

In the Matter of the Interest Arbitration
Between the

STATE OF CONNECTICUT

DECISION

-and-

AND

**CONNECTICUT STATE EMPLOYEES
ASSOCIATION - SEIU LOCAL 2001**

AWARD

Correction Supervisors Unit: NP-8

**Before: Thomas N. Rinaldo, Esq., Arbitrator
P.O. Box 1334
Williamsville, New York 14231**

Appearances:

For the State

Ellen M. Carter, Esq., Principal Labor Relations Specialist
Diane Fitzpatrick
OPM, Office of Labor Relations
450 Capitol Avenue
Hartford, CT 06106-1379

For the Union

Robert Krzys, Esq.
CSEA Counsel
557 Prospect Avenue
Hartford, CT 06105

TABLE OF CONTENTS

DECISION..... 1

STATUTORY AUTHORITY ANDFACTORS FOR CONSIDERATION 3

ISSUES IN DISPUTE - TABLE OF CONTENTS 4

DISCUSSION AND ANALYSIS 6

 Economic Discussion 6

 Other Statutory Factors..... 10

 Review of Arbitrator Weisblatt’s 2006 Award &Recent NP-4 Award of January 5,
 2008 of Arbitrator Foy..... 13

 Arbitrator’s General Findings Regarding the StatutoryFactors That Govern the
 Issuance of this Award. 15

LAST BEST OFFERS, DISCUSSION ANDAWARD ON UNRESOLVED ISSUES.... 18

CONCLUSION..... 187

DECISION

The State of Connecticut (the “State”) and the Connecticut State Employees Association, SEIU Local 2001 (the “Union”, also referred to as the “NP-8 unit”), are the Parties in this proceeding. The Union came into existence via a voluntary recognition agreement on December 3, 2001, and, at that time, consisted of approximately 350 employees in the Correctional Lieutenant and Training Officer job titles, all of whom were assigned to the State Department of Correction. (“DOC”). The Parties’ first Contract was resolved by interest arbitration (Zausner Award), and approved by the Legislature and implemented in March 2004.

The Union, on November 5, 2004, filed a petition for a new bargaining unit to consist of Correctional Captains and Counselor Supervisors. Subsequently, the Union filed a unit modification petition to add the Captains and Counselor Supervisors to the NP-8 unit, which, after an election, the State Board of Labor Relations issued a certification decision on October 17, 2005.

While the petition for a new unit was pending, the Parties engaged in negotiations and interest arbitration, which was approved by the Legislature in April, 2006 (Weisblatt Award). Subsequently, the Parties engaged in negotiations and interest arbitrations concerning the Memorandum of Understanding to incorporate the Captains and Counselor Supervisors into the Agreement, and an Award by Arbitrator Weisblatt was issued in April 2007, which was approved by the Legislature and implemented on May 31, 2007.

The record shows that the existing NP-8 Contract expired on June 30, 2008. The negotiations between the Parties for a successor Agreement commenced in September 2007,

and after the declaration of impasse by the Union and a selection of a Interest Arbitrator, the interest arbitration began in February, 2008. Seven days of hearings took place and over 180 exhibits introduced into evidence. The proceeding addressed 51 unresolved issues, and during the proceeding and the filing of the Parties' Last Best Offers ("LBO") two issues were either resolved or withdrawn, which left 49 pending issues when the briefs herein were submitted.

The Arbitrator has carefully considered the entire record, which is of extraordinary proportions. It includes the sworn testimony of twenty different witnesses, some of whom presented particularly detailed evidence and many of whom testified on multiple occasions. The documentary record includes 183 exhibits, many of which have broad areas of complex elements relevant to the issues in dispute. The Parties' briefs and reply briefs are thorough and detailed in their presentations and they expertly conveyed the arguments upon which each side rests its positions. The Arbitrator has weighed the evidence, in consideration of the Parties' arguments, and applied the statutory facts to reach the more reasonable determination on each of the 49 issues which remain in dispute at interest arbitration.

STATUTORY AUTHORITY AND
FACTORS FOR CONSIDERATION

The Arbitrator's authority is derived from Connecticut General Statutes, Section 5-276a, as amended by Public Act No. 05-0277. The Arbitrator is required to decide each issue in dispute through an issue-by-issue last best offer procedure. The Arbitrator is directed to consider the factors set forth in Section 5-276a(e)(5). The specified factors are as follows:

- (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;
- (7) the interest and welfare of the employees.

ISSUES IN DISPUTE - TABLE OF CONTENTS

The following is the list of the issues which remained at impasse and were presented for resolution through the interest arbitration process; page references are to the discussion and analysis of each issue in this Decision and Award:

| Issue No. | Article | Subject | Page |
|-----------|---------------------------|---|------|
| 1 | Article 8 Sec. 5 | Union Right - Union business leave | 18 |
| 2 | Article 8 Sec. 11 | Union Rights - Resolve | 22 |
| 3 | Article 8 New Sec. | Union Rights - President's schedule | 23 |
| 4 | Article 9 New Sec. | Personnel Files - FOI disclosure | 27 |
| 5 | Article 12 Sec.1 | Conference Fund - on-line conferences | 31 |
| 6 | Article 12 Sec.3 | Conference Fund - amount of fund | 34 |
| 7 | Article 12 NewSec. | Conference Fund - denials | 38 |
| 8 | Article 19 Sec.3 | Hours of Work - Cat./CS. overtime | 41 |
| 9 | Article 19 Sec.3 | Hours of Work - supplemental OT list | 46 |
| 10 | Article 19 Sec.3 | Hours of Work - supplemental OT list TSHC | 50 |
| 11 | Article 20 Sec.1-9, 11 | Shift & Facility - bid shift program | 53 |
| 12 | Article 20 Sec.11 | Shift & Facility - request deadline | 61 |
| 13 | Article 20 Sec.11 | Shift & Facility - eligibility of WTP em s. | 64 |
| 14 | Article 20 Sec.11 | Shift & Facility - eligibility of absent em s. | 67 |
| 15 | Article 20 Sec.13 | Shift & Facility - Cat./CS transfer <u>rights</u> | 70 |
| 16 | Article 21 Sec.1 | Compensation - Gen. Wage Increase 2008-09 | 78 |
| 17 | Article 21 Sec.1 | Compensation - Gen. Wage Increase 2009-10 | 80 |
| 18 | Article 21 Sec.1 | Compensation - Gen. Wage Increase 2010-11 | 82 |
| 19 | Article 21 Sec.1 | Compensation - Gen. Wage Increase 2011-12 | 84 |
| 20 | Article 21 Sec.1 | Compensation - Maximum rate - increase | 91 |
| 21 | Article 21 Sec.2 | Compensation - Shift differential 2008-09 | 95 |
| 22 | Article 21 Sec.2 | Compensation - Shift differential 2009-10 | 97 |
| 23 | Article 21 Sec.2 | Compensation - Shift differential 2010-11 | 99 |
| 24 | Article 21 Sec.2 | Compensation - Shift differential 2011-12 | 101 |
| 25 | Article 21 Sec.3 | Compensation - Weekend differential 2008-09 | 104 |
| 26 | Article 21 Sec.3 | Compensation -Weekend differential 2009-10 | 106 |
| 27 | Article 21 Sec.3 | Compensation - Weekend differential 2010-11 | 108 |
| 28 | Article 21 Sec.3 | Compensation - Weekend differential 2011-12 | 110 |

| | | | |
|----|---------------------|--|-----|
| 29 | Article 21 Sec.6 | Compensation - Actin shift cmdr. - increase | 114 |
| 30 | Article 21 Sec.6 | Compensation - Actin shift cmdr. - Cat. role | 118 |
| 31 | Article 21 Sec.6 | Compensation - New actin deputy warden a | 122 |
| 32 | Article 21 Sec.7 | Compensation - Meal payments - eligibility | 124 |
| 33 | Article 21 Sec.8 | Compensation - Annual increment 2008-09 | 129 |
| 34 | Article 21 Sec.8 | Compensation - Annual increment 2009-10 | 131 |
| 35 | Article 21 Sec.8 | Compensation - Annual increment 2010-11 | 133 |
| 36 | Article 21 Sec.8 | Compensation - Annual increment 2011-12 | 135 |
| 37 | Article 21 Sec.9 | Compensation - Max. rate payment - increase | 140 |
| 38 | Article 21 Sec.10 | Compensation - Longevity - grandparenting | 144 |
| 39 | Article 21 Sec. 11 | Compensation - Educ. stipend Resolve | 148 |
| 40 | Article 21 Sec. 11 | Compensation - Educ. Stipend - Masters | 149 |
| 41 | Article 21 Sec. 11 | Compensation - Educ. Stipend - Associates | 150 |
| 42 | Article 21 New Sec. | Compensation - New stipend | 153 |
| 43 | Article 21 New Sec. | Compensation - a for compensatory time | 157 |
| 44 | Article 25 Sec. 3 | Travel - meal rates - increase | 160 |
| 45 | Article 27 Sec. 1 | Miscellaneous - aid meal break | 163 |
| 46 | Article 32 Sec. 9 | Holidays - Cat./CS applicability | 166 |
| 47 | Article 35 Sec. 7 | Sick Leave - Medical certificate requirement | 170 |
| 48 | Article 40 Sec. 1 | Labor M mt. Comm. - size of committee | 174 |
| 49 | Article 40 New Sec. | Labor M mt. Comm. - alternate work schedules | 176 |
| 50 | Article 53 New Sec. | Drug Testing/Screening - expand testing | 179 |
| 51 | New Memorandum | Time Off - amount of time off ranted | 183 |

DISCUSSION AND ANALYSIS

The NP-8 unit consists of approximately 585 employees made up of the positions of Correctional Lieutenant, Correctional Training Officer, Correctional Captain, and Correctional Counselor Supervisor. As noted above, the Parties' previous Contracts have been by way of interest arbitration Awards. The first Agreement was for the period December 3, 2001 to June 30, 2005 and was set forth in the Interest Award of Arbitrator Barbara Zaussner. The second Agreement was from July 1, 2005 to June 30, 2008 and was set forth in the Interest Award issued by Arbitrator Joel Weisblatt. The Award herein will constitute the Contract for the period July 1, 2008 to June 30, 2012. Also, as noted, the Parties engaged in interest arbitration concerning the Memorandum of Understanding to incorporate the Captains and Counselor Supervisors into their Contract. This memorandum of understanding was set forth in an Award of Arbitrator Weisblatt.

Economic Discussion

The State advances that it is faced with substantial fiscal and economic constraints. It notes the testimony of Robert L. Genuario, Secretary of the Office of Policy and Management, regarding present and future economic constraints that are faced by the State as well as an explanation of the circumstances surrounding State budgets, including budgets projected for the term of the successor Agreement. According to the State, "the most significant consideration" to be taken into account "is the current and future national

economic outlook.” The economic evidence in the record, according to the State, demonstrates that the State has “stepped over the edge of an economic cliff” and is “experiencing a free fall of diminishing State revenues which are resulting and will continue to result in significant budget shortfalls.”

The State, therefore, identifies the testimony of Secretary Genuario concerning the 2008-2009 fiscal year budget deficit, the fact that the State is experiencing the highest unemployment rate in 16 years, the State’s long-term obligations that total 54 billion dollars, 70% of which equal the State employee pension and health benefits, and the State’s limited budgetary reserves. The State emphasizes what it considers to be the alarming evidence that its financial situation has worsened considerably over the past several months. The State contends that it must be recognized that, at the start of the 2008-2009 fiscal year budget, OPM estimated that the General Fund for the fiscal year was approximately 150 million dollars “out of balance” because of revenue shortfalls and increased expenditures; that the surplus from fiscal year 2007 will be entirely drained as of the fiscal year that began July 1, 2008, and that the fiscal year 2008 surplus in less than two months, because of the “mess” on Wall Street as well as other factors, had fallen by 33%.

The State notes that, by April 1, 2008, the Comptroller’s projected surplus was even less than the surplus projected by OPM or the Office of Fiscal Analysis. The State emphasizes that, in the first quarter of fiscal year 2009, it was running a projected deficit of over 300 million dollars and that, as of the date of the State’s submission, the projected deficit was over a billion dollars. Revenue projections, the State indicates, as of July, 2008

showed a decrease of 300 million dollars, which were accompanied by significant decreases in the real estate conveyance taxes and investment income. In addition, the State notes the declining employment and rising unemployment rate. Thus, the State maintains that “[a]ny decision on employee wage increases would have an alarming effect on the State Budget.”

In setting forth its position regarding economic factors, the Union emphasizes that it is the statute “that controls this proceeding” and which “sets forth seven equally weighted factors to be applied.” The Union acknowledges that one must “give serious and due consideration to the current nature of the US economy and the Connecticut economy” but nevertheless states that “it is also incumbent upon the decision-maker to look to the other [statutory] factors with equal emphasis.”

The Union contends that there are “positive” facts to speak about concerning the State’s economic condition. It maintains that the State still “remains the highest per capita income state in the Nation.” While acknowledging that taxes are the pleasure of no one, the Union also states that the taxes must be considered to be “an obligation of our citizens, which serve the purpose of preserving a just and peaceful society.” There is “an ability to pay” on the State’s part, the Union argues, and an unwillingness to raise revenue by increasing taxes cannot be equated to “an inability to pay.” The State, the Union claims, thus has the ability to raise revenue.

The Union also claims that the State has been able to “fill up” its Rainy Day Fund, although the Legislature has “intercepted much of the previous surpluses from the last three surplus fiscal years, they still put enough away to establish a large hedge against the current

economic downturn.” The Union states that, when it rains, the time arrives for the use of the Rainy Day Fund.

In its Reply, the State maintains that, although the Union points to the seven statutory factors, it cannot claim that all factors are to be given equal weight. The State maintains that the “ability to pay factor” is clearly one “that is affecting every business and government entity in this country.” Despite claims to the contrary by the Union, the State contends, private sector employees have suffered far worse because of the economic decline. It points to the remarks made by Arbitrator Foy in the recent NP-4 Arbitration Award regarding the dire economic circumstances facing the State.

It is the State’s position that comments regarding its ability to pay by the Union must be considered either “misplaced” or simply advanced “to avoid recognizing the basic facts of the situation.” Tax increases, the State claims, are brought about by decisions not belonging either to the Union nor the Arbitrator. The 1.3 billion dollars in the Budget Reserve Fund, the State claims, must be viewed in light of the projected budget deficit for the 2008-09 fiscal year, which is close to a billion dollars and the projected deficits for the next two fiscal years of approximately three billion dollars for each year.

Regarding any claim by the Union that the State banks are in better shape than banks in other states and that industries in the State are essentially recession proof, the State points out that the Union’s witness, Professor Stodder, acknowledged that there was a serious recession in the country and that industries he identified as “recession-proof” were experiencing “zero growth.”

The Union, in its Reply, argues that any suggestion by the State “that the budget situation requires rejection of all of the Union proposals is too simplistic and ignores the meaning of the ability to pay factor.” Thus, the Union asserts that consideration of the factor “requires a deeper analysis.” Further, the Union claims that the State’s position concerning ability to pay and economic data “leaves out important considerations that have been and will be part of Connecticut’s actions to resolve the current and future deficits.” The ability to pay, the Union emphasizes, cannot be reduced to “whatever the State is willing to pay.” The Union points out that if all of its proposals were awarded, the cost would be 5.8million dollars and if the State’s proposals were awarded, the cost would be 3.6 million dollars. The 2.1 million dollar difference, the Union contends, “will be resolved by applying the statutory factors” and the Union submits that any resolution of the open issues will not be “alarming”, as the State has contended.

Other Statutory Factors

The Union notes that the wages, benefits, and compensation of other employees in the prevailing labor market as well as conditions of similar employees are included in the other statutory factors. It claims that its evidence shows that, when measured against other Northeastern states, Connecticut Officers “are behind in their pay at maximum.” A comparison with other State employees, the Union maintains, shows that a comparison with the State Police would indicate that State Police salaries are equal to or exceed those of Lieutenants and, in the case of Sergeant and Master Sergeants, exceed the compensation of

Captains. It notes that this disparity was identified by Arbitrator Weisblatt in increasing the maximum pay of Officers in the NP-8 unit. Another comparison indicates, according to the Union, that within the State, when classifications are “worth” the same points, the bargaining system has not necessarily produced similar salaries. No other bargaining unit, according to the Union, has a 2% increase in any year covered by the period of the Award herein.

The Union emphasizes further that the statutory factor of interest and welfare of the employees must be considered relevant. The duties of a Correction Officer, the Union claims, are amply demonstrated in the record, has become “more stressful.” Its members, the Union claims, work primarily in environments where most individuals would not consider working and therefore they “deserve wages and working conditions that recognize this undeniable fact.”

The State, in its Reply Brief, maintains that a comparison with the State of New Jersey would more accurately mandate a comparison to the New Jersey Sergeant for Connecticut Lieutenants and to the New Jersey Lieutenant for Connecticut Captains. Such a comparison indicates, the State maintains, “very favorable comparisons for Connecticut.” The State also claims that the Union’s information concerning New York is not complete because the Union’s information did not include the New York Sergeant rates. Further, the State maintains that the salary rates in Connecticut are higher than those in Massachusetts, Rhode Island, Pennsylvania, Vermont, New Hampshire, and Maine.

As to in-State comparisons, the State notes that for the State Police, general wage increases in the negotiated Agreement for 2007 to 2010 “were allocated so that the higher

steps received larger percentage increases and employees on the lower steps receive small percentage increases.” It notes that, in the instant case, the Union does not seek any allocation of different percentage of the general wage increase.

In addition, the State claims, the Union did not present any information that there were other classifications of similarities to the Lieutenant position and did not acknowledge that salary comparisons would have to include the meal money and the 2.5% payment at maximum received by Lieutenants along with their more substantial pension benefits.

It is the State’s position that, since DOC fills Lieutenant positions by promotion of Correction Officers, a more appropriate comparison in a “labor market” would be one with wages and benefits received by workers which “serve as the recruitment base.” A comparison with the Correction Officers Unit, the State claims, cannot justify the increases sought by the Union. It notes that, while there may be no other bargaining units that have received 2% general wage increases for 2008 through 2012, it also can be said that two years of the NP-4 successor Agreement contains only 2.5% increases and most of the bargaining units are now currently in negotiations for contracts to be effective July 1, 2009. Increase in other contracts that were negotiated or awarded in 2005 or 2006, the State maintains, in view of the State’s dire economic circumstances, “do not establish a pattern.”

**Review of Arbitrator Weisblatt’s 2006 Award &
Recent NP-4 Award of January 5, 2008 of Arbitrator Foy**

The Arbitrator finds it useful to offer some review of the last interest arbitration

between the Parties as set forth in Arbitrator Weisblatt's March 31, 2006 Award as well as the January 5, 2008 Award of Arbitrator Foy regarding the NP-4 Unit. Arbitrator Weisblatt's Award is relevant for reasons that are obvious. The Award, it can be further noted, was issued at a time when the State was experiencing substantial and internal economic difficulties because of a budget crisis. The Foy Award is of significant relevance because it was recently issued and because of the obvious connections between the NP-4 Corrections Unit and the NP-8 Correction Supervisors Unit.

Arbitrator Weisblatt, on the question of the State's ability to pay, had before him the State's "budgetary collapses of fiscal years 2002 and 2003" as well as the actions of the Legislature in 2002, 2003, and 2005 "to address the structural imbalance in the budget through certain additional revenue sources." He noted that these corrections "raised revenues by as much as 1.1B for FY '06." Arbitrator Weisblatt also noted the "heavy tax burden" within the State, showing that in 2004 the State was "the highest in the nation in a formula relating per person taxes paid, as a function of personal income."

In his Award, Arbitrator Weisblatt stated that he was giving "substantial weight to the evidence presented relating to the State's ability to pay." Although he observed that the evidence reflected that "the State has successfully emerged from the depths of its fiscal challenges", he also noted that his "determinations made concerning the core economic items recognize that the fiscal situation has improved but they are very cautious to remain in balance with the concerns for further fiscal health." Accordingly, Arbitrator Weisblatt stated that his "moderate and balanced approach to wage increases, increment payments and

maximum levels [in his Award] provides recognition of the limitations of the Employer's budget."

In his January 5, 2008, Award, Arbitrator Foy summarized in detail the events that spelled out "[t]he deterioration of the economy and financial system during the year [of 2007]." Among the events identified by Arbitrator Foy was the fact that the week of October 6-10, 2008, was the worst week for the stock market in 75 years, with the Dow Jones losing 22.1%, after having reached a record high of 40.3% on October 9, 2007. He noted the efforts of the federal government to address the crisis. He stated, quoting from another Award he issued, "to an objective person with basic literacy in economics, the disaster to the private economy and public sector finances almost certainly will be unequaled in the last 30 years. (Since the late 1970s and early 1980s)." Arbitrator Foy also noted that the events he identified "could not fail to affect the Connecticut economy and state budget." Thus, he observed that "[t]here are many landmines in the State's finances caused by the dramatic fall of the economy and financial markets that have only begun to be explored."

In Arbitrator Foy's opinion, "it is painfully clear that the State of Connecticut's ability to pay is less than at any time in recent memory and likely to get worse." (Emphasis in original). Thus, he offered his conclusion that "[t]his is not the time for substantial improvement in employee compensation or new or increased benefits without proof of compelling need and consistency with the statutory factors." (Emphasis in original). In reviewing the statutory factors other than the State's ability to pay, Arbitrator Foy took special note of the criterion of "the interest and welfare of the employees." He noted that this

criterion, “if considered alone or heavily weighted versus the other statutory factors, usually argues for acceptance of Union proposals.” He cautioned, however, this was “not necessarily” the approach to take in the dispute before him because “[a]cceptance of substantial Union economic proposals adding more large new costs during the term of the new contract will likely invite legislative rejections of the arbitration award and could lead to the fate the bargaining unit faced in the 1990s when legislative rejection led to no general wage increases for a number of years.”

Arbitrator’s General Findings Regarding the Statutory Factors That Govern the Issuance of this Award.

Initially, the Arbitrator would state his finding that between the date of this Award and the January 5, 2008, Award of Arbitrator Foy, there has been no positive change in the nation’s economic circumstances that would in any way cause one to believe that Arbitrator Foy was being an alarmist in the observations he offered regarding the economic circumstances that attended the issuance of his Award. This Arbitrator would note, however, that economic conditions have apparently not worsened since Arbitrator Foy’s Award. In issuing the instant Award, the Arbitrator would also state that he finds himself guided by some optimism that, with its collective shoulder to the wheel, the nation will ultimately achieve economic stability. There is, of course, no guarantee as to precisely how long the recovery will take or, for that matter, once there has been recovery, whether there will be prosperity at the level that was experienced before the economic downturn. Accordingly, the

Arbitrator finds it absolutely necessary to adopt the “moderate and balanced” approach of Arbitrator Weisblatt.

In addition, the Arbitrator would note that all aspects of the Award that follows reflect the consideration of all statutory factors. There is no requirement that all factors be weighted equally, presuming it would be possible to do so in any event. It is evident that the economic condition, nationally and in the State of Connecticut, as Arbitrator Foy found, places the State’s ability to pay as the statutory factor deserving of the most weight. Indeed, Arbitrator Weisblatt stated as much in his 2006 Award at a time when the State was in the process of fiscal recovery rather than facing a time of economic peril. The Arbitrator also appreciates Arbitrator Foy’s admonition that the Award herein is not binding but requires legislative approval. Clearly, if the Award herein does not reflect a very cautious approach to basic economic matters, then the interest of the Union will not be served should an Award be legislatively rejected.

It must also be said, however, that the need for extreme caution in the context of a time of substantial economic difficulties does not lead to a finding that the State has no “ability to pay.” Put differently, the Arbitrator does find that, while as Arbitrator Foy noted, “Union proposals for wages or benefits that are in excess of the current contract and or the State’s proposals have a heavy burden to overcome,” there is room for some economic improvements for the Union as reflected in its LBOs after fully taking into account the severe constraints on the State’s “ability to pay.”

In this regard, the other statutory factors, including the interest and welfare of the

employees, which have not been legislatively negated in the State, mandate that the Union members be paid a fair wage and receive sufficient benefits. As the Union has correctly noted, its members work in an extremely dangerous environment and perform a critical function for the citizens of the State.

**LAST BEST OFFERS, DISCUSSION AND
AWARD ON UNRESOLVED ISSUES.**

ISSUE 1

ARTICLE 8 - UNION RIGHTS

Section 5, Union Business Leave

Union Business Leave - Number of Days

Union Proposal

Current Contract Language:

Section 5. Union Business Leave. (a) Provided two (2) weeks written request indicating the nature of the business is submitted by the Union to the Office of Labor Relations, paid leave will be granted to Union designees except in the case of emergency. A bank of sixty (60) days is established in each year of the contract for attendance at steward training, union conventions, legislative or administrative hearings or other legitimate union business, such as by-law meetings, executive sessions, etc. There will be unlimited carryover of unused bank time from one contract year to the succeeding contract year(s), but carryover past the expiration date is to be by mutual agreement. Time used for processing grievances shall not be charged to this bank of hours.

State's Last Best Offer:

Modify the language to:

Section 5. Union Business Leave. (a) Provided two (2) weeks written request indicating the nature of the business is submitted by the Union to the Office of Labor Relations, paid leave will be granted to Union designees except in the case of emergency. A bank of **seventy (70)** ~~sixty (60)~~ days is established in each year of the contract for attendance at steward training, union conventions, legislative or administrative hearings or other legitimate union business, such as by-law meetings, executive sessions, etc. There will be unlimited carryover of unused bank time from one contract year to the succeeding contract year(s), but carryover past the expiration date is to be by mutual agreement. Time used for processing grievances shall not be charged to this bank of hours.

Union's Last Best Offer:

(a) A bank of sixty (60) days is established in the 2008-2009 year of the contract for attendance at steward training, union conventions, legislative or administrative hearings or other legitimate union business, such as by-law meetings, executive sessions, etc. A bank of one hundred (100) days is established for each remaining year of the contract for attendance at steward training, union conventions, legislative or administrative hearings or other legitimate union business, such as by-law meetings, executive sessions, etc.

There will be unlimited carryover of unused bank time from one contract year to the succeeding contract year(s), but carryover past the expiration date is to be by mutual agreement. Time used for processing grievances shall not be charged to this bank of hours.

Parties' Positions

The State maintains that the Union is seeking to increase the amount of paid hours for Union business leave from 60 days to 100 days beginning in the second year of the Contract.

The State notes its counteroffer of increasing Union business leave to 70 days in each year of the Contract, which would then include the first year. According to the State, the Union's proposal of 40 additional days, from the State's perspective, would increase the amount of State-paid Union time by 66.67%.

According to the State, the only evidence offered by the Union to support the increase was the "very brief" testimony of Robert Rinker who stated that the proposed increase was occasioned by adding Captains and Counselor Supervisors to the bargaining unit. The State claims that a review of the use of Union business leave, contrary to the testimony of Mr. Rinker, would indicate that the majority of the hours have been used for release of a few bargaining unit officers. The fact that the number of officers has increased from five to seven, the State maintains, would not justify the substantial increase in the amount of the Union business leave.

It is the Union's position that the increase is justified by virtue of the increase in membership of the unit due to the addition of Captains and Counselors Supervisors. It focuses on its perception that, given the "high degree of inmate contact" experienced by

members of the bargaining unit, there will always be a need for investigation given the number of charges by inmates, “sometimes without foundation.” Hence there is a need for more stewards and steward training, the Union contends, as well as a need for “more breakout meetings” for the discussion of workplace issues.

The Union also asserts that this issue is connected to Issue 3 wherein it seeks to place its President on a Monday to Friday day shift, which would allow the President to be available to have more effective meetings with Agency and facility representatives. At present, according to the testimony of the current President, the Union contends, the Union President is forced to work doubles on weekends and then spend her own time during the week to attend to such meetings. According to the Union, its LBO is supported by the statutory factors of similar conditions of employment of other employees together with the interest and welfare of the employees of the unit in having their stewards available to discharge their statutory duty to provide fair representation to unit members.

In its Reply, the State emphasizes its counterproposal to increase the Union business leave bank by ten days from 60 to 70 days. According to the State, the “massive increase” set forth in the Union’s LBO is predicated on the claim that the bargaining unit had been expanded to include Captains and Counselor Supervisors. The State notes that this occurred in October, 2005 and was accompanied at that point by negotiation and interest arbitration. Any increase that might be warranted, the State claims, could not reasonably be the increase sought by the Union. Insofar as the Union claims a need for investigation and representation because of additional employees and inmate claims, the State responds that the Stewards

representing employees at investigative interviews are released on State time to perform that function.

Arbitrator's Award

The Arbitrator finds that the record contains insufficient evidence that the increase in the membership of the bargaining unit by the addition of Captains and Counselor Supervisors has created a need for 40 more Union business leave days as sought by the Union in its LBO. It is the Arbitrator's finding that the State's LBO, which does reflect an addition to the size of the bargaining unit by adding 10 more days of Union business leave days to the "bank", is more reasonable and consistent with the record evidence. In Issue "3" infra, the Arbitrator's Award to the Union of its LBO recognizes the need for the Union President to be more available for Union business.

The State's LBO is awarded on Issue "1".

ISSUE 2

**ARTICLE 8 - UNION RIGHTS
Section 11**

Union President - carrying cell phone

Union Proposal

Current Contract Language:

Section 11. The Council President may wear a pager in the facilities.

**THIS ISSUE HAS BEEN RESOLVED
SEE ATTACHMENT A**

ISSUE 3
ARTICLE 8 - UNION RIGHTS
New Section

Union President work schedule

Union Proposal

Current Contract Language:

No current language

State's Last Best Offer:

No new language.

Union's Last Best Offer: New provision

The Council President may at his or her option work a 5/2 schedule.

Parties' Positions

The State observes that this proposal by the Union would allow its President to chose to work a Monday to Friday schedule even if the President's current position has a five day on and three day off schedule. It is obvious, according to the State, that this change would be disruptive to the facility in which the President works and is without justification. It notes the Union's evidence that its current President works a 5-3 schedule. The State maintains that, since grievance conferences and legislative hearings would continue to be scheduled on Mondays to Fridays, the purpose of the Union's proposal, in effect, would be to ensure that the activities always fell on one of the President's workdays, which would make it likely that the President would rarely be at work.

Insofar as the NP-4 Local Presidents having been allowed a 5-2 schedule, the State contends that this schedule does not amount to justification of the Union's proposal, given the far larger number of NP-4 unit members as well as the fact that the State's granting of the request of the NP-4 Presidents to work a 5-2 schedule does not mean that such arrangements will be continued in the future, and, in any event, the granting of the request is much different than incorporating such a schedule into the Collective Bargaining Agreement itself. The State also notes the testimony of Warden Higgins that, if the current Union President were on a 5-2 schedule, her Union activities would be during work time and the facility would need another Lieutenant position to provide 5-3 coverage. The State claims that it is not its responsibility to "subsidize the Union", and it cannot be considered reasonable for Union officials to have expectation that they will be able to perform a substantial amount of their Union activities during their regularly scheduled work time.

The Union incorporates its arguments advanced under Proposal "1" as it pertains to this Proposal. As seen above, the Union claims that a 5-2 schedule for its President will allow the President to provide more effective representation for Union members. Additionally, the Union has pointed out that the Department of Correction has allowed the three Local Presidents of the NP-4 units to work a 5-2 schedule, which should be an option, the Union argues, afforded to its President.

In its Reply, the State asserts that the Union's justification for its LBO under Issue 3 is that the DOC granted the request of NP-4 Presidents for the schedule sought and that the NP-

8 President performs Union activities on her own time. The State claims, however, that NP-4 Presidents serve “much larger groups of employees” and no guarantee exists that the preferred schedules will continue. The Union’s LBO, according to the State, would not result in the President being more available to management representatives but only being able to use more State time to further Union activities. The State maintains that the Union’s LBO would result in a requirement on the part of DOC to establish another 5-3 Lieutenant position at the Bergin Facility to replace the Union President, and no justification for placing “this burden on the DOC” has been advanced by the Union.

The Union Reply responds to the State’s contention that DOC would be required to establish another Lieutenant position by stating that its President “is overburdened by the current situation and she is treated differently than other Union Presidents.” Further, the Union argues, if the Union President is on a 5-2 and takes time off, her position will need to be filled by overtime. The State, according to the Union, has clearly managed to accommodate three full time releases in the NP-4 unit and the same should be accomplished by the State for the Union herein.

Arbitrator’s Award

The Arbitrator understands the evidence as showing that the State has accommodated three full time releases in the NP-4 Unit, and finds there is a bona fide need for the NP-8 President to have the flexibility sought in this proposal. Although the Arbitrator finds that the Union’s needs did not extend to 40 additional days in the business leave bank, the

Union's proposal under this Issue reflects the need for the Union President to have more time and opportunities to effectively represent Union members. The Arbitrator also finds that an Award to the Union of its LBO does not have any measurable adverse economic impact on the State.

The Union's LBO is awarded on Issue "3".

ISSUE 4

ARTICLE 9 - PERSONNEL FILES New Section

Freedom of Information Law Applicability

Union Proposal

Current Contract Language:

No current language

State's Last Best Offer:

No new language.

Union's Last Best Offer: New Section

Personnel files of bargaining unit employees shall not be subject to disclosure under the State's Freedom of Information Act where the request for disclosure is made by an inmate or made by someone on behalf of an inmate.

Parties' Positions

The State claims that the Union here seeks to restrict the State's Freedom of Information Law so as to prevent disclosure to inmates or persons making requests on their behalf. It notes that the Union relies on the testimony of Mr. Rinker to the effect that inmates and members of other bargaining units have requested personnel information for NP-8 unit members, including disciplinary letters. The State notes that Mr. Rinker furnished an excerpt from a State University Contract that provided for limited disclosure. It notes that, during the proceeding, the Union modified its proposal so that it would only apply to requests from inmates and not from other State employees.

The State identifies the strong public policy reasons that justify the Freedom of

Information Law and argues that it cannot be doubted that public employees do not have privacy rights equal to those in the private sector. It points to the 1997 Decision in *Department of Public Safety v. FOI Commission*, 242 Conn. 79, in which the Connecticut Supreme Court upheld a trial court ruling that the presumption favoring disclosure had not been overcome in an investigation of an Officer involving a complaint of excessive force but that the presumption had been overcome in an investigation of an Officer for alleged inappropriate relationship with a complainant's wife. According to the State, this decision underscores the importance of the public disclosure requirements. It also points to a Connecticut Superior Court Decision, *Dept. of Correction v. FOIC*, Conn. Superior Court, 11-3-08, in which the Court found that the Department of Correction had established reasonable grounds to justify non-disclosure of disciplinary records based on fear of creating safety risks. A third case, *Lieberman v. Board of Labor Relations*, 216 Conn. 253, is relied upon by the State wherein the Connecticut Supreme Court stated that "destruction of public records ... is an illegal subject of bargaining." This decision raises question about the legality of the Union's proposal, according to the State, and the Superior Court decision allowing the Department of Correction to withhold disciplinary records on the grounds of a safety risk, the State contends, would seem to remove any "compelling reason" for the change sought by the Union.

The Union claims that access to an Officer's personnel file by an inmate must be considered "a dangerous thing." It states that the State's Freedom of Information Commission "strictly adheres to the theory that in most cases the public has a right to know

and the privacy interests of an officer are not enough to warrant non-disclosure.” The Union points to the record evidence that demonstrates that other units have contractual provisions that carry out the purpose of what the Union is seeking by the instant proposal. It further states that the State law that governs this proceeding “specifically contemplates that negotiating parties may reach agreements or may have arbitration awards that include provisions at variance with current statutes and the interpretation of the statutes.” The Union argues that the process of the Employer preparing a “Supersedence Appendix” after a settlement serves the purpose of advising the legislature of the change, which was the process followed by University Professors concerning the provisions of their contract that required non-disclosure, which was upheld by the Freedom of Information Commission. The Union asserts that this proposal must be granted “to avoid the volatile consequences that can follow from release to an inmate or a person associated with an inmate” of an Officer’s personnel file.

In its Reply, the State emphasizes that the Superior Court decision handed down in November, 2008 “would appear to address the Union’s concerns.” Any stronger protection sought by the Union, the State maintains, should be accomplished by the Union approaching the legislature since it was the legislature who created the Freedom of Information Law and the exclusions therefrom. The legislature, the State further posits, has shown itself willing to respond to concerns of DOC employees. Limitations on inmate requests, the State maintains, should be made applicable to all DOC employees and not to just members of the Union.

For its part, the Union in its Reply states that the recent Superior Court decision “is

just one case” and there should not be a requirement that the concerns be handled on a “case-by-case basis.” Instead, according to the Union, its LBO sets forth a correct approach and mirrors the rule in place with University Professors. Further, the Union states that “[t]here is no reason to maintain a system where inmates can systematically harass the Officers through these frivolous freedom of information requests.”

Arbitrator’s Award

The Arbitrator finds that the Union’s LBO reflects an understanding of the dangers faced by members of the bargaining unit given their regular interactions with inmates. As the Union has pointed out, access to an Officer’s personnel file by an inmate, indeed, is to be considered “a dangerous thing.” The policy that the “public has the right to know” that underscores the State’s Freedom of Information Laws, the Arbitrator finds, does not outweigh the interests set forth in the subject matter of the Union’s proposal. Further, the Arbitrator agrees with the Union that it should not have to deal with this topic on a “case-by-case basis.”

The Union’s LBO is awarded on Issue “4”.

ISSUE 5
ARTICLE 12 - WORKSHOP AND CONFERENCE FUND
Section 1, New Provision

On-line conferences

Union Proposal

Current Contract Language:

No current language.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Add to Article 12, Section 1

Employees may apply to participate in on-line seminars, workshops or conferences in the same manner as they may attend in-person seminars, workshops or conferences.

Parties' Positions

The State notes that the Union seeks contract language that will treat on-line conferences and workshops in the same manner as in-person attendance at a conference or workshop. According to the State, the addition of this proposal to the Contract would allow an employee to observe an on-line conference on State time under circumstances where the cost of the conference would be reimbursed to the employee from the Workshop and Conference Fund. The State notes that the only evidence in support of this proposal was offered by Robert Rinker stating that similar language existed in the P-4 Engineering

Contract and that the parties had agreed that the NP-8 Tuition Fund could be used for either on-line or in-person college courses. The State notes, however, that Mr. Rinker acknowledged that the on-line conference language is not in all of the Contracts with units represented by CSEA and no such language can be found in the P-3B or the P-3A Contracts despite the fact that both Contracts allow tuition reimbursements for certain on-line credit courses. It is the State's position that no need was demonstrated by the Union for this proposal or that there was any "employee interest" in the proposal.

The Union claims that this proposal would reduce costs since employees would not miss time from work or "very little time." It notes Officers who work in 24/7 Institutions would now have a "tool for training" and should be allowed to receive training "in a more convenient manner." It also notes that another CSEA unit, the P-4 unit, has such a provision in its Contract. The Union claims that the proposal is supported by the statutory factor of the conditions of employment of other employees as well as the interest and welfare of employees. Further, the Union claims that justification can be found in the fact that the proposal will save money and time.

The State, in its Reply, emphasizes that the provision sought by the Union is not found in the P-3B Education Professional Contract, which would include teachers and instructors who work in DOC.

Arbitrator's Award

The Arbitrator finds that the Union's evidence produced no persuasive need to allow for the same treatment for on-line conferences and workshops as provided for in-person attendance at a workshop or a conference. Nor is the Arbitrator persuaded by the Union's arguments that this proposal will save the State money and time.

The State's LBO is awarded on Issue "5".

ISSUE 6

ARTICLE 12 - WORKSHOP AND CONFERENCE FUND Section 3

Amount of Conference Fund

Union Proposal

Current Contract Language:

Section 3. There shall be Five Thousand Dollars (\$5,000) appropriated each fiscal year of this Agreement for the purposes outlined in Section 1 above. Funds that are unexpended in one fiscal year shall carry over into the next fiscal year provided however that the fund will expire on expiration of the Agreement.

State's Last Best Offer:

No change in current language.

Section 3. There shall be Five Thousand Dollars (\$5,000) appropriated each fiscal year of this Agreement for the purposes outlined in Section 1 above. Funds that are unexpended in one fiscal year shall carry over into the next fiscal year provided however that the fund will expire on expiration of the Agreement.

Union's Last Best Offer: Increase amount of fund

Section 3. There shall be Five Thousand Dollars (\$5,000) appropriated in the 2008-2009 and 2009-2010 years of this Agreement for the purposes outlined in Section 1 above. There shall be Ten Thousand Dollars (\$10,000) appropriated in the 2010 -2011 and 2011-2012 years of this agreement for purposes outlined in section 1 above.

Funds that are unexpended in one fiscal year shall carry over into the next fiscal year provided however that the fund will expire on expiration of the Agreement.

Parties' Positions

The State observes that the Union's proposal seeks to increase the Workshop and

Conference Fund from \$5,000 per year to \$10,000 per year effective with the third and fourth year of the Contract. The State notes that a \$5,000 yearly increase may not appear to be “a large increase” but nevertheless doubles the size of the Fund, and, the State contends, the Union has presented no substantial evidence to support any increase in the amount of the Fund. It claims that the Union has only offered the “assertion” of Mr. Rinker that he sought to support professional development and felt the use of the Fund was slow when started and the unit had grown in size. Nevertheless, according to the State, no evidence was produced by the Union that the use of the Fund has increased by the addition of Captains and Counselor Supervisors. It points to the testimony of Director of Training and Staff Development, Sandra Sawicki, that the Department did support employee development efforts which might be the reason why there is a lack of demand on the Workshop and Conference Fund. It also claims that Mr. Rinker essentially conceded that the Fund’s size at present was adequate for its current needs.

The Union states that it has a “commitment to increase training and increase educational opportunities for its members.” According to the Union, the instant proposal is also consistent with its proposals under Issues 40 and 41 whereby it seeks to establish additional one-time incentives for employees who achieve a Masters Degree and Associates Degree. “Current underutilization” of the Fund, the Union observes, “is troublesome but understandable.” Thus it claims the work of its members is demanding and “days off are precious.” It also states that difficulty existed when the Committee that was assigned to the Fund did not “ramp up its efforts quickly enough.” The Union does note that the Funds were

only established with the first Contract that was approved in 2003. By the third year of the instant Contract, the Union puts forth, the Committee will have created “pathways for members to access such funds” which is why the Union claims it is delaying the increase until the third year. It claims that the proposal is supported by the interest and welfare of the employees and will involve only a projected cost of a \$10,000 increase over the last two years, as well as the fact that money not spent “lapses.” In its Reply, the State asserts that “[t]he current Fund is not being accessed by bargaining unit members and there is no evidence that there would be an increased demand during the term of the successor contract.” Further, the State maintains, “the role of the joint committee is to review employee request and not to develop means of spending the conference funds.” (Emphasis in original). The State allows that this proposal might be “less problematic” than the two other Union proposals concerning the conference fund because “additional money will most likely not be spent”, but the State nevertheless claims that no justification exists for the Union’s LBO.

Arbitrator’s Award

The Union’s LBO seeks to double the amount of the workshop and conference fund in the last two years of the Agreement. In the final analysis, the Arbitrator finds no persuasive justification for the Union’s LBO, particularly in view of the record evidence that the fund’s present size is likely adequate for current needs.

The State’s LBO is awarded on Issue “6”.

ISSUE 7

ARTICLE 12 - WORKSHOP AND CONFERENCE FUND New Section

Appeals of conference denials

Union Proposal

Current Contract Language:

No current language.

State's Last Best Offer:

No new language.

Union's Last Best Offer: New provision

Any denial by the agency of a request by an employee to attend or participate in a seminar, workshop or conference shall be subject to the grievance and arbitration procedure. However, any grievance may only be filed to step 3 and shall not be eligible for arbitration.

The appeal of any denial to step 3 shall be decided by whether the denial was for lack of funds and/or lack of relevance to job relatedness. The hearing officer shall have the authority to issue a remedy.

Parties' Positions

The State claims that the Union's proposal serves the purpose of allowing a grievance to be filed if there is a denial of a request to attend a workshop, conference or seminar and also the proposal seeks to limit reasons for denial to job-relatedness. The State notes that Mr. Rinker offered testimony concerning the Union's wish to increase the amount of the Fund and to allow on-line conferences. It notes that, although the proposal removes the appeal to arbitration, it adds to the second paragraph by limiting the reasons for denials, which was not in the proposal in the Union's submission to arbitration. The State again identifies the small number of employees who have used the conference in the first two and a half years of the

2005-2008 Contact and claims that the Union offered no evidence or arguments that any employee had been denied a request to use the Conference Fund.

As to employee Hines, the State claims that he did not seek funding from the Conference Fund but instead submitted a request to attend a two week program on State time and to use a State vehicle to travel to a program in Pennsylvania. It notes that the Union withdrew the grievance filed on behalf of Hines. The State relies on the testimony of Ms. Sawicki to the effect that the Department allows outside training under appropriate circumstances. The State observes that Director Sawicki testified that, as to the Hines' request, the longest approved programs are generally three to five days and Hines was seeking approval for attending a program for two weeks on paid time. She also noted that she took into account the fact that it was a leadership program and Hines had previously participated in this sort of training. Hence, the State observes, Ms. Sawicki reasonably concluded that there was no benefit to be derived from the training. It is the State's position that the Union has not demonstrated a need for the appeal language or the provision that would seek to limit the reasons for denials.

The Union claims that its members who are denied permission to attend a conference or workshop should be provided the reason why they cannot attend and the reason should be "lack of funds or that the opportunity sought was not job related." The Union notes that the proposal seeks to create a process that would allow a challenge to the denial of the Committee, which is comprised of two Union appointees and two managers. It also notes that, under the proposal, the appeal cannot go to arbitration. The Union claims that some

limited review would provide an incentive for the Committee to discharge its duties properly.

The Union also claims that the proposal is supported by the factor of the interest and welfare of its employees.

In its Reply, the State complains that the Union offered no examples of any denial of a conference request and thus did not establish any reason to change the language sought in its LBO.

Arbitrator's Award

The record would show that a small number of employees, in fact, have used the Conference Fund in the first two and a half years of the 2005-2008 Contract. It has not been brought to the Arbitrator's attention that a genuine issue has arisen regarding unreasonable denials by the State of employee applications. Indeed, the Arbitrator finds that no examples have been offered by the Union to require the Arbitrator to modify the Parties' contractual relationship to provide an "incentive" for the Commission to act fairly in the absence of evidence that it has not acted fairly.

The State's LBO is awarded on Issue "7".

ISSUE 8

ARTICLE 19 - HOURS OF WORK, WORK SCHEDULES, AND OVERTIME

Section 3, Overtime Distribution

Third paragraph, second sentence, New provision & Last paragraph

Overtime distribution to Captains & Counselor Supervisors

Union Proposal

Current Contract Language:

. . . After using the quarterly list, the overtime shall be offered to employees on the supplemental overtime list. . . .

The Captains and Counselor Supervisors shall not be covered by Article 19 Section 3, overtime solicitation and distribution procedures.

State's Last Best Offer:

No change in current language.

. . . After using the quarterly list, the overtime shall be offered to employees on the supplemental overtime list. . . .

The Captains and Counselor Supervisors shall not be covered by Article 19 Section 3, overtime solicitation and distribution procedures.

Union's Last Best Offer: Deletion exclusion of Captains and Counselor Supervisors for overtime

Section 3. After ~~using~~ exhausting the quarterly list, **Captains and Counselor Supervisors (who have operational experience) shall be offered the overtime in the same manner as the offering of overtime on the book system and the quarterly list for lieutenants. After exhausting the list of eligible Captains and Counselor Supervisors, the overtime shall be offered to employees on the supplemental overtime list.**

~~The Captains and Counselor Supervisors shall not be covered by Article 19 Section 3, overtime solicitation and distribution procedures.~~

The Department shall implement an overtime book system and quarterly list for Captains and Counselor Supervisors consistent with the overtime book system and quarterly list for lieutenants.

Parties' Positions

The State notes that the Union seeks to make what the State perceives to be “two

major changes.” In the State’s estimation, the Union is seeking to grant rights to overtime work as Lieutenants to both Captains and certain Counselor Supervisors and is further seeking to establish an overtime equalization system for the Captains and Counselor Supervisors, which the State claims is “presumably for overtime work in their own classifications.” The State points to the testimony of Lieutenant Osten, who was offered by the Union as a witness, as to how the Lieutenant overtime book and equalization system work. It also notes that Lieutenant Osten stated that the absences of Captain/Shift Commanders generally are covered by Lieutenants who are designated as Acting Shift Commander and receive a stipend as such rather than being covered by another Captain on overtime. In effect, according to the State, “what would be considered in other circumstances as a reason for Captain overtime ... has been and continues to be handled by the assignment of a Lieutenant/Shift Commander.” Hence, the State claims this would not be source of Captain overtime work to be covered by an overtime book or equalization system.

The State also points to the testimony of Director Administrator Stranger to the effect that it would be unusual for a facility to cover the absence of a Captain by offering overtime work. In the State’s estimation, the testimony of both State and Union witnesses reflected that Captains and Counselor Supervisors primarily receive overtime when they are involved in an incident that continues past their shift. Thus, the State opines, it would be difficult to image how there could be overtime equalization. The State also claims that it must be noted that the need to maintain an overtime list for Captains and approved Counselors Supervisors who are willing to work Lieutenant overtime and then to make calls when the facility is

facing the need to cover a vacant Lieutenant shift “will create significant administrative difficulties.” Another serious question, the State identifies is whether any Counselor Supervisors would be qualified to perform Lieutenant duties.

The State claims that the opportunity to assert the right to work overtime in a different job classification is not a practice that is recognized in other State employee contracts. The State observes that in negotiations to add Captains and Counselor Supervisors to the NP-8 Contract the Union argued that it would not require the inclusion of Captains and Counselor Supervisors in an overtime equalization program but, in this proceeding, the Union seeks precisely that end. It is the State’s position that the Union has not provided justification for its proposal.

The Union claims that its proposal would allow Captains and Counselor Supervisors who have operational experience the right to participate in the process of working facility overtime and that they would be inserted after Lieutenants but before resort is made to the supplemental list. It notes that the supplemental list presently is composed of bargaining unit members from specialized units who have previous experience working at the facility where the overtime is available. The Union notes its position was explained by Captain Verdone, which established that Captains obtain “very little overtime” despite the fact that they are qualified. The Union finds this to be “inequitable” and also argued that the costs to the State “would be minimal as opposed to using all Lieutenants from the facility list or the supplemental list.”

In its Reply, the State asserts that no entitlement overtime work can be found for a

lower classification and no other Contract provides for such a benefit. In fact, the State contends, the Union unsuccessfully attempted to obtain “a much more limited right to the Lieutenant overtime in the interest arbitration on incorporating the Captains and Counselor Supervisors” in the Award issued April 27, 2007. No evidence of any substantial change in circumstances can be found, according to the State, and the Union nevertheless seeks more than it was not able to obtain in 2007. Overtime work by Captains and Counselor Supervisors, the State maintains, is usually linked to their particular assignments and would not be subject to being offered to another Supervisor and no basis exists for the Union’s claim, the State argues, that a Counselor Supervisor is qualified to perform the functions of a Line Lieutenant. No justification, according to the State, has been offered for this proposal by the Union.

The Union, in its Reply, claims that its LBO “simply places the Captains and the Counselor Supervisors who have the requisite operational experience in the overtime distribution system currently in place.” There is no basis for the State’s claim, the Union puts forth, that the Union’s LBO would somehow allow an unqualified Counselor Supervisor to be assigned duties he or she could not handle. Further, the Union claims, its LBO only requires equalization among Captains and Counselor Supervisors at a facility, which could be accomplished by an overtime book system that is now in place for Lieutenants at all the Correctional Facilities. The Union asserts that its LBO “addresses what is in some facilities an imbalance in the distribution for Captains” and “simply replicates for these two classes what is already in place for the Lieutenants.”

Arbitrator's Award

After carefully reviewing the Parties' positions in the context of the record evidence, the arbitrator notes that Arbitrator Weisblatt in his 2007 Award on the Captains and Counselor Supervisors awarded the language in the State's LBO in that proceeding that the Union now seeks to modify. In short, the Arbitrator finds that there has been no showing by the Union of any significant change of circumstances to warrant a different finding than made by Arbitrator Weisblatt in 2007.

The State's LBO is awarded on Issue "8".

ISSUE 9

ARTICLE 19 - HOURS OF WORK, WORK SCHEDULES, AND OVERTIME Section 3, Overtime Third paragraph, last sentence

Supplemental overtime list - remove restriction

Union Proposal

Current Contract Language:

The supplemental list shall consist of bargaining unit members from specialized units who have previously worked in that facility.

State's Last Best Offer:

Modify the language to:

The supplemental list shall consist of bargaining unit members from non-facility based units ~~specialized units~~ who have previously worked in that facility.

Union's Last Best Offer: Modify

The supplemental list shall consist of bargaining unit members from **non-facility based units**.

Parties' Positions

The State asserts that the Union seeks to remove the requirement that bargaining unit members have previously worked in the facility before signing up to work voluntary overtime in that facility. The Union's proposal, according to the State, would allow any Lieutenant from any non-facility or specialized unit to be able to work overtime in any correctional facility, which would not even ensure the individual would have basic knowledge of the facility. Lieutenant Osten's testimony that about half of the facilities do

not have supplemental overtime lists and it was difficult to contact employees on a supplement list for overtime at the last minute, the State claims, does not provide justification for removing the prior experience requirement.

The State relies on the testimony of Warden Higgins to the effect that facilities generally allow a one to three week period of on-the-job training or an orientation when an Officer transfers to another facility. The State claims that during such period the employee could observe the different shifts and become familiar with basic operations. It finds significant the testimony of Warden Higgins that, simply because a Lieutenant knows how to be a supervisor or a Captain knows how to be a Shift Commander, do not guarantee that individuals in those capacities could function at a facility where they have never worked without at least being provided an orientation. The State also contends that the Union provided no specific examples of individuals who sought or were denied placement on the facility's supplement list and no basis exists to support the claim that knowledgeable individuals were excluded by the contract language. Furthermore, the State asserts that, although, the current Contract language of "specialized units" is clear, it does observe that its LBO does adopt the Union's desired language of non-facility based units.

The Union claims that its proposal would reflect the record evidence that a practice does exist that Lieutenants have been allowed to work overtime without having worked at a facility, as, for example, Lieutenants from the Training Academy, which is a specialized unit, being allowed to work overtime at a particular facility without having previously worked at said facility. According to the Union, the State seeks to retain a qualification that is no

longer operable in practice, and the Union's LBO seeks "to reflect the practice."

In its Reply, the State maintains that the Union never produced testimony that a Training Lieutenant on a supplemental list at a facility ever worked at the facility. The State further maintains that the Union's contention about Training Lieutenants would have been entitled to "more weight" if there had been an explanation "why such Lieutenants would be qualified to perform the overtime" and if the Union had "cited examples of such Lieutenants who were denied the opportunity to have their names placed on the supplemental overtime lists." The State asserts that, while the Union's position may reflect an attempt by the Union to make its proposal appear "like a reasonable modification, the real impact would be to allow any bargaining unit member to place his/her name on the supplemental overtime list at any facility, regardless of his/her lack of experience in that facility, and management would have to allow, and to bear the risk of liability, of having a supervisor in the facility who had no knowledge of the facility." Thus, the State claims that the Union's proposal is one that "goes too far."

In its Reply, the Union maintains that the restriction now in place is not enforced, in that officers who have no previous service at a facility have been allowed to work overtime. Hence, the Union concludes, "[t]here is no need for it to continue."

Arbitrator's Award

The Arbitrator finds that the Union's LBO seeks to work a substantial change to the Department's operations, in that it would allow bargaining unit members to be placed on the

supplemental overtime list at a facility where that member does not have experience. I find the State's argument more persuasive that an individual should be familiar with the basic operations of the facility before that employee can work the overtime in that facility

The State's LBO is awarded under Issue "9".

ISSUE 10

ARTICLE 19 - HOURS OF WORK, WORK SCHEDULES, AND OVERTIME Section 3, Overtime Distribution Third paragraph, addition to last sentence

Supplemental overtime list - add second category

State Proposal

Current Contract Language:

The supplemental list shall consist of bargaining unit members from specialized units who have previously worked in that facility.

State's Last Best Offer:

Modify the language by adding to the sentence:

and individuals who are serving Temporary Service in a Higher Class as a Lieutenant in the same facility.

Union's Last Best Offer: No new provision

Parties' Positions

The State observes that, on this issue, it is seeking a change “to recognize the individuals who are functioning as lieutenants on a temporary basis and to allow them to work overtime before bargaining unit lieutenants are involuntarily mandated to work overtime.” The State contends that its change would not affect the right of an NP-8 Lieutenant to work overtime under the volunteering and equalizing provisions of the Contract. The State claims that its proposal would allow Correction

Officers or Correction Treatment Officers serving as temporary service in the higher class as Lieutenants to volunteer for overtime “functioning as a Lieutenant at the same facility.” The temporary service in a higher class appointments in the bargaining unit, the State maintains, is small in number and generally lasts from six weeks to four months. Lieutenants in the class, the State observes, according to the record evidence, do not work large amounts of overtime. Hence, the State claims its proposal must be considered “reasonable” and “consistent with the practices of almost all of the facilities which responded to the survey [of the Department of Corrections Human Resources Office] would not adversely affect the permanent lieutenants.”

The Union, however, claims that the State’s proposal is one that seeks to take overtime away from the bargaining unit. Therefore, the Union states its position that, “[i]f there is Lieutenant overtime it should go to Lieutenants, Captains or Counselor Supervisor.” The Union claims that, if a Correction Officer is assigned to the overtime, it would be “antithetical to the notion of Recognition Clause and to the concept of bargaining unit work is for bargaining unit members.” There is no record evidence, the Union argues, that the State’s proposal reflects a practice anywhere else in State service.

In its Reply, the State contends that its LBO seeks to recognize individuals who are functioning as Lieutenants on a temporary basis and to allow such individuals to work overtime before bargaining unit Lieutenants are involuntarily

mandated to work overtime. According to the State, there would be no adverse effect on the right of NP-8 Lieutenants to work overtime “in accordance with the volunteering and equalizing provisions in the NP-8 contract.” The State maintains its proposal thus allows Correction Officers or Correction Treatment Officers serving Temporary Service in a higher class as Lieutenants to volunteer for overtime functioning at a Lieutenant at the same facility. The State maintains that, contrary to the Union’s arguments, its proposal would not be taking overtime away from the unit since the overtime to be offered to TSHC Lieutenants would only occur “prior to involuntarily mandating a Lieutenant to work the overtime.” Moreover, the State insists that its LBO reflects the practices in place at most of the facilities that have had TSHC Lieutenants.

The Union, in its Reply, complains that the State’s LBO is an effort to “inject NP-4 members into the NP-8 overtime pool.” The Union states that, instead, NP-8 overtime should go to NP-8 and NP-4 overtime should go to NP-4. Thus, the Union states that no basis exists for the State’s LBO.

Arbitrator’s Award

It is the State that seeks to change the contractual language and, the Arbitrator finds, the Union’s concerns that the State’s LBO could result in NP-4 members becoming part of the NP- 8 Overtime Pool is a valid one. The Arbitrator finds that there has been an insufficient showing by the State to award its LBO.

The Union's LBO is awarded on Issue "10".

ISSUE 11

ARTICLE 20 - SHIFT AND FACILITY ASSIGNMENTS Sections 1 through 9 and Section 11 second paragraph (second and third sentences)

Changing Bid Shift to Shift Transfer Program State Proposal

Current Contract Language:

BID SHIFT PROGRAM:

Section 1. The Department of Correction agrees to implement a bid shift assignment program for Line Supervisors as set forth in this agreement. The Bid Shift Program will allow Line Supervisors to bid according to seniority for shift preferences. Thus, Line Supervisors will bid their desired shift preference according to seniority. Seniority for purposes of the bid shift program shall refer to seniority as defined in Section One of the Seniority Article 15.

For purposes of the Bid Shift Program, the lieutenants who serve as shift supervisors in the CTU base locations, but not the lieutenants in the CTU specialized or administrative assignments, will be considered as Line Supervisors.

Section 2. Bidding will be done through the completion of bid forms. On the form each Line Supervisor must list a first, second, third, fourth or as many preferences as necessary to indicate that supervisor's preferences as to all shifts then established at the applicant's facility. Bids must be fully completed and submitted by February 1 of each year. All supervisors must submit these forms.

On or before January 15 each year, management will indicate the estimated Line Supervisor levels at each facility for each shift prior to the submission of the forms. Management retains the exclusive right to determine the number of supervisors to staff each shift. Upon receipt of all forms, management shall finalize the schedule. Management will notify the Line Supervisors of their bid shift assignments by February 15 each year.

Section 3. The implementation of the annual bid shift program shall commence with the start of the next full pay period that is at least two weeks after the deadline for line supervisor notification or the start of the next following pay period if mutually agreed to by the parties. Annual vacation requests will begin to be accepted only after the new shift assignments have begun following the

implementation of each annual bid shift program.

Section 4. Seniority will be applied as the determining factor in shift assignment for line supervisors when all other factors are equal. Management retains the right to determine when all other factors are equal. If a Line Supervisor is denied his/her shift preference under this section, he/she shall receive a written explanation of the reason for denial. The Union may grieve a pattern of denials of shift assignment by seniority.

Section 5. Transfers. When practicable, transfers should be made prior to the close of the bidding deadline so that the transferred supervisors will be permitted to bid at their new facility.

Section 6. Discipline. Bid shift can be denied or limited for disciplinary reasons subject to just cause.

Section 7. Administrative Denial. Bid shift can be denied or limited to a line supervisor for administrative purposes such as reassignment to another facility (e.g., line supervisor must learn and be familiar with new facility operations.) This type of assignment is limited to two weeks.

Section 8. Denial of Bid Shift/Evaluations. Management may deny or limit a line supervisor the option to elect a bid shift if that supervisor in his/her most current service evaluation is rated "unsatisfactory" in any one or more categories or who is rated "needs improvement" in two or more categories.

Section 9. Captains working as Shift Commanders shall participate within their classification in the bid shift program described in Sections 1 through 8 above.

Section 11. . . . [Resolved language omitted]

... The employee will indicate the facility or facilities, and the shift(s) at those facilities, for which he/she wishes to be considered. An employee who wishes to be considered for a different shift(s) at his/her current facility prior to the next Bid Shift will follow the same procedures for placing his/her name on the departmental transfer list.

State's Last Best Offer:

Rename Program. Delete Sections 1 through 3 and 5, renumber the remaining sections and modify the language in Sections 4 to 9 and Section 11

as follows:

SHIFT TRANSFER BID-SHIFT PROGRAM:

Section 14. Each facility shall maintain a shift transfer list which shall be updated on a quarterly basis. Seniority will be applied as the determining factor in shift assignment for line supervisors when all other factors are equal. Management retains the right to determine when all other factors are equal. If a Line Supervisor is denied his/her shift preference under this section, he/she shall receive a written explanation of the reason for denial. The Union may grieve a pattern of denials of shift assignment by seniority.

Section 2 6. Discipline. Shift transfer Bid-shift can be denied or limited for disciplinary reasons subject to just cause.

Section 3 7. Administrative Denial. Shift transfer Bid-shift can be denied or limited to a line supervisor for administrative purposes such as reassignment to another facility (e.g., line supervisor must learn and be familiar with new facility operations.) This type of assignment is limited to two weeks.

Section 4 8. Denial of Shift Transfer Bid-Shift/Evaluations. Management may deny or limit a line supervisor the option to elect a **shift transfer** bid-shift if that supervisor in his/her most current service evaluation is rated "unsatisfactory" in any one or more categories or who is rated "needs improvement" in two or more categories.

Section 5 9. Captains working as Shift Commanders shall participate within their classification in the **shift transfer** bid-shift program described ~~in Sections 1 through 8~~ above.

Section 11. . . . [Resolved language omitted]

... The employee will indicate the facility or facilities, ~~and the shift(s) at those facilities,~~ for which he/she wishes to be considered. ~~An employee who wishes to be considered for a different shift(s) at his/her current facility prior to the next Bid Shift will follow the same procedures for placing his/her name on the departmental transfer list.~~

Union's Last Best Offer: Current Contract Language

BID SHIFT PROGRAM:

Section 1. The Department of Correction agrees to implement a bid shift assignment program for Line Supervisors as set forth in this agreement. The Bid Shift Program will allow Line Supervisors to bid according to seniority for shift preferences. Thus, Line Supervisors will bid their desired shift preference according to seniority. Seniority for purposes of the bid shift program shall refer to seniority as defined in Section One of the Seniority Article 15.

For purposes of the Bid Shift Program, the lieutenants who serve as shift supervisors in the CTU base locations, but not the lieutenants in the CTU specialized or administrative assignments, will be considered as Line Supervisors.

Section 2. Bidding will be done through the completion of bid forms. On the form each Line Supervisor must list a first, second, third, fourth or as many preferences as necessary to indicate that supervisor's preferences as to all shifts then established at the applicant's facility. Bids must be fully completed and submitted by February 1 of each year. All supervisors must submit these forms.

On or before January 15 each year, management will indicate the estimated Line Supervisor levels at each facility for each shift prior to the submission of the forms. Management retains the exclusive right to determine the number of supervisors to staff each shift. Upon receipt of all forms, management shall finalize the schedule. Management will notify the Line Supervisors of their bid shift assignments by February 15 each year.

Section 3. The implementation of the annual bid shift program shall commence with the start of the next full pay period that is at least two weeks after the deadline for line supervisor notification or the start of the next following pay period if mutually agreed to by the parties. Annual vacation requests will begin to be accepted only after the new shift assignments have begun following the implementation of each annual bid shift program.

Section 4. Seniority will be applied as the determining factor in shift assignment for line supervisors when all other factors are equal. Management retains the right to determine when all other factors are equal. If a Line Supervisor is denied his/her shift preference under this section, he/she shall receive a written explanation of the reason for denial. The Union may grieve a pattern of denials of shift assignment by seniority.

Section 5. Transfers. When practicable, transfers should be made prior to the close of the bidding deadline so that the transferred supervisors will be permitted to bid at their new facility.

Section 6. Discipline. Bid shift can be denied or limited for disciplinary reasons subject to just cause.

Section 7. Administrative Denial. Bid shift can be denied or limited to a line supervisor

for administrative purposes such as reassignment to another facility (e.g., line supervisor must learn and be familiar with new facility operations.) This type of assignment is limited to two weeks.

Section 8. Denial of Bid Shift/Evaluations. Management may deny or limit a line supervisor the option to elect a bid shift if that supervisor in his/her most current service evaluation is rated "unsatisfactory" in any one or more categories or who is rated "needs improvement" in two or more categories.

Section 9. Captains working as Shift Commanders shall participate within their classification in the bid shift program described in Sections 1 through 8 above.

Section 11. The employee will indicate the facility or facilities, and the shift(s) at those facilities, for which he/she wishes to be considered. An employee who wishes to be considered for a different shift(s) at his/her current facility prior to the next Bid Shift will follow the same procedures for placing his/her name on the departmental transfer list.

Parties' Positions

The State observes that it is seeking, by way of this proposal, to eliminate the Parties' current bid shift program and replace it with a system set forth in the proposal. According to the State, the system it proposes is one by which vacancies first are filled by other employees in the same facility with the consideration of seniority. The State claims that its proposal would result in the parties having the same process for filling vacancies that now exists in the Correction NP-4 Unit.

The State points to the testimony of Dan Callahan and his explanation of the NP-4 system as well as the fact that, under the Parties' current system, the line Lieutenant transfer process does not have any preference for employees in the same facility. The State relies on Mr. Callahan's explanation that a benefit would result to the facility if employees familiar with the facility were able to advance to better shifts in the same facility. As it stands now, the State observes, a more senior Lieutenant in another

facility has the ability to claim a preferential shift at a different facility and a long term employee may be obliged to seek a facility transfer simply to obtain a chance at a better shift. The State claims its offer is justified, and in fact, will harm no bargaining unit members.

The Union responds by claiming the State is doing more than renaming the current bid shift program. Instead, the Union puts forth, the State is ending the bid shift program and its proposal would eliminate the annual bid shift program that allows all Officers at facilities to exercise seniority once a year to change shifts if they so desire. It labels the State's proposal as a "huge change", and identifies the fact that the bid shift program was among the "contentious issues" that arose at the beginning of the Parties' relationship. The Union claims no issues have resulted because of the bid shift program and to eliminate it now would be inconsistent with the Parties' negotiating history as well as the interest and welfare of the employees.

In its Reply, the State states that its attempt to eliminate the bid shift program and to replace it with a system whereby vacancies are first filled by other employees in the same facility would result in the same process of filling shift vacancies being used in the NP-8 as used in NP-4 Unit. The State asserts that the only objections to the proposal offered by the Union is that it would only allow seniority to be exercised if there is a vacancy on another shift and, additionally, that the bid shift program was awarded in the Zausner Award. The State maintains that Arbitrator Zausner only had a choice between the bid shift program as set forth in the Union's LBO and the State's proposal of "no language." No basis can be found, according to the State, that Arbitrator Zausner would have rejected the shift transfer

program had it been before her. The State insists that its proposal “continues seniority as the deciding factor in determining shift assignments but limits the initial pool of candidates to those working at the Facility.” It claims that its LBO is reasonable in that it continues seniority rights to the more preferred shifts without operational disruptions that the State finds “inherent in the bid shift program.”

According to the Union, it “fought for” the bid shift program and it has worked well. It accuses the State of seeking the bid shift program’s “wholesale destruction” when there is no “need to change.” It notes Arbitrator Zausner found for the Union when the NP- 8 unit was required to arbitrate in its initial contract issues concerning bid shifts and transfers. In the Union’s estimation, the State has “pointed to no operational issues during this proceeding because there have been no issues.” The State’s “take away”, as described by the Union, should not be accepted.

Arbitrator’s Award

The Arbitrator finds that the State has met its burden of establishing a justification for its LBO. By eliminating the Bid Shift Program and replacing it with a system that would find vacancies first filled by other employees in the same facility, the Parties would be following the same process of filling shift vacancies currently used in the NP-4 unit. The Arbitrator agrees with the State that Arbitrator Zausner’s Award did not address the particulars of the Parties’ proposals herein. The State’s LBO, the Arbitrator finds, does continue to honor seniority rights to the more preferred shifts, and causes less operational

disruption that the Arbitrator finds is inherent in the bid shift program as presently constituted.

The Arbitrator awards the State its LBO under Issue “11”.

ISSUE 12

ARTICLE 20 - SHIFT AND FACILITY ASSIGNMENTS Section 11, second paragraph, last sentence

Transfer List - frequency & deadline

State Proposal

Current Contract Language:

Such departmental list will be updated quarterly.

State's Last Best Offer:

Modify the language to:

Such departmental list will be updated quarterly **and an employee must submit his/her transfer request form at least fifteen (15) days prior to the start of the next transfer period.**

Union's Last Best Offer: Current Contract Language

Such departmental list will be updated quarterly.

Parties' Positions

The State notes that its LBO has modified its original proposal so that now the proposal focuses only on the need for employee transfer requests to be submitted at least 15 days before the start of the next transfer period. The State identifies the testimony of Mr. Callahan that the Department needs some time to compile transfer requests into the required list, which occasions the need for advance notice. It identifies Mr. Callahan's testimony that there have been situations when the Department was in the process of making a selection in the promotion approval process when the process had to be started again because one or more employees had placed their names on the transfer list on the last day of the month before the

next quarterly lists. The 15 day advance notice, the State contends, would effectively address this difficulty. According to the State, its proposal eliminates an administrative problem and should create no harm or otherwise negatively affect the rights of bargaining unit members.

In the Union's estimation, the State has offered no record support for this proposal. The Union claims that the difficulty with the proposal is "the lack of any period or flashpoint to which the notice is to be directed." The Union maintains that the 15 day notice period "makes little sense."

In this Reply, the State claims, contrary to the Union's arguments, that it offered evidence via the testimony of Dan Callahan. Responding to the Union's argument that its LBO under this issue does not appear logical because there is no period to which the deadline was directed, the State responds that its "language clearly provides that the transfer request form must be submitted 'at least 15 days prior to the start of the next transfer period.'" The State maintains that the Union has offered no "legitimate objection" to this LBO, which seems to do no more than "create a reasonable period in which DOC could cease any pending selection decisions and could update the transfer list before the start of the quarter for which the updated list would apply."

In its Reply, the Union claims that if the State's LBO was no more or less than "a procedural proposal to help with the implementation of existing rights, then it should have no harm and this fact should be explicitly stated in any decision to award the State's LBO in this issue."

Arbitrator's Award

The Arbitrator finds that the State has met its burden of establishing a persuasive justification for its LBO. In this regard, the Arbitrator notes the modification of the State's original proposal to the one to be awarded that requires an employee to submit a transfer requests form at least 15 days before the start of the next transfer period. This proposal, it is submitted, allows the State to more effectively address its operational concerns without causing any adverse effect on members of the bargaining unit.

The State's LBO is awarded on Issue "12".

ISSUE 13

ARTICLE 20 - SHIFT AND FACILITY ASSIGNMENTS Section 11, fourth paragraph

Transfer List - eligibility of recently appointed employee

State Proposal

Current Contract Language:

An employee must have completed the working test period in a bargaining unit classification to be eligible to be transferred to other facilities.

State's Last Best Offer:

Modify the language to:

An employee must have completed the working test period in a bargaining unit classification to be eligible to **place his/her name on the transfer list** ~~be transferred to other facilities.~~

Union's Last Best Offer: Current Contract Language

An employee must have completed the working test period in a bargaining unit classification to be eligible to be transferred to other facilities.

Parties' Position

The State notes that its LBO, from its perspective, “involves a minor change in the administration of the line lieutenant transfer process.” Under the current Agreement, the State observes, an employee who is still in a promotional working test period can place his or her name on the transfer list but is not able to be transferred until after completing the working test period. The State asserts that its proposal requires that the employee complete the working test period before being able to place his or her name on the transfer list. The State relies on the testimony of Mr. Callahan and his opinion that the proposal would have the salutary effect of guaranteeing that newly promoted Lieutenants would be serving for

more than six months in facilities to which they were offered and accepted promotions. The State contends there would be a “minimal impact” on the bargaining unit members since the proposal affects “very few newly promoted lieutenants.” The State claims, therefore, that its proposal is reasonable and should be awarded.

The Union resists the proposal, claiming that no evidence can be found in the record to support the proposal.

In its Reply, the State maintains that the only argument offered by the Union against the proposal is the contention that the State did not present any evidence but, the State argues, Mr. Callahan testified about the justification for this proposal. The State puts forth that the proposal “would have very little impact” and should be awarded.

In its Reply, the Union claims that the State’s LBO “seems to have little basis.” It emphasizes that the transfer rights of NP-8 members were “hard won rights” and a new Lieutenant, even if in the working test period, “should have the same rights as others.”

Arbitrator’s Award

The State, the Arbitrator finds, has not met its burden of presenting sufficient justification for its LBO. Transfer rights, as the Union observes, are significant and should not be modified absent a substantial reason that is factually supported. In the absence of factual support, the Arbitrator declines to accept the State’s LBO.

The Union’s LBO is awarded in Issue “13”.

ISSUE 14
ARTICLE 20 - SHIFT AND FACILITY ASSIGNMENTS
Section 11, seventh paragraph

Transfer List - eligibility of absent employee

State Proposal

Current Contract Language:

An employee on workers compensation or medical or personal leave will be eligible to transfer to another facility under this procedure, provided that his/her return to work date is within ninety (90) calendar days of the offer of transfer.

State's Last Best Offer:

Modify the language to:

An employee on workers compensation or medical or personal leave will be eligible to transfer to another facility under this procedure, provided that his/her return to work date is within **thirty (30)** ~~ninety (90)~~ calendar days of the offer of transfer.

Union's Last Best Offer: Current Contract Language

An employee on workers compensation or medical or personal leave will be eligible to transfer to another facility under this procedure, provided that his/her return to work date is within ninety (90) calendar days of the offer of transfer.

Parties' Positions

The State notes that its proposal shortens the period of time that an employee has to return to work in order to be eligible for transfer to another facility. The State maintains that its proposal seeks only a “minor” change in the administration of the line lieutenant transfer list. Relying on the testimony of Mr. Callahan, the State notes that under the current Contract a facility is not able to fill a vacancy if an absent employee entitled to transfer might not be returning to work for 90 days. Moreover, the State notes that the facility seeking to fill the vacancy would receive an employee who might not be able to work for up to 90 days and

would therefore have to make arrangements to cover the absence of the employee even though the employee had not started at the facility. The State contends that, if accepted, its proposed change would have “minimal impact” on members of the bargaining unit as it would “only affect the few Lieutenants on extended absences who have to wait a month or two more while they were absent before obtaining a transfer to a different facility.” The State claims its proposal is reasonable and should be awarded.

The Union resists the change, arguing that no evidence can be found to support it.

In its Reply, the State claims that the Union’s argument that no evidence was offered in support of this proposal is incorrect because of the testimony of Mr. Callahan stating the justifications for the proposal. The State claims that the proposal “would have very little impact on bargaining unit members but would reduce the operational impact that could be caused by the current 90 day language.”

In its Reply, the Union claims that the State’s attempt to reduce from 90 to 30 days the expected return date requirement creates a problem because “a transfer vacancy may only come up every so often and if the time period is lessened and an employee does not qualify, he or she may not get another chance for quite awhile.” The Union claims the reduction sought by the State “seems a bit too much.”

Arbitrator’s Award

In its LBO, the State is seeking to increase its operational efficiency with no genuine danger that any adverse effect will be felt by a member of the bargaining unit. Accordingly,

the Arbitrator finds that the State has met its burden of establishing a justification for its LBO.

The State's LBO is awarded under Issue "14".

ISSUE 15

**ARTICLE 20 - SHIFT AND FACILITY ASSIGNMENTS
Section 13**

Transfer List - Captains & Counselor Supervisors

Union Proposal

Current Contract Language:

Section 13. The Captains and Counselor Supervisors shall be covered by Section 10 and Section 12, but shall not be covered by Section 11 of the Facility and Schedule Transfer provisions of Article 20.

State's Last Best Offer:

Modify the language to:

Section 13. The Captains and Counselor Supervisors shall be covered by Section 10 and Section 12, but shall not be covered by Section 11 of the Facility and Schedule Transfer provisions of Article 20.

Captains and Counselor Supervisors who have completed the working test period in their classification shall be eligible to submit a written request for reassignment to other facilities to a designated supervisor in the DOC Recruitment Unit. The recruitment unit will be responsible for maintaining the list of interested candidates and ensuring that Wardens are forwarded the list for consideration when vacancies at their facilities are being filled. The Department retains the right of selection.

Union's Last Best Offer: Delete Section 13 and add new provision.

The Captains and Counselor Supervisors shall be covered by Section 10 and Section 12 but shall not be covered by Section 11 of this Article.

In the case of voluntary transfers and voluntary transfer requests concerning Captains and Counselor Supervisors, the following shall apply:

Captains and Counselor Supervisors may request a transfer to another facility but not to a specific assignment at another facility.

An employee requesting a transfer to another facility must put his or her name on the departmental transfer list in accordance with departmental procedures in order to be considered. Such departmental list will be updated quarterly.

As the correctional facilities develop vacancies in a position occupied by either a Captain or a Counselor Supervisor, the Employer shall transfer Captains and Counselor Supervisors according to the following procedure.

When a vacancy at the facility occurs, the remaining facility Captains and Counselor Supervisors assignments may be reevaluated and changed at the discretion of the Unit Administrator including the classification of the vacant position to be filled before the transfer list is utilized. If any change results in a shift change, seniority shall govern any shift change as to captains who are shift commanders at the facility. Then, the applicable transfer list will be utilized to fill the vacancy. Notwithstanding the above, no captain who is serving as a shift commander at the facility may be involuntarily placed on another shift as a result of the process to fill the vacancy at the facility under this section.

Thus, seniority will be the determining factor in the assignment to vacant positions when all other factors are equal. Management, however, retains the right to determine when all other factors are equal and if the senior employee on the transfer list is denied a transfer to the vacant position, he or she shall receive a written explanation of the reason for the denial and the Union may only grieve a pattern of denials for transfers to vacant positions by seniority.

An employee must have completed the working test period in a bargaining unit classification to be eligible to be transferred to other facilities.

Employees are not eligible for transfer under this section if they have been granted, rejected or constructively rejected a prior transfer within the previous six (6) month period.

Employees may remove their names from the transfer list at any time prior to being notified of an opening at the facility of their choice. The employee must notify the employer within twenty-four (24) hours upon receipt of an offer of transfer of his or her intention to accept or reject such offer. Failure to comply with this provision shall be considered a constructive rejection of the offer of transfer.

An employee on workers compensation or medical or personal leave will be eligible to transfer to another facility under this procedure, provided that his or her return to work date is within ninety (90) calendar days of the offer of transfer.

Bargaining unit members will have the right to transfer to vacant positions before these positions are filled from outside the bargaining unit.

For positions that will be vacant for six (6) months or less, only bargaining unit members assigned to the same facility will be eligible for transfer from the departmental transfer list.

If a vacancy occurs and the vacancy is expected to be longer than six(6) months, all Captains and Counselor Supervisors in the bargaining unit are eligible for transfer from the departmental transfer list in accordance with the provisions of this section.

If two or more Captains or Counselor Supervisors are on the departmental transfer list for the vacant position of either less than six (6) months or more than six (6) months, the position will be assigned to the most senior employee as defined in Section One of the Article pertaining to seniority.

The Union and the State may agree to a particular facility transfer in special circumstances. In such case, a written agreement shall be reached by the parties and signed by the Union Executive Director and the Agency Human Resources Director.

Parties' Positions

The State maintains that the Union's LBO seeks to have implemented voluntary transfer rights, including transfer decisions made on the basis of seniority, for Captains and Counselor Supervisors that would essentially mirror those that are provided to line Lieutenants. The State claims that the Union is pursuing a subject that was denied by Arbitrator Weisblatt in his April 2007 award. In the State's estimation, the Union has offered no evidence, or claim for that matter, that circumstances have changed since April 2007 so as to justify its LBO. In setting forth its position, the State finds it significant that the voluntary transfer provisions of Section 10 are limited to Line Supervisor Lieutenants and do not apply

to administrative or unit supervisor Lieutenants who work a five day on and two day off schedule within correctional facilities. No basis can be found, the State claims, “to expand the provisions to cover the Captains and Counselor Supervisors, who all work on the administrative schedule.”

It is the State’s contention that the testimony of the Union’s witnesses, in addition to describing types of assignments held by Captains and Counselor Supervisors, essentially boiled down to two employees who have been seeking transfers for what the State describes as a “relatively short period of time.” Their testimony, the State argues, clearly does not provide justification for the “major change” sought by the Union, “particularly on a subject that had been addressed in interest arbitration less than one year before the present arbitration began.” It is the State’s position that the Union’s LBO, therefore, lacks justification and should not be awarded, especially in light of the “potential operational impact of not being able to select the most qualified candidate for the various Captain and Counselor Supervisor assignments.” On the other hand, the State claims, the record clearly establishes that its LBO is needed by the Department and therefore should be awarded by the Arbitrator.

The Union does take note of Arbitrator Weisblatt’s 2007 Award. According to the Union, Arbitrator Weisblatt observed that the Union’s LBO was “less reasonable” than the State’s LBO “because it takes a step too far and is not reflective of the practical reality of certain staffing and assigning demands.” The Union claims that its instant proposal shows that it “has dramatically changed its position.” Thus, the Union observes that its LBO reflects concerns set forth in the testimony of State witnesses that a transfer request of

Captains and Counselor Supervisors should be within the sole discretion of the State. The Union puts forth that its proposal is one showing “a proper balance of the interest of the employees and the employer’s need to direct the workforce.” Thus it notes that Wardens are allowed to reassign personnel within a facility if a Captain or Counselor Supervisor exercises transfer rights and that, further, a provision exists to allow for the denial of a transfer if it is not consistent with sound operational practice. The Union insists that its proposal affords Captains and Counselor Supervisors “a legitimate process to transfer based on seniority without forfeiting operational concerns.” It claims that when Lieutenants achieved such transfer rights several years ago, the State’s fears about operational concerns did not come into being. The Union, therefore, claims its proposal should be granted in accord with the statutory factors.

According to the State, in its Reply, although the Union claims that its LBO is much different from what it proposed before Arbitrator Weisblatt in the Captain and Counselor Supervisor arbitration, it can be seen that “the only real difference is that it allows the warden to select a Shift Commander from the second or third shift to be assigned to a first shift Captain position, if the Shift Commander volunteers for the shift change, in addition to considering the captains on the first shift for the position.” Accordingly, the State contends, the Union’s proposal “only adds two captains to the facility’s efforts to select the best qualified individual for its vacant captain assignment, including as a unit manager.” Hence, the State maintains that the Union’s LBO amounts to only “a slight change from the last arbitration.” Moreover, the State maintains that the Union has shown no substantial change

in circumstances to allow for a different conclusion than reached in the Weisblatt Award.

The State also posits that the Union does not recognize the substantial differences in assignments and staffing of Lieutenants when compared to Captains and Counselor Supervisors. It notes that Arbitrator Weisblatt took note of the fact that the NP-8 transfer language applied only to Line Lieutenants and not to Lieutenants at the Facilities who had 5-2 administrative schedules. The State observes that the Union's attempt to apply the language to Captains and Counselor Supervisors who do not have 5-3 schedules and who do not provide the type of staffing coverage of Line Lieutenants constitutes "an effort to greatly expand the applicability of the language." The State asserts that its LBO is needed by the DOC and should be awarded by the Arbitrator, and it further observes that the DOC is "strongly opposed to this proposal."

The Union, in its Reply, claims that this Issue "is one of the most important language issues in this case." It insists that it is not making the same proposal as it made before Arbitrator Weisblatt and that its "LBO explicitly responds to the points raised by the State's witnesses that certain Counselor Supervisors may not have the requisite qualifications to perform all Unit Manager tasks." According to the Union, its LBO would permit the Facilities Warden to adjust unit manager assignments and the individuals involved so as to "accommodate the skills of the transferee" and also allows for "a management veto if there is an operational need that cannot be met."

The Union complains that the State seeks to continue a policy with no employee rights. In the Union's estimation, the rights it seeks are not the same as those that exist for

Line Lieutenants and there is “wide latitude” given to management in its LBO “to direct and re-assign the workforce when those rights are exercised.” According to the Union, the dispute under this issue shows a “continuing battle ... for basic workplace rights.” It claims that its approach is one that is “cautious and cognizant of past attempts that have failed.” Its LBO, the Union further asserts, takes into account the needs of management.

Arbitrator’s Award

The Arbitrator finds that the Union has met its burden of providing a persuasive basis to award it its LBO. In reaching this decision, the Arbitrator agrees with the Union that its LBO is not the same proposal made and rejected by Arbitrator Weisblatt. Further, the Arbitrator agrees that the Warden of a facility, under the Union’s LBO, would be permitted to adjust unit manager assignments to accommodate the skills of the transferee and the State would have a veto if operational needs could not be met. In the final analysis, Captains and Counselor Supervisors, the Arbitrator finds, are entitled to a process by which transfers can be sought based on seniority without the State forfeiting any operational concerns. The Union’s LBO, the Arbitrator finds, accomplishes this purpose.

The Union’s LBO is awarded on Issue “15”.

ISSUE 16

ARTICLE 21 - Compensation Section 1(a)

General Wage Increase for 2008-2009

State and Union Proposal

Current contract language:

Section 1. The base annual salary for all employees in effect on June 30, 2005, based on the salary schedules effective June 25, 2004, shall remain in effect for the 2005-2006 contract year.

Effective at the start of the pay period following July 1, 2006, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2006, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

State's Last Best Offer:

Delete outdated language and include the following:

(a) Effective at the start of the pay period following July 1, 2008, the base annual salary for all employees and the current salary schedules shall be increased by two percent (2%).

Union's Last Best Offer: Delete obsolete language add new provision

a. Effective at the start of the pay period including July 1, 2008, the base annual salary for employees and the current salary schedules shall be increased by three percent (3%).

ISSUE 17
ARTICLE 21 - Compensation
Section 1(a)

General Wage Increase for 2009-2010

State and Union Proposal

Current contract language:

Section 1. The base annual salary for all employees in effect on June 30, 2005, based on the salary schedules effective June 25, 2004, shall remain in effect for the 2005-2006 contract year.

Effective at the start of the pay period following July 1, 2006, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2006, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

State's Last Best Offer:

Delete outdated language and include the following:

(b) Effective at the start of the pay period following July 1, 2009, the base annual salary for all employees and the current salary schedules shall be increased by two percent (2%).

Union's Last Best Offer: Delete obsolete language add new provision

b. Effective at the start of the pay period including July 1, 2009, the base annual salary for employees and the current salary schedules shall be increased by three percent (3%).

ISSUE 18
ARTICLE 21 - Compensation
Section 1(a)

General Wage Increase for 2010-2011

State and Union Proposal

Current contract language:

Section 1. The base annual salary for all employees in effect on June 30, 2005, based on the salary schedules effective June 25, 2004, shall remain in effect for the 2005-2006 contract year.

Effective at the start of the pay period following July 1, 2006, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2006, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

State's Last Best Offer:

Delete outdated language and include the following:

(c) Effective at the start of the pay period following July 1, 2010, the base annual salary for all employees and the current salary schedules shall be increased by two percent (2%).

Union's Last Best Offer: Delete obsolete language add new provision

c. Effective at the start of the pay period including July 1, 2010, the base annual salary for employees and the current salary schedules shall be increased by three percent (3%).

ISSUE 19
ARTICLE 21 - Compensation
Section 1(a)

General Wage Increase for 2011-2012

State and Union Proposal

Current contract language:

Section 1. The base annual salary for all employees in effect on June 30, 2005, based on the salary schedules effective June 25, 2004, shall remain in effect for the 2005-2006 contract year.

Effective at the start of the pay period following July 1, 2006, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2006, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all employees and the current salary schedules shall be increased by three percent (3%).

Effective at the start of the pay period following July 1, 2007, the base annual salary for all Captains and Counselor Supervisors and the current salary schedule shall be increased by three percent (3%).

State's Last Best Offer:

Delete outdated language and include the following:

(d) Effective at the start of the pay period following July 1, 2011, the base annual salary for all employees and the current salary schedules shall be increased by two percent (2%).

Union's Last Best Offer: Delete obsolete language add new provision

d. Effective at the start of the pay period including July 1, 2011, the base annual salary for employees and the current salary schedules shall be increased by three and one-half (3.5%).

Parties' Positions

The State observes that these four issues are the Parties' LBOs for wages for: 2008-08 (Issues 16); 2009-2010 (Issue 17); 2010-2011 (Issue 18); and 2011-2012 (Issue 19). The State notes that there are different effective dates between the Parties' LBOs, in that the State's LBOs begin with a pay period which starts after July 1 while the Union begins effective at the start of the pay period that includes July 1. Thus, the State observes that the Union's first proposed increases actually would occur during the term of the current 2005-2008 Contract.

The State incorporates its arguments regarding its analysis of the general economic factors, with special emphasis on its "ability to pay." The State claims that its LBOs on these issues are predicated "entirely on the dire nature of the State's economic and fiscal situation." It notes that it is not proposing a "zero year" even though one would be "clearly warranted under the current fiscal crisis." The State claims its position is justified because of its fiscal situation and the lack of justification for the Union's proposals.

The State maintains that, unlike previous interest arbitrations, no pattern exists regarding raises in other State employee bargaining units. Thus, the State contends that the fact that three bargaining units negotiated agreements in either 2007 or early 2008 cannot serve as a pattern given the small number (3 of 13) of units and what the State describes as "the dramatic change in circumstances which has occurred since those Agreements."

The State maintains that its LBOs of a "reasonable increase of 2%" must be understood as "substantially more than is occurring in the private sector." The State claims

that, in actuality, it cannot afford the increases sought by the Union and it also proffers that members of the bargaining unit already have “decent pay rates as well as twenty-year hazardous duty retirement and the generous State Health and other benefits.”

According to the Union, the wage increases for the four years are to be “largely determined by any existing pattern of other units.” It does acknowledge, however, that “ability to pay, the cost of living and the labor market and the interest and welfare of the employees” also come into play. Its LBOs, according to the Union, should also be understood in view of its LBO under Issue 20 in which it seeks to increase the maximum pay of each classification in the unit by 3% in the third year as well as its LBO under Issue 37 where it seeks to increase the lump sum annual payment to employees at maximum pay to 3% in the second year of a new Agreement. The wage increases sought in Issues 16 to 19 together with the increase of maximum pay of each classification and increase of the lump sum annual payment, the Union maintains, must be seen together and, in this light, reflect “the proper compensation that Union contends is appropriate.”

The Union notes that there are units with 3% and 3.5% increases of the first year of the Agreement. It notes that the State Police have raises from 2.25 % at the minimum and 3.5% at the maximum and the Corrections Unit recently was awarded 3% for 2008-2009. Further, the Union observes that the two 1199 units have a 3% increase for 2008-2009 as does the P-2 unit of AFSCME. Three SEIU, Local 2001 units of CSEA, the Union notes, had 3.5% for 2008-2009 and the A & R Unit has 3% for 2008-2009. It also notes that the NP-4 Unit has 2.5% in 2009-2010, the A & R Unit has 3.25% in 2009-2010, the State Police

in this period have a range of 2.25% to 3% at the maximum. In 2010-2011, according to the Union, the A & R Unit has 3% but also a 3% additional step at maximum and the NP-4 Unit has 2.5%. As to 2011-2012, the Union observes that there are no other units with increases in place.

The Union observes that the State's ability to pay will be affected for the budget for the period 2009-2011, which is yet to be adopted. Nevertheless, the Union contends, in view of the number of units that have 3% wage increases in place for 2008-2009, the State's present efforts to address the 2008-2009 deficit, and the 1.3 billion dollars in the Rainy Day Fund, a 3% offer must be considered "more reasonable" than the State's 2% offer. The Union does acknowledge for the second and third years, there are fewer comparables though more do exist in the second year. In the second year, the Union proffers, it can be said that "the economy is slated to rebound" and "most economists expect greater recover to occur in the third year." The Union claims that its 3.5% increase sought for the fourth year (2011-2012), as with the previous years, must be considered "more reasonable" than the State's 2.5% LBO.

In its Reply, the State asks that the Arbitrator take into account its arguments under the General Economic Discussion and the Background and Statutory Factors section of its brief. It insists that its ability to pay is "extremely limited, if not nonexistent and there is no evidence of any recruitment or retention problems or any lack of comparability with other states or with the salaries of other DOC and/or related job classifications." Bargaining units that had an increase of more than 2% in 2008-2009, the State points out, received them under

negotiated agreements or awards that were completed several years ago at a time “when the State’s economic and budgetary conditions were not so disastrous.” Further, the State claims that, with more than half the units not having “any increases in place for 2008-10 or beyond, there is no basis to claim that there is any pattern that would justify the Union’s LBOs in the last three years of the successor contract.” The State contends that its LBOs of a 2% increases each year is “the more justified” of the LBOs and should be awarded.

The Union claims that the general wage increase that are awarded “should not place this unit out of line with what is already in place.” The Union, in its Reply, states that this observation is particularly apt when one takes into account Issue 20 where the Union has pointed out in its initial brief that “internal comparisons within the State warrant an adjustment to top pay in the third year.” According to the Union, this effort on its part “has been an on-going pursuit ... which the State acknowledges in its brief that has been successful.” It is the Union’s position that “[t]he stare decisis of the bargaining history validates the comparisons.” Further, the Union claims that its costing in the third year indicates no significant cost will occur in that year because the award of 3% will eliminate payment of the current lump sum of 2 and 1/2 % for employees at maximum pay.

Arbitrator’s Award

The Arbitrator, as noted, must heavily take into account the State’s present economic situation that adversely impacts on its “ability to pay.” As Arbitrator Foy stated in the recent NP-4 Award, and as noted above, the economic situation confronting the State is such that

“Union proposals for wages or benefits that are in excess of the current contract and or the State’s proposals have a heavy burden to overcome.” In the proceeding before him involving the NP-4 Unit, Arbitrator Foy awarded the State’s LBOs for each year of a three year contract of 3%, 2.5%, and 2.5%. He found the State’s proposals “reasonable” as against the Union’s LBOs seeking wage increases of 3.25%, 3.5%, and 3.5%. Arbitrator Foy specifically noted, as to the last two years of the Contract (2009-2010 and 2010-2011) that, although the increases he awarded were “lower than other state employee units for those years, ... there are few covering those years and they were awarded or agreed upon before the great deterioration of the economy and public finance occurred.” (Emphasis in original). Arbitrator Foy also found that, “[m]ost significantly, that deterioration must be given great weight as previously discussed.”

The Arbitrator has before him the State’s LBOs of: 2%, 2%, 2%, and 2%, and the Union’s LBOs of : 3%, 3%, 3%, and 3.5%.

The Arbitrator notes that, for 2008-2009, the Award of Arbitrator Foy of 3% is in accord with the other units, and though the Arbitrator feels there is a need for downward adjustment in the second and third years of this Contract regarding general wage increases, he finds that the State has the ability to pay 3% for the first year of the Parties’ Contract, which would be an increase consistent with all statutory factors.

For the second and third year, the Arbitrator finds, as did Arbitrator Foy, the economic conditions confronting the State trump the other statutory factors such that the State’s LBOs of 2% for each year should be awarded. As to the fourth year, which covers the period

beginning July 2011, which is a year not addressed in Arbitrator Foy's Award, it is appropriate to find that the relief given the State in the second and third years, coupled with the expectation that there should be a turnaround in the nation's and in the State's economy leads the Arbitrator to Award the Union its LBO. In arriving at this conclusion, the Arbitrator would also note that on Issue "42", *infra*, the Union will not be awarded its LBO seeking hazardous duty pay. The 3.5% general wage increase for the fourth year of the Contract, the Arbitrator finds, addresses the Award on Issue "42" in light of the statutory factor that requires that existing conditions of employment and the interest and welfare of the employees be taken into account. Clearly, no one would deny the dangerous conditions in which members of the Union perform their work for the citizens of the State.

The Arbitrator awards the Union its LBO in Issue "16"; the Arbitrator awards the State its LBO on Issue "17"; the Arbitrator awards the State its LBO on Issue "18"; the Arbitrator awards the Union's LBO on Issue "19".

ISSUE 20
ARTICLE 21 - Compensation Section 1(a)

Maximum salary rate - proposed increase
Union Proposal

Current contract language:

Effective July 1, 2006, the maximum salary for each job classification in the bargaining unit shall be increased by three percent (3%).

Effective July 1, 2006, the maximum salary for the Captain and Counselor Supervisor job classification shall be increased by three percent (3%).

State's Last Best Offer:

No change in current language.

Effective July 1, 2006, the maximum salary for each job classification in the bargaining unit shall be increased by three percent (3%).

Effective July 1, 2006, the maximum salary for the Captain and Counselor Supervisor job classification shall be increased by three percent (3%).

Union's Last Best Offer: Delete obsolete language add new provision

f. Effective July 1, 2010, the maximum salary for each job classification in the bargaining unit shall be increased by three percent (3%).

Parties' Positions

The State notes that the Union seeks, in this proposal, to increase the maximum rate for all bargaining unit classifications by 3% effective July 1, 2010. The State contends that the Union presented no explanation or justification for this proposal. It notes that the Union proposed two increases of 3% to the maximum salary rates in the 2005 interest arbitration, and that Arbitrator Weisblatt ruled in favor of one increase in the context of a three year Contract, which therefore saw the maximum rates of the salary ranges increase by 3% effective July 1, 2006. No evidence was offered by the Union, the State claims, to increase the maximum rates any further.

A consideration of the salary distribution among members of the bargaining unit, the State puts forth, does not justify raising the maximum rates and demonstrates that the Union's proposal "will continue to increase as more employees reach the maximum and receive the benefits of the higher maximum rate." The State also asserts that the Union has

not offered a sufficiently “detailed analysis” of other bargaining units to show that any “adjusted maximums” in said units provides justification for the Union’s proposal.

The State also claims that no showing has been made by the Union that the State is experiencing any recruitment or retention problem and the testimony of Dan Callahan shows that such is not the case. According to the State, the Union’s LBO must be rejected because of a lack of justification and in view of the State’s economic conditions.

The Union observes that it did successfully increase the maximum pay before Arbitrator Weisblatt based on comparables with out-of-state Officers and also because, as the Arbitrator stated, salaries of rank and file State Police Officers “compelled an increase in this unit.” Comparing members of the bargaining unit with the NP-1 Unit, as did Arbitrator Weisblatt, the Union observes that in the third year of their Contract top step Troopers will be paid \$80,835.00, and, were a Correctional Lieutenant to receive a 3% raise both in 2008-09 and 2009-10, as the Union has sought, the Lieutenant would be paid \$74,563.00 effective July 1, 2009. The Lieutenant, therefore, according to the Union, would lag behind the State Trooper by \$6,000.00. Even if the Lieutenant were to receive both the 3% raise and the 3% adjustment to maximum in year 3, the Union notes, the Lieutenant would make \$79,101, which still places the Lieutenant behind the State Trooper. Lieutenants are also paid less than other State employees with similar objective job evaluation points, the Union contends, and when compared out-of-state, Lieutenants are paid \$5,000 less at maximum than New Jersey Lieutenants. The Union contends that this proposal along with all its other wage proposals, is supported by the factor of interest and welfare of the employees.

In its Reply, the State claims that the Union's sole explanation for its LBO is based on its comparison with the State Police and with other States. The State maintains that the Union's attempt to invoke a comparison with other states "fails to recognize that the Connecticut Lieutenant is a first-line supervisor and therefore equivalent to the Sergeant level in the other states and that the Connecticut Captain is therefore the equivalent of lieutenant in other states." A comparison to "appropriate equivalent job classifications (and not just by title)", the State maintains, would show that the "Connecticut salaries are higher than the other states and therefore do not provide any justification for the proposal." As to the State Police, the States notes that its Union agreed to a greater general wage increase to the higher steps and a smaller general wage increase to the lower steps, whereas in the instant proceeding, the Union is seeking a 3% increase in the maximum rate while "in addition" seeks to provide "the same general wage increase to all employee." Further, the State notes that NP-8 employees receive a 2.5% lump sum payment at maximum, "which is not a benefit received by the State Police, NP-4, Protective Services, Health Care, and other bargaining units." No recruitment or retention issues justify this proposal either, the State argues, and the LBO of the Union lacks justification.

The Arbitrator would observe that the Union's Reply brief as to Issues 16-19, as seen above, included its justification under this Issue, which was set forth above.

Arbitrator's Award

The Arbitrator notes that the burden is particularly heavy on the Union in seeking to

increase the maximum salary for each job classification in the bargaining unit by 3%, effective July 1, 2010. The Arbitrator notes no comparison has been offered by the Union that would persuade the Arbitrator to accept the Union's proposal. That is to say, comparisons with the State Police and other States, upon examination, cannot outweigh the "moderate and balanced" approach the Arbitrator needs to take, particularly in view of the State's economic constraints.

The State's LBO is awarded on Issue "20".

ISSUE 21
ARTICLE 21 - Compensation
Section 2. Night Shift Differential

Shift differential - proposed increase, 2008-09

Union Proposal

Current contract language:

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No change in current language.

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

Union's Last Best Offer: Increase Night Shift Differential

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm

and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour.

Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

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

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

ISSUE 22
ARTICLE 21 - Compensation
Section 2. Night Shift Differential

Shift differential - proposed increase, 2009-10

Union Proposal

Current contract language:

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Increase Night Shift Differential

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour.

Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

Effective July 1, 2009, the shift differential shall be increased by ten cents (\$.10) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

ISSUE 23
ARTICLE 21 - Compensation
Section 2. Night Shift Differential
Shift differential - proposed increase, 2010-11

Union Proposal

Current contract language:

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Increase Night Shift Differential

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour. Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

Effective July 1, 2010, the shift differential shall be increased by ten cents (\$.10) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

ISSUE 24
ARTICLE 21 - Compensation Section 2.
Night Shift Differential

Shift differential - proposed increase, 2011-12
Union Proposal

Current contract language:

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour.

Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour.

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:
No new language.

Union's Last Best Offer: Increase Night Shift Differential

Section 2. Night Shift Differential. All employees in this bargaining unit shall be eligible to receive shift differential whose assigned work shift begins anytime after 2:00 pm and before 6:00 am.

(a) The night shift differential shall be seventy-five (\$.75) cents per hour. Effective June 23, 2006, the shift differential shall be eighty cents (\$.80) per hour. Effective July 6, 2007, the shift differential shall be eighty-five cents (\$.85) per hour. **Effective July 1, 2011, the shift differential shall be increased by ten cents (\$.10) per hour.**

(b) Shift differential will only be paid when an employee is actually working.

(c) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

Parties' Positions

The State notes that the Union, for these proposals under Issues 21 to 24, seeks a shift differential rate that increases by \$.10 per year for each year of the Contract. According to the State, no evidence was offered by the Union to justify the increases. It notes that the shift differential rate is presently \$.85 and was recently increased from \$.75 to \$.80 on June 23, 2006 and to \$.85 on July 6, 2007.

The State claims that, when compared to other State bargaining units, the NP-8 unit, with a rate of \$.85 per hour, is equal to the rates in three other units and is higher than all the other units, including the Correction NP-4 Unit. Hence, no need or justification, the State contends, can be found for the Union's LBOs under these issues.

The Union claims that the increases that it seeks under these Issues in the night shift differential should be awarded as opposed to the four-year freeze that the State proposes. Moreover, the Union notes that, in the NP-4 award, the differential was increased to \$.90 per year in year three (2010-2011).

In its Reply, the State claims that the Union's "only argument" in support of its LBOs "is that there should be 'some' increase over the four year term of the contract and they pointed to the fact that the NP-4 award contained an increase to 90 cents in the third year of that contract." (2010-11). The State notes, however, that, in the NP-4 award, the Arbitrator awarded the State's LBO to increase the differential to 90 cents in the third year. Further, the State observes that Lieutenants started to receive shift and weekend differentials in 2002-03 and that the Captain/Shift Commanders started receiving shift differential with the 2006-07

implementation of the Memorandum that incorporated them into the Contract. According to the State, “[g]iven the dramatic change in economic circumstances since the NP-4 Last Best Offers were submitted on May 30, 2008 ... the State has not proposed any increase in shift differential for the term of the NP-8 successor contract.” No justification can be found for any such increases, the State claims, and if any increase is granted, the State urges “that it be delayed until the last year of the contract.”

Arbitrator’s Award

This set of Issues, “21” to “24”, concerns the Union’s proposals to increase the shift differential for each year of the Contract period. Under the economic conditions prevailing, the Arbitrator finds that no justification has been offered by the Union to justify these proposals. The Arbitrator would note that the Lieutenants received shift and weekend differentials in 2002 to 2003 and Captain/Shift Commanders received a shift differential in 2006-2007 year. The Arbitrator finds no justification has been offered by the Union to increase the differentials.

The State is awarded its LBOs on Issues “21”, “22”, “23”, and “24”.

ISSUE 25
ARTICLE 21 - Compensation
Section 3. Weekend Differential

Weekend differential - proposed increase, 2008-09

Union Proposal

Current contract language:

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No change in current language.

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor

Supervisors effective and retroactive to June 23, 2006.

Union's Last Best Offer: Increase Weekend Differential

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

Effective July 1, 2008, the weekend differential shall be seventy five cents (\$.75) per hour.

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

ISSUE 26
ARTICLE 21 - Compensation
Section 3. Weekend Differential

Weekend differential - proposed increase, 2009-10

Union Proposal

Current contract language:

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No change in current language.

Union's Last Best Offer: Increase Weekend Differential

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

Effective July 1, 2009, the weekend differential shall be increased by ten cents (\$.10).

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

ISSUE 27
ARTICLE 21 - Compensation
Section 3. Weekend Differential

Weekend differential - proposed increase, 2010-11

Union Proposal

Current contract language:

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No change in current language.

Union's Last Best Offer: Increase Weekend Differential

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

Effective July 1, 2010, the weekend differential shall be increased by ten cents (\$10).

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

ISSUE 28
ARTICLE 21 - Compensation
Section 3. Weekend Differential

Weekend differential - proposed increase, 2011-12

Union Proposal

Current contract language:

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors effective and retroactive to June 23, 2006.

State's Last Best Offer:

No change in current language.

Union's Last Best Offer: Increase Weekend Differential

Section 3. Weekend Differential. For the purposes of this section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

(a) The weekend differential shall be paid for working a minimum of six (6) hours on a shift as defined above.

(b) The weekend differential rate shall be fifty (\$.50) cents per hour.

Effective June 23, 2006, the weekend differential shall be fifty-five cents (\$.55) per hour.

Effective July 6, 2007, the weekend differential shall be sixty cents (\$.60) per hour.

Effective July 1, 2011, the weekend differential shall be increased by ten cents (\$.10).

(c) Weekend differential shall only be paid when an employee is actually working.

(d) The above provisions shall also apply to Captains and Counselor Supervisors

effective and retroactive to June 23, 2006.

Parties' Positions

The State notes that the Union, in its proposals under Issues “25 to 28”, seeks an increase of the weekend differential rate by \$.10 per year. It notes that the weekend differential rate is currently \$.60 per hour and was increased from \$.50 to \$.55 on June 23, 2006 and then to \$.60 per hour on July 6, 2007. The State maintains that the “only evidence produced by the Union was a tentative “contingent agreement” that was rendered “null and void” when Arbitrator Weisblatt awarded a three year duration for the Contract.

Viewing other Contracts with State bargaining units, the State contends that the rate of \$.60 per hour for the NP-8 bargaining unit “is in the middle to high range of the rate.” Further, the State observes that the NP-8 rate is higher than the \$.55 received by NP-4 Correction employees and that the State Police Unit does not have a weekend differential benefit. Prior increases in the unit, the State also observes, were five cent increments and not the ten cent increments now sought by the Union. No need or justification for the differentials has been established by the Union, the State claims, and the State’s LBOs on these issues should therefore be awarded.

The Union observes that its proposals of a ten cent per year increase in the weekend differential must be seen in light of the State’s “freeze” proposals. According to the Union, “a slight increase only may be warranted in the context of other economic rulings.”

As to Issues “25 to 28”, in its Reply, the State claims that the only evidence that the

Union adduced was “the contingent tentative agreement in the last contract for an increase to 75 cents in the fourth year of that contract, if the arbitrator awarded a contract duration of four years.” The three year award of the arbitrator, according to the State, renders the contingent agreement void. Moreover, the State points out, its economic situation “is drastically different from 2005-2006 when the contingent agreement was reached.” Furthermore, according to the State, the Union’s proposal is not an increase of 75 cents but a ten cent increase in every year of the Contract. In the recent NP-4 interest arbitration, the State notes, Arbitrator Foy did not award the Union’s LBO seeking an increase in every year but did award the one State LBO that proposed an increase to 65 cents per hour in the third year of the Contract. The State claims, however, that it “is not able to propose any increase in the weekend differential rate in this unit given the current economic circumstances.”

The State also maintains that the weekend differential rates received by the Union “are generally similar to other units.” Therefore, the State posits, “no need or justification” exists for the Union’s LBOs. If any increase is awarded, however, the State urges the Arbitrator to delay the increase “until the last year of the contract.”

Arbitrator’s Award

Under these issues, the Arbitrator notes, the Union’s LBOs seek an increase of the weekend differential rate of \$.10 per year. The Arbitrator’s analysis of these four issues differs from his analysis of the shift differential issues to some extent because, the Arbitrator

observes, the State was willing in the third year of the NP-4 Contract to increase both night and weekend shift differentials in the third year of that Contract, which was accepted by Arbitrator Foy. At the very least, the Union herein should be entitled to the slight increase sought in the third and fourth year as to weekend differential. This Award will not impose a great cost on the State and will achieve a modicum of parity with the NP-4 Unit.

The State's LBOs are awarded on Issues "25" and "26"; the Union's LBOs are awarded on Issues "27" and "28".

ISSUE 29

ARTICLE 21 - Compensation Section 6. Shift Commander Pay, second paragraph

Acting Shift Commander - rate of pay

State and Union Proposal

Current contract language:

Section 6. Shift Commander Pay.

Effective at the start of the pay period following July 1, 2007, the rate shall be increased to \$26.40 per shift.

State's Last Best Offer:

No change in current language.

Effective at the start of the pay period following July 1, 2007, the rate shall be increased to \$26.40 per shift.

Union's Last Best Offer: Increase Shift Commander Pay

Effective July 1, 2009, and each July 1st thereafter for the life the agreement, the shift commander pay shall be increased by the General Wage Increase which is provided for in Article 21, Section 1.

Parties' Positions

The State observes that the Union on this proposal is seeking to have the \$26.40 per shift rate for serving as Acting Shift Commander, increased each year by the amount of the general wage increase. The State asserts that the Union offered no evidence in support of its proposal under this issue and also notes that it dropped its proposal to reduce the daily amount of Shift Commander pay and now proposes to continue the current rate for the rest of the Contract. The State puts forth that the \$26.40 per shift rate currently in effect "is

considerably more than a lieutenant would receive if promoted to captain and that therefore it should not be increased.”

The State points to the testimony of Mr. Callahan that, after the initial Contract was approved, he discussed the rate with the Union and proposed an initial \$26.00 per shift rate, which was accepted by the Union. Callahan testified, the State notes, that the \$26.00 rate was predicated on a comparison “of the midpoint of the lieutenant pay range and the midrange of the captain pay ranges.” The State asserts that the current rate is more than warranted by the additional duties, and it also notes that Arbitrator Weisblatt in awarding the \$26.40 rate effective July 2007, based on the State’s LBO, stated that “the compensation currently provided is adequate and reflects the current responsibilities.” The State maintains that the Union proposal is not justified and the State’s proposal is the “more reasonable proposal and should be awarded.”

According to the Union, the State once again seeks a “freeze” by its proposal that would not allow the \$26.40 per shift for the Acting Shift Commander to be increased by whatever percentage wage increase is awarded in the last three years of the Contract. The Union maintains that “bargaining history supports the continuation of the stipend and that the original amount was reached in an arms length negotiation.” The only question, according to the Union, is the amount by which the stipend should be increased in view of other economic issues on the table. The Union asserts that its position must be understood as seeking “a modest general wage increase” which therefore is the “more reasonable of the two last best offers.” The increase is justified, the Union sets forth, by virtue of the nature of the

assignment, which requires an employee to “take command of a facility shift.”

The State, in its Reply, claims that the only argument advanced by the Union in support of its LBO is that “the original stipend amount was reached by agreement of the parties.” Nevertheless, the State argues, the current rate of \$26.40 “is substantially more than the generally \$12 to \$13.46 per day that a lieutenant would receive if promoted to captain.” There is “an obvious error”, the State contends, in setting the stipend rate at \$26.00 and clearly no basis exist to increase that amount. If anything, the State claims, “the stipend should only be adjusted if it ever falls below the ‘as if promoted rate’, which is not likely to occur for many years.” The State claims that its LBO is more reasonable and should be awarded.

On this Issue, the Union, in its Reply, submits that its resolution should be “tied to a recognition of the Union’s case in the other economic areas.”

Arbitrator’s Award

The Arbitrator agrees with the State’s observation that the \$26.40 per shift rate that is currently in effect is higher than what a Lieutenant would receive if promoted to Captain and is a rate that became effective based on Arbitrator Weisblatt’s 2006 Award.

Under the circumstances, including the additional costs that would be imposed upon the State by the Union’s LBO, the Arbitrator finds that no sufficient justification has been advanced by the Union.

The State is awarded its LBO on Issue “29”.

ISSUE 30

ARTICLE 21 - Compensation Section 6. Shift Commander Pay, New paragraph

Acting Shift Commander - assignment of Captain

State Proposal

Current contract language:

No current language

State's Last Best Offer:

Add the following language:

If a Captain is working overtime as part of the supervisory coverage, the Captain will function as the shift commander.

Union's Last Best Offer:

In the event that a Captain or Counselor Supervisor is working as a line Supervisor on an overtime basis, they will function as the Shift Commander in the absence of the assigned Shift Commander. That Shift Commander position shall have the duty of Desk Supervisor.

Parties' Positions

The State observes that this issue reflects its proposal that if a Captain works overtime in place of a Lieutenant the Captain is functioning as the Shift Commander rather than functioning as a Line Lieutenant while a Lieutenant is functioning as the Acting Shift Commander. The State offers its perception that the Union recognizes the "legitimacy" of this proposal and its counteroffer but that it has not accepted the State's language, seeking

instead to improperly advance the Union proposal under Issue 8 to allow Counselor Supervisors to function as Lieutenants on an overtime basis. The State maintains that there is no basis to have Counselor Supervisors to function as Line Lieutenants during the regular day or on overtime and thus no basis to have a Counselor Supervisor function as a Shift Commander. Further, the State complains, the Union's proposal would require the Captain/Shift Commander to act as Desk Lieutenant, "which was not a concept discussed at the negotiations or presented during the evidence at arbitration."

The State points to Mr. Callahan's testimony concerning "the rationale for the State's proposal" and his emphasis on the fact that "it was not appropriate to have a Lieutenant to act as Shift Commander and be the supervisor of a Captain acting as a Line Supervisor." The State claims that, in the final analysis, its proposal reflects "what the practice should be, without the additional clauses or issues being raised by the Union."

The Union observes that the Parties agree "in concept," on the issue. It notes that the only difference is that its proposal "specifies the Acting Shift Commander Captain or Counselor Supervisor shall have the duty of Desk Supervisor." Its witnesses testified, the Union asserts, that the Shift Commanders now act as Desk Supervisors when they work as Acting Shift Commanders and that, in turn, the Desk Supervisor has "special duties," that must be seen as duties appropriate for the Shift Commander. The Union therefore claims that its proposal seeks "to incorporate a practice."

In its Reply, the State claims that the Union's counteroffer adds a "new issue" whereby Counselor Supervisors would function as Shift Commanders. According to the

State, it does not believe that Counselor Supervisors are so qualified. It is the State's position that the Union offered no testimony of other evidence to justify its proposal. In addition, the State argues, the Union has made the erroneous claim that both parties' LBOs reflect that the duty of a Shift Commander will be assigned to the Captain or Counselor Supervisor if he is working overtime as a Line Supervisor. According to the State, its LBO does not include Counselor Supervisors and it has "no interest in having the Counselor Supervisors perform overtime as line supervisors and/or function as Shift Commanders." Moreover, the State claims that the Union did not produce any witnesses that offered evidence that Shift Commanders serve as Desk Supervisors when they work as acting Shift Commander. According to the State, it seeks to make no change other than to ensure that a Captain would assume the acting Shift Commander role in the absence of a regular Shift Commander if the Captain is working on his shift.

In its Reply, the Union claims that its LBO does not compel a Counselor Supervisor who is not qualified to be a Shift Commander. Further, it claims that its LBO "clarifies that the Shift Commander be the one with the desk duties because that is what the Shift Commander does." It is clear, according to the Union, that the "parties agree" on a change, and it asserts that its LBO "does not abandon the Counselor Supervisors and provides that the Shift Commander do what Shift Commanders are now doing."

Arbitrator's Award

As noted by the Union, the Parties conceptually agree on the issue reflected in their LBOs. The Union's LBO seeks to have Counselor Supervisors function as Shift

Commanders. The record is barren of any persuasive evidence to justify the Union's proposal. Accordingly, the State's LBO will be awarded.

The State is awarded its LBO on Issue "30".

ISSUE 31

ARTICLE 21 - Compensation Section 6. Shift Commander Pay, New paragraph

New Acting Deputy Warden pay Union Proposal

Current contract language:

No current language

State's Last Best Offer:

No new language.

Union's Last Best Offer: Add new sub-section to Section 6

Effective July 1, 2009, bargaining unit members in the Captain and Counselor Supervisor classification who are required to serve as Deputy Wardens shall be paid the stipend as provided for in this section.

Position of the Parties

The State notes that, in this proposal, the Union is attempting to extend the daily stipend for the Acting Shift Commander to Captains and Counselor Supervisors assigned as Acting Deputy Wardens. It notes that the Union made a similar proposal before Arbitrator Weisblatt, which was not found to be persuasive. Similarly, the State maintains, its position in this proposal is more reasonable than the Union's LBO and should be awarded.

The Union claims that when Officers are assigned to what it perceives to be "significant duties in the absence of a Deputy Warden, they should be paid." It contends that the history of negotiations and the interest and welfare of the employees support this

proposal. Moreover, the Union asserts that the “cost is modest” and adding it to the Contract “should be considered as part of the economic package.”

In its Reply, the State claims that the record evidence clearly establishes that when a Captain or Counselor Supervisor is assuming some of the duties of an absent Deputy Warden the situation is not the same as when a Lieutenant, who is acting Shift Commander, becomes responsible for the entire Facility for the entire shift. Moreover, the State points out, the acting Shift Commander stipend does not apply to every instance of a Lieutenant who is acting as a Captain or assuming some of the Captain’s duties but only when the Lieutenant is serving as acting Shift Commander in that assignment. Further, the State notes that Arbitrator Weisblatt considered the same proposal and found it unwarranted in 2007. No need or justification, according to the State, has been established for this proposal.

Arbitrator’s Award

This LBO of the Union seeks to increase the daily stipend for the acting Shift Commander, which the record shows is a proposal similar to one rejected by Arbitrator Weisblatt. No compelling reason has been advanced in the record why this stipend should be extended to Captains and Counselor Supervisors.

The State’s LBO is awarded on Issue “31”.

ISSUE 32

**ARTICLE 21 - Compensation
Section 7. Facility Meal Reimbursement**

Facility Meal Reimbursement - Eligibility

Union Proposal

Current contract language:

Section 7. Facility Meal Reimbursement. Employees at all existing correctional facilities shall continue to receive reimbursement as detailed herein:

(a) Rate. The meal reimbursement rate shall be \$7.00 for each shift actually worked.

Effective June 23, 2006, the per meal rate shall be the rate provided to the majority of correctional employees and shall be adjusted in accordance with the rate provided to the majority of correctional employees.

(b) Eligibility. The minimum time for eligibility for such reimbursement shall be equal to one-half (1/2) of the shift, except unanticipated overtime after a regular shift the employee shall be provided with a sandwich and a beverage, prepared by a staff member.

(c) New Facilities. As new correctional facilities open during the term of this Agreement, the employees at such facilities shall also receive meal reimbursement as is in effect at current facilities.

(d) Captains and Counselor Supervisors will continue to be eligible for meal reimbursement under the above criteria, including the meal rate increase of June 23, 2006.

State's Last Best Offer:

No change in current language.

Section 7. Facility Meal Reimbursement. Employees at all existing correctional facilities shall continue to receive reimbursement as detailed herein:

(a) Rate. The meal reimbursement rate shall be \$7.00 for each shift actually worked.

Effective June 23, 2006, the per meal rate shall be the rate provided to the majority of

correctional employees and shall be adjusted in accordance with the rate provided to the majority of correctional employees.

(b) Eligibility. The minimum time for eligibility for such reimbursement shall be equal to one-half (1/2) of the shift, except unanticipated overtime after a regular shift the employee shall be provided with a sandwich and a beverage, prepared by a staff member.

(c) New Facilities. As new correctional facilities open during the term of this Agreement, the employees at such facilities shall also receive meal reimbursement as is in effect at current facilities.

(d) Captains and Counselor Supervisors will continue to be eligible for meal reimbursement under the above criteria, including the meal rate increase of June 23, 2006.

Union's Last Best Offer: Expand Eligibility

Section 7. Facility Meal Reimbursement. Employees at all existing correctional facilities shall continue to receive reimbursement as detailed herein:

(a) Rate. The meal reimbursement rate shall be \$7.00 for each shift actually worked.

Effective June 23, 2006, the per meal rate shall be the rate provided to the majority of correctional employees and shall be adjusted in accordance with the rate provided to the majority of correctional employees.

(b) Eligibility. The minimum time for eligibility for such reimbursement shall be equal to one-half (1/2) of the shift, except unanticipated overtime after a regular shift the employee shall be provided with a sandwich and a beverage, prepared by a staff member.

(c) New Facilities. As new correctional facilities open during the term of this Agreement, the employees at such facilities shall also receive meal reimbursement as is in effect at current facilities.

(d) Captains and Counselor Supervisors will continue to be eligible for meal reimbursement under the above criteria, including the meal rate increase of June 23, 2006.

(e) Effective July 1, 2009, all bargaining unit employees shall be eligible for meal reimbursement.

Parties' Positions

The State observes that the Union, in this proposal, seeks to have the daily meal payment to be extended to bargaining unit members not working inside Correctional Facilities but who are working at a Department of Correction Office location, including its Central Office. The State maintains that the proposal involves a “costly benefit” and all justification and history supporting the payment for employees working in Correctional Facilities simply do not apply to those working in office locations. It notes the testimony of Dan Callahan that, after an incident involving food tampering by inmates, the NP-4 Unit reached an agreement with the Department whereby employees at each facility could vote whether to continue free meals or opt for a monetary payment. The testimony of the Union witnesses, according to the State, cannot be considered persuasive support for the Union’s proposal.

The State relies on the testimony of Mr. Callahan that, while some NP-4 members at the Central Office receive meal payments, said payments only go to employees “responsible for supervising the inmates who work at the Central Office and are therefore expected to eat their lunch at the job site.” NP-8 members at the Training Academy, the State notes, according to the testimony of Mr. Callahan, also have been granted meal money because they are conducting training at correctional facilities most of the time and it would be “administratively difficult to be granting the payment on certain days and not others.” NP-8 members at the Central Office, the State notes, relying on Mr. Callahan’s testimony, are not required to remain on duty during the meal period. Furthermore, the State contends, the benefit, when calculated, would be “costly”. No justification, the State argues, can be found

for the proposal and the State's LBO must be considered "more reasonable."

According to the Union, most of its members do receive a meal allowance. The rationale for the allowance, the Union puts forth, is that its members "should not have to eat institution food because of the likelihood the food will be doctored inasmuch as it is prepared by inmates." Hence, the Union observes, the benefit's existence "turns on drawing a fine distinction between those with inmate contact and those without." All Officers that have some contact with inmates, the Union claims, and most of them, even if not assigned to a facility, are nevertheless "required to respond to codes defeating the purpose of a guaranteed meal break." Against a background of "very limited" exceptions to the meal allowance, the Union contends that its proposal seeks to make the benefit "uniform", involves a "slight" cost, and is otherwise supported by the history of negotiations and conditions of similar employees together with the interest and welfare of the employees.

The State, in its Reply, reaffirms that the meal allowance has as its purpose the providing of a benefit to "institutional employees, who are in position that cannot leave the facility during meal periods and have to remain in the facility to be available to respond to codes." It notes that there are administrative and clerical employees in facilities who do have some contact with inmates that are not required to remain in the facility during meal periods to respond to emergencies, and who do not receive meal money. It notes in the recent NP-4 interest arbitration that the Union's efforts to obtain a meal payment for non-facility based employees was rejected by the Arbitrator. The same results should be obtained in this proceeding, the State claims.

According to the Union, in its Reply, the State seek to “continue to draw fine distinctions between those entitled and those not” to the meal allowance. It notes that there are various non-facility based Officers who “do have custodial and/or code duties and inmate contact.” No reason exists, the Union argues, why these employees should be left out of the meal allowance benefit. Its LBO, the Union claims, “equalizes the benefit.”

Arbitrator’s Award

The Arbitrator finds that there is no justification for the Union’s LBO, since it would include employees who are not “institutional employees” in the contractual coverage for meal reimbursement. At a time when the State is facing economic constraints, there is no justification for providing for a meal allowance when such employees are not required to remain on duty during the meal period. The Arbitrator respectfully rejects the Union’s claim that the present contractual distinctions are based on a “fine distinction.”

The State is awarded its LBO on Issue “32”.

ISSUE 33
ARTICLE 21 - Compensation
Section 8. Annual Increments

Annual Increments - Effective date, 2008-09

State Proposal

Current contract language:

(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.

(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).

(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).

State's Last Best Offer:

Delete outdated language and include the following:

(c) (1) Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2008-2009 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1 (for those with July increments) or July 1 (for those with January increments).

Union's Last Best Offer: Delete obsolete language add new provision

Section 8. Annual Increments.

~~(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.~~

~~(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).~~

~~(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).~~

(a) Annual Increments 2008 - 2009. Employees will be eligible for and receive annual increments in accordance with existing practice.

ISSUE 34

ARTICLE 21 - Compensation Section 8. Annual Increments

Annual Increments - Effective date, 2009-10

State Proposal

Current contract language:

(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.

(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).

(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).

State's Last Best Offer:

Delete outdated language and include the following:

(c) (2) Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2009-2010 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1 (for those with July increments) or July 1 (for those with January increments).

Union's Last Best Offer: Delete obsolete language add new provision

Section 8. Annual Increments.

~~(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.~~

~~(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).~~

~~(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).~~

(b) Annual Increments 2009 - 2010. Employees will be eligible for and receive annual increments in accordance with existing practice.

ISSUE 35
ARTICLE 21 - Compensation
Section 8. Annual Increments

Annual Increments - Effective date, 2010-11

State Proposal

Current contract language:

(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.

(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).

(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).

State's Last Best Offer:

Delete outdated language and include the following:

(c) (1) Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2010-2011 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1 (for those with July increments) or July 1 (for those with January increments).

Union's Last Best Offer: Delete obsolete language add new provision

Section 8. Annual Increments.

~~(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.~~

~~(b) **Annual Increments - 2006-2007.** Employees will be eligible for and~~

~~receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).~~

~~(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).~~

(c) Annual Increments 2010 - 2011. Employees will be eligible for and receive annual increments in accordance with existing practice.

ISSUE 36

**ARTICLE 21 - Compensation
Section 8. Annual Increments**

**Annual Increments - Effective date, 2011-12
State Proposal**

Current contract language:

(a) **Annual Increments - 2005-2006.** There shall be no payment of annual increments for the 2005-2006 contract year.

(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).

(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).

State's Last Best Offer:

Delete outdated language and include the following:

(c) (4) Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2011-2012 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1 (for those with July increments) or July 1 (for those with January increments).

Union's Last Best Offer: Delete obsolete language add new provision

Section 8. Annual Increments.

~~(a) **Annual Increments - 2005-2006.** There shall be no payment of annual~~

increments for the ~~2005-2006~~ contract year.

~~(b) **Annual Increments - 2006-2007.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2006-2007 contract year in accordance with existing practice, except that they shall be delayed by six (6) months and paid accordingly in the pay periods which include January 1, 2007 (for those with July increments) or July 1, 2007 (for those with January increments).~~

~~(c) **Annual Increments - 2007-2008.** Employees will be eligible for and receive annual increments and maximum rate lump sum payments for the 2007-2008 contract year in accordance with existing practice, except that they shall be delayed by three (3) months and paid accordingly in the pay periods which include October 1, 2007 (for those with July increments) or April 1, 2008 (for those with January increments).~~

(d) Annual Increments 2011 - 2012. Employees will be eligible for and receive annual increments in accordance with existing practice.

Parties' Positions

The State observes that these four issues involve the annual increments for a four year Contract. It notes that the Parties' LBOs are the same in each year for the these issues but further observes that its LBOs seek to delay the increments for six months in each year of the Contract. The State incorporates its arguments concerning its fiscal condition, and maintains that its LBO have the beneficial effect of saving the State "some of the increment costs in each year." Moreover, the State claims that its proposal, ultimately, would "not impact the annualized costs of the increment of the pay rates that will be received by employees after the increment is implemented."

The State observes delaying increments is not a new concept in the bargaining unit. In the Parties' first contract, the State observes, Arbitrator Zausner

awarded increment delays in the first and third years as a way to reduce the immediate cash cost and as an attempt to offset other costs. Arbitrator Weisblatt, for the second contract, the State notes, awarded the State's first year LBO of "no increment" as part of a "zero increase" year as well as awarding the State's LBO for a six month delay for the second year of the contract and a three month delay in the third year of the contract. Against the Union's proposal that no increments should be delayed, the State claims that its LBO is "more reasonable."

The Union notes that the State again "seeks to delay an otherwise scheduled benefit to generate cash flow." The delays, from the Union's perspective, are not justified. According to the Union, an increment for service performed should be paid when it is due. In the Union's estimation, "delays must and should be related to other positive economic findings", which are not present in the instant case.

The State notes in its Reply that the Parties' LBOs are the same in each year. The State seeks a six month delay in the implementation of the increment. The State complains that the Union has not explained why delays are not warranted. The State puts forth that it simply cannot afford to pay wage increases to employees and the delays sought in these LBOs "would at least reduce the cash cost of the implements in the increments in the fiscal year in which they occur (the roll-out or ongoing cost would be the same)." The State notes delays have occurred in previous Contracts and that Arbitrator Zausner awarded two years of delays and Arbitrator Weisblatt awarded delays in the two years in which increments were

granted. Substantial justification, according to the State, exist for the proposed delays with a minimal impact upon employees.

In its Reply, the Union asserts that the State has not pointed out that in previous instances where there have been delays that “the overall awards contained other significant improvements sought by the Union such as increases to the maximum pay and as to the amount of the General Wage Increases.” The Union also claims that a delay must be considered a reduction in pay, “especially in an overtime unit as NP-8.”

Arbitrator’s Award

The question under these four issues is when the increment is to be paid. Thus, the Parties’ differences are found in the fact that the State’s LBOs seek to delay increments for six months of each year of the Contract whereas the Union’s LBOs seeks payment when due “in accordance with existing practice.” As the State has observed, the delay of payments is not a new concept in the Parties’ relationship, and, in fact, Arbitrator Zausner awarded increment delays in the first and third years of the contract period as a way to eliminate immediate cash costs or to offset other costs. Further, Arbitrator Weisblatt in his 2006 Award, the Arbitrator observes, awarded no increment in the first year, a six month delay in the second year, and a three month delay in the third year of the Contract period. Given the undisputed fact that delayed increments reduce the cash costs of the increments in

the fiscal year in which they occur, and the State's need to generate savings, the Arbitrator finds that, when the fiscal crunch should be the greatest in the first two Contract years, the State's LBOs should be awarded. In the remaining two year, however, increments should be paid when due to ensure that they do not become a permanent fixture in the Agreement. That is to say, the Arbitrator notes, typically benefits are to be paid when due.

The State is awarded is LBOs on Issues "33" and "34"; and the Union is awarded its LBOs on Issues "35" and "36".

ISSUE 37

ARTICLE 21 - Compensation Section 9. Maximum Rate Employees

Maximum Rate Lump Sum payment- Increase of payment

Union Proposal

Current contract language:

Section 9. Maximum Rate Employees. Effective June 28, 2002 and thereafter, those employees at the maximum rate of the salary schedule and those employees who will exceed the maximum rate of the salary schedule because of the receipt of an annual increment, shall receive a salary adjustment, which exceeds the salary maximum, in the form of a lump sum payment. Lump sum payments will be effective on the employee's annual increment or anniversary date. The value of the lump sum payment shall be two and one half percent (2 1/2%) of the employees annual salary.

There shall be no payment of the maximum rate lump sum payments for the 2005-2006 contract year.

Captains and Counselor Supervisors will be eligible for the maximum rate lump sum payment.

State's Last Best Offer:

No change in current language.

Section 9. Maximum Rate Employees. Effective June 28, 2002 and thereafter, those employees at the maximum rate of the salary schedule and those employees who will exceed the maximum rate of the salary schedule because of the receipt of an annual increment, shall receive a salary adjustment, which exceeds the salary maximum, in the form of a lump sum payment. Lump sum payments will be effective on the employee's annual increment or anniversary date. The value of the lump sum payment shall be two and one half percent (2¹/₂%) of the employees annual salary.

There shall be no payment of the maximum rate lump sum payments for the 2005-2006 contract year.

Captains and Counselor Supervisors will be eligible for the maximum rate lump sum payment.

Union's Last Best Offer: Increase payout and delete obsolete language

Section 9. Maximum Rate Employees. Effective June 28, 2002 and thereafter, those employees at the maximum rate of the salary schedule and those employees who will exceed the maximum rate of the salary schedule because of the receipt of an annual increment, shall receive a salary adjustment, which exceeds the salary maximum, in the form of a lump sum payment. Lump sum payments will be effective on the employee's annual increment or anniversary date. The value of the lump sum payment shall be two and one half percent (2 1/2%) of the employees annual salary.

Effective for the pay period including July 1, 2009, the value of the lump sum payment shall be three (3%) of the employees' annual salary.

~~There shall be no payment of the maximum rate lump sum payments for the 2005-2006 contract year.~~

~~Captains and Counselor Supervisors will be eligible for the maximum rate lump sum payment.~~

Parties Positions

The State notes that the Union, in this proposal, seeks to increase the amount of the lump sum payment at the maximum rate from 2.5% to 3%. This means to the State an increase in a year when there is a general wage increase despite the fact that the Union has not offered justification for the proposal. The State observes that there are a number of bargaining units that have no payment for employees at maximum or a payment between \$500 to \$750. Hence, the State argues, no basis can be found to justify the Union's increasing payments from 2.5% to 3%. The State notes that the same proposal was made by the Union before Arbitrator Weisblatt who ruled that "no valid basis" existed "to increase the value of the lump sum

payment.” It is the State’s position that the same results should be obtained in this proceeding. The State also notes that, while the proposal is couched in a term of a one-half percent increase, “the actual effect of the proposal is that the lump sum payments would increase by 20% (since 3% is a 20% increase over 2.5%).”

The Union contends that this proposal should be seen as part of the overall economic package and therefore incorporates its arguments on the general wage increase as well as its LBO under Issue “20” in support for an increase in maximum pay. The Union asserts that its proposal is justified by labor market comparisons including comparable wage status of other State employees as well as the factor of interest and welfare to the employees.

In its Reply, the State maintains that the Union has offered no justification for its LBO “other than their general argument for economic gain.” No showing has been made, the State argues, of any need to increase salaries to achieve comparability with other States and there has been no showing that an increase of the maximum for Correctional Officers has occurred so as to justify increasing the maximums for the Lieutenants. No recruitment or retention problems have been identified, the State notes, and most bargaining units do not have a lump sum payment at maximum or only have a payment of \$500 to \$750 dollars. According to the State, its LBO of “no change” is the most reasonable.

The Union, in its Reply, notes that the State’s observation that no other bargaining unit has a level of 3% does not take into account the Union’s reliance “on

the internal and external comparisons to show a disparity.” According to the Union, its LBO is thus “a way to address that disparity.”

Arbitrator’s Award

The Union has the burden of establishing that its LBO seeking to increase the amount of the lump sum payment at the maximum rate from 2.5% to 3% is justified. Clearly, the payment, based as it is on a percentage, would increase each year there is a general wage increase. Given the economic conditions now prevailing, the Arbitrator finds that the Union has not presented sufficient justification to award the Union’s LBO.

The State is awarded its LBO on Issue “37”.

ISSUE 38

ARTICLE 21 - Compensation Section 10(a). Longevity

Longevity payment amount

State Proposal

Current contract language:

No current provision

State's Last Best Offer:

Add to subsection (a):

The Management Pay Plan longevity schedule referenced in this Section shall be the longevity pay schedule applicable to managerial employees that was in effect on July 1, 2008.

Union's Last Best Offer: No new provision.

Parties Positions

The State notes that under this issue it is seeking to correct what it perceives to be “an error that has occurred in the administration of the grandparented longevity payments.” According to the State, it is not attempting to reinstitute rates frozen in 2004 by Arbitrators Zausner but “instead is simply seeking to freeze the grandparented rates based on the 2008 managerial rates.” It points to the testimony of Mr. Callahan that the grandparented rates were considerably higher than in other bargaining units. The import of Mr. Callahan’s testimony the State claims, is that the

increased rates were not based on contractual requirements but instead on a discussion with the Office of Labor Relations, which later informed the Department that rates should not have been increased. Hence, the State claims its LBO seeks to correct the error by nevertheless “giving the employees the benefit of the error by freezing the rates at the 2008 managerial level rather than at the 2004 managerial level.” The State claims that it is significant that neither Arbitrators Zausner nor Arbitrator Weisblatt, in dealing with this issue, “sought to reduce the benefit level but at the same time neither individual endorsed or referenced any increasing of the benefit level or any need for the benefit to increase as non-bargaining employee (i.e., managers’) salaries increased.” Hence, the State claims that its proposal should be awarded as the “more reasonable” LBO on the issue, since “it is needed to correct an error and to reflect the original language and intent.”

The Union accuses the State of attempting “to cap a benefit”, and it argues that the State should not be allowed to do so. It notes that before Arbitrator Zausner the State “won” on a proposal that created a two-tier longevity system whereby employees who were then in the bargaining unit were able to keep their “uncapped” managerial longevity while new hires were to be placed in a schedule that included most other unionized State employees. The Union claims that the State now wants to “penalize” employees who were “uncapped”. In the Union’s estimation, the State is seeking to “get another bite at the resolution it proposed.” The Union asserts that its position is supported by the history of negotiations as well as the interest and

welfare of the employees.

In its Reply, the State emphasizes that it is seeking to “freeze the grandparented rates based on the 2008 managerial rates” in order “to correct an error that has occurred in the administration of the grandparented longevity payments.” The State rejects the Union’s claim that it is seeking to penalize or take away any benefit. Instead, the State puts forth, its “proposal is essential to correcting an error to ensure that the grandparented benefit continues as it was intended.” The State claims that it could have corrected the error on its own and reverted to the 2003 rates but elected to present the matter to an Interest Arbitrator with the understanding that the Interest Arbitrator would consider the initial award as well as the fact that the State was willing to have the rates frozen at the 2008 level instead of at the 2003 level. According to the State, its LBO is necessary “and is exactly what was intended by the language in the first arbitration award and does not cause any harm to the employees and therefore should be awarded.”

In its Reply, the Union claims that the State is in fact seeking to reduce a benefit. According to the Union, when the members of the unit “organized as Lieutenants” they “had a longevity benefit tied to the managerial benefit package,” and “[t]he managers were uncapped.” In the first arbitration proceeding, the Union notes, the Parties’ LBOs differed in that the Union sought to keep the benefit uncapped and the State “capped new promotees into the unit.” The Union maintains that “[t]he then current Lieutenants kept what they had” and therefore “[t]hey kept a

grandfathered benefit.” Now, according to the Union, the State is arguing “that the grandfather provision was just not to grandfather the benefit ... it was to grandfather the benefit and to grandfather and freeze the benefit level.” According to the Union, “[t]his is not what the deal was.”

It is the Union’s position that the State was awarded its LBO “based on a proposal to create a two tier longevity schedule” and officers who “previously [were] classified as managers, got to keep their longevity benefits which were not subject to any cap.” The Union urges rejection of the State’s “attempt to get more from that deal.”

Arbitrator’s Award

The Arbitrator finds, as the State has claimed, that the State is not seeking to reinstitute rates that were frozen by Arbitrator Zausner in 2004. Instead, the State seeks only to freeze the grandparented rates based on the 2008 managerial rates. The State, contrary to the Union’s argument, is not seeking to impose a “cap” on a benefit or otherwise penalize or take away a benefit. An error occurred when increased rates were mistakenly paid by the State. The State’s LBO, the Arbitrator finds, does no more than correct the error, which should be permitted at a time when fiscal resources need to be conserved.

The State’s LBO is awarded on Issue “38”.

ISSUE 39

ARTICLE 21 - Compensation

Section 11. Educational Stipend

Educational stipend - changing to annual payments

Union Proposal

Current contract language:

Section 11. Educational Stipend On or about September 1, 2006, permanent employees in the classifications of Correctional Lieutenant or Correctional Training Officer who have achieved a Bachelors degree in a job-related discipline from an accredited institution of higher learning and submitted adequate documentation of the degree shall receive a five hundred dollar (\$500) lump sum payment.

Lieutenants or Training Officers who complete a qualifying Bachelors degree and satisfy the above criteria after September 1, 2006 shall be eligible for the five hundred dollar (\$500) payment within 60 days of the agency's receipt of the required documentation.

Captains and Counselor Supervisors will be eligible for the educational incentive payment on or about September 1, 2007.

THIS ISSUE IS NOW RESOLVED

SEE ATTACHMENT A

ISSUE 40

**ARTICLE 21 - Compensation
Section 11. Educational Stipend**

Educational stipend - new Masters degree payments

Union Proposal

Current contract language:

No current language.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Add new sub-section

Effective the pay period including July 1, 2009, permanent employees who have achieved a Master's degree in a job-related discipline from an accredited institution of higher learning and who submit adequate documentation of the degree shall receive a one thousand dollar (\$1,000) lump sum payment.

Employees who complete a qualifying Master's degree and satisfy the above criteria after July 1, 2009 shall be eligible for the one thousand dollar (\$1,000) yearly payment within 60 days of the agency's receipt of the required documentation.

ISSUE 41

ARTICLE 21 - Compensation Section 11. Educational Stipend

Educational stipend - new Associates degree payments

Union Proposal

Current contract language:

No current language.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Add new sub-section

Effective the pay period including July 1, 2009, permanent employees who have achieved an Associates degree in a job-related discipline from an accredited institution of higher learning and who submit adequate documentation of the degree shall receive a two hundred and fifty dollar (\$250) lump sum payment.

Employees who complete a qualifying Associates degree and satisfy the above criteria after July 1, 2009 shall be eligible for the two hundred and fifty dollar (\$250) payment within 60 days of the agency's receipt of the required documentation.

Parties Positions

The State notes that in Issue "40" the Union is seeking a stipend for its members who earn a Master's degree and in Issue "41" the Union is also seeking to extend stipends to its members with an Associate's degree. The State observes that in the 2006 proceeding the Union sought to establish new stipends for a Bachelor's

degree and Associate's degree and the State countered with a one time payment of \$500 for employees with Bachelor's degree. Arbitrator Weisblatt, the State notes, awarded the State its LBO.

The State points to the testimony of Mr. Callahan which it proffers establishes that "educational achievement is being recognized by DOC and therefore does not necessitate the creation of new payments." The State also claims that an Associate's degree "generally" cannot be seen to be related to any particular job and career. Further, the State maintains that the Union has not adduced any evidence concerning any change in circumstances to now justify the additional Associate's payment. The State claims its LBOs are "more reasonable" and should be awarded.

The Union asserts that it is seeking to establish a "one time non-recurring payment for the achievement of a Master's degree and for an Associates degree." It claims that its LBO "builds off the current one time payment for the achievement of a Bachelor's degree." If awarded, the Union puts forth, its proposals will motivate bargaining unit employees to obtain more knowledge, which in turn will benefit them in performing their jobs. According to the Union, its proposal must be considered "more reasonable" and is justified by history of negotiations and the interest and welfare of the employees. It also asserts that the costs will be "minimal" while "the payoff will be great."

According to the State in its Reply, the Union has not identified any other Contract that provides stipends for Master's or Associate's degrees and, in addition,

“there are likely to be difficulties in assessing the job-relatedness of many Associate Degree areas.” It also notes the DOC has staff development programs and that, in addition, the State “funds tuition reimbursement and conference funds established in the contract.” It is not at all clear, according to the State, that the Union’s LBOs under these issues would advance the goal of “encouraging additional education.”

As to these two issues, the Union, in its Reply, claims that its LBOs “are not at all costly and would increase the caliber of the officers in the system.”

Arbitrator’s Award

The Arbitrator finds that the record evidence supports the conclusion that the Union seeks a one time “non-recurring payment” when either a Master’s degree or an Associate’s degree is awarded, in keeping with the one time payment presently allowed for a Bachelor’s degree. The Arbitrator finds that the State’s contention that DOC has a staff development program and other allowances for education cannot outweigh the persuasive case made by the Union that its LBO will provide a motivation to its employees, which will benefit not only the employees but the State.

The Union’s LBO are awarded on Issues “40” and “41”.

ISSUE 42

ARTICLE 21 - Compensation New Section

New annual hazardous duty stipend

Union Proposal

Current contract language:

No current language.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Add new Section

Effective December 1, 2009, and each December 1st thereafter, each bargaining unit employees shall receive a eight hundred (\$800) hazardous duty stipend. The stipend will be payable in the pay period that includes the date of December 1.

Parties' Positions

The State notes that this Union proposal, with the current number of members in the bargaining unit at 590, would cost \$472,000 in each Contract year. The amount could go higher, the State observes, to the extent the size of the unit grows or members on unpaid leave return. It is the State's position that no testimony was offered by the Union in support of the proposal. The fact that the payment exists in the NP-4 Unit, according to the State, by itself does not justify the Union's proposal. It asserts there is no record evidence concerning how the NP-4 payment came into

being. In addition, the State claims that members of the bargaining unit are already “well compensated” when compared to NP-4 unit members.

The State also notes that, for the 2001-05 Contract, the Union made the same proposal and Arbitrator Zausner found no evidence to support the award. The Union also made the same proposal in the 2006 interest arbitration, the State observes, and Arbitrator Weisblatt likely rejected the stipend. Hence, the State concludes that its LBO must be considered “more reasonable.”

The Union concentrates on the fact that the NP-4 unit members have received an annual \$800 stipend for hazardous duty. It claims that Arbitrator Weisblatt rejected its LBO on this point because he had “partially addressed” the issue in the increasing the maximum pay of Lieutenants in addition to the general wage increase. Since the time of his Award, according to the Union, the Lieutenant job specification was modified by an objective job study, which included the specific notation that Lieutenants “may be exposed to a considerable danger of injury or assault by inmates.” Hence, the Union claims that Lieutenants are now on “equal footing” with the members of the NP-4 unit. It is clear, the Union contends, that the proposal is justified by conditions of similar employees as well as interest and welfare of employees.

In its Reply, the State notes that the Union’s proposal would cost the State approximately \$472,000 per contract year. It is the State’s position, set forth in the Reply, that no evidence was adduced by the Union to support this proposal and that the Union bases its arguments on the fact that an \$800 working condition stipend exist in the NP-4 unit. No

evidence exists to support any contention by the Union that the “working conditions” of the Correctional Lieutenant job has changed since the Weisblatt Award in which an 3% increase to NP-8 maximum rates was referred to as a way of addressing the Union’s claim to the \$800 stipend.

Moreover, the State claims that, while the Lieutenant job specification refers to considerable dangers, the Training Officer job classification refers to danger and the Captain and Counselor Supervisor specification refers to some danger. According to the State, the Union’s proposal cannot be based on any considerable danger “that has likely been long referenced in the Lieutenant specification since the proposal would grant the same payment to the other classifications which do not contain the same reference.” Furthermore, the State notes, the salary rates for the Lieutenant position are much higher than those of Correction Officer. No justification can be found in the final analysis, the State claims, to support the Union’s position.

In its Reply, the Union acknowledges that the proposal has been rejected by arbitrators in the past, but, the Union contends, there are two factors that require serious consideration. In the Union’s estimation, the job specification has been “revised ... to acknowledge the danger faced by these officers as well as for NP-4 members who have the stipend already.” Moreover, the Union claims, “this is an economic issue.” Hence, the Union claims that, “[a]s part of the mix of issues, this may well be the time to establish parity on this point.” The Union urges strong consideration of its proposal “especially if there is an award to the State on any of its economic wage increases or delays.”

Arbitrator's Award

As noted by the Arbitrator in addressing a general wage increase in the last year of the Contract, the Union will not be awarded its LBO on this Issue. The Arbitrator wishes to emphasize that the rationale in support of awarding the State its LBO is not predicated on any finding that members of the bargaining unit do not undergo hazardous duty on a regular basis. Instead, it is the Arbitrator's finding that the compelling need for fiscal constraint and the general wage increase awarded the Union in the fourth year of the Contract compels the conclusion that hazardous duty pay cannot at this point be awarded. The Arbitrator would hasten to add that he does not find this to be a "dead issue" for future consideration, and the Arbitrator urges that his denial of the LBO not be treated as precedent in the future to support any claim that Union members are not entitled to a reasonable hazardous duty stipend.

The State is awarded its LBO on issue "42".

ISSUE 43

ARTICLE 21 - Compensation New Section

Payment for compensatory time

Union Proposal

Current contract language:

No current language.

State's Last Best Offer:

No new language.

Union's Last Best Offer: Add new section

Effective July 1, 2009, any Captain or Counselor Supervisor that has accrued compensatory time (not Holiday time) shall receive pay for such compensatory time at their rate of pay in effect on July 1, 2009.

Parties Positions

The State notes that the Union, on this Issue, seeks to have Captains and Counselor Supervisors paid for compensatory time remaining to them that they had earned before being covered by the NP-8 Contract. The State points to the testimony of Robert Rinker to the effect that the Union's proposal is based on a provision concerning pre-contract compensatory time in the 2001-05 Lieutenant Contract at a point when Lieutenants became eligible for time and one-half overtime pay. According to the State, Mr. Rinker allowed that the Union could have made this proposal in negotiations for the Memorandum that

incorporated Captains and Counselor Supervisors. Further, the State notes that the language in the 2001-05 Lieutenant Contract was not the same as the instant proposal, since the Lieutenant proposal called for payment only if the employee was not granted his or her request to use the compensatory time and the payment was based on the employee's rate at the time the compensatory time was earned and not based on the employee's rate, as proposed by the Union on this issue, two years after the time was earned. The management personnel policy that applied to Captain and Counselor Supervisors, the State claims, required them to use compensatory time earned in 2007 by the end of 2008, which means that they would not have had any compensatory time as of July 1, 2009 and no basis exists for the payment proposed by the Union. Hence, the State claims that its LBO is the "more reasonable" and is the one that should be awarded.

The Union claims that, when the Lieutenants became organized, they negotiated the right to overtime, and before then, they had compensatory time. It notes that the Contract allowed for accrued compensatory time to be used by a certain date in cash, which is the same arrangement sought by the instant proposal on behalf of Captains and Counselor Supervisors, who also negotiated eligibility for overtime once they were organized and added to the bargaining unit. The Union claims that its LBO is supported by negotiating history, the conditions of other similar employees, and interest and welfare of the employees.

In its Reply, the State claims, that if the Union thought that the proposal was warranted, it should have raised it during the negotiations concerning the incorporation of the Captains and Counselor Supervisors into the bargaining unit. No justification can be found

for this proposal, according to the State, particularly since the existing time limit on using compensatory time would mean that no Captains or Counselor Supervisors would have legitimate compensatory time remaining beyond December 31, 2008.

The Union, in its Reply, claims that there is some compensatory time “on the books” for Captains and Counselor Supervisors. It is the Union’s position that, to the extent such time has not been taken, the Captains and Counselor Supervisors should be paid “since this is now an overtime unit and that time should always have been paid cash, not comp time.” The Lieutenants had the same issues, the Union posits, and were paid and there should be no “forfeiture” for Captains and Counselor Supervisors.

Arbitrator’s Award

On this issue, the Union’s LBO seeks payment for accrued compensatory time for any Captain or Counselor Supervisor at their rate of pay in effect on July 1, 2009. The Arbitrator finds that this benefit, based on negotiating history and the welfare and interest of the employees, should be made available to Captains and Counselor Supervisors to the extent that there is accrued compensation time. If the State is correct that there is no accrued compensatory time, then the Award of this LBO to the Union should be of no moment.

The Union is awarded its LBO on Issue “43”.

ISSUE 44
ARTICLE 25 - Travel
Section 3

Travel meal rates

Union Proposal

Current contract language:

Section 3. When authorized in accordance with Standard State Travel Regulations, any employee who is required to travel on employer business shall be reimbursed at the following rates:

| | |
|---------------------|---------|
| <u>July 1, 2002</u> | |
| Breakfast | \$ 8.00 |
| *Lunch | \$10.00 |
| Dinner | \$20.00 |

*Applicable to out-of-State travel or when authorized in accordance with the Standard State Travel Regulations issued by the Commissioner of Administrative Services.

State's Last Best Offer:

No change in current language.

Section 3. When authorized in accordance with Standard State Travel Regulations, any employee who is required to travel on employer business shall be reimbursed at the following rates:

| | |
|---------------------|---------|
| <u>July 1, 2002</u> | |
| Breakfast | \$ 8.00 |
| *Lunch | \$10.00 |
| Dinner | \$20.00 |

*Applicable to out-of-State travel or when authorized in accordance with the Standard State Travel Regulations issued by the Commissioner of Administrative Services.

Union's Last Best Offer: Increase meal reimbursement

Section 3. When authorized in accordance with Standard State Travel Regulations,

any employee who is required to travel on employer business shall be reimbursed at the following rates:

| | <u>July 1, 2002</u> | <u>July 1, 2008</u> | <u>July 1, 2009</u> |
|-----------|---------------------|---------------------|---------------------|
| Breakfast | \$8.00 | \$8.00 | \$11.00 |
| Lunch | \$10.00 | \$10.00 | \$15.00 |
| Dinner | \$20.00 | \$20.00 | \$26.00 |

*Applicable to out-of-State travel or when authorized in accordance with the Standard State Travel Regulations issued by the Commissioner of Administrative Services.

An employee who is required to remain away from home overnight in order to perform the regular duties of his/her position may be reimbursed for lodging expenses in accordance with the Standard State Travel Regulations issued by the Commissioner of Administrative Services.

Employees shall be notified of the minimum insurance requirements prior to using their personal vehicles in the performance of duties. In an emergency situation, an employee who uses his/her personal vehicle shall be reimbursed regardless of the insurance requirement.

The mileage reimbursement rate shall be the GSA rate subject to readjustment within thirty (30) days, consistent with the readjustment by the U. S. General Services Administration.

Parties' Positions

According to the State, the Union's proposal seeks to increase the travel meal reimbursement rates, which proposal, the State claims, is supported by no evidence. The State opines that the Union will rely on units that are higher, though many units are lower than NP-8, for travel meal reimbursement. Moreover, the State contends that there is no evidence that unit members do any significant travel on State business and while the cost impact may be low, the fact is there is no justification for the proposal. Thus, the State claims its LBO is "more reasonable."

The Union claims that this proposal “simply seeks to keep pace with the statewide reimbursement level for other state employees.” Thus, it claims that the LBO follows the payments that are currently in effect for the executive branch units. It also states that very few members of the unit travel, but when they do, no reason exists for them not to receive the “going rate.” It is the Union’s position that this proposal is supported by negotiating history, the condition of other similar employees, and the interest and welfare of the employees.

In its Reply, the State notes that the current NP-8 rates in this area are higher than six other units, to include the NP-1 State Police and the NP-4 Correction Units. No basis can be found for the Union’s LBO, the State claims, or its specific argument that the proposed rates are “statewide rates or that the NP-8 unit is behind other units and must be increased to ‘keep pace’.”

Arbitrator’s Award

The Arbitrator finds that the Union has not met its considerable burden of proof to increase the compensatory benefits connected to travel meal reimbursement rates. As noted by the State, economic constraints, as well as the fact that many units are below the MP-8 rate at present, lead to the conclusion that the State’s LBO should be awarded.

The State’s LBO is awarded on Issue “44”.

ISSUE 45

ARTICLE 27 - Miscellaneous **Section 1. Meal Breaks.**

Meal breaks - applicability

State Proposal

Current contract language:

Section 1. Meal Breaks. All employees shall be granted up to twenty (20) minutes without loss of pay during each work shift during which they may eat their lunch. Employees are required to respond to facility incidents if necessary during such period.

State's Last Best Offer:

Clarify the language to:

Section 1. Meal Breaks. All facility employees shall be granted up to twenty (20) minutes without loss of pay during each work shift during which they may eat their lunch. Employees are required to respond to facility incidents if necessary during such period.

Union's Last Best Offer: Current Contract Language

Section 1. Meal Breaks. All employees shall be granted up to twenty (20) minutes without loss of pay during each work shift during which they may eat their lunch. Employees are required to respond to facility incidents if necessary during such period.

Parties' Positions

The State notes that, under this Issue, it is proposing to clarify the current contractual language to make it clear that the 20 minute paid meal break is applicable to employees who are working in Correctional facilities and not to other employees. It points to the testimony of Warden Higgins that members of the bargaining unit at correctional facilities are not able to leave the facility during their meal period and they are paid for that period because they

are required to be on duty. No genuine claim or evidence was proffered by the Union, the State claims, that Captains and Counselor Supervisors assigned to administrative buildings are required to remain on duty and are not being provided with a 30 minute unpaid meal break. The State contends that its proposal is simply a clarification that will not change the meaning or intent of the provision and thus it should be awarded.

The Union resists what it labels as a “curious proposal by the state.” The Union offers the belief that the proposal exists for the purpose of assisting the State “in its argument that the meal allowance should be denied because some, if not all, employees are entitled to a break and theocratically go out to lunch.” In the final analysis, the Union contends, its LBO to keep the status quo is “more reasonable.”

In its Reply, the State claims that the Union does not understand the State’s proposal. According to the State, it merely is attempting to add the word “facility” to the contractual language to ensure “that there is no confusion on the part of the supervisor or their supervisors” as a point of clarification.

Arbitrator’s Award

The Arbitrator agrees with the State that its LBO seeks in essence a clarification of current contractual language to ensure that the 20 minute paid meal break is applicable to Correctional Facilities and not other employees. In view of the clarifying nature of the proposal, the Arbitrator’s finding that it will not genuinely create any adverse impact on the bargaining unit, and the State’s LBO should be awarded.

The State's LBO is awarded on Issue "45".

ISSUE 46

ARTICLE 32 - Holidays Section 9

Holiday Article - applicability to Captains & Counselor Supervisors

State & Union Proposals

Current contract language:

Section 9. Captains and Counselor Supervisors shall be covered by Sections 1 and 2 of Article 32 and the following provision:

Each full-time Captain and Counselor Supervisor whose job does not require him/her to work on a holiday shall ordinarily receive the holiday off and shall receive his/her regular week's pay for the week in which the holiday falls. When such employee is called in to work on a holiday, he/she shall receive compensatory time for the hours worked on the holiday, which shall be at least the minimum call-back hours provided by Article 21, Section 5, in addition to the holiday pay for the day.

Notwithstanding the prior sentence, if Article 19, Section 2 provides that Captains and Counselor Supervisors shall receive overtime pay rather than compensatory time for additional hours worked, the Captains and Counselor Supervisors shall not receive compensatory time but instead shall receive time and one-half overtime pay for hours worked on the six holiday listed in Section 5 of Article 32 and shall receive straight time overtime pay for hours worked on the other six holidays.

State's Last Best Offer:

No change in current language except to update:

Section 9. Captains and Counselor Supervisors shall be covered by Sections 1 and 2 of Article 32 and the following provision:

Each full-time Captain and Counselor Supervisor whose job does not require him/her to work on a holiday shall ordinarily receive the holiday off and shall receive his/her regular week's pay for the week in which the holiday falls. When such employee is called in to work on a holiday, he/she shall receive **overtime pay** ~~compensatory time~~ for the hours worked on the holiday, which shall be at least the

minimum call-back hours provided by Article 21, Section 5, in addition to the holiday pay for the day.

The overtime rate shall be ~~Notwithstanding the prior sentence, if Article 19, Section 2 provides that Captains and Counselor Supervisors shall receive overtime pay rather than compensatory time for additional hours worked, the Captains and Counselor Supervisors shall not receive compensatory time but instead shall receive time and one-half overtime pay for hours worked on the six holiday listed in Section 5 of Article 32 and shall receive straight time overtime pay for hours worked on the other six holidays.~~

Union's Last Best Offer: Delete Section 9

Section 9. ~~Captains and Counselor Supervisors shall be covered by Sections 1 and 2 of Article 32 and the following provision:~~

~~Each full-time Captain and Counselor Supervisor whose job does not require him/her to work on a holiday shall ordinarily receive the holiday off and shall receive his/her regular week's pay for the week in which the holiday falls. When such employee is called in to work on a holiday, he/she shall receive compensatory time for the hours worked on the holiday, which shall be at least the minimum call-back hours provided by Article 21, Section 5, in addition to the holiday pay for the day.~~

~~Notwithstanding the prior sentence, if Article 19, Section 2 provides that Captains and Counselor Supervisors shall receive overtime pay rather than compensatory time for additional hours worked, the Captains and Counselor Supervisors shall not receive compensatory time but instead shall receive time and one-half overtime pay for hours worked on the six holiday listed in Section 5 of Article 32 and shall receive straight time overtime pay for hours worked on the other six holidays.~~

Parties' Positions

According to the State, it proposes in this Issue an updating of the language in the Contract to reflect that Captains and Counselor Supervisors received overtime pay rather than compensatory time in the Award of Arbitrator Weisblatt. By seeking to delete Section 9, the

Union, the State argues, is attempting to have all of the holiday language apply to the Captains and Counselor Supervisors even though they do not have to work on holidays as part of their regular schedules. The State notes that the present Contract language was agreed to by the Parties at the time Captains and Counselor Supervisors were included in the bargaining unit. Because Captains and Counselor Supervisors are not required to work on holidays as part of their regular schedules, language in Sections 3, 7, and 8 concerning holidays, the state proffers, are not applicable to Captains and Counselor Supervisors. The State claims that its LBO should be awarded and that the Union has not “demonstrated any need to change the language.”

The Union contends that its proposal to delete Section 9 and treat Captains and Counselor Supervisors the same as other employees for purposes of holidays should be awarded. The Union contends that its LBO ensures that any compensatory time earned under the Article will be paid time off. The State’s LBO, the Union asserts, does not accomplish this purpose, and, the Union claims, its “proposal” is a “cleaner way to accomplish the equal treatment of Captains and Counselor Supervisors for purposes of holidays.” The Union further argues that its LBO should be awarded because of the history of negotiations, the conditions of other similar employees and the interest and welfare of the employees.

The State, in its Reply, claims that it is doing no more than proposing to modify the language “to reflect the fact that Captains and Counselor Supervisors were awarded overtime pay (than compensatory time) in the Weisblatt #2 award.” The State claims, however, that the Union seeks the applicability of the holiday article language to benefit all Captains and

Counselor Supervisors, even those who do not have to work holidays as part of their regular schedules. The State maintains that the Union has demonstrated no need to change the language and that its LBO should be awarded.

The Union, in its Reply, asserts that the State has acknowledged that there are occasions when Captains and Counselors work on holidays. It maintains that its LBO “simply treats them under the existing language for the Lieutenants.” The Union asserts that it not seeking to enlarge a benefit but simply to achieve “a cleaner way to cover the classes.”

Arbitrator’s Award

The Arbitrator finds that the State has sustained its burden of persuasion that the LBO it advances seeks to update language to reflect the fact that overtime pay is received by Captains and Counselor Supervisors and that individuals in these positions do not receive compensatory time per the Award of Arbitrator Weisblatt. The Arbitrator further finds that the Union’s LBO, seeking to delete Section 9, overlooks the fact that Captains and Counselor Supervisors are not required to work on holidays as part of their regular schedules.

The State is awarded its LBO on Issue “46”.

ISSUE 47

ARTICLE 35 - Sick Leave Section 7(a)

Medical Certificate requirement - length of absence

State Proposal

Current contract language:

Section 7. An acceptable medical certificate, which must be on the form prescribed by the Commissioner of the Department of Administrative Services and signed by a licensed physician or other practitioner whose method of healing is recognized by the state, will be required of an employee by his appointing authority to substantiate a request for sick leave for the following reasons:

- (a) Any period of absence consisting of more than five consecutive working days;
- (b) to support request for sick leave of any duration during annual vacation;
- (c) leave of any duration if absence from duty recurs frequently or habitually provided the employee has been notified that a certificate will be required;
- (d) leave of any duration when evidence indicates reasonable cause for requiring such a certificate.

The Commissioner of the Department Administrative Services or the appointing authority may provide a State physician to make a further examination.

State's Last Best Offer:

Modify subsection (a) to:

- (a) Any period of absence consisting of more than **three** five to consecutive working days;

[Rest of section is resolved language]

Union's Last Best Offer: Current Contract Language

- (a) Any period of absence consisting of more than five consecutive working days;

Parties' Positions

The State notes that its proposal here is to change the minimum period for requiring medical documentation to three consecutive days. It claims that the average amount of sick days utilized by NP-8 bargaining unit members is more than the 15 days earned by employees in each year and “there are a substantial number of employees who often are absent for claimed illness for five consecutive work days.” The State claims that its proposal is “not unreasonable.” It points to the testimony of Mr. Callahan that the Department has had the highest sick leave usage of any of the larger State agencies and that the current Contract is such that employees need not provide documentation if they are off for a full workweek provided they are on a five to three or five to two schedule.

Statistical data, according to the State, supports its LBO as well. The State claims that “two likely factors” could be supporting the increase in multiple day absences of a number of bargaining unit employees, including the fact that there is no contractual requirement to document a claim of not more than five days and the Department’s own attendance policy that defines an “occasion of absence” to include multiple days missed from work at the same time. The State also identifies its obligation under both the State and Federal Family and Medical Leave Acts as an additional reason in support of this proposal. Hence, the State maintains that there is “every reason” to award it its proposal.

The Union claims its proposal to keep the status quo is supported by a State regulation that mirrors the current Contract. Moreover, the Union claims that the record contains “little

evidence” of any discipline for sick leave abuse. Thus, it claims that the State has “a suspicion” but “no proof.” A similar proposal, the Union further notes, was rejected by the arbitrator in the recent NP-4 arbitration, and its proposal to keep the status quo was supported by history of negotiations, conditions of similar employees, and the interest and welfare of the employees.

In its Reply, the State contends that, despite assertions to the contrary by the Union, the bargaining unit presents a pattern of sick leave that is either excessive or abusive. The State claims that its proposal is intended to cover lengthy absences that would be in the range of four to five days that presently do not require medical documentation. It is the State’s position that, by shortening the period for required medical certification, the Parties’ Agreement would be more consistent with the FMLA, which requires employers to notify employees of possible coverage thereunder.

The Union asserts that the State should be addressing any alleged problem on a case-by-case basis. The State’s proposal, the Union maintains, was not successful in the recent NP-4 award, and likewise it should not be successful here.

Arbitrator’s Award

In analyzing the Parties’ positions under this issue, the Arbitrator finds he need not, and in fact does not, make any findings that there has been any abuse of sick leave. Rather, the Arbitrator finds, on balance, that the equities favor the State to the extent that it is reasonable for the State to receive documentation for reasons of sick leave for three or more

consecutive working days of absences. The Arbitrator is also persuaded that this LBO of the State is in accord with the Federal FMLA and may prevent issues arising from abuse or misuse of sick leave.

The State is awarded its LBO on Issue “47”.

ISSUE 48

**ARTICLE 40 - Labor Management Committee
Section 1**

Labor Management Committee - size of committee

Union Proposal

Current contract language:

Section 1. Facility and agency Labor Management Committees shall be established by the parties. Such committees when established shall consist of not more than two (2) representatives of each party at the facility level, and not more than five (5) representatives at the agency level. Time off for participation by members in the Committee(s) will be without loss of pay or benefits.

State's Last Best Offer:

No change in current language.

Section 1. Facility and agency Labor Management Committees shall be established by the parties. Such committees when established shall consist of not more than two (2) representatives of each party at the facility level, and not more than five (5) representatives at the agency level. Time off for participation by members in the Committee(s) will be without loss of pay or benefits.

Union's Last Best Offer: Increase number of members

Section 1. Facility and agency Labor Management Committees shall be established by the parties. Such committees when established shall consist of not more than two (2) representatives of each party at the facility level, and not more than ~~five (5)~~ seven (7) representatives at the agency level. Time off for participation by members in the Committee(s) will be without loss of pay or benefits.

Parties Positions

The State observes that, under this Issue, the Union's LBO seeks to increase the number of employees who are to be released on paid State time to attend Department of Correction Labor Management Committee meetings. According to the State, the Union has not claimed to have any difficulties with Labor Management Committee. The status quo, the State argues, should be maintained.

The Union claims its position is "simple." The labor component of the Committee has five members and when the Captains and Counselor Supervisors were added to the unit, 217 additional members were thus on board. The proposal to add two members, the Union asserts, simply is to "ensure representation of all groups and to make an effective committee." The Union claims its proposal is "more reasonable" than the State's and is supported by the interest and welfare of the employees.

Arbitrator's Award

The Arbitrator agrees with the Union that the proposal seeking to increase the number of members serves to make the committee more effective. Given the salutary purposes of the committee, its increased effectiveness serves both parties.

The Union's LBO is awarded on Issue "48".

ISSUE 49

ARTICLE 40 - Labor Management Committee

New Section

Establishment of Alternate Work Schedules

Union Proposal

Current contract language:

No current language

State's Last Best Offer:

No new language.

Union's Last Best Offer: New section

The parties agree to use the labor management committee for establishing alternate work schedules programs including pilot programs. Any alternate work schedule programs may be implemented upon mutual agreement.

Parties' Positions

The State notes that in this issue the Union proposal seeks to begin alternate work schedule programs within the Department of Corrections. According to the State, the Union's witness on this topic, Robert Rinker, made the assertion that alternate work schedules would largely apply to the Central Office staff and several administrative positions. Mr. Rinker, the State contends, was not aware of what schedules were being worked in the administrative post or in specialized units outside correctional facilities. He acknowledged, the State claims, that the P-3B unit, which has members that work in the Department of Corrections and which is also represented by CSEA, has no contractual language about

alternate work schedules.

The State relies on the testimony of Mr. Callahan that the Department of Corrections and CSEA have labor management meetings on a quarterly basis and that he could never recall the issue of alternative work schedules raised in any of the discussions. The Department's Central Office, the State points out, has a flex time program whereby employees can request different starting times for their schedules, and Mr. Callahan testified that Captains and Lieutenants in Security Division had the same schedule options and most of them opted to begin their work day at 7:00 am or 7:30 a.m. It is the State's position that, because the Union has not looked into whether the alternate work schedules existed at the Department or whether they would provide any benefit to employees of the Department, no justification can be found for the proposal and the State's proposal should be awarded.

The Union asserts that it is seeking to "explicitly place before the [labor management] committee the concept of alternative work schedules and pilot programs regarding the same subject." It notes that any Agreement would require the State's approval, and the proposal itself "would make this important topic a priority in a unit where schedules are designed to fit a 24/7 operation." It claims that these schedules "can wreck havoc with one's personal life and individual needs such a day care." The cost of this proposal is nothing, the Union puts forth, and its proposal is clearly "more reasonable" than the State's LBO.

In its Reply, the State contends that the assertion by the Union that alternate work schedule programs should be a priority where schedules are designed to fit a 24/7 operations, is not consistent with the testimony of the Union's only witnesses who addressed central

office schedules. The Union, the State claims, was not aware that DOC central office staff has in place flextime options, and the Union cannot articulate further reasons why “other alternate work schedules would provide any benefit to the employees or the department.”

Arbitrator’s Award

Unlike Issue 48, where an articulated purpose was served by the Union’s LBO, the Arbitrator finds that the Union’s LBO on this Issue serves no articulable and factually supported purpose. Given the purposed Department’s 24/7 need for coverage, the Arbitrator agrees with the State that it is not reasonably within the scope of contemplation that an alternate work schedule would be feasible.

The State’s LBO is awarded on Issued “49”.

ISSUE 50

ARTICLE 53 - Employee Drug Testing/Screening New Sections and Section 3

Expansion of Employee Drug Testing/Screening

State Proposal

Current contract language:

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

State's Last Best Offer:

Add new provisions and modify the current Section 3 to:

New Section. Random Testing. The Department of Correction will establish a random drug testing program applicable to all bargaining unit members.

The random selection shall be made by computer-generated numbers for each employee covered by this agreement. Such computer-generated program shall be performed by an outside contractor hired by the State after consultation with the Union and which is experienced in such function. Each random selection shall be made from the full complement of bargaining unit members covered by this agreement.

During any contract year, up to twenty-five percent (25%) of bargaining unit members may be tested. No employee shall be subject to more than two (2) random drug tests in any contract year.

New Section. Post-incident Testing. An employee may be subject to a mandatory immediate post-incident drug test when involved in any incident which results in the death or serious physical injury of a person.

Section 3. Refusal to Take Test, Tampering or Positive Results.

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

[Sections 1, 2, 4 and 5 are resolved provisions.]

Union's Last Best Offer:

Section 2. Probable Cause. Add to existing language:

Probable Cause -The probable cause standard for drug testing is based upon a specific, objective fact or facts, and reasonable inferences drawn from those facts that are reasonable in light of experience that the individual may be involved in the use of any illegally used drug or controlled substances.

Probable cause determinations may be based upon, but are not limited to the following:

Observable phenomena, such as direct observation of illegal use or possession of drugs and/or the physical symptoms or manifestations of being under the influence of a drug, controlled substance, or marijuana; abnormal or erratic behavior while on duty (ie., slurred speech, uncoordinated movement, gait, stupor, excessive giddiness, unexplained periods of exhilaration and excitement, impaired judgment, deteriorating work performance or frequent accidents not attributable to other factors);

Arrest, indictment or conviction for drug related offenses or the identification of an employee through an affidavit, as being involved directly or indirectly in activities that are the subject of criminal investigation into illegal drug use or trafficking;

Evidence that an employee has tampered with a previously administered drug test and/or has made false or misleading statements to any Department personnel regarding past or present illegal use of drugs;

Repeated or flagrant violations of the Department's rules and procedures, which are determined by management, to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug use.

The Supervisor making the initial determination of probable cause shall document, in writing, all circumstances, information and facts leading to and supporting the existence of probable cause. The report will include pertinent dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing and action(s)

taken. The information will be forwarded to the Warden for review and determination.

The Union shall be promptly notified when a determination of probable cause has been made. Documentation regarding that determination will be made available to the Union, upon request, if approved by the subject employee.

Laboratory - A facility certified by the Federal Department of Health and Human Services under the Mandatory Guidelines for Federal Workplace Drug Testing Programs shall be used for the testing provided for in this article. Prior to advertising the RFP for such services, the Department will ask the Union for their comments and suggestions on the RFP.

All samples will be tested consistent with the Federal Department of Health and Human Services Mandatory Guidelines for federal workplace drug testing.

At the time of the drug test, the employee's urine sample will be divided into two collection bottles (split sampling). If a specimen is reported as positive, the employee, upon written application to the Warden, and within ten (10) days of the notification of a positive result, may have the untested specimen independently tested by a laboratory, as defined herein.

At the time that the employee provides a urine sample, the employee shall also provide a confidential, written statement as to whether the employee is using any prescription drugs. If the test is positive the employee must present evidence of the use of prescription drugs, which shall include all written confirmation from the employee's prescribing physician, and copies of the prescription.

MEDICAL REVIEW: All urinalysis drug test results along with the confidential statement prepared by the employee will be communicated by the laboratory to a specially trained physician serving as Medical Review Officer. The Medical Review Officer will notify the Department directly if an employee's test result is negative. If the test result is positive, the Medical Review Officer will contact the employee to discuss the test, to determine if the positive result is valid and to notify the employee that the employee has 72 hours to request a test of the split specimen. If, after making reasonable efforts and documenting those efforts, the Medical Review Officer is unable to reach the employee, the Medical Review Officer shall contact a designated management official, who shall direct the employee to contact the Medical Review Officer within twenty-four (24) hours. The Department will be notified that the employee tested positive or negative. If the test is positive, the identity of the specific drug(s) involved, as well as other information regarding the test, will be disclosed to the Department by the Medical Review Officer.

Section 3. Refusal to Take Test. Termination will result if the employee refuses to be administered the test or tampers with the test or sample. Positive findings from both the drug

tests administered will result in the employee being relieved of duty and placed on sick or vacation pay, pending completion of departmental-approved drug rehabilitation program.

Section 6. New. Random Drug Testing.

All bargaining unit members will be subject to random drug testing. Such testing will be done during an employee's on duty hours. An employee may only be tested once per contract year.

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

Failure to report for testing may constitute insubordination and the imposition of discipline. Each random selection shall be made from the full complement of bargaining unit employees covered by this Agreement, regardless of classification.

Section 7. Post incident testing.

Only employees assigned to the Central Transportation Unit shall be subject to post incident testing. These employees shall be tested according to the procedure currently in place.

THIS ISSUE HAS BEEN RESOLVED

SEE ATTACHMENT A

ISSUE 51

New Memorandum of Understanding Time Off Procedure

Negotiation of Time Off Procedure & Number allowed

Union Proposal

Current contract language:

No current language

State's Last Best Offer:

No new language.

Union's Last Best Offer: New provision

Time-off allotment for Lieutenants shall be governed by the following:

Facilities shall grant one (1) vacation day off per shift (1 vacation day off per shift) with the exception of Brooklyn and Webster, which shall grant no more than two (2) per day;

Personal Leave days are to be granted regardless of overtime incurred (1 personal leave day off per shift);

Additional time off may be granted on overlap days where overtime would not be incurred.

Parties' Positions

The State notes that the Union's LBO seeks to add language to the Contract that would reflect the current Department of Corrections policy. It notes, however, that the time

off allotments are currently granted by way of the Deputy Commissioner's Policy Memos, and that the Union's motivation to add the language to the Contract "must be to prevent the DOC from making any changes - certainly the language is not needed to ensure that the Deputy's Policy is followed." It states that Arbitrator Weisblatt rejected a similar provision. It points to the testimony of Deputy Warden Chapdelaine, which included the fact that no "time off" slots were assigned to Captains and Counselor Supervisors because they were not replaced by overtime if they were absent. Any issue raised by Union witness, Lieutenant Lemelin, the State claims, has "effectively been resolved" and no need exists for the language to be added to the Contract as sought by the Union. Hence, the State concludes, the Union has not put forward any reason to justify its LBO and the State's position must be considered "more reasonable."

The Union observes that NP-4 Officers have a provision in their Contract that allows them to take their accrued time notwithstanding the need for the Department to order an Officer to cover minimum staffing requirements. For years, according to the Union, Lieutenants have sought a similar type of protection and a Department memo in 2004 set forth a "Lieutenant time off allotment" that allowed Lieutenants to take some time off when requested. The Union claims its LBO tracks the Department policy with the difference that its LBO "refers to vacation as vacation leave not annual vacation leave as does the policy." This difference, the Union contends, is of no moment regarding the appropriateness of its proposal. According to the Union, the State's evidence confirmed the policy and its LBO is supported by the history of negotiations, the conditions of similar employees, and the interest

and welfare of employees.

The State argues in its Reply that, since time off allotments are presently being granted by the DOC per the policy memos of the Deputy Commissioner, no justification exists to place any provision in the Parties' Agreement. Further, the State claims the Union is not correct when it states that Correction Officers have language in their Agreement that would allow them to take time off each even if other Officers must be required to work involuntary overtime to cover vacation time. According to the State, if the Union's proposal is successful, it would result in a restriction on the ability of management to make adjustments to substantial changes and there is no showing that any such restriction is required. The fact that the NP-4 agreement, according to the State, explicitly acknowledges management's right as advanced by the State is further support for the State's position.

In its Reply, the Union emphasizes that this proposal is not the same as its proposal before Arbitrator Weisblatt that sought "unfettered time off." The Union claims that its LBO "almost exactly tracks a recent memorandum by management." According to the Union, there is a need to recognize that "[t]ime off at an institution is like gold" and, the State's position seeks to do no more than "retain the right to go backwards."

Arbitrator's Award

After careful consideration of the Union's LBO, the Arbitrator finds that, while the LBO reflects current DOC policy, awarding the LBO might unnecessarily restrict managerial alternatives in the future. Absent a negotiated Agreement on this point, the Arbitrator finds,

at least on the present state of the record, the Union's LBO cannot be awarded.

The State's LBO is awarded on Issue "51".

CONCLUSION

The resolution of the impasse at hand has been accomplished through the selection and awarding of the more reasonable last best offer, on an issue-by-issue basis, as provided for by statute, Connecticut General Statutes Section 5-276a. The evidence and arguments have been carefully considered in light of the factors set forth in Section 5-276a(a)(5) in order to determine the last best offer awarded with respect to each issue presented.

THOMAS N. RINALDO, ESQ., ARBITRATOR

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
WILLIAMSVILLE, NEW YORK)

I, THOMAS N. RINALDO, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed the within Award on April 6, 2009.

THOMAS N. RINALDO, ESQ., ARBITRATOR