional spending cap controls expenditures by incorporating a balanced budget provision, which provides in part that "the amount of general budget expenditures authorized for any fiscal year shall not exceed the estimated amount of revenue for such fiscal year." In Section 18(b) the constitutional cap limits increases in general budget expenditures to the greater of: the percentage increase in personal income or the percentage increase in inflation. In addition, surpluses must be used to fund the budget reserve and to reduce bonded indebtedness. Exceptions to the spending cap require a declaration from the governor that there exists an emergency or extraordinary circumstances. Following this, there must be a 3/5ths 60% supermajority vote of each house of the General Assembly in favor of the exception.

The amendment also provides that the legislature will enact legislation to define the terms and that general budget expenditures "shall not include expenditures for payment of bonds, notes or other evidences of indebtedness." (State Ex. #4.) The enactment of these definitions must be by a 3/5ths vote of each house, but this has not been done. In the absence of such legislation, the State Attorney General has issued a Formal Opinion dated April 14, 1993 that "the statutory provision [Section 30 of Public Act 91-3] remains in place and will so remain until replaced by the requisite Constitutional definitions." (State Ex. #5.)

The Union's expert witness, Professor James P. Stodder, criticized Secretary Ryan's adherence to the spending cap (which the State has done since 1993), noting: "The Cap is a political not a legal constraint." (Union Ex. #4.) However, quite the opposite is true, the State contends. The General Assembly can only exceed the cap if the Governor declares an emergency of extraordinary circumstances and at least 3/5ths of the members of each house vote in favor. In the past the Governor has issued a declaration to exceed the cap under limited circumstances, including but not limited to when the State had an extremely large surplus, the budget reserve fund was fully funded and retiring low-interest debt was not cost-effective.

On each occasion when asked, the General Assembly has voted to exceed the cap. Thus, the State points out, the cap was not repealed and remains in effect because definitions for a constitutional amendment have never been voted upon. Absent the Constitutional definitions, the spending cap remains good law and the Governor and the General Assembly are bound by its terms.

According to the State, Dr. Stodder ignored the one fact upon which Secretary Ryan and the Office of Fiscal Analysis (OFA) agreed, and that is that both the Governor and the OFA estimate revenue shortfalls in FY 2004 and FY 2005, and shortfalls in the transportation fund in FY 2005 and 2006 as well.

The State points out that notwithstanding fiscal constraints and large surpluses, both the executive and legislative branches project sizeable budget deficits in the out years. Those projections assume that the State lives within the constraints of the spending cap. Any deficiencies, the State contends, will exacerbate predicted deficits.

The State points out that it has a variety of competing obligations to fund including: State employee unfunded pension liabilities, which totaled \$4.3 billion at the end of FY 2000. The fiscal year 2001-03 pension costs are 20.6% higher than in the prior biennium, and health insurance costs for the same period are projected to be 31.3% higher than in the prior biennium. In addition, several State agencies face budget shortfalls as a result of unforeseen circumstances. The State needs to expand its prison facilities. The University of Connecticut Health Center and the Hospital Board of Trustees approved budgets that will increase support to the Health Center by \$14.4 million annually.

Within the Department of Children and Families, there are continuing costs associated with implementing a court-ordered consent decree, which will place pressure on the Department's budget. The Governor's budget will add \$15 million in FY 2002 and \$24 million in FY 2003 for behavior health services for children.

In FY 2004 the SDE will face significant increases in the cost of the Education Cost Sharing (ECS) Grant, as the ECS cap will be eliminated, resulting in an increase in the ECS of \$102 million. By the end of 2004 the State will need \$175 million to fund it. The Department of Mental Retardation has a waiting list of more than 1,400 mentally handicapped persons awaiting community placement. Its budget will increase almost \$64 million over the biennium to maintain current services. These economic requirements demonstrate that dollars can only be spent once, and the State must do so carefully given the various demands on the limited resources.

The statute provides that expenditures beyond the cap "shall not be considered general budget expenditures for the current fiscal year for the purposes of determining general budget expenditures for the ensuing fiscal year..." This, the State asserts, is very important in considering its LBOs on the GWIs.

With regard to the State's economic condition, the State calls attention to its experience, and notes that while the personal income tax has stabilized government revenues and allowed the State to repay past deficits, it has not created a "bottomless money pit" of State revenue.

Secretary Ryan noted that while capital gains growth has been extraordinary due to massive appreciation of equity in the late 1990s, which has resulted in larger capital gains tax revenues and large budget surpluses, he does not believe that they will continue into the future, given the decline in the stock market and lower capital gains. He also believes that the rate of economic growth will decline. Taking 1999 as a base year to 2000 the economic growth rate was about 8.5% in general fund revenue. He expects it to go down to around 6.4% in 2001, and 4% in 2002 and 2003.

Connecticut is number one in terms of per capita personal income, per capita tax burden (\$2932 in 1999, 60% higher than the national average), and per capita debt. Connecticut residents pay the highest tax in the nation, which is \$18.80 per \$100 of income. (State Ex. #2, p. 29.) This is significantly higher than some of the other New England states such as Vermont and Rhode Island. While Connecticut is number one in terms of the amount of taxes paid without relation to income, its actual per capita tax burden puts it 26th in the middle of all 50 states, when measured as a percentage of personal income.

Dr. James P. Stodder, Clinical Assistant Professor at the Lally School of Management and Technology, Rensselaer Polytechnic Institute at Hartford, CT made a presentation on behalf of the Union with a prepared report entitled, "State Finances and School Administrators in Connecticut, April 24, 2001." (Union Ex. #4.) He noted that the Connecticut Office of Fiscal Analysis (OFA), the legislative research arm, predicts:

A slower national economy with real GDP growth slowing to around 2.5% in 2001 and then picking up in 2002 and 2003 to around 3.0%. These GDP forecasts are based on Economy.com forecast models and are similar to the forecasts of the Congressional Budget Office. The Connecticut economy is expected to slow in a similar manner, with slower job and real personal income growth in 2001 and picking up in 2002 and 2003. "Analysis of Governor's Budget, March 1, 2001," OFA, p. 2.

The Union points out that while there is a spending cap in place, it applies to only certain expenditures, and that the Governor's spending package places millions of dollars outside of the cap. His interpretation, however, has been challenged by OFA, which has indicated that many items belong under the cap. As noted by Secretary Ryan, until the spending cap is further defined by the legislature, this issue will remain open, unclear and debatable.

Moreover, the Union notes that the cap is not hard and fast, but can be relaxed, as it has been in each of the last three years, and as will likely occur again this year. As shown in the graph in State Ex. #2, the surpluses have been used to pay off debt and to replenish the Budget Reserve Fund, which had been totally depleted. It also

shows that in every fiscal year since FY 97, the statutory procedure has been followed, and a significant part of the surplus has been used for "other" expenditures, thus spending beyond what the cap would allow.

Consequently, the Union argues, the cap relied upon by the State in its inability to pay claim, is no impediment at all. It asserts that the ability of the state to pay is a function of its overall economic situation, including its current revenue and those projected, and is related to its taxing structure, the unemployment rate, and other economic indicators. According to the Union, the spending cap is only indirectly related to the ability to pay factor as it currently exists in the State. While not clarifying exactly what is or is not subject to the cap may be a wise political strategy for the legislature to allow for budget negotiations among competing interests, it nonetheless demonstrates that the cap is not the rigid, inflexible restraint implied by its name.

The Union submits that the cap is largely irrelevant to a determination of the ability of the State to pay, and what really matters is the health of the economy and how the taxing structure is performing. The evidence introduced by both parties shows strong growth in State revenues with projected growth through FY 06 at a rate over 4% each year until then. As noted by Professor Stodder, the non-partisan Congressional Budget Office in Washington, D.C., the non-partisan Office of Fiscal Analysis in Hartford, the leading private economists and the Governor's own budget all share the opinion that medium and long-term outlook are excellent in both the U.S. and Connecticut. (Union Ex. #4, p. 2.)

The Union points out that Connecticut has reclaimed all the jobs lost during the recession of the early 1990s and its current unemployment rate, which is about 2% below the national rate, is so low that there are labor shortages. In his report, Professor Stodder noted: "This tight labor market creates challenges for the state in the field of labor relations." (p. 9.) He went on to say:

The overall tightening of the labor market has certainly been seen for school administrators. According to the Committee on the Future of School Leadership in Connecticut, in a study published last year [9/21/00], the field faces a "shortage of candidates and high administrative turnover." Reflecting this, the median number of applicants per district declined from 60 in 1990 to 30 in 2000, according to this report--a decline of 50 percent. This decline in actual supply stands in stark contrast to a rise in potential supply--the number of teachers who have obtained administrative certification. According to the report there are now more than two-and-a-half times as many administratively certified teachers as there are people working in school administration and this ratio has been increasing.

The reasons they are not coming forward to apply for the open principals' jobs, according to the report, has to do with:

insufficient authority compared to responsibility, **inadequate compensation for the scope and complexity of the job**, and a lack of public understanding of the role and escalating demands on educational administrators. The Future of School Leadership in Connecticut, Sept. 2000, p. 2. Emphasis added.

* * * *

A dwindling supply of people willing to work, especially when matched with an increase in the number of people actually qualified to do that work, points to some combination of inadequate wages and poor working conditions. This is just elementary logic, it does not require any advanced degrees.

Professor Stodder concluded:

As the state with the nation's highest per-capita income, and one of its most educated populations, Connecticut is certainly capable of providing better conditions—for its students, teachers, and school administrators. (p. 10.)

The Union notes that the State bonded its deficits in the early 1990s through Economic Recovery Fund notes, all of which have since been paid off. While in the early 1990s the State had depleted its Budget Reserve Fund, also known as the "Rainy Day Fund," it is now filled to the amount allowed by statute, which is 5% of the State's General Fund revenues.

The personal income tax instituted in 1991 is a progressive tax. As pointed out by Professor Stodder, it is "prejudiced" to lead to annual surpluses, which have occurred in every year since 1995, reaching a high of \$702 million in FY 99. While Secretary Ryan's documentary presentation included a projected surplus of \$501 million for this year, during his testimony he stated that the current number was closer to \$570 and counting. During this period Connecticut was cutting taxes to both corporations and individuals, which the Secretary estimated to amount to \$400 million dollars.

Finally, Secretary Ryan testified that the Governor's budget originally contained a 3.0% general wage increase and an annual increment in FY 02 and FY 03 for State employee contracts. The Union concludes that the ability to pay exists, that the State is in a solid position, and that the ability to pay factor runs in favor of the employees, who contributed to the solution in the first half of the 1990s.

In its Reply Brief, the Union notes that as to the condition of State revenues, it is not true that there will be revenue shortfalls as stated on page 18 of the State's Brief. State revenues are largely tied to the personal income tax. Connecticut has the highest per capital income in the nation.

All the evidence showed predictions of growth in the personal income of Connecticut's citizens. In fact Secretary Ryan acknowledged that as the state spending cap allows for an increase in spending tied to a five-year average, there is no doubt that revenues will grow.

Consequently, the Union maintains, there will be no "sizable deficits" as predicted by the State in its brief (p. 18). The State's claim of future budget shortfalls two years from now is based on an assumption that the current appropriations committee budget will be adopted. However, this is speculative and ignores the fact that the spending cap will continue to allow increases in the budget in future years. It totally ignores the historical reality that State government has and most likely will use the \$580 million surplus this year to address deficiencies in 2000-01 and future expenditures in 2001-03. The Union notes that the projection of sizable deficits in future years amount to .02% and .04% of the total budget and therefore the use of the word "sizable" is hyperbolic.

I note that these same experts made similar presentations to Arbitrator Healy in the Interest Arbitration between the State of Connecticut and New England Health Care Employees Union District 1199, for the P-1 and NP-6 health care professionals bargaining units. In his Award (Jt. Ex. 51) he summarized their testimony as follows:

The "expert" witnesses concerned themselves with the macro and micro considerations in dealing with the economic environment. Macro in the sense that they addressed the general state of the economy in the United States. More attention was given to the state of the economy in Connecticut, past, present, and the reasonably predictable future. As part of the micro analysis considerable attention was given to the special legal constraints applicable in Connecticut which could limit the State's ability to pay the costs inherent in the adoption of Union proposals. Professor Stodder had also prepared for these proceedings, a special research report on "State Finances and Health Care Labor in Connecticut."

The following areas of the testimony are highlighted because of their importance in assessing the merits.

First, the evidence shows clearly that a decade ago the State was suffering from a serious economic malaise. There were budgetary crises which prompted the State to seek--and often obtain--not only moderation in bargaining ...settlements, but also in some instances, concessions. The economic climate inspired fiscal monitors to seek public policy restraints on the State's spending ability. The consequences of these efforts will be discussed below .

Second, in more recent years there has been a dramatic reversal in the economic fortunes of the country as a whole and in the State of Connecticut. Budget surpluses, not deficits, became the recurrent pattern. The Union, in Brief, implies that the State fiscal monitors became so conditioned by the bleak budget years that they repeatedly underestimated the budget surpluses in more recent years.

Third, predictions concerning the state of the economy nationally and in Connecticut was discussed. The forecasts were mixed. Although the estimates for FY 2002 and 2003 are favorable, both the Governor's Office and the Office of Fiscal Analysis are now predicting revenue shortfalls in FYs 2004 and 2005, and even the outlook for the so-called Transportation Fund, which often provides some budgetary relief, is not favorable 4-5 years hence.

Fourth, it is appropriate to highlight the importance of the statutory spending cap which was adopted in the early 1990's and endorsed, as a constitutional amendment, by the voters by a 4 to 1 margin. The spending cap, in effect, was a **quid pro quo** for the enactment (after considerable legislative/executive jockeying) of a personal income tax.

The statutory spending cap imposes a limit on "budget expenditures" based upon the greater of two figures (a) the increase in personal income as defined in the amendment and (b) the percentage increase in inflation during the preceding 12-month period. Certain expenditures are excluded from the spending cap (e.g. money for the Budget Reserve Fund). The exclusions identified in the statutory cap do not apply to any of the wage/benefit cost items included in the Union proposals.

* * * *

The issue raised... by the two expert witnesses on general economic background concerns the force and effect of the statutory/constitutional spending caps. ...it is sufficient to note the conclusion of Professor Stodder, who said, "the Cap is a political not a legal constraint." (See State Brief, p. 5 and Union Brief, p. 3.)

The circumstances leading up to the Governor's declaring a need or basis for exceeding the cap were described. In each case the General Assembly gave the necessary (and formidable, 3/5ths majority).

The arbitrator is not seduced by either the evidence or the arguments that the statutory/constitutional spending limits have lost their significance and legal effectiveness. Even if the Rembrandt-stroke characterization of the caps is nothing more than political symbols with little or not binding legal force--even if such depiction were shown to be valid in the basis for gubernatorial/general assembly conduct, this arbitrator refuses to indulge in similar alleged conduct. **He regards the spending cap as a formidable constraint and will respect its effect in the selection of final offers involving public expenditures.**

In summary, the arbitrator finds that the economic outlook for the initial fiscal years (02 and 03) is reasonably good. However, in the later years there is uncertainty. Professor Stodder, citing several respected sources on economic projections, concluded the Connecticut

economy would grow at a rate of about 3% adjusted for inflation, through 2004, with personal income growth reaching 4%/year through 2004. The State's expert, as noted above, believes some special austerity measures will be needed in the not too distant future. Jt. Ex. #51, emphasis added.

I agree with much that Arbitrator Healy has to say in the above decision, particularly as highlighted above. I too will take the economic, financial and fiscal evidence, including the spending cap, into account in rendering an award.

CHANGES IN THE COST OF LIVING:

The State points out that there has been a substantial increase in P-3A salaries since the advent of collective bargaining in 1977, and that this exceeds changes in the National CPI-U from 1977 to 2001 by a substantial amount. A graph prepared by Mr. McDonough shows that since the first contract to date there has been an increase in the maximum rate of 278.2%, and only a 102.4% increase in the National CPI and 194.8% in the Northeast CPI.

The current contract shows a 9.8% increase in wages and a 10.7% increase in the National CPI and 10.1% in the Northeast CPI. The State maintains that when coupled with annual increments of 2.01%, 1.77%, 1.20% and .84%, as reflected on the 1997-2001 cost sheet as well as Article 11, merit pay eligibility, P-3A members have continuously fared well ahead of the inflation rate.

Secretary Ryan testified that from FY year 1996 through FY 2001 the total non-compounded general wage increase for P-3A members amounted to 15.5%, while CPI for the same period increased 15.1%. When the general wage increase is combined with the annual increments and other salary adjustments, including merit promotion and merit pay, P-3A members have received increases well above the CPI during this period. Based on the State's proposals, they will continue to do so in the future. Projected increases in National CPI are expected to hover in the 2.4% to 3.2% range through FY 2003-04. (State Ex. #2.) The State argues that these cost of living increases, particularly when considered in the light of raises received by this unit in recent years, show that there is little justification for the salary increases sought by the Union here.

The Union's rejoinder is that the State's cost of living argument has no legs, as CPI is only a factor, not an absolute ceiling. The Union points out that the general wage increase does not equate to a COLA clause, and is only an increase in wages. The amount of a GWI any year is determined by all the statutory factors, not just the CPI. The Union notes that the comparison done by the State in State Ex. #7 as to CPI vs. GWI demonstrates only that from 1995 to 2001 the CPI and the GWI are about equal. If anything, it shows no real wage improvement during that period. Going back two more years to 1993 when P-3A froze its wages, shows that from that year until 2001, P-3A employees had an actual loss of earning power.

I note that in his Award for P-1 and NP-6 Arbitrator Healy made the following findings with respect to Cost of Living:

During the life of the now expiring contract the cost-of-living increased at a modest pace for the first three years, about 2% per year. The increase in 2000 was more substantial (3.7%). The Union... refers to compounded wage increases for the period at 16.5%, contrasted with the compounded CPI increase of 23.0%, indicating a loss for unit members, one which was avoided in part because of the dollar value of the SCOPE settlement....

The State's analysis is somewhat different. Secretary Ryan testified the non-compounded 1199 wage increases from FY 96 through FY 01 for the 1199 units totaled 15.5% vs. a CPI increase of 15.1% for the same period. But what the State stresses more is the fact that the Union's reference to cost-of-living ignores the salutary impact of annual increments. If these are considered, the 1199 unit members are shown to be well above

the CPI during the past contract.

The arbitrator concludes that the affected employees have not suffered in recent years when status is assessed by reference to cost of living. In terms of total compensation they have experienced some, albeit modest, gains. Given the inclusion in statute of the somewhat vague criterion "interests and welfare of the employees," a reference to "real" wage/salary gains is appropriate. Keeping up with the CPI is not enough over a reasonable period of time. **A sustained treadmill status does not allow for the net improvement consonant with the interest and welfare of employees. In summary, it is consistent with legislative intent to consider some increase in level of pay which goes above past or anticipated CPI, absent a showing that such level would create serious inequities.** [Jt. Ex. #51, Emphasis added.]

I agree with Arbitrator Healy in this regard, and while mindful of the cost of living, will not limit this Award to those numbers, given the evidence on other statutory factors.

INTERESTS AND WELFARE OF THE EMPLOYEES:

The State contends that its proposals serve the interests and welfare of this unit. Its LBOs will keep employees ahead of the inflation curve. P-3A will also maintain its status as the highest paid unit amongst the executive branch units as well as continue to hold a favorable position in relation to comparable state and municipal educators. It would not be in the employees' interests to obtain large wage increases only to be subjected to potential wage concessions experienced in the early 1990s. The State concludes that its wage offer represents a balanced approach to employee compensation in this unit, which will maintain employees' standard of living while at the same time gain acceptance from the legislature and the citizenry of the State, who ultimately pay the price.

The Union does not agree that its proposals will subject employees to concession bargaining. Rather, it maintains that its LBOs are in keeping with the settlements and awards for other units.

The members of this bargaining unit, while small in number, are large in functions and responsibilities. Their interests and welfare entitle them to continuation of their past contractual gains, and to improvements during the term of the successor contract. They have made concessions during a period of severe economic and fiscal constraints, recouped some of those losses in more recent years, and should be able to continue to move forward. I believe that this Award will permit them to do just that.

STIPULATIONS: The parties stipulated to the following:

Re: P-3B- Education Professions Unit:

1. The extended pay plans for Teachers and Instructors of the P-3B was the result of previous negotiations between the parties extending back to 1980;
2. The Supervisor salary schedule combined 2 formerly 7-step schedules into a 10-step plan whereby employees with a sixth (6th) year certificate in the appropriate area of certification are assigned to Steps 3 to 11 while employees without such sixth (6th) year certification are assigned steps 1-8. (See P-3B Contract, p. 38.)

Re: P-3B Negotiations: In recent negotiations between the State and CSEA as to the P-3B unit

1. CSEA did not make any proposal as to P-3B's vehicle use fee, which currently is \$4.25.
2. CSEA withdrew its proposal for one additional leave day for the purpose of

attending to the educational needs of members' children.

Re: P-4 - Engineering, Scientific and Technical Unit:

1. Approximately 2000 out of 2800 P-4 employees are on pay plans of 10 or more steps.
2. The eighth, ninth and tenth steps of the P-4 pay plan were created effective June, 1989 due to the OJEReopener. (Jt. Ex. #29, P-4 Contract, pp. 33-34.)
3. A "non-traditional" eleventh step was added in the SCOFE negotiations in 1995.

Re: Joint Exhibits: The parties have agreed to reference the following documents as Joint Exhibits....

1. Joint Exhibit 3C - State's January 23, 2001 package proposal submitted by the Union during negotiations;
2. Joint Exhibit #51 - Arbitrator James J. Healy's Award dated May 16, 2001 in the P-1 and NP-6 Interest Arbitration proceedings between the State and District 1199.

THE ISSUES: The following issues have been resolved:

Issue #1:	Employee Bill of Rights Article 7, Section One	RESOLVED
Issue #2:	Employee Bill of Rights Article 7, Section Six - New	RESOLVED
Issue #3:	Non-discrimination Article 8, Section Three - New	RESOLVED
Issue #4:	Exclusions from the Grievance Procedure Article 15, Section Ten (g)	RESOLVED
Issue #5:	Membership in Professional Organizations Article 17, Section Seven (h)	RESOLVED
Issue #6:	Compensatory Time Off Article 18, Sections One and Three	RESOLVED
Issue #7:	Grievability of Compressed Work Schedules Article 18, Section Eight e	RESOLVED

I have chosen to take one of the issues, #24, Duration, out of order because the length of the successor contract dictates a number of other issues in this proceeding. The remaining issues will be taken in the order in which they were introduced.

Issue #24: **Duration**
 Article 38, Section One

Current Contract Language:

Section One. This Agreement shall be effective on July 1, 1997 and shall expire on June 30, 2001.

State's LBO: Delete Section one and replace with the following:

Section One. This Agreement shall be effective on July 1, 2001 and shall expire on June 30, 2004.

Union's LBO: Continue to have a four-year contract as follows:

Section One. This Agreement shall be effective on July 1, 2001 and shall expire on June 30, 2005.

Discussion: The parties currently have a four-year agreement. Because of the uncertainty of the economic future, the State seeks a contract no longer than three years, which is the length of the majority of past contracts. It points to the testimony of OPM Secretary Ryan, who, relying on economic uncertainties of the final year, expressed misgivings about a four-year agreement. He did not want to be placed in the position of seeking concessions from the Union when budget shortfalls left the State with an inability to pay for the fourth year of the contract. While the last contract was for a four-year term, that was because of the late negotiations and arbitration proceeding. Thus, it was similar to having a three-year contract. The State also points out that three-year agreements are the predominant pattern in local school districts. Of the 17 contracts included in State Ex. #9, eleven have a duration of three years. Therefore, it asks that a three-year contract be awarded.

The Union proposes to continue to have a four-year contract for five reasons: (1) the parties' practice in two contracts, each of which lasted for four years; (2) stability, so employees know their economic future; (3) alignment with the mandated State biennial budget process; (4) placing P-3A employees on the same schedule as two much larger bargaining units--NP-6 and P-1, whose contracts will run from 2001 to 2005; and (5) the projections through FY 05 are as solid as those for the three prior fiscal years. The Union points out that the Governor's projections through FY 06 are for over 4% revenue growth, and that Secretary Ryan has consistently underestimated surplus revenues by hundreds of millions of dollars. It also asserts that his prediction for future drops in capital gains revenue for FY 02 is already substantially damaged by the rise in the stock market since his April testimony.

Currently, the State is considering a two-year budget effective from July 1, 2001 to June 30, 2003. Thus, the Union argues, it makes sense to negotiate contracts before those budgets are set by the General Assembly. It also notes that the State is not adverse to long-term contracts. In 1997 it negotiated a 20-year arrangement with SEBAC for health care and pensions.

I note that other State bargaining units have long-term contracts. The State Police NP-1 unit negotiated with the State for a five-year contract, which is in effect from 1999 to 2004. This issue was considered by Arbitrator James J. Healy in his May 16, 2001 Award for the P-1 and NP-6 units. (Jt. Ex. #51.) He noted that eight of the ten State bargaining units have terms of at least four years, and that the statutory factors favor the Union's LBO for a four-year contract. Referencing Secretary Ryan's uncertainty, he noted:

However, bargaining history for the Union and other State units shows that this uncertainty has not been an inhibiting factor in the adoption of 4-year agreements nor has such adoption led to any proven negative consequences.

Also noting the difficulty the State and District 1199 had over the years in obtaining negotiated settlements, and the recurrent resort to LBO arbitration, he concluded that "the stability afforded by a longer-term contract will lessen the recurrent frustration described by the State." For these reasons he adopted the Union's LBO of a contract duration of four years. I note that to adopt the State's proposal here would put the Union out of step with the budgetary process, which may create more problems. I agree with Arbitrator Healy's assessment here and will make the same award.

AWARD: Union's LBO.

Issue #8: **Temporary Service in a Higher Classification**
Article 19, Section Three

Current Contract Language:

Section Three. No employees shall be required to perform temporary service in a higher classification without his/ her consent. There shall be no loss in any of the rights, provisions or benefits of this contract to an employee as a result of temporary service in a higher classification.

State's LBO: Delete Section Three and replace it as follows:

Section Three. There shall be no loss in any of the rights, provisions or benefits of this contract to an employee as a result of temporary service in a higher classification.

Union's LBO: Continue current contract language as stated above.

Discussion: The contract presently provides that employees may not be required to perform temporary service in a higher classification without their consent. The State proposes to delete that sentence, and continue the second sentence unchanged, thereby making such service involuntary. Thus, the issue is whether employee consent should be required before making an assignment to temporary service in a higher class.

The State proposes to delete the requirement of consent because assigning employees to temporary service in a higher classification is a basic, fundamental managerial right. It argues that an employee should not have the opportunity to interfere with this basic right by withholding consent, particularly in a unit of this professional caliber. Temporary service assignments allow the Agency to maintain smooth and efficient operations by filling often unexpected gaps in departmental responsibilities. This promotes the collective interests and welfare of employees.

The Union states that it is at a loss to respond to this issue since nothing was introduced to support it. There was no evidence that any employee had refused or even been asked or that there have been any "temporary" problems. Absent a showing of need, the Union argues that the status quo should be retained.

Absent evidence of a need to change this, and in the interest of maintaining the status quo, I will not adopt this proposal at this time.

AWARD: Union's LBO.

Issue #9: **General Wage Increase for 2001-2002**
Article 27, Compensation, Section One (a)

Current Contract Language:

Section One: (a) Effective January 2, 1998, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(b) Effective January 15, 1999, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(c) Effective January 14, 2000, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(d) Effective July 14, 2000, the base annual salary for all bargaining unit employees shall be increased by three and one-half percent (3.5%).

Union's LBO: Substitute the following Section One (a):

(a) Effective July 1, 2001, the base annual salary for all bargaining unit employees shall be increased by three and one-half percent (3.5%).

State's LBO: Delete Section one (a) and replace it as follows:

(a) Effective the first pay period following July 1, 2001, the base annual salary for all bargaining unit employees shall be increased by three percent (3.0%).

Discussion: The issue here is the percentage of the general wage increase to be effective in the first year of the contract. The Union has proposed 3.5% and the State 3.0%--only 1/2% difference. Most of the arguments concerning this issue and the next three are set forth above under the various factors.

The Union maintains that the primary comparable for the resolution of Issues #9-#12 should be the settlements and awards in other State of Connecticut units. The State agrees. The evidence indicates that a pattern has emerged from the various settlements and awards. Every contract in every year has a 3.0% wage increase for the period 2001-2004, with the exception of the Interest Arbitration involving P-1 and NP-6 unit employees, where Arbitrator Healy awarded a 3.5% increase in 2001-02 and 2.5% in 2003-04--a difference that is hardly a difference. The total increase remains essentially the same. Of significance is the award of 3.0% for 2004-05, the fourth year.

The Union contends that the statutory factor as to existing conditions of similar employees clearly favors at least a 3.0% per year general wage increase for P-3A unit members. No evidence supports less and the economic conditions do not warrant any diversion from this pattern.

Moreover, other wages in the relevant labor market all show (Union Exs. #10, #11-13 and State #9) increases of at least 3.0% and, in most cases, more for the market of educational professionals. Thus, the Union argues that the statutory factors show its LBO's on Issues #9-#12 to be more reasonable than those of the State.

The State notes that while two of the units have general wage increases of 3% in fiscal year 2003-04, those increases were negotiated or arbitrated before the evidence regarding the projected budget shortfalls was available. Based upon the new information the State proposes a less generous general wage increase of 2.5% in the third year--Issue #11. It asserts that going to a fourth year would be entirely too speculative to take a fiscally responsible position. Given Secretary Ryan's testimony, it would be more prudent to allow the parties to negotiate the fourth year of the Agreement when working with solid figures instead of projected deficits. If, however, the arbitrator concludes that there should be a fourth year, then the State argues that its conservative proposal of a 2.0% increase is more reasonable based on the projections of the Governor and the Office of Fiscal Analysis. For all these reasons, it asks that the arbitrator award the State's LBOs on Issues #9-#12.

In the Interest Arbitration proceeding before Arbitrator Healy, the parties made the following LBOs:

Contract year	Union LBO	State LBO
2001-02	3.5%	3.0%
2002-03	3.5%	3.0%
2003-04	3.0%	2.5%
2004-05	3.0%	2.0%
	Total: 13.0%	10.5%

He noted:

Keeping up with the CPI is not enough over a reasonable period of time. A sustained treadmill status does not allow for the net improvement consonant with the interest and welfare of employees. In summary, it is consistent with legislative intent to consider some increase in level of pay which goes above past or anticipated CPI, absent a showing that such level would create serious inequities.

He awarded 3.5% for the first year of the health care contracts, noting:

Based on the forecast of CPI adjustments in the immediate years ahead, the likelihood of a reduction in the rate of economic growth, a State budget shortfall whose impact is likely to be felt several years hence, and the comparative status of the covered employees of a general increase package of the following LBOs is endorsed for a 4-year contract:

- 1) The Union's LBO of a 3.5% general wage increase for FY 2002 is adopted.

For the following fiscal years he awarded 3.0%, 2.5% and 3.0% for a total of 12% over four years. Then he noted:

The facile notion that this package is nothing more than "splitting the difference" is not valid. The combination enables the employees involved to continue to make some real gains in economic status during the life of the contract, with increases that are likely to exceed by a modest margin the CPI adjustments. By moderating the adjustments in the last two years, the strain on the predictable State resources are moderated. At the same time the annual adjustments are not disparate from the comparative changes in the Executive branch or in the general labor market. (Issues 1-4:5.)

In view of the fact that Arbitrator Healy and I had essentially identical evidence put before us with regard to economics, CPI, the conditions of comparable State units and some of the other statutory factors, and the only differences are the outside comparable and the rates and benefits specific to each respective unit, some of which are very similar, if not the same; and given that in general I agree with his analysis and conclusions, there appears to be no valid reason to detour from his Award.

Giving the employees in P-3A general wages increases of 3.5%, 3.0%, 2.5% and 3.0% for a total of 12% over four years takes into account the State pattern, the negotiating history; the existing conditions of employment of similar group of employees; the wages, fringe benefits and working conditions prevailing in the labor market; 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,... and all other benefits received by such employees; the possibility of deficits toward the last years of the contract and the employer's ability to pay; changes in the cost of living; and the interests and welfare of the employees. Accordingly, I shall render the same Award.

AWARD: Union's LBO.

Issue #10: General Wage Increase for 2002-2003

Article 27, Compensation, Section One (b)

Current Contract Language:

Section One: (a) Effective January 2, 1998, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(b) Effective January 15, 1999, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(c) Effective January 14, 2000, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(d) Effective July 14, 2000, the base annual salary for all bargaining unit employees shall be increased by three and one-half percent (3.5%).

Union's LBO: Substitute the following Section One (b):

(b) Effective July 1, 2002, the base annual salary for all bargaining unit employees shall be increased by three and one-half percent (3.5%).

State's LBO: Delete Section one (b) and replace it as follows:

Section One: (b) Effective the first pay period following July 1, 2002, the base annual salary for all bargaining unit employees shall be increased by three percent (3%).

Discussion: The issue here is the amount or percentage of the general wage increase in the second year of the contract. The Union has proposed 3.5% and the State 3%, a difference of one-half a percent. The parties' arguments are set forth in Issue #9 and earlier. As noted above, Arbitrator Healy adopted the State's LBO of a 3.0% general wage increase for FY 2003. For reasons stated above, I shall adopt the State's LBO as well.

AWARD: State's LBO.

Issue #11: General Wage Increase for 2003-2004
Article 27, Compensation, Section One (c)

Current Contract Language:

Section One: (a) Effective January 2, 1998, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(b) Effective January 15, 1999, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(c) Effective January 14, 2000, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(d) Effective July 14, 2000, the base annual salary for all bargaining unit employees shall be increased by three and one-half percent (3.5%).

Union's LBO: Substitute the following Section One (c):

(c) Effective July 1, 2003, the base annual salary for all bargaining unit employees shall be increased by three percent (3%).

State's LBO: Delete Section One (c) and replace it as follows:

(c) Effective the first pay period following July 1, 2003, the base annual salary for all bargaining unit employees shall be increased by two and one-half percent (2.5%).

Discussion: The issue here is the amount or percentage of the general wage increase in the third year of the contract. The Union has proposed 3% and the State 2.5%, a difference of one-half percent. The parties' arguments are set forth in Issue #9 and earlier. As noted above, Arbitrator Healy adopted the State's LBO of a 2.5% general wage increase for FY 2004. For reasons stated above, I shall adopt the State's LBO as well.

AWARD: State's LBO.

Issue #12: **General Wage Increase for 2004-2005**
Article 27, Compensation, Section One (d)

Current Contract Language:

Section One: (a) Effective January 2, 1998, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(b) Effective January 15, 1999, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(c) Effective January 14, 2000, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

(d) Effective July 14, 2000, the base annual salary for all bargaining unit employees shall be increased by three and one-half percent (3.5%).

Union's LBO: Substitute the following Section One (d):

(d) Effective July 1, 2004, the base annual salary for all bargaining unit employees shall be increased by three percent (3%).

State's LBO: The State has a LBO for Issue No. 24, Article 38, Section One, Duration, that proposes a three-year Agreement. As such, there would be no general wage increase for a fourth year. However, in the event that the Arbitrator selects the Union's LBO in Issue No. 24, the State makes the contingent LBO of deleting Section one (d) and replacing it with Section one (d) as follows:

(d) Effective the first pay period following July 1, 2004, the base annual salary for all bargaining unit employees shall be increased by two percent (2%).

Discussion: The issue here is the amount or percentage of the general wage increase in the fourth year of the contract, which I previously awarded. The Union has proposed 3% and the State 2%, a difference of one percent. The parties' arguments are set forth in Issue #9. As noted above, Arbitrator Healy adopted the Union's LBO of a 3.0% general wage increase for FY 2005. For reasons stated above, I shall adopt the Union's LBO as well.

AWARD: Union's LBO.

Issue #13: **Upgradings**
Article 27, Compensation, Section One (e) - new

Current Contract Language: None

Union's LBO: Add the following new subsection (e):

(e) Effective July 1, 2001, a ninth step and a tenth step will be added to the pay plan for all

classifications. The ninth step shall be two and three-quarters percent (2.75%) above the eighth step and the tenth step shall be two and three-quarters percent (2.75%) above the ninth step.

State's LBO: The current salary grades and the number of steps in the pay schedules shall remain unchanged.

Discussion: The issue is whether employees should receive salary group upgradings and whether there should be two steps added to the top of the pay schedules. This is the most difficult of all the issues presented here.

The Union proposes the addition of two steps to the pay plan for all classifications, each valued at 2.75%. This value was chosen because it represents the difference between the current next to the last step (7) and the current last step (8). Thus, the Union built out these added steps at the same value as has been the practice in order to maintain the integrity of the plan. The value was also set at 2.75% to achieve the compensation levels the Union maintains are needed to keep pace with the maximum pay for comparable positions.

The Union points out that the history of the parties is that adjustments over and above GWIs have been necessary to maintain a competitive compensation structure. The LBOs of both parties in 1987-90 contained significant increases in addition to the GWI, and in the next contract they agreed to upgrade the pay plans again. Thus, this proposal does not break new ground.

The Union points out the current round of settlements reflects additions to the maximum pay levels in a variety of units. In the NP-1 State Police unit, an extra 6% was added to the trooper top step above the GWI pattern with the bulk of the increase occurring in 2001-03. (State Ex. #7, cost sheets.) In NP-5, Protective Services, an award, which, in the words of Shaun McDonough was "not unexpected," provided for the addition of two steps to the pay plans, one in 1999-00 and the other in 2001-02, amounting to a 4% increase at the maximum. The Vocational-Technical Administrators also added steps to their contract. The recent award in the NP-6 and P-1 units provided for two extra steps to their pay plans. They now have eleven steps as do the State Police and Protective Services. In that case the Union argued that those on the top step had no further movement and that a tight labor market made for retention problems.

The Union asserts that the evidence shows that the labor market for educational administrators is tight and that "this was demonstrated over and over again in the hearings without any contradiction." (Union Brief, p. 19.) A document (Union Ex. #5) written by a blue ribbon commission, including the current Commissioner of Education, Theodore Sergi, resulted in a finding that there is a shortage of education administrators in the State and that must be addressed, in part, by increasing their compensation.

In addition, the report by Professor Stodder (Union Ex. #4) made note of the Committee's finding that in part the administrator shortage is due to "inadequate compensation." He concluded that it does not take an advanced degree to realize that where there is a dwindling supply of people willing to work matched against an increase in the number qualified to work, there exists a wage issue as contended by the Union. (Union Ex. #4, p. 10.)

The Union also points to other comparable with multiple step schedules including assistant principals, principals, curriculum directors, pupil services directors and superintendents. The data it introduced showed that in 1999-00, the average pay for principals at the maximum was \$94,229, as compared with a P-3A consultant in the same year, who had a maximum of \$86,951. In that year the average pay for assistant principals was \$82,588 at maximum, and for curriculum directors it was \$87,636. (Union Ex. #11.) In 2000-01 the average maximum for principals was \$96,906. In 1998-99 superintendent's earned an average of \$100,340. State Ex. #9 showed similar data at the maximums.

As attested to by Scott Schuler, all kinds of educators (principals, university faculty, central office curriculum coordinators, special education supervisors, district and assistant superintendents) come into and leave P-3A positions. The history of the hiring rate issue shows the on-going tight labor market and the need to keep pace with salaries. Regardless of how Issue #20 is decided, there is one common denominator--salaries in P-3A need to be competitive and consistently adjusted upward to attract professionals to fulfill the Agency's mission.

The Union submits that market data support its proposed addition of two steps. Without these steps and with four GWIs of 3.0%, in 2004-05 the Education Consultant will have a maximum salary of \$97,864. The steps are needed to keep pace with what has already happened in the school districts. Adding steps would place the consultant maximum at \$103,300 in 2004-05.

Finally, the Union asserts that if merit pay is offset the annualized estimate for this proposal is 1.43% in year one and 1.42% in year two. (Appendix B, Union's costing.) For all these reasons, the Union contends that its proposal is the more reasonable given the State's offer of no steps.

The State's rejoinder is that there is "absolutely no evidence" in the record to support the Union's proposal to add steps, which will present significant economic consequences for the State. As reflected in the cost estimate sheets of the Union's LBO, step differentials of 2.75% would add: 3.5% in extra cost over the first two years of the contract; and 4.17% in extra cost in the event that a four-year contract is awarded.

The State contends that the evidence does not support the Union's argument that this proposal was necessary to keep this unit competitive as to retention and recruitment, or the Union's indication that its hiring rate information would establish a need "to adjust this unit's compensation upwards."

The State maintains that P-3A is not experiencing recruitment or retention problems. Steps are warranted when there is a need to further compensate employees at the top step, e.g., when there is a need to retain long-term employees. While 56.2% of unit members are at the top step (State Ex. #7), retention has not been a problem. As of August, 2000, 119 out of 195 employees of SDE had ten or more years of seniority with the State. (State Ex. #20.)

For the three-year period from July, 1997 to October, 2000, only 29 employees resigned from SDE. (State Ex. #19.) P-3A's overall turnover rate for the period April, 1997 to October, 2000, is comparable to that of other executive branch, non-higher education units. (State Ex. #7, p. 4.) In fact, P-3A's turnover rate of 26.76% is lower than that for managers. This figure, as attested to by Mr. McDonough, includes both retirements and resignations. Accordingly, those who resigned are less than 26.76% of the unit as a whole over more than three years.

The articles submitted by the Union (Union Exs. #5 and #6) to support its claim of a tight labor market are totally irrelevant to members of the P-3A unit. Those articles deal with superintendents and principals of local school districts--positions that "are responsible for multimillion dollar public corporations having hundreds of employees and serving thousands of clients." (Union Ex. #5, p. 1.) P-3A administrator positions, which include classifications ranging from Education Support Technician to Education Consultant, are NOT comparable to superintendents and principals. (Jt. Ex. #32, P-3A job specifications.) Unlike superintendents, P-3A members do not serve as "the chief executive officer of the school district in matters of personnel, finance, day-to-day operations, and educational affairs." (Union Ex. #5, p. 3.) The State concludes that because these articles focus on principals and superintendents of local school districts, they have little probative value on the issue of additional steps for members of P-3A.

The SDEs practice of offering individual hiring rates above step one in limited instances does NOT indicate that the State is experiencing a "recruitment problem" in regard to P-3A education administrators. As shown by many of the hiring packages (State Ex. #14), there are substantial applicant pools for the advertised positions. For example, that of Kristina Elias-Staron establishes that for the specialized position of Education Consultant within DTL Curriculum and Instruction, there were 37 applicants, of whom thirteen were interviewed and three invited to return for a second interview. Two of the three were selected to fill the vacancies.

As attested to by Mr. Wilber, while a hiring rate may reflect the SDEs preference for the type of candidate it seeks to recruit, it does not translate into an inability to recruit or to a lack of qualified candidates. This is also supported by the hiring packages of Theresa Lawrence for the position of Associate Education Consultant, for which there were 120 applicants, of whom nineteen were interviewed and one selected; and Jeanne Purcell, where there were 36 applicants, four candidates interviewed and one selected. (State Ex. #14.) These documents hardly reflect a "recruiting problem." Rather, they substantiate the SDEs continuing need to hire the best applicant for the position in order to maintain Connecticut's superior reputation in the field of education.

The State maintains that while other State units in the executive branch negotiated or received additional steps, they are clearly distinguishable from P-3A. In the case of Protective Services, which added two additional steps during the contract term, those steps were only two percent of the top step, not full steps. Their total value was only one full step. Here, CSEA seeks the addition of two nearly full steps, which is substantially more than what was obtained in Protective Services.

The State Police unit, which also added steps, gave up its meal allowance increase in exchange for the steps. P-3A, in contrast, has obtained increases in nearly every compensation-related item in its contract, and is not willing to sacrifice anything comparable in return for steps, as did members of NP-1.

The Administrative and Residual (A&R) NP-5 unit was awarded an additional step in interest arbitration. It was the only unit in the executive branch that had a seven-step pay plan following the implementation of the pay equity SCOPE agreement. The arbitrator determined that P-5 deserved to catch up with other executive branch units. However, unlike P-5, P-3A, which voluntarily opted out of SCOPE several years ago, is the highest paid unit, having received substantial increases as a result of the Education Enhancement Act. Hence, it has no "catch up" argument, according to the State.

The State contends that the State Police, Protective Services and A&R units are also distinguishable from P-3A in another very distinctive way. Since 1995, these units have not benefitted from the same general wage increases as P-3A. In 1995-96 P-5 received no GWI while P-3A had a 3% GWI. In 1997-98 no GWI was given to NP-1 or Protective Services, while P-3A received a 2% GWI. (State Ex. #7, cost sheets.)

Moreover, P-3A has the same number of steps in its pay plan as do Vocational Technical Administrators, and more steps than the majority of pay plans for administrators within local school districts. (State Ex. #7, Comparabilities tab, p. 5.) Out of the 17 districts listed in State Ex. #9, the most number of steps in one district's plan is that of Avon with six. The remaining 16 have substantially less than six-step pay plans. Thus, the State notes, labor market evidence undermines the request for additional steps.

With regard to the Healy Award, which added a tenth step in the second year of the contracts (FY 2002-03) and an eleventh step in the fourth year (FY 2004-05), the State contends that he chose those LBOs for specific reasons, which are NOT present in the P-3A proceeding. He attributed his award to substantial evidence that health care workers were experiencing "an increasingly tight labor market." (Jt. Ex. #51, Issue #8.) He concluded that for 1199 employees additional steps would serve "to meet, at least in part, the special labor market problems in this employment category." Significantly, he found the Union's step proposal persuasive because "[b]y timing the change in structure as the Union has done [i.e., placing the steps in the 2nd and 4th years respectively], the cost impact over the life of the agreement has been moderated."

Unlike the 1199 step proposal, which adds the first additional step in year two and the second additional step in year four, the P-3A proposal places the requested additional steps in the first two years of the contract. Accordingly, "the cost impact over the life of the Agreement" will NOT be "moderated" in P-3A as it was found to have been by Arbitrator Healy in the 1199 contract.

The State contends that the reasons cited as justifying 1199's request for two additional steps do not apply to the P-3A unit. The recruitment and retention problems experienced in the health care profession, particularly for nurses, is a national and local phenomenon that is addressed almost daily in the news. As detailed in Issues #9 and #20, labor market shortage is not an issue, to any degree, for P-3A education administrators. The totality of the evidence presented by CSEA on "labor market shortage" was two articles, which is woefully insufficient to support its request for two additional steps. Moreover, as noted above, the articles apply to school administrators and superintendents, not to the type of administrators in the P-3A bargaining unit. As attested to by Mr. Wilber, there are no recruitment or retention problems at SDE.

While the Union submitted information regarding the pay schedules of the P-3B and P-4 units, unlike P-3A, both of these units are subject to evaluation through the OJE Process. (Jt. Ex. #18.) Neither P-3B nor P-4 have received additional steps recently. The eighth, ninth and tenth steps of the P-4 pay plan were created effective June, 1989, as a result of the OJE reopener. (Jt. Ex. #29, and attached stipulation of the parties.)

The extended pay plans for the P-3B unit are the product of negotiations extending back to January, 1980. The P-3B supervisor salary schedule combined two formerly seven-step schedules into a ten-step plan whereby employees with a sixth year certificate in the appropriate area of certification are assigned to steps 3-11, while those without such a sixth year certificate are assigned to steps 1-8. (Jt. Ex. #17.) Furthermore, the P-3B schedule reflects a traditional teacher pay plan followed by these employees for their entire career. Members of P-3B do not have the benefit of merit promotion as do members of P-3A, who can go, for example, from Associate Education Consultant to Education Consultant. Accordingly, the State argues that the mere fact that some units have more steps overall than does P-3A does not justify adding steps to the P-3A pay plan.

As noted above, the State disputes the Union's claims of merit pay cost savings and offsets, pointing out that based on the number of eligible employees and the pay increases awarded, the merit pay pool will be exhausted by the time the added steps are effective; and even if not exhausted, unused funds cannot serve as an offset for the cost of added steps, but must be carried forward to the next year as part of the merit pool.

In addition, the State notes that merit pay is an important concept to consider in evaluating this Union proposal. Unlike the majority of other bargaining units, all P-3A employees have the opportunity to receive merit pay supplements. The fact that the unit employees represented by District 1199 do not have this benefit, explains in part Arbitrator Healy's finding that additional steps were necessary to provide "greater economic opportunities" for health care workers whom he found to be subject to an "increasingly tight labor market." These findings do not apply to the P-3A unit.

In summary, the State argues that the Union has failed to put forth any compelling evidence that two steps of 2.75% in the first two years of the contract are warranted. To borrow the words of Arbitrator Healy in his Award for NP-6 and P-1, "about the only basis for the Union claim is that the existing schedule, at least in terms of step structure, has been in effect for many years... and therefore a revision is now appropriate." (Jt. Ex. #51, Issue #37.) This arbitrator should similarly find that such evidence "is not sufficient to justify a change under the statutory criteria."

In its Reply Brief, the Union recites five claims made by the State opposing the Union's proposal, and argues that they are either misplaced or not supported by the evidence in the record or by reasonable inferences that flow from that evidence.

With respect to the claim that an award to P-3A on Issue #13 would put it "at variance" with other units, the Union claims that it is far from the truth. First, the State's costing of the Union's proposals at 22.95% failed to account for the merit pay offset, which will necessarily take place if Issue #13 is awarded to the Union. Taking it into account will bring the cost to 20.174%, according to the Union's calculations. If only a 3.0% GWI is awarded in years one and two, then this would reduce the Union's costing by about 1% to 19.17%.

In its Brief (p. 21), the State also argues that an award to P-3A, which is at substantial variance with other recent awards, would necessitate relief from the spending cap. The Union asserts that this claim is clearly erroneous because there is no cap in place as yet for 2001-02 or 2002-03 as one has not yet been set. This is also a misstatement of the evidence. State Ex. #7, which contains the latest costing of the most recent contracts, shows:

Voc. Tech. Admns.	1999-03	4.93 + 5.47 + 4.24 + 4.95 = 19.59%
Voc. Tech. Teachers	1999-03	7.55 + 6.91 + 8.89 + 6.51 = 29.86%
Admn. & Residual	1999-03	5.91 + 5.28 + 5.82 + 4.15 = 21.16%
NP-5 Prot. Services	1999-04	4.74 + 6.06 + 4.82 + 4.53 = 24.38%
NP-1 State Police	1999-04	4.60 + 5.79 + 6.36 + 5.63 + 4.60 = 26.98%

(Union Reply Brief, p. 4.) Thus, there is no significant variance. The Union's Last Best Offers on the economic issues place P-3A squarely within the confines of other State employee packages, not outside of them.

With respect to the State's claim that the Union's external comparables are not applicable, the Union alleges that the State "is grasping at straws." (Union Reply Brief, p. 4.) While, in its Brief, the State tries to diminish the responsibilities of two consultants by claiming they have narrow duties, the evidence is that one is concerned with school accountability and policy making, and the other with the BEST program to gain and mentor new teachers. These are the areas on which the national debate is focused. While the State compared P-3A to a family doctor and LEA's to the emergency room physician, in fact P-3A members are the specialists, who guide and inform the process.

It is noteworthy that Arbitrator Healy, who faced a similar issue in his case, considered it "one of the more critical issues" in that proceeding as well. At the time (except for physicians) there were nine steps in the pay scales for the employees in those two units. As here, because the number remained constant over a long period of time, a substantial number of the covered employees had reached the top step, as one might expect. Thus, they had no further upward movement opportunities within the classification despite their increasing years of service. The Union sought to increase this to an 11th step effective July 1, 2004. In adopting the Union's LBO, the Arbitrator noted the following:

...[T]he Union cited the increasingly tight labor market for health care workers and the need for greater economic opportunities to recruit and retain these employees. The potential of higher steps would help in solving this problem. The Union submitted evidence to show that some other units in the State enjoy more than nine steps. University Health Professionals at UConn Health Center has ten steps. NP-5 added 2 steps in its recent negotiations. And finally, the Union highlighted the 11 steps enjoyed by the State Police and the recent enrichment of their 11th step.

The State acknowledged the evidence concerning the step structure in other Executive Branch units but points out that they are not truly analogous steps (e.g., Protective Services) or were structures achieved by a trade-off for concessions, as in the case of the State Police who gave up their meal allowance as a **quid pro quo** for the two additional steps.

The arbitrator concludes that the Union's proposal is the more reasonable. Despite the special characteristics which are present in some of the units with more than nine steps on the bargaining trade-offs which may well have been part of their genesis, the fact remains that a structure of 11 steps is not foreign to executive branch units. The Uconn pattern is definitely relevant. As for the totality of the bargaining result (a factor cited by the State in the police settlement), the parties are asked to recognize that in this case the arbitrator must deny some Union LBOs because of the need to consider the impact of the total award. By timing the change in structure as the Union has done, the cost impact over the life of the Agreement has been moderated.

A relevant but subordinate consideration in the arbitrator's appraisal is a recognition that the Union proposal will help to meet, at least in part, the special labor market problems in this employment category. He finds this a more constructive long-run measure than some of the similarly-motivated contract changes sought elsewhere in the Union LBOs. (Issue 8:1-2.)

On the other hand, he did not adopt the Union's LBO to increase the number of steps in the physician's schedule from seven to nine. Apparently, in that instance he did not find a shortage justifying an increase in steps.

There is no question that the statistics regarding health care workers show a shortage of qualified personnel, particularly, nurses, and that has had a direct impact on the State health care units and their ability to recruit personnel. While the evidence presented regarding school administrators, in general, and school superintendents and school principals, in particular, shows that there has been a tightening of the labor market for these education professionals, the evidence is that shortage apparently has not translated into a shortage of qualified candidates for P-3A vacancies, at least so far.

As noted in Issue #20, regarding individual hiring rates, the statistics initially put forth by the Union to show the frequency of hiring above step one, were incorrect, and the number and percentage were below that presented by the Union (17 out of 55 or 30% vs. 35 out of 51 or 68%). Thus, to the extent that it argued that this was evidence that the State had a recruitment problem, it does not establish that. In fact, the evidence presented by the State, with regard to number of applicants for some of these positions (up to 120 for one position), and the number sufficiently qualified to be interviewed shows that the State has not experienced a recruitment problem. In fact, the percentage hired at steps above the first one has gone down over the years.

Also I would note that while adding steps at the top of the schedule might encourage those to apply who are looking for a higher maximum over the years, it will not generally assist with offering higher rates to most new hires. This is because most new hires with individual rates do not come into the unit at steps seven or eight, but rather at steps two, three and four. (State Ex. #18.) Of the 92 employees hired in the period from 1984 to 1989, only one (Richard Vaillancourt) came into the unit at step 8. (State Ex. #8.) Thus, having a ninth or tenth step would not directly assist in recruitment. Raising the schedule rates from steps 2 through 8 would enable the State to offer higher rates to the majority of new hires, more than adding two new steps at the top.

In addition, the unit's turnover statistics are in keeping with other executive branch units, and do not show that there is in fact a retention problem in P-3A. What would be helpful in deciding this issue would be exit interviews to find out how many employees resigned because they felt they were being compensated inadequately, or because they had a comparable position offered, which paid more. Similarly, in terms of recruitment, it would be helpful to know how many applicants were offered a position and turned it down because of the pay or the absence of additional steps that would allow them to reach a higher maximum over the years. It is more difficult to know how many did not apply because they felt the salary offered was too low.

While the pay levels of some local school administrators are above those of P-3A positions, there are two factors that currently mitigate against adding steps. These school administrators, for the most part, have six or less steps in their schedules as compared with eight for P-3A members. As noted at various points in this Award, these school administrators also have duties and responsibilities which are not shared by P-3A employees, and which put them in line positions where they have oversight for people, buildings and systems, which are not a part of the P-3A member's job specifications.

In addition, if one looks at State units, the P-3A salaries do not appear to be out of line with those of Vocational-Technical Administrators, for example. The P-3A Education Consultant with a minimum salary of \$70,102 and a maximum of \$86,951 compares favorably with the V-T Administrator, who, depending on certification, has a minimum salary of \$67,323 or \$70,688 and a maximum of \$85,166 or \$88,152. They are in line with each other. Similarly, the Association Education Consultant with a minimum salary of \$64,647 and a maximum of \$80,666 compares favorably with the Assistant Director, who has a minimum of \$62,968 and a maximum of \$78,679. These employees received wage increases of either 3.0% or 1.5% depending on certification. Thus, looking at "in-house" school administrators, there does not appear to be justification for the addition of two steps at this time for P-3A.

I would also note that the addition to the schedule proposed here is two steps, which come in the first years of the contract, and not spread out as in the Union's LBO for NP-6 and P-1. Thus, the State will feel the full brunt in the second year of the contract, and it will continue throughout its term. This is not insubstantial given the number of employees in the unit (about 60%) who are currently at the top two steps and would advance during the term of the contract.

While having only eight steps puts P-3A in the minority of State units with less than ten steps, the evidence is that P-3A is still and will still be the highest paid unit in the State. In addition, it has a merit pool, which will add to the pay for many unit members. Thus, while there is some evidence to support an increase in steps for P-3A, after reviewing the pertinent factors, I find that the evidence does not support an increase of two steps (valued at 2.75%) in the first years of the contract at this time. Therefore, on balance I find the State's LBO to be the more reasonable.

AWARD: State's LBO.

Issue #14: Annual Increments 2001-2002

Article 27, Compensation, Section Two (a)

Current Contract Language:

Section Two: (a) Annual Increments - 1997-98. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by five months and paid accordingly in the pay period which would include December 1 and/or June 1.

(b) Annual Increments - 1998-99. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(c) Annual Increments - 1999-2000. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(d) Annual Increments - 2000-2001. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

State's LBO: Delete Section two (a) and replace it as follows:

(a) Annual Increments - 2001-2002. Employees will continue to be eligible for and receive annual

increments in accordance with existing practice, except the payment will be delayed by six (6) months.

Union's LBO: Substitute the following Section Two (a):

(a) Annual Increments - 2001-2002. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

Discussion: Both parties agree that employees should receive annual increments. The issue is the timing of the increments in each year of the contract. The State proposes that they be delayed for six months.

The Union states that it is somewhat perplexed by the State's continuing insistence that annual increments in each year of the contract be delayed six months, especially given that there is no evidence to support this, and in its package the State even proposed that increments be paid on time. (Jt. Ex. #3C.) The Union points out that there are no negotiated or awarded delays in State contracts for the 2001-05 period except for the 1999-2003 Vocational Technical School Administrators' Agreement, which has five-month delays in 2000-01 and 2002-03. There is no comparable State unit where increments have been delayed in all or any one year by six months as proposed by the State here.

The Union argues that annual increments are part and parcel of a promised advancement within a salary range tied to continued satisfactory performance. Increments or the step system allow hiring at below market rates with a promise of future advancement. As noted by this arbitrator in a prior Award (Jt. Ex. #15, p. 54), increments "are part of the wage administration system in which an employee progresses from an entry level to the true worth of the job, and therefore, an integral part of the compensation package."

The State points out that its offer in its January 23, 2001 package (Jt. Ex. #3C) to give the Union on time payment of annual increments for the duration of the contract, was contingent in part upon the Union's withdrawal of its proposals regarding upgradings and steps. The Union rejected this package as proposed, and continues to assert a proposal for two additional steps at 2.75% in the first two years of the contract. While the evidence in no way supports this request for additional steps, in its LBO the State maintained its position of annual increments delayed by six months solely in an effort to minimize the severe economic consequences that such steps could have upon the State's budget. As shown in the cost estimate of the State's LBO, a six-month delay will improve the State's cash flow.

As noted by the Union, the only time in the past that P-3A has deferred or skipped increments was in the 1992-93 concession year when the State was in crisis. No such period of economic hardship currently exists or is expected to exist in the foreseeable future. Thus, there is no need to delay increments as in the past. The State recognized this as evidenced by that the fact that it has negotiated on time payments of annual increments with all but one unit and made such an offer to P-3A as part of a package. No delay is warranted here. For these reasons and based on the relevant factors, I shall adopt the Union's LBO on this and the next three issues, which deal with the payment of annual increments in the ensuing three contract years.

AWARD: Union's LBO.

Issue #15: Annual Increments 2002-2003

Article 27, Compensation, Section Two (b)

Current Contract Language:

Section Two: (a) Annual Increments - 1997-98. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by five months and paid accordingly in the pay period which would include December 1 and/or June 1.

(b) Annual Increments - 1998-99. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(c) Annual Increments - 1999-2000. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(d) Annual Increments - 2000-2001. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

Union's LBO: Substitute the following Section Two (b):

(b) Annual Increments - 2002-2003. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

State's LBO: Delete Section two (b) and replace it as follows:

(b) Annual Increments - 2002-2003. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by six (6) months.

Discussion: Both parties agree that employees should receive annual increments. The issue is the timing of the increments in the second year of the contract. The parties' arguments are noted in Issue #14. For reasons stated therein, I shall adopt the Union's LBO.

AWARD: Union's LBO.

Issue #16: Annual Increments 2003-2004

Article 27, Compensation, Section Two (c)

Current Contract Language:

Section Two: (a) Annual Increments - 1997-98. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by five months and paid accordingly in the pay period which would include December 1 and/or June 1.

(b) Annual Increments - 1998-99. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(c) Annual Increments - 1999-2000. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(d) Annual Increments - 2000-2001. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

Union's LBO: Substitute the following Section Two (c):

(c) Annual Increments - 2003-2004. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

State's LBO: Delete Section two (c) and replace it as follows:

(c) Annual Increments - 2003-2004. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by six (6) months.

Discussion: Both parties agree that employees should receive annual increments. The issue is the timing of the increments in the third year of the contract. The parties' arguments are noted in Issue #14. For reasons stated therein, I shall adopt the Union's LBO.

AWARD: Union's LBO.

Issue #17: Annual Increments 2004-2005
Article 27, Compensation, Section Two (d)

Current Contract Language:

Section Two: (a) Annual Increments - 1997-98. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by five months and paid accordingly in the pay period which would include December 1 and/or June 1.

(b) Annual Increments - 1998-99. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(c) Annual Increments - 1999-2000. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

(d) Annual Increments - 2000-2001. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

Union's LBO: Substitute the following Section Two (d):

(d) Annual Increments - 2004-2005. Employees will continue to be eligible for and receive annual increments in accordance with existing practice.

State's LBO: The State has a LBO for Issue No. 24, Article 38, Section One, Duration, that proposes a three-year Agreement. As such, there would be no annual increment for a fourth year. However, in the event that the Arbitrator selects the Union's LBO in Issue No. 24, the State makes the contingent LBO of deleting Section 27, Section two (d) and replacing it with Section two (d) as follows:

(d) Annual Increments - 2004-2005. Employees will continue to be eligible for and receive annual increments in accordance with existing practice, except the payment will be delayed by six (6) months.

Discussion: The issue here is the timing of receipt of the annual increments in the fourth year of the contract. The Union has proposed no delay and the State has proposed a delay of six months. The parties' arguments are noted in Issue #14. For reasons stated therein, I shall adopt the Union's LBO.

AWARD: Union's LBO.

Issue #18: **Travel Reimbursement - Meals**
 Article 27, Compensation, Section Four RESOLVED

Issue #19: **Travel Reimbursement - Vehicle Use Fee**
 Article 27, Compensation, Section Four

Current Contract Language:

Employees required to utilize a personal vehicle for State business for fifty (50) percent of the assigned monthly work days (which must be at least nine (9) work days) shall be paid a daily vehicle use fee of \$4.00 for each day of required usage which shall be in addition to the mileage reimbursement described above.

Union's LBO: Increase fee to \$4.50 as follows:

Employees required to utilize a personal vehicle for State business for fifty (50) percent of the assigned monthly work days (which must be at least nine (9) work days) shall be paid a daily vehicle use fee of \$4.50 for each day of required usage which shall be in addition to the mileage reimbursement described above.

State's LBO: Increase fee to \$4.25 as follows:

Employees required to utilize a personal vehicle for State business for fifty (50) percent of the assigned monthly work days (which must be at least nine (9) work days) shall be paid a daily vehicle use fee of \$4.25 for each day of required usage which shall be in addition to the mileage reimbursement described above.

Discussion: The issue here is the amount of reimbursement for vehicle usage. The current amount is \$4.00 for a qualified employee, who uses a car for 50% of the work days in the month, which is nine days. Both parties agree that the rate should be increased. The Union has proposed that it be increased to \$4.50, and the State has proposed that it be increased to \$4.25, a difference of 25 cents. The Union maintains that the rate it proposes is necessary and reasonable, as the cost of operating and maintaining a vehicle is going up, not down.

Robert Rinker, Director of CSEA, and chief negotiator for this contract, pointed out that other units have a rate of \$4.50, including P-5, the Administrative and Residual unit, and P-4, the Engineering and Scientific Unit based on the tentative agreement negotiated by the State and CSEA. He also pointed out that in the P-3A negotiations, as part of a package, the State made a counterproposal to increase the rate to \$4.50, but the Union did not accept the package. The Union maintains that its offer is more reasonable given the history of negotiations, the ability of the employer to pay the rates in effect in other units, changes in the cost of living, and the interests of the employees.

The State asserts that while other units received an increase in this fee, there was evidence to do so, which there is not here. In addition, for P-3A the Union is asking for double the increase other units received. P-3B currently has a vehicle use fee of \$4.25. In its recent negotiations, CSEA did not propose to increase the vehicle use fee for that unit. Neither the contract for the Vocational School Instructors or for the Administrators contains a car usage fee clause. Given these facts a \$.25 increase as proposed by the State is more than reasonable.

There is evidence here to support the positions of each party. I note that in his Award (Jt. Ex. #51) Arbitrator Healy adopted \$4.50 as the vehicle use fee for employees in the P-1 and NP-6 bargaining units and that was the State's LBO. Given the increase in auto expenses, particularly the price of gas, and the cost of living, the bargaining history, and the rate in comparable units, I will adopt the Union's LBO on this issue.

AWARD: Union's LBO.

Issue #20: Individual Rate of Hire
Article 27, Compensation, Section Seven

Current Contract Language:

Section Seven. The State will notify and meet with the Union to discuss any proposed hiring of above Step 1. Said notification and meeting shall take place expeditiously so as to not delay the hiring process. The parties recognize the need to keep confidential the fact that an individual may be leaving a former employer throughout this process.

Union's LBO: Substitute the following Section Seven:

Section Seven: If the State wishes to hire a new employee above Step 1, the State and the Union will meet and discuss the proposed hiring. If after five (5) days no agreement has been reached, the State may submit the issue of whether the selected employee should receive the hiring rate to arbitration.

Arbitration hearings will be expedited to a mutually agreed upon arbitrator who can hear and decide the case within seven (7) days. Hearings may be consolidated if practicable, and no delays result. The arbitrator will issue a bench decision. The arbitrator's authority will be limited to:

- (1) Authorizing the hiring rate; OR
- (2) Denying the hiring rate.

If granted, the rate of hire will be effective the date of hire. The arbitrator will have the authority to mediate the dispute, if agreed upon by the parties or requested by the arbitrator.

The factors to be considered by the arbitrator in arriving at his/her decision may include, but not be limited to:

- (1) The unique qualifications of the new employee;
- (2) The new employee's rate of pay prior to State service;
- (3) The unique skills the new employee brings to the job;
- (4) The special requirements of the State in filling the _____ position;
- (5) The minimum experience and training requirements for the _____ job; and
- (6) Prevailing rates of pay in the labor market.

The parties recognize the need to keep confidential the fact that an individual may be leaving a former employer throughout this process.

State's LBO: Retain the current language, which reads as above.

Discussion: The issue here is whether disputes about hiring rates should be arbitrable. The current clause provides essentially that management meet and confer with the Union regarding those hired at steps higher than step one of a classification. This language has an extensive history.

In 1987 CSEA filed a prohibited practice complaint with the Connecticut State Board of Labor Relations challenging the State's ability to hire new employees above step one in the P-3A and P-3B units. On March 22, 1990 the Board found that the State had the right to hire new employees at steps above step one of the salary schedule because the current contract contained no prohibition on such advance step placement, and this had been a consistent past practice for P-3A. State of Connecticut ex. rel. (Dept. of Education et al., Dec. No. 2786. (State Ex. #1.) The Board also found that the long standing practice of placing new hires on the schedule above step one occurred where: (1) there was a recruitment problem; (2) an applicant had exceptional credentials or expertise, which was in short supply; and (3) a well-qualified applicant was already earning more than the step one level.

During the 1990 interest arbitration proceedings before Arbitrator J. Larry Foy, while the above case was still pending before the Board, the Union proposed a nearly identical initial provision (as that here). At that time evidence was produced that the State Department of Education (SDE) had hired a total of 92 employees, nearly half of whom (42) were offered hiring rates above step one. (State Ex. #18.) In its Last Best Offer the Union modified its proposal to "meet and discuss" and that was awarded by the arbitrator because of its limited interference with the State's management right to hire above step one. (Jt. Ex. #11, p. 24.)

Arbitrator Foy addressed the State's concern that the "meet and discuss" language would establish the "thin edge of the wedge" into management's discretion as to hiring rates, stating that for the "wedge" to move even a millimeter further, "the Union would have to prove a pattern whereby the State has abused the discretion it has enjoyed regarding the step placement of new hires by using arbitrary considerations." (Jt. Ex. #11, p. 28.) According to the State, he intimated that the standard would not be met by evidence that 42 out of 92 new hires within the SDE were offered hiring rates above step one.

For more than a decade the Department has regularly negotiated starting salaries above step one in order to recruit the personnel needed to accomplish its mission. The Union asserts that this proves that the compensation levels in P-3A are very sensitive to the outside labor market, which is competitive or "tight." It now seeks to expand the current clause to refer unresolved cases to expedited arbitration. It argues that the issue of hiring above step one reflects the on-going difficulty of attracting candidates to this bargaining unit based on the existing pay scales.

While the State claims that it only institutes hiring rates above step one where it is difficult to recruit individuals for specialized assignments or where there are better "comparable," the Union contends that the State's practice actually demonstrates a much more significant point, namely, the continuing inadequacy of the compensation levels in P-3A. In other words, the State cannot get the employees it needs to fulfill its prescribed duties without resorting to individual bargaining.

Richard Wilber, Chief of the Bureau of Human Resources for the SDE, testified that the State opposes this because candidates will not wait for an arbitral ruling, but rather will accept available offers from competitors in the labor market. This, the Union concludes, is further evidence of the need to boost salary ranges.

While the State argues that hiring rates have nothing to do with recruitment or retention, but rather just seeking out special people, the Union maintains that P-3A is just that--a bargaining unit of special people. The State uses hiring rates to attract them. The Union does not allege that the State has abused the hiring rates process, but rather that its frequent use reflects a legitimate compensation issue. The Union acknowledges that the hiring rate issue is tied to its argument for higher maximum compensation. However, it denies that it is a "back-door" argument for an increase, but rather a "front-door" claim. If the State needs hiring rates to attract people, it is direct evidence of an inadequate pay plan. (Union Reply Brief, p. 6.)

Joanna James, CSEA Staff Representative, sought information on and provided a list (Union Ex. #1A) of SDE new hires in the P-3A unit from 7/1/97 to 9/12/00; and she and Katharine Oleksiw, President of P-3A, updated the list (Union Ex. #1B) to 4/10/01. Ms. James testified that her analysis showed that on the first SDE list, 27 of 38 applicants were hired above step one, and that on the second list four out of nine were hired above step one for a total of 47 new hires of whom 31 were hired above step one. She had no data for other agencies with P-3A members. After reviewing the rate of hire letters provided to the Union by the State, she came up with a few more names. She counted a total of 51 new hires, with 36 hired at salaries above step one. She found sixteen hired at step one, fourteen at step two, six at step three, three at step four, two at step five, none at step six, three at step seven, and seven at step eight, the top step. Thus, she testified that sixteen or 31% were hired at step one, and 35 or 69%, above step one.

The Union also presented a series of letters sent to candidates by Dick Wilber, spelling out the reasons for their being hired above step one, including Jennifer Niles (to be in line with job offers others in her graduating class might have received), and Theresa Lawrence (to include a tuition credit benefit she had at Renbrook School for one of her children who attended that school).

Mr. Rinker testified that the Union's proposal is taken from the P-4 contract with the State, which has had this language included for about fourteen years, pre-dating the SBLR decision in 1987. It provides certain criteria to judge whether someone should be hired off step one. When the Union objects, it can submit it to expedited arbitration. While the Union has both agreed and disagreed with the State's proposed hiring rates, under the P-4 contract, none of the cases has been arbitrated.

Mr. Rinker explained that the Union is making this proposal now because it is clear from the evidence that most of the hires have been above step one. When the parties originally dealt with hiring candidates above the step one rate, it was to be the exception, not the rule. Now it does not appear to be the exception, and this shows there is a recruitment problem, which is why the Union made a proposal to have additional steps. Mr. Rinker asserted that some of the cases presented do not meet the "straight-face" test to hire someone above step one, e.g., the person who taught at a private school, where her son received a tuition waiver in the 7th and 8th grades, and shortly would no longer be attending that school. In the other case the applicant did not have a job and there were no competing offers. Mr. Rinker argued that these egregious situations mean there is a need for greater scrutiny over rates of hire. For these reasons, it asks that its LBO be adopted as more reasonable.

The State is adamantly opposed to the Union's proposal and has presented evidence to continue the state-wide practice of hiring above step one. The enormity and importance of this issue to the SDE was attested to by Richard Wilber, SDE Bureau Chief of Human Resources, who stated that the Agency's practice of hiring P-3A employees above step one pre-dates his employment in 1985. This practice, which was codified in a Memorandum entitled "Hiring Rate Request" (State Ex. #17), has been carried forward with similar requirements including review and approval by Mr. Wilber and the Commissioner.

Mr. Wilber emphasized that the SDE must have the ability to place new hires above step one in order to attract the best available candidates for P-3A positions. He explained that the Union's proposal would have a devastating impact on his Agency's ability to recruit the best talent available because it would frustrate the candidate's expectation of possible placement within the salary range of the advertised posting, and would add delay and uncertainty as to what actual salary could be offered. As a result the Agency would probably lose its desired applicant, particularly given the competitive environment in which it recruits. Mr. Wilber further testified that based on his experience, a new hire may be placed above step one when his or her current salary and benefits package, educational and professional credentials, and/or years of experience warrant such a placement, particularly when considered in the light of the uniqueness of the position being filled.

The State submitted a summary document detailing all new hires from July 1, 1997 forward as well as informational hiring packets to justify the individual rates of those employees hired above step one. (State Exs. #13 and #14.) It claims that both Ms. James and Mr. Rinker mistakenly interpreted information provided by the SDE resulting "in their erroneous conclusion" that 35 out of 51 new hires were offered hiring rates, leading Mr. Rinker to conclude that this was now the rule rather than the exception.

The State maintains that the evidence introduced through Mr. Wilber established that for the period of July, 1997 forward, of the 55 new employees hired by SDE, only seventeen or 30% were hired above step one. Furthermore, as reflected in many of the hiring packages, **there have been substantial applicant pools for the advertised positions**. For example, that of Ms. Kristina Elias-Staron establishes that for the position of Education Consultant with DTL Curriculum and Instruction, there were 37 applicants, thirteen interviewed by the screening committee, and three invited back for a second interview, two of whom were selected to fill the open positions.

As substantiated by Mr. Wilber, while a hiring rate may reflect the SDE's preference for a particular candidate it wants to recruit for the job, **it does not translate into an inability to recruit or a lack of qualified candidates**. For example, 120 applications (including that of Theresa Lawrence) were received for the position of Associate Education Consultant, nineteen of whom were interviewed. On another occasion when Jeanne Purcell was selected, there were 36 applicants, of whom four were interviewed. The State argues that these numbers hardly reflect a "recruiting problem." Rather, they substantiate the SDE's continuing need to hire the best applicant for the position in order to maintain Connecticut's superior reputation in the field of education.

The State argues that the Union has failed to articulate any legitimate reason to justify why the arbitrator should impose a requirement on the State to arbitrate disputes about hiring rates, which are governed by strict and objective criteria. The evidence shows that in every case involving an individual hiring rate during the last contract period, the step placement of the candidate was based on the unique credentials of the candidate in relation to the position being filled, and/or the current salary/benefits package of the applicant.

Of the seventeen candidates who received an individual hiring rate during the period reviewed, six took a pay decrease to work for the SDE. Under the Union's proposal without mutual agreement or arbitration, the State would have to have made offers of even less value, and at least one of the applicant's would have experienced a pay cut of almost \$10,000.

In another case, the applicant (Nancy Stark) was hired at EA 34, Step 8 (\$74,910), which was almost \$10,000 less than her salary as an elementary school principal of \$85,256. The Union's proposal would have placed her at step one with a salary of \$60,034, and absent agreement, required arbitration of her placement. The State contends that imposing such a burdensome process in an area historically reserved exclusively to management is unwarranted absent evidence of abuse, and will severely curtail its ability to hire the best qualified person for the position. Even where pay increases were given to SDE new hires, they were only slightly higher than the employee's previous salary and benefit package, ranging from \$73.00 to \$4,679 (to an applicant who stayed only two months). Most were in the \$1,000 to \$2,000 range.

Moreover, the State points out that the frequency with which the SDE has offered hiring rates for employees has **decreased** during the current contract as compared with previous years. Between 1984 and 1989 there were 92 new hires, 42 of whom were hired above step one or 45%. From 1994 to 1997 there were eleven new hires, with only four or 36% hired above step one. During the term of the most recent contract, from 1997 to 2001, there were 55 new hires, with only seventeen or 30% hired above step one. (State Exs. 13, 16 and 18.) Thus, contrary to the Union's claim, the State has not increased the use of hiring rates, but rather decreased it.

In addition, the existing conditions of employment of similar groups of employees and the prevailing conditions in the labor market also support the State's proposal to retain the current language. Of the seventeen contracts offered by the State in State Ex. #9, only five school districts have discretion with respect to hiring rates: Berlin, Cheshire, Hartford, North Haven and Region 15. Two contracts (Derby and East Lyme) place a minor

limitation on initial salary. Ten contracts make no mention of any such process. Therefore, the arbitrator should conclude that the predominant pattern recognizes management's discretion regarding step placement.

The existence of a long-standing step placement within State service has already been noted above. (State Ex. #1, p. 9.) With the exception of the P-4 contract, where the language was incorporated prior to the SBLR's 3/22/90 decision, no other agreement places express limits on hiring rates. When the P-4 type language was proposed by CSEA in 1990 for inclusion in the P-3B contract, Arbitrator Foy rejected it. (State Ex. #8.)

In conclusion, the State requests that the arbitrator refrain from placing any limitation on this critical management function, noting that the Union has not met its burden of proof, that there is no compelling need for the change, and no demonstration that the present system is unworkable or inequitable. As noted by Arbitrator Foy in the P-3B case, "[t]he record is devoid of evidence that the State has abused the discretion it has enjoyed regarding the step placement of new hires." (State Ex. #8, p. 180.)

It is understandable that the Union would have made this proposal based on the statistics it had been able to acquire, which reflected that the majority of new hires (35 out of 51 or 69%) were initially employed above the step one rate, leading it to conclude that indeed this had become the rule rather than the exception. However, as shown by the State these numbers were not in fact correct, as a number of people who were counted were actually hired at step one, and had increases thereafter, which was not clear from the information provided to CSEA.

The more accurate figure for new hires above step one during the last contract term is 17 out of 55 or only 31%, which is less than during prior contracts. Although it questions one or two of the determinations for hiring above step one, the Union admits that for the most part the State has not abused its privilege. Weighing what evidence there is of the need for such a provision, and its downside as attested to by Mr. Wilber, including cost, delay, and probable loss of the candidate, the State's proposal seems the more reasonable.

Thus, after a careful review of the various factors and all the evidence, which I have spelled out in detail here because of the importance of this issue to the parties, I find, based on the history of negotiations between the parties, the existing conditions of employment of similar groups of employees, the wages and working conditions prevailing in the labor market, the overall compensation and benefits received by unit employees, and their interests and welfare, that the Union's LBO is not warranted at this time.

AWARD: State's LBO.

Issue #21: Definition of Family for Bereavement Leave

Article 34, Sick Leave, Section Three (b)

Current Contract Language:**Section Three.**

(b) in the event of death in the immediate family when as much as five (5) working days leave with pay shall be granted. Immediate family means husband, wife, father, mother, sister, brother, or child, and also any relative who is domiciled in the employee's household;

Union's LBO: Expand the definition of immediate family as follows:

(b) in the event of death in the immediate family when as much as five (5) working days leave with pay shall be granted. Immediate family means husband, wife, father, mother, grandmother, grandfather, sister, brother, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law, also any relative who is domiciled in the employee's household, and domestic partner (a domestic partner is a person who has qualified for domestic partnership benefits under the parties' pension and health care agreement) and his or her family listed above;

State's LBO: Change current contract language, which reads:

(b) in the event of death in the immediate family when as much as five (5) working days leave with pay shall be granted. Immediate family means husband, wife, father, mother, sister, brother, or child, and also any relative who is domiciled in the employee's household;

Stipulation: The parties entered the following stipulation:

The parties have agreed to incorporate "domestic partners" into the definition of immediate family contained in Article 34, Section Three. It is understood that "domestic partner" will be defined as a person who has qualified for domestic partnership benefits under the parties' pension and health care agreement.

The parties have NOT agreed to incorporate "in-laws" and "grands" as proposed by the Union into the definition of immediate family. Accordingly, Issue 21 as to these individuals remains an unresolved issue in these interest arbitration proceedings.

Discussion: Initially there were two issues concerning expanding the definition of immediate family, one to include domestic partners, and the other to include in-laws and grandparents. The parties were able to resolve the matter of domestic partner, leaving only the issue of in-laws and grandparents.

The Union points out that it is not seeking to increase the number of days available, but only the definition of the entitlement as to the deceased. The Union points out that it is not plowing new ground here. Mr. Rinker noted that other contracts in State service extend bereavement leave or sick leave to those categories, including that of the Vocational-Technical Faculty Instructors and the Vocational-Technical Administrators. On cross-examination, he acknowledged that he was not aware of other executive branch units, which have the definition that the Union proposes here. He also admitted that there was no survey on what level of participation could be anticipated and the impact this expansion would have on costs. The Union concludes that awarding this issue to it will enhance morale and show that the State is an employer that is pro-family.

The State points out that "immediate family" has traditionally meant spouse, sibling, child or those relatives living within the employee's domicile. The Union now proposes to expand this definition to extended family members, which is exponential. Any one employee could have two grandmothers, two grandfathers, unlimited numbers of grandchildren, one mother-in-law, one father-in-law, unlimited numbers of sons and daughters-in-law, and unlimited numbers of brothers and sisters-in-law. Under the proposed language each unit employee would be entitled to up to five days of leave for the death of each of these extended family members as well as for the critical illness or severe injury of any of them. This translates into a substantial increase in the use of sick leave for this unit as a whole.

The State argues that no explanation was offered as to why this expansive change was being sought by the Union. There was no evidence that this type of benefit is common in the labor market or in State employment contracts.

This proposal seems unwarranted at this time in light of a number of different factors. As noted this is not a common provision for comparable employees. No executive branch units have such language in their contracts. Moreover, P-3A employees already have contract language in Article 34, Section Three (d) that allows them to use up to five days of sick leave per calendar year in order to attend the funeral of persons "other than members of the immediate family." P-3A employees have more generous vacation benefits than other State units, and could use such days to attend the funeral of an "in-law" or "grand." For all of these reasons, I do not find this proposal justified by the statutory factors.

AWARD: State's LBO

Issue #22: Personnel Rules and Regulations
Article 35, Miscellaneous, Section Three

Current Contract Language:

Section Three. References in this Agreement to "rules and regulations" refer to the "Blue Book," Regulations of the Personnel Policy Board effective July 1, 1975 and as amended thereafter. Such references include all applicable General Letters and Q-Items.

All statutory and regulatory references in this Agreement shall include any changes from time to time in any such statutes and/or regulations. Any changes made in the statutory and regulatory references shall not be deemed to diminish any right or benefit enjoyed by a bargaining unit employee as of June 30, 1990.

State's LBO: Modify Article 35, Section Three as follows:

Section Three. References in this Agreement to "rules and regulations" refer to the "Blue Book," Regulations of the Personnel Policy Board effective July 1, 1975 and as amended thereafter. Such references include all applicable General Letters and Q-Items.

All statutory and regulatory references in this Agreement shall include any changes from time to time in any such statutes and/or regulations.

Union's LBO: Continue the current contract language as above.

Discussion: The issue is whether the language regarding diminution of benefits should be deleted from the contract. Neither party spent much time on this issue during the arbitration hearings. The State proposes to delete the following sentence as antiquated language--a proposal it sees as simply "housekeeping" in nature:

Any changes made in the statutory and regulatory references shall not be deemed to diminish any right or benefit enjoyed by a bargaining unit employee as of June 30, 1990.

It asserts that a plain reading of this language establishes that it is outdated and no longer necessary. Public Act references have long been substituted by their appropriate statutory citations without detriment. All State employees are governed by applicable statutes and regulations, unless they specifically are superseded by the agreement. Accordingly, absent such specific contract language, the boiler-plate attempts in Article 15 and the Memorandum of Understanding to not "diminish" unnamed rights or benefits are ineffectual. Moreover, any rights or benefits that "may have" existed in 1987 or 1990 are now unknown. The State maintains that it is in the best interests of P-3A employees to be governed by clear and unambiguous contract language, and deleting these provisions will further these interests.

The Union's rejoinder is that its proposal is more reasonable, because if adopted, the State's proposed change would do nothing more than open the door for members to lose benefits at present unidentified. It points out that the State, which is the moving party on this issue, has not produced any reason to implement such open-ended language, and urges maintenance of the status quo as the more reasonable offer.

The parties obviously had some concerns about this issue more than ten years ago for they addressed it in two locations in the contract, Article 15, and in a Memorandum of Understanding, which is Issue #25. Since parties to a collective bargaining agreement do not include unnecessary or purposeless language, this clause must have had some meaning and been included for a valid reason.

While at some point in the future, it may make sense to do what the State proposes here, it cannot be done casually given the importance the parties attached to this language in the past. Thus, this should not occur until they have prepared a list of the various statutory and regulatory references to which these sections were intended to refer, review them for current application, and incorporate those that are necessary in the agreement to ensure there is no diminution of any right or benefit enjoyed by a bargaining unit employee as of June 30, 1990. There is no evidence that the parties have done this or sought to do so. Thus, to award the State's LBO could result in unknowingly reducing an employee's right or benefit. Accordingly, I shall not award the State's LBO at this time.

AWARD: Union's LBO.

Issue #23: **Personal Leave**
Article 35, Miscellaneous, Section 6

Current Contract Language:

Section Six. Personal Leave. In addition to annual vacation, each appointing authority shall grant to each full-time permanent employee in the State service three (3) days of personal leave of absence with pay in each calendar year. Personal leave of absence shall be for the purpose of conducting private affairs, including observance of religious holidays and shall not be deducted from vacation or sick leave credits. Personal leave of absence days not taken in a calendar year shall not be accumulated.

Union's LBO: Add leave to attend certain meetings as follows:

Section Six. Personal Leave. In addition to annual vacation, each appointing authority shall grant to each full-time permanent employee in the State service three (3) days of personal leave of absence with pay in each calendar year. Personal leave of absence shall be for the purpose of conducting private affairs, including observance of religious holidays and shall not be deducted from vacation or sick leave credits. Personal leave of absence days not taken in a calendar year shall not be accumulated. In addition to personal leave, each appointing authority shall grant to each full-time permanent employee in State service one (1) day of leave for the purpose of attending meetings

involving the education of their children.

State's LBO: Retain the current language, as written above.

Discussion: Consistent with other bargaining units in State service, employees in the P-3A unit get three personal leave days per calendar year. The Union proposes granting one additional day of leave for purpose of permitting a parent to participate in meetings involving the education of their children, such as parent-teacher conferences in an elementary school, IEPs for those in need of special education, etc.

The Union points out that this is an educational unit and that the State is charged with promoting the educational growth of its young people. The Union's proposal underscores the positive role parents must play to assist the schools in helping students. An award in its favor, it argues, would send a signal that the State Department of Education is practicing what it preaches--that parents be involved in the education of their children. The members of this unit, who are professional educators, share the same philosophy and this would permit them to put it into practice.

The State asserts that the Union presented no evidence on this issue. It points out that members of the P-3A bargaining unit already have more vacation time (eight days during the first five years of service and six to seven days for six to twenty years of service, and an additional five days for more than twenty years of service) than other executive branch units. In addition, P-3A employees have a 35-hour work week, unlike many other units who work a standard forty hour work week. Given the generous vacation benefits enjoyed by this unit, an additional day of leave is not warranted.

I note that while the purpose of this leave is laudable, members of this unit already have negotiated time to do what they propose. First, they have three personal days as do all other executive branch employees. Second, they work a 35-hour week as listed in this contract, and thus have time at the start or end of the day to visit their children's school. Third, the vacation benefit for this unit is more than any other executive branch unit covered by OLR. Finally, it is noteworthy that the Union made this proposal in the P-3B negotiations with the State, and withdrew it on February 15, 2001. (Jt. Ex. #41.) For all these reasons, and with an interest in having a balanced Award, I will not adopt the change sought by the Union.

AWARD: State's LBO

Issue #25: Memorandum Concerning the Effect of Certain Changes
Memorandum of Agreement, page 51, third paragraph

Current Contract Language:

MEMORANDUM OF AGREEMENT

The parties have agreed to the following concerning the effect of certain changes in the contractual languages:

1. The Public Act references in the following Articles have been changed to their appropriate statutory sections:

- Article 6, Union Security and Payroll Deductions
- Article 24, Legislative Action

The purpose of the change was for ease of reference and, if there was an inadvertent omission of a relevant statutory section, the omission shall not be interpreted as a substantive change.

2. The addition of the words "and as amended thereafter" to Article 35, Section Three, Miscellaneous, shall not be deemed to diminish any right or benefit enjoyed by a bargaining unit employee as of June 30, 1987.

State's LBO: Delete this Memorandum of Agreement from the contract.

Union's LBO: Continue current contract language as above

Discussion: The issue is whether this Memorandum of Agreement concerning changes in contract language should be deleted. Neither party spent much time during the hearing on this issue. The State seeks to delete it for the same reasons stated in Issue #22. The Union's rejoinder is the same as that for Issue #22. Without reiterating what is already stated in Issue #22, I will adopt the Union's LBO here as well, for similar reasons.

AWARD: Union's LBO.

Issue #26: Side Letter Concerning Continuing Education Units and Continuing Education Unit Equivalents

Letter of Intent

RESOLVED

SUMMARY:

This Award takes into account the Last Best Offers of the State and CSEA, the evidence presented, the arguments of the parties, and the statutory criteria. I have not tried to include every number, every fact, or every argument because to do so would make this Award longer than it already is. In making the above choices I have tried to be faithful to the statutory criteria, and to be mindful of the economic and fiscal realities. This is my best judgment of what is reasonable for the successor four-year Agreement. In addition to the Resolved Issues attached hereto, and incorporated herein, the Award may be summarized as follows:

Issue #1: Employee Bill of Rights
Article 7, Section One

RESOLVED

- Issue #2: Employee Bill of Rights**
Article 7, Section Six - New RESOLVED
- Issue #3: Non-discrimination**
Article 8, Section Three - New RESOLVED
- Issue #4: Exclusions from the Grievance Procedure**
Article 15, Section Ten (g) RESOLVED
- Issue #5: Membership in Professional Organizations**
Article 17, Section Seven (h) RESOLVED
- Issue #6: Compensatory Time Off**
Article 18, Sections One and Three RESOLVED
- Issue #7: Grievability of Compressed Work Schedules**
Article 18, Section Eight e RESOLVED
- Issue #8: Temporary Service in a Higher Classification**
Article 19, Section Three UNION'S LBO
- Issue #9: General Wage Increase for 2001-2002**
Article 27, Compensation, Sec. 1(a) UNION'S LBO
- Issue #10: General Wage Increase for 2002-2003** STATES LBO
Article 27, Compensation, Sec. 1(b)
- Issue #11: General Wage Increase for 2003-2004** STATES LBO
Article 27, Compensation, Sec. 1(c)
- Issue #12: General Wage Increase for 2004-2005** UNION's LBO
Article 27, Compensation, Sec. 1(d)
- Issue #13: Upgradings**
Article 27, Compensation, Sec. 1(e) STATES LBO
- Issue #14: Annual Increments 2001-2002** UNION'S LBO
Article 27, Compensation, Sec. 2(a)
- Issue #15: Annual Increments 2002-2003** UNION'S LBO
Article 27, Compensation, Sec. 2(b)
- Issue #16: Annual Increments 2003-2004** UNION'S LBO
Article 27, Compensation, Sec. 2(c)
- Issue #17: Annual Increments 2004-2005** UNION'S LBO
Article 27, Compensation, Sec. 2(d)
- Issue #18: Travel Reimbursement - Meals**
Article 27, Compensation, Sec. 4 RESOLVED
- Issue #19: Travel Reimbursement - Vehicle Use Fee**
Article 27, Compensation, Sec. 4 UNION'S LBO

- Issue #20: Individual Rate of Hire**
Article 27, Compensation, Sec. 7 STATE'S LBO
- Issue #21: Definition of Family for Leave**
Article 34, Sick Leave,
Section Three (b) STATE'S LBO
- Issue #22: Personnel Rules and Regulations**
Article 35, Miscellaneous,
Section Three UNION'S LBO
- Issue #23: Personal Leave for Educational Purposes**
Article 35, Miscellaneous, Section 6 STATE'S LBO
- Issue #24: Duration**
Article 38, Section One UNION'S LBO
- Issue #25: Memorandum Concerning the Effect of
Certain Changes**
Memorandum of Agreement, page 51,
Third paragraph UNION'S LBO
- Issue #26: Side Letter Concerning Continuing
Education Units and Continuing
Education Unit Equivalentents**
Letter of Intent RESOLVED

Marcia L. Greenbaum, Arbitrator
June 27, 2001

DISCLAIMER: If there is any difference between this disk and the hardcopy, it is the hardcopy which must be deemed the correct version.