STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

STATE OF NEW JERSEY (DIVISION OF CRIMINAL JUSTICE)

-and- Docket No. IA-2015-03

FRATERNAL ORDER OF POLICE, LODGE #91

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the State:
Jackson, Lewis, attorneys
(Jeffrey J. Corradino, of Counsel)
(James J. Gillespie, of Counsel and on the brief)

For FOP:
Pelettieri, Rabstein & Altman, attorneys
(Frank M. Crivelli, of Counsel and on the brief)
(Donald C. Barbati, on the brief)

Witnesses:

Det. Kiersten Pentony, Lodge 91 President
Det. Scott Donlon, Lodge 91 First Vice President
Det. Paul Marfino, Lodge 91 Treasurer
Det. John Neggia, Lodge 91 Executive Board Member
Dr. Christopher Young, Sobel & Company
Robert Peden, Deputy Director, NJ Office of Management and Budget - Treasury Department
Michael Dee, Director, Governor's Office of Employee Relations
Camille Warner, Employee Relations Coordinator, Governor's Office of Employee Relations
Robbie Miller, Chief of Staff, Division of Criminal Justice
Paul Morris, Chief of Detectives, Division of Criminal Justice

Also Present At the Hearing:

Greg Spellmeyer, Deputy Attorney General
Phillip Dowdell, Deputy Attorney General

INTEREST ARBITRATION AWARD

BACKGROUND

On July 25, 2014, Fraternal Order of Police Lodge 91 ("FOP") filed a Petition for Interest Arbitration with the Public Employment Relations Commission ("the Commission") to initiate interest arbitration for a collective negotiations agreement with the State of New Jersey, Division of Criminal Justice ("the State" or "DCJ"). This is the parties' first collective agreement. Until 2010, DCJ detectives were statutorily considered "confidential" employees, not eligible for representation under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et. seq. N.J.S.A. 52:17B-100(b). However, effective January 18, 2010, that statute was amended to remove the confidential designation of these investigators as well as deputy attorneys general. FOP Lodge 91 was certified by the Commission on December 8, 2010 to represent this unit of employees.[1] The parties have been in negotiations since that time, but have not succeeded in concluding negotiations for the first contract.

On September 4, 2014, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 90 days of my appointment. Both

[1] Separate negotiations units of detective sergeants and superior officers were also certified at the same time. Petitions for interest arbitration have been filed concerning negotiations in those units and those petitions are pending at the Commission.

parties submitted Final Offers by October 17. As required by the 2014 amendments to the interest arbitration statute, I conducted mediation sessions with the parties, wherein agreement was reached on a substantial number of non-economic issues.

The State submitted a list of unit employees who were on the payroll during the 12-month period immediately prior to December 3, 2014 (the date the State proposes as the effective date of the new contract). It also supplied a list of employees who are on the payroll during the 12-month period immediately prior to July 1, 2014 (the date the FOP proposes as the effective date of a new contract). Both lists contained employees' anniversary dates, dates of retirement or separation where applicable, and their aggregate base pay paid during the respective 12-month periods.

On October 21, 28, 29, 30, and 31, I conducted interest arbitration hearings at the State Office of Employee Relations. The State and the FOP each submitted extensive documentary evidence and testimony.[2] At the close of the hearing, the record was held open until November 4 only for the purpose of providing the FOP an opportunity to refute the accuracy of the State's payroll data. No further submissions were received, and the parties were advised that the record closed

[2] State exhibits will be referred to as "S- "; FOP's exhibits will be referred to "FOP- ".

on November 4. Both parties submitted calculations of the financial impact of their respective salary proposals. Post-hearing briefs were filed by November 14, 2014.

FINAL OFFERS OF THE PARTIES

As this is the parties' first collective agreement, both parties submitted voluminous final offers on both economic issues and non-economic issues. Because the final offers, taken together, are more than 100 pages, I will summarize the issues here, and treat them in full detail below.

The Union proposes salary increases and adjustments as follows:

Effective 7/1/14 - 12% across the board increase to all unit employees who were employed as of 6/30/14;

Effective 7/1/15 - Implement Salary "Range" changes as follows:

Title	Current Salary Range	Proposed Salary Range
Detective Trainee	Y95	Y24
Detective II	Y24	Y27
Detective I	Y27	Y32

- Detectives would move to the next highest step on the "Salary Advancement Chart" that would provide them with a raise from their base salary on June 30, 2015. No other salary increases and/or movements would occur through June 30, 2016.

- Beginning in 2015, employees would advance on the salary guide on January 1 each year instead of on their anniversary date (currently employees at step 8 move on the guide after 18 months and employees at step 9 move to step ten after 24 months).[3] Step movement to occur in all years of the proposed agreement.

[3] It is unclear whether the FOP proposes this change in anniversary dates to occur in January, 2015 or in July, 2015.

The State proposes to continue the practice of advancing unit employees on the salary guide on their anniversary in each year of the agreement, and to increase employees' salaries by a 1% across the board increase to the salary guide effective on the first pay period after July 1, 2018.

In addition, the FOP proposes the following additional economic items:

-Automatic advancement to Detective I after 5 years;
-advance notice for schedule changes
-Overtime after 40 hours work
-Holiday Premium Pay
-Weekend Differential
-Out Of Title Work Pay
-Minimum Call-In Pay
-Duty Officer Pay
-Compensation for Overnight Stay
-Uniform Main Allowance
-Reimbursement for Damaged Items
-Education Incentive Pay
-Changes in Comp Time Accrual
-Reduce Work Day to 8 Hours Including Paid Lunch
-Assignment of State Car
-Vacation Leave
-Vacation Cash-Out Upon Retirement
-Sick Leave
-Sick Leave Cash-Out Upon Retirement
-Injury On Duty
-Terminal Leave
-Bereavement Leave

-Administrative Leave

-Union Leave Time

-Negotiations Time

-Health Benefits

-Health Benefit Contributions

-Health Benefits for Retirees

-Eye Care Plan

-Death Benefit

-Tuition Reimbursement

-License & Continuing Education Reimbursement

Some of the FOP's proposals on economic issues propose to codify existing benefits; others propose new or enhanced benefits. The State also proposed contract language on some of the same economic issues. These proposals of both parties will be reviewed sequentially.

In addition, the parties each proposed a plethora of non-economic contract language clauses which will be reviewed separately below. The State objected to some of the FOP's language proposals and filed several Scope of Negotiations Petitions with the Commission asking that certain FOP proposals be declared non-negotiable. On January 30, 2014, and on May 6, 2014, the Commission issued decisions finding certain subjects were not negotiable. P.E.R.C. No. 2015-50 and P.E.R.C. No. 2015-78. However, the Commission dismissed a third Petition (SN-2015-029), filed October 21, 2014, as untimely and invited the parties to address the issues in the interest arbitration. These issues will be discussed below.

STIPULATIONS OF THE PARTIES

At the beginning of the hearing, the parties stipulated to the following facts:

1. FOP members move through the Y-24 and Y-27 salary schedules through Step 8 in twelve (12) month increment periods;

2. Step movement from Steps 8 to 9 in the Y-24 and Y-27 salary schedules is eighteen (18) months;

3. Step movement from Step 9 to Step 10 in the Y-24 and Y-27 salary schedules is twenty-four (24) months;

4. FOP members have received increment payments in 2014; and

5. Increments are paid to FOP members on their respective anniversary dates.

In addition, the parties agreed upon a substantial amount of language issues for the new contract. Due to the volume, I have not replicated the agreed upon contract provisions in this award. The parties have drafts of what was agreed upon. I retain jurisdiction.

FINDINGS OF FACT

Mission of the Department

The State Division of Criminal Justice ("DCJ") is in the Department of Law and Public Safety and is derived from an extension of the Attorney General's role as the State's Chief Law Enforcement Officer.

Primarily, the Division is charged with the responsibility to detect and prosecute the criminal business of the State and

to enforce the criminal laws. In addition, the Division provides oversight and coordination within New Jersey's law enforcement community. It is the goal of the DCJ to coordinate law enforcement efforts and cooperate to share resources within criminal justice communities on the state, county, and municipal levels, to ensure the safety and security of all New Jersey citizens.

Organization of the DCJ:

The Division of Criminal Justice ("DCJ") is broken down into a number of bureaus to address certain types criminal offenses. The Division contains, amongst many others, the following bureaus: (1) Corruption Bureau; (2) Gangs and Organized Crime Bureau; (3) Financial and Computer Crimes Bureau; and (4) Specialized Crimes Bureau. (S-22)

The detectives of DCJ serve in all of the aforementioned bureaus and task forces, in addition to carrying out the other specialized law enforcement functions of the Division of Criminal Justice such as: (1) supervising all the County Prosecutor's Offices; (2) comprising the Shooting Response Team that investigates all State law enforcement officer shootings; and (3) administering a training academy in Sea Girt, New Jersey that trains all county prosecutor's office investigators as well as many other law enforcement officers.

Duties and Responsibilities of Detectives:

Until 2008, the law enforcement officers in DCJ held the

title of "Investigator - Division of Law and Public Safety". In 2008, the State Department of Civil Service reclassified the DCJ titles to Detective Trainee-State Investigator; Detective II-State Investigator; and Detective I-State Investigator. The duties and responsibilities of each position are as follows:

Detective Trainee-State Investigator

Under immediate supervision of a superior officer in the Division of Criminal Justice, a detective trainee assists in performing specific field and office work relative to criminal/civil violations of other state statutes; participates in extensive field and office training on the operations, procedures, and policies of the Division; is authorized to exercise all powers/rights of police officers in criminal matters; is empowered to act as officer for the detection, apprehension, arrest, and conviction of offenders against the law; and does other related duties as required.

According to the New Jersey Civil Service Commission Job Specification, the employment title "Detective Trainee-State Investigator" includes, amongst many others, the following duties:

> Performs specified investigative work involving State enforcement programs;
>
> Prepares reports of routine nature during the course of an investigation;
>
> Participates in and observes the detecting, reporting, and following-up of criminal violations of New Jersey statutes and regulations;

May assist in surveillance of certain aspects of investigative operations to gain knowledge of illegal activities in developing a case to prosecute violators of New Jersey laws for casino operation; and

Exercises arrest procedures of criminal violators in assisting an investigator to enforce state laws governing the casino industry. (FOP-1)

Detective II-State Investigator

Under supervision in the Division of Criminal Justice, a Detective II performs varied investigative functions involved with financial, compliance, and enforcement activities concerning criminal violations of state statutes; is authorized to exercise all powers and rights of police officers; is empowered to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the law; and does other related duties as required.

According to the New Jersey Civil Service Commission Job Specification, the employment title "Detective II-State Investigator" includes, amongst many others, the following duties:

Conducts assigned investigations relating to alleged or suspected violations of state law;

Conducts surveillance designed to apprehend individuals engaged in criminal activity or to gather investigative information;

Investigates fraud or misconduct;

Testifies before Grand Juries, Courts of Law, and other judicial or administrative bodies; and uses various types of electronic communications equipment, electronic surveillance equipment, photographic equipment, recording devices, and database software

for investigative activities. (FOP-2)

Detective I-State Investigator

Under supervision in the Division of Criminal Justice, a Detective I performs varied investigative functions involved with financial, compliance, and enforcement activities concerning criminal violations of state statutes; is authorized to exercise all powers and rights of police officers; is empowered to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the law; and does other related duties as required.

According to the New Jersey Civil Service Commission Job Specification, the employment title "Detective I-State Investigator" includes, amongst many others, the following duties:

> Performs various financial, compliance, and enforcement investigations, including those of a complex and difficult nature;
>
> May provide guidance to other employees in complex and/or specialized investigations, detecting civil or criminal violations, executing search warrants, and conducting apprehensions and arrests;
>
> Conducts surveillance, searches and seizures relative to investigations.
>
> Analyzes findings of investigations and prepares in-depth reports often of a highly technical business nature or complex legal nature to be used by superior officers in planning the next course of action to be taken; and
>
> May coordinate investigations with other law enforcement authorities, and participate in joint operations as required. (FOP-3)

In the capacity of law enforcement officers, detectives investigate a wide variety of criminal allegations and/or offenses, to include many that constitute complex and/or "high profile" cases.

Additionally, based upon their Statewide jurisdiction, the DCJ detectives frequently work alongside members of many other law enforcement agencies. Most notably, the detectives work with members of the New Jersey State Police on a consistent basis in a variety of matters given both agencies fall under the purview of the Department of Law and Public Safety and the State Attorney General. DCJ detectives also work with members of the Federal Bureau of Investigation (FBI); Alcohol, Tobacco, and Firearms (ATF); the various county prosecutor's offices; and the Drug Enforcement Agency (DEA).

Responsibility for Contract Administration

The responsibility for negotiating and administering the State's collective negotiations agreements with all of its bargaining units rests primarily with the Governor's Office of Employee Relations ("OER").

STATUTORY CRITERIA

I am required to make a reasonable determination of the issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution

of these negotiations. These factors, commonly called the statutory criteria, are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

(2)Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

The Arbitrator's award must address all nine statutory criteria, identify the criteria found to be relevant, analyze all of the evidence pertaining to the relevant criteria, and explain why any remaining criteria were deemed irrelevant. "A reasoned explanation along those lines should satisfy the

requirement for a decision based on those factors that are judge relevant." Borough of Hillsdale and PBA, 137 N.J. 88 (1994). Any economic offers that are clearly unreasonable in light of the statutory criteria must be rejected.

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award. This observation is present here as judgments are required as to which criteria are more significant and as to how the relevant evidence is to be weighed.

In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

The factor of internal comparability, based upon existing

Commission and court precedent, is a factor that is not only specifically addressed in the statutory criteria [N.J.S.A. 34:13A-16g(2)(c)], but also has been found to fall within the criteria of the "interests and welfare of the public" and the "continuity and stability of employment." The Commission has held, "Pattern is an important labor relations concept that is relied upon by both labor and management ... deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." County of Union, P.E.R.C. No. 2003-33, 28 NJPER 459,461 (¶33169, 2002). An interest arbitration award that does not give due weight to an internal pattern is subject to reversal and remand. County of Union, P.E.R.C. No. 2003-87, 29 NJPER 250,253 (¶75, 2003).

Further, an internal pattern of settlement properly focuses on the terms of economic improvement offered in a given round of negotiations. See, Somerset County Sheriff's Office v. FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008) and County of Passaic, PERC No. 2010-42 and PERC No. 2011-36 [cites].

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among

those factors that interrelate and require the greatest scrutiny in this proceeding are the evidence on internal comparability and comparability to other jurisdictions [N.J.S.A. 34:13A-16g(2)(c)]; the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)]; the employees' existing compensation and benefits; the impact upon continuity and stability of the bargaining unit, including employee morale and turnover; and the cost of living.

DISCUSSION

CONTRACT DURATION:

The FOP proposes a five-year contract retroactive to July 1, 2014 and extending through June 30, 2019. The State offers a contract beginning on the date of this award and continuing through June 30, 2019.

Neither party presented arguments in their respective briefs explaining the rationale for their proposed starting dates for the new contract. I intend to award effective dates for the new contract for the full five-year period extending from July 1, 2014 through June 30, 2019. This term is consistent with every other contract the State has with its multiplicity of bargaining units, including the recently negotiated contract with the IBEW for its newly certified unit of Deputy Attorneys General. I award the following:

> July 1, 2014 - June 30, 2019. Unless otherwise specified, all provisions of this contract shall not

be retroactive and shall apply beginning December 3, 2014.

SALARIES AND STEP GUIDES:

The threshold issue in this matter is whether a 2% "hard cap" applies to awarded salary increases in this matter. N.J.S.A. 34:13A-16.7(b) provides:

> An Arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The State argues that this statutory limitation applies to this award. It contends that any other conclusion would be illogical and contrary to the legislative intent. The State avers that any reasonable interpretation of the relevant amendments to the Interest Arbitration Act must conclude that the 2% cap applies here. The relevant provision concerning the effective date of the amendments provides:

> This act shall take effect January 1, 2011; provided however, section 2 of P.L.2010, c.105 (C.34:13A-16.7) *[the "cap" provision]* shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to

> negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.
>
> This act shall take effect immediately and shall be retroactive to April 2, 2014.
>
> N.J.S.A. 34:13A-16.9.

This matter concerns a newly established negotiations unit and a first contract. At issue is a first contract. Ostensibly, the Union would have the Arbitrator conclude that because there is no "expiring" negotiations agreement, the 2% cap does not apply. Such a conclusion is erroneous as it ignores the precepts of statutory construction and is contrary to the Legislature's intent.

Further, the State contends that the Union's interpretation, taken to its logical extreme, would lead to the absurd result that the interest arbitration act does not apply to first contracts.

The State continues that N.J.S.A. 34:13A-16 through -21 is the section of the New Jersey Employer-Employee Relations Act commonly referred to as the "Interest Arbitration Act." Nowhere in the Act is reference made to agreements for newly formed negotiations units or first contracts. To the contrary, reference is made throughout the entire Act to expiring collective negotiations agreements. For example, the provisions

setting forth the precursors to interest arbitration provide as follows:

> Negotiations between a public fire or police department and an exclusive representative concerning the terms and conditions of employment shall begin at least 120 days prior to the day on which their collective negotiation agreement is to expire. . . .
>
> The first of those three meetings shall take place no later than the 90th day prior to the day on which their collective negotiation agreement is to expire. . .
>
> Prior to the expiration of their collective negotiation agreement, either party may file an unfair practice charge with the commission alleging that the other party is refusing to negotiate in good faith. N.J.S.A. 34:13A-16 a. (1)(emphasis supplied).

In terms of the initiation of the interest arbitration process, the Interest Arbitration Act provides:

> Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission. N.J.S.A. 34:13A-16 b.(2)

The State continues that, no one can credibly argue that the Legislature did not intend for the Interest Arbitration Act to apply to newly created police and fire negotiations units. Therefore, the Union cannot "cherry pick" and interpret provisions that only reference expired agreements as conferring the right to interest arbitration but contend that the provision

capping awards does not apply because it only references agreements "expiring on that effective date or any date thereafter . . ." N.J.S.A. 34:13A-16.9.

Further, the State argues that the "effective date" provision of the interest arbitration statute was not intended to exclude negotiations for first contracts. In amending the interest arbitration statute in 2011, the Legislature clearly set forth an effective date of January 1, 2011. The Legislature further clarified that the "cap" provision would "apply only collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date [January 1, 2011] or any date thereafter.

This language establishes a bright line and forestalls any challenges to the statute based upon retroactivity. There is no evidence that language was intended to exclude first contracts any more than the reference to contract expiration dates in the preceding provisions was intended to exclude first contracts from the Interest Arbitration Act altogether. Rather, newly formed units -- such as those at issue here -- are not in the statute. However, having afforded itself the right to invoke interest arbitration under the statute, the Union must accept all the constraints that currently exist under the law -- including the 2% cap.

The State argues that, given that there is no expiring agreement, the proper focus for newly formed units should be on the effective date of an agreement. Here, that effective date will be either July 1, 2014 (based on the Union's proposal) or December 3, 2014 (using the State's proposal). Thus, this contract, regardless of which proposal one were to analyze, will commence well-after the effective date of the 2% cap and, thus, no basis exists to exclude this group from its application. Any other result would require this Arbitrator to treat this group of employees differently from all other law enforcement personnel with contracts effective on or after January 1, 2011. Nothing in the Legislation or in the dire economic conditions that precipitated the 2% cap suggests that a newly formed unit can have any less detrimental impact on the budget of a public employer than existing units that would justify such an exclusion.

The State maintains that the legislative intent of imposing a 2% cap on base salary awards is plain on the face of the statutory amendments -- to lessen the burden on financially stressed public employers of police and fire personnel. As stated above, interpreting the language in the Interest Arbitration Act in a literal and restrictive manner would lead to the absurd result of excluding first contracts from interest arbitration. Such a result is contrary to the precepts of statutory interpretation as "[t]he language of a statute 'must

be read perceptively and sensibly with a view toward fulfilling the legislative intent.'" Association of Municipal Assessors, 225 N.J. Super. 475 481 (1988) (quoting Unemployed-Employed Council of N.J. Inc. v. Horn, 85 N.J. 646 (1981).

For example, in In The Matter of the Denial of the Application of Giles W. Casaleggio for a Retired Law Enforcement Officer Permit to Carry a Hand Gun, 420 N.J. Super. 121 (App. Div.)(2011), the court concluded that Casaleggio, a former prosecutor and Deputy Attorney General in the Division of Criminal Justice, was not eligible for a gun permit afforded to retired "full-time members of a state law enforcement agency." Id. at 128. In essence, the court conceded Casaleggio met a broad definition of "law enforcement officer" but noted a "broad prohibition." Id. at 123. The court noted:

> To decide Casaleggio's first claim, we must consider the legislative intent behind N.J.S.A. Although our starting point is to 'ascribe to the statutory words their ordinary meaning and significance,' we recognize that sometimes a plain reading will lead to an absurd result that could not have been intended by the Legislature." Id. at 125. . . . Our function is not "to 'rewrite plainly-written enactment of the Legislature.'" . . . . Nevertheless, we recognize that "common sense" should not be abandoned when interpreting a statute. Id. at 125. (citations omitted).

The Casaleggio case followed the doctrine that previously had been reaffirmed and followed in The NJ Democratic Party, Inc., et. al. v. Hon. David Samson, Attorney General, State Of NJ, In His Official Capacity, et. al,175 N.J. 178 (2002), in

which the Court addressed the consequences of attempting to fill a ballot vacancy that occurred outside of the 51-day statutory period. The Court stated:

> N.J.S.A. 19:13-20 simply does not contain a legislative declaration that the filling of a vacancy within forty-eight days of the election is prohibited. Unlike the legislatures of our sister states that have clearly expressed the consequences that follow when a vacancy occurs outside of the statutory period, New Jersey has not specifically addressed the issue. [HN8]When that happens, the Court must consider the "fundamental purpose" of the enactment, and, where it "does not expressly address a specific situation . . . interpret it [in a manner] consonant with the probable intent of the draftsman had he anticipated the matter at hand." State, Township of Pennsauken v. Schad, 160 N.J. 156, 170, 733 A.2d 1159 (1999) (citations and internal quotations omitted); see also Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 396, 774 A.2d 495 (2001) (finding [***30] that affidavit of merit statute was silent regarding affidavit requirement in common knowledge malpractice cases); AMN, Inc. v. Township of So. Brunswick Tp. Rent Leveling Bd., 93 N.J. 518, 524-25, 461 A.2d 1138 (1983) (finding that drafters of local ordinance did not contemplate question whether condominium owners would be subject to rent control). It falls, then, to the Court to determine the "essential purpose and design" of the election law so as to effectuate the legislative purpose. Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323, 744 A.2d 175 (2000).
>
> The NJ Democratic Party, Inc., 175 N.J. at 193.

In this matter, the Arbitrator should heed the principles enunciated by the Casaleggio and the NJ Democratic Party courts. The Interest Arbitration Act does not expressly preclude the application of the 2% cap to first contracts and the issue as to whether it should apply must be determined in light of its essential purpose and design; to wit, to lessen the burden on

financially stressed public employers. Thus, the State concludes that declining to apply the 2% cap provision to this matter would be contrary to the Legislative intent and common sense.

The FOP argues that no cap applies to this award. It cites the specific language of N.J.S.A. 34:13A-16.9 which provides:

> This act shall take effect January 1, 2011; provided however, section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached. (emphasis added)

The FOP continues that, according to the express wording of this provision, the 2% cap shall only apply to: (1) collective negotiations between a public employer and the exclusive representative of a public police and/or fire department; and (2) those negotiations must relate to a negotiated agreement expiring on the effective date of the act, January 1, 2011, or any date thereafter until December 31, 2017. The FOP maintains that there is no dispute that the first prong of the test is satisfied; these DCJ detectives are members of a public law enforcement department.

However, the FOP maintains that this interest arbitration does not relate to a negotiated agreement expiring on January 1, 2011 or any date thereafter until December 31, 2017. Rather, the instant collective negotiations and/or interest arbitration proceedings with the State relate to the drafting of an initial collective bargaining agreement. As such, the FOP contends that no agreement is set to expire and, thus, the criteria for the two percent (2%) cap to apply cannot be met.

The FOP argues that the clear, unambiguous wording of N.J.S.A. 34:13A-16.9 is controlling and provides that the two percent (2%) cap does not apply to the instant interest arbitration. It avers that the State's assertion to the contrary is without merit and in direct contravention of the express wording of controlling statute.

Further, the FOP argues that this conclusion is further reinforced by the legislative history surrounding the recent amendments to N.J.S.A. 34:13A-16, et. seq. in June 2014. Under the prior statutory language that expired on April 1, 2014, a Police and Fire Public Interest Arbitration Task Force (hereinafter "Task Force") was created to study the interest arbitration process and make recommendations concerning its continued use in connection with police and fire labor contract disputes. N.J.S.A. 34:13A-16.8(e)(2). The Task Force was comprised of eight members: four appointed by the Governor; two appointed by the Senate President; and two appointed by the

Speaker of the General Assembly. The Task Force was statutorily charged with issuing a final report to the Governor and the Legislature before April 1, 2014 and to include any specific recommendations for any amendments to the arbitration award cap, in addition to any other findings and recommendations concerning the interest arbitration process.

The Task Force issued its Final Report to the Governor and Legislature on March 19, 2014. (FOP-19) Within the body of the report, the Task Force made four unanimous recommendations, namely: (1) to increase the number of days to complete the interest arbitration process from 45 days to 90 days; (2) to increase the 30-day time period to 60 days for PERC to decide an appeal of an interest arbitration award; (3) to increase the arbitrator's maximum compensation from $7,500.00 to $10,000.00; and (4) to increase the time period to appeal an interest arbitration award from seven days to 14 days. Id. at pp. 16-18. In the new legislation passed on June 24, 2014, all four of these unanimous recommendations were incorporated into the new law. Therefore, the Union argues, it is evident the Legislature took the recommendations of the Task Force into account and relied heavily upon the same when revising the law and passing the new legislation.

The Union notes that, included within the Task Force's final report was also additional recommendations and comments

made specifically by the appointees of the Governor. Specifically, the final report states on page 20:

> N.J.S.A. 34:13A-16.9 currently provides that the 2% base salary cap shall expire on April 1, 2014. The four appointees of the Governor to the Task Force strongly recommend that the law be amended to remove the "sunset" provision and have the cap continue without a date limitation as to the number of agreements to which it would apply. Moreover, they recommend that this cap apply to newly-certified units which have not had an initial collective negotiations agreement prior to the effective date of the law, January 1, 2011. [Emphasis Added.]

The FOP notes that David Cohen, the former Director of the Governor's Office of Employee Relations, served as the Task Force Chairman. The FOP points out that Cohen played a lead role in negotiating for the State concerning the newly certified DCJ bargaining units.

The Union argues that the Task Force's recommendation to include this new language amounts to a concession by the State that it was aware that the 2% cap did not apply to newly certified units which did not have an initial collective bargaining agreement prior to January 1, 2011.

The FOP maintains that, taking this one step further, the "new" version of the (2%) cap is not applicable in the instant interest arbitration proceeding since the language was never amended to incorporate such wording as recommended by the Task Force.

Further, the Union argues that this concept is also bolstered by the fact the Legislature reviewed the Task Force's Final Report prior to making the most recent legislative changes to the interest arbitration process. Therefore, the Legislature was aware of the recommendation to change the express wording of the law to ensure the 2% cap apply to newly certified units without a collective negotiations agreement. However, despite the recommendation being explicitly delineated in the Task Force's Report, the Legislature chose not to include the recommended language in the amended legislation. As a result, the Union asserts, the question as to whether the 2% cap applies to the instant interest arbitration is well-settled; clearly it does not.

Lastly, the Union argues that the non-applicability of the 2% cap in the instant proceeding is logical as a matter of practicality. As the Arbitrator is aware, the 2% cap is based upon the aggregate amount expended by the employer on "base salary" items for unit employees in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. As such, no definitive timeframe to determine an "aggregate amount" expended can be determined since no collective negotiations agreement between the parties currently exists.

To illustrate this point within the context of the instant interest arbitration, the Union notes that the State is seeking

to have the new contract commence on the date the interest arbitration award is ultimately issued. Assuming the interest arbitration award in this matter is rendered on December 3, 2014, it is impossible to know what the State has paid in "base salary" items for DCJ detectives from December 3, 2013 until December 4, 2014. Therefore, the calculation of the base year would be purely speculative.

* * * *

The starting point is the statutory language. N.J.S.A. 34:13A-16.9 provides:

> This act shall take effect January 1, 2011; provided however, section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

Section 2 of P.L. 2010 contains the 2% cap restrictions. The plain wording of the statute states that section 2 "shall only apply" to negotiations relating to contracts that expire on or before January 1, 2011. Here, there was no prior contract to expire. Therefore, a literal reading of the statutory language

can only reach the conclusion that the Section 2 does not apply. Moreover, the Commission affirmed this notion that the statutory references to "contracts expiring" refer to the parties' last contract and it suggests that the statute be given its plain meaning. Burlington County Prosecutor, P.E.R.C. No. 2012-61, _____ NJPER ____ (¶); Borough of Bloomingdale, P.E.R.C. No. 2011-70, 37 NJPER 143 (¶43 2011).

More significantly, the Interest Arbitration Task Force's final report and recommendations to the legislature issued in March, 2014, addressed this very issue. Those recommendations addressed the issue of the applicability of Section 2 to newly formed negotiations units. Specifically, the Task Force recommended that the statute be amended to include language that the cap apply to newly-certified units which have not had an initial collective negotiations agreement prior to the effective date of the law, January 1, 2011. While the legislature did adopted the other four recommendations of the Task Force in amendments to the statute, it declined to include this recommendation. Therefore, even if it could be argued that the legislature initially presumed that all police groups had an existing contractual relationship and ignored situations involving newly certified units, the legislature's rejection of this amendment shows its intent not to apply a cap in such situations.

Moreover, the logic of the situation dictates the exemption of this group from the cap. The point of limiting the original 2011 2% cap to only future contracts appears to be a recognition that units with a contract expiration date of December 31, 2010 and before would already be in negotiations at the time the statute was enacted. It appears that the law intended to grandfather such units. Here, the FOP was certified in December, 2010 -- before the cap law became effective. The FOP could have sought a contract period beginning in January 1, 2011. Therefore, they are in a parallel position to those bargaining units whose contracts expired December 31, 2010 -- the very groups the legislature exempted from the cap.

For the foregoing reasons, I find that the 2% cap on the arbitrator's award does not apply to the instant interest arbitration.

* * * *

PARTIES' SALARY ARGUMENTS

The Union argues that its salary proposal should be awarded primarily based upon the fact that the comparability data shows that DCJ detectives are about 12% below the average pay rate for detectives employed by the various county prosecutors and below the average pay of State Troopers. More importantly, the FOP points to the fact that salaries of unit employees have been effectively frozen since 2008. It seeks to make up lost ground in this award.

The State argues that Young's analysis of the financial impact of the Union's proposal is based on a faulty premise. The FOP asks whether the State has the financial ability to accommodate such requests, but the State argues this is misplaced. The State argues the "financial impact" criterion, N.J.S.A. 34:13A-16(g)(6), requires an arbitrator to consider the financial impact of an award on the State, not the ability to pay but whether the award would create a "substantially detrimental result." Hillsdale. It asserts that the Union wrongly stated that awarding the Union's proposal would not have a substantially detrimental result.

The State argues that Young's analysis of the State's fiscal health is based on stale data and faulty reasoning. In support of the conclusion that the finances of the State are improving, Young erroneously relied on data and statements from FY14 Budget Summary presented in February 2013. The State's budget expert Peden stated that the summary document was presented in February of 2013 and the economic data quoted there is data as of December 2012, and thus, not relevant to the State's current fiscal health. The State argues that Young's report should be disregarded.

The State also argues that the State's Budget between FY 2010 through FY 2014 continues to be severely strained. The State's unemployment rate as of August 2014 was 6.6%, 33rd highest in the country; the State did not achieve its revenue

projections for FY2014 by $1.3 billion, and is experiencing another major shortfall in FY 2015 of $1.8 billion. The State argues as of the hearing date its revenues had not even rebounded to the FY 2008 level. The State argues its revenue situation does not reflect the continued improvement the Union suggests. The FY 2014 State's fund balance was only 1% of the expenditures and 1.1% of the FY 2015 projected expenditures.

The fund balance is a cushion against extraordinary events like revenue shortfalls and unforeseen circumstances. The accepted fund balance benchmark is that the ending surplus should be 5% or greater, as recommended by the National Association of State Budget Offices, Center for Budget Policy and Priorities, and the National Council of State Legislatures. The FY 2015 budget demonstrates a continued trend of small fund balances. The FY 2015 projected fund balance is 1.1% of expenditures. As a result, the State's credit rating has been down=graded and is in next to last position nationally; this will increase the cost of the State's debt service.

The State's non-discretionary expenditures comprise the largest and fastest growing parts of the budget. The largest percentage increases in State expenditures continues to be in pension, health benefits and debt services. In the $32.5 billion FY 2015 budget, the largest expenditures are for State Aid (41.2%) and Grants-In-Aid (30.1%) of the budget -- both mandated programs.

The State argues that the future does not hold much relief for the State's ability to control significant portions of its budget. For example, State employee health benefits cost are expected to grow to $6.5 billion over the next 10 years and devour 14% of State revenue. In addition, $1.582 billion was budgeted as a mandatory State pension contribution, but as a result of the revenue shortfall, the State lapsed approximately $882 million of that contribution. Finally, as an additional way to address the revenue shortfall, the legislature cut various line items of the budget by approximately $40 million.

The State argues that the Union's wage proposal significantly increases the Division's already-stretched budget. The Division's total budgeted expenditures are $31.5 million. No matter which cost-calculation is used, the Union's wage proposal is a significant percent of the total Division's budget. Over the past five years the Division expenditures have been reduced by 0.6% and have remained flat for the past three cycles. Despite this, the State avers that the FOP proposes salaries that amount to 10% of the total Division budget, which does not include salary adjustments for the sergeants or lieutenants.

The financial impact criterion involves an analysis of whether the award would create "substantially detrimental result." If awarded, the Union's proposal for an almost 35% wage increase would have a tremendously negative financial

impact on the State in payouts exceeding four times the statutory salary cap, and in the ripple effect on negotiations with other units.

The State argues that the Union's expert's analysis and conclusions regarding the Consumer Price Index ("CPI") must be disregarded. The expert's comparison of the unit's "yearly" wage to CPI, failed to factor in step increases and thus his conclusions that the detectives' wage increases are substantially below the rate of inflation is categorically wrong.

A comparison of settlements negotiated with other law enforcement and civilian units supports awarding the State's final offer. The parties' final offers must be reviewed in comparison with the wages and benefits the State provided to its other employees as "internal comparables." N.J.S.A.34:13A-16g(2)(c). The evidence submitted by the State overwhelmingly demonstrates that its final offer is consistent with the wage increases received by the State's other represented employees, particularly the State's comparable law enforcement units in the last contract cycle. Given the current state of the State's budget as shown above and the existence of the 2% cap, nothing would suggest that future settlements will result in any greater increases. See, Somerset Cty. Sheriff's Officers, (court affirmed an award to the fifth unit based on county's pattern of settlement with four other law enforcement units).

Young's report analyzes "wage trends" from 2002 through 2012 based on the Bureau of Labor Statistics' "QCEW" data, concluding that the yearly wage increases averaged 3.0%. A more appropriate comparison is patterns established in the State's most recent law enforcement contract: voluntary agreements with five units and one interest arbitration award. The State notes that its contracts with other law enforcement groups provide for increases as shown below:

Wage Increases			
Effective Date	Corrections Officers (PBA 105)	Lieutenants (NJSOLEA)	Special Investigators (FOP 174)
July 2011	0%[4]	0%	0%
July 2012	0%	0%	0%
July 2013	0% (Steps 1-9) 1.75% (Step 10)	1.25%	0% (Steps 1-9) 1.0% (Step 10)
July 2014	1.0% (Steps 1-9) 1.5% (Step 10)	1.25%	0%(Steps 1-9) 1.5% (Step 10)

Non-Corrections Law enforcement (SLEU)		Sergeants* (NJLESA)	Majors** (NJLECOA)
July 2011	0%	0%	0%
July 2012	0%	0%	0%
July 2013	0%[5]	1.25% to Step 10	1.0%
July 2014	1.0% Steps 1-9 1.25% Step 10	1.25% to Step 10	1.25%

[4]Plus an $800 lump sum not added to base for officers at the top of the scale on May 31, 2012.

Young failed to consider State law enforcement CNA for the 2011-2015 period other than State Troopers. The increases Young omitted compare favorably to the State's final offer. Contract settlements with the State's civilian units further support awarding the State's final wage offer. Young's analysis also failed to take into account the civilian contract settlement trends established in the last State negotiation cycle. The contracts established the following across-the-board pattern increase which includes FY 2015:

AFSCME, AFT, CWA, and IFPTE Across-the-Board Wage Increases	
July 2011	0%
July 2012	0%
July 2013	1%
July 2014	1.75%

This pattern of voluntary settlements demonstrates that other State negotiations representatives continue to recognize the State's fiscal condition. Young did not analyze its final offer compared to the civilian settlements.

The State further argues that a comparison with comparable positions in other jurisdictions supports awarding its final offer. N.J.S.A. 34:13A-16g(2)(c) requires that wages, salaries, and conditions of employment of public sector employees in similar or comparable jurisdictions be considered. The

settlements in the County Prosecutors' offices throughout the State show a trend of declining increases. The average yearly wage increase for the jurisdictions listed is 1.4%. The average increase demonstrates a trend of modest increases throughout the State. The State's final wage offer is consistent with the current trends. N.J.S.A. 34:13A-16.7(b).

The salaries of the FOP's unit members are within the Statewide range of detectives' and investigators' salaries. Young's report emphasizes the difference between the Division's detectives' median and mean salaries as compared to the county median and mean. The data shows the Division's median is $8,631 less than the counties' median and $9,663 less than the counties' mean salaries. Young failed to explain the calculation that lead to this conclusion. Young's assertion provides no basis for the arbitrator to award the Union's wage proposal. In fact, for those benchmarks in 2013 the Division ranked 17 out of 22 in both categories. The Division's detectives are paid less on average than their county counterparts. However, there is nothing in Young's report to conclude that the detectives should be paid more than the average. Moreover, nothing in the interest arbitration statute suggests that an average wage rate alone is sufficient to justify an increase without any analysis of whether some of the various jurisdictions which comprise the average are "comparable." There is a range of average salaries with a

$50,918 spread and the Division's salaries fall within that range.

An analysis of voluntary settlements in interest arbitration-eligible units and arbitration awards militates against awarding the Union's excessive wage proposal. The Union's proposal far exceeds the average of voluntary settlements for arbitration-eligible units and arbitration awards as reported in the "Final Report of the Police and Fire Public Interest Arbitration Impact Task Force" dated March 19, 2014. The overall average salary increases were 2.11% for voluntary settlements outside the IA process, 1.84% for settlements after IA initiation and 1.92% for Interest Arbitration Awards. Other economic comparative data establishes that the detectives are well positioned as it relates to their salaries and the proposed increase. For example, the national annual mean salary for detectives and criminal investigators is $58,550 as compared to the detective's mean of $85,849. Further, the detective's average median salary is $85,849 which is $14,212 higher than the median for the household income for New Jersey ($71,637). Finally, the State's proposed 1% wage increase together with increments compares favorably with the average annual increase for New Jersey wages -- 1.4% in 2013.

Awarding the Union's final wage offer will exacerbate wage compression by raising the detective's scale (without the Trainees) to a range of $67,303.37 - $110,786.85. This will put

pressure on those in the detective's immediate chain of command. The Division is already experiencing wage compression challenges. Awarding the Union's proposal would exacerbate the wage compression to untenable levels.

Finally, comparing the salaries of Deputy Attorneys General ("DAGs") who work in the Department shows that the Union's proposal would put detectives' salaries above DAG 4s who require much higher education levels. Detectives will earn $67,303.37 at step one whereas DAG 4s will earn $62,090.59 at step one. DAG 4s direct and guide detectives in their investigations. Such a result is irrational and unwarranted.

The Union's proposals are unnecessary to stabilize employment in the Division. N.J.S.A. 34:13A-16g(8) requires consideration of the parties' proposals in relation to the continuity and stability of employment. See, Fox v. Morris Cty. Policemen's Assoc, PBA No. 151, 266 N.J. Super. 501 (App. Div. 1993)(Court held criterion requires review of employer's salary structure, unemployment rate, employee turnover and the absence of unemployment among police). The record establishes that the Division has had no difficulty in attracting qualified candidates. In terms of the Division's ability to retain candidates, the record contains no evidence that attrition or turnover is a concern. Therefore, under the stability in employment analysis, the Union's proposals are not warranted.

In determining salary increases and increments for the period of this award, I have considered the following:

FINDINGS OF FACT

AUTHORITY OF THE EMPLOYER INCLUDING APPROPRIATIONS AND LEVY CAPS/FINANCIAL IMPACT (G5,6)

Budget

According to the Governor's FY2015 Budget Summary (FOP-36), the following summarizes the financial state of New Jersey as of February 2014:

- At 7.3%, New Jersey's unemployment rate is now the lowest it's been in five years, since December 2008;

- New Jersey's economic expansion continued in 2013. A total of 10,100 jobs were created in the last 12 months, and a total of 121,900 private sector jobs were created since 2010;

- State income has continued to set new highs in virtually every quarter;

- The outlook for 2014 and 2015 is positive;

- Indexes of monthly economic activity compiled by the Federal Reserve of Philadelphia suggest that New Jersey's growth has been at or above the national pace and higher than other states in the region. The Fed also suggested that New Jersey could be one of the fastest growing states in the nation;

- Based on estimates from the New Jersey Department of Treasury, Office of Revenue and Economic Analysis, New Jersey's total revenues for Fiscal Year 2015 will be $34.4 billion, $1.9 billion, or 5.8% above the 2014 level;

- The forecast of $9.2 billion in sales tax revenue for Fiscal Year 2015 will see an increase of $532 million over the 2014 level;

- The Fiscal Year 2015 gross income tax revenues are

expected to be $14 billion, or 8.2%, higher than the revised Fiscal Year 2014 estimate;

- The Fiscal Year 2015 budget is expected to have $313 million in surplus; and

- There is $1.2 billion budgeted to provide property tax relief.

Revenues:

The chart below reflects a comparison of total revenues from FY 2009 through 2015; an increase of 12.8%. (S-5; 4T-22-23)

STATE of NEW JERSEY REVENUES (In Billions)	
FY	**Amt.**
2009	28.9
2010	27.9
2011	28.7
2012	29.1
2013	30.9
2014 *	31.5
2015 **	32.6
FY 2019 - 2013 Source Document is the Comprehensive Annual Financial Report (CAFR)	
* FY 2014 Certified	
** FY 2015 Appropriation Act	

The following chart illustrates the State's FY 2013 and 2014 revenues at budget detail level: (S-5)

FY 2013 and 2014 Revenues (In Millions)						
	FY 2013 CAFR	Approp. Act	Feb FY 2014 Revised	June 2014 Certified	Certified vs. Feb 2014 Change	
					$	%
Income	12,109	13,039	12,928	12,050	(878)	(6.8)
Sales	8,235	8,680	8,680	8,597	(83)	(1.0)
Corporate	2,364	2,416	2,420	2,433	13	0.5
Other *	8,216	8,678	8,534	8,438	(96)	(1.1)
Total	**30,924**	**32,813**	**32,562**	**31,518**	**(1,044)**	**(3.2)**
* All Sales Tax and Corporation Taxes on Energy are included in" Other".						

The Deputy Director of the State's Office of Management and Budget, Robert Peden, testified that the difference between the $32.6 and $31.5 billion is a $1.1 billion reduction, that is attributable to when the State's April tax collections were received for the gross income tax; an amount that fell short of collections. (4T-10) Further, Peden stated that the above categories of income, sales, and corporate represented the "Big 3" of taxes which the State received. (4T-11)

Fund Balance (Surplus):

The chart depicted below shows the State's FY 2014 opening surplus balance, minus total appropriations for a revised June 2014 certified balance: (S-5)

FY 2014 Fund Balance (in Millions)			
	Approp. Act	Feb 2014 Revised	June Certified
Opening Surplus	467	313	313
Revenues			
Income	13,039	12,928	12,050

Sales	8,680	8,680	8,597
Corporate	2,416	2,420	2,433
Other	8,678	8,535	8,438
Total Revenues	**32,813**	**32,563**	**31,518**
Lapses	-	694	812
Pension	-	-	887*
Total Resources	**33,280**	**33,570**	**33,530**
Appropriations			
Original	32,977	32,977	32,977
Supplemental	-	292	253
Total Appropriations	**32,977**	**33,269**	**33,230**
Fund Balance	**303**	**301**	**300**
* Pension Payment Active Employees $696 million; 3/7 of the actuarially recommended contribution per P.L. 2010, c. 1 would have been $1,582 billion.			

Peden stated that the chart above shows how the State gets to its ending fund balance of $300 million; and $31.5 billion worth of revenues. Peden added that because of the shortfall in revenues, the State would have to identify a series of "lapses" in order to balance the budget. (4T-11)

A lapse is appropriated money which, if not spent, comes back to the State's general fund to assist in balancing its budget. Peden further testified that there are two categories of lapses on the chart above: the first is a series with hundreds of different accounts that were examined for opportunities to lapse $812 million; the second lapse is a titled a "pension" lapse. Peden stated that sometimes the State freezes appropriated accounts and sometimes it returns monies that have been appropriated and place it in the State's surplus.

Together, between the two lapses and its revenues, the State has an ending fund balance of $300 million, which goes back into surplus in the general fund. (4T-12-13)

The Union points to the $300 million in surplus as a potential source to fund salary increases. However, Peden testified that in his view, the current surplus amount does not measure up to what is considered adequate levels, which would be a minimum of 5% of the budget. Such minimum surplus levels, Peden explained, are necessary as a "rainy day fund". The State's failure to maintain adequate surplus has negatively impacted upon its bond rating.

Appropriations:

The following chart reflects the State's FY2014 (June Revised) and the FY 2015 Appropriations Act: (S-5)

FY 2015 Appropriations Act (in Millions)						
	FY 2014 June Revised		**2015 Budget**	**2015 May Testimony**	**FY 2015 Approp. Act.**	
Opening Surplus	**313**		**301**	**300**	**300**	
Revenues						
Income	12,050		13,988	12,627	12,627	
Sales	8,597		9,212	9,138	9,068	
Corporate	2,433		2,583	2,590	2,590	
Other	8,438		8,664	8,383	8,341	
Total Revenues	31,518		34,447	32,738	32,626	
Lapses	1,699	*	-	-	-	
Total Resources	**33,530**		**34,748**	**33,038**	**32,926**	
Appropriations						
Original	32,977		34,435	34,307	34107	
Supplemental	253		-	-	-	
Pension	-		-	-1,569	-1,569	

						**
Total Appropriations	**33,230**		**34,435**	**32,738**	**32,538**	
Fund Balance	**303**		**313**	**300**	**388**	
* Pension Payment Active Employees $696 million; 3/7 of the actuarially recommended contribution per P.L. 2010,C.1 would have been $1.582 billion.						
** Pension Payment Active Employees $681 million; 4/7 of the actuarially recommended contribution per P.L. 2010,C.1 would have been $2.25 billion.						

Supplemental funds of $253 million reflected in the above chart included about $85 million for snow removal. Peden explained that the $85 million was additional funding which would be excluded from the total supplemental, for a revised total of $168 million. (4T-14)

Pensions, Health Benefits, and Debt Service

The State's FY 2015 Budget represents $32.5 billion in appropriations and revenues. The two largest categories of the budget are State Aid and Grants-In-Aid. State Aid accounts for 41.2% of the budget, or $13.4 billion. Grants-In-Aid represent 30.1% of the budget, or $9.8 billion. This aid includes property tax relief programs, Medicaid, PAAD, nursing home and long-term services and support, and support for higher education.

Executive Operations encompasses all of the salaries of State employees or 10.5% of the overall budget, or $3.4 billion. The State's employee fringe benefits include both benefits for active employees and post-retirement medical and health benefits, employer taxes, pensions, and so forth and represent about 7% of the budget, or $2.3 billion. Debt Service, excluding School

Construction, accounts for 8.4% of the budget, or $2.7 billion.

The two remaining categories of the budget are Legislative and Judiciary and accounts for 2.4% of the budget, or $.8 billion; and capital improvements, which accounts for .4% of the budget, or $.1 billion. (S-5; 4T-16-17)

Peden testified that pensions, health benefits, and debt service consume 49.0% of the State's overall revenue growth since FY 2009. Pensions, health benefits, and debt service account for $7.39 billion of the FY 2015 Appropriations Account of $32.6 billion. (S-5; 4T-23)

According to the New Jersey Pension and Health Benefits Study Commission, health benefit costs for the State are forecasted to rise 4.0% by the year 2024. Peden stated that when comparing this increase to its revenues, these increases take up an ever-increasing share of the State's revenues. (S-5, 4T-26)

In summary, Peden testified that as illustrated in the chart above, there is a revenue increase from FY 2014 to FY 2015 of $1.1 billion. Of that amount, $300 million is appropriated for post-retirement medical costs; and $430 million is appropriated for the State's debt service. (S-5; 4T-26)

Division of Criminal Justice (DCJ) Budget:

The DCJ's budget for years 2010 through 2015 is essentially flat. The change in the number of full-time employees represents a negative -5.7%, or a reduction of 32 employees. (S-5;4T-37-38)

The following chart depicts the DCJ's budget from FY 2010 through FY 2015: (S-5)

FY 2015 Budget Division of Criminal Justice (DCJ) (In thousands)							
	GF Only		Change			Change	
FY	Approp.	*	$	%	FTE ***	# FTE	%
2010	31,575				403		
2011	31,298		(277)	2.0%	392	-11	-2.7%
2012	31,608		310	1.0%	397	5	1.3%
2013	31,501		(107)	0.3%	387	-10	-2.5%
2014	31,501		0	0.0%	391	4	1.0%
2015	31,501	**	0	0.0%	371	-20	-5.1%
	5-Yr. Change		**(74)**	**0.6%**	**5-Yr. Change**	**(32)**	**-5.7%**
* Adjusted Appropriation in Fiscal Years 2011-2014.							
** FY 2015 Appropriation includes $25 million from non-State resources.							
*** FTE (Full Time Employees) counts in FY11-FY14 are as of December. FY15 count as of September.							

Of the total $31.5 million budgeted for appropriations in DCJ's FY 2015 budget, $27.4 million is allocated for salaries. (S-5; 4T-38-39) The FOP notes that of the FY 2014 DCJ budget, the salary expenses for the members of this bargaining unit account for .03% ($10.4 million/$32,920.9 billion) of the total 2014 State budget. (FOP-18) Peden testified that the FY 2015 budget already includes funding for the increments paid or to be paid during the fiscal year.

The record reveals that many of the positions in DCJ are funded by reimbursements from federal agencies and through the insurance industry.

Bond Rating

As a result, at least in part due to the small fund balance, Standard and Poor downgraded the State's credit rating to A which is tied with California in next to last position nationally. At the very least, the S & P downgrading will increase the cost of the State's already high debt service. (4T-42)

State Unemployment

The State's August 2014 unemployment rate compared to four neighboring states is as follows:[6] The United States average is 6.1%. (S-5)

- **New Jersey: 6.6%**
- Delaware: 6.5%
- Maryland: 6.4%
- New York: 6.4%
- Pennsylvania: 5.8%

New Jersey is ranked 33rd out of the 50 states and is tied with Connecticut and West Virginia at 6.6%. (S-5)

Consumer Price Index (CPI)

Dr. Christopher Young is the FOP's Financial Consultant and expert witness. He conducted his analysis using two components

[6] Source: Bureau of Labor Statistics (September 2014)

of the CPI: (1) all items; and (2) medical care. These two components were analyzed in the following two regions: New York-Northern New Jersey-Long Island, NY-NJ-CT-PA ("Northern NJ"); and Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD ("Southern NJ). A summary of this data is provided in the chart below:

Yearly Compound Increase (2004-2013)			
Component	Northern NJ	Southern NJ	Average
All Items	2.64%	2.47%	2.56%
Medical Care	3.27%	2.98%	3.13%

The Union states that based upon the above information, inflation in the combined regions during the past ten years has averaged a 2.56% annual increase, with the cost of medical care increasing at an even greater rate.

The FOP contends that the data cited by Young illustrates consumer prices in the Northern and Southern NJ regions, as well as throughout the United States, have increased over the last several years and will continue to do so in the future. It states that the percentage increase of the CPI should set a minimum level of wage increases for an individual to maintain his or her standard of living. The FOP points out that members of this bargaining unit have not had salary increases since 2008, notwithstanding the rise in inflation that occurred since that time.

Young then compared the rate of increase in the CPI with

the rate of wage increases experienced by FOP members for the past several years.

Year	DCJ Employees	Southern NJ CPI	Northern NJ CPI
2004	2.90%	4.08%	3.54%
2005	2.00%	3.92%	3.86%
2006	4.30%	3.87%	3.76%
2007	5.42%	2.19%	2.83%
2008	3.00%	3.41%	3.90%
2009	0.00%	-0.04%	0.44%
2010	0.00%	1.98%	1.71%
2011	0.00%	2.68%	2.85%
2012	0.00%	1.83%	1.97%
Yearly Increase 2004-2012	**1.96%**	**2.61%**	**2.75%**
Yearly Increase 2008-2012	**0.60%**	**1.90%**	**2.16%**

The State argues that the Union's analysis of the yearly wage increases of the negotiations unit as compared to the increases in cost of living did not factor in employee increases as a result of step movement on the salary guide.

The Employer contents that its exhibit S-30 tracks a detective's salary history from inception forward. For example, the listed employee became a law enforcement detective July, 2000 at a salary of $35,710.20 which increased to the current rate of $81,787.47; an increase of 129% over a 14-year period for an average of 9.9% per year. The increase in salary far out-paces the CPI for the time period analyzed by Young. The increases for the employee since 2004 were as follows: (S-30)

Year	Employee Salary at Start	New Salary	Reason [7]
2004	$47,217.13	$50,750.91	AT/AD*
2005	$50,750.91	$55,053.16	AT/AD
2006	$55,053.16	$59,971.42	AD/AT/AT
2007	$59,971.42	$64,197.96	AD/AT
2008	$64,197.90	$67,303.37	AD/AT
2009	$67,303.37	$70,200.19	AD
2010	$70,200.19	$73,097.01	AD
2011	$73,047.01	$75,993.83	AD
2012	$75,993.83	$78,890.65	AD
2013	$78,890.65	$81,787.47	AD

The State avers that the chart below, which is based upon the conclusion regarding the CPI:

Year	% Wage Increase	Southern NJ CPI	Northern NJ CPI
2004	7.48%	4.08%	3.54%
2005	8.48%	3.92%	3.86%
2006	8.93%	3.87%	3.76%
2007	7.05%	2.19%	2.83%
2008	4.84%	3.41%	3.90%
2009	4.30%	0.04%	0.44%
2010	4.13%	1.98%	1.71%
2011	4.03%	2.68%	2.85%
2012	3.81%	1.83%	1.97%
2013	3.67%	1.20%	1.50%

COMPARABILITY (G3)

The Union argues that the closest comparable group of employees which should be compared to the DCJ detectives, is the

[7] *AT/AD represents an across-the-board increase plus an anniversary date increment. AT represents an anniversary date increment alone. AD/AT/AT represents a year in which the employee received an anniversary date increment and two (2) across-the-board increases. (S-30,p.150-56)

State Division of State Police, which is also in the Department of Public Safety. It notes that its members often work side-by-side with State troopers and both groups have similar responsibilities. In addition, the Union maintains that a fair comparison could be drawn between its members and detectives employed by the various county prosecutors' offices.

The State asserts the fairest group for comparison to the DCJ detectives would be the other six law enforcement groups employed in state government. Additionally, the State points to the recent contract signed with the IBEW representing the Deputy Attorneys General who are also within the Department of Law and Public Safety.

On September 21, 2011, the State signed a successor agreement with New Jersey State Fraternal Association ("STFA") which represents the State troopers. This contract covered the period July 1, 2008 through June 30, 2012, and provided for across-the-board increases of 2.75% in FY 2009, 2.50% in FY 2010, 2.25% in FY 2011, and no increase in FY 2012. The salary guide included in the STFA contract shows the following current salaries for troopers:

- Trooper $81,022
- Trooper II $90,949
- Trooper I $95,198

In January 2014, Interest Arbitrator Mastriani issued an award covering the period July 1, 2011 through June 30, 2015,

for the New Jersey Law Enforcement Supervisors Association (LESA). He awarded no across-the-board increases for FY 2012 or FY 2013. For FY 2014, he awarded a 1.25% increase to the top step only; and an additional 1.25% to the top step only for FY 2015. Increments were continued for employees moving through the step guide. However, those employees received no cost-of-living increase.[8]

On January 27, 2014, the State signed a contract with the PBA/SLEU covering the period July 1, 2011 through June 30, 2015. SLEU represents various law enforcement titles such as, conservation officer, college campus police officers, park police officers, and weights and measures inspectors. This contract also provided for no across-the-board increases for FY 2012 and FY 2013. For FY 2014, the parties negotiated for 1.25% increase to the top step only. For FY 2015, the parties agreed to 1.25% increase to the top step; and a 1.0% increase to all other steps in the guide. Increments will continue for the life of the contract.

In August 2014, the State signed a contract with New Jersey Law Enforcement Commanding Officers Association, which represents corrections captains (Juvenile Justice), corrections majors, as well as supervising conservation officers and supervising parole officers. This agreement covered the period July 1, 2011 through June 30, 2015, and provided for a 1.0%

[8] It should be noted that the 2% cap applied to this matter.

increase effective July 1, 2013 and a one-time lump sum cash bonus of $1,750 to corrections majors and $1,160 to all other unit employees. Effective July 1, 2014, salaries were increased by 1.25%. Also, in July 1, 2014, corrections majors received a one-time lump sum cash bonus of $1,500 and all other unit employees reached a one-time cash bonus of $1,450.

On February 12, 2014, the State signed a contract with IBEW Local 33 representing the newly certified unit of Deputy Attorneys General, covering the period July 1, 2013 through the period June 30, 2015. In that contract, the parties agreed to a range adjustment for unit employees (Z30 to Z33 or Z35 depending upon current salary levels and from Z33 to Z38), subject to approval by the New Jersey Civil Service Commission. Additionally, the parties agreed to change employee's anniversary dates for those currently employed to July 1, 2013. Further, the parties agreed to a 1.0% across-the-board increase for FY 2014 and 1.75% increase for FY 2015. Normal increments are to be paid for the life of the agreement. It should be noted that this bargaining unit was certified in October 2010. This is the first contract covering this unit and DAG's did not receive any salary increases for FY 2011, FY 2012, and FY 2013.

On October 4, 2013, the State signed a successor agreement with New Jersey Superior Officers Law Enforcement Association, affiliated with FOP Lodge 193. This bargaining unit consists of corrections lieutenants, campus police lieutenants, parole

supervisors, State park lieutenants, and other supervising law enforcement officers. This successor agreement covers the period July 1, 2011 through June 30, 2015. In that contract, the parties agreed to a wage freeze for FY 2012 and FY 2013; a 1.25% increase for FY 2014, and a 1.25% increase for FY 2015. In addition, certain titles were granted a one-time lump sum bonus of $500. Increments continued for all eligible employees.

On June 11, 2012, the State signed a successor agreement with PBA Local 105, representing the State's corrections officers, parole officers, and juvenile justice commission officers. This contract covered the period July 1, 2011 through June 30, 2015. The parties negotiated no across-the-board increases for FY 2012 but instead provided for a one-time lump sum payment of $800 to employees at top step. For FY 2014, employees at top step received an across-the-board increase of 1.75%; for FY 2015, a 1.0% across-the-board increase for employees in steps 1 through 9; and a 1.5% increase for employees at on step. Increments continued for the duration of the contract.

On September 13, 2013, the State signed a successor agreement with the Investigators Association, affiliated with FOP Lodge 174, covering the unit of investigators, senior investigators, and principal investigators, parole and secured facilities. This contract covers the period July 1, 2011 through June 30, 2015. For FY 2014, the parties agreed to a

1.0% across-the-board increase to the top step of the salary guide. For FY 2015, the parties agreed to a 1.5% increase to the top step (except for principal investigators who received a .75% to the top step of that guide). In addition, principal investigators also received an $800 one-time lump sum payment.

In June 2012, the State signed an agreement with CWA covering four bargaining units of white-collar, professional and supervisory employees in a broad-based unit of civilian state workers. This agreement covered the period July 1, 2011 through June 30, 2015. For FY 2012 and FY 2013, the parties agreed to a wage freeze. For 2014, employees received a 1.0% across-the-board increase. For FY 2015, employees received a 1.75% across-the-board increase.

The FOP submitted FOP-18 which included a comparison of DCJ salaries and other terms and conditions of employment with detectives in all 21 of the County Prosecutor's Offices. In comparing the average salary of a DCJ detective to the average salaries of county prosecutor detectives, the chart below shows this comparison:

County	2013 Average Salary
DCJ	**85,849**
Bergen	127,472
Monmouth	122,849
Somerset	115,050
Middlesex	110,200
Union	103,976
Passaic	100,955

Essex	100,938
Gloucester	99,896
Mercer	99,558
Warren	96,384
Camden	95,308
Salem	93,652
Cumberland	86,656
Burlington	86,578
Ocean	86,219
Morris	83,933
Cape May	83,786
Hunterdon	82,663
Sussex	82,360
Atlantic	80,437
Hudson	76,554
Average	**$95,512**
$ Below Avg.	**$9,663**

FOP-18, exhibit 2, also reveals that in 2008, DCJ detectives were above the average pay among county detective units by $462.00. However, it is an inevitable consequence of these employees not having received increases since 2008 that has led to its decline among average pay rates.

Private Sector Wage Survey:

I give almost no weight to the component of comparability with the private sector, other than to observe the private sector wage increases.

There is no particular occupation, public or private, that is an equitable comparison to detectives. The investigators are unique in a variety of ways, including the potential to be called upon to respond to their assigned mission areas, conducting surveillances, searches, and seizures

relative to investigations and related duties as assigned, along with the stress and dangers of the job. Moreover, they are regularly required to work evenings, nights and holidays. Unlike the private sector, they do not compete in a global economy, which tends to depress wages.

PERC annually distributes a private sector wage survey for use in interest arbitration proceedings. This wage survey is developed by the New Jersey Department of Labor and Workforce Development, with the most recent version of this wage survey being distributed on September 2014.

The total net change in private sector annual wages for the State of New Jersey was a 1.6% increase from 2012 to 2013.[9] That same figure for the change from 2011 to 2012 was a 2.1% increase. The same wage survey data also provides general comparisons in the public sector as well. Between 2012 and 2013, the average annual wage for all state, county, and municipal government workers increased by 0.4%. During the same period, average wages for state government workers decreased by 0.6%. Total wage increases between 2012 and 2013 for all employees, public and private, amounted to 1.4%.

PERC Settlement Rates:

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average

[9] Source: New Jersey Public Employment Relations commission website, "Private Sector Wage Survey".

increase for awards issued in 2013 on post-2011 filings was 1.16% where no 2% cap applied, and 1.89% were the cap did apply. Over the same time period, reported voluntary settlements averaged 1.96%.

The PERC analysis indicates that the average 2012 award for post-2011 with a 2% cap was 1.98%, and an average of 1.59% for awards with no 2% cap. Settlement for the same time period (based upon 29 contracts settled) averaged 1.82%. Overall, PERC's data over the past few years shows that there is a downward trend in salary increases received through voluntary settlement or an award.

CONTINUITY AND STABILITY OF EMPLOYMENT (G7):

Employee turnover in this unit has not been significant. Of the 140 employees employed during FY 2014, only four detectives left the division. In addition, during FY 2014, the Employer hired six new detective-trainees. I conclude therefore, that even with the long term freeze which has been in effect on employee's salaries, this has not resulted in any significant negative impact on employee continuity and stability of employment.

ANALYSIS

Increments

Although not needed to calculate a 2% award under the hard cap, the total amount the State paid to this bargaining unit in the 12 months before the contract commences is important

because I am required to show the cost of the award. Here, that period is July 1, 2013 to June 30, 2014.[10] The State's list shows that during that 12-month period, unit employees were paid an aggregate of $9,913,644. The Union accepted this amount as the total base year costs.

The cost of increments here is not insignificant. Here, the State calculated the cost of increments for each year of the contract, including the costs of moving detective trainees from the trainee rate on salary scale Y95 to detective II rate on salary scale Y24 (from $51,239 to $53,622), which occurs at the conclusion of the trainee's first year of employment. The FOP did not submit its own calculation of increment costs. The State calculations show the following increment costs for the life of the contract: (S-12)

Fiscal Yr.	Total Increments	Percent
FY 2015	$582,800.95	5.88%
FY 2016	$195,117.95	1.97%
FY 2017	$168,725.53	1.70%
FY 2018	$130,541.57	1.32%
FY 2019	$122,856.30	1.24%
Total Increment Cost:	$1,200,042.30	12.10%

However, it appears that the State has miscalculated the cost of increments in the first year. It arrived at this

[10] The State is on a bi-weekly payroll system. The State's list of employees and the amounts of base salary they were paid was taken from the payroll period 14 of 2013 to payroll period 13 of 2014, and is therefore, a close approximation of the total amounts paid. The FOP did not object to this method, and I have accepted it for the purpose of calculating base year costs.

amount by subtracting the total amount spent for base salaries in FY 2014 from the total amount to be spent in FY 2015 after increments are paid. However, the difference between these two numbers includes (in addition to increment costs) the amount needed to bring employees who were paid for part of the year in FY 2014 to full salary in the subsequent year. This is not a true "increment cost". In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), the Commission provided instructions for costing out the award to include increment costs. It stated that the best method to cost out would be to take the complement of employees on the employer's payroll on the last day before the new contract, and move them forward though the steps (where increments are being awarded) and any across-the-board increases. Thus, the appropriate starting point to track costs for contract year one is the total base salaries of unit employees on the last day before the new contract begins[11]

Further, the cost of step movement for detective II's who are not yet at the top step is $2,500 per employee; the cost for detective I's who are not yet at the top step is $2,897 per employee. An increment cost of $582,800 for these 136 employees would mean that, even if every unit employee received a step increment (which they do not), their increments would be $4,483 (which it is not). Therefore, the State's calculations

[11] This date would ordinarily be the last day of the expired contract.

of increment costs for FY 2015 must be rejected. Rather, I have performed my own calculations of increment costs for FY 2014 based upon the data the State supplied as to salary and anniversary date. I have found that the true cost of increments for FY 2015 is $108,308.86. Except for the increment costs for FY 2015, I accept the State's calculations.

SALARY INCREASES AND INCREMENTS

The FOP's stated goal in constructing its salary proposals was to bring these unit employees up to par with the salaries of prosecutor's detectives in the various counties and with detectives in the State Police. The FOP calculated that its median salary of all DCJ detectives is $85,849 as compared with those of county detectives of $95,512. The FOP calculated that, to overcome this $9,663 disparity, it would need a 12% increase.

However, the FOP's proposal for a 12% salary increase effective on the first day of the 2014-2019 contract is unrealistic, even if it were followed by no across-the-board increases for the remainder of the contract period. This "front-end loading" of the contract would dramatically increase the Employer's costs for every year of the contract. It also fails to recognize that the State is facing difficult times with regard to revenues.

Further, the Union also seeks range adjustments which have significant costs in the long run. It asks that Detectives II's be given a three-range adjustment -- moved from salary range Y24

be given a three-range adjustment -- moved from salary range Y24 to Y27 -- and that Detective I's be given an adjustment of five ranges -- from Y27 to Y32. These proposed range changes would prove to be expensive to award in the short run and cost prohibitive in the long run as Detective I's would move from top pay of $87,581 to $110,787. In addition, the FOP seeks an automatic advancement system to move Detective II's to the Detective I salary range after five years of service. While the cost of this proposal is minimal, it still must be considered in the overall cost of the awarded salary package.

On the other hand, the State's proposal of a freeze on the salary guide for the first four years of the contract followed by a 1% increase in the fifth year is also unreasonable. This is so particularly in light of the fact that these employees have endured a guide freeze since 2008. Awarding this proposal will effectively create a ten-year freeze on the salary guide (FY 2009 through FY 2018). While employees moving through the guide would be paid their increments, detectives at top pay (currently 43) would receive no increase for a number of years.

Additionally, this proposal does not address the cost of living or the fact that detectives in county prosecutor's offices have gotten increases during this period and would continue to do so (see State's brief, Appendix A). Further, the State's miniscule offer, if awarded, would negatively impact employees morale and likely lead detectives to seek

employment elsewhere, thus, negatively impacting unit continuity and employment stability. This is all not supportive of the statutory criteria.

For all of the foregoing reasons, I find that neither proposal as written is in the public interest. Having considered all of the relevant facts as discussed above and the parties' arguments, as well as the other components of this award, I award the following salary increases:

FY 2015: Effective 10/1/14: 1.75% ATB

FY 2016: Effective 7/1/15: 1.5% ATB

FY 2017: Effective 7/1/16: 1.5% ATB

FY 2018: Effective 7/1/17: 1.5% ATB

FY 2019: Effective 7/1/18: 1.5% ATB

Step increments will be continue to be paid pursuant to the previously established increment plan for these employees.

The increases awarded above result in a compounded increase over the life of the five-year agreement of 7.99%. The impact on top pay is that it will increase the Detective I's salary from $87,581 to $94,580 by the last year of the agreement. This will put DCJ detectives closer to the average salary of detectives employed by county prosecutors of $95,512. While it certainly could be argued that over the next four years the county averages will also increase, such increases are likely to be slight since the 2% cap (including step increases) will have the effect of keeping salary increases

low. Additionally, top pay for Detective I's will closely comparable to the salary afforded to State Trooper I's at a top pay of $95,281. Also, this increase, even by contract end, will maintain a reasonable disparity between top pay of detective and the salary of detective sergeants which is currently $105,810.

The pay increases awarded herein in the first year grant some recognition to the fact that DCJ detectives have not had a salary increase since 2008. In addition, this increase of 1.75% in the first year is comparable to that afforded to the Deputy Attorneys General for FY 2015, who also suffered from a wage freeze for several years. Further, the increase awarded to this unit is comparable to the increase provided to the CWA unit -- the largest unit of State employees.

While the State argues that I am bound to follow the internal pattern of settlement, here there is no consistent pattern of settlement for FY 2015. Some unit settled for a 1.25% increase while others received more. Moreover, even if a consistent pattern of settlement existed for FY 2015, I believe that the fact that DCJ detectives endured a five-year salary freeze is sufficient justification for awarding increases on the high end.

In awarding 1.5% increases across-the-board for the remaining years of the contract, I have considered the DCJ employees who, five years ago, were at about average among

detectives Statewide, have now fallen significantly below that average. On the other hand, given the severe financial constraints on the State, and particularly on the DCJ budget, the lost ground cannot be made up completely during this contract cycle. Moreover, it must be remembered that the raises awarded herein, are in addition to step increments which of course add to the total cost of the award.

Further, the 1.5% increase to the salary guide for the four fiscal years going forward, closely parallel the cost of living. It will allow the Division to offer its detectives a competitive salary that will permit turnover to remain low as detectives will not need to shop in other jurisdictions for better pay opportunities. This is consistent with the statutory criteria of continuity and stability of employment. Moreover, this award will increase employee morale which is in the public interest.

Given that I have determined that the 2% arbitration cap does not apply to this matter, this award is in the lawful authority of the Employer. In addition, because I have limited the retroactivity of this award to October 1, 2014, this will diminish the financial impact on the DCJ budget and the taxpayers of the State, which is in the public interest.

Advancement To Detective I

The FOP proposes a contract provision that would automatically advance employees in the Detective I title to the

Detective II title after five years. The Union notes that, until 2013, the Division had a "advancement track" for detectives. Detectives were hired as detective-trainees and then automatically moved to the detective II title after one year. After serving in the detective II title for four years, the employee was automatically advanced to the title of detective I. The Union seeks to reinstate this practice and include it within the contract provisions. The Union observes that this is similar to the provisions of the STFA contract wherein State troopers automatically advanced from trooper to trooper II to trooper I based upon the attainment of years of service.

Both Detectives Marfino and Pentony testified regarding how detectives had historically "progressed" through the detective titles and the appropriate salary ranges. (1T-45-46; 3T-27) They testified that detectives were recently advised by the Division that Civil Service was now calling such advancement a "promotion" and employees would no longer advance automatically.

The Union contends that what the State has now labeled a "promotion" to detective I is not really a promotion at all but is merely an advancement from one range to another. More specifically, the FOP contends that such advancement includes none of the indicia of a process one would normally associate with a promotional process. First, the FOP notes that the job descriptions for the two titles virtually identical except for

the length of service associated with each. It notes that the job description for detective I does not confer any supervisory duties to the title. As a practical matter, the Union states that in fact, the only difference between the responsibilities of a detective II and a detective I is a function of the greater experience level a detective I possesses.

Further, the Union maintains that since the Division's announcement that the elevation from detective II to detective I would now be considered a promotion, no "promotions" have actually taken place. In addition, the record shows that there is no process in place for employees to be promoted. Promotional criteria has not been established; promotional announcements have not occurred; and no interviews or screening process has been developed. Chief of Staff Miller testified that she was unaware of any promotional process which has been developed for detective II's to advance to detective I's.

The State argues that the Union's proposal to automatically advance detective II's to detective I's amounts to a promotion and is therefore not mandatorily negotiable.

As Director of the Governor's Office of Employee Relations, Michael Dee testified on both direct and cross examination, (5T-4,7, 10). The move from detective II to detective I advances the individual to a title with a higher Class Code; i.e., a promotion as defined by the Civil Service Commission ("CSC") in its regulations. Specifically, the CSC

defines promotion of an individual employed in the State service as "an advancement to a title having a higher class code [12] than the former permanent title." N.J.A.C. 4A:1-1.3 (emphasis added). The CSC defines Class Code as the "designation assigned to job titles in State and local service with ranking based upon an evaluation of job content."

Exhibit S-21 establishes that the detective II title has a class code of 23 while the detective I title has a class code of 26. Thus, the State argues that when a unit member moves from detective II to detective I he/she advances—i.e., is promoted -- to a title with a higher class code. As such, the move from detective II to detective I is a promotion and, therefore, the Union's proposal for an automatic promotion is non-negotiable.

Accordingly, the State avers that I am required to follow the well-established precedent and find the contested proposals non-negotiable as they would impermissibly infringe upon the State's ability to promote detectives and to establish promotional criteria.

I find that the Division has historically treated career advancements for non-ranking detectives as advancements, and not promotions, and continues to do so.

The Division has a standard operating procedure for career advancement for detectives (SOP-45). That SOP provides,

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[12] The NJ CSC's Class Code is not the same as the Salary Range. (S-21)

45:1: POLICY OF DIVISION OF CRIMINAL JSUTICE

> The Division of Criminal Justice recognizes that a definite, well designed career path is essential for providing the individual State Investigator with a mechanism for future personal planning and for fostering good morale and overall well-being of the investigative staff. Therefore, it is the policy of the Division of Criminal Justice that a State Investigator shall progress through the investigative ranges in a steady and orderly fashion.

The SOP continues in Section 45-5 to lay out how and when an employee would advance from trainee through the career path for investigators; advancement is based upon length of service and satisfactory performance. By contrast, the SOP makes clear that advancement to a supervisory position is considered a promotion to be based upon competitive interviews (Section 45-6).

The Division continues to advance detectives from the trainee title to detective II based upon the completion of one year of service and satisfactory performance. The State's argument that it now views advancement to detective I as a "promotion" is undermined by both the SOP and the lack of any action on the Division's part to actually implement any promotional process or establish criteria for such promotional opportunities. Based upon the record, I find that in these particular circumstances, this salary advancement is merely a range change and not a promotion. Accordingly, such advancement is mandatorily negotiable. I am inclined to award the Union's

proposal that the Division resume its practice of automatically moving employees from the detective II range to the detective I range based upon length of service and satisfactory performance.

The following chart illustrates the detectives' career advancement through the salary ranges:

DETECTIVES SALARY ADVANCEMENT CHART				
Full Years of Service	**Range**	**Step**	**Title**	**Salary** [13]
Recruit (Academy) 0	Y95	0	Detective Trainee	$48,970.00
6 months	Y95	6 mos.	Detective Trainee	$51,239.00
1	Y24	1	Detective II	$53,623.00
2	Y24	2	Detective II	$56,123.00
3	Y24	3	Detective II	$58,623.00
4	Y24	4	Detective II	$61,123.00
5	Y24	5	Detective II	$63,623.00
6	Y27	3	Detective I	$67,303.00
7	Y27	4	Detective I	$70,200.00
8	Y27	5	Detective I	$73,097.00
9	Y27	6	Detective I	$75,994.00
10	Y27	7	Detective I	$78,890.00
11	Y27	8	Detective I	$81,787.00
12	Y27	9	Detective I	$84,684.00
13	Y27	10	Detective I	$87,581.00

I award the following:

Career Advancement

Effective July 1, 2015, and pursuant to SOP-45, the Division of Criminal Justice shall advance detectives through the salary ranges as shown in the following chart in a steady and orderly fashion provided the employee has performed all of his/her duties in a satisfactory manner.

[13] The salaries reflected herein are before any awarded increases.

The cost of awarding this proposal over the five-year contract is as follows:

Cost of Advancements	
Year	**Advancements**
FY15	0.00
FY16	12,618.96
FY17	2,359.00
FY18	9,436.00
FY19	9,436.00
Total	**33,849.96**

SALARY RANGE CHANGES

The FOP seeks to change the salary ranges of unit employees by advancing detective II's three ranges and advancing Detective I's five ranges. It also asked to move detective trainees from the Y95 range to the Y24 salary range.

Currently, the DCJ detective trainees are compensated according to range Y95, which provides a minimum salary of $48,970.62 and, after six months of service, a salary of $51,239.81. Detective II's are compensated in accordance with salary range Y24, which is as follows:

Increment	**$2,500.22**
Step 1	$53,622.79
Step 2	$56,123.01
Step 3	$58,623.23
Step 4	$61,123.45
Step 5	$63,623.67
Step 6	$66,123.89
Step 7	$68,624.11
Step 8	$71,124.33
Step 9	$73,624.55
Step 10	$76,124.77

Finally, employees serving in the Detective I title are compensated according to range Y27, as follows:

Increment	$2,896.82
Step 1	$61,509.73
Step 2	$64,406.55
Step 3	$67,303.37
Step 4	$70,200.19
Step 5	$73,097.01
Step 6	$75,993.83
Step 7	$78,890.65
Step 8	$81,787.47
Step 9	$84,684.29
Step 10	$87,581.11

The Y32 salary schedule provides as follows:

Increment	$3,696.91
Step 1	$77,514.66
Step 2	$81,211.57
Step 3	$84,908.48
Step 4	$88,605.39
Step 5	$92,302.30
Step 6	$95,999.21
Step 7	$99,696.12
Step 8	$103,393.03
Step 9	$107,089.94
Step 10	$110,786.85

The State argues that the Division is currently experiencing wage compression challenges. Awarding the Union's proposal would exacerbate the wage compression to untenable levels. It notes that sergeants are presently being paid in salary range 30 (at a top pay of $105,810) and lieutenants are presently being paid in salary range 33 (at a top pay of $116,129). The deputy chief of detectives has a salary of $109,200. Therefore, awarding the Union's proposed range changes with a top pay for detective I at $110,787 would put

those employees above the pay rate for sergeants and would create compression with higher ranks.

I agree with the State's position that granting the proposed range changes would compound the compression problem which already exists, which in turn would negatively impact employee morale to those above and make it unlikely detectives would ever seek promotions. Further, I do not believe that I have the authority to award range changes with any finality as it is the Department of Civil Service which controls the setting and adjustments to salary ranges. See the State's contract with IBEW providing for range changes for deputy attorneys general subject to the approval of the Department of Civil Service. Moreover, the FOP has not adequately explained its rationale or justification for the range changes. This proposal is denied.

CHANGES IN ANNIVERSARY DATES

Finally, the FOP proposes to change the date on which step increases are awarded. Currently employees receive step increases on the payroll period of their anniversary. Employees on steps 1 through 8 move through the guide annually; employees move from step 8 to step 9 after 18 months; and employees move to step 10 after 24 months. The Union proposes that all unit employees annually advance on the guide on January 1. The Union has not adequately explained the rationale for this proposal except to argue that it would

simplify calculations. I find that this proposal has not been justified and I decline to award it.

WORK HOURS

The Union proposes the following clause:

A. Regular Hours/Workweek

> The regularly scheduled workday shall consist of no less than eight (8) hours. The regular hours of work each day shall be consecutive. The regularly scheduled work week shall consist of five (5) days, Monday to Friday. References to consecutive hours of work in the balance of this Article shall be construed to include a one-half (1/2) hour paid meal period in which employees may be subject to recall.

The State proposes this language for the work hour's clause:

Work Day and Work Week

> A. The work week for each job classification within the unit shall be consistent with its designation in the State Compensation Plan and shall generally consist of eight (8) consecutive hours per day, five (5) days per week. However, the general work week and work hours may be changed to meet operational needs.

The FOP argues it seeks to codify the regular hours of work for detectives as defined by Standard Operating Procedure #46. (FOP-32) Given that this is the policy the Division of Criminal Justice has abided by for approximately 20 years, FOP's proposal should be awarded. Moreover, the proposal does not infringe on the State's managerial prerogatives in any way. By qualifying the proposal with the word "regular" and not delineating the exact hours required for all Detectives, FOP's proposal

recognizes that all detectives will not all work the same hours and/or days given the varying nature of their assignments.

The State makes no particular argument in its brief concerning the above disputed language.

* * * *

The Division's SOP #46 provides in part:

> 46-6. Normal Hours
> A State Investigator shall be assigned a shift of normal or regular hours which shall be 8:30 a.m. to 5:00 p.m. Monday through Friday; or 9:00 a.m. through 5:30 p.m. Monday through Friday; or such other expanse of time an identification of days as may be assigned by the appropriate [supervisor].

To the extent that the FOP's proposal tracks the language of the existing SOP, I am inclined to award it. The SOP was promulgated by the Employer and, although the policy was drafted in 1995 -- prior to the State's changing the detective's title from "investigator" to "detective-Law and Public Safety", the policy has never been modified and is presumptively still in effect.

However, the FOP apparently seeks to deviate from the SOP as to the 30-minute meal break. The SOP provides for a thirty-minute unpaid meal break during an employee's eight and a half hour shift. By its proposal to include a thirty-minute paid meal break into an eight-hour work shift, the FOP appears to be seeking to reduce the length of the work day by one half-hour per day. Alternatively, if the FOP is seeking to maintain the present schedule of 8:30 a.m. to 5:00 p.m., with a thirty-minute

lunch break, then the consequence of its proposal would be to add thirty minutes of overtime per day. The State has not responded to this demand. Nevertheless, I find no justification in the record evidence to support such a reduction in the work day. I am inclined to leave the length of the work day, including the current thirty-minute unpaid meal break (pursuant to the SOP), intact.

I award the following:

> Detectives shall be assigned a shift of regular hours which shall be 8.5 consecutive work hours, 5 days per week. Unless the nature of a duty assignment dictates, otherwise, a State investigator shall take one thirty-minute unpaid meal period during his/her 8.5 hour shift.
>
> A detective may be scheduled to work at times outside of his/her regular hours, or in addition to, his/her regular hours. Employees will be given as much advance notice as practicable of changes in their scheduled hours of work.

OVERTIME

> B. Overtime
>
> All overtime shall be compensated as paid compensation at the rate of one and one-half (1 ½) hours, unless the employee, at said employee's sole discretion, elects to bank those hours in the Compensatory Time Off bank (hereinafter "C.T.O. Bank").
>
> All work performed in excess of forty (40) hours in a five (5) consecutive day work week shall be compensated at the overtime rate. For overtime calculation purposes, time worked includes vacation leave, compensatory time leave, sick leave, bereavement leave, administrative leave, union leave and holiday leave.
>
> D. Overtime

> Employees are compensated pursuant to a 28-day cycle in accordance with N.J.A.C. 4A:6-2.2A (b). Hours worked up to and including 160 hours in a 28-day cycle are paid at straight time. Hours worked between 160 hours and 171 hours in a 28-day cycle shall be compensated with compensatory time off (CTO) at the rate of one (1) CTO hour for every one (1) hour worked. Hours worked over 171 hours in a 28-day cycle shall be compensated at the overtime rate of one and one-half (1 ½) times the employee's regular hourly rate.

Overtime for detectives is presently calculated based upon a 28-day work cycle. Hours worked over 160 during the period are compensable by compensatory time off calculated at an hour for hour rate; hours over 171 in the period are compensable at a time-and-one-half rate.

According to Neggia, FOP 91 members have to work over 171 hours in a 28-day cycle before they are entitled to any paid overtime. For those hours worked between 160 hours and 171 hours, FOP members accrue compensatory time, wherein in which hours are stored in an employee time bank. Significantly, this time accrues as straight time. Hours worked over 171 are stored in a separate bank at one and one-half (1 ½) times the number of hours worked (time and a half) until that employee's bank reaches eighty (80) hours. It is only after that bank reaches eighty (80) hours, that any hours worked over one hundred seventy one (171) in a twenty-eight (28) day cycle are then paid at the overtime rate of time and a half. (3T114-115).

The Union argues that this system allows the Division of Criminal Justice to manipulate the same and employ certain

measures to avoid paying overtime to detectives. As described by Detective Neggia, given the fact the Division of Criminal Justice has a 28-day cycle to work with, they manipulate the same by mandating Detectives to "flex" their time and take certain days off towards the end of the cycle to avoid paying overtime. (3T116:7-117:12) The Union also notes that the Division also does not charge detectives for use of vacation and/or administrative leave days already utilized in an earlier portion of a twenty-eight (28) day cycle.

The Union contends that the overtime and/or compensatory time off policies utilized by the Division of Criminal Justice are confusing and inequitable to say the least. Of critical importance, however, is the fact that detectives do not receive "overtime" compensation for the hours worked beyond 160 up to and including 171. Instead, compensation for these hours is provided to detectives in the form of compensatory time off and paid at straight time.

The FOP contends that its proposal seeks an overtime and compensatory time off system that is similar and/or identical in nature to almost every other law enforcement agency in the State.

The Union maintains that, should the Arbitrator accept FOP's proposal concerning overtime and compensatory time, the negotiations unit's members would earn overtime compensation for all work performed in excess forty hours in a five consecutive

day work week. The Union avers that its proposed system is simple, straightforward, and, most importantly, fair.

The State argues DCJ Investigators, now DCJ Detectives, have been working the same 28-day work schedule since July 8, 1995. (FOP-32) Here, the Union seeks a five-day, Monday thru Friday work week with a required eight-consecutive-hour work day. (J-8) The State notes that DCJ detectives have been designated by the Civil Service Commission ("CSC") as "4L," and therefore the Union's proposal is preempted by regulation and is non-negotiable. N.J.A.C. 4A:6-2.2A provides that:

> a. Job titles which meet all of the following criteria may be assigned an alternate work schedule consisting of a 23-day cycle, pursuant to 29 U.S.C. § 207(K). . .
>
> b. Job titles which meet the criteria in (a) above and which are assigned such an alternate work schedule shall be designated 4L. All employees who meet the criteria are considered engaged in law enforcement activities regardless of their rank or their status as trainee, probationary or permanent employees.
>
> 1. The tour of duty within the 28 day cycle shall total at least 160 hours. At the discretion of the appointing authority, employees who work more than 160 hours may be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of such additional work time.
>
> 2. Within the 28-day cycle, employees can work a maximum of 171 hours. Employees may work more than 40 hours in a week without incurring overtime, so long as they do not work more than 171 hours within the 28 day cycle. Overtime begins on the 172nd hour.
>
> 3. Except for the special eligibility requirements set forth above, overtime compensation shall be paid in the same manner as employees in 40 hour workweek titles. See N.J.A.C. 4A:3-5.5(b).

The State argues that the FOP has failed to present any evidence to support a compelling reason for abandonment of the long-established 4L work schedule.

The State argues that the Union's proposal would represent a complete change in the manner in which overtime is calculated resulting in an incalculable (and, ultimately, costly) impact on the manner in which the Division performs its work. The State asserts that the Union has failed to justify its offer to change a long-standing work schedule.

As to the need to retain the 28-day schedule, the State relies on the testimony of Chief of Detectives Paul Morris. According to Morris, although units such as those that investigate insurance fraud, conduct financial investigations, and assist with the prosecution of court cases tend to have more consistent Monday to Friday, 8:30 a.m. to 5:00 p.m. or 9:00 a.m. to 5:30 p.m. schedules, (5T-128), many other assignments require that detectives work at other times when the crime is occurring. Morris provided the following examples:

- Covering wiretaps requires 24/7 coverage for between twenty to sixty day periods.

- Activities in the Human Trafficking Unit, which deals heavily with the crime of forced prostitution, also must be available 24/7.

- The Gangs and Organized Crime Unit deals with "the gray market which would include illegal guns, illegal narcotics, money laundering these folks aren't working nine to five and some of the operatives you're

using whether their informants or not the ones who are in contact with you, all the time they are not working nine to five. They do things when they want or they need to."

- Detectives are occasionally called upon to carry out raids which "occur when we can use the element of surprise and that could take place at any time.

- A Detective may need to execute an arrest warrant. That work must be done when the Detective "can get" the target, which "may not be feasible to do nine to five. You may have to ask people to come in in the afternoon to able to capture the individual."

- The installation of surveillance equipment is generally done at times when the Detective will not be seen. "[I]f you were going to put a bug in a car it would necessitate getting up real early in the morning or in the middle of the night when the owner of the car is sound asleep. If we are going to do a survey of electronic surveillance using a camera on a particular location, we wouldn't want to go out to do that survey in a casual observe and someone see us out there. They want to go when it's quite and the cover of night can help us.

- Detectives assigned to the Shooting Response Team conduct on-site investigation of "the use of deadly force employed by police officers in the State." Such shooting can occur at any time of the day or night. In Morris' eight years as Chief, there have been as few as three shootings to as many as ten shootings per year.

The State also notes that, Det. Neggia characterized the Union's overtime offer as "exactly the same" as that found in the State Police contract. The State point out unlike DCJ Detectives, State Police work in shifts and, thus, DCJ's scheduling needs differ greatly than those of the State Police (e.g., given that Troopers work on shifts, there is less need to have employees work off-shift given the availability of relief troopers). The

provisions relating to hours of work contained in the STFA contract reflect that difference. Depending on assignment, troopers can work eight-, ten- or twelve-hour shifts, as well as shifts of anywhere between eight and twelve hours.

* * * *

I find that, given the nature of the operations performed by detectives employed at DCJ, flexibility in scheduling is essential. The FOP's comparison to other law enforcement units is inapposite in that groups such as State troopers, State corrections officers, and others typically work around-the-clock shifts to staff a police or custodial operation on a 24/7 basis. Therefore, their work schedules are more fixed and regular. Here, the Employer needs flexibility to cover investigations of crimes as they occur. Its operation does not lend itself to a strictly 9-to-5 work schedule. The Union has not adequately provided justification for changing the overtime computation plan to one based upon a 40-hour work week. Moreover, not even antidotal evidence has been supplied to demonstrate the possible costs associated with a complete modification of the overtime formula. Therefore, I'm unable to track the costs of this modification for purposes of costing out the award as required by arbitrators. Accordingly, the State's proposal is awarded as follows:

D. Overtime

Employees are compensated pursuant to a 28-day cycle in accordance with N.J.A.C. 4A:6-2.2A (b). Hours worked up to and including 160 hours in a 28-day cycle are paid at straight time. Hours worked between 160 hours and 171 hours in a 28-day cycle shall be compensated with compensatory time off (CTO) at the rate of one (1) CTO hour for every one (1) hour worked. Hours worked over 171 hours in a 28-day cycle shall be compensated at the overtime rate of one and one-half (1 ½) times the employee's regular hourly rate.

COMP TIME

The Union proposes:

C. Compensatory Time Off

1. Compensatory time off (hereinafter "C.T.O.") will be recorded in a "bank" up to a maximum of one hundred and forty (140) hours at a rate of time and a half. Any overtime earned by an employee with one hundred and forty (140) hours banked is payable only in cash or taken as compensatory time only if agreed upon by the employee. Hours currently in the employee's "Comp Time Bank" will be transferred to the new C.T.O. Bank.

2. Once C.T.O. is banked in the C.T.O. Bank, the time accrued shall remain in the C.T.O. Bank and only be used at the request of the employee. Each request is subject to prior employer approval based on operational needs.

D. Current "11 Hour Bank" a.k.a. "Bank 1"

Hours currently "banked" by employees in Bank 1 shall be carried over. After the implementation of this contract, hours will no longer accrue into Bank 1. These hours can be used at the discretion of the employee until separation from the Division of Criminal Justice. Any unused hours banked in the current "11 Hour Bank" or "Bank 1" that go unused will be paid in cash upon retirement.

The State proposes:

Employees are compensated pursuant to a 28-day cycle in accordance with N.J.A.C. 4A:6-2.2A (b). Hours worked up to and including 160 hours in a 28-day cycle

are paid at straight time. Hours worked between 160 hours and 171 hours in a 28-day cycle shall be compensated with compensatory time off (CTO) at the rate of one (1) CTO hour for every one (1) hour worked. Hours worked over 171 hours in a 28-day cycle shall be compensated at the overtime rate of one and one-half (1 ½) times the employee's regular hourly rate.

The use of banked CTO hours for time off may be scheduled by the employee or the Division in accordance with departmental needs. At the request of either party, the employee and her/his supervisor shall meet to amicably schedule CTO. If the employee and her/his supervisor cannot agree on scheduling, the supervisor shall have the discretion to schedule the CTO.

FOP argues that its proposal seeks the establishment of one compensatory time off bank, instead of the two separate banks currently being utilized by the Division. The "comp bank" would permit a maximum of 140 hours, to be used at the discretion of the employee, subject to the operational needs of the Division. Moreover, FOP's proposal also addresses how the current "11-Hour Bank," those hours accrued between 160 and 171, will be phased out and eliminated. Specifically, it proposes that at the time this contract is implemented, hours will no longer accrue into this bank and the hours contained therein can be utilized by the detective throughout the course of their employment and/or be paid out upon their retirement. Eventually, all of the hours contained in the "11-Hour Bank" will be drained and the bank can then be eliminated in its entirety.

The Union argues that the State's proposal would codify the convoluted, unfair overtime and compensatory time off systems currently being utilized.

The State makes no particular argument in its brief with regard to the Union's proposal to merge the comp time banks together.

I find neither the FOP's proposal nor the State's proposal to be satisfactory. First, the current SOP provides:

> A State investigator working overtime shall earn compensatory time at the rate of one and one-half compensatory hours for every hour of overtime. Earned comp time shall be credited to the State investigator at the end of the work test period to be available for use in the following work test period and thereafter. Acceptance of employment with the Division of Criminal Justice constitutes agreement to accept comp time in lieu of cash overtime.
>
> A State investigator may accumulate comp time to a maximum of 480 hours. Earned overtime which would cause accumulated comp time to exceed 480 hours shall be paid in cash in accordance with F.L.S.A. The Division may pay any and all comp time in cash at any time. Compensatory time balances so paid shall be reduced in proportion to the cash payment.

The SOP does not distinguish the hours between hours in the 11-hour bank and hours in the CTO bank; therefore, it is unclear whether the 480-hour cap on accumulated compensatory time applies to only the regular comp time bank or both banks. Moreover, the comp time limitation of 480 hours in the SOP cannot be reconciled with the unrebutted testimony of the Union's witnesses that comp time in the CTO bank is currently capped at 80 hours. Further, the SOP provides that all overtime

shall be at time and one-half which is clearly not the existing practice. Therefore, I am unable to reconcile the existing practice as explained in the record with the provisions in the SOP.

I award the following:

> There shall be one bank of compensatory time off ("CTO"). Pursuant to the overtime article, employees who work more than 160 hours and up to and including 171 hours in a 28-day cycle, will be credited with comp time on an hour-for-hour basis. Employees may use time accrued in the CTO bank at their discretion, subject to prior employer approval based on operational needs.

WEEKEND HOURS

> Employees required to work weekends shall be paid at the rate of one and one-half (1 ½) times the normal salary rate.

The FOP argues this proposal merely delineates that detectives who are required to work weekends shall be paid at the rate of one and one-half (1 ½) times the normal salary rate. In essence, this proposal seeks a "shift differential" of sorts.

According to Neggia, many detectives assigned to certain task forces and/or narcotics units are assigned a significant number of weekend and night hours. (3T127-129). Moreover, Neggia stated that there are various scenarios wherein which a detective might get "stuck" working overnight and/or on the weekends. Given that this varies from a typical detective's regular hours, the FOP believes these detectives should be

compensated at a higher rate for such work beyond the "normal call of duty."

The FOP argues that its proposal is more than reasonable and should be awarded. Quite simply, being required to work on the weekends is atypical for the DCJ detectives. Those detectives who are required to do so should be rightfully compensated for the impact such work has on their personal lives. Furthermore, many law enforcement units have a similar contract provision, providing the employees who perform such work with an "enhanced" form of compensation. FOP should be afforded the same benefit.

The State argues that there is no provision in the STFA contract which provides for State police be paid overtime for weekend work.

Although the FOP perceives that working weekends is outside of detectives' "normal workday", I find that such "off-hours" assignments are typical for law enforcement officers. In fact, most employees with police powers work shifts which certainly include evening shifts, overnight shifts, and weekends. This is widely considered an integral component of holding a job in law enforcement. While some municipal police departments and county corrections groups may still pay a differential for some shifts, the concept of shift differential is no longer a widely accepted benefit. Further, I have not seen special compensation or a differential paid for weekend work, as such assignments are an

expected part of a career in law enforcement. More importantly, the FOP did not point to any contract with State law enforcement groups which pays premium pay for weekend work. The FOP's proposal is denied.

OVERNIGHT STAY

Both parties have made proposals concerning compensation and accommodations for overnight stays. The Union proposes,

> Any employee who is assigned an investigation and/or extradition which causes him/her to stay out of state overnight shall receive an additional 4 hours pay (at the overtime rate) for each night out of state in addition to pay for actual hours worked. In addition to the employee receiving lodging and travel expenses, the employee shall receive payment in accordance with the current Federal and/or State per diem guidelines for meals.
>
> Any employee traveling for approved training requiring one or more overnight stays shall be paid for eight (8) hours pay or the actual hours worked for each day over eight (8) hours. Actual time traveling both to and from an approved training shall be paid. Employees who are stranded or otherwise delayed while on travel due to circumstances outside of their control shall be reimbursed for this time. In addition to the employee receiving lodging and travel expenses, the employee shall receive payment in accordance with current Federal and/or State per diem guidelines for meals.

The State proposes:

> Any employee who is assigned an investigation or extradition which causes him/her to stay out of the state overnight or who travels out of state overnight to attend mandatory training shall receive per diem reimbursement for lodging, meals, and expenses consistent with the State Department of the Treasury Travel Regulations. The time spent traveling for the above-referenced purposes shall be compensated as required by the federal Fair Labor Standards Act.

The Union argues that its proposal would solve the current system of reimbursement and compensation which is dependent upon the whim of the supervisor. Detective Neggia also testified regarding the part of the proposal pertaining to training-related activities:

> Q. The second paragraph of the overnight stay, it discusses when an employee becomes stranded out-of-state whether for official duties or training, things of that sort. Why is the union asking for that?
>
> A. We are asking for anybody who is away on training, I believe that involves an overnight stay of one or more days, that they basically be paid for the actual hours in excess of eight hours a day and in each day for eight hours that they are actually there working or travelling back and forth to the training.
>
> Q. Have there been situations where employees have been stranded overnight at different training exercises and unable to get home?
>
> A. Yes.
>
> Q. And how has that been handled in the past?
>
> A. It varies by individual. Certain individuals have been denied time due to no cause of their own duty being stranded due to weather conditions. (3T131)

The FOP argues that its proposal would impose a level of uniformity and clearly delineate how such a situation should be handled going forward. Moreover, the proposal would ensure that detectives are rightfully compensated for such assignments and/or activities that require them to be away from their families.

Alternatively, the State's proposal regarding "overnight stays" does not spell out how such situations will be handled,

but merely states that detectives will be compensated for the time spent traveling as required by New Jersey wage payment laws and the federal Fair Labor Standards Act. Such language does nothing more than continue the inconsistent, haphazard way these situations are currently handled. For the reasons set forth by Detective Neggia, this cannot continue. Consequently, the FOP argues that its proposal is superior and should be awarded.

The State points to the Division's current SOP-46, which provides:

> Travel which keeps a State [Detective] away from home overnight must be approved by the appropriate [supervisor] before such travel takes place. Activity which constitutes work time during travel away from home shall be determined in accordance with the regulations promulgated under the Fair Labor Standards Act. FOP-32, Sec. 46-12

The State points out that neither the concept of an "overnight stay," nor compensation for such stays is addressed in any of the State's six law enforcement agreements (S-31). Nor are overnight stays or out-of-state travel addressed in the State Police CNA (FOP-24). Rather, Neggia testified that he believed the proposal was found in one of the county contracts.

The State contends that a provision in some unspecified county contract is not persuasive justification for awarding the provision. Instead, the Arbitrator should rely on and award the State's counter-proposal which is based on the almost two-decade old SOP-46; the State Department of the Treasury Travel

Regulation, which applies to all State employees; and the federal Fair Labor Standards Act, which mandates compensation for covered travel time and reimbursement for covered travel expenses. Accordingly, N.J.S.A. 34:13a-16g(9), supports the awarding of the State's proposal.

Additionally, the State claims that because the Union failed to cost-out the financial impact of its proposal as required by N.J.S.A. 34:13a-16f(3), the proposal may not be awarded. Under the Union's proposal, any time a Detective is out of state overnight on an investigation or extradition, the Detective would receive six hours of additional pay (i.e., four hours of overtime pay at time-and-one-half) for "each night spent out of state."[14] Det. Neggia testified that Detectives assigned to the Casino Unit are frequently required to perform extraditions that require overnight stays. (1T129-130)

That State opines that the second paragraph of Union's proposal should also be rejected. The proposal would require that Detectives be compensated for all travel time for approved training that requires an overnight stay, as well as compensation for any time a Detective is delayed in his/her travels due to "circumstances outside of their control." That paragraph addresses a personal situation involving Det. Neggia:

[14] Union does not define how "night spent out of state" is to be determined. It is unclear whether it means an entire night (i.e., 5:30 p.m. to 8:30 a.m.), any portion of a night (e.g., any time past 5:30 p.m.), or something else.

A: Earlier this year, I believe it was January or February, I went on two separate trips for ICAC, Internet Crimes Against Children. In the course of those two travels, I was delayed a number of hours, a number of days because Newark Airport was basically iced in and you cannot get out of our training location and when I put the hours in to be reimbursed for my time that I was actually out-of-state, I was actually denied those hours, 25 hours total. So that's why we have this provision in here to prevent that.

Q: The 25 hours would represent the time that you normally would have worked had you been able to get back; is that fair?

A: Correct. I wanted to get back. We could not get back. The airport was closed.

Q: Are you aware of any other situation where that occurred?

A: Not that I'm aware of. No. (3T179-180)

The State argues that a collective negotiations agreement is not the vehicle for addressing individual, personal peccadillos.

I find that the FOP has not justified awarding additional compensation for occasions when out-of-state travel is necessary. And, apart from the one example of one employee being stranded during a storm, the Union has not adequately explained why its proposed language is needed.

I award the following:

An employee who is assigned to an investigation or extradition, or who attends approved training, which causes him/her to stay out of the State overnight shall receive per diem reimbursement for lodging, meals, and expenses consistent with the State Department of the Treasury Travel Regulations. The actual time spent traveling for the above-referenced purposes shall be compensated as required by the federal Fair Labor Standards Act.

MEAL BREAKS

The FOP proposes:

> Work, for purposes of this Article, shall be defined as any service performed which arises out of the employee's status as a law enforcement officer. Meal and break periods which occur during periods of work shall be computed as work time.

The meal breaks have been discussed and an award crafted in the Hours of Work section. The Union has not justified why this particular separate section is needed.

CALL IN TIME

The parties have each submitted a proposal for compensation for "call-in" time. The main difference between the parties' proposals is the number of minimum hours for which the detective will be compensated when called in to work. The FOP proposes:

> I. Call-In Time
>
> When an employee is called in for duty outside his/her normal tour of duty, or on a day when he/she is not scheduled for duty, the employee shall be guaranteed a minimum of four (4) hours compensation, whether or not the four (4) hours are worked, except when the end of the call-in period coincides with the beginning of his/her scheduled shift.

The State proposes:

> F. Call-In Time
>
> When an employee is called in for duty outside of his/her scheduled work time, or on a day when he/she is not scheduled for duty, the employee shall be guaranteed a minimum of two (2) hours compensation, regardless of the amount of time worked. The

guarantee shall not apply when the call-in period is contiguous with the employee's scheduled work time.

The FOP argues that a review of the collective negotiations agreements contained in Ex. FOP-19 illustrates that four hours of compensation for "call-in" time is the accepted and/or normal practice. Moreover, as stated by Detective Neggia, there is no uniform policy currently utilized by the Division to compensate officers for "call-in" time. (3T135) The form of compensation for "call-in" time is usually dependent upon a detective's supervisor.

The FOP argues that its proposal will codify a detective's compensation for being "called in" for duty and, thus, impose a level of uniformity within the Division. Moreover, under FOP's proposal, the compensation given to Detectives will be comparable to the amount provided to various other law enforcement collective negotiations units. Four hours of compensation is an adequate amount of compensation for the members given the inconvenience of being "called in" and the impact the same can have upon one's personal life.

The State argues that its proposal of a two-hour minimum call-in pay is identical to all but one of the State's law enforcement Agreements. Every State 2011-2015 law enforcement CNA containing a call-in time provision provides for a minimum of two-hour compensation when the law enforcement officer is called-in outside of the employee's scheduled work time. (S-31:

FOP Lodge 174, Art. XXVI, Sec. F(4); PBA Local 105, Art. XXVII Sec. (C); NJ Superior Officer Law Enforcement Assoc., Art. XXVII Sec. (C); NJ Law Enforcement Supervisors Assoc., Art. XXVI Sec. (C); PBA State Law Enforcement Unit (SLEU), Art. XXVII Sec. (C).

The State points out that the State Police contract is the only State law enforcement Agreement that has call-in time of greater than two hours, and that contract only provides a minimum of three hours of call-in time. (FOP-24, Art. V, Sec. C)

The State argues that its proposal is consistent with of the vast majority of its law enforcement contracts, and thus supports the criteria of comparability with other similar employees within the same jurisdiction. It maintains that the Union has failed to establish that any greater minimum hours of call-in time is necessary.

I find that that the State's proposed two-hour minimum is supported by the fact that at least five other State law enforcement units have a two-hour minimum call in benefit. The Union has not justified its proposal for a four-hour minimum, which even exceed that which the State Police have in its contract. I award the following provision:

F. Call-In Time

When an employee is called in for duty outside of his/her scheduled work time, or on a day when he/she is not scheduled for duty, the employee shall be guaranteed a minimum of two (2) hours compensation, regardless of the amount of time worked. The

guarantee shall not apply when the call-in period is contiguous with the employee's scheduled work time.

SCHEDULE CHANGES

The FOP proposes:

> H. Schedule changes
>
> Any schedule change or shift change which is effective on less than forty-eight (48) hours' notice to the employee shall cause the entire work obligation so changed to be paid at the overtime rate. Change shall be defined as an alteration from a regularly scheduled work schedule. Work schedule changes shall be communicated to the affected employees directly, in person or telephonically, and through the State e-mail system.

The State proposes:

> B. The Division will schedule each employee's work hours one (1) week in advance. Scheduled hours are subject to change to meet operational needs.
>
> C. Employees shall be given as much advance notice as practicable of changes in their scheduled hours of work.

The FOP maintains that according to Detective Neggia, similar provisions are contained in the collective negotiations agreements for the investigators/detectives of the various county prosecutor's offices.

The Union avers that this proposal will properly compensate a detective when his/her schedule is altered on a moment's notice due to emergent or non-emergent situations. In short, the proposal ensures the detectives will be compensated for the impact such a change has on their personal lives without a proper amount of notice. Moreover, the same will act as a

deterrent for the Division to alter a detective's schedule for disciplinary reasons or otherwise.

The FOP argues that the State's proposal to provide employees with "as much notice as practicable" for schedule changes is inadequate and does nothing to compensate a detective for such a monumental change in his/her employment and personal life. Schedule changes that do not provide a detective with adequate notice may result in the alteration of childcare and other personal needs of a detective and his/her family. Thus, when such a situation arises, such a contractual provision will deter deleterious conduct of the Division. Consequently, the FOP argues that its proposal should be awarded.

The State's brief did not address this issue.

The Union has not provided sufficient justification for its proposal that a monetary penalty be imposed when schedule changes occur within 48 hours of the change. The record does not indicate with what frequency such changes occur and whether the changes are to meet emergent circumstances, or simply the employer's failure to advise the detective of the need to work different hours. I recognize that last-minute schedule changes can be extremely disruptive to a detective's personal life. However, given the nature of the work being performed by some members of this bargaining unit, I expect that scheduling must be arranged around the detection of crime, which of course does not happen on a fixed schedule. Balancing the competing needs

of the Division and the interests of the employees, I award the following:

> A detective's scheduled hours of work are subject to change to meet operational needs. Employees shall be given as much advance notice as practicable of changes in their scheduled hours of work.

OUT OF TITLE WORK:

The FOP proposes:

> An employee working in an out-of-title position, whether carrying the acting title or not, including, but not limited to, Sergeant-State Investigator or Lieutenant-State Investigator, shall upon the end of the 4th bi-weekly pay cycle be paid at the salary of the title he/she is working. The salary shall be the rate of pay equivalent to a minimum of one (1) step up within the acting title from the employee's current rate.

The FOP argues that its proposal is simple and straightforward. In essence, FOP is requesting that, if a detective is ordered to perform the work of a Sergeant and/or Lieutenant for four consecutive pay cycles, immediately after the fourth consecutive pay cycle, so long as he or she is still performing the duties of the higher rank, the detective will receive the compensation of the rank that they are serving in. As indicated by Detective Donlan, since 2008 through the current time, detectives have been performing the work of sergeants and lieutenants for extended periods of time.

Detective Donlan noted that a detectives in the South office that has been serving in a sergeant's billet for the past three years and continues to receive his detective pay. (1T122).

The Union claims this is a large problem within the Division as management has no restraining mechanism in place to prevent them from ordering detectives to serve in a higher rank without pay. As a result of these actions, management saves on the additional expense associated with a promotion. This particular proposal is directed towards stopping management's abusive behavior. Consequently, FOP implores the Arbitrator to grant this proposal in its entirety as a matter of equity and fairness.

The State argues that the Union has offered only hearsay testimony in support of this proposal. One of the only two instances in which Dolan testified that an individual has been working out-of-title involved an unnamed sergeant whom Dolan claimed has been performing lieutenant's duties for a prolonged period of time. (1T-121). Sergeants are excluded from this negotiations unit. Such vague testimony cannot form a basis to award the proposal sought here.

Additionally, the State notes that of its other law enforcement units, only the State Police contract has a provision for out-of-title-work (FOP-24). The reason no such provision exist is simple -- classified and unclassified employees (including the Detectives here) in the State Service have a right to seek a "desk audit" through Civil Service in the event an employee contends that he or she is performing "out-of-title work." See N.J.A.C. 4A: 3-3.9. Accordingly, even if one were to credit the testimony of Donlan and assume that "out-of-

title" work occurs within the DCJ with any frequency, the detectives in this unit have a regulatory remedy in place nullifying any need for the provision sought here by Union.

Nonetheless, not even the State Police Contract contains Union's provision. The State Police provision on out-of-title work provides:

> Out-of-title work assignments occur when a member is formally designated to occupy a position in an acting capacity, which is structured at a higher rank in the then currently published staffing tables of the Division.
>
> This Article governs out-of-title work issues and compensation for time served in a formally designated acting assignment at a higher rank for greater than eight (8) bi-weekly pay periods and is applicable to all enlisted members of the Division of State Police. When the Superintendent initiates a 369A or otherwise designates in writing that a member will be assigned to serve in an acting assignment at a higher rank, the member will be eligible to receive the rate of pay of the higher rank upon completion of eight (8) bi-weekly pay periods of continuous service. The rate of pay of the higher rank will be effective and payable to the member for service in the higher rank subsequent to the completion of the eight (8) bi-weekly pay periods. Following completion of the eight (8) bi-weekly pay periods, the member shall receive the rate of pay of the higher rank until either promoted according to the procedures adopted by the Superintendent or the acting assignment is terminated. Any decision to initiate or terminate any acting assignment shall be within the sole discretion of the Superintendent and shall not be subject to any grievance procedure contained in this Agreement. Time served in an acting assignment at a higher rank will not be given consideration toward any promotional decision, toward computation of any probationary period, and/or toward computation of seniority at the higher rank. (Id., Art. XXII) (emphasis added).

Thus, New Jersey State Police are only entitled to be compensated for out-of-title-work "for time served in a formally designated acting assignment at a higher rank for greater than eight (8) bi-weekly pay periods." Id. (emphasis added). In comparison, Union seeks out-of-title-work pay after only four (4) bi-weekly pay periods "working in an out-of-title position." Unlike the provision in the expired State Police CNA, Union's proposal has no requirement that the out-of-title work must be "designat[ed] in writing" to fall under the provision. Thus, if awarded in its present form, this proposal is likely to result in disputes and grievances as to whether a detective has been "working in an out-of-title position." For the foregoing reasons, the State argues that the Union's proposal should be rejected.

I find that the Union has justified the need for contract language that would provide for compensation for employees being asked to serve in the capacity of a superior officer for extended periods of time. The State's suggestion that detectives put into the role of a superior officer could simply request that civil service conduct a desk audit is an unsatisfactory solution, as such a process is not expeditious and may not necessarily result in the granting of compensation for the employee for having served in the acting position. I award the following:

An employee who has been designed by the Employer to serve in an acting capacity as a superior officer shall, upon the end of the 8th bi-weekly pay cycle, be paid at the salary of the title he/she is working. The salary shall be the rate of pay equivalent to a minimum of one (1) step up within the acting title from the employee's current rate. The rate of pay of the higher rank will be effective and payable to the member for service in the higher rank subsequent to the completion of the eight (8) bi-weekly pay periods. Following completion of the eight (8) bi-weekly pay periods, the member shall receive the rate of pay of the higher rank until either promoted or the acting assignment is terminated. Any decision to initiate or terminate any acting assignment shall be within the sole discretion of the Employer and shall not be subject to the grievance procedure.

HOTEL STAY

The FOP proposes,

In recognition of "Maggie's Law," N.J.S.A. 2C:11-5, the State understands that employees may be required to work more than twenty-four (24) consecutive hours and, as such, because of the requirements of the law, such employees shall be afforded a hotel/motel room without cost to the employee or driven home at the end of their shift when it exceeds twenty-four (24) hours in duration.

The FOP argues that this proposal is consistent with "Maggie's Law," codified at N.J.S.A. 2C:11-5. Moreover, the proposal is consistent with the Division of Criminal Justice Standard Operating Procedure #71, entitled "Driving While Fatigued," (FOP-33). As such, FOP seeks nothing more than to clearly delineate its members' rights when they are required to work more than 24 hours in duration. Given the proposal is consistent with N.J.S.A. 2C:11-5 and the Division's long-

standing Standard Operating Procedure, that FOP argues that there is no reason that the same should not be awarded.

The State notes that SOP-71 which has been in place since March 1, 2005. (FOP-33) Union's stated intent for its proposal is to formalize SOP-71 in the contract. However, the Stat maintains, the problem with Union's intent is that the proposal addresses only a small aspect of SOP-71 --he provision of a hotel room or a ride home to a detective who has worked greater than twenty-four hours consecutively. The two-page SOP addresses the rationale for Maggie's Law, and provides an explanation as to how and when the policy will be implemented as well as a detailed procedure for "replacing and relieving personnel." (See FOP-33, Sec. 71-2, 71-4, and 71-5). Indeed, by failing to incorporate the SOP in its entirety, Union's proposal either seeks significant changes to the current practice (for which Union has failed to establish any basis) or, at a minimum, will create significant confusion and numerous disputes. The State therefore argues that the Union's proposal should be rejected.

I believe tht the State's concerns about the Union's proposal not having incorporated the entire SOP into the proposal language are unfounded. Section 71-2 of the SOP provides the background of enactment of Maggie's law. Section 71-4 deals with procedures on how supervisors are to plan for replacement or relief of personnel who have not slept

within a 24-hour period. The FOP proposal captures the essence of the SOP to which detectives have an interest; namely, that they not be required to drive while fatigued in accordance with Maggie's Law. I award the following:

> There may be occasions when a detective is required to work more than twenty-four (24) consecutive hours. In accordance with "Maggie's Law," N.J.S.A. 2C:11-5, detectives who are assigned to work such a shift shall be afforded a hotel/motel room without cost to the employee or driven home at the end of their shift, at the discretion of the supervisor. However, at the conclusion of an eight-hour rest period, the detective will be permitted to return to duty.

HEALTH BENEFITS

The Union proposes:

Health Insurance and Fringe Benefits:

A. State Health Benefits Program

1. The State Health Benefits Program is applicable to employees covered by this Contract. It is agreed that, as part of that program, the State shall continue the Prescription Drug Benefit Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. The State Health Benefits Plan Design Committee shall provide to employees the option to select one of at least three levels of coverage each for family, individual, individual and spouse, and individual and dependent, or equivalent categories, for each plan offered by the program differentiated by out of pocket costs to employees including co-payments and deductibles. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the

plan design, plan components and coverage levels under the program.

2. Medicare Reimbursement - Consistent with law, the State will no longer reimburse active employees or their spouses for Medicare Part B premium payments.

The State proposes:

A. State Health Benefits Program

As with any provisions of this Agreement that reflect statutory or regulatory mandates, the provisions of paragraphs (A 1-3), (B), (C) and (G) of this Article, are for informational purposes only and provide an explanation which is subject to change due to legislative action. Any legislative changes to the State Health Benefits Program that occur during the term of this Collective Negotiations Agreement shall apply to employees in this negotiations unit at the same time and on same terms as they apply to unrepresented State employees. If the legislation provides that such changes go into effect at the expiration of current collective negotiations agreements, such changes shall go into effect for this unit on July 1, 2015 or when the changes apply to other State law enforcement collective negotiations units, excluding State Police, whichever is later.

1. The State Health Benefits Program is applicable to employees covered by this Contract. It is agreed that, as part of that program, the State shall continue the Prescription Drug Benefit Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the plan design, plan components and coverage levels under the program.

2. Effective July 1, 2003, new hires are not eligible for enrollment in the Traditional Plan. The Traditional Plan and the NJ Plus POS Plan have been abolished.

3. Medicare Reimbursement - Effective January 1, 1996, consistent with law, the State will no longer reimburse active employees or their spouses for Medicare Part B premium payments.

The key difference in the two proposals is that the State seeks to have any legislative changes go into effect immediately, whereas the Union seeks to continue the benefits clause for the length of the contract unless the contract language is superseded by any such legislative changes.

I find merit in the FOP's argument. The terms of the contract should remain in effect for the contract length unless changes are mandated by statute or the State Health Benefits Commission. If the legislature enacts changes to the law and makes such changes mandatorily immediately effective, then the statutory provisions will control. If the legislature exempts current contracts from any amended provisions, then the parties current contract provisions will continue. I award the Union's proposal[15] and add the following:

3. Any legislative changes regarding post-retirement medical benefits that mandate immediate changes to retiree benefits and/or contribution levels shall supersede the provisions herein. If the legislation provides that such changes go into effect at the expiration of current collective negotiations agreements, such changes shall go into effect for this unit on July 1, 2019.

HEALTH BENEFIT CONTRIBUTIONS

[15] I see no value in adding the State's proposed language concerning the elimination of traditional plan or NJ Plus plan.

The Union proposes:

A. Contributions Towards Health and Prescription Benefits

1. Employees shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of health care benefits coverage for the employee and any dependent provided under the State Health Benefits Program in an amount that shall be determined in accordance with section 39 of P.L. 2011, c. 78, except that, in accordance with Section 40(a) of P.L. 2011, c. 78, an employee employed on July 1, 2011 shall pay:

a) from implementation through June 30, 2012, one-fourth of the amount of contribution;

b) from July 1, 2012 through June 30, 2013, one-half of the amount of contribution;

c) from July 1, 2013 through June 30, 2014, three-fourths of the amount of contribution; and

d) from July 1, 2014, the full amount of contribution, as that amount is calculated in accordance with section 39 of P.L. 2011 c. 78. After full implementation, the contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

The State proposes:

B. Contributions Towards Health and Prescription Benefits

1. Except for any changes that occur in accordance with Section A above, employees shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of health care benefits coverage for the employee and any dependent provided under the State Health Benefits Program in an amount that shall be determined in accordance with section 39 of P.L. 2011, c. 78. If Section 39 of P.L. 2011, Chapter 78 should expire during the term of this Collective Negotiations Agreement, the contributions required pursuant to Section 39 and this Collective

Negotiations Agreement shall continue for the duration of this Collective Negotiations Agreement unless the Legislature specifically enacts different employee contribution levels for the State Health Benefits Program, which shall then govern.

I award the following:

A. In accordance with section 39 of P.L. 2011, c. 78, employees shall contribute, through the withholding from salary or other compensation, toward the cost of health care benefits coverage for the employee and any dependents provided under the State Health Benefits Program. Effective July 1, 2014, employees shall contribute the full amount of contribution as calculated in accordance with section 39 of P.L. 2011, c. 78.

B. Contributions Towards Health and Prescription Benefits

1. If Section 39 of P.L. 2011, Chapter 78 should expire during the term of this collective negotiations agreement, the contributions required pursuant to Section 39 and this Collective Negotiations Agreement shall continue for the duration of this agreement unless the Legislature specifically enacts different employee contribution levels for the State Health Benefits Program, which shall then govern.

EYE CARE

The Union proposes:

B. Eye Care Program

1. Full-time employees and eligible dependents shall be eligible for the State administered Eye Care Program.

2. The Program shall provide for a $70.00 payment for regular prescription lens or a $100.00 payment for bifocal lens or more complex prescriptions. Included are all eligible full-time employees and their eligible dependents (spouse and unmarried children under 23 years of age who live with the employee in a regular parent-child relationship). The extension of

benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

3. Full-time employees and eligible dependents shall be entitled to a maximum payment of $75.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or Optometrist, during the two (2) year period ending June 30, 2016, and only one payment during the two (2) year period commencing July 1, 2016.

4. Each eligible employee and dependent may receive only one (1) payment for glasses and one payment for examination during the period of July 1, 2014-June 30, 2016 and one payment for glasses and one payment for examination during the period of July 1, 2016-June 30, 2018.

The State proposes:

D. Eye Care Program

1. It is agreed that the State shall continue the Eye Care Program during the period of this Contract. The coverage shall provide for a $40.00 payment for regular prescription lens or $45.00 for bifocal lens or more complex prescriptions. Included are all eligible full-time employees and their eligible dependents (spouse and unmarried children under 26 years of age who live with the employee in a regular parent-child relationship). The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of $35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

3. Each eligible employee and dependent may receive only one payment for glasses and one payment for examinations during the period of July 1, 2015 to June 30, 2017 and one payment for glasses and one payment for examination during the period of July 1, 2017 to June 30, 2019. This program ends on June 30, 2019.

Proper affidavit and submission of receipts are required of the employee in order to receive payments.

The FOP argues that, through its proposal, it seeks an allotment for prescription eyeglasses in the amount of $70 and, for bifocal lenses, one hundred dollars ($100.00). It also seeks a seventy-five dollar ($75.00) allotment for eye examinations. Moreover, the proposal seeks these allotments every two (2) years while the collective negotiations agreement is in effect.[16]

The FOP argues that this proposal would assist detectives in paying for these services and products as the same are not covered under the State Health Benefit Plan. According to Neggia, even if FOP's proposal were awarded, the members would still have some out of pocket expenses for glasses and eye examinations.

The FOP argues that the cost of living has increased over the past several years and will continue to increase. FOP's proposed allotments for these services and products recognize this increase and seek to pay members a sufficient amount toward the same. Consequently, this proposal is more than reasonable and, thus, should be awarded in its entirety.

The State opposes the increases in the eye care program as proposed by the Union. It argues that (1) the design of the program is to defray the cost of eye care and frames and lenses

[16] Neggia testified that he read the proposal as applying at least the eye exam benefit every year. [3T139-140] However, this is not what the FOP's Final Offer provides.

and the $35 covers the cost of the deductible for an eye exam which is covered under the SHBP; and, (2) the program is the same across all bargaining units and also applies to the non-aligned employees. Given the anticipated large and uncontrollable increases in health benefits, it would make no sense increase this benefit or to carve out a different program for this small unit.

The State's proposal in section D(3) asks to make reimbursement available during contractually set 2-year periods, i.e, 2015-2016 and again 2016-2018. It also proposes that to sunset the benefit provisions on June 30, 2019. The State asserts that this proposal is a benefit cost containment measure, should the State decide to modify or end the program at the agreement's expiration.

I find that neither the State's proposal nor the Union's proposal is entirely justified. As to the Union's proposal to increase the reimbursement levels, it must be noted that no other bargaining unit in State government has an eyecare reimbursement rate of greater than the plan that currently exists for DCJ detectives. The Union's complaint that the plan does not cover the costs of eyeglasses or frames has merit; however, the plan does not appear to be intended to completely cover such costs; rather, it is intended to partially offset such costs. I am not inclined to give an increased benefit to

this bargaining unit for eyecare that would put it out of parity with all other State units.

As to the State's proposal to make the benefit available in specified two-year increments, this is inconsistent with other State contracts and ignores the possibility that some employees did not receive a reimbursement in the last two years, or need glasses for the first time in 2014. Therefore, language permitting reimbursement once in a two-year period is more appropriate. Finally, I decline to include language that would sunset the clause upon the expiration of the contract. The State's proffered reason that it wants the option to terminate the program if it wishes flies in the face of collective negotiations, is inconsistent with the provisions of other State contracts, and is not in the public interest, which favors collective negotiation over unilateral action. I award the following:

> 1. It is agreed that the State shall continue the Eye Care Program during the period of this Contract. Included are All eligible full-time employees and their eligible dependents (spouse and unmarried children under 26 years of age who live with the employee in a regular parent-child relationship) are covered under this program. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.
>
> 2. Eligible employees and eligible dependents as defined above shall be eligible for a maximum payment of $35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist during a two-year period.

3. Eligible employees and eligible dependent as defined above shall be eligible for a maximum payment of $40 for single vision eyeglasses or $45 for bifocal or complex lenses during a two-year period.

Finally, the State proposes:

E. The provisions of Sections (A.1-3), (B), (C) and (G) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article ____.

The State maintains that this provision appropriately excludes disputes concerning these fringe benefits from the grievance and arbitration procedure and is consistent with the language contained in the negotiated agreements between the State and its other negotiation units. The FOP asserts that there is no basis to exclude health benefits from the grievance procedure. I award the State's proposal as it is consistent with language contained in the State's other negotiations units' contracts.

HEALTH INSURANCE IN RETIREMENT

The Union proposes:

1. Those employees who have 20 or more years of creditable service on the effective date of P.L. 2011, c. 78, who accrue 25 years of pension credit or retire on a disability retirement on or after July 1, 2011 will contribute 1.5% of the monthly retirement allowance toward the cost of post-retirement medical benefits as is required under law. Those employees who have fewer than 20 years of creditable service on June 28, 2011, and who accrue 25 years of pension credit and retire on or after July 1, 2011, will contribute toward the cost of post-retirement medical benefits in accordance with P.L. 2011, c. 78. In accordance with P.L. 2011, c. 78, the Retiree Wellness Program no longer applies.

2. The State agrees to assume, upon retirement, the full cost of the Health Benefits coverage for the State employees and their dependents including the cost of charges under the Part B of the Federal Medicare Program for eligible employees and their spouses, but not including survivors, for employees who accrue 25 years of pension credit service, as provided under the State plan, by July 1, 1997, and those employees who retire on disability on the basis of fewer years of pension credit in the State plan by July 1, 1997.

3. Employees who accrue 25 years of pension credit service after June 30, 2007, and before June 30, 2011, will be eligible to receive post-retirement medical benefits ("PRM") in accordance with applicable law in effect at that time. Such employees will be eligible to participate in the applicable PPO or HMO and will pay 1.5% of pension benefit as a contribution to the cost of PRM, but such contribution shall be waived if the retiree participates in the Retiree Wellness Program. Participation shall mean that the retiree completes the designated HRA form at the time of retirement, participates in the annual health assessment, and participates in any individualized health counseling, follow-up, or program developed for that individual. There shall be an annual verification from the appropriate person at the Retiree Wellness Program in which the retiree is participating.

4. Employees hired on or after July 1, 1995, will not receive any reimbursement for Medicare Part B after retirement.

5. Employees who elect deferred retirement are not entitled to health benefits under this provision.

The State proposes:

G. Health Insurance in Retirement

a. Those employees who have 20 or more years of creditable service on June 28, 2011, and who accrue 25 or more years of pension credit and retire or retire on a disability retirement on or after July 1, 2011, will contribute 1.5% of the monthly retirement allowance toward the cost of post-retirement medical benefits as is required under

law. Except as provided in Paragraph (g) below, those employees who have fewer than 20 years of creditable service on June 28, 2011, and who accrue 25 or more years of pension credit and retire on or after July 1, 2011, will contribute toward the cost of post-retirement medical benefits in accordance with P.L. 2011, c. 78. In accordance with P.L. 2011, c.78, the Retiree Wellness Program no longer applies to employees who accrue 25 years of pension credit or retire on a disability retirement on or after July 1, 2011.

b. The State agrees to assume, upon retirement, the full cost of the Health Benefits coverage for the State employees and their dependents including the cost of charges under the Part B of the Federal Medicare Program for eligible employees and their spouses, but not including survivors, for employees who accrue 25 years of pension credit service, as provided under the State plan, by July 1, 1997, and those employees who retire on disability on the basis of fewer years of pension credit in the State plan by July 1, 1997.

c. Employees who accrue 25 years of pension credit service after June 30, 2007, and before June 30, 2011, will be eligible to receive post-retirement medical benefits ("PRM") in accordance with applicable law in effect at that time. Such employees will be eligible to participate in the applicable PPO or HMO and will pay 1.5% of pension benefit as a contribution to the cost of PRM, but such contribution shall be waived if the retiree participates in the Retiree Wellness Program. Participation shall mean that the retiree completes the designated HRA form at the time of retirement, participates in the annual health assessment, and participates in any individualized health counseling, follow-up, or program developed for that individual. There shall be an annual verification from the appropriate person at the Retiree Wellness Program in which the retiree is participating.

d. Employees hired on or after July 1, 1995, will not receive any reimbursement for Medicare Part B after retirement.

e. Employees who elect deferred retirement are not entitled to health benefits under this provision

f. Violations of this Article are not subject to the grievance/arbitration procedures of this Agreement.

g. Any legislative changes regarding post-retirement medical benefits that occur during the term of this Collective Negotiations Agreement, including but not limited to contribution levels, shall apply to this negotiations unit at the same time and on the same terms as they apply to unrepresented State employees. If the legislation provides that such changes go into effect at the expiration of current collective negotiations agreements, such changes shall go into effect for this unit on July 1, 2015 or when the changes apply to other State law enforcement collective negotiations units, excluding State Police, whichever is later.

The FOP asserts that the major difference between its proposal and the State's proposal is the State's inclusion of language that would make any legislatively imposed changes to the contribution level of retirees to become effective immediately, notwithstanding the terms of any collective negotiations agreement that may be in effect at the time. In addition, the State seeks language that any violations of this contract article would not be subject to the grievance/ arbitration provisions contained in the contract.

The FOP urges rejection of the State's proposal as it would allow any contract language to immediately be superseded by legislative changes, thus rendering this contract article null and void. Moreover, the Union contends, in proposing this article to fall outside the purview of the grievance/arbitration procedures, the entitlements contained therein are not enforceable. The FOP argues that its proposal clearly

identifies and/or delineates the rights of retirees with regard to healthcare contributions and must be awarded.

The State argues that it is appropriate to exclude disputes over retirees' health benefits from the grievance procedure. Further, it argues that any legislative changes should be given immediate effect in furtherance of cost containment.

First I find that the State has not sustained its burden of justifying the exclusion of health benefits for retirees from the grievance arbitration clause. The Union has the right to seek enforcement of its collective agreement, even where the agreement incorporates statutory provisions.

Second, the provisions of Chapter 78 concerning health benefits are due to sunset. Upon its expiration, this contract will still be in effect. Chapter 78 provides that upon expiration of the statute, the provisions will be treated as part of collective agreements, to be subsequently negotiated by the parties. If the legislature enacts changes to the law and makes such changes mandatorily immediately effective, then the statutory provisions will control. If the legislature exempts current contracts from any amended provisions, then the parties current contract provisions will continue. I award the Union's proposal and add the following:

> f. Any legislative changes regarding post-retirement medical benefits that mandate immediate changes to retiree benefits and/or contribution levels shall supersede the provisions herein. If the legislation provides that such changes go into effect at the

expiration of current collective negotiations agreements, such changes shall go into effect for this unit on July 1, 2015.

DEATH BENEFIT

The Union proposes the following language:

> The State will provide to the estate of an employee killed in the line of duty a twenty-five thousand dollar ($25,000.00) benefit which may be in addition to those benefits provided by any State or Federal administered pension program or insurance program.

The Union argues that this proposal would provide $25,000 to the estate of an employee killed in the line of duty, in addition to any other benefits the estate might receive as a matter of law or otherwise. According to Neggia, a similar provision is contained in the collective negotiations agreement for the Investigators/Detectives of the Essex County Prosecutor's Office. Neggia explained the purpose behind the proposal:

> We do some very dangerous duties rather than just strictly office type investigations so we felt as through if God forbid something happened to one of our Detectives, they wanted to provide for educational benefits to their children or however they see fit for the spouses or others to spend that money on behalf of the family... (3T145)

Given the members' status as sworn law enforcement officers, the FOP asserts that its proposal should be awarded. The very nature of being a law enforcement officer is that you are putting your life on the line every day you report to work. In the unfortunate event a detective was ever killed, this proposal would help his/her family immensely by ensuring some

financial stability. As a matter of practicality, the proposal should be awarded.

The State argues that these employees already have a death benefit which is provided by statute. In addition to a non-contributory life insurance benefits paid through the detectives' retirement system (which represents a lump sum payment of 3.5 times a detective's annual salary), the spouse/child/children of a detective killed in the line of duty is/are entitled to receive 70%, 20%, or 35%, respectively, of the detective's pension. N.J.S.A. 43:16A-10. Additionally, effective January 13, 2014, the family of a detective killed in the performance of his/her duties are reimbursed for up to $10,000 of the detective's funeral expenses. N.J.S.A. 52:18A-218.2. By any standard, the State argues, the benefits to which these detectives already are entitled are generous.

I agree with the State. The statutory entitlement to three and a half times the employee's salary in the event of death is sufficient insurance against an employee's death. The Union's proposal for an additional $25,000 insurance policy is denied.

EDUCATIONAL INCENTIVE

The FOP proposes:

> 1. In order to recognize the achievement of the employee's educational advancements, the State shall provide an annual education incentive payment for employees who attain the following degrees:
>
> 60 credits or Associates - $500.00
> Bachelors - $1,000.00

Master's and above - $1,500.00

2. To qualify for Educational Incentive pay, all credits and degrees must be from an institution accredited by a nationally recognized accrediting association, such as the Middle States Association of Colleges and Schools.

3. The Educational Incentive payment is an annual lump sum payment, which shall not be added to the base salary.

4. Educational Incentive payments are not cumulative. The employee shall only be entitled to the amount at the highest degree they hold.

5. The Educational Incentive payment shall be made on or before June 30 of each fiscal year. The employee must have attained the degree or the earned requisite credits by July 1 to receive the payment for that fiscal year. If not, the employee shall commence receiving the payment in the next fiscal year.

The FOP notes that it is not seeking to compound these educational incentive payments. Rather, a detective will only be eligible to receive a single payment based upon the highest degree achieved.

FOP's contends that its proposal is identical in form and substance to the educational incentive provision contained in the collective negotiations agreement between the State and the STFA. Again, the FOP is seeking nothing more than the award of a comparable benefit already being provided to negotiations unit that also falls under the purview of the Division of Criminal Justice and/or the State Attorney General. Moreover, a similar educational incentive is provided to many detectives of the various county prosecutor's offices. (FOP-34.) As a matter of

equity, FOP's educational incentive provision should be awarded in order to maintain consistency within the Division of Criminal Justice itself and the various county prosecutor's offices.

The State maintains that this proposal should be denied. It points out that the Union proposal would award employees based upon the degree earned, regardless of the area of study the degree may be in. Further, it responds that, contrary to Neggia's testimony that "a lot of county prosecutor's offices and some State law enforcement contract have this benefit, a review of Union's fringe benefit survey chart, (FOP-11), shows that 13 of New Jersey's 21, or 61%, pay no educational incentive. Of the 8 counties that do pay an incentive, four pay less than Union proposes. This comparison militates against Union's offer.

The State further argues that a review of the State's law enforcement contracts warrants the same conclusion. Of the 7 law enforcement contracts, only the State Police contract provides for an educational incentive.

The State also argues that, while an educational incentive benefit presumably incentivizes employees to obtain advanced education, here, "graduation from an accredited college or university with a Bachelor's degree" is a prerequisite for being hired as a Detective. [17] Further, Pentony testified that nearly

[17] The Detective II and I Job Specifications, (FOP-2, and -3), provide that "Applicants who do not possess the required education may substitute additional experience as required on a year-for-year basis with thirty (30)

all bargaining unit members hold at least a BA degree and many hold master's degrees, law degrees, or higher. Thus, Union is seeking annual incentive pay that is based on degrees which almost all detectives earned before being hired.

Finally, the State notes that the proposal would be fiscally prohibitive and irresponsible. Exhibit 37 of FOP-18, Dr. Young's report, contains a list of what appears to be the Unit members and the degrees they hold. As Union offered no testimony on this chart we will presume that in the column titled "Degree" "A" stands for associates degree, "B" bachelor's degree, "M" master's degree, and "JD" juris doctorate. Using the information provided in Exhibit 37, Union's proposal would require the State to pay at least $121,000 in educational incentive each year of the Agreement, or $484,000 over the life of the contract. Thus, the State argues, consideration of the proposal under criteria N.J.S.A. 34:13A-16g(1) and (6) militates against awarding it.

I have considered the arguments of both parties. First, Chief of Detectives Morris, who have an extensive background with the State police, testified that troopers are not necessarily required to hold a bachelor's degree as a pre-requisite for appointment to a trooper position. Thus, in that

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semester hour credits being equal to one (1) year of experience." The Detective II and I Job Specifications also provide that [continued] "A Master's degree . . . may be substituted for one (1) year of indicated experience." The Detective Trainee Job Specification (FOP-1) does not contain these substitution options.

context, the State has an interest in providing an incentive to its troopers to seek advanced degrees. Here, however, the detectives are required to hold at least a bachelor's degree. But like the troopers group, the State does have an interest in providing an incentive to detectives to seek additional education beyond the minimum requirement for the position. A better educated work group is a benefit to the Division and to the employees themselves. Further, there is record evidence that about half of the units of county prosecutor's detectives have educational incentive programs. Therefore, I award the following effective July 1, 2015:

> 1. In order to recognize the achievement of the employee's educational advancements, the State shall provide an annual education incentive payment for employees who attain the following advanced degrees:
>
> Master's - $1,000
> PhD/JD - $1,500.
>
> 2. To qualify for Educational Incentive pay, all credits and degrees must be from an institution accredited by a nationally recognized accrediting association, such as the Middle States Association of Colleges and Schools.
>
> 3. The Educational Incentive payment is an annual lump sum payment, which shall not be added to the base salary.
>
> 4. Educational Incentive payments are not cumulative. The employee shall only be entitled to the amount at the highest degree they hold.
>
> 5. The Educational Incentive payment shall be made on or before June 30 of each fiscal year. The employee must have attained the degree or the earned requisite credits by July 1 to receive the payment for that

fiscal year. If not, the employee shall commence receiving the payment in the next fiscal year.

The cost of providing this benefit is $21,000 ($1,500 X 2 employees + $1,000 x 18 employees)

TUITION REIMBURSEMENT

The Union proposes the following Article:

A. In accordance with N.J.A.C. 4A:6-4.6, employees may be eligible for tuition reimbursement for post-secondary courses (taken at a properly accredited educational institution) which are directly job related and/or necessary to increase such employee's expertise in his or her area of work, as determined by the Chief of Detectives, provided the employee is not being reimbursed for the same course(s) from other sources, such as the L.E.E.P. and/or the V.A.

1. The maximum reimbursement per credit shall be equivalent to the tuition at the State Colleges or the actual tuition, whichever is less.

2. Approved courses shall be taken during off-duty hours.

B. Written application must be made through channels to the Office of Attorney General's Fiscal Office, prior to enrollment in a course of study, stating the basis for the request for reimbursement. Within twenty (20) calendar days, a response will be made in writing as to whether or not the Division will provide reimbursement subject to the availability of funds.

In order to secure reimbursement, the employee must complete the course of study and maintain a course grade of not less than "C" or its equivalent at the undergraduate level, or satisfactory for program completion in graduate study. Written proof of payment of tuition must be submitted to the Division along with a copy of the final grade received.

Tuition reimbursement shall ordinarily not exceed twelve (12) credits per year.

C. The operation of this program is subject to the availability of funds. In the event that funds are

not sufficient to meet all requests which would otherwise be approvable, the State may provide tuition reimbursement at less than full cost.

The FOP argues that this benefit is also available to the State troopers unit. (FOP-24) Detective Neggia further indicated that the Division of Criminal Justice provided tuition reimbursement to FOP members, including him, in previous years when the funds were available to do so.

The FOP notes that its proposal is subject to the availability of funds. Therefore, any concerns put forth by the State regarding the same should be somewhat assuaged. The FOP contends that the provision should be awarded so as to codify the Division's past practice and grant the Detectives a right to this benefit when adequate funding is available. Moreover, by engaging in such a reimbursement system, the Division of Criminal Justice will surely benefit from better educated Detectives.

The State argues that, like reimbursements for training, the issue of tuition aid program is codified in a Department of Law and Public Safety SOP, which provides for a procedure to such reimbursement subject to available funding. The State points out that the provisions of this SOP are based upon the provisions contained in N.J.A.C. 4:A6-4.6. It notes that, except for the State troopers contract, other law enforcement contract simply contain a provision that states, "The tuition aid program shall be administered consistent with N.J.A.C. 4A:6-

4.6." Therefore, the State asserts that, if any language should be awarded on this subject, it should be limited to the same language and/or a reference to the SOP.

I find that the FOP's proposal closely tracks the SOP which is based upon the civil service regulation in Section 4A. I award the following:

> A. In accordance with N.J.A.C. 4A:6-4.6, employees may be eligible for tuition reimbursement for post-secondary courses (taken at a properly accredited educational institution) which are directly job related and/or necessary to increase such employee's expertise in his or her area of work, as determined by the Chief of Detectives, provided the employee is not being reimbursed for the same course(s) from other sources, such as the L.E.E.P. and/or the V.A.
>
> 1. The maximum reimbursement per credit shall be equivalent to the tuition at the State Colleges or the actual tuition, whichever is less.
>
> 2. Approved courses shall be taken during off-duty hours.
>
> B. Written application must be made through channels to the Office of Attorney General's Fiscal Office, prior to enrollment in a course of study, stating the basis for the request for reimbursement. Within twenty (20) calendar days, a response will be made in writing as to whether or not the Division will provide reimbursement subject to the availability of funds.
>
> In order to secure reimbursement, the employee must complete the course of study and maintain a course grade of not less than "C" or its equivalent at the undergraduate level, or satisfactory for program completion in graduate study. Written proof of payment of tuition must be submitted to the Division along with a copy of the final grade received.
>
> Tuition reimbursement shall ordinarily not exceed twelve (12) credits per year.

D. The operation of this program is subject to the availability of funds.

DUTY OFFICER/UNIT PHONE MONITOR

The FOP proposes:

A. The parties hereby expressly acknowledge the Division of Criminal Justice maintains 24/7 communications systems monitored by a Duty Officer and Unit Phone Monitors. This position requires the Duty Officer and Unit Phone Monitors to receive and transmit communications. Some calls can be emergent in nature, i.e. including, but not limited to, statewide police officer involved shootings, environmental crimes, human trafficking, bias crimes and/or other emergent issues.

B. An Employee who is assigned to be a Duty Officer or Unit Phone Monitor shall be paid $500.00 for every 2 weeks of assignment, to be paid the following month. An employee who is a Backup Duty Officer or Backup Unit Phone Monitor and who takes control of duties will receive $35.00 per day.

C. In accordance with the Division of Criminal Justice Standard Operating Procedure 19, no Detective shall be requested to staff the Position of Duty Officer.

The FOP witness, Neggia testified about the purpose of this proposal:

> …What we are trying to get at here in this request is, that there are certain Detectives that work in the Bias Crime Unit and work in the Human Trafficking Unit that handle an on-call phone. It's basically a hotline which the Attorney General's Office puts out these flyers with I believe it is an 800 number or toll free number where people who want to report instances of bias crime and/or human trafficking would call this number. I believe it is manned 24/7. These Detectives in this particular unit are required to answer this phone on a 24/7 basis. I believe they rotate it through the unit. We just want this provision to recognize them and compensate them for actually handling that particular work for the Division… (3T149-150)

The Union argues that, given the responsibilities of serving as the duty officer and/or unit phone monitor, detectives are subjected to restrictions in their personal lives when serving in this position. For example, these detectives cannot drink alcohol and/or travel far away from home in the event the phone needs to be answered or a call has to be responded to. According to Neggia, the detectives assigned to these positions are either: (1) not compensated; or (2) given compensatory time off. Suffice it to say, there is no practice that is consistently followed.

The FOP argues that this contractual provision will ensure there are definitive criteria as to how detectives are compensated for serving in these positions. Consequently, FOP's proposal should be awarded.

The State responds that the Union proposes that detectives be compensated $500 every two-weeks for carrying a "duty officer" cellphone (which are carried by lieutenants), and $35 per day for carrying the human trafficking unit cell phone - which receives an average of two and five calls, respectively, each week. The State argues that the Union has established no basis upon which to award this additional compensation.[18]

Chief Morris was more knowledgeable as to the "hotline" telephones and who is responsible for monitoring them.

[18] As proposed, the offer equates to an estimated annual cost to the State of $37,920: ($500 x 26 weeks of Duty Phone pay = $13,000; and $35.00 x 365 days of Human Trafficking Unit phone duty = $24,920).

According to Morris, the duty officer cell phone, which receives an average of four calls in each two-week assignment, is the responsibility of and is monitored by lieutenants (4T-135).

The cell phone for the human trafficking unit may be monitored by detectives. An average of five calls is received on that phone weekly, and may or may not require immediate action by the detective who answers the call.

The State asserts that, contrary to Neggia's belief, the "hotline" for the bias unit is a landline, not a cell phone, that is used primarily for collecting data. The line is also tied into the bias units in the 21 counties prosecutors' offices as well as DCJ. The State argues that the Union has established no basis for the establishing this new and excessive monetary benefit. As such the proposal should be rejected.

I award a modified version of the Union's proposal. There are three separate situations where DCJ employees are possibly "on call": duty officer, the human trafficking unit hotline, and possibly the bias crimes unit hotline. It is unclear from the record whether detectives are actually ever asked to assume the position of duty officer, as the SOP states that the responsibility is one assigned to lieutenants. It is also unclear whether they are assigned to monitor the bias crimes Unit hotline. But detectives definitely are assigned to the human trafficking phone. I agree with the Union that employees

deserve some compensation for the intrusion into their personal lives when undertaking this assignment. Therefore, I award the following:

> A. An detective who is assigned to be a duty officer or unit phone monitor shall be paid $35 per day for such assignment. Payment will be made within 30 days of completion of the period of continuous assignment.[19]

If, as the State suggests, no detective is assigned as duty officer or assigned to monitor the bias crime hotline, then the State will have no cost to this unit associated with the assignment. The annual cost for monitoring each "hotline" would be $12,775.

TIME OFF:

The FOP proposes:

A. Vacation

1. Upon separation from the State or upon retirement, an employee shall be entitled to vacation allowance for the current year prorated upon the number of months worked in the calendar year in which the separation or retirement becomes effective and any vacation leave which may have been carried over from the preceding calendar year.

2. If a permanent employee dies, having earned vacation credits, a sum of money equal to the compensation figured on his salary rate, at the time of death, shall be calculated and paid to his estate.

3. Each employee covered by this Agreement may, at his option, carry forward up to one year's earned vacation.

A. Vacation

[19] I have not awarded the Union's proposal that restricting DCJ from assigning detectives as duty officers. First this proposal is inconsistent with it proposal for compensation for the assignment. Second, I believe that the designation of personnel to handle the duty officer assignment is a managerial prerogative.

2. Vacation leave shall be taken during the calendar year in which it is earned. An employee may request, in writing, that he/she be granted vacation carryover into the next year in cases where his/her workload would not permit the individual's requested vacation schedule. This request must first be approved by the Chief of State Investigators or his/her designee. At the discretion of, and with the written authorization of the Attorney General, the Director, Division of Criminal Justice, or designee, vacation carryover into the next calendar year may be authorized up to the total number of unused vacation days earned in the previous year. However, in no event shall carryover be more than five (5) days, unless the press of business dictates otherwise.

3. Any unused vacation leave remaining at the time of separation or retirement from State service, may either be utilized or satisfied by lump sum reimbursement (not to exceed one year's accrued vacation time) at the discretion and with the written authorization of the Attorney General and the division director or his/her designee.

The parties have agreed on the amount of vacation allowance for detectives, based upon length of service. The parties disagree over approval for vacation leave carryover, payment for unused vacation upon separation from service or death of the employee.

The Union argues that its proposal merely seeks to codify the existing vacation leave benefit.

The State argues that if codifying the existing benefit is the Union's intent, then it should agree that the State's proposal is substantively and materially identical to the DCJ's SOP-06, (FOP-14), which has been in effect since January 1996. SOP-06 provides in relevant part:

> Vacation leave should be taken during the calendar year in which it is earned. A State [Detective] may request, in written memorandum form, that he/she be granted vacation carryover into the next year in cases where his/her workload would not permit a normal vacation schedule. This request shall be forwarded through, and approved by, the appropriate Chain of Command to the Chief [Detectives]. At the direction of, and with the written authorization of the Attorney General, the Director, Division of Criminal Justice, or designee, vacation carryover into the next calendar year may be authorized up to the total number of unused vacation days earned in the previous year. However, every attempt should be made to reduce carryover to no more than five days unless the State [detective]'s investigative workload dictates otherwise.

The State argues that the awarding of the Union's proposal would substantially and significantly change the DCJ's policy and practice. In particular, the Union's proposal would permit each detective the ability to carry forward up to one full year's worth of vacation time, for any reason or no reason, at the detective's discretion. The current policy, as stated in FOP-14 and mirrored by the State's proposal, permits detectives the right to request that up to five days of vacation time be carried forward to the following year further providing (consistent with the current practice) that greater carryover may be approved when the "press of business dictates otherwise."

The FOP argues that its proposal pertaining to how vacation leave is calculated for an employee who is separated from State service and/or retires is in complete accordance with N.J.A.C. 4A:6-1.5 and N.J.S.A. 11A:6-2 and, thus, must be awarded as a

matter of law. Moreover, it avers that the language is similar to provisions contained in every other State law enforcement collective negotiations agreements currently in effect. (FOP-19) The State's proposal, on the other hand, fails to recognize the mandates of the applicable statutes and/or regulations. Additionally, it asserts, the State's proposal seems to indicate a detective would need certain approvals in order to obtain payment for such leave and/or utilize the same.

Secondly, the FOP argues that its proposal on the method of calculating how unused vacation credits would be paid to an employee's estate was drafted after reviewing the express wording contained in N.J.A.C. 4A:6-1.2(j), which mandates how unused vacation credits are paid. As such, the proposal must be awarded as a matter of law as the same is mandated by regulation. The FOP argues that similar provisions are contained in every other State law enforcement agreement currently. (FOP-19)

Further, the parties dispute the amount of vacation days a Detective can carryover from one year to the next. The FOP maintains that its proposal seeks to carry over up to one year of unused vacation, while the State's proposal would only allow a detective to carryover a maximum of five days. As indicated by Neggia, FOP's proposal is consistent with the Division's current practice. Additionally, its proposal is identical to the one contained in the STFA collective negotiations agreement.

The FOP argues that therefore, the State is attempting to deprive FOP a benefit afforded to all other State units.

Finally, the FOP asserts that its proposal concerning carryover of vacation leave make more fiscal and operational sense. If employees are only permitted to carryover only five vacation days from year to year, they are going to "use it or lose it." Some employees will not be able to take the vacation time during the year due to operational needs. Thus, being able to carryover only five days may cause an onslaught of vacation time being utilized at the end of the year. Significant overtime may be required to backfill for those taking vacation, or alternatively, offices may be operated under minimal staffing levels. For these reasons, the State's proposal should be rejected and FOP's proposals awarded in their totality.

Concerning the issue of vacation leave carryover, it appears that the Union's proposal and the State's proposal do not mirror the existing practice. I intend to award the existing practice as recited in SOP #6 as follows:

> Vacation leave should be taken during the calendar year in which it is earned. A detective may request, in written memorandum form, that he/she be granted vacation carryover into the next year in cases where his/her workload would not permit a normal vacation schedule. This request shall be forwarded through, and approved by, the appropriate Chain of Command to the Chief of Detectives. At the direction of, and with the written authorization of the Attorney General, the Director, Division of Criminal Justice, or designee, vacation carryover into the next calendar year may be authorized up to the total number of unused vacation days earned in the previous

year. However, every attempt should be made to reduce carryover to no more than five days unless the State detective's investigative workload dictates otherwise.

As to the issue of cashing out unused vacation time upon a detective's retirement, I award the following language:

4. Upon separation from the State or upon retirement, an employee shall be entitled to vacation allowance for the current year prorated upon the number of months worked in the calendar year in which the separation or retirement becomes effective and any vacation leave which may have been carried over from the preceding calendar year.

5. If a permanent employee dies, having earned vacation credits, a sum of money equal to the compensation figured on his salary rate, at the time of death, shall be calculated and paid to his estate.

SICK LEAVE

The Union proposes the following language:

B. Sick Time

1. Every employee covered by this Agreement shall earn payment for absence due to illness (Sick Leave) at the rate of fifteen (15) days per year, which shall accumulate at the rate of 1.25 days per month that is worked during the first calendar year of employment.

2. Employees shall be credited for each subsequent calendar year thereafter, fifteen (15) days as of the first day of the calendar year.

3. Unused sick days shall accumulate year to year, without limit.

4. After an employee has used five (5) continuous sick days, the employer shall have the right to demand that the employee furnish a note from his doctor that the employee was in fact ill.

5. Upon retirement, the employee may use sick leave for thirty (30) days immediately prior to the date of retirement without need of a doctor's note. This shall be contingent on the employee having thirty (30) days remaining after the cash payment pursuant to Article _____of this contract. In the event an employee has less than thirty (30) sick days remaining after the cash payment, he shall be permitted to be absent without a doctor's note for said lesser number of days immediately prior to retirement.

Pursuant to N.J.S.A. 11A:6-16 and N.J.A.C. 4A:6-1.3, et seq:

1. Employees will earn sick leave at the rate of one (1) day per month for the first calendar year and will be credited with fifteen (15) days of sick leave each year thereafter.

2. Unused sick leave may be carried over to the next calendar year with no restrictions.

3. Sick leave may be used for:

   a. Illness;
   b. Death of an immediate family member;
   c. Care of a seriously ill member of the employee's immediate family.

4. Proof of Illness

Proof of illness or injury may be required if there is reason to believe that the employee is abusing sick leave, or has been absent on sick leave for five or more consecutive work days, or has been absent on sick leave for an aggregate of more than fifteen (15) days in a 12 month period.

5. Eligibility for supplemental compensation on retirement is set forth in N.J.S.A. 11A:6-16 and N.J.A.C. 4A:6-3.1 *et seq.* To the extent legislation is passed during the term of this agreement amending entitlement to such supplemental compensation, members of the unit shall be subject to those legislative changes in accordance with that legislation.

The FOP contends that its proposal merely codifies the current practice with regard to sick leave, except that it seeks to increase the sick leave allotment for detectives in the first year of their employment from one day a month to 1.25 days per month.

The State argues sick leave for the unclassified service is governed by N.J.S.A. 11A:6-16 and N.J.A.C. 4A:6-1.3. N.J.A.C. 4A:6-1.3 (Sick Leave), provides, in pertinent part:

> (a)Full-time State employees shall be entitled to annual paid sick leave as set forth in (a)1 and 2 below. . . . :
>
> 1. New employees shall only receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.
>
> 2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days. (Emphasis added).

Further, N.J.A.C.4A:6-1.3(g) governs the reasons for which sick leave may be used:

> (g) Sick leave may be used by employees who are unable to work because of:
>
> 1. Personal illness or injury (see N.J.A.C. 4A:6-21B for Federal family and medical leave);
>
> 2. Exposure to contagious disease (see N.J.A.C. 4A:6-1.21B for Federal family and medical leave);

3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (see N.J.A.C.4A:1-1.3 for definition of immediate family, see N.J.A.C. 4A:6-1.21A for family leave under State law and see N.J.A.C. 4A:6-1.21B for Federal family and medical leave); or

4. Death in the employee's immediate family, for a reasonable period of time.

Because Sec. B(1) of the Union's proposal is inconsistent with (and preempted by) the accrual of sick leave in the first-year of employment mandated by N.J.A.C. 4A:6-1.3(a)(2), it must be rejected. Conversely, Sec. B(1) and (3) of the State's proposal is consistent with the governing Civil Service regulation. As such, the State's proposal should be awarded.

Proof of Illness:

The State argues that its proposal, which is consistent with the governing Civil Service regulation, provides:

> Proof of illness or injury may be required if there is reason to believe that the employee is abusing sick leave, or has been absent on sick leave for five or more consecutive work days, or has been absent on sick leave for an aggregate of more than fifteen (15) days in a 12 month period. (J-9, Item 3.B(4)).

The Union has multiple proposals on this subject:

> If an Employee cannot work due to an illness, injury or infirmity, the employee shall be required to present evidence in the form of a certificate from a licensed physician that he is unable to work after he or she is absent from work for five (5) consecutive work days. The Employer may require the said employee to present an additional certificate from a physician of the employer's selection. If the Employer requires the employee to present an additional certificate from a physician of the employer's selection, the expense of obtaining the same will be borne by the employer.

> Certifications of infirmity may be continually requested by the employer at a frequency rate that is consisted with the rules and regulations of the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, et. seq. (J-10, Item 10.A).
>
> As well as:
>
> 4. After an employee has used five (5) continuous sick days, the employer shall have the right to demand that the employee furnish a note from his doctor that the employee was in fact ill. (J-8, Item 11.B(4))

The State argues that the Union offered no evidence or testimony in support of its proposal to limit the circumstances in which DCJ may request proof of illness. (J-8, Item 11.B(4)) Nonetheless, the Union's proposals impermissibly limit the circumstances under which the State may request proof of illness from a unit member, and would be in violation of the governing Civil Service regulation. As such, the Union's proposal cannot be awarded. On the other hand, the State's proposal is taken directly from the Civil Service regulation and should be awarded.

N.J.A.C.4A:6-1.4(d) (Sick leave procedures: State Service) provides:

> An appointing authority may require proof of illness or injury when there is a reason to believe that an employee is abusing sick leave; an employee has been absent on sick leave for five or more consecutive work days; or an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period. (S-24)

Additionally, the State's proposal is consistent with its SOP 1-00 on "Sick Leave Usage," (FOP-13), which has been in

effect since February 9, 2000. We note that the parties have stipulated to a Management Rights article which recognizes the application of the SOPs to the unit members. (See J-10, Item 5; and J-11, Item 5).

I find that the State's proposal is based upon the applicable Civil Service statutes and regulations and therefore must be awarded. On the other hand, the Union's proposals, which seek to add additional sick days in the employee's first year of employment and to limit the Employer's opportunity to verify sick leave usage when abuse is suspected, are contrary to the statute and regulations and are preempted by same. I award the following provisions:

Pursuant to N.J.S.A. 11A:6-16 and N.J.A.C. 4A:6-1.3, et seq:

> 1. Employees will earn sick leave at the rate of one (1) day per month for the first calendar year and will be credited with fifteen (15) days of sick leave each year thereafter.
>
> 2. Unused sick leave may be carried over to the next calendar year with no restrictions.
>
> 3. Sick leave may be used for:
>
> d. Illness;
>
> e. Death of an immediate family member;
>
> f. Care of a seriously ill member of the employee's immediate family.
>
> 4. Proof of Illness
>
> Proof of illness or injury may be required if there is reason to believe that the employee is abusing sick

and religious observances" while N.J.A.C. 4A:6-1.9(a)(1) further provides that the "[p]riority for granting such leave requests shall be: (i) emergencies; (ii) religious holidays; (iii) personal matters." The Union's proposal is prohibited by the foregoing regulatory requirements and completely ignores the operational impact that would result in providing all employees with three paid days off without any advanced notice or approval requirements. On the other hand, the State asserts that its proposal is consistent with the requirements set forth in N.J.A.C. 4A:6-1.9(a) and (b) while simultaneously providing additional practical context for the approval process. Accordingly, the State argues that the Union's proposal on Section 3 must be rejected in favor of the State's proposal.

The State further argues that Section 5 of its proposal should also be awarded as it is consistent with the mandate contained in N.J.A.C. 4A:6-1.9(e), which provides: "Administrative leave that is not used during the calendar year shall be forfeited."

I award the following provisions under the administrative leave clause:

> 3. Detectives will be permitted to take three days of annual leave in each calendar year for personal business, including emergencies and religious observances. The detectives request for the use of administrative leave time shall indicate whether the basis of the request is due to an emergency, the observance of a religious holiday, or to attend to personal matters. The request must be approved by the

DCJ Chief of Staff or his/her designee and shall not be unreasonably denied.

4. Consistent with N.J.A.C. 4A:6-1.9, priority in granting such requests shall be (1) emergencies, (2) religious holidays (3) personal matters.[21]

5. There is no accumulation, carry forward, or lump sum reimbursement for unused administrative leave.

It should be noted that I have rejected the State's language requiring advance notice, specific reasons for the request, and/or documentation to support the request. I believe that the employee should not be compelled to divulge the circumstances underlying the employee's need to take an administrative leave day except to the extent that the regulation provides for priorities in approving such requests.

TIME OFF FOR ILLNESS, INJURY OR INFIRMITY

The Union proposes:

A. If an Employee cannot work due to an illness, injury or infirmity, the employee shall be required to present evidence in the form of a certificate from a licensed physician that he is unable to work after he or she is absent from work for five (5) consecutive work days. The Employer may require the said employee to present an additional certificate from a physician of the employer's selection. If the Employer requires the employee to present an additional certificate from a physician of the employer's selection, the expense of obtaining the same will be borne by the employer. Certifications of infirmity may be continually requested by the employer at a frequency rate that is consisted with the rules and regulations of the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, et. seq.

[21] The FOP argues in its brief that there is no dispute concerning the priority of approving administrative leave. However, the State's proposed paragraph 4 did not appear in the FOP's final offer as agreed upon language.

B. For the purpose of this Article, injury or illness incurred while the employee is acting in any law enforcement activity in the line of duty shall be covered by the State's Workmen's Compensation Insurance Carrier or equivalent.

C. In the event a dispute arises as to whether an absence shall be designated as an injury on duty, (as outlined in Section B), the parties agree to be bound by the decision of an appropriate Workmen's Compensation Judgment or, if there is an appeal therefrom, the final decision of the last reviewing court.

FOP seeks a provision delineating certain procedures to be adhered to when an employee is ill and/or injured. Initially, FOP's proposal addresses the situation wherein an employee is out of work for more than five days. Detective Donlan indicated what the proposal is exactly seeking to accomplish:

> . . . There we are stating that if a detective is taking sick time for more than five days that he has to come in with a note from a doctor. And if the State requires him or her to come up with another note, they can have them see their own doctor, but have to give them time for that and pay for it... (1T-111)

According to Donlan, such a process is currently used by the Division and contained in Standard Operating Procedure #1-00, entitled "Sick Leave Usage." (FOP-13). The Union argues that this portion of the proposal should be awarded as a matter of practicality. Simply put, this portion of the proposal is merely seeking to codify a process already utilized and adhered to by the Division. Moreover, logic dictates that if the Division desires the production of a doctor's note from one of

its own physicians, it should be responsible for the cost associated with the same.

The FOP contends that the next part of FOP's proposal merely indicates that any injury and/or illness which is incurred while a detective is performing the duties and functions of his/her employment will be covered by workers' compensation. Similar to the maternity leave provision, this portion of the proposal simply recounts and codifies an employee's entitlement to workers' compensation benefits as required by law. As such, no comprehensive analysis regarding the same is necessitated.

The Union argues that this proposal is similar to provisions contained in various law enforcement collective negotiation agreements and therefore should be awarded. (FOP-19)

The first part of the Union's proposal was addressed in the Sick Leave Section above. To the extent that the FOP seeks to have the State reimburse its members for the cost of obtaining a doctor's note to document sick leave or unpaid leaves of absence under FMLA/FLA, I decline to award this part of the Union's proposal. These employees are adequately covered with health care insurance which covers most of the cost of medical visits.

The remaining portion concerning workers' compensation was not directly addressed by the State in its brief. I award the following provision for this Article:

A. Injury or illness incurred while the employee is acting in any law enforcement activity in the line of duty shall be covered by the State's Workmen's Compensation Plan.

B. In the event a dispute arises as to whether an absence shall be designated as an injury on duty, (as outlined in Section A), the parties agree to be bound by the decision of an appropriate Workmen's Compensation Judgment or, if there is an appeal therefrom, the final decision of the last reviewing court.

MATERNITY LEAVE

The Union proposes the following clause:

Maternity Leave:

Employees shall be entitled to maternity leave consistent with federal and state laws and regulations with the most liberal interpretation taking precedence.

The Union argues that the Division has historically provided FOP members with such leave when necessitated. (3T-154-155) FOP seeks formal codification of the same. The Union avers that the members' entitlement to maternity leave should be codified within the collective negotiations agreement as a matter of practicality, especially given the fact the Division has provided this benefit for several years. Therefore, the proposal should be awarded.

The State argues this proposal essentially requires that the applicable federal and state laws relative to maternity leave be followed. The parties need not have this provision inserted into the contract as statutory obligations are independent of the CNA. Also, Union's subjective, ambiguous and

unexplained language, "with the most liberal interpretation taking precedence," is likely to generate unnecessary and potentially costly grievance and arbitrations. The State is not aware of, nor has Union cited, to any other contract with similar language. For the foregoing reasons, the proposal should not be awarded.

It is not clear to me why the contract should have a separate provision covering pregnancy disability and child care leave. Such circumstances are but a small part of the overall medical leave provisions which are covered by the Federal Medical Leave Act and the New Jersey Family Leave Act. The provisions of both the federal statute and the state statute apply. Therefore, I find that this separate proposed provision for maternity leave is unnecessary.

LEAVE OF ABSENCE WITHOUT PAY:

The FOP proposes:

> Employees shall be entitled to apply for a leave of absence without pay. The application shall set forth the reason for the request and should be forwarded through channels to the Chief of Detectives. Leave of absence without pay for a maximum period of twelve (12) months shall only be granted under unusual circumstances where denial would result in extreme personal hardship and deprival of opportunity for the requesting employee. Consideration of such requests shall be weighed against the negative effect of such leave on Division operations and scheduling. The decision with regard to the granting or denial of requests for leave of absence under this Article shall lie ultimately with the Chief of Detectives.

The State proposes:

> Consistent with N.J.A.C. 4A:6-1.10, employees shall be entitled to apply for a leave of absence without pay. The application shall set forth the reason for the request and should be forwarded through channels to the Chief of Detectives. The decision with regard to the granting or denial of requests for leave of absence under this Article shall lie exclusively with the Attorney General or his/her designee.

The Union argues that its proposal is consistent with SOP #6, which permits detectives to take a leave of absence without pay for a maximum period of twelve months. (FOP-14) Donlan further testified that detectives have taken leaves without pay for a variety of reasons, to include medical care, child birth, as well as attending another police academy.

The FOP asserts that its proposal is consistent with Standard Operating Procedure #6. Donlan indicated it is important to the FOP to have this SOP codified within the confines of the collective negotiations agreement as it provides a useful and important benefit to the detectives and, presently, the same can be changed or eliminated at any time at the desire of the Division.

The State argues that N.J.A.C.4A:6-1.10 (Leaves Without Pay: State Service) provides that "[e]mployees in the . . . unclassified service may be granted leaves of absence without pay up to one year, at the discretion of the appointing authority."[22] N.J.A.C.4A: 6-1.10(b). Although the parties' proposals are not entirely inconsistent -- both grant the State

[22]N.J.S.A. 52:17B-100.1 established the position of State Investigator (now Detective) in the Division of Criminal Justice as an unclassified civil service position subject to removal by the State Attorney General.

ultimate discretion to grant or deny the leave request -- only the State's proposal identifies and would put unit members on notice of the regulation from which the benefit is derived. The State asserts that its proposal is consistent with the regulation in that ultimate authority over the decision to grant or deny the leave requests rests with the Attorney General (i.e. the appointing authority) whereas the Union's proposal vests that decision in the Chief of Detectives. Thus, to be consistent with N.J.A.C. 4A: 6-1.10(b), the State's proposal should be awarded.

The current SOP #6 in effect for DCJ investigators provides that investigators wishing an unpaid leave of absence must submit a written request through the chain of command to the Chief of State Investigators. Such requests must include the reason for the leave and the proposed duration. Further, it provides that the leave of absence may not exceed one year absent exceptional circumstances. It also provides that the DCJ Director may grant the unpaid leave of absence with the Department of Personnel approval.

N.J.A.C. 4A:6-1.10(b) provides "Employees in the senior executive and unclassified service may be granted leaves of absence without pay up to one year, at the discretion of the appointing authority."

Therefore, it appears that the current SOP is not entirely consistent with the administrative code. Nevertheless, I agree

with the State that the designation of the individual to whom approval authority must be derived, is a decision best left to the appointing authority. Therefore, I award the following language to be included in the contract:

> Consistent with N.J.A.C. 4A:6-1.10, detectives may apply for an unpaid leave of absence by submitting a request through the chain of command to the Chief of Investigators. The application shall include the reason for the proposed leave and the proposed duration. The decision with regard to the granting or denial of requests for leave of absence under this Article shall lie exclusively with the Attorney General or his/her designee. Absent exceptional circumstances, such leaves of absence shall not extend beyond one year.

HOLIDAYS

The State and FOP agree upon several provisions relating to holidays. Specifically, the parties agree upon the holidays which are recognized, when certain holidays are celebrated, and FOP members being granted a paid day off when the Governor declares a paid day off by Executive Order. Where the proposals diverge, however, revolves around three issues: (1) subsequent amendments to the list of holidays; (2) whether detectives will be granted time off in the event the Governor grants a partial day off; and (3) the FOP's request for double time in the event a holiday must be worked. The FOP proposes the following contract provisions:

> 2. In the event the Governor grants less than a day off, employees shall be granted an equal number of hours regardless of the assignment of the employee.

3. If an employee is required to work on one of the aforementioned holidays, the employee shall be compensated at the rate of double time (two (2) times the normal rate of pay)

The State proposes the following language:

2. The statutorily prescribed holidays, including any subsequent amendments thereto, shall be the holidays recognized for purposes of this Agreement.

The FOP argues that the State's language pertaining to any subsequent amendment of the holidays must be rejected. It argues that, similar to the health insurance language the State has proposed, an award of this language would allow the compensation package given to FOP members to be unilaterally altered during the term of a collective negotiations agreement. Moreover, such a provision is not contained in any other comparable State law enforcement collective negotiations agreements. As a matter of comparability and fairness, the Union claims that the State's proposed language should be rejected.

The FOP maintains that its request for double time compensation if work is performed on one of the holidays is more than justified. As stated by Neggia, a comparable provision is contained in many collective negotiations agreements covering county prosecutor's detectives. (3T-158-159) Moreover, working on a holiday is not normally required of a DCJ detective. If a detective is required to do so, he/she should be compensated appropriately for engaging in such atypical work.

The State argues that the designation of holidays for State employees is preempted by N.J.S.A. 11A:6-24.1, which provides: "Paid holidays granted to all State government employees each calendar year shall be limited to the following . . . ." N.J.S.A. 11A:6-24.1a. Director Dee explained that the State's proposal merely clarifies that fact so as not to raise any conflict or confusion. (4T-226) Moreover, the State points out that identical language to that proposed by the State is contained in the following State law enforcement contracts: FOP 174, Art. XV, Sec. A; PBA Local 105, Art. XVI, Sec. 1; New Jersey Law Enforcement Commanding Officers Association, Art. XV, Sec. AL; and New Jersey Law Enforcement Superiors Association, Art. XV, Sec. A. (S-31) The State Police contract also contains substantially similar language: "the list [of holidays] above shall be modified beginning January 1, 2012 to be consistent with State law and shall thereafter only be included for informational purposes as holidays will then be set pursuant to statute." (FOP-24, Art. VI, Sec. B(1)).

Further, the State argues that the Union's proposal concerning the granting of less than a full day off by the Governor's executive order must be rejected. Dee clearly and succinctly stated the State's rationale for opposing this proposal:

> If the Governor grants less than a day off as it says in Paragraph [4] above, it's going to be by Executive Order, as I understand the process, and that Executive

> Order is going to say who gets off and when and how the schedules work, so the contract should not and cannot change that, so we don't want that in there, that's why we are not agreeable to that.

Finally, the State argues that the Union has presented no evidence in support of its proposal that detectives who work a holiday be compensated at twice their regular rate of pay. Civil Service regulations already provide that the tens of thousands of State employees covered by the regulations who work on a holiday receive time and one-half in addition to the holiday pay. See N.J.A.C. 4A: 3-5.8. The State argues that the Union has presented no evidence to warrant that they be treated any differently.

I am inclined to reject the Union's proposal concerning subsequent modifications of the holiday schedule. First, the identification of which holidays are days off for State employees is established by State statute. This statutory language appears to preempt negotiations. Second, contrary to the Union's assertion, the State's language proposed herein was included in the interest arbitration award in the matter of State of New Jersey v. New Jersey Law Enforcement Superior Officers Association, J. Mastriani (1/21/14), aff'd State/LESA, P.E.R.C. No. 2014-60, __ NJPER ___(¶____ 2014), appeal pending. In addition, the same contract language also appears in contracts between the State and PBA Local 105 and FOP Lodge 174. As noted above, the pattern of bargaining on this issue

has already been established. Therefore, the language as proposed by the State in Section 2 is awarded.

I am also not inclined to award the FOP's proposal concerning partial days off as declared by executive order. In these instances, the content of the executive order will control. There is no need for additional and potentially conflicting language in the contract on this issue.

Finally, the Union proposes to be paid double time for hours worked on a holiday. The record shows that there have been occasions when detectives have been required to work on State-declared holidays. However, the Union is correct that such work is not part of their typical work schedule. It is noted that typically law enforcement officers may be required to give up their holiday off because of operational demands. In such situations the employee does not have the benefit of the holiday off to spend time with family and engage in leisure pursuits. The employee should be appropriately compensated for surrendering such time off to the needs of the State. Therefore, I award a modified version of the Union's proposal to read as follows:

> 3. If an employee is required to work on one of the aforementioned holidays, the employee shall be compensated at the rate of one and a half times the normal rate of pay.

UNION LEAVE TIME

The parties have submitted competing proposals regarding union leave. The State has proposed to provide detectives with 20 days of union leave per year, without pay. Additionally, the State's proposal would not permit detectives to carryover any unused leave days into successive years. Conversely, FOP proposes 35 days of union leave per year, with pay, in addition to 35 unpaid leave days. Moreover, FOP proposal would allow the carryover of unused days. Finally, under the terms of the FOP's proposal, the leave would be retroactive to January 1, 2014.

FOP proposes the following provisions for Union Leave Time:

> B. Leave Time
>
> 1. Officers and/or members of the Executive Board (or designees) of the Negotiations Unit shall be granted a total of one thirty five (35) days per year leave effective January 1, 2014, not to be deducted from their duty leave or vacation, to pursue the affairs of the Negotiations Unit. In addition, thirty five (35) days per year leave without pay per year shall be granted.
>
> 2. The allocation of such leave among the Officers and members of the Executive Board shall be determined solely by the Negotiations Unit.
>
> 3. Union leave days which are not utilized in one (1) contract year may be carried forward for use in the next contract year.
>
> 4. The Negotiations Unit may be advanced a maximum of twenty (20) paid leave days in any contract year, in which the provided thirty five (35) days per year have been exhausted. Any paid leave days so advanced will then be deducted from the number of paid leave days normally creditable in the next contract year. Approval of requests for advances of such leave time shall not be unreasonably withheld.
>
> B. Leave Time to Attend to Lodge Business

1. Officers and/or members of the Executive Board of the Lodge shall be granted a total of twenty (20) days of leave without pay per each year of this Agreement effective January 1, 2015, not to be deducted from their duty leave or vacation, to attend to Lodge business. This leave is to be used exclusively for Lodge activities for which appropriate approval by the State is required. Such approval will not be unreasonably withheld.

2. The allocation of such leave among the Officers and members of the Executive Board shall be determined solely by the Bargaining unit.

3. Union leave days which are not utilized in one (1) contract year may not be carried forward for use in the next contract year.

4. Application for the use of such leave on behalf of the officers of the Officers and members of the Executive Board shall be made in writing fourteen (14) days in advance by the Lodge President to the Office of Employee Relations.

5. Timely requests for such leave will be approved based upon the condition that the employee's absence will not cause undue hardship or the inability of the work unit to function effectively.

The Union argues the State's proposal is abhorrent. By proposing 20 days of unpaid leave, the Union argues that the State's proposal would deny it a benefit provided to every other State law enforcement collective negotiations unit, namely paid union leave days in addition to unpaid union leave days. The Union continues that paid union leave is necessary to: (1) administer the business of the union; and (2) address situations involving detectives as they arise. As a matter of comparability and fairness, the State's proposal should be rejected.

Further, the Union maintains that the State's proposal fails to recognize FOP's negotiating committee was forced to use their own personal time to attend the interest arbitration hearings and pre-arbitration mediation sessions in this matter. The State's proposal fails to reimburse the negotiating committee for the time they already utilized. From a labor relations standpoint, this is patently unacceptable.

The FOP contends that its proposal regarding union leave is fair and equitable based upon all the relevant evidence. The proposal recognizes that Lodge 91 members are assigned throughout the State. Detectives are assigned to the following locations: (1) Whippany; (2) Trenton; (3) Cherry Hill; and (4) Atlantic City. This makes contacting certain members and/or addressing certain issues somewhat problematic. The union leave, as requested, would help alleviate this burden.

Finally, the FOP avers that the amount of union leave it requests is reasonable. Neggia testified that the amount of leave the FOP is requesting is in direct proportion to the amount currently afforded to the STFA:

> Q. The Union is asking for 35 days per year for Union leave to take care of Union affairs. Where did the Union come up with this number?
>
> A. This number was basically derived from looking at numerous contracts throughout the County Prosecutors and State law enforcement. What we came upon with was the STFA, which is the State Police Fraternal Association, and at the time that we reviewed this contract there were approximately 1,300 members that were covered by this Collective Bargaining Agreement

> and STFA were granted 325 days for Union time. We simply took a ratio of the Detectives in our bargaining unit which is approximately 136. We simply came up with an equivalent ratio based on that, which is 35 days. [3T-163]

The FOP contends that its proposal for union leave is comparable to the union leave provisions of comparable collective negotiations units. The FOP argues that its proposal should be awarded considering all the relevant facts and circumstances.

The State acknowledges that its proposal to allot the Union leadership 20 days of unpaid leave represents a change in policy regarding the spending of public funds for employees to conduct business that does not benefit the State. The shift in policy arose in response to a State Commission of Investigation ("SCI") report that criticized the State and municipalities for granting paid time off for union leave because of its attendant costs to taxpayers. Dee testified that in the last negotiations cycle, the State "rolled back" paid union leave from 9% to as high as 26% for all units. (4T-152-53) As Arbitrator Mastriani stated in his award reducing the number of leave days for the Corrections Sergeants in NJLESA:

> I do not award NJLESA's proposal to expand the number of leave days to attend Association activities from 195 to 225. There is a clear trend in all of the comparable law enforcement units to reduce the number of days of union leave as evidenced by the recent reductions in all of the various contracts. Notwithstanding this, NJLESA has provided testimony and extensive argument differentiating its need for leave time from the other units. The reductions that

have taken place do not appear to stem from a lack of usefulness of the leave days but are reflective of a policy understanding as to State funding of the benefit.

State of NJ and NJ Law Enf. Super. Assoc., PERC Docket No. IA-2014-003 (Mastriani) at p. 91. The State points out that the recently negotiated contract with the new unit of Deputy Attorneys General provided for no paid union leave.

The State contends that the remainder of its language in the Union Leave clause is typical contract language required for the orderly implementation of the leave provision.

I recognize that there is a State-wide trend to scale back on paid leave for employees to attend to union business. In State of New Jersey and NJLESA, Arbitrator Mastriani declined the Union's demand to increase union leave time and partly granted the State's proposal to reduce union leave -- from 195 days annually to 175 days annually. It must be noted that that bargaining unit is much larger and more diverse than the DCJ unit. In fact, the ratio developed by FOP to formulate its proposed allotment of union leave days was predicated upon the STFA contract, which was negotiated in September 2011, well before the scale-back on union leave time got underway.

Of course, because this is a newly certified unit, there is no history to be able to discern the frequency of grievance filings, so it is difficult to determine how much time is adequate for the union to administer its new contract. In

balancing the Union's need for sufficient time off to administer the contract and the State's need for detectives on the clock to be duty, I award the following:

1. Members of the Executive Board, or designees of the Lodge 91, shall be granted a total of 24 days per year paid leave effective July 1, 2014, not to be deducted from their contractual leave time, to pursue the affairs of Lodge 91. In addition, 12 days per year leave without pay shall be granted.

2. The allocation of such leave among the members of the Executive Board or their designees shall be determined solely by Lodge 91.

3. Union leave days which are not utilized in one contract year may not be carried forward for use in the next contract year.

4. Application for the use of such leave on behalf of members of the Executive Board or their designee shall be made in writing ten calendar days in advance by the Lodge President to the Office of Employee Relations.

5. Timely requests for such leave will be approved based upon the condition that the employee's absence will not cause undue hardship or the inability of the work unit to function effectively.

SUPER-SENIORITY:

The Union proposes the following:

It is recognized that Executive Board members and field office representatives of the Negotiations Unit have a need for continuity in their assigned locations which exceeds that of other employees. It is, therefore, agreed that:

1. Field Office representatives of the Negotiations Unit will not, subject to the overriding operational requirements of the Division, be routinely transferred involuntarily.

2. Executive Board members will not be involuntarily transferred from the Hughes Justice Complex or field office, and Bureau, to which they are assigned when named to that office for the term of office, providing such

retention may be interrupted if emergency conditions warrant.

The Union contends that this clause is necessary to prevent its leadership from being transferred to another location. This would maintain the existing Union representation structure at all facilities.

While the State recognizes that limited controls over the "regular" involuntary transfers of union officers may be negotiable, see Local 195, supra, 88 N.J. at 423, the State asserts that the Union's proposals to limit the DCJ's managerial prerogative to transfer union officers except in "emergency conditions" is far beyond the limits of negotiability recognized in Local 195. Moreover, the State argues that the Union failed to present any evidence at the hearing that the transfer of union officers has posed any impact on the officers' ability to represent employees in the bargaining unit in the past and, thus, has failed to satisfy its burden of establishing a basis for the award of this proposal.

I decline to award the Union's proposal limiting transfers of its Union leadership. The Union has not demonstrated that such transfers have occurred or that there has been any targeting of its Union leadership for transfers. Therefore, I find that this proposal has not been justified and I decline to award it.

TRAINING AND CONTINUING PROFESSIONAL EDUCATION:

The FOP proposes the following:

A. The State recognizes the need to have sworn, law enforcement personnel in the Division of Criminal Justice with advanced degrees and/or professional licenses in varying disciplines, which includes, but is not limited to, certified public accountancy, law, environmental sciences, insurance and finance.

1. The State acknowledges its responsibility to train Division of Criminal Justice investigators so they have the degree of technical training and proficiency necessary to complete the complex criminal investigations conducted by the Division of Criminal Justice.

2. Therefore, the State will work to recruit, employ, train and retain a sufficient cadre of duly sworn, Division of Criminal Justice investigative personnel with such technical training, proficiency and advanced degrees and/or professional licenses to successfully conduct the Division's work.

3. To those ends, the State will:

(a) Allow and/or provide Division of Criminal Justice investigative personnel access to attend and successfully complete the necessary continuing professional education credits, in a timely manner, so they may keep their professional status in good standing with the issuing agency or entity. When a member attends outside training for purposes of maintaining a license, the State will fund all expenses associated with the same.

(b) Allow Division of Criminal Justice investigative personnel to use work hours, as well as, State resources and equipment to travel to/from and to attend these training programs.

(c) Pay the cost of each continuing professional education program or reimburse Division of Criminal Justice investigative personnel, so there shall be no out of pocket expense to the employee.

4. Selection of the continuing professional programs shall be made as to comply with the required regulations of the issuing agency. Selection of an individual course will be at the discretion of the license holder. Any program

selected under this section must earn the licensee with continuing training hours/credits to be eligible for reimbursement or direct payment.

The FOP argues that this proposal is intended to provide payment for training and compensation while attending the training and earning professional education credits associated therewith. The FOP asks that the Employer fund these costs given they are reaping an enormous benefit from detectives possessing a higher level of education.

Neggia testified that a bachelor's degree is a requirement of the detectives and that the Division frequently seeks individuals with advanced degrees and/or professional licenses for its employ. The FOP maintains that, with regard to many of these licenses and/or certifications detectives hold, there are continuing education requirements to maintain the same. The FOP argues that since the Division is receiving the benefits of these licenses and/or certifications, it should bear the cost associated to maintain the same. In fact, it is akin to the Division paying for the deputy attorneys general client protection fund annual assessment every year, a requirement to maintain active status as an attorney. (3T-162-163) The Union argues that its proposal is logical and pragmatic and therefore, should be awarded.

The State contends that the FOP's proposal is already covered by the Department of Law and Public Safety's Tuition

Reimbursement Program. The Program, as memorialized in SOP 2-95, (S-27), has been in place since February 13, 1995 pursuant to N.J.A.C. 4:A6-4.6. (S-28) The regulation requires that "each State department or agency, subject to available appropriations, shall establish a tuition aid program" to assist employees with the cost of post-secondary education. N.J.A.C. 4:A6-4.6(a). The State notes that the program is still in effect, but simply has not been funded in these difficult economic times.

It is the State's position that SOP 2-95 should be left to govern this subject. The SOP contains important provisions not found in Union's proposal, such as: a requirement that an employee be employed in a full-time position for one-year before being eligible for the benefit; a requirement that an employee who terminates employment within one-year from completing a course must refund the Division for 100% of the tuition reimbursement; and reimbursement for "continuing education courses related to required professional certifications." The latter requirement would cover the Union's proposal. As SOP 2-95 continues to apply to all employees in the Department of Law and Public Safety and not just its detectives, the SOP should be left in place and Union's proposals rejected.

The State notes that, other than the State Police contract from which the FOP lifted its proposal language, every other State law enforcement agreement that has a Tuition and Employee Training Article contains the identical language in that

article: "The tuition aid program shall be administered consistent with N.J.A.C. 4A:6-4.6." (See S-31: FOP 174, Art. XXXIV; PBA Local 105, Art. XL; NJ SLEU; NJ Sup. Off. Law. Enf. Assoc., Art. XL; and Art. XXXVIII). Therefore, the State argues that if any language should be awarded on this subject, it is: "The tuition aid program shall be administered consistent with N.J.A.C. 4A:6-4.6."

The Division's SOP 2-95, issued in 1995, provides at section IV(D):

> Continuing education courses related to required professional certification, which are a direct requirement of the employee's current job responsibilities, may be considered for reimbursement if funds are available. Reimbursement amounts will be consistent with the established tuition policy.

The FOP's proposal for continuing education necessary to maintain a license includes (a) a guarantee that the State will bear the cost of the course or seminar, including travel expenses; (b) time off with pay; (c) a State car for travel to the course; and (d) the employee's ability to select the course. The proposed language is not contingent upon funding being available.

The Union's theory is that the Division benefits from having licensed professionals such as CPA's and attorneys on its staff. Since maintaining such licenses requires the licensee to periodically take continuing education courses as a condition of the license, I understand the Union's argument that the Division

should contribute to the cost of obtaining the course credits. But my first problem with FOP's proposal is that I am unable to even estimate the cost of this proposal to the Division. Second, the Division should be permitted to have input into the selection of the course so that it can ensure that the course is related to the employee's area of responsibility the extent possible. I award the following:

> 1. The State will allow Division of Criminal Justice detectives to attend and successfully complete the necessary continuing professional education credits, in a timely manner, so they may keep their professional status in good standing with the issuing agency or entity.
>
> 2. The State will permit Division of Criminal Justice detectives time off with pay to attend these training programs.
>
> 3. Continuing education courses related to required professional certification, which are a direct requirement of the employee's current job responsibilities, may be considered for reimbursement if funds are available. Reimbursement amounts will be consistent with the established tuition policy.
>
> 4. Selection of the continuing professional programs shall be made as to comply with the required regulations of the issuing agency. Selection of the individual training course will be at the discretion of the license holder but subject to the approval of the Division. Any program selected under this section must earn the licensee continuing training hours/credits to be eligible for reimbursement or direct payment.

UNIFORMS

The parties have submitted competing proposals with regard to uniforms. The FOP proposes:

> Clothing/Equipment allowance shall be paid at the rate of one thousand dollars ($1,000.00) annually, which

shall be paid in a lump sum commencing with the first pay period of each calendar year.

The State proposes:

The State agrees to continue its current practice of providing initial issue of uniforms to all new employees in this unit and to replace worn or damaged uniforms as necessary.

The FOP argues that its request for a $1,000 annual payment would allow detectives to purchase and/or replace certain clothing items and equipment associated with their employment. Currently, members are responsible for purchasing and/or replacing any uniform or other clothing and equipment items required to carry out the duties and functions of their employment. As testified to by Neggia, such an allowance is necessitated given all the scenarios in which detectives' uniforms and/other items become damaged or destroyed. (3T-141-144). To this end, Neggia indicated many detectives have had to replace several items throughout the duration of their employment, with the cost of the same being borne by the detective. Moreover, he stated that there is no current policy utilized by the Division in regard to replacing uniforms or other items that may become damaged during the course of employment.

Additionally, the FOP notes that almost every other law enforcement collective negotiations unit throughout the State receives some sort of clothing/equipment allowance. (FOP-18-21-22). Of particular note, the STFA receives a clothing allowance

of $900 per year in addition to a generous maintenance allowance. Without a clothing/equipment allowance, the FOP contends that its members will continue to be forced to spend their own money for items associated with their employment. '

The State argues that its proposal on uniforms should be awarded, and the Union's proposal on a clothing and equipment allowance should be rejected. First, it points out that detectives do not have a formal dress code or uniform policy. (4T-69) Chief-of-Staff Miller confirmed this, testifying that detectives normally wear dress pants, a polo or long-sleeve shirt, and occasionally jeans during the workday. (4T-70)

Upon hire, detectives are issued a class B uniform which consists of cargo pants, four shirts (both long-sleeve and short sleeve with a "police" emblem or patch on the breast pockets), a three-season jacket, and an all-weather jacket with the word "police" printed across the back. Pursuant to the Division's SOP, Class B uniform items are replaced when "they are worn, damaged, or they no longer fit." [23] Replacement needs should not arise frequently because, as Chief Morris testified, detectives wear their class B uniforms only between five and eight times each year.(4T-122-123).

The State notes that the Union's proposed annual $1,000 clothing and equipment allowance which would cost the State

[23] Det. Neggia testified that he "[didn't] believe there is an official policy [for replacing items] I guess theoretically you can request through the chain of command for replacement of certain goods. . . ." (3T-143-44)

approximately $540,000 over the life of the Agreement ($1,000 x 135 Detectives x 4 yrs. = $540,000) – primarily to address the issue of wet boots and soiled clothes.

The State argues that the Union also seeks this additional benefit for "equipment." However, Union provided no evidence as to what equipment items the State issues to detectives, or what equipment items detectives believe they need to perform their duties. Nor has Union provided any evidence as to the cost associated with purchasing, maintaining or replacing that equipment at issue, whatever that equipment may be. Critically, the State argues that the Union failed to introduce any credible evidence regarding actual costs expended by members of the unit to justify this significant economic benefit. Thus, the Union's $1,000 per detective annual clothing and equipment allowance is baseless.

The State's also observes that its proposal is consistent with the language contained in its other law enforcement contracts: "No allowance will be paid to employees who are not required to purchase a uniform and wear it for work."[24] The State Police contract provides State troopers with either a $900 or $800 "Clothing Allowance." See FOP-24, Art. X, Sec. B(9). However, as Chief Morris, stated, troopers are required to wear

[24]See S-31 (FOP Lodge 174, Art. XIII, Sec. C; PBA Lodge 105, Art. XXXVIII; NJ Sup .Officers Law Enf. Assoc., Art. XXXVI; NJ Law Enf. Commanding Off. Assoc., Art. XXXII; and PBA SLEU, Art. XXXIX).

a full uniform for work and they must maintain their uniforms for the duration of their service. (4T-122-23).

Dee testified that the State's position is due in part to an April 13, 2011 report issued by the State Comptroller's Office titled, "An Analysis of Clothing Allowance Payments to White-Collar New Jersey State Employees." (S-18); (4T-150-51) In the report, the Comptroller recommended that "at a minimum the State seek to eliminate the clothing allowance benefit for those employees who are not required to wear uniforms or other special clothing."

Finally, the State contends that a review of the Union's own fringe benefit survey chart, (FOP-11), shows that fifteen of New Jersey's twenty-one counties pay no clothing allowance. Also, five of the six counties that do pay a clothing allowance pay substantially less than the $1,000 proposed by Union. The State argues that the Union failed to present any evidence that DCJ's uniform policy is more analogous to any one of the minority jurisdictions that receive a bonus compared with the majority that do not.

I intend to award sufficient compensation to partially defray the cost to detectives for purchasing replacement uniform components and other equipment necessary in the performance of their duties. Given their particular line of work, damage to clothing, shoes, and gear is not an incidental expense. Employees should not have to pay for the equipment needed to do

their job no more than clerks should have to buy their own staplers. I award the following:

> Effective January 1, 2015, an allowance for clothing and equipment shall be paid to each eligible detective at the rate of three hundred dollars ($300) annually, which shall be paid in a lump sum commencing with the first pay period of each calendar year. Detectives will be expected to maintain and update their own uniform as needed. The State will no longer be required to replace damaged or worn uniform components.
>
> The cost to the State for this benefit will be $40,500 annually.

VEHICLE ASSIGNMENT

The FOP proposes a clause which would provide,

> 2. All employees serving in the title of Detective will be individually assigned a state owned or leased vehicle which will be available for work use only, but may be utilized by Detectives in an around the clock basis for those members assigned special assignments including, but not limited to, the Attorney General's Shooting Response Team and the High Risk Team, or at the Chief of Detectives' discretion.

The State argues that it has a managerial prerogative to prohibit or limit the use of its vehicles for employee commutation" and to "deploy its vehicles as it sees fit." Morris County Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561, at 562 (1982), aff'd App. Div. Dkt. No. A-795-82T2 (1984), 10 NJPER 103 (1984), certif. den. 97 N.J. 672 (1984). In New Jersey Highway Auth. (Garden State Parkway), H.E. No. 93-13, 19 NJPER P24,089, 1993 NJ PERC LEXIS 224 (1993), the Commission, applying Morris County, concluded that the union "cannot negotiate over the assignment of Authority vehicles, particularly for commuting purposes." Hence, the State is not

obligated to negotiate over the decision to assign individual vehicles to its detectives as doing so would impermissibly infringe upon the State's managerial prerogative. Accordingly, the State argues that this proposal may not be awarded.

I agree with the State that the assignment of vehicles is a non-negotiable managerial prerogative. Therefore, this proposal cannot be legally awarded. The proposal is denied.

NEGOTIATIONS UNIT RIGHTS

The FOP proposes:

> 1. Where a problem occurs which is of such consequence as to suggest the need for a higher than institutional level Negotiations Unit representative, a request to permit the Negotiations Unit President or his designee access to the location of the problem may be directed in writing to the Office of Employee Relations for approval. A decision and any conditions imposed by the Office of Employee Relations shall be final. Approval of such requests shall not be unreasonably withheld.

Under the terms of FOP's proposal, when such a problem occurs and/or allegations are made, the President, or his/her designee, is to be provided access to the location of the incident and/or involved members, subject to the approval of the Office of Employee Relations. The proposal indicates that such approval shall not be unreasonably withheld.

The FOP argues that its proposal is simple and straightforward. Further, the decision and any conditions imposed by the Office of Employee Relations shall be final. As such, any concerns the State has and/or may have regarding this proposal have been taken into consideration. Finally, given

that the decision of Office of Employee Relations will be final, the sentence indicating that such approval "shall not be unreasonably withheld" is necessitated to ensure such requests are not denied without adequate justification. (1T-98)

The State argues that the agreed upon provisions for access with 72-hours' notice is sufficient and therefore, this clause is unnecessary.

I find the proposal is reasonable in that it will allow the Union to represent its members with difficult and consequential issues and allows the State to retain control of its premises through the finality of the decision of the OER. The proposal is awarded.

Intranet

The Union proposes:

> 5. Each department/agency of the State that employs members of the Negotiations Unit may, in its discretion, provide Negotiations Unit representatives with access to an intranet page that shall serve as an electronic bulletin board to be used exclusively by the Negotiations Unit. Use of this intranet page shall be subject to all restrictions and requirements under this section.

Again, the State does not argue against this. This proposal is awarded.

Finally, under this Article, the FOP proposes:

> D. Telephone
>
> A telephone shall be available at the Division of Criminal Justice Headquarters and each field office for use by the Negotiations Unit representatives for Negotiations Unit business. This telephone shall be located within the Negotiations Unit office designed

above. The Negotiations Unit shall reimburse the State for actual telephone charges, if any.

The FOP argues that this proposal would allow FOP to be in communication with its membership, who are scattered among the State in various locations, its attorney, and/or any other individual as a situation may warrant. (1T-99)

The FOP argues that is proposal clearly delineates that it would be responsible for any charges associated with the use of the telephone. In other words, the State would merely have to dedicate one line at each office for use by the FOP representatives. To this end, the same can be placed in any office space that is provided for the FOP's use. The FOP argues that this proposal would not cause the State to incur any expenses.

The State maintains that the Union abandoned its proposal for its own offices and instead agreed to available storage space for its papers and files. So, essentially what the Union is asking for is to have telephones located on a file cabinet that may or may not be available in each of the DCJ's three offices.

Donlan testified that the reception on his personal cell phone is poor at the Whippany field office and that he needs to exit the building in order to use his cell phone for personal calls.

First, the State argues that it has agreed to provide the Union with its own page on the DCJ's intranet through which the Union may communicate with its members. There is nothing in the record to indicate that the Union's representatives have had any difficulty whatsoever in communicating with their membership over the past four years.

The State avers that not only is the Union's telephone proposal unnecessary, it is cost prohibitive. DOJ Chief-of-Staff Miller looked into complying with the Union's proposal. She discovered that the telephone systems in the Whippany and Cherry Hill offices, and quite possibly the system in the Hughes Justice Complex in Trenton, are all at maximum capacity. (5T-61-62)[25] To add an additional telephone line would require the installation of an entire new bank of lines in each office at a cost of approximately $7,000 for each field office, or $21,000 total. As such, the Union's proposal should be rejected.

I understand the Union's need to occasionally speak with their members by phone during work hours. Its ability to do so is compromised in at least the Whippany office as cell phone reception is poor in that facility. I also understand the State's reluctance to expend resources to expand the telephone line system at each facility to accommodate an additional telephone line for the Union. However, the record evidence

[25] Miller testified that there may be unoccupied DAG offices with telephones at the DCJ's Trenton office, but that those lines are dedicated to those offices which will be occupied by DAGs with their own extensions. (5T-89-91)

reveals that at some locations, there are unassigned "empty" desks with telephone lines. Therefore, I award the following:

> To the extent possible, the State will permit the Union to have a dedicated telephone line in the DCJ offices in Whippany, Hughes Justice Complex, and Cherry Hill. The Union will pay for the cost of line installation, the telephone instrument and any on-going charges to maintain the line.

DISCIPLINE:

The Union proposes,

A. Discipline under this Article means official written reprimand, fine, suspension without pay, reduction in grade or dismissal from service, based upon the personal conduct or performance of the involved employee. Dismissal from service or reduction in grade based upon a layoff or operational charges made by the State shall not be construed to be discipline.

B. Just cause for discipline up to and including dismissal from service shall include those causes set forth in N.J.A.C. 4A:2-2.3. The list of causes set forth in N.J.A.C. 4A:2-2.3 is not exclusive and discipline up to and including dismissal from service may be made for any other combination of circumstances amounting to just cause.

C. Where the appointing authority or its designee imposes discipline pursuant to paragraph B., written notice of such discipline shall be given to the employee. Such notice shall contain a reasonable specification of the nature of the charge, a general description of the alleged acts and/or conduct upon which the charge is based and the nature of the discipline. Suspensions will not be implemented before the expiration of a period of seventy-two (72) hours from the beginning of the work shift during which the notice of suspension was given except in cases where, in the judgment of management, the suspension is directed at an immediate need to maintain safety, order or effective direction of work assignments.

D. The name of any employee who is notified of suspension or dismissal pursuant to paragraph C. shall

be transmitted to the Negotiations Unit as soon as feasible but not to exceed seventy-two (72) hours after such notice.

Any appeal relating to the involved disciplinary matter must be filed by the employee within fifteen (15) calendar days of notice of discipline to the employee involved, and the employee must indicate within the notice of appeal if he will exercise his right to a Departmental Disciplinary Hearing. The employee may be represented at such hearing by a Negotiations Unit representative in the same work unit and/or legal counsel. The employee shall have the right to present evidence and witness at such hearing as well as cross-examine any witnesses or evidence presented by the State. The circumstances surrounding a discipline case may suggest that the Negotiations Unit President or a member of the Unit's Executive Board has a particular need to assist in the presentation at the hearing. He/she may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied. The Department or Agency Head, or his designee, shall render a written decision within twenty (20) calendar days from the date of such hearing. The decision rendered herein shall be final except where the disciplinary appeal involves a penalty as set forth in paragraph E. below.

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1. Suspension of more than five (5) days at one time;

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(a) The Negotiations Unit may appeal the discipline through the disciplinary arbitration process as herein provided. To file a timely appeal under the disciplinary arbitration process the Negotiations Unit must take the following action:

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B. Just cause for discipline up to and including dismissal from service shall include those causes set forth in N.J.A.C. 4A:2-2.3. The list of causes set forth in N.J.A.C. 4A:2-2.3 is not exclusive and discipline up to and including dismissal from service may be made for any other combination of circumstances amounting to just cause.

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D. The name of any employee who is notified of suspension or dismissal pursuant to paragraph C. shall

be transmitted to the Negotiations Unit as soon as feasible but not to exceed seventy-two (72) hours after such notice.

Any appeal relating to the involved disciplinary matter must be filed by the employee within fifteen (15) calendar days of notice of discipline to the employee involved, and the employee must indicate within the notice of appeal if he will exercise his right to a Departmental Disciplinary Hearing. The employee may be represented at such hearing by a Negotiations Unit representative in the same work unit and/or legal counsel. The employee shall have the right to present evidence and witness at such hearing as well as cross-examine any witnesses or evidence presented by the State. The circumstances surrounding a discipline case may suggest that the Negotiations Unit President or a member of the Unit's Executive Board has a particular need to assist in the presentation at the hearing. He/she may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied. The Department or Agency Head, or his designee, shall render a written decision within twenty (20) calendar days from the date of such hearing. The decision rendered herein shall be final except where the disciplinary appeal involves a penalty as set forth in paragraph E. below.

E. In the event the appeal has not been satisfactorily settled or otherwise resolved and involves the following contemplated or implemented penalties:

1. Suspension of more than five (5) days at one time;

2. Suspensions or fines more than three (3) days or for an aggregate of more than fifteen (15) days in one (1) calendar year; or

3. Demotion; then

(a) The Negotiations Unit may appeal the discipline through the disciplinary arbitration process as herein provided. To file a timely appeal under the disciplinary arbitration process the Negotiations Unit must take the following action:

(1) A notice to initiate disciplinary arbitration must be postmarked within twenty (20) calendar days from the date the Department Head's decision was rendered and sent to the Office of Employee Relations. A request for disciplinary arbitration shall contain the name of the employee involved, a copy of the original appeal, the notice of discipline and any written decisions rendered concerning the matter.

(2) In the event the employee involved elects to appeal the decision to disciplinary arbitration such election will be deemed final and binding subject to his rights to appeal under the law.

F. An appeal to disciplinary arbitration may be brought only by the Negotiations Unit through its President or designee or attorney.

G. Within thirty (30) days of the execution of this Agreement, the parties shall mutually agree upon a panel of not less than three (3) disciplinary arbitrators. Each member of the panel shall serve in turn as the sole arbitrator for a given case. Where a member of the panel is unable to serve, the next member in sequence shall then serve. In the event the parties are unable to agree upon a panel of arbitrators within thirty (30) days, arbitrators shall be selected, on a case-by-case basis under the selection procedure of the Public Employment Relations Commission, until such time as the parties agree upon a panel. The disciplinary arbitrator shall hold a hearing at a place convenient to the parties as soon as possible after the request for arbitration but not later than thirty (30) days after the arbitrator accepts the case. The arbitrator shall issue a decision as soon as possible but not later than thirty (30) days after the hearing.

H. Arbitrators in disciplinary matters shall confine themselves to determinations of guilt or innocence and the appropriateness of penalties and shall neither add to, subtract from, nor modify any of the provisions of this Agreement by any decision. In the event the arbitrator's decision finds the employee innocent or modifies a penalty, he may reinstate the employee with back pay for all or part of a period of suspension. If the employee was reduced in grade, the Arbitrator may reinstate the employee with back pay for all or part of the period of reduction. The arbitrator may

consider any period of suspension served in suggesting the penalty to be imposed. Should the arbitrator's recommendation suggest reduction of the suspension with back pay for all or part of a period of suspension or reduction in grade, the employee may be paid for the hours he would have worked in his normally scheduled work week, at his normal rate of pay, but not exceeding forty (40) hours per week or eight (8) hours per day, less any deductions required by law or other offsetting income, for the back pay period suggested by the arbitrator. The arbitrator's decision shall contain a short statement of the nature of the proceedings, the positions of the parties and specific findings and conclusions on the facts. In addition, the arbitrator's recommendation shall discuss the testimony, evidence or positions of the parties which merits special analysis.

It is agreed that this process is not to be utilized as a device to apply more severe suspensions than would normally be imposed.

I. General Provisions

1. The terms of this Article shall not apply to provisional employees or employees serving a working test period, provided such working test period does not exceed six (6) months. This exclusion shall not apply to provisional or probationary employees who otherwise hold permanent appointment in another job classification in State service except that under no circumstances will the State's judgment as to the adequacy of the employee's performance in a working test or provisional status, or any action taken in pursuance thereof, be deemed to be discipline within the meaning of this Article. Employees serving their working test period shall retain all rights under Civil Service Laws, Rules or Regulations.

2. All disciplinary charges shall be brought within forty-five (45) days of the Division becoming aware or when the Division should have reasonably been aware of the offense. In the absence of the institution of the charge within the 45 day time period, the charge shall be dismissed with prejudice.

3. In the event a disciplinary action is initiated, the employee or his/her representative shall be provided with copies of all written documents,

reports, or statements which will be used against him/her at such hearing and a list of all known witnesses who may testify against him/her, which, will be provided not less than ten (10) days, exclusive of weekends, prior to the hearing date.

4. Nothing in this Article of Agreement shall be construed to limit the right of the State to implement any disciplinary charges notwithstanding the pendency of any appeal proceeding.

5. Before a permanent employee is suspended without pay pending dismissal, he shall promptly be given an opportunity for an informal hearing commonly referred to as a "Laudermill Hearing" at which time the employee will be informed of the charges made and a synopsis of the evidence on which the State intends to rely. The employee shall have an opportunity to respond and/or refute the evidence or information presented against him.

6. Where a fine is imposed as a disciplinary measure and the matter is appealed within the disciplinary procedure provided in this Agreement and where the fine is one hundred dollars ($100.00) or more, the enforcement of the fine will be withheld upon request of the employee being fined pending hearings and final disposition of the appeal as provided herein, provided the employee continues in his employment with the State.

J. In disciplinary matters involving dismissal from service, such employees, upon written request, shall be entitled to a conference with the Department or Agency Head or his designee to discuss the matter. The Department or Agency Head or his designee may conduct an administrative investigation of the matter at his or her discretion.

K. Nothing in this Article shall be construed as a waiver of any rights any employee may have under New Jersey Statutes or Administrative Rules and Regulations.

The State proposes the following provisions:

Discipline:

Employee discipline shall be addressed in accordance with the provisions of this Article and the Department's Standard Operating Procedures. Pursuant to law, this Article does not modify or limit the Department's right to terminate, demote or reassign employees who serve at the pleasure of the Attorney General. Decisions to terminate, demote or reassign are not subject to this Article or the grievance and Arbitration provisions of this Agreement.

Procedures regarding disciplinary matters that do not include termination, demotion or reassignment, including those that involve conduct which constitutes a crime, will be addressed in accordance with the Department's Standard Operating Procedures and will not be inconsistent with the following provisions.

A. Discipline may be based on:

1. Incompetency, inefficiency or failure to perform duties;

2. Insubordination;

3. Inability to perform duties;

4. Chronic or excessive absenteeism or lateness;

5. Conviction of a crime, or of any offense involving or touching the employee's office, position or employment;

6. Conduct unbecoming a public employee;

7. Neglect of duty;

8. Conduct constituting any offenses;

9. Violation of rules, regulations or employment policies applicable to the employee;

10. Violation of the Department or Division Code of Ethics;

11. Sexual harassment; and

12. Other just, sufficient cause.

B. Disciplinary charges against an employee must be

initiated within a reasonable time after discovery of the conduct by the department.

C. Should the Division Director or designee determine that cause for discipline exits, the Director or designee will serve upon the Employee a "Preliminary Notice of Disciplinary Action" either by hand delivery or certified mail along with a copy to the Lodge.

D. Upon receipt of the Preliminary Notice of Disciplinary Action, the Employee shall have five (5) calendar days to request a "Departmental Hearing." If no request is made the discipline will be finalized and a Final Notice of Disciplinary Action will issue. Following the issuance of the Final Notice of Disciplinary Action, the discipline will be implemented and shall not be subject to further challenge.

E. If an employee chooses to challenge the disciplinary action, he/she must request a "Departmental Hearing" within five (5) days of receipt of the Preliminary Notice. The request must be in writing to the issuing Department with a copy to the appropriate Lodge representative.

F. Within thirty (30) days of the hearing request, (or such other time as the parties agree), a hearing will be conducted.

G. The Office of the Attorney General will assign a Hearing Officer who will hear the evidence and issue a report. The burden of proof to establish cause for discipline shall rest with the Department. Employees shall be entitled to Lodge representation which may be a Lodge official, attorney or consultant, in the Lodge's discretion.

H. Within ten (10) calendar days the Hearing Officer shall issue a report that will:

1. Identify the date of and participants in the hearing;

2. Specify the charges;

3. Summarize the documentary evidence presented;

4. Summarize the testimony presented;
5. State the hearing officer's finding of facts and conclusions, including any decisions concerning the

credibility of witnesses; and

6. Make recommended findings as to whether the charges have been sustained and recommendations as to penalty.

Where the legal issues presented are significant, the hearing officer may recommend that the Attorney General review the report and render the decision.

I. The hearing officer will submit the report to the Attorney General, the Division Director or designee, the employee involved and the Lodge.

J. The Attorney General or designee will review the Hearing Officer's Report and within twenty (20) calendar days of the hearing will issue a "Final Departmental Decision." The time frame may be expanded with the express written consent of the Lodge.

K. The Final Departmental Decision may adopt, reject or modify the hearing officer's recommended factual findings and recommendations as to penalty.

L. The Attorney General or designee will execute a Final Notice of Disciplinary Action. The Final Notice of Discipline will specify the charge, the penalty, the date of discipline.

M. The Final Notice of Disciplinary Action will be served upon the employee and the Lodge and disciplinary action will be implemented as appropriate. The Final Notice of Disciplinary Action is not subject to the grievance and arbitration provisions of this Agreement.

First, the FOP concedes that the Commission issued a ruling prohibiting FOP from challenging the State's right to terminate a detective without cause pursuant to the relevant law. This issue is currently pending before the Superior Court of New Jersey, Appellate Division. The Union acknowledges that reassignments may not be challenged unless FOP feels the process is being used as a disciplinary tool. Additionally, demotion is a recognized form of discipline under the rules and regulations

of the Civil Service Commission. As a result, and the absence of any statutory criteria that says otherwise, FOP believes it has the right to challenge demotions under this particular proposed article of the collective negotiations agreement.

Aside from the procedural aspects as to when discovery is to be provided, the major differences between the proposals are the time limit in which discipline is to be initiated and whether FOP has the right to challenge disciplinary actions through an independent arbitration process.

Here, the FOP asserts that under its proposal, discipline must be initiated "within 45 days of the Division becoming aware or when the Division should have reasonably been aware of the offense." The institution of disciplinary charges within a 45-day time period is a statutory protection that all county and municipal law enforcement officers in the State of New Jersey enjoy. See N.J.S.A 48:14-147. Additionally, the State Police also enjoy this protection pursuant to N.J.S.A. 53:1-33. Finally, for those law enforcement officers that do have such statutory protection, it has been negotiated into their collective bargaining agreements. (FOP-19)

The Union argues that the State's proposal to initiate discipline "within a reasonable time after the discovery of the conduct by the department" is flawed for several reasons. First, there is no definition proposed in regard to what is "reasonable" under the contract. The State and FOP will

inevitably have vastly different interpretations regarding what is a "reasonable" timeframe within which to initiate disciplinary charges. The FOP argues that the State's proposed appeal process does not provide any method for the FOP to challenge the definition of "reasonable" in a specific circumstance.

The Union argues that if the State's disciplinary proposal is awarded, the FOP will not have the ability to have discipline reviewed by an independent, unbiased party. Therefore, the State will determine what is "reasonable" in regard to the timeframe of when charges should have been initiated in a disciplinary matter.

The second major difference between the parties' proposals concerns the appeal process of disciplinary charges lodged against a FOP member. The State proposes that disciplinary charges (exclusive of termination) may be appealed in finality to a designee of the State Attorney General, who will issue a decision concerning guilt and/or innocence along with the proposed penalty in regard to the same. FOP's proposal allows disciplinary charges (also exclusive of termination) to proceed to binding arbitration. DCJ detectives are not Civil Service employees and, therefore, disciplinary charges against them cannot be adjudicated at the New Jersey State Office of Administrative Law. Additionally, the arbitrator's decision may be appealed by either party to the Superior Court of New Jersey

as a matter of law, much like any other arbitration decision that is rendered in the grievance process.

The FOP asserts that its language is mirrored after the contractual language the State agreed to with the Communications Workers of America. The Union argues that, contrary to the State's assertion that State law preempts disciplinary appeals to binding arbitration, DCJ detectives may contest major disciplinary infractions, including termination, through binding arbitration in accordance with N.J.S.A. 34:13A-5.3. Therefore, it is obvious FOP's proposal is within the scope of negotiations. Specifically, N.J.S.A. 34:13A-5.3 provides in pertinent part:

> Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:110 [State Police], the grievance and disciplinary review procedures established by agreement between the State of New Jersey and the majority representative shall be utilized for any dispute covered by the terms of such agreement. For purposes of this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days… [N.J.S.A. 34:13A-5.3.]

The wording of N.J.S.A. 34:13A-5.3 makes it unequivocally clear that the State and a majority representative, can include a disciplinary review procedure in the contract that provides for binding arbitration of disputes involving major discipline.

The statute further provides that the only public employee group excluded from agreeing to such binding arbitration is the New Jersey State Police. Consequently, the State's assertion that such a proposal by FOP is not mandatorily negotiable is contrary to the unambiguous wording of N.J.S.A. 34:13A-5.3 and, as such, must be rejected.

The Union argues that a public employment disciplinary policy that does not provide an employee with an independent, unbiased binding review of the alleged wrongful conduct and penalties flies in the face of fundamental fairness.

The State argues that its proposal reflects a discipline provision that is appropriate for a collective negotiations agreement covering at-will employees. The State's proposal references the Division's SOP entitled "Discipline Procedures for Investigative Personnel." The SOP has been in existence at least since 1993 and most recently updated in 2000. The SOP, expressly references the Attorney General's right to terminate, demote or assign unclassified civil service investigators "at-will," as established with "due regard for employee rights guaranteed by Title 4A of the New Jersey Administrative Code, a collective bargaining agreement, statute or by case law." In essence, the State proposes to incorporate the SOP into the contract and ensure that the SOP remains consistent with the provisions of the contract. There is no provision in the State's proposal that truncates or limits the process currently

contained in the SOP. The State notes that the Union's proposal varies substantially from the SOP and seeks to capture substantive rights not contained therein.

Significantly, the State argues that the Union offered no evidence or rationale in support of its proposals at the hearing. Given that the Union is seeking significant changes to the current practice without any evidentiary support for those changes, the Arbitrator should reject the Union's Discipline proposal out-of-hand and award the State's proposal.

The Union proposes that suspensions of more than five days and demotion be subject to binding disciplinary arbitration. Those disciplinary actions are "major disciplines" as defined by N.J.A.C. 4A:2-22. Therefore, the Union's proposal is non-negotiable under well-settled law, State of New Jersey and State Trooper's Fraternal Association 134 NJ 393 (1993), Monmouth County and CWA, 300 NJ. Super 272 (App. Div. 1997) and re-affirmed in the scope of negotiations decision in this matter. State of New Jersey and New Jersey Division of Criminal Justice Non-Commissioned Officers Association et. al., P.E.R.C. No. 2014-50, at fn., p. 10 (2013). Accordingly, that portion of the Union's proposal seeking to arbitrate suspensions of five days or more falls outside the scope of negotiations and, thus, must be rejected.

The State notes that the Union also seeks to have "suspensions or fines of more than three days or for an

aggregate of more than fifteen days in one calendar year." Besides being incongruous with the rest of the provision, the language appears to be a reference to one of the definitions of "major discipline" set forth in N.J.S.A. 34:13A-5.3. The fact remains that the Court in State Troopers Fraternal Association ruled explicitly that such discipline cannot be subject to binding arbitration. As a result, each of the Union's proposals as they relate to binding arbitration cannot be awarded and, thus, its proposals must be rejected.

The State argues that the Union's proposed "45-day rule" providing for finite length of time with in which discipline may be brought should not be awarded. The Union introduced two statutes applicable to State Police and local police respectively. The State argues that the Union offered absolutely no further evidence as to the basis for awarding its proposal. The Union proffered no evidence that, for example, charges against a detective have been unfairly delayed. Further, the State argues that while the State legislature consciously enacted the "45-day" rule for State and local police, it did not do so for many categories of law enforcement personnel and in particular the "at-will" personnel at issue here in the Department of Law and Public Safety.

As Dee testified, there is no context for applying the 45-day rule to employees who are "at-will." Discipline is a tool for management to communicate expectations to employees and

provide them notice and an opportunity to remediate. If you remove the tool from management because of some arbitrary time limitations, then the only option left is removal. The State asserts that such a result serves neither party's interests.

The State maintains that at-will employees do not possess rights pursuant to "Laudermill" and the arbitrator has no basis to create such rights in this agreement. The Union offered no testimony or evidence concerning its request for a "Laudermill hearing." Therefore, the Arbitrator cannot award it. The proposal references "permanent" employees which, DCJ employees are not -- they are at-will employees. At-will employees have no Laudermill rights. See e.g., Thomas v. Town of Hammonton et. al., 351 F3d 108, 112 (2003).

The State further asserts that the Union provided no explanation or support for its proposals concerning the delay in the implementation of fines or termination conference. Similarly, the Union provided no explanation or context for its proposal concerning a conference with the Department Head (presumably the Attorney General) in "matters involving dismissal." (J-10, p.23, 20(I)) Furthermore, the record is devoid of any evidence regarding the purported purpose of the conference or what is intended by the proposal: "The Department or Agency Head or his designee may conduct an Administrative Investigation of the matter at his or her discretion."

Here, the State argues that having failed to satisfy its burden of proof relative to such proposals, the Union is not entitled to have its proposal awarded.

* * * *

The parties disagree about what discipline may be appealed and whether it may be appealed to binding arbitration. The Commission ruled the State's right to terminate employees and major discipline, may be without just cause and may not be appealed. In State of NJ, P.E.R.C. No. 2014-50, the Commission reviewed the scope of negotiations of several of the FOP's proposals and determined that Article 25 "Terminations" is preempted. The Commission also determined that Article 24, Section A (Just cause) is not mandatorily negotiable. The Commission held that the Attorney General is required to negotiate over proposed Article 24, Sections B., C., K.1., and S.6, finding that these provisions are procedural or informational and do not interfere with managerial prerogatives.

Finally, the Commission found that, to the extent the proposals would authorize binding arbitration of minor discipline, a negotiated agreement on that proposal would not interfere with the Attorney General's statutory right to remove an investigator. The Commission found that the proposal comports with existing law allowing arbitral review of minor discipline of law enforcement personnel. The Commission rejected the State's argument, based on State of N.J. and State

Troopers Fraternal Ass'n., 134 N.J. 393 (1993)("State Troopers"), that the members of FOP's unit could not use arbitration to review minor disciplinary sanctions. In 1996, N.J.S.A. 34:13A-5.3 was amended to allow police, except State Police, to contest minor discipline through binding grievance arbitration, and the amendments did not exclude other state law enforcement officers.

Just Cause

The Commission found the paragraph which proposed discipline be imposed only for just cause to be not mandatorily negotiable. The Attorney General argued that it would interfere with his right to remove unit members. The Commission then approved the provision calling for binding arbitration of minor discipline. I construe the Commission's findings on just cause to be limited to removal and other major forms of discipline, not to minor discipline. Further, the State has a just cause provision in its "Discipline SOP for Investigative Personnel" Having argued that its SOP is the longstanding practice of the Division, and should be incorporated into the collective agreement, the State cannot now argue against its own pre-existing just cause standard. The State has already committed itself to this standard. Therefore, I award the just cause provision for minor discipline only.

FOP Proposals

I will begin by a discussion of the parties' proposals beginning with FOP proposals A through K. The six particular issues the State identified in its brief are: a 72-hour delay in the implementation of suspensions, arbitration of major discipline, a 45-day statute of limitations rule, "Laudermill" hearing rights, suspension of the imposition of disciplinary fines; and termination conferences with the Attorney General.

I. Demotions And Reassignments Appeal Rights

The Union proposes that demotions be considered discipline subject to binding arbitration. It contends that demotions are a universally recognized form of discipline, including under Civil Service rules and that there is no statutory prohibition against the right to challenge demotions. The State asserts that demotions cannot be challenged under the disciplinary process.

The FOP proposes that where reassignments are used as a disciplinary tool, they may be challenged through binding arbitration under the grievance procedure. The State asserts that reassignments are managerial prerogatives and may not be appealed.

I find that demotions are major discipline and are not arbitrable. However, I find that that the FOP is entitled to appeal reassignments made for disciplinary reasons through the grievance and arbitration procedure.

II. Arbitrability Of Discipline

I award the FOP's paragraph A, with the addition of just cause and deletion of reduction in grade and dismissals. I award FOP's proposals B, and C. Paragraph D is awarded except for the last sentence: "The decision rendered herein shall be final except where the disciplinary appeal involves a penalty as set forth in paragraph E. below."

Paragraph E is not awarded because it provides procedures for appealing major discipline.

I find that, with the exceptions noted, the FOP's proposals to challenge minor disciplinary actions through an independent binding arbitration process are reasonable and I award them. See, PERC No. 2014-050. This excludes major disciplines: suspension of more than five days, suspensions or fines more than three days or for an aggregate of more than fifteen days in one calendar year, and demotions.

I award the FOP's paragraph F.

Paragraph G is awarded in part. The last two sentences of FOP's paragraph G are modified because the proposed timeframes are unreasonable. I award:

> The disciplinary arbitrator shall hold a hearing <u>at a place and time mutually convenient</u> to the parties as soon as possible after the request for arbitration. The arbitrator shall issue a decision as soon as possible, <u>preferably within thirty (30) days after the hearing is closed</u>. (Additions/Modifications are underlined)

Paragraph H is awarded in part. The third and last sentences are removed. The third sentence refers to a major form of discipline, and the last sentence -- prohibiting the arbitration process from being used to apply more severe suspensions -- is unnecessary.

Paragraph I(1) is excised as it does not apply to the unclassified employees who comprise this unit. Paragraph I(2), the 45-day rule, is awarded for the reasons below. Paragraph I, (3) and (4) are awarded.

Paragraph I(5), Loudermill hearing, is not awarded, see PERC No. 2014-050, and discussion below.

Paragraph I (6) is awarded.

Paragraph J concerns major discipline and is not awarded.

Paragraph K is awarded.

III. Timing Of Initiating Discipline

The FOP proposes discipline should be initiated "within 45 days" of the Division having become aware or from the date when the Division reasonably should have been aware of the offense (paragraph I(2))." The State proposes that disciplinary charges be initiated "within a reasonable time". The State argues that no evidence supports the restrictive 45-day rule.

I award the FOP's proposal. The institution of disciplinary charges within a 45-day period is statutory for all county and municipal law enforcement officers in the State of New Jersey. N.J.S.A 40A:14-147 provides, in relevant part:

> A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based.

Additionally, a similar provision applies to the State Police through N.J.S.A. 53:1-33. Other State law enforcement units contain a 45-day provision as well, notably those between the State and NJLESA, and the State and NJSOLEA.

The State argues the Union's "45-day Rule" proposal should be denied. It asserts that while the legislature enacted the "45-day" rule for State and local police, it did not do so for many categories of law enforcement personnel and in particular these detectives. The State further asserts there is no context for applying the 45-day rule to employees who are at-will and that discipline is a tool for management to communicate expectations to employees and provide them notice and a chance to correct their behavior, and if this tool is taken from management because of some arbitrary time limitations, then the only option left is removal. I find these arguments are without merit and that the open-ended "reasonable time" standard could encourage future disputes and litigation.

IV. Loudermill Hearing

The Union's Loudermill hearing proposal is not awarded. The State asserts that the Union offered no testimony or evidence concerning its request for a "Loudermill Hearing," and

the proposal references "permanent" (classified) employees, which under Civil service regulations means employees who acquire property rights to their jobs resulting from regular appointment and successful completion of a working test period, in contrast to the FOP's unit employees who are unclassified. N.J.A.C. §4A:1-1.3. The Court in Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532 (1985), relied on the public employee's property interest in his job to grant him due process (notice and opportunity to be heard) procedures before termination. Since the employees in the FOP's unit serve at the pleasure of the Division and Attorney General, and are unclassified, no property rights appear to attach to their employment.

In P.E.R.C. No. 2014-050, the Commission found not mandatorily negotiable: "L.5. Before a permanent career service employee is suspended without pay pending dismissal, he shall promptly be given an opportunity for an informal hearing at which the employee will be informed of the charges made and a synopsis of the evidence on which the State intends to rely." It found the Section as written not mandatorily negotiable because a public employer has the prerogative to impose an immediate suspension of a law enforcement officer, without having to observe pre-disciplinary procedures. The Union's Loudermill hearing proposal is L.5 above, which the Commission found is not mandatorily negotiable. PERC No. 2014-050.

The State seeks to incorporate in its entirety the Division's discipline SOP into the discipline article of the contract. It argues that the SOP is comprehensive and has been in existence at least since 1993, and recently updated in 2000. It argues that the SOP, has "due regard for employee rights guaranteed by Title 4A of the New Jersey Administrative Code, a collective bargaining agreement, statute or by case law." I decline to incorporate the disciplinary SOP wholesale into the contract because it is too long and many parts are inappropriate for inclusion in a collective agreement because they are the State's procedures and protocols.

I now address the State's specific proposals. The State's proposed introductory paragraphs are modified:

> Employee discipline shall be addressed in accordance with the provisions of this Article. Decisions to terminate, demote or reassign are not subject to this Article or the grievance and Arbitration provisions of this Agreement.

I awarded the Union's proposal (paragraphs A and B) defining minor discipline and referring to N.J.A.C. 4A:2-2.3.

The State's proposed paragraph B providing that discipline be initiated by the department within a reasonable time after discovery is not awarded. See discussion of "Timing of Initiating Discipline" at III above.

The State's paragraph C is not awarded -- see paragraphs C and D of the FOP's proposal.

The State's paragraphs D through M refer to the conduct of an internal departmental hearing. I award these provisions as written, except where I have modified them to avoid a conflict with other findings. These modifications include:

In Paragraph D., the first sentence is merged with the first sentence of paragraph E below. The second and third sentences are not awarded. These provide that where an employee does not request a departmental hearing within 5 days, his or her discipline becomes final. The discipline article provides, for minor discipline, for finality of disputes through binding arbitration and thus, these two sentences conflict with those procedures.

Section E. is modified to remove the phrase "to challenge the disciplinary action" since employees have an alternate procedure -- binding arbitration -- to challenge discipline. The new paragraph E is:

> If an employee chooses, he/she must request a "Departmental Hearing" within five (5) days of receipt of the Preliminary Notice. The request must be in writing to the issuing Department with a copy to the appropriate Lodge representative.

Paragraphs F, G, H, I and K -- departmental hearings -- are awarded as written. Paragraph J, proving for a conference with management when an employee is being terminated, is not awarded. This proposed language conflicts with the concepts of at-will employment and are therefore inappropriate. Paragraphs L and M

are eliminated because they conflict with the binding arbitration of minor discipline.

I award the following:

A. Discipline under this Article means official written reprimand, fine, suspension without pay, based upon the personal conduct or performance of the involved employee. As they are major discipline, dismissals from service, suspensions exceeding five (5) days, and reductions in grade (demotions) either for discipline, layoff or for operational changes shall not be grievable or arbitrable.

B. Just cause for minor discipline up to five days suspension shall include those causes set forth in N.J.A.C. 4A:2-2.3. The list of causes set forth in N.J.A.C. 4A:2-2.3 is not exclusive and discipline up to and including dismissal from service may be made for any other combination of circumstances amounting to just cause.

C. Where the Division imposes discipline pursuant to paragraph B., written notice - "Preliminary Notice of Discipline" - of such discipline shall be given to the employee. Such notice shall contain a reasonable specification of the nature of the charge, a general description of the alleged acts and/or conduct upon which the charge is based and the nature of the discipline.

D. The name of any employee who is notified of suspension or dismissal pursuant to paragraph C. shall be transmitted to the Negotiations Unit as soon as feasible but not to exceed seventy-two (72) hours after such notice.

Any appeal, except for departmental hearings (see below), relating to the involved disciplinary matter must be filed by the employee within fifteen (15) calendar days of the notice of discipline to the employee, and the employee must indicate within the notice of appeal if he will exercise his right to a Departmental Disciplinary Hearing.

The employee may be represented at such hearing by a Negotiations Unit representative in the same work unit and/or legal counsel. The employee shall have the right to present evidence and witnesses at such hearing as well as

cross-examine any witnesses or evidence presented by the State.

The circumstances surrounding a discipline case may suggest that the Negotiations Unit President or a member of the Unit's Executive Board has a particular need to assist in the presentation at the hearing. He/she may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied.

[E. Not awarded]

Arbitration

F. An appeal to disciplinary arbitration may be brought only by the Negotiations Unit through its President or designee or attorney.

G. Within thirty (30) days of the execution of this Agreement, the parties shall mutually agree upon a panel of not less than three (3) disciplinary arbitrators. Each member of the panel shall serve in turn as the sole arbitrator for a given case. Where a member of the panel is unable to serve, the next member in sequence shall then serve. In the event the parties are unable to agree upon a panel of arbitrators within thirty (30) days, arbitrators shall be selected, on a case-by-case basis under the selection procedure of the Public Employment Relations Commission, until such time as the parties agree upon a panel. The disciplinary arbitrator shall hold a hearing at **a time and place mutually** convenient to the parties as soon as possible after the request for arbitration. The arbitrator shall issue a decision as soon as possible, **preferably within thirty (30) days** after the hearing is **closed.**

H. Arbitrators in disciplinary matters shall confine themselves to determinations of guilt or innocence and the appropriateness of penalties and shall neither add to, subtract from, nor modify any of the provisions of this Agreement by any decision. In the event the arbitrator's decision finds the employee innocent or modifies a penalty, he**/she** may reinstate the employee with back pay for all or part of a period of suspension. The arbitrator may consider any period of suspension served in suggesting the penalty to be imposed.

Should the arbitrator's recommendation suggest reduction of the suspension with back pay for all or part of a period of suspension, the employee may be paid for the hours he would

have worked in his normally scheduled work week, at his normal rate of pay, but not exceeding forty (40) hours per week or eight (8) hours per day, less any deductions required by law or other offsetting income, for the back pay period suggested by the arbitrator.

The arbitrator's decision shall contain a short statement of the nature of the proceedings, the positions of the parties and specific findings and conclusions on the facts. In addition, the arbitrator's recommendation shall discuss the testimony, evidence or positions of the parties which merits special analysis.

I. General Provisions

1. All disciplinary charges shall be brought within forty-five (45) days of the Division becoming aware or when the Division should have reasonably been aware of the offense. In the absence of the institution of the charge within the 45 day time period, the charge shall be dismissed with prejudice.

2. In the event a a disciplinary action is initiated, the employee or his/her representative shall be provided with copies of all written documents, reports, or statements which will be used against him/her and a list of all known witnesses who may testify against him/her, which, will be provided not less than ten (10) days, exclusive of weekends, prior to any departmental hearing date.

3. Nothing in this Article of Agreement shall be construed to limit the right of the State to implement any disciplinary charges notwithstanding the pendency of any appeal proceeding.

4. Where a fine is imposed as a disciplinary measure and the matter is appealed within the disciplinary procedure provided in this Agreement and where the fine is one hundred dollars ($100.00) or more, the enforcement of the fine will be withheld upon request of the employee being fined pending hearings and final disposition of the appeal as provided herein, provided the employee continues in his employment with the State.

J. (not awarded)

K. Nothing in this Article shall be construed as a waiver of any rights any employee may have under New Jersey Statutes or Administrative Rules and Regulations.

L. (not awarded)

M. (not awarded)

N. Departmental Hearing

1. If an employee chooses a departmental hearing, he/she must request a Hearing within five (5) days of receipt of the "Preliminary Notice of Discipline." The request must be in writing to the issuing Division in the Department with a copy to the appropriate FOP 91 representative.

2. Within thirty (30) days of the hearing request, (or such other time as the parties agree), a hearing will be conducted.

3. The Office of the Attorney General will assign a Hearing Officer who will hear the evidence and issue a report. The burden of proof to establish cause for discipline shall rest with the Department. Employees shall be entitled to Lodge representation which may be a Lodge official, attorney or consultant, in the Lodge's discretion.

4. Within ten (10) calendar days the Hearing Officer shall issue a report that will:

    1. Identify the date of and participants in the hearing;
    2. Specify the charges;
    3. Summarize the documentary evidence presented;
    4. Summarize the testimony presented;
    5. State the hearing officer's finding of facts and conclusions, including any decisions concerning the credibility of witnesses; and
    6. Make recommended findings as to whether the charges have been sustained and recommendations as to penalty.

    Where the legal issues presented are significant, the hearing officer may recommend that the Attorney General review the report and render the decision.

5. The hearing officer will submit the report to the Attorney General, the Division Director or designee, the employee involved and the Lodge.

6. The Attorney General or designee will review the Hearing Officer's Report and within twenty (20) calendar days of the hearing will issue a "Final Departmental Decision." The time frame may be expanded with the express written consent of the Lodge.

7. The Final Departmental Decision may adopt, reject or modify the hearing officer's recommended factual findings and recommendations as to penalty.

8. The Attorney General or designee will execute a Final Notice of Disciplinary Action. The Final Notice of Discipline will specify the charge, the penalty, the date of discipline.

GRIEVANCE PROCEDURE

The Union proposes the following contract language:

B. Grievance Definition

A "Grievance" is:

1. A claimed breach, misinterpretation or improper application of the terms of this Agreement (contractual grievance); or

2. A claimed violation, misinterpretation or misapplication of rules or regulations, existing policies, letters or memoranda of agreement, administrative decisions, or laws, applicable to the agency or department which employs the grievant affecting the terms and conditions of employment and which are not included in A.1 above. (non-contractual grievance).

C. Purpose and Employee and/or Negotiations Unit Rights

1. The purpose of this procedure is to assure prompt and equitable solutions of problems arising from the administration of the Agreement, or other conditions of employment by providing the exclusive vehicle set forth in this Article for the settlement of employee grievances.

2. It is agreed that the individual employee is entitled to use this grievance procedure and to be represented by the Negotiations Unit upon his request in accordance with the provisions hereof. He/she shall not be coerced, intimidated or suffer any reprisal as

a direct or indirect result of such use. The Negotiations Unit shall be notified of any scheduled grievance hearing.

3. Nothing in this Agreement shall be construed as compelling the Negotiations Unit to submit a grievance to arbitration. The Negotiations Unit's decision to request the movement of any grievance at any step or to terminate the grievance at any step shall be final as to the interests of the grievant and the Negotiations Unit.

4. No grievance settlement reached under the terms of the Agreement shall add to, subtract from or modify any terms of this Agreement.

5. Where an individual grievant initiates a grievance, such grievance shall only be processed through Negotiations Unit representation, unless the Negotiations Unit provides specific permission to the contrary.

D. Scope of Grievance

1. It is understood by the parties that this grievance procedure represents the exclusive process for the resolution of disputed matters arising out of the Grievance Definition, A.1. and 2. above, except for those specific matters listed below:

(a). Appeals of matters in disputes shall be made directly to the Civil Service Commission subsequent to proper notification to the responsible local management officials with regard to the following subjects only:

(1) Out-of-title work

(2) Position classification and re-evaluation review

(3) Layoff and recall rights

(4) Examination procedures for which an appeal exists

(5) Removal at completion of a working test period

(b). For purposes of this Agreement, the terms and conditions of employment shall be those matters which intimately and directly affect the work and welfare of the employees covered hereunder and which do not significantly interfere with the exercise of inherent management prerogatives pertinent to the determination of government policy.

(1). A claim of improper and unjust discipline against an employee shall be processed in accordance with the provisions of the Agreement regarding Discipline.

(2). Reference by name or title or otherwise in this Agreement to laws, rules, regulations, formal policies or orders of the State, shall not be construed as bringing any allegation concerning the interpretation or application of such matters within the scope of arbitrability as set forth in this Agreement except as provided in this Agreement.

E. General Rules and Procedures

1. Where the subject of a grievance, or its emergent nature, suggests it is appropriate, and where the parties mutually agree, such grievance may be initiated at or moved to any step of the procedure without hearing at a lower step. Where the Negotiations Unit requests a grievance be initiated at Step Two or beyond based on a claim of emergency wherein the normal processing of the grievance would prejudice the effective relief sought and/or the substantive rights of the grievant and, if such request is denied by the agency of the State involved, the Negotiations Unit may seek an expedited determination by the Office of Employee Relations of the appropriate step to initiate such grievance. If the Negotiations Unit is not satisfied with this determination, then the issue of whether or not an emergency exists may be brought to an expedited arbitration hearing. The option to be prescribed would be to initiate at Step Two.

2. Where a grievance directly concerns and is shared by more than one grievant, such group grievance may properly be initiated at the first level of supervision common to the several grievants, with the

mutual consent of the parties as to the appropriate step. The presentation of such group grievance will be by the appropriate Negotiations Unit representative(s) and one of the affected grievants designated by the Negotiations Unit. A group grievance may be initiated by the Negotiations Unit.

3. Any member of the collective negotiating unit may orally present and discuss his/her complaint with his/her immediate supervisor on an informal basis. Such discussion of a complaint will not preclude the member from initiating a grievance under the terms and conditions of this Article.

4. In the event that the grievance has not been satisfactorily resolved on an informal basis, then an appeal may be made on the grievance form specified below.

5. All such grievances shall be presented in writing to the designated representative of the party against whom it is made on the "Grievance Forms" to be provided by the State. Such forms shall make adequate provision for the representative of each of the parties hereto to maintain a written record of all action taken in handling and disposing of the grievance at each step of the Grievance Procedure. The form shall contain a general description of the relevant facts from which the grievance derives and references to the sections of the Agreement, if any, which the grievant claims have been violated. The grievance form must be completed in its entirety. A group grievance initiated by the Negotiations Unit may be presented on the above form, or where appropriate, in another format provided that the grievance is fully set forth in writing and contains all the information called for by said form.

6. When a grievance is initiated, the original form shall be forwarded to the Personnel Officer of the appropriate operating agency. Copies of completed grievance forms shall be made by the State and distributed to the Negotiations Unit at the conclusion of the State taking action at each step of the Grievance Procedure.

7. Grievance resolutions or decisions at Step One and Step Two shall not constitute a precedent in any arbitration or other proceeding unless a specific

agreement to that effect is made by the Office of Employee Relations and the Attorney of the Negotiations Unit. This shall not be construed to preclude either party from introducing relevant evidence, including such grievance resolutions, as to the prior conduct of the other party.

F. Grievance Time Limits and Management Response

1. A grievance must be filed initially within fifteen (15) calendar days from the date on which the act which is the subject of the grievance occurred or fifteen (15) calendar days from the date on which the grievant knew or should reasonably have known of its occurrence. If the alleged grievance involves an alleged continuing violation of the contract, the fifteen (15) day deadline shall be relaxed. Other references to days in this process are working days of the party to which they apply.

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

3. Decisions after a scheduled hearing shall be rendered in writing to the grievant and to the Negotiations Unit representative within established time limits, except that the decision will be considered timely if rendered within the following limits or within three (3) days after the conclusion of the hearing at Step One and fifteen (15) days after the conclusion of the hearing at Step Two whichever is later.

   (a) At Step One within ten (10) working days of the receipt of the grievance;

   (b) At Step Two, within fifteen (15) working days of the receipt of the appeal from the Step One decision.

4. Should a grievance not be satisfactorily resolved, or should the employer not respond within the prescribed time periods, either after initial receipt of the grievance or after a hearing, the grievance may be appealed within ten (10) working days to the next step. The lack of response by the State within the prescribed time periods, unless time limits have been

extended by mutual agreement, should be construed as a negative response.

5. When a grievance appeal is to be filed, the State representative at the last hearing shall inform the grievant of the name and position of the next higher level of management to whom the appeal should be presented.

6. Time limits under this Article may be changed by mutual agreement and requests for extensions of time limits will not be unreasonably denied.

7. If, at any step in the grievance procedure, the State's decision is not appealed within the appropriate prescribed time, such grievance will be considered closed and there shall be no further appeal or review.

   Where an extraordinary circumstance precludes the timely appeal of the grievance at any step, the Negotiations Unit may promptly seek a waiver of the time limit for such appeal by direct request to the Office of Employee Relations. Such request shall not be unreasonably denied.

8. No adjustment of any grievance shall impose retroactivity beyond the date on which the grievance was initiated or the fifteen (15) day period provided in E.1. above except that payroll errors and related matters shall be corrected to date of error.

G. Grievance Investigation - Time Off

When a grievance has been formally submitted in writing and the Negotiations Unit represents the grievant, and where the Negotiations Unit Representative or other officer requires time to investigate such grievance to achieve an understanding of the specific work problem during working hours, the Representative or Officer will be granted permission and reasonable time, to a limit of one (1) hour, to investigate without loss of pay. It is understood that the supervisor shall schedule such time release providing the work responsibilities of the Negotiations Unit Representative or Officer and of any involved employee are adequately covered and providing further there is no disruption of work. Such time release shall not be unreasonably withheld and upon request could be extended beyond the one (1) hour limit for specified reasons if, to

the supervisor, the circumstances warrant an exception to this limit. Where a Negotiations Unit Representative or other Officer serves a mutually agreed upon grievance district encompassing two (2) or more geographically separated work locations and where the circumstances require it, a supervisor shall authorize the additional time required for travel.

Such time release shall not be construed to include preparation of paperwork, record keeping, conferences among Negotiations Unit officials nor preparation for presentation at a grievance hearing.

H. Time Off for Grievance Hearings

1. An employee shall be allowed time off without loss of pay;

   (a) As may be required for appearance at a hearing of the employee's grievance scheduled during working hours;
   (b) For necessary travel time to and from the grievance hearing during working hours;

   If the hearing extends beyond the employee's normal working hours, compensatory time equal to the additional time spent at the hearing shall be granted but such time shall not be considered time worked for the computation of overtime.

2. Where the employee or the Negotiations Unit requests employee witnesses, permission for a reasonable number of witnesses required during the grievance proceedings will be granted. A witness at such proceedings will be permitted to appear without loss of pay for the time of appearance and travel time as required if during his/her normal scheduled working hours.

3. At Step One and beyond in the grievance procedure, witnesses may be heard and pertinent records received.

4. The Negotiations Unit representative may have the right directly to examine or cross-examine witnesses who appear at any step of this procedure.

I. Grievance Steps and Parties Therein

Grievances shall be presented and adjusted in accordance with the following procedures:

Step One

If the grievance is not satisfactorily disposed of informally, it may be filed with the highest operational management representative. He or his designee shall hear the grievance, witnesses may be heard and pertinent records received. The grievant may be represented by an employee in the same work unit designated by the Negotiations Unit or a Negotiations Unit officer at the institution or installation involved. The circumstances surrounding a grievance may suggest that the Negotiations Unit President or a member of the Unit's Executive Board has a particular need to assist in the presentation of the grievance at Step One. He/she may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied.

Step Two

If the grievance is not satisfactorily disposed of at Step One, it may be appealed to the department head or his designee who shall not be a person who was directly involved in the grievance. The appeal shall be accompanied by the decisions at the preceding level and any written record that has not been made part of the preceding hearings.

The grievant may be represented by the Negotiations Unit President or his designee. The Negotiations Unit may designate an additional non-employee representative.

If the decision involves a non-contractual grievance or if the grievant has presented his appeal without Negotiations Unit representation, the decision of the department head or his designee shall be final and a copy of such decision shall be sent to the Negotiations Unit.

Step Three Arbitration

1. In the event that the grievance has not been satisfactorily resolved at Step Two, and the grievance involves an alleged violation of the Agreement as described in the definition of a grievance in A.1. above, then a request for arbitration may be brought only by the Negotiations Unit, through its designee, within fifteen (15) calendar days from the day the Negotiations Unit received the Step Two decision by mailing a written request for arbitration to the

Director of the Office of Employee Relations. If mutually agreed, a pre-arbitration conference may be scheduled to frame the issue or issues. All communications concerning appeals and decisions at this Step shall be made in writing. A request for arbitration shall contain the names of the department or agency and employee involved, copies of the original grievance, appeal documents and written decisions rendered at the lower steps of the grievance procedure.

2. Within thirty (30) days of the execution of this Agreement, the parties shall mutually agree upon a panel of three (3) arbitrators. Each member of the panel shall serve in turn. If a member of the panel is unable to serve, the next member in sequence shall then serve. In the event the parties are unable to agree upon a panel of arbitrators within thirty (30) days, arbitrators shall be selected, on a case-by-case basis, under the selection procedure of the Public Employment Relations Commission until such time as the parties mutually agree upon a panel.

3. The arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement or laws of the State, or any written policy of the State or sub-division thereof and shall confine his decision solely to the interpretation and application of this Agreement. The arbitrator shall confine himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him, nor shall he submit observations or declaration of opinions which are not relevant in reaching the determination. The decision or award of the arbitrator shall be final and binding consistent with applicable law and this Agreement. In no event shall the same question or issue be the subject of arbitration more than once. The arbitrator may prescribe an appropriate back pay remedy when he finds a violation of this Agreement, provided such remedy is permitted by law and is consistent with the terms of this Agreement. The arbitrator shall have no authority to prescribe a monetary award as a penalty for a violation of this Agreement. Rules, regulations, formal policies or orders of the State shall not be subject to revision by the arbitrator except if specifically provided herein. The fees and expenses of the arbitrator and recording of the procedure shall be divided equally

between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost.

1. The arbitrator shall hold the hearing at a time and place convenient to the parties within thirty (30) calendar days of his acceptance to act as arbitrator and shall issue his decision within thirty (30) days after the close of the hearing. In the event a disagreement exists regarding the arbitrability of an issue, the arbitrator shall make a preliminary determination as to whether the issue is arbitrable under the express terms of this Agreement. Once a determination is made that such a dispute is arbitrable, the arbitrator shall then proceed to determine the merits of the dispute.

2. Whenever a grievance which is to be resolved at Step Three, Arbitration, is based on a provision of this Agreement in which the power or authority of the arbitrator is specifically limited, those limits shall be observed and the provisions of paragraph three (3) above shall be operable except and to the extent that the limitations in such provisions modify such powers or authority.

The State proposes the following language:

E. Grievance Definition

1. A "Contractual Grievance" is a claimed breach, misinterpretation or improper application of the express terms of this Agreement.

2. A "Non-Contractual Grievance" is a claimed violation, misinterpretation or misapplication of standard operating procedures rules or regulations, or existing policies, administrative decisions, or laws applicable to the agency or department which employs the grievant affecting the terms and conditions of employment and which are not included in A.1 above.

F. Purpose

The purpose of this procedure is to assure prompt and equitable solutions of problems arising from the administration of this Agreement, or other conditions of employment by providing the exclusive vehicle for the settlement of employee grievances.

1. Nothing in this Agreement shall be construed as compelling the submission of a grievance to arbitration. The Lodge's decision to request the movement of any grievance at any step or to terminate the grievance at any step shall be final as to the interests of the grievant and the Lodge.

2. Where individual grievant initiates a Grievance, such Grievances shall only be filed by and processed through the Lodge representation.

G. Scope of Grievance

1. It is understood by the parties that this grievance procedure represents the exclusive process for the resolution of disputed matters arising out of the grievances as defined above, except for those specific matters listed below:

(a). Appeals of matters in dispute within the jurisdiction of the Civil Service Commission shall be made directly to the Civil Service Commission subsequent to proper notification to the responsible local management officials. Such matters include but may not be limited to the following subjects:

i. Out-of-title work

ii. Position classification and re-evaluation review

2. A claim of improper and unjust discipline against an employee shall be processed in accordance with the provisions of the contract regarding Discipline.

3. Reference by name or title or otherwise in this Agreement to laws, rules, regulations, formal policies or orders of the State, shall not be construed as bringing any allegation concerning the interpretation or application of such matters within the scope of arbitrability as set forth in this Agreement.

E. General Rules and Procedures

1. Where the subject of a grievance, or its emergent nature, suggests it is appropriate, and where the parties mutually agree, such grievance may be initiated at or moved to any step of the procedure

without hearing at a lower step. Where the Lodge requests a grievance be initiated at Step Two or beyond based on a claim of emergency wherein the normal processing of the grievance would prejudice the effective relief sought or the substantive rights of the grievant and, if such request is denied by the agency of the State involved, the Lodge may seek an expedited determination by the Office of Employee Relations of the appropriate step to initiate such grievance.

2. Where a grievance directly concerns and is shared by more than one grievant, such group grievance may properly be initiated at the first level of supervision common to the several grievants, with the mutual consent of the parties as to the appropriate step. The presentation of such group grievance will be by the appropriate Negotiations Unit representative(s) and one of the affected grievants designated by the Lodge. A group grievance may be initiated only by the Lodge.

3. Any member of the collective negotiations unit may orally present and discuss a complaint with his/her immediate supervisor on an informal basis but shall not expand the time limits for filing a formal grievance unless mutually agreed in writing.

4. In the event that the grievance has not been satisfactorily resolved on an informal basis, then an appeal may be made on the grievance form specified below.

5. All formal grievances shall be presented in writing to the designated representative of the party against whom it is made on "Grievance Forms" to be provided by the State. Such forms shall make adequate provision for the representative of each of the parties hereto to maintain a written record of all action taken in handling and disposing of the grievance at each step of the Grievance Procedure. The form shall contain a general description of the relevant facts from which the grievance derives and references to the sections of the Agreement, which the grievant claims to have been violated. The grievance form must be completed in its entirety. A group grievance initiated by the Lodge may be presented on the above form, or where appropriate, in another format provided that the grievance is fully set forth in writing and contains

all the information required on the official Grievance Form.

6. When a grievance is initiated, the original Grievance Forms shall be forwarded to the Personnel Officer of the appropriate operating agency. After the grievance is resolved copies shall be distributed as designated on the Grievance Form.

   A copy of the decision of the State at each step shall be provided to the Lodge representative involved.

F. Grievance Time Limits and Management Response

1. A grievance must be filed initially within fifteen (15) calendar days from the date on which the act which is the subject of the grievance occurred or fifteen (15) calendar days from the date on which the grievant should reasonably have known of its occurrence.

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

3. Step One hearings shall be scheduled within ten (10) calendar days of the initial receipt of the grievance. The State's decision shall be issued in writing to the grievant and to the Lodge representative within ten (10) days following conclusion of the Step One hearing.

4. The Lodge shall have ten (10) calendar days from the date the Step One Decision is issued to appeal the grievance to Step Two. A Step Two hearing shall be scheduled within fifteen (15) calendar days from the date of the appeal of the Step One decision. The State's decision shall be issued in writing to the grievant and to the Lodge representative within fourteen (14) calendar days following conclusion of the Step Two hearing.

5. Should a grievance not be satisfactorily resolved, or should the State not respond within the prescribed time periods, either after initial receipt of the grievance or after a hearing, the grievance may be appealed within ten (10) calendar days to the next

step. The lack of response by the State within the prescribed time periods, unless time limits have been extended by mutual agreement, should be construed as a negative response.

6. When a grievance decision is rendered the decision shall contain a notice informing the Lodge of the name and position of the next higher level of management to whom the appeal should be presented.

7. Time limits under this Article may be extended in writing by mutual agreement and requests for extensions of time limits will not be unreasonably denied.

8. If, at any step in the grievance procedure, the State's decision is not appealed within the appropriate prescribed time, such grievance will be considered closed and there shall be no further appeal or review.

9. No adjustment of any grievance shall impose retroactivity beyond the date on which the grievance was initiated or the fifteen (15) day period provided in E.1. above except that payroll errors and related matters shall be corrected to date of error within any applicable statute of limitations.

G. Grievance Investigation - Time Off

When a grievance has been formally submitted in writing, and where the Lodge Representative or other officer requires time to investigate such grievance to achieve an understanding of the specific work problem during working hours, the Representative or Officer will be granted permission and reasonable time, to a limit of one (1) hour, to investigate without loss of pay. It is understood that the supervisor shall schedule such time release providing the work responsibilities of the Representative or Officer and of any involved employee are adequately covered and providing further there is no disruption of work. Such time release shall not be unreasonably withheld and upon request could be extended beyond the one (1) hour limit for specified reasons if, in the judgment of the supervisor, the circumstances warrant an exception to this limit. Where a Lodge Representative or other Officer serves a grievance which the parties agree encompasses two (2) or more geographically separated work locations and where the

circumstances require it, a supervisor shall authorize the additional time required for travel.

Such time release shall not be construed to include preparation of paperwork, record keeping, conferences among Lodge officials or preparation for presentation at a grievance hearing.

H. Time Off for Grievance Hearings

1. An employee shall be allowed time off without loss of pay:

   (a). As may be required for appearance at a hearing of the employee's grievance scheduled during working hours;

   (b). For necessary travel time to and from the Grievance hearing during working hours.

2. Where the Lodge requests employee witnesses, permission for a reasonable number of witnesses required during the grievance proceedings will be granted. A witness at such proceedings will be permitted to appear without loss of pay for the time of appearance and travel time as required if during his normal scheduled working hours.

3. At Step One and beyond in the grievance procedure, witnesses may be heard and pertinent records received.

4. The Lodge representative may have the right directly to examine or cross-examine witnesses who appear at any step of this procedure.

I. Grievance Steps and Parties Therein

Grievances shall be presented and adjusted in accordance with the following procedures:

Step One

If the grievance is not satisfactorily disposed of informally, it may be filed with the Chief of Staff of the Division of Criminal Justice or designee. The State representative or his/her designee shall hear the grievance, witnesses may be heard and pertinent records received. The grievant may be represented by a Lodge officer or fellow Negotiations Unit employee at the

institution or office involved. The circumstances surrounding a grievance may suggest that the Lodge President or a member of the Lodge's Executive Board has a particular need to assist in the presentation of the grievance at Step One. He may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied.

Step Two

If the grievance is not satisfactorily disposed of at Step One, it may be appealed to the Office of the Attorney General which shall appoint a person to hear the appeal who shall not be a person who was directly involved in the grievance. The appeal shall be accompanied by the decisions at the preceding level and any written record that has not been made part of the preceding hearings.

The grievant must be represented by the Negotiations Unit President or his designee. The Lodge may designate an alternate non-employee representative.

If the decision involves a "Non-contractual Grievance", the decision of the Office of the Attorney General's designee shall be final and a copy of such decision shall be sent to the Lodge.

Step Three Arbitration

1. In the event that a "Contractual Grievance" as defined in A.1 has not been satisfactorily resolved at Step Two, then a request for arbitration may be brought by the Lodge or Lodge designee only within fifteen (15) calendar days from the day the Lodge received the Step Two decision. The written request must be by mailed to the Director of the Office of Employee Relations. If mutually agreed, a pre-arbitration conference may be scheduled to frame the issue or issues. All communications concerning appeals and decisions at this Step shall be made in writing. A request for arbitration shall contain the names of the department or agency and employee involved copies of the original grievance, appeal documents and written decisions rendered at the lower steps of the grievance procedure.

2. Within sixty (60) days of the execution of this Agreement, the parties shall mutually agree upon a panel of three (3) Arbitrators. All panel arbitrators

must agree, in writing and in advance as a condition for being placed on the panel, to accept a fee of no more than $1,000 per day, and to impose a fee of no more than $500 for a late cancellation by either party without good cause. Each member of the panel shall serve in turn. If a member of the panel is unable to serve the next member in sequence shall then serve.

3. The arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement or laws of the State and shall confine his/her decision solely to the interpretation and application of this Agreement. The arbitrator shall confine her/himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted, nor shall she/he submit observations or declaration of opinions which are not relevant in reaching the determination. The decision or award of the arbitrator shall be final and binding consistent with applicable law and this Agreement. In no event shall the same question or issue be the subject of arbitration more than once. The arbitrator may prescribe an appropriate back pay remedy when she/he finds a violation of this Agreement, provided such remedy is permitted by law and is consistent with the terms of this Agreement. The arbitrator shall have no authority to prescribe a monetary award as a penalty for a violation of this Agreement. The fees and expenses of the arbitrator shall be divided equally between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including any attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including any attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost.

4. The arbitrator shall hold the hearing at a time and place convenient to the parties within thirty (30) calendar days of her/his acceptance to act as arbitrator, or as soon thereafter as practicable, and shall issue her/his decision within thirty (30) days after the close of the hearing.

5. Whenever a grievance which is to be resolved at Step Three, Arbitration, is based on a provision of this Agreement in which the power or authority of the arbitrator is specifically limited, those limits shall be observed and the provisions of paragraph three (3) above shall be operable.

The FOP asserts that its grievance procedure is the same that is included in the majority of the law enforcement agreements with the State. The FOP asserts that the State's proposals seek to do nothing more than "pare down" the contractual grievance rights of the FOP.

First, the parties are in agreement as to the definitions of what a contractual grievance is as opposed to a non-contractual grievance. However, under Paragraph B, which defines the purpose of the grievance process, the divergence between the parties proposals begin. Donlan testified that the Union's proposal would allow an individual grievant to file a grievance on his/her own behalf but would not permit the individual to arbitrate the grievance without the Union's authorization.

The FOP contends that paragraph B(3) accomplishes this purpose and makes it clear that under no circumstances will the FOP be compelled to bring a grievance to arbitration. This language makes it unequivocally clear the FOP is the party that possesses the exclusive power and authority to: (1) initiate a grievance; (2) move the same from step to step; and (3) initiate arbitration proceedings. Additionally, when reading the purpose

provisions comparatively together, it is clear the State has conscientiously chosen to remove important language existing in other grievance clauses which would place the FOP's members on notice that they will not be retaliated against and/or suffer any reprisal for initiating a grievance under the terms and conditions of the collective negotiations agreement.

There are few differences between the parties' proposals in paragraph D, entitled, "General Rules and Procedures". The first paragraph of both the State and the FOP's proposal provides a vehicle to file an "emergent" grievance. In both proposals, the State has the discretion to determine the "emergent" nature of the grievance and thereby make a decision if the emergent process articulated under this article is followed. Where the proposals diverge, however, is that if the State determines the grievance is not "emergent" as articulated by the FOP, the process stops, whereas FOP's proposal provides an avenue to appeal the decision. If there is no process to appeal a decision, the State will always have the power and authority to reject a request made by the FOP.

The second major discrepancy in this paragraph pertains to FOP's proposal that resolutions and decisions at Step One and Step Two of the grievance process shall not constitute a precedent in any manner unless it is specifically agreed to by the parties. Grievances are withdrawn and settled within the three-step process for a myriad of reasons. For instance,

grievances are sometimes withdrawn and/or settled for issues with timeliness, witness availability, or the proofs available for consideration. The Union avers that common sense dictates that such a decision to settle or withdraw a matter should not be precedent setting.

Under paragraph G, the State is again attempting to remove long-standing, accepted language that permits an employee to be granted compensatory time off if a grievance hearing extends beyond the confines of the normal work day. Again, this provision of the proposal was taken directly from other State law enforcement collective negotiation agreements the State negotiated over a period of years. An employee should not be forced to rush through the presentation of his/her evidence or limit his/her ability to refute the State's evidence because of time constraints. Placing this language in the contract will help prevent such a situation from occurring.

Next, the FOP does not object to designating the Chief of Staff as being the receiving party for a grievance filed under Step One of the process. Additionally, there is no objection to the State Attorney General being named as the receiving party for Step Two of the grievance process.

The FOP takes issue with the State's attempt to limit the pool of arbitrators based on contractually-mandated fee restrictions. All arbitrators do not hold the same level of skill, expertise, and/or experience. Those arbitrators that

have a higher level of skill, expertise, and experience will charges rates that exceed $1,000 per day. The FOP is willing to pay for these services.

The FOP argues that its proposal is superior, as the language contained in the same has been tested over many years within the bodies of the other State law enforcement collective negotiations agreements. Conversely, the State's attempts to modify the long-standing language does nothing more than restrict and/or extinguish the detective's rights.

The State argues that its proposed grievance procedure, where it differs from the Union's, reflects a conscious effort to develop a process that dovetails with the operations of the Division and eliminates vague and redundant language.
The State urges the Arbitrator to adopt the State's proposal as written. In paragraph A(1), the State proposal limits "contractual grievances" to "express terms" which is an appropriate clarification of the parties' intent to distinguish between those disputes that may proceed to arbitration and those which will not. In paragraph B(1), the State objects to the Union's attempt to absolve itself of any responsibility for processing meritless grievances while simultaneously requiring the State to process such grievances. The State's position is a matter of fairness. If the Union determines that a grievance lacks merit such that it chooses not to be involved, the grievance should not proceed. In paragraph B(2), the State

objects to this proposal as it merely reiterates the State's legal obligation. The second sentence is redundant to the "General Rules and Procedural language." In paragraph B(4), Agreements between the Union Representatives and the State Representatives should stand on their own. If a grievance settlement is reached it should not be subject to attack because it is alleged to modify the terms of the Agreement. On occasion, grievance resolution may do exactly that. In paragraph C(1)(a), the State and the Union disagree on the subjects that are available to appeal to CSC (as shown below). The State's language: "Such matters shall include, but not be limited to the following topics," provides the appropriate flexibility to address any concern the Union may have that the State's list of subjects that can be appealed to CSC is not exhaustive. In paragraph C(a) (3) and (4), the State asserts that the topics the Union lists do not apply to unclassified employees. In paragraph C(b), the State claims the Union's proposal is an attempt to summarize the law as it relates to negotiable subjects of bargain. The language does not add anything useful to the Agreement; however, given the language's incomplete and misleading recitation of the scope of negotiations, its inclusion only could result in confusion and unintended results. In paragraph D(1), the Union's proposal to arbitrate whether a grievance should be expedited is not efficient as it would result in an arbitration over when to have

an arbitration. In paragraph D(3), the proposals are substantially similar. However, the State contends that its proposal appropriately makes clear that an informal discussion does not expand the time limits for filing a grievance. As stated throughout the State's proposal, any extension of the time periods must be in writing to avoid the inevitable disputes over whether an extension had been agreed to between the parties. In paragraph D(7), the Union proposed that there be a contractual prohibition against grievance resolutions or decisions having precedential value. Such a blanket prohibition is not warranted. During the course of contract administration, grievances will be filed; decisions issued and resolutions reached. Each such decision and resolution should stand on its own merits and either party should be free to argue the precedential value in any given circumstance. In paragraph E(1), the Union's proposal provides for "relaxed" deadlines for filing grievances in the case of a continuing violation. The Employer argues that the proposal is vague and attempts to grossly expand the equitable doctrine of "continuing violations." Such an expansion would render the time limits in the process meaningless in many circumstances. In paragraph E(3)/E(4) and (5), the State submits that its proposal concerning the hearing schedules is clearer and less cumbersome than the Union's proposal which, as written, provides no limit on when a hearing must be scheduled. In paragraph E(5) and (6),

the Union's proposal requiring the State to inform the grievant of the next higher level of management "when a grievance appeal is to be filed," is nonsensical. The State's proposal places the burden on the State to provide the information to the grievant with the issuance of the decision. In paragraph E(7), the State insists that the agreements to extend time be in writing. The State's proposal is categorically reasonable.

In paragraph E(8)/(9), the State appropriately proposes that the retroactivity not be entirely open-ended. The State's proposal to limit retroactivity to applicable statutes of limitation, is fair and in compliance with the law. In paragraph G(b), the State contends the employees should be "held harmless" in terms of compensation for attending grievance hearings. The Union's proposal essentially provides extra compensation beyond what an employee would receive had he or she been on duty. In paragraph H, Step One, the State proposes that grievances be filed with the Chief of Staff. The State's proposal eliminates the possibility of confusion. The Chief of Staff can then refer the grievance to appropriate management personnel for response. In paragraph H, Step Two, the State's proposal to have Step Two grievance filed with the Attorney General's office will eliminate the possibility of confusion or misdirection of the grievance. In paragraph H, Step Three (2), the Union and the State disagree on two points. The State proposes a sixty-day window to settle on a panel of three

arbitrators. Thirty days after the start of a new agreement simply is too short a period of time. The State proposed the cost containment measures of empaneling arbitrators who will agree to a $1,000 ceiling. The cost containment provision is contained in every law enforcement contract that was negotiated or awarded in the last contract cycle. In paragraph H, Step Three (3), the Union proposes that the following caveat be added to the section defining the arbitrator's authority: "Rules, regulations or orders of the State shall not be subject to revision by the arbitrator except as provided herein." There is no provision in the agreement that would give the arbitrator the authority to modify rules, regulations or State orders - nor should there be one. In addition, the parties disagree over the State's proposal to insert clearer language regarding the costs for ordering transcripts. In H, Step Three (4), the State proposes to add the phrase "or as soon thereafter as practicable" to the timeframe in which to hold a hearing.

The State urges that its proposal on the grievance process is rationally tailored and eliminates the awkward and vague language contained in the Union's "cut and pasted" proposal. The arbitrator should award the State's proposal in its entirety.

* * * *

Generally, the State's proposed language is adopted, beginning with paragraphs A and B, except that I add "unless the

Negotiations Unit provides specific permission to the contrary" to the end of B. 2. The Union should be able to decide to permit individual employees to pursue grievances on their own. The State's version more succinctly captures the essence of the provisions. I further find unnecessary proposals (B. 2) that restate the State's legal obligation, thus, the "no reprisals" language is not awarded.

However, I approve the ability of individuals to pursue their grievances up to arbitration. I do not agree with the contention that if the Union determines that a grievance lacks merit such that it chooses not to be involved, the grievance should not proceed. Acknowledging that this is a contract between the Union and the State, the individual employees are also beneficiaries and have interests at stake to defend.

I agree that where a grievance settlement is reached it should not be subject to attack because it is alleged to modify the terms of the Agreement and that on occasion, grievance resolution may do exactly that. Thus, the Union's paragraphs B 1 through 5 are collapsed or eliminated.

I award the State's paragraph C and concur that paragraphs C.1.a. # 3, 4, and 5 do not apply to the FOP's unit employees. Certain other language is excised because it is less concise and I believe that a comprehensive listing of items that may be appealed to Civil service Commission (in C.1.a.1 and 2. is not necessary or prudent. A minimal list for the informational

benefit of unit members is best. The Civil Service Commission or the Courts will be the ultimate arbiter of that commission's jurisdiction.

I agree with the State's criticism of the Union's proposed language in section C. 1. b. - that it attempts to concisely reference or define arbitrability for this contract, but cannot do this well and will likely mislead or lead to misunderstandings. It does not add to the overall purposes of the grievance procedure. It would be impossible to concisely explain arbitrability in a collective agreement.

Paragraphs C. 2. and 3. are awarded.

I award the State's paragraph D, paragraph 1. and agree that the Union's proposal to arbitrate whether a grievance should be expedited is not efficient and would result in an arbitration over when to have an arbitration. It is possible and may be likely that an arbitrator could not render a decision regarding the timing of an arbitration prior to the exhaustion of the grievance process.

I award the State's paragraph D, paragraphs 2. And 3, and agree that the State's proposal makes explicit that an informal discussion does not expand the time limits for filing a grievance and that mutually-agreed upon extensions must be obtained in writing. This may avoid future disputes.

I award paragraph s D. 4, 5 and 6, as the parties concur on these.

The State objects to the FOP's proposed D. 7. The Union proposed that there be a contractual prohibition against grievance resolutions or decisions having precedential value. I agree that such a blanket prohibition is not warranted. During the course of contract administration, grievances will be filed, decisions issued and resolutions reached. Each such decision and resolution should stand on its own merits and either party should be free to argue the precedential value in any given circumstance.

In paragraph E.1., the FOP proposed "relaxed" deadlines for filing grievances in cases of alleged continuing violations. The State objects to the proposal. I agree that the proposal is vague, and concerns a legal doctrine over much many cases have been litigated. The Union did not support this language and I decline to award it.

I also award paragraph E 2, which the parties agree to.

The State objects to the Union's proposed E. 3. (a) and (b) and E.4. These provisions set time limits for issuing decisions and moving the grievance forward. Since the FOP has not provided any support for its proposal, I award the State's E. 3. and E.4., as they are more simply drafted. Similarly, I award E.5 through 9, as the differences are minor.

Paragraph F is awarded.

Paragraph G is awarded, without compensatory time for grievance hearings that last longer than the workday. The State

argues that the Union's proposal provides extra compensation beyond what an employee would receive had he or she been on duty. The Union objects to the State's alleged attempt to remove this long-standing language. There is insufficient evidence in the record to support this provision, and it is not included.

Paragraph H

The State's proposed version of Paragraph H Steps One and Two are awarded. The State proposes that the contract direct that grievances at Step One be filed with the Chief of Staff to avoid confusion. The Chief of Staff can then refer the grievance to appropriate management personnel for response. In Step Three, "Arbitration," the Union and the State disagree on two (2) points: the State proposes a sixty (60) day window to settle on a panel of three (3) arbitrators. It argues the Union's proposed thirty (30) days after the start of a new agreement is too short a period of time. I award this longer timeframe.

Second, the State proposed the cost containment measures of impaneling arbitrators who will agree to a $1,000.00 ceiling. The cost containment provision is contained in every law enforcement contract that was negotiated or awarded in the last contract cycle - including, NJLESA, FOP Union 174, PBA Local 105, NJSOLEA, PBA SLEU and NJLECOA. F.O.P. #91 views the $1000.00 rate as limiting the pool of willing and qualified

arbitrators. It contends all arbitrators are not as experienced or skilled as more experienced ones who tend to charge more. F.O.P. #91 asserts it is willing to pay for these higher level services.

The proposed rate - $1000.00 - is too low and I do not award it because the parties already agree that they may use the procedures of the PERC grievance arbitration panel, I award those rates, set by individual arbitrators. Under the PERC grievance arbitration panel, arbitrators set their own rates.

The Union proposes that the following caveat be added to the section defining the arbitrator's authority: "Rules, regulations or orders of the State shall not be subject to revision by the arbitrator except as provided herein." The State argues and I concur that there is no other provision in the agreement that gives an arbitrator the authority to modify rules, regulations or State orders and there should not be one.

The State suggests inserting of clearer language regarding the allocation of costs for ordering transcripts. Finally, the State proposes to add "or as soon thereafter as practicable" to the timeframe in which to hold a hearing. These provisions are also awarded.

The Union proposed language authorizing an arbitrator to decide the arbitrability of subjects in dispute but I do not award this language. The Commission determines arbitrabilty through its scope of negotiations authority and procedures.

I award the following language for the grievance procedure:

A. Grievance Definition

1. A "Contractual Grievance" is a claimed breach, misinterpretation or improper application of the express terms of this Agreement.

2. A "Non-Contractual Grievance" is a claimed violation, misinterpretation or misapplication of standard operating procedures rules or regulations, or existing policies, administrative decisions, letters or memoranda of agreement, or laws applicable to the agency or department which employs the grievant affecting the terms and conditions of employment and which are not included in A.1 above.

B. Purpose

The purpose of this procedure is to assure prompt and equitable solutions of problems arising from the administration of this Agreement, or other conditions of employment by providing the exclusive vehicle for the settlement of employee grievances.

7. Nothing in this Agreement shall be construed as compelling the submission of a grievance to arbitration. The Lodge's decision to request the movement of any grievance at any step or to terminate the grievance at any step shall be final as to the interests of the grievant and the Lodge.

2. Where an individual grievant initiates a Grievance, such Grievances shall only be filed by and processed through the Lodge representation, unless the Negotiations Unit provides specific permission to the contrary.

C. Scope of Grievance Procedure

1. It is understood by the parties that this grievance procedure represents the exclusive process for the resolution of disputed matters arising out of the grievances as defined above, except for those specific matters listed below:

(a). Appeals of matters in dispute within the jurisdiction of the Civil Service Commission shall be made directly to the Civil Service Commission subsequent to proper notification to the responsible local management officials. Such matters include but may not be limited to the following subjects:

i. Out-of-title work

ii. Position classification and re-evaluation

2. A claim of improper and unjust discipline against an employee shall be processed in accordance with the Discipline provisions of the contract.

3. Reference by name or title or otherwise in this Agreement to laws, rules, regulations, formal policies or orders of the State, shall not be construed as bringing any allegation concerning the interpretation or application of such matters within the scope of arbitrability as set forth in this Agreement.

D. General Rules and Procedure

1. Where the subject of a grievance, or its emergent nature, suggests it is appropriate, and where the parties mutually agree, such grievance may be initiated at or moved to any step of the procedure without hearing at a lower step.

Where the Lodge requests a grievance be initiated at Step Two or beyond based on a claim of emergency wherein the normal processing of the grievance would prejudice the effective relief sought or the substantive rights of the grievant and, if such request is denied by the agency of the State involved, the Lodge may seek an expedited determination by the Office of Employee Relations of the appropriate step to initiate such grievance.

2. Where a grievance directly concerns and is shared by more than one grievant, such group grievance may properly be initiated at the first level of supervision common to the several grievants, with the mutual consent of the parties as to the appropriate

step. The presentation of such group grievance will be by the appropriate Negotiations Unit representative(s) and one of the affected grievants designated by the Lodge. A group grievance may be initiated only by the Lodge.

3. Any member of the collective negotiations unit may orally present and discuss a complaint with his/her immediate supervisor on an informal basis but shall not expand the time limits for filing a formal grievance unless mutually agreed in writing.

4. In the event that the grievance has not been satisfactorily resolved on an informal basis, then an appeal may be made on the grievance form specified below.

5. All formal grievances shall be presented in writing to the designated representative of the party against whom it is made on "Grievance Forms" to be provided by the State. Such forms shall make adequate provision for the representative of each of the parties hereto to maintain a written record of all action taken in handling and disposing of the grievance at each step of the Grievance Procedure. The form shall contain a general description of the relevant facts from which the grievance derives and references to the sections of the Agreement, which the grievant claims to have been violated. The grievance form must be completed in its entirety. A group grievance initiated by the Lodge may be presented on the above form, or where appropriate, in another format provided that the grievance is fully set forth in writing and contains all the information required on the official Grievance Form.

6. When a grievance is initiated, the original Grievance Forms shall be forwarded to the Personnel Officer of the appropriate operating agency. After the grievance is resolved copies shall be distributed as designated on the Grievance Form.

A copy of the decision of the State at each step shall be provided to the Lodge representative involved.

E. E. Grievance Time Limits and Management Response

1. A grievance must be filed initially within fifteen (15) calendar days from the date on which the act which is the subject of the grievance occurred or fifteen (15) calendar days from the date on which the grievant should reasonably have known of its occurrence.

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

3. Step One hearings shall be scheduled within ten (10) calendar days of the initial receipt of the grievance. The State's decision shall be issued in writing to the grievant and to the Lodge representative within ten (10) days following conclusion of the Step One hearing.

4. The Lodge shall have ten (10) calendar days from the date the Step One Decision is issued to appeal the grievance to Step Two. A Step Two hearing shall be scheduled within fifteen (15) calendar days from the date of the appeal of the Step One decision. The State's decision shall be issued in writing to the grievant and to the Lodge representative within fourteen (14) calendar days following conclusion of the Step Two hearing.

5. Should a grievance not be satisfactorily resolved, or should the State not respond within the prescribed time periods, either after initial receipt of the grievance or after a hearing, the grievance may be appealed within ten (10) calendar days to the next step. The lack of response by the State within the prescribed time periods, unless time limits have been extended by mutual agreement, should be construed as a negative response.

6. When a grievance decision is rendered the decision shall contain a notice informing the Lodge of the name and position of the next higher level of management to whom the appeal should be presented.

7. Time limits under this Article may be extended in writing by mutual agreement and requests for extensions of time limits will not be unreasonably denied.

8. If, at any step in the grievance procedure, the State's decision is not appealed within the appropriate prescribed time, such grievance will be considered closed and there shall be no further appeal or review.

9. No adjustment of any grievance shall impose retroactivity beyond the date on which the grievance was initiated or the fifteen (15) day period provided in E.1. above except that payroll errors and related matters shall be corrected to date of error within any applicable statute of limitations.

F. (not awarded)

G. (not awarded)

H. Grievance Steps and Parties Therein

Grievances shall be presented and adjusted in accordance with the following procedures:

Step One

If the grievance is not satisfactorily disposed of informally, it may be filed with the Chief of Staff of the Division of Criminal Justice or designee. The State representative or his/her designee shall hear the grievance, witnesses may be heard and pertinent records received. The grievant may be represented by a Lodge officer or fellow Negotiations Unit employee at the institution or office involved. The circumstances surrounding a grievance may suggest that the Lodge President or a member of the Lodge's Executive Board has a particular need to assist in the presentation of the grievance at Step One. He may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied.

Step Two

If the grievance is not satisfactorily disposed of at Step One, it may be appealed to the Office of the Attorney General which shall appoint a person to hear the appeal who shall not be a person who was directly involved in the grievance. The appeal

shall be accompanied by the decisions at the preceding level and any written record that has not been made part of the preceding hearings.

The grievant must be represented by the Negotiations Unit President or his designee. The Lodge may designate an alternate non-employee representative.

If the decision involves a "Non-contractual Grievance", the decision of the Office of the Attorney General's designee shall be final and a copy of such decision shall be sent to the Lodge.

Step Three Arbitration

1. In the event that a "Contractual Grievance" as defined in A.1 has not been satisfactorily resolved at Step Two, then a request for arbitration may be brought by the Lodge or Lodge designee only within fifteen (15) calendar days from the day the Lodge received the Step Two decision. The written request must be by mailed to the Director of the Office of Employee Relations. If mutually agreed, a pre-arbitration conference may be scheduled to frame the issue or issues. All communications concerning appeals and decisions at this Step shall be made in writing. A request for arbitration shall contain the names of the department or agency and employee involved copies of the original grievance, appeal documents and written decisions rendered at the lower steps of the grievance procedure.

2. Within sixty (60) days of the execution of this Agreement, the parties shall mutually agree upon a panel of three (3) Arbitrators. Panel Arbitrators will be paid their normal daily rates. Each member of the panel shall serve in turn. If a member of the panel is unable to serve the next member in sequence shall then serve.

3. The arbitrator shall confine his/her decision solely to the interpretation and application of this Agreement. The arbitrator shall confine her/himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted, nor shall she/he submit observations or declaration of opinions which are not relevant in reaching the

determination. The decision or award of the arbitrator shall be final and binding consistent with applicable law and this Agreement. In no event shall the same question or issue be the subject of arbitration more than once. The arbitrator may prescribe an appropriate back pay remedy when she/he finds a violation of this Agreement, provided such remedy is permitted by law and is consistent with the terms of this Agreement. The arbitrator shall have no authority to prescribe a monetary award as a penalty for a violation of this Agreement. The fees and expenses of the arbitrator shall be divided equally between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including any attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including any attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties.

4. The arbitrator shall hold the hearing at a time and place convenient to the parties as soon as practical after of her/his appointment to act as arbitrator, and shall issue her/his decision within thirty (30) days after the close of the hearing.

5. Whenever a grievance which is to be resolved at Step Three, Arbitration, is based on a provision of this Agreement in which the power or authority of the arbitrator is specifically limited, those limits shall be observed and the provisions of paragraph three (3) above shall be operable.

PROMOTIONS:

The Union's proposal provides:

A promoted candidate and the Lodge shall receive a written notification of the promotion which will include the new rank and rate of pay within one week after promotion, and shall within ten days of the effective date of the promotion, assume the vacant position for which the promotion was announced, subject to overriding operational requirements.

The State proposed an alternate version:

> A promoted candidate and the Lodge shall receive a written notification of the promotion which will include the new rank, rate of pay, effective date and start date. Within ten (10) days of the designated start date, the employee shall assume the vacant position for which the promotion was announced, subject to overriding operational requirements.

Miller provided uncontroverted testimony as to the process for the promotion of Detectives to Sergeant or Lieutenant, including the approval process required for those promotions. (5T-66-70). First, notice of a promotional opportunity is posted.[26] Responsive resumes are reviewed and qualified applicants interviewed. Miller, the Chief of Detectives, and the DCJ Director select the individual(s) to be promoted. The DCJ then must obtain approval, in succession, from three offices: (1) the Office of the Attorney General; (2) the Governor's Office; (3) the Civil Service Commission.

Upon the CSC's approval, a representative of the CSC sends the promotional paperwork to the DCJ. That paperwork indicated the "effective date" of the promotion. It is on the "effective date" that the employee assumes the higher rank and pay. However, the employee's "start date" may not be the same as her "effective date". Miller explained that the detective might be in the middle of an assignment and there might be some operational need that would delay the employee's actual start

[26] The criteria for the promotion is taken "directly from the [Civil Service Commission] job specification" and listed in the posting, as required. (Tr. 10/31/14, p. 96-97, 99(Miller)).

date in his/her new rank. Additionally, if the promoted employee is accepting the new assignment at a different facility the employee has to be moved to the new facility.

The State contends that its proposal takes into account the practical and logistic realities of the entire promotion process, ensuring that the promoted detective will actually assume his/her position within ten days of the designated start date. The Union's proposal, on the other hand, poses a logistical conundrum. The Union's proposal provides that the promoted candidate "receive written notification of the promotion . . . within one week after the promotion." The State argues that the Union's witnesses have failed to explain how and why the State would wait until one week post-promotion to advise a detective that he's been promoted. For the foregoing reasons, the State urges that its proposal be awarded.

I find that the Union's proposal requiring notice to the candidate and to the Union within ten days to be unnecessary. However, the Union's language which would require a start date within ten days of the effective date, is completely compatible with the Division's current practice as explained by Miller. This is particularly true since it also provides for an exception if operational needs dictate otherwise. I award the following language:

> A. A promoted candidate and the Lodge shall receive a written notification of the promotion which will

include the new rank, rate of pay, effective date and start date. Within ten (10) days of the effective date, the employee shall assume the vacant position for which the promotion was announced, subject to overriding operational requirements.

TRANSFERS:

The Union proposes the following contract language:

A. No employee shall be transferred on less than ten (10) days' notice to the employee of the proposed transfer, but this specific requirement does not apply to emergency assignments.

B. Arbitration of the provisions of this clause is limited to the procedural aspects only with the exception of when it is alleged that a transfer was made for disciplinary reasons.

E. Once a year, beginning in July 2011, employees shall be permitted to request a transfer by submitting a request to the Chief or his designee.

G. An employee may submit a transfer for extraordinary reasons at any time to the Chief detailing the extraordinary reasons for a transfer.

The State proposes:

H. Arbitration of the provisions of this clause is limited to the procedural aspects only. The Division's decision on whether to transfer an employee shall not be subject to arbitration.

I. Employees shall be permitted to request a transfer by submitting a request to the Chief or his designee. [Modification of Union's Item "F"]

The FOP notes that under the proposed Article entitled "Transfers," there are four paragraphs the parties disagree about. First, under Paragraph C., the FOP proposes that, if a transfer is effectuated, the member being transferred be afforded a total of ten days' notice prior to the same going

into effect unless the transfer is deemed an emergency by management. There are three primary locations where detectives work and most detectives are assigned to a geographical location that is close to their residence. The Union argues that providing the detective with ten days' notice, when possible, to ensure that his/her personal life is in order is not only reasonable in this instance but warranted as a matter of human decency.

The Union contends that paragraph F will permit the detectives to request to be transferred once a year. Second, paragraph G permits an FOP unit member to request a transfer at any time for extraordinary reasons so long as the same are detailed in the request. It must be noted that under both paragraphs, there are no guarantees the transfers will be effectuated. Therefore, other than the fact that the transfer requests may take a minimum amount of administrative time for the Chief of Detectives and his staff to consider, there is no plausible reason offered by the State as to why these proposals should be rejected.

Paragraph E allows the FOP to grieve the procedural aspects of the transfer proposal, with the exception of providing FOP the ability to grieve a disciplinary transfer. The Union acknowledges that the Employer has a managerial prerogative to transfer employees for operational needs. Therefore, the Union does not seek the ability to grieve the reasoning behind a

transfer. Nevertheless, the procedural aspects pertaining to how an employee may be transferred is a negotiable topic. Based upon this, there should be no reason the procedural aspects of how an employee is transferred should not be subject to the grievance procedures of the collective negotiations agreement.

Finally, Donlan testified that detectives have been transferred in the past for disciplinary reasons. (1T-131) In particular, Donlan testified Detective Jim Sweeney was involuntarily transferred from the Northern Unit in Whippany to the evidence facility in Hamilton. This resulted in a two-hour commute each way for Sweeney. The transfer was in response to an alleged incident the State ultimately determined required discipline. In fact, shortly after the transfer was effectuated, Sweeney was terminated from employment.

Both the State and FOP have proposed the penalties that may be imposed for discipline. In both instances, neither the State nor the FOP proposed that transferring an employee as an acceptable penalty for a disciplinary offense. Based on the foregoing and given the severe implications a transfer can have upon the life of a detective, if the transfer can be linked directly to a disciplinary action, FOP is requesting the right to contest such a transfer by grieving the same. If this paragraph is excluded from the collective negotiations agreement, the State will have the unfettered ability to bypass

the disciplinary process and transfer an individual for disciplinary reasons, without the same able to be challenged.

The State argues that it has a non-negotiable prerogative to transfer, assign or reassign its employees to meet its governmental policy goal of matching the best qualified employee to a particular job and, thus, cannot be subject to review by an arbitrator. See e.g., Ocean Tp. Superior Officers Ass'n, P.E.R.C. No. 93-13, 18 NJPER, 198, (¶23 1992). To create an exception to those well-established principles any time an employee characterizes the decision to transfer as "disciplinary," would eviscerate the DCJ's managerial right to transfer employees as such decisions inevitably would be subject to arbitral review under the guise of "discipline." Teaneck Bd. Of Education v. Teaneck Teachers Assoc., 94 N.J. at 15 (1983) (recognizing that allowing an exception for claims of discrimination to the general rule that transfer decisions cannot be subject to arbitration would impermissibly infringe on a public employer's managerial prerogative to transfer). For these reasons, the FOP's proposal to permit the arbitration of transfers in any circumstance is outside the scope of negotiations and must be rejected.

I find the Union's argument on the ten-day advance notice of a transfer is persuasive, especially since the locations of the Division's offices are far from each other. The State need not give ten days' notice where an emergent need arises.

I find the Union's arguments supporting its proposed right to appeal a "disciplinary" transfer also persuasive. The State's assertion that submitting such allegations to arbitration would "eviscerate" its right to transfer employees and that challenges would be inevitable are not supported by any evidence. One obvious safeguard to these circumstances is the fact that the Union has to prove a transfer was disciplinary. Further, that there is in New Jersey a public policy disfavoring transfers for disciplinary reasons in public employment is suggested by the amendments to N.J.S.A. 34:13A-25 that states:

> "Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons."

Finally, PERC did not agree with the State that the submission of any discipline to binding arbitration "has no place" where unclassified employees are concerned. It found mandatorily negotiable proposals allowing the arbitration of minor discipline. State of New Jersey, P.E.R.C. No. 2014-50

I find the remaining paragraphs merely afford employees the right to request transfers and I award them with slight modifications.

I award the following:

> A. No employee shall be transferred on less than ten (10) days' notice to the employee of the proposed transfer, but this specific requirement does not apply to emergency assignments.

B. Arbitration of the provisions of this clause is limited to the procedural aspects only with the exception of when it is alleged that a transfer was made for disciplinary reasons.

E. Employees shall be permitted to request a transfer by submitting a request to the Chief of Staff or his designee stating the reasons for the transfer request.

OUTSIDE WORK

The Union proposes:

A. An employee serving in the title of Detective may engage in outside employment with prior approval from the Chief. Outside employment in the security field, including, but not limited to, work as a security officer shall be permitted.

B. An employee serving in the title of Detective desiring to engage in outside employment shall request permission in writing from the Chief of Detectives. Approval or disapproval of such requests shall be transmitted within fourteen (14) calendar days thereafter.

C. It is understood that outside employment shall in no way interfere with the efficient operation of the Division of Criminal Justice and the absolute priority of the Detective's responsibility to assignments in his/her work as a Detective.

D. Any grievance under this Article shall be submitted directly to the Chief of Detectives, and if not resolved may be submitted as an A.1 grievance under Article_____ of this Agreement.

The Union argues that it is seeking to codify the current practice utilized by the Division with regard to detectives engaging in outside employment. To this end, the FOP submitted SOP #10, entitled "Restrictions on and Requests for Outside Employment by State Investigators." (FOP-34)

The Union argues that its proposal permits a detective to engage in outside employment so long as the prior approvals are obtained. The proposal comprehensively sets forth the mechanism to obtain such approval and explicitly indicates that such outside employment shall in no way interfere with a Detective's duties with the Division of Criminal Justice. Lastly, the proposal mandates that a Detective's responsibilities to the Division of Criminal Justice remain paramount.

The State asserts that, pursuant to N.J.S.A. 2:13D-12, et seq. and N.J.A.C. 19:61-1.1., et seq. its SOP, in place since 1993 and titled "Restrictions on and Requests for Outside Employment by State Investigators," prohibits, with good reason, outside employment of detectives in certain fields of work, including "private investigative and security work." The Union's proposal would rescind that restriction and subject denials of requests for outside employment to review of a third-party arbitrator. That change is significant, potentially detrimental to the DSJ and its detectives and affords no recognition of the requirement and limitations set forth in the governing conflict of interest laws referenced above.

As the SOP states, detectives are not permitted to engage in "any employment which may impair his/her objectivity and independence of judgment or create an appearance of impropriety or conflict of interest," or to "engage in any business, transaction, or professional activity, which is in conflict with

the proper discharge of his/her duties." Morris summed up the State's objections to Union's proposal:

> Q: The Union has a proposal that would require that you as a Chief not have a blanket prohibition on their performance of outside security work. What do you think about that proposal?
>
> A: I think it's going to create a lot of problems as far as conflict of interest. I can see somebody wanting to do security work perhaps as a bodyguard or perhaps at an establishment that serves alcohol or perhaps for an individual that [has an] extensive background in their actual activities would have to be done in order to approve it and it would create a problem.
>
> Q: What do you mean it would create a problem?
>
> A: Because the individual may actually be doing something that we're investigating in an area that particular Detective doesn't know about and by telling them that he couldn't do it, it would raise a red flag for that particular individual.
>
> Q: The Unit's proposal also provides that any of your denials of requests to perform outside work would be subject to the grievance and arbitration procedure of the agreement. Do you have any issues with that?
>
> A: Sure do. I'd have to start disclosing confidential investigations to third parties about why I denied the request. (5T-133-134)

Thus, the State argues that DCJ's strict prohibition on outside employment in security must be maintained for the integrity of the DCJ and its investigations. As such, Union's proposal must be rejected.

I find that the proposal is awarded in part and denied in part. To the extent the proposal represents a change in the SOP of the parties, it is denied.

N.J.S.A. 52:13D-12, provides:

> (a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
>
> (b) To ensure propriety and preserve public confidence, persons serving in government should have the benefit of specific standards to guide their conduct and of some disciplinary mechanism to ensure the uniform maintenance of those standards amongst them. Some standards of this type may be enacted as general statutory prohibitions or requirements; others, because of complexity and variety of circumstances, are best left to the governance of codes of ethics formulated to meet the specific needs and conditions of the several agencies of government.
>
> (c) It is also recognized that under a free government it is both necessary and desirable that all citizens, public officials included, should have certain specific interests in the decisions of government, and that the activities and conduct of public officials should not, therefore, be unduly circumscribed. L.1971, c. 182, s. 1, eff. Jan. 11, 1972.

In line with the concepts set forth in the legislative intent statement above, I find that the prohibition on outside employment in "private investigative and security work" should remain because the likelihood that security work would create the possibility of conflicts of interest between detectives' official responsibilities and the outside work is high. Further, there is a risk of the potential appearance of a conflict of interest between the Division's official business and the outside security work. Thus, the sentence: "Outside

employment in the security field, including, but not limited to, work as a security officer shall be permitted" is excised from the provision.

The other issue is whether submitting disputes over disapprovals of particular outside employment requests may be arbitrated. I agree with the Division that because of the sensitive nature of its work, it should not be compelled to reveal to outside parties the subjects or substance of its investigations in defending charges of unfair denial of outside employment. Thus, I find the Division's argument has greater merit and deny the inclusion of paragraph D, which would have subjected disputes under the article to arbitration.

I award the following language:

A. An employee serving in the title of Detective may engage in outside employment with prior approval from the Chief.

B. An employee serving in the title of Detective desiring to engage in outside employment shall request permission in writing from the Chief of Detectives. Approval or disapproval of such requests shall be transmitted within fourteen (14) calendar days thereafter.

C. It is understood that outside employment shall in no way interfere with the efficient operation of the Division of Criminal Justice and the absolute priority of the Detective's responsibility to assignments in his/her work as a Detective.

D. Any grievance under this Article shall be submitted directly to the Chief of Detectives, but shall not be subject to the grievance arbitration procedures.

RETIREMENT CREDENTIALS

The Union proposes:

> The Division of Criminal Justice shall provide identification cards for retired Detectives, in compliance with Federal Public Law 108-277, the "Law Enforcement Officers' Safety Act."

The Union argues that it is merely requesting the Division provide detectives with retirement credentials, namely identification cards, when they retire from the Division. This is a practice that is currently adhered to by the Division.

The State did not make an argument about this proposal. I take administrative notice of the "Law Enforcement Officers' Safety Act," P.L. 108-277, (or, P.L. 111-272) ("LEOSA"), referenced by FOP, codified at 18 U.S.C. 926C "Carrying of concealed firearms by qualified retired law enforcement officers."

This provision exempts qualified retired law enforcement officers from local and State laws against carrying concealed firearms. In summary, the law provides that qualified retired law enforcement officers who carry the proper identification may carry concealed firearms across state lines, subject to the limitations that private citizens can prohibit firearms on their property and a State can restrict the concealed weapons on its property, i.e. parks, schools, buildings, etc.

The identification required by subsection (d) of 18 USC 926 is a photographic identification ("ID") issued by the agency from which the individual retired as a law enforcement officer. The ID indicates that the individual has, not less recently than

one year before the date the individual is carrying the firearm, met qualification standards in firearms training.

Alternately, the ID can be a photographic identification issued by the agency from which the individual retired and a certification issued by the State in which the individual resides or by a certified firearms instructor that indicates the retired officer, within one year before the date the individual is carrying the firearm, has met the State standards for qualification in firearms training.

In either case, the agency from which the officer retired must provide the photo ID.

Here, the testimonial evidence appears to show that the DCJ already provides them to retired detectives. The State did not object to this provision. The State does not deny that the Division already provides the benefit to retired detectives.

I award this benefit since I find that, as a practice, the Division already issues the IDs. The retirees could not obtain the IDs anywhere other than from the Division and without the IDs, it appears retired officers would not be able to avail themselves of the rights afforded them by LEOSA.

I award the following:

> The Division of Criminal Justice shall provide identification cards for retired Detectives, in compliance with Federal Public Law 108-277, the "Law Enforcement Officers' Safety Act."

PERSONNEL PRACTICES

The Union proposes the following language:

> B. The State agrees to make information concerning employee health benefits and information on educational programs, if available, accessible to all employees in electronic format.

The State proposes the following language:

> B. The State agrees to make information concerning employee health benefits accessible to all employees in electronic format.

Here, the only disagreement between the parties on this clause involves the availability of information on educational programs. The FOP contends that inclusion of this proposal is reasonable and should be awarded. As described by Donlan, including this information and making the same accessible to the members would not only benefit the members themselves, but the Division. (1T-100). Specifically, apprising members of educational program afforded to them would undoubtedly encourage members to participate in such programs. In turn, this will enhance the operational effectiveness of the Division.

The State opposes this provision. Dee testified that the State opposes the disputed portion of the Union's proposal, not because the State is opposed to its detectives having educational opportunities, but rather because it is so poorly drafted. The proposal is vague, has no limitations, is wide-open to interpretation, and if awarded is sure to be the subject of multiple disputes and grievances. (3T-115). As written, the proposal could easily be read to apply to any and all

educational programs regardless of subject matter, by whom offered, or to whom they might apply. The Union does not even limit its proposal to educational programs relevant to the unit members' job duties. As Director Dee testified, the scope of the educational programs covered by the proposal is limitless. (Tr. 10/30/14, p. 115 (Dee)). For the foregoing reasons, the State argues that its proposal should be awarded.

I award the Union's proposal with modifications to address the State's concerns.

> A. To the extent information is available to the Division, it will provide such information concerning degree and certification programs offered through the State colleges and to which DCJ detectives might be eligible for tuition aid, to all employees in electronic format.
>
> B. The State agrees to make information concerning employee health benefits accessible to all employees in electronic format.

ACCESS TO PERSONNEL FILES

The Union proposes:

> C. An employee may request the correction or expungement of information in the file where there are pertinent and substantive inaccuracies or for reasons of time, duration, relevance or fairness. Such request will be evaluated in relation to the State's needs for comprehensive and complete records but shall not be unreasonably denied when the inaccuracies can be satisfactorily documented by the employee.

The State agrees to the Union's proposed language with the exception of the phrase ". . . for reasons of time, duration, relevance or fairness."

The FOP argues that its proposal merely broadens the categories of consideration in deciding whether certain information in an employee's personnel file should be corrected and/or expunged. It cannot reasonably be countenanced that categories such as "time, duration, relevance, or fairness" are not adequate criterion to consider when determining whether information should be corrected and/or expunged from a personnel file. An employee's personnel file or "jacket" is the basis upon which many employment decisions, such as promotions and/or discipline, are based upon. As such, it is imperative that the information included therein is not unfairly prejudicial to the employees. Given the proposal seeks to ensure the integrity of the employees' personnel files, it should be awarded.

The State argues that the Union's proposed phrase "or for reasons of time duration and fairness" should be rejected. As Dee explained, there are multiple uses for information contained in a personnel file and the State has an interest in maintaining historical information. The State is willing to allow for expungement (and arbitration for unreasonable denial) in so far as the expungement concerns objective "substantive inaccuracies" that can be documented. The Union's criteria "reasons of time, duration and fairness" are subjective and may be used, for example, to request the removal of a discipline that an employee believes is no longer fair because of the passage of time. Such a dynamic is inimical to the State's interest in keeping

complete and accurate records. Finally, the phrase "Such request will be evaluated in relation to the State's needs for comprehensive and complete records" provides context for an Arbitrator in the event a request to remove records is challenged as being "unreasonably denied."

In light of the above, the Arbitrator should award the provision regarding expungement of personnel records as proposed by the State.

I find that the integrity of the files is better maintained when the information within them is complete and accurate, and the Article addresses this purpose by permitting expungement of inaccurate information. I find that the State's interest in retaining accurate and complete personnel records outweighs the interest of employees in having older negative information removed from their files. The age of information would reasonably be taken into account in future personnel decisions. Accordingly, I do not award the phrase "or for reasons of time, duration, relevance or fairness" in the first sentence of the proposed language. The remainder of the paragraph is awarded as follows:

> C. An employee may request the correction or expungement of information in the file where there are pertinent and substantive inaccuracies. Such request will be evaluated in relation to the State's needs for comprehensive and complete records but shall not be unreasonably denied when the inaccuracies can be satisfactorily documented by the employee.

PROBATIONARY EMPLOYEES:

The Union Proposes:

> New employees hired by the Division of Criminal Justice shall be considered on probationary status for a period of six (6) months. After six (6) months of probationary status and depending on satisfactory supervisory review, the employee shall be considered permanent. Once an employee has reached permanent status, his/her Seniority shall be retroactive to his/her date of hire as a Detective.

The Union argues that this proposal is simple and straightforward. In essence, the FOP wants to clearly delineate who is considered a "probationary employee" and, if the probationary status is satisfactorily completed, what their seniority date would be. Given that FOP's proposals complete both these objectives, an award of the same is warranted.

The State asserts that there is no basis or relevance to the Union's proposal, and therefore, it should be rejected. Donlan admitted and Miller confirmed that there are not now, nor have there ever been probationary detectives employed in the DCJ. For the foregoing reasons, the Union's proposal must be rejected.

Given that detectives in the Division are not subject to a probationary period, I find that contract language on this issue is not relevant and unnecessary. I decline to award this provision.

SENIORITY:

The Union proposes:

A. Permanent Employees shall be considered to have State seniority as of the date of hire with the Division of Criminal Justice in the capacity of conducting criminal and/or civil investigations in an investigative title. Such State seniority shall accumulate until there is a break in service from the Division of Criminal Justice. State seniority of an employee who is reinstated after a period of layoff shall be continued retroactively exclusive of the period of layoff.

B. A break in continuous service occurs when an employee resigns, is discharged for cause, retires, is laid off, or leaves the Division of Criminal Justice for employment within another Department, Division, Commission, Authority or any other subdivision of the State of New Jersey or any other government agency. For purposes of this Article, a detachment to work with another governmental agency, such as a task force assignment, will not constitute a break in continuous service.

C. Every six (6) months the State will provide to the Negotiations Unit a current seniority list. Any disagreement concerning the accuracy of the list will be made known to the State within one (1) month of the posting and corrective action will be initiated at this level. If there is a continued disagreement with the seniority list the same will be resolved pursuant to the grievance procedure as stated under Article____ of this contract.

Seniority, as described in the section, will be applied to all sections of the Agreement that reference seniority as a requirement.

The FOP acknowledges that detectives do not have the right to bid for posts and/or positions in the various Division's bureaus, as indicated by Donlan during direct examination. Additionally, FOP also acknowledges that its members do not have "bumping" rights in the event that there was a Department-wide layoff.

Notwithstanding the foregoing, FOP asserts that establishing a seniority list does have a purpose within the Division. While, at the current time, requests for vacation leave and administrative time of is not an issue, conflicts can develop in the future, especially because the grant of these requests typically hinge on an individual supervisor's discretion. (1T-115-116). An award of a seniority provision would solve such dilemmas quickly and easily as well as prevent arbitrary decisions with regard to the same.

The State argues that this proposal is unnecessary and will only lead to confusion or potential litigation.

I find this provision to be unnecessary. In fact, there is no provision in the contract which pins a benefit to seniority. While the Union's stated goal is that it wants a method of resolving issues over vacation selection, its vacation proposal did not address vacation selection by seniority. I decline to award this proposal.

INFORMATION AND SPECIAL PROVISIONS

The FOP proposes the following provision:

A. The Evaluation System shall be applied equally to all Detectives.

Neither party submitted any argument concerning this provision. I find that the need for this proposal has not been justified and is therefore not granted.

LABOR/MANAGEMENT COMMITTEE

The Union proposes:

A. A committee consisting of State representatives, Division of Criminal Justice personnel and Lodge members shall be established for the purpose of reviewing the administration of this Agreement and to discuss problems which may arise.

B. Said committee may meet bi-monthly or whenever the parties mutually deem it necessary. These meetings are not intended to by-pass the grievance procedure or to be considered contract negotiation meetings but are intended as a means of fostering good employment relations through communications between the parties.

C. Either party may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such meeting.

D. A maximum of four (4) members of the Negotiations Unit, the Negotiations Unit's Executive Board and the Negotiations Unit Attorney may attend such meetings and, if on duty, shall be granted time off to attend not to be deducted from the time provided in Article_____.

The Union contends that it seeks to establish a committee that will consist of members of the administrative staff and the Union. The committee will have the ability to come together to discuss the administration of this first collective negotiations agreement. The Union notes that both FOP and the State are about to enter "uncharted waters" once the interest arbitration award is rendered. It argues that it is merely sound operational policy to create a committee that can come together to discuss issues that may arise regarding the implementation of the contract going forward.

While the FOP acknowledges the creation of this committee will take some time away from certain employees performing their

official duties, it contends that it will save considerable time and money, going forward, by resolving certain issues without resort to the grievance procedure. Once again, this proposal is reasonable given the fact this is the first collective negotiations agreement between the parties and is fiscally responsible in the long run.

The State responds that the stated intent of this proposal is for the Union (represented by its entire executive board, up to four additional unit representatives, and the Union's attorney) to have a vehicle to review with DCJ "personnel" problems that may arise under the Agreement. The State agrees that open and continued communication between the Union and the appropriate State representatives are beneficial and even necessary. However, the State does not agree that the establishment of a formal committee as offered by the Union is warranted and certainly not justified by the record evidence which has not established any reluctance by management to communicate with representatives of its employees. As such, the State asserts that the Union has failed to satisfy its burden of establishing a need for the creation of a committee by contract.

The State further argues, that the Union has also not established (or even explained) the need to have an attorney present as a member of the committee. Although other State contracts contain language providing for committees somewhat similar to that offered by the Union, none of those contracts

provide for the inclusion of either party's legal counsel as a committee member. As Dee testified, "to include an attorney really changes the dynamic of the whole committee," and, in the State's view, would tend to hinder, rather than facilitate, communication between the parties.

Additionally, the number of committee members on the Union's side would likely result in a drain on the State's limited resources.

The State further objects to Section D of the proposal which provides for as many as twelve (12) Detectives being relieved from duty to attend these committee meetings without that time being deducted from the Union's union leave allotment. The stated purpose of this committee is to address contract administration and problems, clearly topics that would be encompassed within any union leave provision awarded. For the foregoing reasons, the Union's proposal should not be awarded.

* * * *

A labor management committee can be a useful tool in resolving issues in a collaborative fashion rather than resorting to the formal grievance procedure and litigation. This is particularly true when the parties are entering into a collective bargaining relationship for the first time. However, the Union' proposal would permit too many of its representatives to attend such a meeting, meaning that they are not performing

their regular duties and there are then "too many cooks in the kitchen."

Additionally, the parties must now learn to work together at the local level to resolve problems. I agree with the State that bringing the attorneys into the mix adds an unneeded and possibly counter-productive level of formality. Accordingly, I award the following:

> A. A committee consisting of the Employer's representatives and FOP Lodge 91's representatives shall be established for the purpose of reviewing the administration of this Agreement and discussing problems which may arise.
>
> B. Said committee may meet quarterly or whenever the parties mutually deem it necessary. These meetings are not intended to by-pass the grievance procedure or to be considered contract negotiation meetings but are intended as a means of fostering a good employment relations through communications between the parties.
>
> C. Either party may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such meeting.
>
> D. A maximum of three (3) members of FOP Lodge 91 may attend such meetings and, if on duty, shall be granted time off to attend not to be deducted from the Union Leave time provided in Article_____.

DUTY TO DEFEND AND INDEMNIFY

The Union proposes:

> C. Liability Claims Indemnification
>
> All employees covered by this Agreement shall be entitled to defense and indemnification by the State against liability claims or judgments arising out of the performance of their official State duties as set forth in the Laws of 1972, Chapters 45 and 48.

> It is understood by the parties that the State's obligation to defend and indemnify employees against liability claims or judgments arising out of the performance of their official State duties is governed by the Tort Claims Act, specifically N.J.S.A. 59:10A-1 through 59:10A-6. For informational purposes, it is here stated that the above obligation has been interpreted by the Attorney General of New Jersey to include actions against State Detectives and Non-Commissioned Officers alleging false arrest, except that such obligation shall not extend to false arrest actions where it is determined by the Attorney General that:
>
> A. The act or omission was not within the scope of employment; or the act or omission was because of actual fraud, willful misconduct or actual malice; or the defense of the action or proceeding by the Attorney General would create a conflict of interest between the State and the employee. Additionally, the State's obligation to indemnify shall not extend to any award for punitive damages ultimately granted against the Detective or Non-Commissioned Officer who is the defendant in the action. In any of the above matters, the Attorney General may determine and authorize the use of outside counsel where, in his judgment, such is warranted. In such cases the reasonable costs of such counsel shall be borne by the State.

The State proposes:

> The State acknowledges its obligation to defend and indemnify employees against liability claims or judgments arising out of the performance of their official State duties as governed by the TORT Claims Act, specifically N.J.S.A. 59:10A-1 through 59:10A-6.

The FOP asserts that a contractual clause that obligates the State, county, or municipality to defend and indemnify its law enforcement employees against alleged acts of negligence that may occur in the workplace is standard. (FOP-19). In addition, Donlan testified the language proposed by FOP in this article was taken directly from the Memorandum of Agreement

reached between the State Police and State in the year 2007. (1T-133) The Union asserts that the State agreed upon this language in 2007 with a comparable law enforcement unit that also falls under the jurisdiction of the Department of Law and Public Safety and/or the State Attorney General, there is no reason why this language should not be included in this collective negotiations agreement.

The Duty to Defend and Indemnify provision is somewhat similar in nature to Liability Claims Indemnification proposal put forth by FOP. In that proposal, FOP wants to ensure its members are entitled to defense and indemnification by the State against liability claims or judgments arising out of the performance of their official State duties. Again, a Liability Claims Indemnification clause is found in each and every other State law enforcement collective negotiations agreement. (FOP-19) Moreover, the entitlement to defense and indemnification for law enforcement officers is set forth in the Laws of 1972, Chapters 45 and 48. Consequently, the FOP is merely seeking to codify this legal entitlement and achieve comparability with other State law enforcement units. As such, this proposal should likewise be awarded.

The State argues that its proposal and the first sentence of the Union's proposal say the same thing, that the Tort Claims Act, N.J.S.A. 59:10A-1 through -6, obligates the State to defend and indemnify employees against liability claims or judgments

arising out of the performance of their official State duties. It maintains that the Union's proposal goes on to reference an alleged past interpretation of the Tort Claims Act by an unidentified Attorney General purporting to extend the State's obligation under that Act to defend and indemnify Detectives for some, but not all, false arrest claims.

The Union presented no evidence of the context in which that Memorandum of Understanding was entered into, nor did the Union produce the referenced Attorney General "interpretation" or to even identify the Attorney General who allegedly issued it. In other words, the Union would have this Arbitrator award language excised from an agreement that does not apply to these detectives, without any understanding of what interpretation that language purports to summarize or even any context in which that language was drafted. Accordingly, no basis exists for the Union's proposal.

* * * *

The defense and indemnification of State employees is governed by the Tort Claims Act and nothing in this agreement can or should even attempt to alter the meaning or provisions of that law. Accordingly, at most, the State's proposal which recognizes that the Tort Claims Act governs claims for defense and indemnification (and not the contract between these parties) must be awarded.

The Union also has what appears to be a duplicative proposal on the same topic under its "Effect of Law" Article, titled "Liability Claims Indemnification." That proposal provides:

> All employees covered by this Agreement shall be entitled to defense and indemnification by the State against liability claims or judgments arising out of the performance of their official State duties as set forth in the Laws of 1972, Chapters 45 and 48.

Since the employee's right to defense and indemnification is statutory, the contract need only recite the statutory requirement. The Attorney General's opinion interpreting the statute is unnecessary and subject to possible re-interpretation at a later date. I award the following:

> Pursuant to N.J.S.A. 59:10A-1 through 59:10A-6, the Tort Claims Act, all employees covered by this Agreement shall be entitled to defense and indemnification by the State against liability claims or judgments arising out of the performance of their official State duties.

EFFECT OF LAW

The State proposes:

B. Savings Clause

> If any provision of this Agreement shall conflict with any federal or State law or have the effect of eliminating or making the State ineligible for federal funding, that specific provision of this Agreement shall be deemed amended or nullified to conform to such law. The other provisions of the Agreement shall not be affected thereby and shall continue in full force and effect.

The FOP proposes:

Savings:

> In the event any provision of this Agreement shall conflict with any Federal or State law, the appropriate provision or provisions of this Agreement shall be deemed amended or nullified to conform to such law in which event such provision may be renegotiated by the parties.

The difference between the two proposals centers on the phrase added by the State: "…or have the effect of eliminating or making the State ineligible for federal funding…"

The FOP argues that its language was taken directly from the STFA contract as well as the collective negotiations agreement the State entered into with the Deputy Attorney Generals earlier this year. (FOP-24, FOP-19). The FOP contends that it is merely proposing to utilize language the State agreed to with two collective negotiations units that also fall under the purview of the State Attorney General. Based upon the foregoing, this contractual proposal should be awarded without reservation as a matter of practicality.

The State urges the Arbitrator to award the language which includes the challenged phrase. There is no dispute that the Division receives federal funds. The State is not aware of anything in either party's proposal that would jeopardize federal funding. However, the language is intended to be a preventative measure that will only be relevant if a particular term or provision would make the State "ineligible for federal funding." The State is being prudent and reasonable for

proposing the language and the Union is being unreasonable for resisting it.

I award the following:

> In the event that any provision of this Agreement shall conflict with any Federal or State law, or have the effect of eliminating or making the State ineligible for federal funding, the appropriate provision or provisions of this Agreement shall be deemed amended or nullified to conform to such law, in which event such provision may be renegotiated by the parties.

This 'composite' language will give the State its desired protection should some provision cause a loss in federal funding, and yet permit the parties to renegotiate the disputed provision.

COMPLETE AGREEMENT

The FOP proposes the following language:

> A. The State and the Negotiations Unit acknowledge this to be their complete Agreement and that this Agreement incorporates the entire understanding by the parties on all negotiable issues whether or not discussed. The parties hereby waive any right to further negotiations except as specifically agreed upon and except that proposed new rules, or modifications of existing rules, affecting working conditions, shall be presented to the Negotiations Unit and negotiated upon the request of the Negotiations Unit as may be required pursuant to the laws of the State of New Jersey.
>
> B. The State agrees that all mandatory negotiable benefits, terms and conditions of employment relating to the status of Detectives of the Division of Criminal Justice covered by this Agreement shall be maintained at standards existing at the time of the agreement.
>
> C. If, during the term of this Agreement, legislation becomes effective which has the effect of

> improving wages or fringe benefits otherwise available to eligible employees in this unit, this Agreement shall not be construed as a limitation on their eligibility for such improvements.

The State proposes:

> The State and the Bargaining unit acknowledge this to be their complete Agreement and that this Agreement incorporates the entire understanding by the parties on all negotiable issues whether or not discussed. The parties hereby waive any right to further negotiations except as specifically agreed upon and except that proposed new rules, or modifications of existing rules, affecting working conditions, shall be negotiated upon the request of one of the parties as may be required pursuant to the New Jersey Employer-Employee Relations Act (Ch. 303 L. 68 and Ch. 123 L. 74) and as amended.

The FOP maintains that its language is standard language copied from other State law enforcement collective negotiations agreements, to include the STFA. (FOP-24)

Given that the proposal is routine and found in other State law enforcement collective negotiation agreements, the same need not be repeated at length herein. The FOP is seeking to include the same language in its contract as every other State law enforcement unit, this proposal should be awarded in its entirety.

The State argues its proposal and paragraph "A" of the Union's proposal are similar but for one important distinction. The State's proposal provides <u>both</u> parties the mutual right to request negotiation over proposed new rules and modification of existing rules whereas the Union's proposal gives that right exclusively to the Union. The State argues that its proposal

also properly ties the parties' negotiations obligation to the New Jersey Employee-Employer Relations Act, whereas the Union's proposal ties the obligation broadly to the entirety of "the laws of the State of New Jersey."

Further, the State argues that the Union's paragraph "B" appears to be a maintenance of benefits clause but it is vague, ambiguous, and confusing. The clause refers to "standards existing at the time of the agreement" which are "relating to the status of detectives of the Division of Criminal Justice." Nowhere in its proposal does the Union define "status" or "standards" as they are applied in this provision. Nor did the Union proposal any testimony to explain its intent in making this proposal.

The State asserts that the Union's paragraph "C" is likewise vague, amorphous, and ambiguous. The State recognizes that certain benefits referenced in the parties' proposals are governed by Statute rather than the terms of the proposed contract. Without identifying a particular statutory provision, this vague proposal will do nothing but invite confusion and disputes in the future. In essence, the Union wants the awarded contract to have binding effect on the parties unless the unit members would enjoy greater fringe benefits by virtue of legislation. The State contends that, for the foregoing reasons, the Arbitrator should award the State's proposal and reject the Union's proposal, in its entirety.

* * * *

I find that, as to paragraph A, it appears that the State's proposal is more generous to the Union in that it would permit the Union to "propose new rules or modification of existing rules" as required by N.J.S.A. 34:13A. This appears to fly in the face of the concept of the Complete Agreement language. It is the employer who controls work rules which involve terms and conditions of employment, and it is the employer who might seek to change existing practices which would then trigger a bargaining obligation with the union over those elements which impact negotiable terms and condition of employment. The State's language just invites future disputes over the parties' bargaining obligation.

Concerning paragraph B, I believe the State correctly perceives this as a maintenance of benefits clause. I award this provision, which is contained in other State contracts with law enforcement groups, with modification for clarity purposes.

Paragraph C appears to guarantee the Union that any statutory changes in employees terms and conditions of employment will inure to the bargaining unit immediately notwithstanding existing contract language to the contrary. This is the flip side of the State's proposed language concerning statutory changes in benefits being effective immediately. Modeling this provision after the parallel

language in that section, I award modified language. The contract will contain the following provisions:

A. The State and the FOP acknowledge this to be their complete Agreement and that this Agreement incorporates the entire understanding by the parties on all negotiable issues whether or not discussed. The parties hereby waive any right to further negotiations except as specifically agreed upon and except that proposed new rules, or modifications of existing rules, affecting negotiable working conditions, shall be presented to the Union and negotiated upon the request of the Union as may be required pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3.

B. All existing, mandatorily negotiable benefits, and terms and conditions of employment of DCJ detectives covered by this Agreement shall be continued.

C. If, during the term of this Agreement, legislation is enacted which mandates immediate changes in employee's terms and condition of employment, such changes will supersede any conflicting provision of this contract. If legislation is enacted which permit such changes to become effective upon the expiration of any current collective agreement, then the provisions of this contract shall continue in effect.

NEGOTIATION OF SUCCESSOR AGREEMENT

The Union proposes:

D. Collective negotiation meetings shall be held at times and places mutually convenient to the parties. The State agrees to grant the necessary duty time off to Negotiations Unit officers and representatives not to exceed six (6) in number, to attend scheduled negotiation meetings. Said time off shall not be considered "Leave" as defined under Article_____ of this contract.

The State proposes:

> The State agrees to grant the necessary duty time off to Lodge Officers and representatives not to exceed three (3) in number, to attend scheduled negotiation meetings. The State agrees that during working hours, without loss of pay, the designated Lodge Officers shall be allowed to attend negotiation sessions and shall not be required to charge leave time.

The dispute here primarily focuses on the number of individuals that will be permitted to attend contract negotiations sessions without loss of pay. FOP is proposing six individuals and the State is proposing three individuals. The FOP contends that this language is identical to other State law enforcement collective negotiations agreements and is quite telling as to why the request of six members is reasonable and should be awarded.

In the contract between the State and the New Jersey Law Enforcement Supervisors Association (State Correction Sergeants), twelve employees are permitted to attend contract negotiation sessions without loss of pay. (FOP-19) In the contract between the State and the STFA, six employees are permitted to attend contract negotiation sessions without loss of pay. (FOP-24) In the contract between the State and the New Jersey Superior Officers Law Enforcement Association (State Correction Lieutenants), eight employees are permitted to attend contract negotiation sessions without loss of pay. (FOP-19) Every State law enforcement unit has at least six individuals able to attend negotiation sessions. The FOP is merely seeking a comparable benefit.

The State urges that the Arbitrator award its proposal as the Union's request for six paid representatives at negotiations for approximately 136 employees is excessive. As Dee testified, there is a real cost in having people taken away from their jobs in what could be a long process. (3T-148-49) Further, Dee noted that in the recently concluded negotiations for a first contract with the DAG unit, the parties agreed to provide for three union representatives in a unit of 450. In terms of a ratio, the State's proposal here is more than reasonable.

I have considered both party's proposal on this issue. I particularly note that the Union's negotiating committee present during all days of hearing in the interest arbitration consisted of four detectives. I also note that the Division operates from three locations. Therefore, it appears reasonable that the Union be permitted to have four employee representatives present during negotiations. I award the following:

> Collective negotiation meetings shall be held at times and places mutually convenient to the parties. The State agrees to grant the necessary duty time off to Lodge Officers and representatives not to exceed four (4) in number, to attend scheduled negotiation meetings. The State agrees that during working hours, without loss of pay, the designated Lodge Officers shall be allowed to attend negotiation sessions and shall not be required to charge leave time, nor shall Union Leave time be charged. The provisions of this clause shall be retroactive to July 1, 2014.

AWARD SUMMARY

CONTRACT DURATION

July 1, 2014 - June 30, 2019. Unless otherwise specified, all provisions of this contract shall not be retroactive and shall apply beginning December 3, 2014.

SALARY INCREASES

FY 2015:	Effective 10/1/14:	1.75% ATB
FY 2016:	Effective 7/1/15:	1.5% ATB
FY 2017:	Effective 7/1/16:	1.5% ATB
FY 2018:	Effective 7/1/17:	1.5% ATB
FY 2019:	Effective 7/1/18:	1.5% ATB

Step increments will be continue to be paid pursuant to the previously established increment plan for these employees.

CAREER ADVANCEMENT

Effective July 1, 2015, and pursuant to SOP-45, the Division of Criminal Justice shall advance detectives through the salary ranges as shown in the chart on page 73 in steady and orderly fashion provided the employee has performed all of his/her duties in a satisfactory manner.

HOURS OF WORK

Detectives shall be assigned a shift of regular hours which shall be 8 consecutive work hours, 5 days per week. Unless the nature of a duty assignment dictates, otherwise, a State investigator shall take one thirty-minute unpaid meal period during his/her 8-hour shift.

A detective may be scheduled to work at times outside of his/her regular hours, or in addition to, his/her regular hours. Employees will be given as much advance notice as practicable of changes in their scheduled hours of work.

OVERTIME

Employees are compensated pursuant to a 28-day cycle in accordance with N.J.A.C. 4A:6-2.2A (b). Hours worked up to and including 160 hours in a 28-day cycle are paid at straight time. Hours worked between 160 hours and 171 hours in a 28-day cycle shall be compensated with compensatory time off (CTO) at the rate of one (1) CTO hour for every one (1) hour worked. Hours worked over 171 hours in a 28-day cycle shall be compensated at the overtime rate of one and one-half (1 ½) times the employee's regular hourly rate.

COMPENSATORY TIME

There shall be one bank of compensatory time off ("CTO"). Pursuant to the overtime article, employees who work more than 160 hours and up to and including 171 hours in a 28-day cycle, will be credited with comp time on an hour-for-hour basis. Employees may use time accrued in the CTO bank at their discretion, subject to prior employer approval based on operational needs.

OVERNIGHT STAY

An employee who is assigned to an investigation or extradition, or who attends approved training, which causes him/her to stay out of the State overnight shall receive per diem reimbursement for lodging, meals, and expenses consistent with the State Department of the Treasury Travel Regulations. The actual time spent traveling for the above-referenced purposes shall be compensated as required by the federal Fair Labor Standards Act.

CALL-IN TIME

When an employee is called in for duty outside of his/her scheduled work time, or on a day when he/she is not scheduled for duty, the employee shall be guaranteed a minimum of two (2) hours compensation, regardless of the amount of time worked. The guarantee shall not apply when the call-in period is contiguous with the employee's scheduled work time.

A detective's scheduled hours of work are subject to change to meet operational needs. Employees shall be given as much advance notice as practicable of changes in their scheduled hours of work.

SCHEDULE CHANGES

A detective's scheduled hours of work are subject to change to meet operational needs. Employees shall be given as much advance notice as practicable of changes in their scheduled hours of work.

An employee who has been designed by the Employer to serve in an acting capacity as a superior officer shall, upon the end of the 8th bi-weekly pay cycle, be paid at the salary of the title he/she is working. The salary shall be the rate of pay equivalent to a minimum of one (1) step up within the acting title from the employee's current rate. The rate of pay of the higher rank will be effective and payable to the member for service in the higher rank subsequent to the completion of the eight (8) bi-weekly pay periods. Following completion of the eight (8) bi-weekly pay periods, the member shall receive the rate of pay of the higher rank until either promoted or the acting assignment is terminated. Any decision to initiate or terminate any acting assignment shall be within the sole discretion of the Employer and shall not be subject to the grievance procedure.

OUT OF TITLE WORK

An employee who has been designed by the Employer to serve in an acting capacity as a superior officer shall, upon the end of the 8th bi-weekly pay cycle, be paid at the salary of the title he/she is working. The salary shall be the rate of pay equivalent to a minimum of one (1) step up within the acting title from the employee's current rate. The rate of pay of the higher rank will be effective and payable to the member for service in the higher rank subsequent to the completion of the eight (8) bi-weekly pay periods. Following completion of the eight (8) bi-weekly pay periods, the member shall receive the rate of pay of the higher rank until either promoted or the acting assignment is terminated. Any decision to initiate or terminate any acting assignment shall be within the

sole discretion of the Employer and shall not be subject to the grievance procedure.

HOTEL STAY

There may be occasions when a detective is required to work more than twenty-four (24) consecutive hours. In accordance with "Maggie's Law," N.J.S.A. 2C:11-5, detectives who are assigned to work such a shift shall be afforded a hotel/motel room without cost to the employee or driven home at the end of their shift, at the discretion of the supervisor. However, at the conclusion of an eight-hour rest period, the detective will be permitted to return to duty.

HEALTH BENEFITS

3. Any legislative changes regarding post-retirement medical benefits that mandate immediate changes to retiree benefits and/or contribution levels shall supersede the provisions herein. If the legislation provides that such changes go into effect at the expiration of current collective negotiations agreements, such changes shall go into effect for this unit on July 1, 2019.

HEALTH BENEFIT CONTRIBUTIONS

A. In accordance with section 39 of P.L. 2011, c. 78, employees shall contribute, through the withholding from salary or other compensation, toward the cost of health care benefits coverage for the employee and any dependents provided under the State Health Benefits Program. Effective July 1, 2014, employees shall contribute the full amount of contribution as calculated in accordance with section 39 of P.L. 2011, c. 78.

B. Contributions Towards Health and Prescription Benefits

1. If Section 39 of P.L. 2011, Chapter 78 should expire during the term of this collective negotiations agreement, the contributions required pursuant to Section 39 and this Collective Negotiations Agreement shall continue for the

duration of this agreement unless the Legislature specifically enacts different employee contribution levels for the State Health Benefits Program, which shall then govern.

EYE CARE

1. It is agreed that the State shall continue the Eye Care Program during the period of this Contract. Included are All eligible full-time employees and their eligible dependents (spouse and unmarried children under 26 years of age who live with the employee in a regular parent-child relationship) are covered under this program. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

2. Eligible employees and eligible dependents as defined above shall be eligible for a maximum payment of $35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist during a two-year period.

3. Eligible employees and eligible dependent as defined above shall be eligible for a maximum payment of $40 for single vision eyeglasses or $45 for bifocal or complex lenses during a two-year period.

HEALTH BENEFIT ARBITRABILITY

E. The provisions of Sections (A.1-3), (B), (C) and (G) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article ____.

RETIREE HEALTH BENEFITS

f. Any legislative changes regarding post-retirement medical benefits that mandate immediate changes to retiree benefits and/or contribution levels shall supersede the provisions herein. If the legislation provides that such changes go into effect at the expiration of current collective negotiations agreements, such changes shall go into effect for this unit on July 1, 2015.

EDUCATIONAL INCENTIVE

Effective July 1, 2015:

1. In order to recognize the achievement of the employee's educational advancements, the State shall provide an annual education incentive payment for employees who attain the following advanced degrees:

Master's - $1,000
PhD/JD - $1,500.

2. To qualify for Educational Incentive pay, all credits and degrees must be from an institution accredited by a nationally recognized accrediting association, such as the Middle States Association of Colleges and Schools.

3. The Educational Incentive payment is an annual lump sum payment, which shall not be added to the base salary.

4. Educational Incentive payments are not cumulative. The employee shall only be entitled to the amount at the highest degree they hold.

5. The Educational Incentive payment shall be made on or before June 30 of each fiscal year. The employee must have attained the degree or the earned requisite credits by July 1 to receive the payment for that fiscal year. If not, the employee shall commence receiving the payment in the next fiscal year.

TUITION REIMBURSEMENT

A. In accordance with N.J.A.C. 4A:6-4.6, employees may be eligible for tuition reimbursement for post-secondary courses (taken at a properly accredited educational institution) which are directly job related and/or necessary to increase such employee's expertise in his or her area of work, as determined by the Chief of Detectives, provided the employee is not being reimbursed for the same course(s) from other sources, such as the L.E.E.P. and/or the V.A.

1. The maximum reimbursement per credit shall be equivalent to the tuition at the State Colleges or the actual tuition, whichever is less.

2. Approved courses shall be taken during off-duty hours.

B. Written application must be made through channels to the Office of Attorney General's Fiscal Office, prior to enrollment in a course of study, stating the basis for the request for reimbursement. Within twenty (20) calendar days, a response will be made in writing as to whether or not the Division will provide reimbursement subject to the availability of funds.

In order to secure reimbursement, the employee must complete the course of study and maintain a course grade of not less than "C" or its equivalent at the undergraduate level, or satisfactory for program completion in graduate study. Written proof of payment of tuition must be submitted to the Division along with a copy of the final grade received.

Tuition reimbursement shall ordinarily not exceed twelve (12) credits per year.

E. The operation of this program is subject to the availability of funds.

DUTY OFFICER/UNIT PHONE MONITOR

B. An detective who is assigned to be a duty officer or unit phone monitor shall be paid $35 per day for such assignment. Payment will be made within 30 days of completion of the period of continuous assignment.

VACATION LEAVE

Vacation leave should be taken during the calendar year in which it is earned. A detective may request, in written memorandum form, that he/she be granted vacation carryover into the next year in cases where his/her workload would not permit a normal vacation schedule. This request shall be forwarded through, and approved by, the appropriate Chain of Command to the Chief of Detectives. At the direction of, and with the written authorization of the Attorney General, the Director, Division of Criminal Justice, or designee, vacation carryover into the next calendar year may be authorized up to the total number of unused vacation days earned in the previous year. However, every attempt should be made to reduce carryover to no more than five days unless the

State detective's investigative workload dictates otherwise.

VACATION PAY UPON RETIREMENT

Upon separation from the State or upon retirement, an employee shall be entitled to vacation allowance for the current year prorated upon the number of months worked in the calendar year in which the separation or retirement becomes effective and any vacation leave which may have been carried over from the preceding calendar year.

If a permanent employee dies, having earned vacation credits, a sum of money equal to the compensation figured on his salary rate, at the time of death, shall be calculated and paid to his estate.

SICK LEAVE

Pursuant to N.J.S.A. 11A:6-16 and N.J.A.C. 4A:6-1.3, et seq:

1. Employees will earn sick leave at the rate of one (1) day per month for the first calendar year and will be credited with fifteen (15) days of sick leave each year thereafter.

2. Unused sick leave may be carried over to the next calendar year with no restrictions.

3. Sick leave may be used for:

   g. Illness;

   h. Death of an immediate family member;

   i. Care of a seriously ill member of the employee's immediate family.

4. Proof of Illness

Proof of illness or injury may be required if there is reason to believe that the employee is abusing sick leave, or has been absent on sick leave for five or more consecutive work days, or has been absent on sick leave for an aggregate of more than fifteen (15) days in a 12 month period.

SICK LEAVE CASHOUT UPON RETIREMENT

Eligibility for supplemental compensation on retirement is set forth in N.J.S.A. 11A:6-16 and N.J.A.C. 4A:6-3.1 *et seq.* Upon retirement, an employee shall be entitled to the cash payment calculated at the rate of one (1) day's pay for each two (2) days of unused accumulated sick leave, not to exceed fifteen thousand ($15,000) dollars. The rate of payment shall be calculated based upon the average annual compensation received during the last year of his/her retirement. The payment shall be made in a lump sum within ninety (90) days of retirement. To the extent legislation is passed during the term of this agreement which mandates an immediate amendment to the supplemental compensation provisions herein, members of the unit shall be subject to those legislative changes in accordance with that legislation.

ADMINISTRATIVE LEAVE

3. Detectives will be permitted to take three days of annual leave in each calendar year for personal business, including emergencies and religious observances. The detectives request for the use of administrative leave time shall indicate whether the basis of the request is due to an emergency, the observance of a religious holiday, or to attend to personal matters. The request must be approved by the DCJ Chief of Staff or his/her designee and shall not be unreasonably denied.

4. Consistent with N.J.A.C. 4A:6-1.9, priority in granting such requests shall be (1) emergencies, (2) religious holidays (3) personal matters.

5. There is no accumulation, carry forward, or lump sum reimbursement for unused administrative leave.

ILLNESS OR INJURY ON DUTY

A. Injury or illness incurred while the employee is acting in any law enforcement activity in the line of duty shall be covered by the State's Workmen's Compensation Plan.

B. In the event a dispute arises as to whether an absence shall be designated as an injury on duty, (as outlined in Section A), the parties agree to be bound

by the decision of an appropriate Workmen's Compensation Judgment or, if there is an appeal therefrom, the final decision of the last reviewing court.

LEAVES OF ABSESNCE

Consistent with N.J.A.C. 4A:6-1.10, detectives may apply for an unpaid leave of absence by submitting a request through the chain of command to the Chief of Investigators. The application shall include the reason for the proposed leave and the proposed duration. The decision with regard to the granting or denial of requests for leave of absence under this Article shall lie exclusively with the Attorney General or his/her designee. Absent exceptional circumstances, such leaves of absence shall not extend beyond one year.

HOLIDAYS

2. The statutorily prescribed holidays, including any subsequent amendments thereto, shall be the holidays recognized for purposes of this Agreement.

3. If an employee is required to work on one of the aforementioned holidays, the employee shall be compensated at the rate of one and a half times the normal rate of pay.

UNION LEAVE TIME

1. Members of the Executive Board, or designees of the Lodge 91, shall be granted a total of 24 days per year paid leave effective July 1, 2014, not to be deducted from their contractual leave time, to pursue the affairs of Lodge 91. In addition, 12 days per year leave without pay shall be granted.

2. The allocation of such leave among the members of the Executive Board or their designees shall be determined solely by Lodge 91.

3. Union leave days which are not utilized in one contract year may not be carried forward for use in the next contract year.

4. Application for the use of such leave on behalf of members of the Executive Board or their designee shall be

made in writing ten calendar days in advance by the Lodge President to the Office of Employee Relations.

5. Timely requests for such leave will be approved based upon the condition that the employee's absence will not cause undue hardship or the inability of the work unit to function effectively.

TRAINING AND CONTINUING EDUCATION

1. The State will allow Division of Criminal Justice detectives to attend and successfully complete the necessary continuing professional education credits, in a timely manner, so they may keep their professional status in good standing with the issuing agency or entity.

2. The State will permit Division of Criminal Justice detectives time off with pay to attend these training programs.

3. Continuing education courses related to required professional certification, which are a direct requirement of the employee's current job responsibilities, may be considered for reimbursement if funds are available. Reimbursement amounts will be consistent with the established tuition policy.

4. Selection of the continuing professional programs shall be made as to comply with the required regulations of the issuing agency. Selection of the individual training course will be at the discretion of the license holder but subject to the approval of the Division. Any program selected under this section must earn the licensee continuing training hours/credits to be eligible for reimbursement or direct payment.

CLOTHING/EQUIPMENT ALLOWANCE

Effective January 1, 2015, an allowance for clothing and equipment shall be paid to each eligible detective at the rate of three hundred dollars ($300) annually, which shall be paid in a lump sum commencing with the first pay period of each calendar year. Detectives will be expected to maintain and update their own uniform as needed. The State will no longer be required to replace damaged or worn uniform components.

SHIFTS IN EXCESS OF 24 HOURS

There may be occasions when a detective is required to work more than twenty-four (24) consecutive hours. In accordance with "Maggie's Law," N.J.S.A. 2C:11-5, detectives who are assigned to work such a shift shall be afforded a hotel/motel room without cost to the employee or driven home at the end of their shift, at the discretion of the supervisor. However, at the conclusion of an eight-hour rest period, the detective will be permitted to return to duty.

NEGOTIATIONS UNIT RIGHTS

Union Access

1. Where a problem occurs which is of such consequence as to suggest the need for a higher than institutional level Negotiations Unit representative, a request to permit the Negotiations Unit President or his designee access to the location of the problem may be directed in writing to the Office of Employee Relations for approval. A decision and any conditions imposed by the Office of Employee Relations shall be final. Approval of such requests shall not be unreasonably withheld.

Intranet

5. Each department/agency of the State that employs members of the Negotiations Unit may, in its discretion, provide Negotiations Unit representatives with access to an intranet page that shall serve as an electronic bulletin board to be used exclusively by the Negotiations Unit. Use of this intranet page shall be subject to all restrictions and requirements under this section.

Telephone

To the extent possible, the State will permit the Union to have a dedicated telephone line in the DCJ offices in Whippany, Hughes Justice Complex, and Cherry Hill. The Union will pay for the cost of line installation, the telephone instrument and any on-going charges to maintain the line.

DISCIPLINE

A. Discipline under this Article means official written reprimand, fine, suspension without pay, based upon the personal conduct or performance of the

involved employee. As they are major discipline, dismissals from service, suspensions exceeding five (5) days, and reductions in grade (demotions) either for discipline, layoff or for operational changes shall not be grievable or arbitrable.

B. Just cause for minor discipline up to five days suspension shall include those causes set forth in N.J.A.C. 4A:2-2.3. The list of causes set forth in N.J.A.C. 4A:2-2.3 is not exclusive and discipline up to and including dismissal from service may be made for any other combination of circumstances amounting to just cause.

C. Where the Division imposes discipline pursuant to paragraph B., written notice - "Preliminary Notice of Discipline" - of such discipline shall be given to the employee. Such notice shall contain a reasonable specification of the nature of the charge, a general description of the alleged acts and/or conduct upon which the charge is based and the nature of the discipline.

D. The name of any employee who is notified of suspension or dismissal pursuant to paragraph C. shall be transmitted to the Negotiations Unit as soon as feasible but not to exceed seventy-two (72) hours after such notice.

Any appeal, except for departmental hearings (see below), relating to the involved disciplinary matter must be filed by the employee within fifteen (15) calendar days of the notice of discipline to the employee, and the employee must indicate within the notice of appeal if he will exercise his right to a Departmental Disciplinary Hearing.

The employee may be represented at such hearing by a Negotiations Unit representative in the same work unit and/or legal counsel. The employee shall have the right to present evidence and witnesses at such hearing as well as cross-examine any witnesses or evidence presented by the State.

The circumstances surrounding a discipline case may suggest that the Negotiations Unit President or a member of the Unit's Executive Board has a particular need to assist in the presentation at the hearing. He/she may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied.

[E. Not awarded]

Arbitration

F. An appeal to disciplinary arbitration may be brought only by the Negotiations Unit through its President or designee or attorney.

G. Within thirty (30) days of the execution of this Agreement, the parties shall mutually agree upon a panel of not less than three (3) disciplinary arbitrators. Each member of the panel shall serve in turn as the sole arbitrator for a given case. Where a member of the panel is unable to serve, the next member in sequence shall then serve. In the event the parties are unable to agree upon a panel of arbitrators within thirty (30) days, arbitrators shall be selected, on a case-by-case basis under the selection procedure of the Public Employment Relations Commission, until such time as the parties agree upon a panel. The disciplinary arbitrator shall hold a hearing at a time and place mutually convenient to the parties as soon as possible after the request for arbitration. The arbitrator shall issue a decision as soon as possible, preferably within thirty (30) days after the hearing is closed.

H. Arbitrators in disciplinary matters shall confine themselves to determinations of guilt or innocence and the appropriateness of penalties and shall neither add to, subtract from, nor modify any of the provisions of this Agreement by any decision. In the event the arbitrator's decision finds the employee innocent or modifies a penalty, he/she may reinstate the employee with back pay for all or part of a period of suspension. The arbitrator may consider any period of suspension served in suggesting the penalty to be imposed.

Should the arbitrator's recommendation suggest reduction of the suspension with back pay for all or part of a period of suspension, the employee may be paid for the hours he would have worked in his normally scheduled work week, at his normal rate of pay, but not exceeding forty (40) hours per week or eight (8) hours per day, less any deductions required by law or other offsetting income, for the back pay period suggested by the arbitrator.

The arbitrator's decision shall contain a short statement of the nature of the proceedings, the positions of the parties and specific findings and conclusions on the facts.

In addition, the arbitrator's recommendation shall discuss the testimony, evidence or positions of the parties which merits special analysis.

I. General Provisions

5. All disciplinary charges shall be brought within forty-five (45) days of the Division becoming aware or when the Division should have reasonably been aware of the offense. In the absence of the institution of the charge within the 45 day time period, the charge shall be dismissed with prejudice.

6. In the event a a disciplinary action is initiated, the employee or his/her representative shall be provided with copies of all written documents, reports, or statements which will be used against him/her and a list of all known witnesses who may testify against him/her, which, will be provided not less than ten (10) days, exclusive of weekends, prior to any departmental hearing date.

7. Nothing in this Article of Agreement shall be construed to limit the right of the State to implement any disciplinary charges notwithstanding the pendency of any appeal proceeding.

Where a fine is imposed as a disciplinary measure and the matter is appealed within the disciplinary procedure provided in this Agreement and where the fine is one hundred dollars ($100.00) or more, the enforcement of the fine will be withheld upon request of the employee being fined pending hearings and final disposition of the appeal as provided herein, provided the employee continues in his employment with the State.

(not awarded)

K. Nothing in this Article shall be construed as a waiver of any rights any employee may have under New Jersey Statutes or Administrative Rules and Regulations.

L. (not awarded)

M. (not awarded)

N. Departmental Hearing

1. If an employee chooses a departmental hearing, he/she must request a Hearing within five (5) days of receipt of the "Preliminary Notice of Discipline." The request must be in writing to the issuing Division in the Department with a copy to the appropriate FOP 91 representative.

2. Within thirty (30) days of the hearing request, (or such other time as the parties agree), a hearing will be conducted.

3. The Office of the Attorney General will assign a Hearing Officer who will hear the evidence and issue a report. The burden of proof to establish cause for discipline shall rest with the Department. Employees shall be entitled to Lodge representation which may be a Lodge official, attorney or consultant, in the Lodge's discretion.

4. Within ten (10) calendar days the Hearing Officer shall issue a report that will:

1. Identify the date of and participants in the hearing;
7. Specify the charges;
8. Summarize the documentary evidence presented;
9. Summarize the testimony presented;
10. State the hearing officer's finding of facts and conclusions, including any decisions concerning the credibility of witnesses; and
11. Make recommended findings as to whether the charges have been sustained and recommendations as to penalty.

Where the legal issues presented are significant, the hearing officer may recommend that the Attorney General review the report and render the decision.

5. The hearing officer will submit the report to the Attorney General, the Division Director or designee, the employee involved and the Lodge.

6. The Attorney General or designee will review the Hearing Officer's Report and within twenty (20) calendar days of the hearing will issue a "Final Departmental express written consent of the Lodge.

7. The Final Departmental Decision may adopt, reject or modify the hearing officer's recommended factual findings and recommendations as to penalty.

8. The Attorney General or designee will execute a Final Notice of Disciplinary Action. The Final Notice of Discipline will specify the charge, the penalty, the date of discipline.

GRIEVANCE PROCEDURE

J. Grievance Definition

1. A "Contractual Grievance" is a claimed breach, misinterpretation or improper application of the express terms of this Agreement.

2. A "Non-Contractual Grievance" is a claimed violation, misinterpretation or misapplication of standard operating procedures rules or regulations, or existing policies, administrative decisions, letters or memoranda of agreement, or laws applicable to the agency or department which employs the grievant affecting the terms and conditions of employment and which are not included in A.1 above.

B. Purpose

The purpose of this procedure is to assure prompt and equitable solutions of problems arising from the administration of this Agreement, or other conditions of employment by providing the exclusive vehicle for the settlement of employee grievances.

1. Nothing in this Agreement shall be construed as compelling the submission of a grievance to arbitration. The Lodge's decision to request the movement of any grievance at any step or to terminate the grievance at any step shall be final as to the interests of the grievant and the Lodge.

2. Where an individual grievant initiates a Grievance, such Grievances shall only be filed by and processed through the Lodge representation, unless the Negotiations Unit provides specific permission to the contrary.

C. Scope of Grievance Procedure

1. It is understood by the parties that this grievance procedure represents the exclusive process

for the resolution of disputed matters arising out of the grievances as defined above, except for those specific matters listed below:

(a). Appeals of matters in dispute within the jurisdiction of the Civil Service Commission shall be made directly to the Civil Service Commission subsequent to proper notification to the responsible local management officials. Such matters include but may not be limited to the following subjects:

i. Out-of-title work

ii. Position classification and re-evaluation

2. A claim of improper and unjust discipline against an employee shall be processed in accordance with the Discipline provisions of the contract.

3. Reference by name or title or otherwise in this Agreement to laws, rules, regulations, formal policies or orders of the State, shall not be construed as bringing any allegation concerning the interpretation or application of such matters within the scope of arbitrability as set forth in this Agreement.

D. General Rules and Procedure

1. Where the subject of a grievance, or its emergent nature, suggests it is appropriate, and where the parties mutually agree, such grievance may be initiated at or moved to any step of the procedure without hearing at a lower step.

Where the Lodge requests a grievance be initiated at Step Two or beyond based on a claim of emergency wherein the normal processing of the grievance would prejudice the effective relief sought or the substantive rights of the grievant and, if such request is denied by the agency of the State involved, the Lodge may seek an expedited determination by the Office of Employee Relations of the appropriate step to initiate such grievance.

2. Where a grievance directly concerns and is shared by more than one grievant, such group grievance may properly be initiated at the first level of supervision common to the several grievants, with the mutual consent of the parties as to the appropriate

step. The presentation of such group grievance will be by the appropriate Negotiations Unit representative(s) and one of the affected grievants designated by the Lodge. A group grievance may be initiated only by the Lodge.

3. Any member of the collective negotiations unit may orally present and discuss a complaint with his/her immediate supervisor on an informal basis but shall not expand the time limits for filing a formal grievance unless mutually agreed in writing.

4. In the event that the grievance has not been satisfactorily resolved on an informal basis, then an appeal may be made on the grievance form specified below.

5. All formal grievances shall be presented in writing to the designated representative of the party against whom it is made on "Grievance Forms" to be provided by the State. Such forms shall make adequate provision for the representative of each of the parties hereto to maintain a written record of all action taken in handling and disposing of the grievance at each step of the Grievance Procedure. The form shall contain a general description of the relevant facts from which the grievance derives and references to the sections of the Agreement, which the grievant claims to have been violated. The grievance form must be completed in its entirety. A group grievance initiated by the Lodge may be presented on the above form, or where appropriate, in another format provided that the grievance is fully set forth in writing and contains all the information required on the official Grievance Form.

6. When a grievance is initiated, the original Grievance Forms shall be forwarded to the Personnel Officer of the appropriate operating agency. After the grievance is resolved copies shall be distributed as designated on the Grievance Form.

A copy of the decision of the State at each step shall be provided to the Lodge representative involved.

F. Grievance Time Limits and Management Response

1. A grievance must be filed initially within

fifteen (15) calendar days from the date on which the act which is the subject of the grievance occurred or fifteen (15) calendar days from the date on which the grievant should reasonably have known of its occurrence.

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

3. Step One hearings shall be scheduled within ten (10) calendar days of the initial receipt of the grievance. The State's decision shall be issued in writing to the grievant and to the Lodge representative within ten (10) days following conclusion of the Step One hearing.

4. The Lodge shall have ten (10) calendar days from the date the Step One Decision is issued to appeal the grievance to Step Two. A Step Two hearing shall be scheduled within fifteen (15) calendar days from the date of the appeal of the Step One decision. The State's decision shall be issued in writing to the grievant and to the Lodge representative within fourteen (14) calendar days following conclusion of the Step Two hearing.

5. Should a grievance not be satisfactorily resolved, or should the State not respond within the prescribed time periods, either after initial receipt of the grievance or after a hearing, the grievance may be appealed within ten (10) calendar days to the next step. The lack of response by the State within the prescribed time periods, unless time limits have been extended by mutual agreement, should be construed as a negative response.

6. When a grievance decision is rendered the decision shall contain a notice informing the Lodge of the name and position of the next higher level of management to whom the appeal should be presented.

7. Time limits under this Article may be extended in writing by mutual agreement and requests for extensions of time limits will not be unreasonably denied.

8. If, at any step in the grievance procedure, the State's decision is not appealed within the appropriate prescribed time, such grievance will be considered closed and there shall be no further appeal or review.

9. No adjustment of any grievance shall impose retroactivity beyond the date on which the grievance was initiated or the fifteen (15) day period provided in E.1. above except that payroll errors and related matters shall be corrected to date of error within any applicable statute of limitations.

H. Grievance Steps and Parties Therein

Grievances shall be presented and adjusted in accordance with the following procedures:

Step One

If the grievance is not satisfactorily disposed of informally, it may be filed with the Chief of Staff of the Division of Criminal Justice or designee. The State representative or his/her designee shall hear the grievance, witnesses may be heard and pertinent records received. The grievant may be represented by a Lodge officer or fellow Negotiations Unit employee at the institution or office involved. The circumstances surrounding a grievance may suggest that the Lodge President or a member of the Lodge's Executive Board has a particular need to assist in the presentation of the grievance at Step One. He may make a request to do so to the Office of Employee Relations. Such request shall not be unreasonably denied.

Step Two

If the grievance is not satisfactorily disposed of at Step One, it may be appealed to the Office of the Attorney General which shall appoint a person to hear the appeal who shall not be a person who was directly involved in the grievance. The appeal shall be accompanied by the decisions at the preceding level and any written record that has not been made part of the preceding hearings.

The grievant must be represented by the Negotiations Unit President or his designee. The Lodge may

designate an alternate non-employee representative.

If the decision involves a "Non-contractual Grievance", the decision of the Office of the Attorney General's designee shall be final and a copy of such decision shall be sent to the Lodge.

Step Three Arbitration

1. In the event that a "Contractual Grievance" as defined in A.1 has not been satisfactorily resolved at Step Two, then a request for arbitration may be brought by the Lodge or Lodge designee only within fifteen (15) calendar days from the day the Lodge received the Step Two decision. The written request must be by mailed to the Director of the Office of Employee Relations. If mutually agreed, a pre-arbitration conference may be scheduled to frame the issue or issues. All communications concerning appeals and decisions at this Step shall be made in writing. A request for arbitration shall contain the names of the department or agency and employee involved copies of the original grievance, appeal documents and written decisions rendered at the lower steps of the grievance procedure.

2. Within sixty (60) days of the execution of this Agreement, the parties shall mutually agree upon a panel of three (3) Arbitrators. Panel Arbitrators will be paid their normal daily rates. Each member of the panel shall serve in turn. If a member of the panel is unable to serve the next member in sequence shall then serve.

3. The arbitrator shall confine his/her decision solely to the interpretation and application of this Agreement. The arbitrator shall confine her/himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted, nor shall she/he submit observations or declaration of opinions which are not relevant in reaching the determination. The decision or award of the arbitrator shall be final and binding consistent with applicable law and this Agreement. In no event shall the same question or issue be the subject of arbitration more than once. The arbitrator may prescribe an appropriate back pay

remedy when she/he finds a violation of this Agreement, provided such remedy is permitted by law and is consistent with the terms of this Agreement. The arbitrator shall have no authority to prescribe a monetary award as a penalty for a violation of this Agreement. The fees and expenses of the arbitrator shall be divided equally between the parties. Any other cost of this proceeding shall be borne by the party incurring the cost. Any party ordering a transcript shall bear the cost of the transcript, however, if both parties want a copy of the transcript, the cost of the transcript, including any attendance fee, shall be shared equally between the parties. Further, the cost of any transcript, including any attendance fee (or copy of any transcript), requested by the Arbitrator, shall be shared equally between the parties.

4. The arbitrator shall hold the hearing at a time and place convenient to the parties as soon as practical after of her/his appointment to act as arbitrator, and shall issue her/his decision within thirty (30) days after the close of the hearing.

5. Whenever a grievance which is to be resolved at Step Three, Arbitration, is based on a provision of this Agreement in which the power or authority of the arbitrator is specifically limited, those limits shall be observed and the provisions of paragraph three (3) above shall be operable.

PROMOTIONS

A. A promoted candidate and the Lodge shall receive a written notification of the promotion which will include the new rank, rate of pay, effective date and start date. Within ten (10) days of the effective date, the employee shall assume the vacant position for which the promotion was announced, subject to overriding operational requirements.

TRANSFERS

A. No employee shall be transferred on less than ten (10) days' notice to the employee of the proposed transfer, but this specific requirement does not apply to emergency assignments.

B. Arbitration of the provisions of this clause is limited to the procedural aspects only with the exception of when it is alleged that a transfer was made for disciplinary reasons.

E. Employees shall be permitted to request a transfer by submitting a request to the Chief of Staff or his designee stating the reasons for the transfer request.

OUTSIDE EMPLOYMENT

A. An employee serving in the title of Detective may engage in outside employment with prior approval from the Chief.

B. An employee serving in the title of Detective desiring to engage in outside employment shall request permission in writing from the Chief of Detectives. Approval or disapproval of such requests shall be transmitted within fourteen (14) calendar days thereafter.

C. It is understood that outside employment shall in no way interfere with the efficient operation of the Division of Criminal Justice and the absolute priority of the Detective's responsibility to assignments in his/her work as a Detective.

D. Any grievance under this Article shall be submitted directly to the Chief of Detectives, but shall not be subject to the grievance arbitration procedures

RETIREMENT CREDENTIALS

The Division of Criminal Justice shall provide identification cards for retired Detectives, in compliance with Federal Public Law 108-277, the "Law Enforcement Officers' Safety Act."

PERSONNEL PRACTICES

A. To the extent information is available to the Division, it will provide such information concerning degree and certification programs offered through the State colleges and to which DCJ detectives might be eligible for tuition aid, to all employees in electronic format.

B. The State agrees to make information concerning employee health benefits accessible to all employees in electronic format.

ACCESS TO PERSONNEL FILES

C. An employee may request the correction or expungement of information in the file where there are pertinent and substantive inaccuracies. Such request will be evaluated in relation to the State's needs for comprehensive and complete records but shall not be unreasonably denied when the inaccuracies can be satisfactorily documented by the employee.

LABOR MANAGEMENT COMMITTEE

A. A committee consisting of the Employer's representatives and FOP Lodge 91's representatives shall be established for the purpose of reviewing the administration of this Agreement and discussing problems which may arise.

B. Said committee may meet quarterly or whenever the parties mutually deem it necessary. These meetings are not intended to by-pass the grievance procedure or to be considered contract negotiation meetings but are intended as a means of fostering a good employment relations through communications between the parties.

C. Either party may request a meeting and shall submit a written agenda of topics to be discussed seven (7) days prior to such meeting.

D. A maximum of three (3) members of FOP Lodge 91 may attend such meetings and, if on duty, shall be granted time off to attend not to be deducted from the Union Leave time provided in Article_____.

DUTY TO DEFEND AND INDEMNIFY

Pursuant to N.J.S.A. 59:10A-1 through 59:10A-6, the Tort Claims Act, all employees covered by this Agreement shall be entitled to defense and indemnification by the State against liability claims or judgments arising out of the performance of their official State duties.

EFFECT OF LAW

Savings

In the event that any provision of this Agreement shall conflict with any Federal or State law, or have the effect of eliminating or making the State ineligible for federal funding, the appropriate provision or provisions of this Agreement shall be deemed amended or nullified to conform to such law, in which event such provision may be renegotiated by the parties.

COMPLETE AGREEMENT

A. The State and the FOP acknowledge this to be their complete Agreement and that this Agreement incorporates the entire understanding by the parties on all negotiable issues whether or not discussed. The parties hereby waive any right to further negotiations except as specifically agreed upon and except that proposed new rules, or modifications of existing rules, affecting negotiable working conditions, shall be presented to the Union and negotiated upon the request of the Union as may be required pursuant to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3.

B. All existing, mandatorily negotiable benefits, and terms and conditions of employment of DCJ detectives covered by this Agreement shall be continued.

C. If, during the term of this Agreement, legislation is enacted which mandates immediate changes in employee's terms and condition of employment, such changes will supersede any conflicting provision of this contract. If legislation is enacted which permit such changes to become effective upon the expiration of any current collective agreement, then the provisions of this contract shall continue in effect.

SUCCESSOR NEGOTIATIONS

Collective negotiation meetings shall be held at times and places mutually convenient to the parties. The State agrees to grant the necessary duty time off to Lodge Officers and representatives not to exceed four (4) in number, to attend scheduled negotiation meetings. The State agrees that during working hours, without loss of pay, the designated Lodge Officers shall be allowed to attend negotiation sessions and shall not be required to charge leave time, nor shall

Union Leave time be charged. The provisions of this clause shall be retroactive to July 1, 2014.

All proposals not awarded herein are denied.

COST OF THE AWARD

Cost of the Award				
Year	**Increment [27]**	**ATB**	**Advancements [28]**	**Totals**
FY15	108,308.86	137,766	0.00	246,074.86
FY16	175,761.43	162,440	12,618.96	350,820.39
FY17	148,800.33	165,341	2,359.00	316,500.33
FY18	110,617.25	167,343	9,436.00	287,396.25
FY19	102,930.78	169,215	9,436.00	281,581.78
Total	**646,418.65**	**802,105**	**33,849.96**	**1,482,373.61**

Susan W Osborn
SUSAN W. OSBORN
Interest Arbitrator

Dated: December 3, 2014
Trenton, New Jersey

On this 3rd day of December, 2014, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton-Browning

PAMELA JEAN SUTTON-BROWNING
ID # 2424173
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 20, 2017

[27] Includes the cost of step movement and cost of moving employees from trainee rate to Det. II rate. Increment costs were calculated using S-11 submitted at hearing on October 30, 2014. On November 14, after the record closed the State submitted a "corrected copy" of S-11 with updated data. However, this document could not be accepted as the record was already closed.

[28] Cost of moving employees from the Det. II range to the Det. I range effective July 1, 2015