

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between

STATE OF NEW JERSEY
 "the State or Employer"

and

**NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION**
 "the Association or Union"

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**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No: IA-2001-35

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Beth A. Hinsdale, Esq.
Of Counsel
David S. Fish, Esq.
On the Brief
Grotta, Glassman & Hoffman

FOR THE PBA:

Richard D. Fornaro, Esq.
Of Counsel & On the Brief
Kusnerik & Fornaro

Background & Procedural History

The State of New Jersey ("State") and the New Jersey Law Enforcement Supervisors Association (the "Union" or "Association") are parties to a collective bargaining agreement (the "CBA") which expired on June 30, 1999. The New Jersey Law Enforcement Supervisors Association represents all primary level supervisors employed by the Department of Corrections.

The bargaining unit includes approximately 550 Sergeants assigned to the Department of Corrections and the Juvenile Justice Commission. The Sergeants serve in positions involving custody of inmates. I shall refer to this group as "the Sergeants".

The bargaining unit also includes 84 primary level supervisors serving in titles such as Chief Ranger II; Chief Ranger I; Conservation Officer II; Police Sergeant; Human Services; Principal Marine Police Officer; Assistant District Parole Supervisor; Assistant District Parole Supervisor, Juvenile Justice Commission; Police Sergeant, Health Care Facility; Police Sergeant PIP; Principal Inspector PIP; Principal Inspector ABC; Sergeant Campus Police; Special Agent I, Supervising Interstate Escort Officer and Supervisor Parole Residential Facility. I shall refer to this group as the 'K Unit'.

Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the parties mutually filed a petition with the New Jersey Public Employment Relations Commission ("PERC") on December 21, 2000 requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on August 16, 2001 from its Special Panel of Interest Arbitrators.

I met with the parties in a voluntary mediation session on November 8, 2001. The mediation session did not resolve the issues included in the impasse. Formal interest

arbitration proceedings were invoked and hearings were conducted on January 9, 2002, January 10, 2002, March 19, 2002 and April 9, 2002 when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs. The hearing was declared closed on July 24, 2002 upon receipt of the briefs. The parties agreed to extend the time for the issuance of the award to November 15, 2002.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f (5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree upon an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

(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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 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 municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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.

FINAL OFFERS OF THE PARTIES

New Jersey Law Enforcement Supervisors Association

1. **Term of Contract:** July 1, 1999 through June 30, 2003.
2. **Wages:**

	<u>Base</u>
7/1/99	4%
7/1/00	4%
7/1/01	4%
7/1/02	4%
3. **Salary compensation Plan & Program, Art. XIII B. Compensation Adjustment, Subparagraph 3:**
 - A. \$50 payment for prescription eyeglasses.
 - B. \$75 payment for bifocals.
4. **Salary Compensation Plan & Program, Art. XIII C., Travel Reimbursement, Subparagraph 4:**
 - A. \$0.27 per mile.
5. **Leave for Association Activity, Art. XXV A.:**

Two hundred (200) days annually of leave for Association activity, with appearance days before the New Jersey Office of Administrative Law not being charged against the two hundred (200) day allotment.
6. **Leave for Association Activity, Art. XXV A.:**

The Association requests that a Convention Leave provision be established providing for two hundred sixty (260) days annually of leave for Association convention leave.
7. **Hours of Work, Art. XXVI H.:**

Corrections Sergeants shall be employed on a normal work schedule of eight (8) hours and twenty (20) minutes per day, equaling forty-one (41) hours and

forty (40) minutes per five (5) day week, the additional twenty (20) minutes per day being compensated at overtime/premium rates.

8. Health Insurance, Art. XXXVI A.:

The New Jersey Law Enforcement Supervisors Association, Inc. takes the position that the bargaining unit should not be segregated between the Corrections Sergeants and the State Law Enforcement Unit for health benefit purposes, and that no copay for any health plan should be assessed to Association members. The status quo should continue.

9. Uniform Allowance, Art. XXXVII:

State Law Enforcement Unit

a.	January 2000	\$1,485
b.	January 2001	\$1,535
c.	January 2002	\$1,585
d.	January 2003	\$1,635

Corrections Sergeants

a.	Year One - \$1,660	
	July 1, 1999	\$830
	January 1, 2000	\$830
b.	Year Two - \$1,710	
	July 1, 2000	\$855
	January 1, 2001	\$855
c.	Year Three - \$1,760	
	July 1, 2001	\$880
	January 1, 2002	\$880
d.	Year Four - \$1,810	
	July 1, 2002	\$905
	January 1, 2003	\$905

10. Maintenance of Benefits, Art. XLI:

Status quo to be maintained.

11. Salary Compensation Plan & Program, Art. XIII E., Cooperative Effort:

Delete the language in sentence one which reads:

“ . . . particularly during this period of severe fiscal constraints.”

12 Association Rights, Art. VII, B.1, Association Activity with Pay:

Overtime on Hearings Commenced/Completed after Shift. The New Jersey Law Enforcement Supervisors Association, Inc. representatives shall be compensated at premium rates for hearings conducted and/or completed after working hours.

13. Association Rights, Art. VII C:

Association Executive Board members shall be assigned first shift, Saturday and Sunday off.

14. Personnel Practices, Art. IX, B.1 & B.2, Merit System Board Examinations:

Association members shall be afforded professional days for any examinations and/or interviews. Association members shall not be scheduled for promotional/transfer/reassignment interviews on regular days off.

15. Discipline, Art. XI F.:

The following provision is to be incorporated after existing sentence 3:

Failure to convene a hearing within twenty (20) days or render a written decision within twenty (20) days, unless said periods are extended by mutual agreement, shall result in dismissal of the disciplinary charges.

16. Discipline, Art. XI F.:

The following provision is to be incorporated after existing sentence 4:

The Association and/or employee shall have the right to an audio recording of the hearing. The State of New Jersey may obtain a copy of any such audio tape and shall be responsible for payment of any reproduction costs.

17. Discipline, Art. XI, General Provisions, Subsection L(4):

The following provision is to be incorporated after existing sentence 3:

Failure to file disciplinary charges within thirty (30) days of the date of the incident and/or offending conduct shall constitute an absolute bar to discipline.

18. Discipline, Art. XI, General Provisions, Subsection L(5):

Documents and lists of witnesses to be provided by the State of New Jersey not less than fourteen (14) days before the hearing.

19. Discipline, Art. XI, General Provisions, Subsection L(6):

Revise provision to provide that the State of New Jersey may not require employees to serve discipline during pendency of any departmental appeal or appeal to the New Jersey Department of Personnel, Merit System Board.

20. Safety, Art. XXXV, Subsection F:

Provision to be modified to provide that employees shall receive compensated time off on date of injury and all subsequent treatment dates, and if treatment occurs outside normal working hours, premium compensation rates shall apply.

21. Uniform Allowance, Art. XXXVII:

Provision to be modified to provide that the State of New Jersey will replace security vest free of charge, if old vest returned.

22. Claims Adjustment, Art. XLIV:

Provision to be modified to provide that the State of New Jersey will pay loss claims within thirty (30) days of filing of claim.

“The Employer and the Representative acknowledge this to be their complete Agreement and that this Agreement incorporates the entire understanding by the parties.”

The State of New Jersey

1. Term of Contract: July 1, 1999 through June 30, 2003.

2. Wages:¹

Base

7/1/99	2.5%
7/1/00	3.5% (2.0% payable on 7/1/00; 1.5% payable on 1/1/01)
7/1/01	4.0% (2.0% payable on 7/1/01; 2.0% payable on 1/1/02)
7/1/02	4.5% (2.0% payable on 7/1/02; 2.5% payable on 1/1/03)

No wage increase shall be made retroactively

¹ 14.5% increase over the term of the contract equates to a 15.4% compounded increase. (S-37A and B)

3. Uniform Allowance:

Revise Article XXXVII, uniform allowance as follows:

The State agrees to provide a cash payment of \$1,435 on January 1, 2002 and a cash payment of \$1,435 on January 1, 2003 to all employees in the unit who have attained one (1) year of service as of December 31, 2001 and December 1, 2002 with the exception of Correction Sergeants.

Paragraph Two - To remain unchanged.

In exception to the program outlined herein, Correction Sergeants will be granted in lieu of any uniform allowances, cash payments of \$805 in January 2002, \$805 in July 2002 and \$805 in January 2003.

Paragraph Four - To remain unchanged.

4. Health Benefits:

Modify Article XXXVI A. to incorporate the following:

1. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.
2. Effective on the first day of the next open enrollment period, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
3. Effective on the first day of the next open enrollment period, employees who elect coverage in an HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
4. Active employees will be able to use pretax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be deducted from pay.
5. Employees who retire on or after January 1, 2002 will be required to contribute to their health coverage under the same terms as above.

5. Hours of Work:

Eliminate section H of Article XXVI and add the following as the new Section H:

Effective immediately upon the issuance of the Award, Correction Sergeants serving in positions involving custody of inmates shall be employed on a

normal work schedule of eight (8) hours per day (40 hours per five day week). Each officer shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond these normal work schedules.

6. Discipline:

Revise Article XI, Section L(4) as follows:

All disciplinary charges shall be brought within six (6) months of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within six (6) months, the charge shall be considered dismissed. The employee's whole record of employment may be considered with respect to the appropriateness of the penalty to be imposed.

POSITIONS OF THE PARTIES

New Jersey Law Enforcement Supervisors Association

The Union asserts that its salary proposal is consistent with the salary structure that controls the vast majority of employees in the rank-and-file bargaining unit of PBA 105/State Law Enforcement Conference ("SLEC"). The Union asserts that the Mastriani Award established the compensation structure applicable to the comparable rank-and-file state law enforcement unit for the same contract term. The award to SLEC was 16% commencing July 1999 and carrying through to June 2003, with even splits of the increase to base in the middle years. The Union contends that the SLEC award split the bargaining unit, setting the compensation schedule for the non-corrections members at the same as offered by the State in this matter.

The Union strongly opposes any effort to split its membership. The Union notes that the first line supervisor Corrections Sergeants and associated rank equivalents formerly negotiated separately with the State until they were merged. Historically, this bargaining unit has received the same compensation program in all of its contract settlements since the merger established the larger bargaining unit. The Union points out that this is the first time that the State has proposed a differentiated compensation program for Corrections Sergeants and the other supervisory State Law Enforcement personnel.

Robert Cardone, President of the Union, testified that all employees in titles represented in the bargaining unit play an essential role in discharging the public safety function for the State. Each title interacts directly with the public in the ordinary course of duty, and supervise subordinates that interact with members of the public. Assistant District Parole Supervisors oversee the activities of Parole Officers, who deal with individuals residing in the community that are subject to supervision for criminal violations. Chief Rangers within the New Jersey Department of Environmental Protection provide law

enforcement and safety services in state park facilities, and supervise Fish and Game Officers whose activities bring them into regular contact with citizens. Sergeants assigned to state educational facilities are responsible for ensuring public safety at colleges and universities having heavy public access, interact with citizens, staff and students on a daily basis. Campus Police Sergeants oversee Campus Police Officers as they perform their duties at these state facilities. Supervisors in the Human Services Police organization likewise oversee rank-and-file officers at state facilities controlled by the Department of Human Service, and are responsible for the safety of staff, individuals that may be residents at such state facilities and members of the public frequenting the same. The Palisades Interstate Parkway Authority operates a police department to patrol its road and facilities. Sergeants provide supervisory responsibility to patrol officers, overseeing roadway activities and other duties, and interacting with the public in their jurisdiction. Sergeant rank equivalents in the New Jersey Division of Taxation oversee Taxation Agents performing investigations involving businesses and citizens.

Corrections Sergeants provide an essential and critical service related to public safety. Correction Sergeants are responsible for supervision, oversight and coordination of the custody function within all New Jersey correctional facilities. Corrections Sergeants are responsible for the activities of all Corrections Officers. The Union cites the testimony of John Cunningham, a Corrections Sergeant and First Vice President of the Union, that Corrections Sergeants bear primary responsibility to ensure posts are filled at facilities, coordinating vacation and sick day coverages. Sergeants coordinate inmate movements, and may have oversight responsibility for up to 1,000 inmates and 15 Corrections Officer during a movement. Sergeants oversee frisking of inmates to assure the facility is safe for the prisoners and law enforcement officers. Sergeants supervise shop areas and inmate labor

assignments, such as painting, grass cutting and general cleanup. Sergeants monitor housing units, interacting with Corrections Officers under their supervision as well as inmates. Vice President Cunningham testified that Corrections Sergeants and Officers also serve as social workers in resolving matters that may have unsettling effects on a housing unit, and as medical personnel assuring appropriate medical care is directed to the inmates.

President Cardone testified that Corrections Officers also have regular interaction with the public, just like other law enforcement titles in their bargaining unit. Corrections Sergeants are responsible for supervision of Corrections Officers and their inmate details while performing work in the public, such as roadway cleanup or repair details. Corrections Sergeants are enlisted to provide general public safety services, and served a critical role in post September 11, 2002 security efforts at Liberty State Park, Newark International Airport, Fort Dix, Port Newark and the Jacob Javits Center. Sergeants assigned to the Special Operations Group are responsible for transport and supervision of inmates to court appearances. Sergeants assigned to the Transportation Unit are responsible for supervision of public movement of inmates between facilities, and to Municipal and Juvenile court proceedings.

The State of New Jersey presented George Camp as its expert for comparative statistics involving correctional employees in other states and at the federal level. The Union notes that Camp presented only raw data, and offered no opinion as to the compensation structure in New Jersey. Camp noted that New Jersey ranked second highest in average annual compensation for Corrections Sergeants. Camp conceded that no adjustments were made to the information reported in his compendium of statistics to reflect regional economic effects that impact compensation structure. The Union contends that Camp's study revealed that the Federal Bureau of Prison applied a 12.1% adjustment factor for Corrections Sergeants against the overall national salary scale for New Jersey. The Union notes that

Camp stated that he had no opinion about the appropriateness of the salary plan for Corrections Sergeants in New Jersey, and was not able to draw any such conclusions from his study.

The Union cites the testimony of Philip Whitcomb, Esq., Director of the Office of Employee Relations. Director Whitcomb testified that the State Troopers NCO unit was comparable to that of the Corrections Sergeants as to unit size and as to the scope of duty and responsibilities as primary level supervisors. The Union points out that the State Troopers NCO unit attained an economic settlement identical to the one sought by the Union — 16% over four years, with no splits. The Union notes that the State voluntarily abandoned their goal of securing a give back on health benefits. The Union further notes that the State Troopers NCO Maintenance Allowance, the functional equivalent to the Shift Overlap, was not modified. While the State may point to the compensatory time reduction as a give back, the reduction in hours in actuality turns into a pay item. Rather than earning days off through compensatory time, the State Troopers NCOs are now paid the full overtime rate for time that could otherwise be banked.

The Union contends that the State has singled out this bargaining unit in its demand that salary increases not be retroactive. The Union argues that this breaks the pattern established in the PBA 105/SLEC contract and imposes a financial penalty that no other State bargaining unit has suffered. The Union cites Director Whitcomb's testimony that each civilian settlement included retroactive pay to the beginning of the contract term. The Union contends that Whitcomb offered no testimony to support the demand that the salary award not carry any retroactive element. The Union asserts that no pattern in this round of negotiations, nor historical precedent in State negotiations was offered to justify the State's proposal for no retroactivity.

The Union cites the testimony of Charlene Holzbaur, Director of the Office of Management and Budget, concerning the 2003 Fiscal Year Budget and associated financial issues being addressed in achieving its balance. Holzbaur explained that the plan structured by the Governor achieved the goal of financial solvency while funding programs and initiatives established by the Governor as having priority. Holzbaur testified that the goals had been attained in setting the 2003 Fiscal Year budget. Holzbaur projected a \$525,000,000 surplus at the end of Fiscal 2003, an increase of nearly \$25,000,000 over Fiscal Year 2002. The Union notes that the impact of the current contract negotiations was not considered in establishing the Fiscal Year 2003 Budget nor in addressing the economic well-being of the State of New Jersey. Holzbaur testified that salary negotiations and settlements were not items budgeted in Fiscal Years 2001, 2002 and 2003 and that expenses associated with labor contract settlements is addressed instead as a supplemental appropriation.

The Union asserts that its final offer is consistent with comparable bargaining units and generally follows the Mastriani Award in the SLEC matter. The Union contends that as a law enforcement unit, its community of interest for comparative analysis is much more closely aligned with the State Troopers NCO unit and PBA 105/SLEC, than with the civilian units cited by the State. The Union contends that the State has made no substantive contention that resolution of the salary component of this proceeding, consistent with its proposal, will adversely affect the financial well-being of the State.

Shift Overlap

Corrections Sergeants are presently afforded a shift overlap totaling twenty (20) minutes for each shift. The State has proposed that the shift overlap be eliminated. The Union submits that Shift Overlap should be viewed as a term of condition of employment that should be continued, on a modified basis, as an essential tool to assure safety and effective operation of the prisons.

The Union cites the testimony of First Vice President Cunningham that Shift Overlap enables Corrections Sergeants as Shift Supervisors, the time necessary for exchange of information during shift changes and that such information is critical to the performance of supervisory duties. Cunningham pointed out that shift overlap for rank-and-file Corrections Officers was eliminated thus precluding the opportunity for information to be passed to relieving Officers of the same rank. Cunningham testified that as superior officers, Corrections Sergeants have supervisory responsibility over first line custody staff, and have a duty to disseminate all information to Correction Officers under their supervision that would be critical to their tour.

The Union cites the testimony of Willis Morton who it offered as an expert on the Shift Overlap issue. Morton worked in the New Jersey Department of Corrections from 1966, beginning as a Corrections Officer, to October 1999 when he retired as Director of Operations. Morton was promoted to the rank of Sergeant in 1972 at Trenton State Prison, then to Lieutenant in 1976, then to Director of the Administrative Segregation Unit at the Vroom Building in 1980, then to Assistant Superintendent at Trenton State Prison in 1981, then Associate Administrator in 1984, and then to Administrator of Trenton State Prison in 1993. Morton was promoted to Director of Operations overseeing all adult facilities in 1998 until retirement the following year.

As Assistant Superintendent, Associate Administrator and Administrator, Morton held functional responsibility for day-to-day operations of Trenton State Prison. The same responsibility, but on a statewide basis, was assumed by Morton upon promotion to Director of Operations. Morton testified that he employed a hands-on approach, being present in the housing units to facilitate interaction with custody staff, supervisors as well as the inmates.

The Union notes that Morton, drawing on his experience as a Corrections Officer, a Corrections supervisor, and as an Administrator, concluded that the Shift Overlap is essential to effective, safe operations of the prisons. The Union notes that Morton repeatedly emphasized the need for communication between the custody staff. Communication was correlated directly to the safety of Corrections Officers and Corrections supervisors involved in the custody function. Morton explained that inmates are always looking for an edge on the Corrections staff, and that the only defense to what inmates may be planning is good communication between shifts. Observations of unusual behavior or changing patterns of behavior by inmates often signify risks, which information once communicated to following shifts, serves as a tool to intervene before a dangerous incident, adding measurably to the safety of the custody staff.

The Union contends that shift overlap also plays a critical role for the administration of the prisons by affording administrators with the opportunity to talk directly to the custody staff and disseminate information which could not otherwise be accurately or effectively communicated. Administrators likewise would be afforded the opportunity to obtain information from custody staff that may otherwise not have been conveyed. The Union notes Morton's testimony that the opportunity to meet and disseminate information enabled better working relationships to develop between the custody staff and the administration.

Morton testified that Shift Overlap is an appropriate policy for custody staff holding posts to be relieved. Morton stated that he would have advocated the elimination of Shift Overlap for posts that were not relieved by another shift, as there was no functional need for an information exchange and it was not operationally warranted. Morton testified that it remained critical that Corrections Sergeants be afforded overlap to assure that necessary operational information be disseminated. Morton pointed out that Corrections Sergeants are front line custody staff, responsible for supervision of Corrections Officers that have direct

responsibility for the inmates. Corrections Sergeants have broad scopes of assignments, interacting with various housing units or functional operations at the facility, enabling wide dissemination of information gathered at shift change. Lieutenants are removed from the custody function from the standpoint of regular interaction with staff and inmates in the units, and due to the nature of their assignment, could not effectively distribute information to the new shift staff. Morton, drawing on his experience as Director of Operations, testified that his views on Shift Overlap would apply to all correctional facilities.

The Union asserts that the critical nature of the Shift Overlap information exchange was demonstrated by a potentially dangerous development at East Jersey State Prison. Vice President Cunningham testified that when supervising an inmate movement in January 2002, a security check revealed an excessive amount of cash on an inmate. Interrogation determined that a narcotics transaction was to have taken place in the recreation yard. Information was then received from an informant as to the source of the narcotics. As the incident occurred at the end of the shift, Cunningham was required to brief the Sergeant relieving his post at shift change, allowing the incoming shift to be prepared to address any additional issues that may arise involving these inmates. While Cunningham was dealing with the identified inmate, a fight occurred in the recreation yard related to the narcotics transaction, which likewise required an exchange of information between the involved supervisor and his relief during Shift Overlap. The Union cites Cunningham's testimony that elimination of the Shift Overlap would prevent the exchange of information between the primary supervisor Corrections Sergeants. Cunningham explained that it is very likely that at shift change, the Sergeants assigned to the post being relieved would not see each other when entering and leaving the respective institutions.

The Union contends that the State implied, on cross-examination of Cunningham, that accommodating the critical information exchange by Corrections Sergeants through overtime policies handled at the institutional level would be effective. Cunningham testified that this would not serve the critical safety issue noting that overtime for information exchange was being regularly denied for rank-and-file Correction Officers. Cunningham testified that Captains and Lieutenants do not have real contact with the front line custody staff and that Corrections Officers have a limited focus. Cunningham stated that Sergeants, with front line assignments, have much broader responsibilities, encompassing up to 900 inmates in various housing units handled by 30 to 35 Corrections Officers under the direct supervision of the Sergeant.

The Union points to George Camp's testimony that 36% of the jurisdictions solicited used the shift overlap process. The Union asserts that this data confirms that most jurisdictions recognize, consistent with the testimony of Union witnesses, that shift overlap is an effective tool for operation of correctional facilities. The Union contends that the study conducted by Camp may actually understate the number of jurisdictions that use some program to allow corrections staff to engage in information exchange. Camp testified that his study employed the actual term "shift overlap". The concept was not described by the person conducting the study. The concept of "Prep Time" which can be used interchangeably with Shift Overlap, never worked its way into the information gathering process. Jurisdictions may allow corrections staff to report early, rather than stay 20 minutes after their shift, to facilitate information exchange before relief of the staff then on duty. The Union contends that Camp should have taken steps to be certain that all periods made available for corrections staff to exchange information found its way into his report. The Union notes that no opinion was offered by Camp about whether shift overlap is appropriate for New Jersey correctional facilities.

The Union disputes the testimony of Scott Faunce, Deputy Commissioner, New Jersey Department of Corrections, that shift overlap was unnecessary. Faunce, in his career with the Department of Corrections, served as a Corrections Officer, an Investigator, Assistant Superintendent, Administrator of the Hudson County Correctional Facility, and Administrator of Bayside State Prison. Faunce testified that any information that needed to be conveyed between Corrections Sergeants at the time of relief, could be accomplished as effectively by leaving notes on daily developments instead of face-to-face discussions by the Sergeants. Faunce noted that the shift overlap had been eliminated for Corrections Officers in 2000. The Union notes that Faunce cited a new memo writing protocol coupled with staggered shifts for the Housing Unit officers as effective at Bayside State Prison. However, Faunce notes that overlap available to the Lieutenants will be used to facilitate a face-to-face information exchange, and that the State is not seeking to discard the "prep time" program now available to the Center Keepers. The Union points out that Faunce did not acknowledge that Bayside State Prison operations remained supported by shift overlap for Corrections Sergeants, enabling the necessary information exchange that flows out to the rank-and-file custody staff to continue on a daily basis.

The Union contends that after much discussion on cross-examination, Faunce conceded that the face-to-face information exchange serves an important purpose, but tempered that by saying that 20 minutes was not needed. Faunce acknowledged that as to operational experience after elimination of shift overlap, his opinion would be tempered since shift overlap had remained for Sergeants and Lieutenants during the relevant period. The Union notes that Faunce disclosed that his suggestion that the Corrections Sergeants would always have time to talk at the time the relief shift reported was not actually true. Many institutions, including Bayside State Prison, have Corrections Sergeants assigned to

custody operations that do not have specific post locations, and may never see their relief at shift change. The Union submits that Faunce, when pressed on the sufficiency of the information exchange in the memo protocol, stated that the opportunity for face-to-face communication remains necessary. The Union submits that although Faunce had contended that overtime could be employed on a case-by-case basis where needed to facilitate the information exchange, he stated that the Department strictly scrutinizes overtime at the institutions and that Administrators would be reluctant to use overtime in the face of elimination of the Shift Overlap.

The Union acknowledges that Shift Overlap was not established years ago for the intended purpose of affording a vehicle to enhance operational safety. Rather, it was an economic tool, allowing the State to avoid adding value to the base salary settlement that may have affected negotiations with civilian units at the time. The Union contends that safety became a beneficial byproduct for Corrections professionals, and the Shift Overlap has been applied usefully for this purpose. The Union notes that Vice President Cunningham quite candidly, and consistent with his assertion of a critical safety need, stated that Shift Overlap is not functionally justified for every Corrections Sergeant — only for those in direct relief assignments.

The State confirmed that Shift Overlap was a targeted give back through the testimony of Philip Whitcomb, Esq., Director of the New Jersey Governor's Office of Employee Relations ("OER"). OER Director Whitcomb characterized Shift Overlap as an overtime issue. The evaluation by the State set Shift Overlap as approximately 25% of the total overtime expenditure for Corrections Sergeants. Whitcomb targeted this area to achieve economic value, with no consideration as to functional impact. The Union points out that Whitcomb did not state that overtime for Corrections Sergeants was unwarranted. The

Union contends that no testimony was offered that addressed the economic impact of Shift Overlap being retained for relief shifts based on functional need. Cunningham estimated the relief posts to be 30% of the total staffing of Sergeants.

The economic value of the Shift Overlap was established by Cunningham at an average of \$3,400 annually per Corrections Sergeant. The State set it a bit higher, by using maximum salaries in their projections. It was correlated rather directly to the compensation proposal of the State, with Cunningham stating that beyond his safety concern on this issue, he felt it was patently unfair to be asked to fund his own raise, by a \$3,400 give back to the State. The Union contends that precedent for continued use of this type of economic tool exists not only in the historical treatment of Shift Overlap by the Department of Corrections, but also with other law enforcement units. The New Jersey State Police are the beneficiaries of a free fund entitled *Maintenance Allowance*. Outside the base salary structure, the range of unattributed annual compensation is \$9,631 to \$10,834. Whitcomb stated that the Maintenance Allowance afforded the State Troopers NCO unit was simply another form of compensation. The Union contends that while the State does not acknowledge that safety principles warrant continuation of Shift Overlap for relief posts, it must acknowledge Shift Overlap as supplemental compensation.

The Union submits that any resolution of the Shift Overlap dispute must be a mixed evaluation of economic and operational impact. Despite the way the proofs have juxtaposed the debate to be essentially operational, the genesis of this benefit of was economic. The Union asserts that it has demonstrated that within the walls of the prisons, there is a functional safety need for shift overlap information exchange essential to discharge of the custody function. The State knows it is functionally beneficial to prison operations, and should move from its negotiations position that a memo writing solution is a real functional

equivalent, and look for a program that works. The Union contends that the PBA 105 resolution of this issue has tied the State's hands, as any differing treatment would cause the new Administration to feel the wrath of the influence of the 5,500 plus PBA 105 rank-and-file members.

The Union asserts that its treatment of the shift overlap issue strikes a fair balance between operational need and economic effect. The Union contends that shift overlap is warranted for Corrections Sergeant as front line supervisors more so than any other rank discharging the custody function in state correctional facilities. The Union contends that the status of Corrections Sergeants as supervisors represents clear grounds for distinguishing the treatment of Shift Overlap from the Mastriani Award to PBA 105. Economically, the State still maintains policies supporting other forms of compensation to law enforcement officials, as evidenced by the Maintenance Allowance left in the last round of negotiations for the State Trooper NCO {sergeants} unit, which is more than 2 ½ times the annual value of the Shift Overlap.

The Union maintains that its final offer is consistent with comparable bargaining units and generally follows the Mastriani Award. Many other jurisdictions afford programs similar to Shift Overlap to address operational needs, although the compensation structures may differ. The Union asserts that the State made no substantive contention that continuation of the Shift Overlap will adversely affect its financial well-being.

The Union asks that I award its proposal to retain Shift Overlap.

Health Insurance

The Union takes the position that the bargaining unit should not be divided between the Corrections Sergeants and the State Law Enforcement Unit for health benefit purposes, and that no copay for any health plan should be assessed to Association members. The Union

notes that bargaining unit members currently enjoy a health benefits package that has no premium contribution. The Union proposes that the status quo be continued.

The Union notes that its members are usually promoted into rank from titles represented by PBA 105. The current PBA 105 CBA provides for health benefit premium contributions only for new employees hired into State Law Enforcement Unit {non-corrections} titles. The status quo for all existing PBA 105/State Law Enforcement Conference employees was maintained by the Mastriani Award. The Union contends that the imposition of full health benefit premium contribution upon bargaining unit members would establish different benefit packages with different economic impacts, for law enforcement titles differentiated only by rank. The Union submits that such a structure would be inequitable.

The Union contends that any program for health benefit premium contributions should be first established as a term and condition at the time employees are initially hired. The employee, when accepting employment, does so with the full understanding that depending upon the health package selected, certain contributions will be required. The health benefit premium contribution would not, in such circumstance, constitute a new employment related financial imposition. Rather it would be viewed from the outset of the employee's corrections career as an anticipated obligation, incident to employment. At promotion, the health benefit premium contribution obligation would follow the employee, and would not be seen as an adverse financial impact that otherwise operates to offset or partially offset the benefit derived from promotion. Applying such a health benefit premium contribution policy enables the State to begin implementation of the program in a fair manner that will gradually grow into higher ranks with promotions, while striking the balance of avoiding an adverse financial impact on current employees.

The Union notes that George Camp's testimony showed that nearly 30% of the jurisdictions provide health benefits with no premium contribution requirement for Corrections Sergeants. However, Camp disclosed that no analysis was conducted as to the nature of the health benefits offered in the various jurisdictions, nor was information gathered regarding either relative cost or percentage of contributions as to total cost where the same applied.

The Union notes that OER Director Whitcomb identified contributions on health benefit payments as a primary economic target in the successor 1999 contract negotiations, as a means to offset salary awards that may result. Whitcomb stated that all civilian contracts included the same health benefit contribution factors. Law enforcement contracts, however, differed, and were largely avoided on the State's direct case, except for passing reference to the PBA 105/SLEC award. The New Jersey State Police NCO settlement, a unit Whitcomb identified as comparable, did not include any contribution for health benefits. The PBA 105/SLEC unit largely achieved the same, with only new hires making contributions to health benefits. The Union cites Whitcomb's testimony that the State abandoned this give back to achieve a settlement.

The Union asserts that its final offer is consistent with comparable bargaining units and generally follows the Mastriani Award. The State Police bargaining units do not contribute to health benefit premiums. The Union contends that the PBA 105/SLEC health benefit terms set by the Mastriani Award in large part complied with the pattern the State set for law enforcement employees with a limited health benefit premium contribution program applicable only to newly employed members of the non-corrections component of the bargaining unit. The Union asserts that its bargaining unit is comparable to the State Troopers NCO unit and PBA 105/SLEC. Further, the Union contends that legitimate

comparisons cannot be made to the civilian units cited by the State. The Union submits that there is no marked divergence by this bargaining unit or other New Jersey law enforcement professionals from the treatment of this benefit in other jurisdictions. The Union maintains that no evidence was offered to suggest that the continuation of payment for medical benefits will not have an adverse impact on the financial well-being of the State.

Prescription Eyeglasses/Bifocals

The Union seeks to increase the reimbursement to \$50 for prescription eyeglasses and \$75 for bifocals. The Union asserts that an increase in this benefit more accurately reflects the actual cost of vision care services.

Travel Reimbursement

The Union seeks to increase the travel expense reimbursement from the current twenty-one (21) cents per mile to twenty-seven (27) cents per mile. The Union points out that this increase is consistent with the reimbursement provision of the State Troopers NCO agreement. The Union seeks to bring the travel expense reimbursement in line with applicable State standards.

Leave for Association Activity

The Union seeks to increase the number of days that the State provides for leaves of absence with pay for delegates of the Association to attend Association activities. The current CBA provides for thirty-five (35) days. The Union seeks to increase the number of days to two-hundred (200). The Union proposal provides that "appearance days before the New Jersey Office of Administrative Law not being charged against the two-hundred (200) day allotment."

The Union contends that it is not afforded adequate time to conduct union business. Days are charged for conducting union business such as grievance and disciplinary hearings, and Office of Administrative Law proceedings, in which the Association Executive Board and Institutional Representatives provide representation to their members. The Association representatives regularly exhaust the 35-day allotment, resulting in vacation and personal day allotments being used to conduct union business. Membership has grown by the SLEC groups being folded into the bargaining unit, without a concomitant increase in union day allotments. The available days are being used completely on formal proceedings, precluding labor management meetings from being scheduled, and preventing Association representatives from appropriately interacting with the various employer units, particularly as related to the SLEU facilities.

The Union contends that improvement of labor management relations and associated benefits to operational efficiency will be realized by this increase. The Union cites Willis Morton's testimony that having the opportunity to meet and discuss issues with the respective majority representatives of the custody staff was a valuable management tool. Regular meetings were conducted with union representatives to exchange information and address current issues. Morton testified that the efficiency of the facility operation was aided by the communications with representatives of the custody employees.

The Union cites the testimony of Thomas Sawey, Director of the DOC Office of Employee Relations, that thirty-five days was sufficient and that the current mix of chargeable and non-chargeable days as now defined by the Department of Corrections, facilitates completion of any Association activities. The Union notes that Director Sawey testified very candidly that the availability of time for labor-management interaction at the local institution level, as well as the Department level, is important to effective functioning

of the facilities. Sawey also testified that PBA 105 is afforded 1,255 total days for its activities, with the same program of chargeable and non-chargeable days. The Union notes that the current policy is now discretionary in application, and while Sawey has been fair in its handling, the Union contends that established standards are more appropriate. The Union contends that the State, in addressing the overall compliment of days sought, offered no proof that 200 days for all matters was not appropriate.

The Union submits that it has shown that the increase is necessary to discharge its duties as majority representative properly. The Union contends that its proposal is generally consistent with the days received by PBA 105/SLEC. The Union asserts that the greater level of labor-management interaction that will result by expansion of days available for union activities will benefit operations at the State correctional facilities, affording long term benefits to the State. The Union further asserts that there will be a general benefit to the public welfare by improvement in the operational effectiveness of the Corrections Sergeants and the facilities to which they are assigned. The Union contends that implementation of its proposal will not adversely affect the financial well-being of the State.

Convention Leave

The Union proposes that a Convention Leave provision be established providing for two hundred and sixty (260) days of annual leave for Association convention leave. The Union, as a State PBA affiliate, participates in two conventions annually, each for a five-day period. Historically, participation by all institutional representatives and Executive Board members has been authorized, but is now in issue due to a change in the authorizing law. The Union seeks to maintain the preexisting status quo, by establishing a contractual provision affording ten convention leave days for its twenty institutional representatives and six Executive Board members, totaling 260 days.

The Union notes that the State asserts that the statutory criteria should apply. Director Sawey testified that the Department of Corrections will afford leave consistent with the new statutory criteria, allowing 10 members with five days of leave for each convention, for a total of 100 days annually. The Union contends that this standard would render many of those that have functional responsibilities in labor relations unable to participate in the biannual union workshops and meetings. The Union notes that there was no testimony offered by the State that affording the additional 160 days would be either operationally or financially burdensome.

The Union submits that it seeks only to maintain the status quo, and the past practice shows that the leave is necessary for the Union properly to discharge its duties as majority representative of supervisory law enforcement officers. The Union contends that its proposal is consistent with the terms of the PBA 105/SLEC agreement and that improvement of the overall operations of the Association will enhance the labor-management relationship, benefitting overall operations at the state correctional facilities. The Association submits that the continuation of this benefit will not adversely affect the financial well-being of the State.

Uniform Allowance

The Union proposes that the Uniform Allowance be structured as follows:

State Law Enforcement Unit

January 2000	\$1,485
January 2001	\$1,535
January 2002	\$1,585
January 2003	\$1,635

Corrections Sergeants

Year One - \$1,660

July 1, 1999	\$830
January 1, 2000	\$830

Year Two - \$1,710

July 1, 2000	\$855
January 1, 2001	\$855

Year Three - \$1,760

July 1, 2001	\$880
January 1, 2002	\$880

Year Four - \$1,810

July 1, 2002	\$905
January 1, 2003	\$905

The Union contends that its proposal represents a reasonable estimate of the actual expenditures related to acquisition and maintenance of uniforms consistent with Department of Corrections standards. Joseph Carroll, Second Vice President of the Association, serves on the Uniform Committee of the Department of Corrections. Carroll testified that annual unreimbursed uniform related expenses are approximately \$1,500. Most Corrections Sergeants have four or five uniform sets. The uniform includes a jacket, pants, shirts, shoes and all garnishments such as patches, collar bars, whistle hooks and chains. Pants and shirts cost approximately \$100 not including standard garnishments, and need to be replaced annually. Jackets cost between \$300 to \$375, and need to be replaced approximately every three years. Dry cleaning of the uniform costs approximately \$20 per week, or \$1,000 per year. The Union contends that the current uniform allowance of \$1,610 annually represents approximately half the actual uniform cost incurred. The Association points out that the State Troopers NCO uniform allowance is a maintenance fund of \$900 annually, with uniforms issued to the employees.

The Union asserts that its proposal seeks only to cover its members' expenses and is consistent with the structure of the benefit provided to other New Jersey law enforcement

bargaining units. The Union asserts that an annual \$50 increase will not adversely impact the financial well-being of the State.

Cooperative Effort

The Union seeks the modification of Article XIII, E which reads as follows:

The parties to the agreement understand that the public services provided to the citizenry of the State of New Jersey require a continuing cooperative effort *particularly during this period of severe fiscal constraints*.

The Union seeks to delete the italicized language. The Union asserts that the *fiscal constraints* terminology was implemented in the CBA to reflect conditions that prevailed at the time of settlement in September 1997. The Union notes that the State has not sought to retain this language, and that it should accordingly be deleted.

Preferential Work Shift for Executive Board Members

The Union proposes that its Executive Board members be assigned the first shift with Saturday and Sunday off. The Executive Board is a group of six Corrections Sergeants charged with conducting all labor-management relations and addressing employment related issues with the State and the Department of Corrections. As a practical matter, no labor-management activity or any other business is conducted on weekends, nor outside the normal work day. Business is conducted during the regular work schedules of State management officials. The Union contends that setting a fixed work schedule of first shift, weekends off for this limited group of six Executive Board members will not adversely impact operations of the correctional facilities, and will facilitate efficient completion of labor-management business.

The Union disputes the Department's position, put forth by Director Thomas Sawey, that guaranteeing one additional weekend day off for the six Executive Board members (out of the overall compliment of 550 Corrections Sergeants) will impose some type of

scheduling difficulty. The Union notes that Director Sawey conceded that he was not certain about any real operational impact for these six individuals. Sawey conceded as well that the PBA 105 Executive Board is free from assignment during the same period. The Union notes that no testimony was offered to show how such a minor modification to scheduling would have any real impact on operational efficiencies.

The Union submits that the State, given the practice with PBA 105, acknowledges the value derived by enabling law enforcement unions to function efficiently. The Union maintains that the scheduling sought for these six individuals is necessary to discharge its duties as majority representative of supervisory law enforcement officers properly. The Union submits that its proposal is consistent with the manner in which PBA 105/SLEC is handled. The Union asserts that this will improve the labor-management relationship and the overall operations at the state correctional facilities. Any such improvement affords a general benefit to the public welfare. The Union submits that implementation of this minor schedule revision will not adversely affect the financial well-being of the State.

**Paid Leave to Take DOP Examinations
and Attend Interviews When Off-Duty**

The Union seeks to modify Article IX (B) to provide that employees shall be afforded professional days for any examinations and/or interviews and shall not be scheduled for promotional/transfer/reassignment interviews on regular days off. The Union contends that Corrections Sergeants, given the nature of their daily assignments, may face work-related constraints, particularly involving emergent events that are commonplace in correctional facilities, that prevent participation in scheduled examinations and interviews. Affording professional days where promotional examinations and interviews have been scheduled will enable Association members the full opportunity, like other State employees, to participate in the promotional process, and create a better opportunity for successful

participation. The Union submits that scheduling of personnel interviews for promotion, transfers and reassignments on days when its members are on duty is a fair practice that will not adversely affect the State.

**Dismissal of Disciplinary Charges for Failure to Conduct Hearing
Within 20 Days or Failure to Render Decision Within 20 Days**

The Union seeks to modify Article XI (F) as follows:

Failure to convene a hearing within twenty (20) days or render a written decision within twenty (20) days, unless said periods are extended by mutual agreement, shall result in dismissal of the disciplinary charges.

The Union seeks to modify Article XI (L)(4) as follows:

Failure to file disciplinary charges within thirty (30) days of the date of the incident and/or offending conduct shall constitute an absolute bar to discipline.

The Union seeks the above modifications to assure that the primary corrective purpose of discipline is fulfilled. The Union seeks to establish firm time frames for the issuance of disciplinary charges, scheduling of hearings, and response on appeals after hearing. The Union cites the testimony of President Cardone that the State on a regular, recurring basis fails to honor the time constraints in the disciplinary provisions of the CBA and the lack of firm contractual terms establishing a remedy for noncompliance has allowed this problem to persist.

The Union also cites the testimony of Willis Morton on this issue. Morton testified that it is in the interests of management to timely process discipline cases. Morton stated that timely action is what has the corrective impact on employees. The Union points out that Morton, former Administrator of New Jersey State Prison, testified that in the majority of disciplinary matters, there is no reason the State cannot serve charges in 30 days and conduct hearings in 20 days. Morton stated that as Administrator, if his management staff failed to meet the noted deadlines, he would dismiss charges based on fairness principles.

The Union disputes the testimony of Employee Relations Director Thomas Sawey who stated that the established guidelines which the Department is required to comply with cannot be worked into their disciplinary protocol. Filing of charges, according to Sawey, cannot be done in 30 days due to the complexity of the underlying investigation. Sawey testified that the scheduling of hearings is complicated by the unavailability of participants, vacations, illnesses and the like. The Union cites Sawey's testimony that decisions cannot be issued in 20 days because it is not a priority for those designated to serve as departmental level hearing officers.

The Union submits that the Department of Corrections is no different from other government units subject to Title 40A which operate within statutory time frames and are subject to preclusion of actions if deadlines are missed. Those governmental units prioritize their activities to fit within the rules. The Union submits that the Department of Corrections will comply with these negotiated standards if there is an enforceable remedy. The Union points out that the Department is now working under established time frames with enforceable conditions for noncompliance in the PBA 105 CBA. Sawey indicated it has been somewhat difficult to comply, but the priority has been set to assure compliance. The Union notes that hearings may be subject to adjournment at the discretion of the hearing officer, based on a showing of good cause — no different from court proceedings or arbitration hearings. The Union contends that nothing precludes setting firm dates for commencement of the hearing within 20 days. The Union submits that where the issues are exceedingly complex, or where special circumstances hinder the ability of the hearing officer to issue a decision such as vacation or illness, it can work cooperatively to reasonably extend the time for issuance. The Union maintains that twenty days provides sufficient time for summary of the hearing testimony and issuance of an opinion.

Provide Discovery 14 Days Prior to Department Hearings

The Union seeks to modify Article XI (L)(5) as follows:

Documents and list of witnesses to be provided by the State of New Jersey not less than fourteen (14) days before the hearing.

The Union describes its proposal as practical revisions concerning prehearing information disclosure and recording of disciplinary hearings. The Union cites President Cardone's testimony that a policy has been developed at the Department of Corrections that delays release of discovery on disciplinary matter to not earlier than 72 hours before a hearing. The Union contends that the Department of Corrections will exceed the established periods to document its case prior to serving discipline, but will not afford the courtesy of prompt disclosure of evidence to be produced against the charged employee. The Union asserts that this practice places it and the employee at a distinct disadvantage, as hearing preparation and identification of witnesses must take place around the regular work schedules of the charged employee and assigned Association representative. The Union maintains that three days is not enough time to review documentation and prepare the case. The Union submits that fourteen days would provide adequate time. The Union contends that there is no reason that discovery cannot be delivered when charges are issued, particularly where hearings are to be held within 20 days.

Audio Tape of Departmental Hearings

The Union seeks to modify Article XI (F) as follows:

The Association and/or employee shall have the right to an audio recording of the hearing. The State of New Jersey may obtain a copy of any such audio tape and shall be responsible for payment of any reproduction costs.

The Union seeks contractual provisions that provide for verbatim recording of disciplinary hearings. Currently the CBA provides for a court stenographer to prepare a verbatim record of the proceeding. The Union submits that the cost of this procedure is

prohibitive and cannot be effectively employed. The Union submits that audio transcription using the process that many courts, local agencies, land use boards, and other governmental units employ, are much less costly and would serve the same purpose as the stenographic transcription. The Union would bear the cost of this procedure.

The Union notes that early disclosure of evidence to be used at hearings was found objectionable to the Department of Corrections. Director Thomas Sawey testified that delivering material 14 days before hearings would add administrative burdens. The Union suggests that this should be taken in the context of Sawey's testimony noting how complex and thorough the underlying disciplinary investigations are in support of issuance of charges. The Union submits that Sawey conceded the information could be supplied sooner than three days prior to hearing, during his cross examination. The Union maintains that discovery is available on the date the charges are issued.

The Union notes that Sawey expressed concerns about audio recording of proceedings, particularly as it related to assuring integrity of the record. The Union submits that procedures can be established to address both the Department's concern and the Union's need to create an economical record. The Union further points out that Sawey did not find objectionable the concept of using an outside recording service to assure integrity of the record.

Stay Disciplinary Action Pending Appeals

The Union seeks to modify Article XI (L)(6) to provide that the State may not require employees to serve discipline during THE pendency of any Departmental appeal or appeal to the Department of Personnel, Merit System Board. The Union seeks a contractual provision implemented to delay the imposition of disciplinary penalties until appeals are fully exhausted. President Cardone testified that penalties served and the implications of

back pay and reinstatement of earned time often becomes significant, artificial obstacles to reaching a fair settlement. Implementation of the proposed policy will benefit both the Union and the State by facilitating early resolution of discipline and by reducing the time and expense dedicated to administrative trials.

The Union cites Thomas Sawey's testimony that the full appeal process may extend two years, and late imposition of penalties would be counter to the corrective intent of discipline. However, the Union notes that the same process is now in place with PBA Local 105. Disciplinary penalties for PBA 105 members may be delayed up to 18 months under this program established by the Department of Corrections. The Union contends that the imposition of final discipline after the departmental hearing, which is entered in the employee's record, is sufficient sanction to fulfill the corrective goal of the policy. The Union asserts that the delay of actual financial sanctions (loss of pay) will not materially undermine the corrective effect of the discipline.

Premium Pay for Representation at Hearing Beyond Shift

The Union seeks to modify Article VII (B) (1) as follows:

Overtime on Hearings Commenced/Completed after Shift. The New Jersey Law Enforcement Supervisors Association, Inc. representatives shall be compensated at premium rates for hearings conducted and/or completed after working hours.

The Union notes that its Institutional Representatives are sometimes required to stay beyond their scheduled work day, or to come in on their regular day off to attend hearings. The Union contends that there is no operational need that compels this practice. Hearing Officers, as management officials, work a regular daily schedule, and can convene hearings earlier in the day to coincide with the work schedule of the Union's Institutional Representatives. The Union submits that the assigned work schedules of its Institutional

Representatives can be checked to assure hearings are not set down on days off. The Union asserts that these revisions will not adversely impact the State of New Jersey.

The Union cites the testimony of Director Thomas Sawey that the issue of extended time for hearings is adequately handled by the existing compensatory time program. Sawey testified that when Union representatives are required to stay beyond their shift to complete hearings involving their members, hour-for-hour compensation is afforded. The Union submits that it seeks to have management and its representatives work under the same set of rules. Hearings are conducted at the convenience of the management staff involved, during the regular 8:30 a.m. to 4:30 p.m. work day. Union representation is an element of the employment relationship. The Union maintains that if its representatives are required to stay beyond their regular work day they should be compensated. Alternatively, management can set hearings to comply with schedules of the affected employees and Union representatives and avoid any overtime issues.

**Receipt of Compensatory Time at Premium Rate for
Treatment of Injuries During Off-Duty Time**

The Union seeks to modify Article XXXV, (F) to provide that employees shall receive compensated time off on date of injury and all subsequent treatment dates, and if treatment occurs outside normal working hours, premium compensation rates shall apply. The Union contends that it is simply seeking to ensure that its members are treated consistent with other State employees related to treatment for work related injuries. Employees injured on duty are required to dedicate personal time for work related injury treatment when such treatment is provided outside their normal shift. Current policies of the Department of Corrections provide that compensation ends at the end of the regular shift, even if an employee is injured while on duty and treatment for that injury extends beyond the end of the regular shift.

Director Thomas Sawey testified that employees held over due to work related impacts do not get compensated beyond the end of the assigned shift. The Union seeks to have employees compensated when held over for treatment of injuries incurred while on duty. The Union notes that treatment must be undertaken with medical care providers designated by the State for work related injuries. Since many employees work shifts that do not coincide with the regular work day, treatments are often scheduled outside their work day. State employees, generally, are afforded short periods of leave during the regular work day for medical care for work injuries. The Union submits that affording compensation to employees who cannot avail themselves of this opportunity assures that all State employees are treated equally in the administration of this policy.

Replacement of Security Vests

The Union seeks to modify Article XXXVII to provide that the State will replace a security vest, free of charge, if an old vest is returned. Protective Vests are an essential safety component of the equipment used by Corrections Sergeants. The shank proof vests were first issued to the Corrections Sergeants in 1997, after the stabbing death of a Corrections Officer. The protective vests carry a five-year warranty and require replacement because daily use causes the knit of the protective fibers to break down. The Union contends that there is no established obligation requiring the Department of Corrections to provide this essential safety equipment. The Union asserts that it is reasonable to set as a term and condition of employment the replacement of vests in accordance with product standards. The Union notes that Director Sawey confirmed that the Department is now following the terms of the Union proposal. The Union asks that this policy be included in the new CBA.

Payment of Loss Claims within 30 Days

The Union seeks to modify Article XLIV to provide that the State will pay loss claims within thirty days of the filing of the claim. The Claim Adjustment procedure is the means by which Corrections Sergeants obtain reimbursement from the Department of Corrections for losses in the workplace. Corrections Sergeants often suffer damage or destruction of their uniform due to incidents with inmates. These losses, as workplace events, are compensable. Replacement cost of the damaged item is recoverable under this provision of the CBA. The current process for simple garment replacement claims payments may extend 18 months to two years.

The Union submits that loss of or damage to a uniform is a significant burden to the Corrections Sergeant who is required to report to work properly attired. The uniform allowance is often exhausted annually on the sets required for duty, and loss of a uniform imposes a personal financial burden on the Corrections Sergeant. The Union contends that the imposition of a reasonable time frame for the claims adjustment process is fair and will not be a burden on the Department of Corrections.

Director Thomas Sawey testified that final payment on claims is not under the control of the Department of Corrections since approval for payment is forwarded to the Department of Treasury. The Union points out that there was no other objection to the proposed time frames and that the negotiations are with the State. The Union submits that procedures can be adapted to assure prompt payment upon approval of claims by the Department of Corrections.

The Union requests that I find in favor of its Final Offer on the economic and non-economic issues submitted.

The State of New Jersey

The State maintains that its final offer is consistent with the State-wide negotiations package for the 1999-2003 contract term agreed to by over 50,000 State employees during 1999, and used as a template by Arbitrator James Mastriani in his June 2000 Interest Arbitration award involving the State Law Enforcement Conference (“SLEC”) Unit, comprising approximately 6,000 Correction Officers and 1,000 other employees in various law enforcement titles. The State asserts that its salary proposal, developed during a time of relative economic prosperity in New Jersey, not only provides wage increases which more than adequately compensate all Sergeants, it furthers the public interest by eliminating excessive and unjustifiable contract terms which have previously been provided without legitimate reason.

The State notes that the established negotiations pattern provides for a four-year CBA with base wage increases (and/or equivalent bonus payments) of approximately 14.5% over the contract term, and some form of employee contribution to offset wage increases.² The State cites the uncontradicted testimony of Philip Whitcomb, Director of the Governor’s Office of Employee Relations (“OER”) that every employee group with a contract term of July 1999 through June 2003 was offered and, with the exception of three supervisory Correction and law enforcement units, received a package designed around this wage and benefit scheme. Specifically, during July through September 1999, the State’s major civilian employee groups, totaling approximately 55,000, including CWA, AFSCME, AFT and IFPTE, as well as the Correction Internal Affairs unit, voluntarily agreed to wage increases of approximately 14.5%, in exchange for contributions to health insurance premiums of

²The AFSCME and IFPTE Groups agreed to lesser percentage wage increases in exchange for bonus payments during the contract term. The cost of the increases and bonus payments approximated 14.5%.

25% for the traditional plan, 5% for the HMO plans, and 0% for the NJ Plus plan.³ The timing of these settlements, in mid-1999, allowed the State to receive the benefit of employee contributions in January 2000 - when the new health benefit contribution levels were implemented.

Arbitrator Mastriani issued his award in June 2000 covering the State's 7,000 rank-and-file SLEC members. The Mastriani Award provided for aggregate increases of 16% for Correction Officers and 14.5% for non-Correction SLEC members. The State notes that Mastriani reasoned that the difference in wage increases between the two groups was motivated by the fact that rank-and-file Correction Officers were required to eliminate 20 minutes of contractually mandated shift overlap per day, resulting in savings to the State of \$12,849,780 per year. Mastriani further reasoned that the additional wage increases fell well within the confines of the State package because of the significant employee contribution. Non-Correction SLEC employees, who did not have mandatory shift overlap provisions to eliminate, were awarded increases of 14.5% and were required to provide for contributions to the cost of health benefits for newly admitted members of the unit.⁴

The State points out that since the Mastriani Award was issued in June 2000, only one year into the new contract period, and at the beginning of the State's new fiscal year, the State achieved significant savings from the elimination of shift overlap — savings of approximately \$38,549,340 for the remaining three years. The State contends that the balancing by Arbitrator Mastriani, based on offsetting actual cost savings to the State with

³Employees in the CWA, AFSCME, IFPTE and AFT groups began contributing to health insurance benefits in their 1995 through 1999 contracts. (Contribution levels were limited to employees making over certain monetary amounts.) Specifically, employees contributed the difference between the cost of the traditional plan and the average cost of the State's HMOs. Employees choosing HMO or PPO coverage received free coverage.

⁴Mastriani's rationale for not requiring all non-correction officers to contribute to health benefits was the State's "booming" economy.

corresponding salary increases to SLEC, preserved the State's pattern of settlements. The State asserts that this type of balancing is required here and it formulated its salary proposal to offset its inability to recoup savings from the proposed elimination of the shift overlap.

Specifically, the State notes that the Mastriani Award provided substantial savings over three of four contract years whereas in this matter the State would not receive the benefit of the elimination of shift overlap until the last six months of the fourth year. The State asserts that to preserve the uniform approach to negotiations developed and successfully implemented by the State in 1995 and 1999, I must offset any increase in base salary by the actual cost to the State of providing shift overlap to Corrections Sergeants for three and one-half of the four contract years.

The State's offer proposes to eliminate shift overlap as soon as possible after the award is issued, require health care contributions from all Sergeants Unit employees and limit uniform allowance payments to January 2002 forward, in return for an award of 14.5% non-retroactive wage increases to both Correction and Non-Correction Sergeants. The State contends that this offer will offset the savings not realized during the contract term and allow Correction Sergeants to receive cumulative base wage increases to keep pace with other State employee groups but will not provide any retroactive payments because of the continued receipt of shift overlap payments.

The State contends that an award to Sergeants above the established State pattern will not only be unfair to the State, but will be unfair to the other approximately 60,000 State employees who accepted or were awarded the State package in 1999 and 2000, and who have made employee contributions for the past two and one-half years. The State further contends that it would not be in the interests and welfare of the public if the Sergeants unit received comparable economic benefits without a corresponding employee contribution.

This result would effectively circumvent the uniform approach developed by the Governor's Office, to create a more balanced and equitable system of collective negotiations for all of its employee groups, both civilian and law enforcement.

The State maintains that the current condition of the State's economy must be considered. Unlike when Mastriani rendered his award, there is no question but that the State is in the midst of a severe financial crisis. The State notes that Arbitrator Mastriani considered the State's economy in 2000 to be "booming." The State cites the testimony of Charlene Holzbaur, Director of the Office of Management and Budget, that the State's economy is operating under the most serious budget shortfall in its history, requiring drastic cost cutting measures throughout every department of State government, including line-by-line analyses of departmental budgets, hiring freezes and layoffs. In addition, the State has had to "pay down" its budget surplus almost to the point of risking fiscal insolvency.

The State suggests that when contractual negotiations are delayed, both parties run the risk of being adversely affected by changes in economic conditions. An economy which was considered booming two years ago, is now severely suffering. The State argues that the Union must not be held exempt from such a deterioration in the economy. The State asserts that its offer provides wage increases to the Sergeants Unit in line with the State pattern.

The State argues that the Union, which is requesting greater economic benefits than received by any other unit of State employees, and is not willing to provide any employee contributions, is ignoring the State's current economic condition. The State contends that the Union's disregard for the State's pattern and the State's economy shows the unreasonableness of the Sergeants' demands.

The State contends that the wages and benefits received by the Sergeants unit exceed the wages and benefits received by other State employees, by employees in comparable titles across the country, and by public and private sector employees in general.

N.J.S.A. 34:13A-16g(2) requires that an Interest Arbitrator give due weight to:

a comparison of the wages, 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.

N.J.S.A. 34:13A-16g(3) further requires that an Interest Arbitrator give due weight to the total compensation received by employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. The State submits that evidence in the record shows that members of the Sergeants Unit: (1) are far better compensated than other State employees; (2) are the most highly compensated Correction Sergeants in the United States by a considerable margin; and (3) are more generously compensated than their counterparts in both the private and public sectors, generally. The State asserts that the Union's relative standing will improve under its final offer.

The State contends that the wages and benefits received by members of the Sergeants unit are superior to those received by other State employees. Effective June 20, 1998, the top base pay of a Correction Sergeant was \$60,228. When the average overtime earnings are included, this figure jumps to an average of \$75,323. In 1999, 53 Correction Sergeants received wages and overtime greater than \$90,000, with the top earner making \$123,193. The State notes that individuals serving in these titles have no educational requirements beyond the possession of a high school diploma, and needs only limited experience, i.e., service for one year in the immediately lower title of Senior Corrections Officer.

The State contends that a Correction Sergeant receives significantly higher wages than employees in comparable title ranges. The base wage of a Correction Sergeant is

greater than civilian employees in higher ranges. This comparison is made even more dramatic considering that each of the non-correction titles listed requires significantly more educational background and experience, and each is classified as NL (non-limited), which means individuals serving in the titles do not receive any additional compensation for work in excess of eight hours in a day or 40 hours in a week.⁵

The State asserts that given the current wage and benefit disparity between members of the Sergeants Unit and other comparable State employees, any increases in wages or benefits to Sergeants beyond that contained in the State's final offer is completely unjustified and will serve only to exacerbate an already inequitable system. In this regard, the economic package presented by the State is entirely consistent with that agreed to or awarded to Corrections rank-and-file employees, Correction Internal Affairs Officers and all other State employee units to date.

The following chart details the major economic components of the settlements/awards reached with the State's other collective negotiations units covering the period July 1999 - June 2003 - as well as the timing of such settlements/awards:⁶

⁵ Pursuant to a system adopted in the 1970s, all job titles in State employment are given a numerical range. The assigned range is based upon job content, required skills, knowledge, training, work atmosphere and overall job desirability and worth, using a practice widely held within the industry of breaking down the job into its essential elements and assigning points to each element. When the system (known as the Hay System) was adopted in New Jersey, positions in the same range were deemed comparable and were paid the same. Although this system is still in use in the State, the underlying intent of the system, to equalize pay between comparable jobs, has been skewed through collective negotiations. Thus, while Corrections Sergeants were paid the same or less than employees in comparable title ranges in the early 1970s and early 1980s, they now receive substantially more.

⁶The approximately 5000 AFT members also received increases of 14.5% and also were required to contribute to health benefits as of January 2000.

	CWA	IFPTE	AFSCME	FOP (Internal Affairs)	PBA (# 105)	PBA (Non-Corr.)
# of Represented Employees	34,000	5,400	8,400	200	6,000	1,000
Date Settled/ Award Issued	7/23/99	8/4/99	9/28/99	10/10/99	6/30/00	6/30/00
FY 1999	2.5%	2.0%	2.5%	2.5%	4.0%	2.5%
FY 2000	2.0% (7/00) 1.5% (1/01)	3.0%	2.5%	2.0% (7/00) 1.5% (1/01)	2.0% (7/00) 2.0% (1/01)	2.0% (7/00) 1.5% (1/01)
FY 2001	2.0% (7/01) 2.0% (1/02)	2.0% (7/01) 2.0% (1/02)	2.0% (7/01) 2.0% (1/02)	2.0% (7/01) 2.0% (1/02)	2.0% (7/01) 2.0% (1/02)	2.0% (7/01) 2.0% (1/02)
FY 2002	2.0% (7/02) 2.5% (1/03)	2.0% (7/02) 2.5% (1/03)	2.0% (7/02) 2.5% (1/03)	2.0% (7/02) 2.5% (1/03)	4.0%	2.0% (7/02) 2.5% (1/03)
TOTAL	14.5%	13.5% ⁷	13.5% ⁸	14.5%	16.0%	14.5%
Employee Contributions	Health contr. beginning 1/2000	Health contr. beginning 1/2000	Health contr. beginning 1/2000	Health contr. beginning 1/2000	Elimination of shift overlap eff. 7/2000	Health contr. for new hires eff. 1/2001

The State maintains that its final offer is best understood by considering not only the substantive contract changes reached with each unit, but also the timing of contract resolution. Each of the State's civilian units (which make-up over 85% of the State's unionized workforce) reached a contract settlement prior to October 1999. Each unit agreed to wage increases of approximately 14.5% over the term of the contract, and each unit agreed to contribute to the cost of health benefits as follows: 25% of the cost of the traditional plan, 5% of the cost of HMOs and 0% toward PPO coverage. These contribution rates all took effect on January 1, 2000. The PBA Internal Affairs unit also received salary increases of 14.5% and began contributing to health benefits on January 1, 2000.

⁷In addition to base wage increases, IFPTE members received a \$450 bonus in 1999 and 2000, and for all four years of the agreement, a formula based bonus for employees earning less than \$30,000 per year.

⁸In addition to base wage increases, AFSCME members received a \$450 bonus in 1999 and 2000, and for all four years of the agreement, a formula based bonus for employees earning less than \$30,000 per year.

The State submits that a more specific review of the economics of the Mastriani Award is instructive. The SLEC unit is made up of State Corrections Officers (PBA Local 105), Juvenile Justice Officers (PBA Local 367), Palisades Interstate Parkway Police (PBA Local 83), State Campus Police (PBA Local 278), State Parole Officers (PBA Local 326), State Human Services Police (Local 113), State Park Police (PBA Local 222), State Conservation Officers (PBA Local 120), and State Weights and Measures (PBA Local 269). (J-5) There are approximately 6,000 Correction Officers who are referred to collectively as the L Unit and approximately 1,000 non-corrections officers who are collectively called the F Unit.

The Mastriani award provided the F Unit a base wage increase of 14.5% over four years and required new employees in the F Unit to contribute to the cost of health benefits under the same conditions as civilian employees. These contributions began as of January 2001. Mastriani explained that his award to the F Unit was substantially driven by consideration of the pattern established by the State in its negotiations with the CWA, IFPTE, AFSCME and Internal Affairs. In this regard, Mastriani accorded great weight to a prior award issued by Arbitrator J.J. Pierson, which covered the SLEC unit from July 1995 through June of 1999. In this award, Pierson acknowledged the importance of a pattern of settlement and praised the State for having, “taken affirmative steps in considering the interests and welfare of the public by drawing on a uniform economic proposal to develop consistency in results.”

As related to the L unit (Corrections Officers), the Mastriani Award provided for base wage increases of 16% over 4 years (with split increases in the second and third years), and eliminated contractually mandated shift overlap, resulting in a cost savings to the State of approximately \$12,849,780 per year in overtime. The State notes that Arbitrator

Mastriani decided that the additional percentage base wage increase of 1.5% over the pattern was justified by the additional savings associated with the elimination of mandatory shift overlap. In this regard, Arbitrator Mastriani found specifically:

“Because the cost of the increased salary award to L Unit employees is offset by the elimination of the shift overlap which results in cost-savings, the total cost of the award to the L Unit employees is nevertheless well within the confines of the State package.”

The State points out that since the Mastriani Award was issued in June 2000, the State was able to realize the cost savings associated with the elimination of shift overlap for three of the four contract years, resulting in savings over the contract term of approximately \$38,549,340. This \$38 million in savings was considered a contributory offset for the 16% in base wage increases and resulted in Correction Officers retaining free health benefit coverages. The State submits that without the actual savings and the timing of the Mastriani Award, the result would have been vastly different.

The State asserts that its base wage increase proposal of 14.5% without retroactivity is mandated because of the timing in reaching contract resolution. Although the State is also seeking the elimination of the shift overlap for Correction Sergeants and health benefit contributions from all Sergeants, because of the timing, the State cannot realize any savings from either initiative until after the issuance of an award. The State contends that under a best-case timing scenario, it will have lost at least 3 ½ years of savings.

The State submits that a review of the actual numbers associated with the contractually mandated shift overlap savings is compelling justification for its position: The Sergeants unit contract expired on June 30, 1999. Since July 1, 1999 to date, the State has spent approximately \$6,164,572 (\$2,054,857 per year) on shift overlap for Correction Sergeants. (S-38). The State contends that these unrealized savings must be made up to remain within its pattern of settlement. Under the State's final offer, limiting the Sergeants'

salary increases to 14.5%, without retroactivity, will allow the State to compensate for the lost shift overlap and health benefits savings and take into consideration the deteriorating State financial picture.

The State's offer to Correction Sergeants of 14.5% without retroactivity will cost an additional \$8,389,000 over the contract term. (S-37A and B). In contrast, if the State were required to pay 16% with full retroactivity as demanded by the Union, the additional cost over the term would be \$16,980,000. (S-39-A and B). The State asserts that an award of its final offer is mandated by the loss of shift overlap and health benefits contributions savings, the unwarranted increased wage demand by the Union, the adverse economic and budget realities in New Jersey and the necessity to maintain equity among the State employee bargaining units.

The State asserts that the Union's proposal is fundamentally flawed and contrary to the public interest; it is inconsistent with the pattern established by the State with all other negotiations units; and it is inconsistent with the Mastriani award. Simply stated, while economic enhancements for other State employees have required the balance of employee contributions, the Sergeants Unit is requesting that it receive better economic enhancements, while contributing nothing in return. The State maintains that this is completely unjust and must be rejected.⁹

⁹In support of its position seeking better wages and benefits, the Sergeants may attempt to rely upon the agreement reached between the State and the State Trooper NCOs. As set forth below, reliance on the Troopers settlement is unpersuasive considering the testimony of one of the Sergeants own members. Specifically, John Cunningham testified that, (1) the duties of a Corrections Sergeant are essentially custodial in nature (a marked difference from the duties performed by Trooper, NCOs), (2) State Troopers have historically received greater compensation than Corrections Officers, (3) the term of State Trooper contracts is staggered by one year from all other State negotiations units, including the Sergeants Unit, thereby resulting in an entirely different negotiation schedule, and (4) to his knowledge there has never been an instance when the Sergeants Unit received a different economic package than the members of PBA, Local 105. Furthermore, State Trooper NCOs do not have any contractually mandated shift overlap, and their work schedules are based upon a 28 day, 160 hour work cycle which provides for great flexibility and the ability to minimize overtime. Consequently, the State's agreement with Trooper, NCOs is simply not relevant to a determination of the relative merits of the State's and Union's final offers in the instant matter.

The State contends that the wages and benefits received by members of the Sergeants unit are superior to those received by employees in comparable titles across the country. N.J.S.A. 34:13A-16(g)2 requires that an Interest Arbitrator consider “the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing the same or similar services.” With respect to this criterion, the State presented evidence from comparable Corrections Organizations across the country through the testimony and report of its expert, George Camp, Director of Criminal Justice Solutions, LLC. The State asserts that the evidence shows that New Jersey Correction Sergeants and members of the Sergeants unit in general are paid far more in wages and benefits than comparable titles across the country.

S-3 (*Comparative Analysis of the Terms and Conditions of Employment of Sergeants and Lieutenants in State and Federal Prisons*), shows that Correction Sergeants in New Jersey are paid approximately 40% more than the average State Correction Sergeant in the Country in terms of maximum base pay.¹⁰ Table 2, entitled “2001 Maximum Salary Rank” shows that New Jersey Sergeants are ranked number one in maximum base pay when compared with other State Correctional Sergeants. In terms of starting pay, New Jersey Correction Sergeants are also significantly above average.

These statistics are made even more dramatic when recognizing that the 1998 maximum base pay of New Jersey Correction Sergeants used in Camp’s report is being compared with 2001 maximum base salaries in other States. Specifically, the maximum Correction Sergeant salary in New Jersey as of June 20, 1998 was \$60,228. The average top

¹⁰ As testified to by George Camp, the job of a Corrections Sergeant in New Jersey is directly comparable to that of Corrections Sergeants throughout the 50 States. This testimony was not rebutted.

step salary for Correction Sergeants across the United States in 2001 was \$43,285, representing a difference of \$16,948.¹¹ Moreover, even comparing New Jersey Correction Sergeants with their counterparts in the region, e.g., those in New York, Connecticut, Pennsylvania, Ohio and Massachusetts, again 1998 salary numbers compared with 2001 salary numbers, New Jersey Correction Sergeants are ranked number one, outpacing these States by \$10,780.¹²

In addition, when comparing other terms and conditions of employment, New Jersey Correction Sergeants are superior to or in line with Correction Sergeants in other States. For example, Table 4, entitled, "Average Amount of Overtime Paid Per Person Per Rank or Cluster of Ranks," shows that while the average amount of overtime paid per Sergeant per year as of January 1, 2001, was \$5,011, New Jersey Sergeants made an average of \$16,610 per year, a difference of \$11,599 in wages annually attributable to overtime pay.

Similarly, Table 6, entitled "Employee Contributions to Pay Any Part of Health Insurance Premiums," shows that of the 44 States responding to the survey, 35 or approximately 80% require their Correction Sergeants to contribute toward health insurance premiums. New Jersey Sergeants have not been required to contribute.

Table 7, entitled, "Maximum Leave Entitlements," shows that the leave received by New Jersey Sergeants is equal to or greater than the average leave entitlements of Correctional Sergeants across the Country. Specifically, New Jersey Sergeants receive a maximum of 25 vacation days, 15 sick days, 3 administrative days, and 13 holidays. The national average is 24 vacation days, 14 sick days, 3 administrative days and 11 holidays.

¹¹ Under the State's final offer, the top step salary for New Jersey Correction Sergeants in 2001 would be \$66,483.70. This would yield a \$23,204 difference between top step salary for New Jersey Correction Sergeants and the average top step salary for Correction Sergeants throughout the United States. Moreover, it would yield a difference between the top step salary for New Jersey Correction Sergeants and the top step salary for their counterparts in California (currently ranked number 2 nation-wide) of approximately \$6,340.

¹² Under the State's final offer, the differential between New Jersey Correction Sergeants and their regional counterparts would expand to \$17,036.

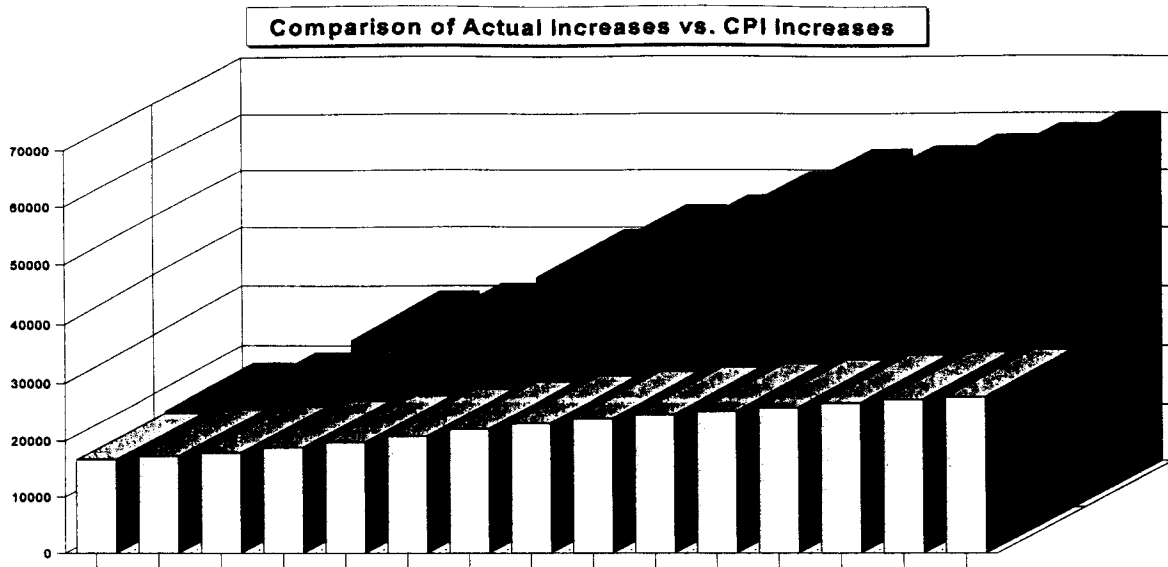
Table 8, entitled, "Provision of Stipends, or Any Other Form of Compensation for Taking College Courses," shows that 58.1% of the 43 States responding to the survey question do not provide a stipend or any other form of compensation for taking college courses. New Jersey Sergeants are eligible to receive 50% reimbursement of mitigated tuition costs up to a maximum of 12 credits in a fiscal year.

The State points out that an analysis of the report prepared by Camp shows that New Jersey Correction Sergeants' wages and benefits are far superior to Correctional Sergeants in other States. This number one ranking will not change with an award of the State's final offer. Moreover, once the other States' 2001 salaries are compared with the updated 2001 New Jersey salaries, rather than the current 2001 to 1998 comparisons, the gap between New Jersey Correction Sergeants and their counterparts across the Country will only widen.

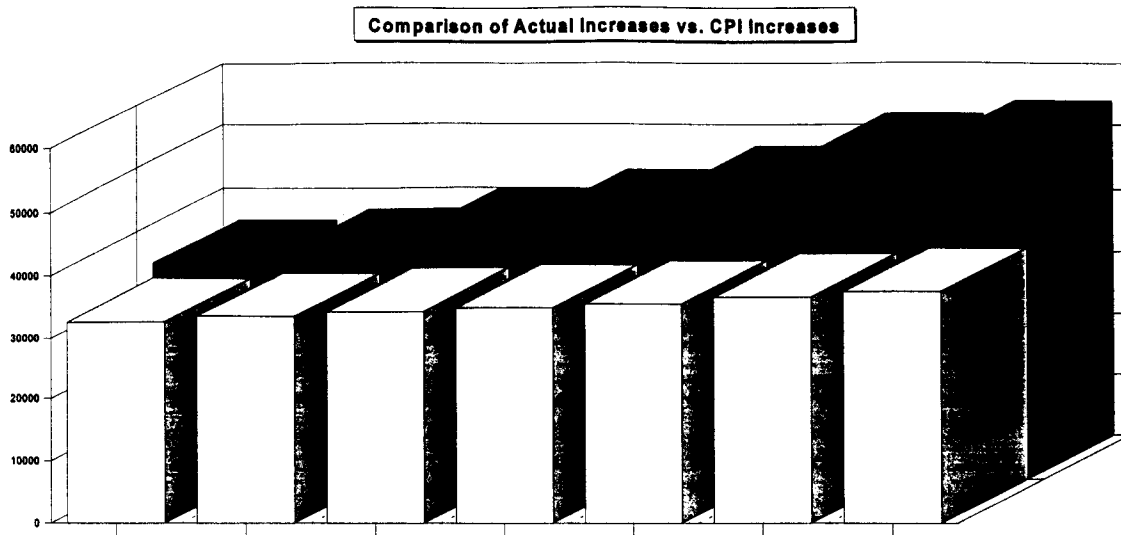
The State points out that the Union did not rebut the State's testimony or documents on this important statutory criterion.

Cost of Living

The State introduced evidence showing that Correction Sergeants have significantly outpaced the Consumer Price Index ("CPI") since 1983, and will continue to do so under its final offer. The State presented the salary history of 2 Officers, labeled Officer A and B. Officer A started his career in 1983 and received one promotion - to Sergeant - in 1990. From hire date through June 1998, Officer A's salary increased by 279%, compared with a CPI increase of 63%. Officer A's wages outpaced the cost of living by 216%, or 13.5% per year for sixteen years:



Similarly, Officer B started his career in 1994 and received one promotion in 1998 - to Sergeant. From hire date through September 2001, Officer B's salary increased by 69%, compared with a CPI increase of only 19.3%. Officer B's wages by 49.7% over seven years or 7.1% per year. Significantly, this increase over the CPI does not take into consideration any increases in wages in 1999, 2000 or 2001. Once these increases are awarded, Officer B's increases will further outpace the CPI:



Even excluding step and promotional increases, Correction Sergeants' across-the-board raises outpaced the cost of living. Since 1980, Correction Sergeants have received compounded base wage increases totaling 206% (excluding increments), compared with a CPI increase of 89.9% over the same period. (S-26). The State's final offer continues this historic pattern of exceeding the cost of living. Given a CPI increase of 2.0%, 3.1% and 2.5% for 1999, 2000 and 2001, the State's final offer, which provides for 2.5%, 3.5% and 4.0% in those years, exceeds the cost of living index by 2.4%.

Continuity and Stability of Employment

The State contends that the Union cannot claim that its proposal is necessary to ensure the continuity and stability of employment of unit members. To the contrary, because of the severe fiscal crisis currently facing the State, the continuity and stability of employment for all State employees may be eroded if the Interest Arbitrator grants the Union any increases beyond those set forth in the State's final offer.

The State submits that the Union has presented no evidence which even suggests that unit members might leave State employment to seek better wages and benefits if its final

offer is not awarded. As demonstrated in detail above, there is no better compensation and benefit package offered for comparable work in New Jersey or elsewhere in the United States. This superior economic position is not altered at all by the State's offer.

In addition, the State offers an unblemished record of employment stability for Sergeants Unit members. Unlike other State employees, Correction Sergeants and other SLEU members have never suffered a layoff. Since only July 1999, 35 new positions have been added to this unit, 25 of which were additional Correction Sergeant positions. (S-40)

The financial impact on the governing unit, its residents and taxpayers

The State notes that traditionally the sheer size of the State budget compared with the money involved with salary increases for a single unit militates against this criterion affecting the outcome of a given Interest Arbitration hearing. However, the State contends that the present fiscal state of New Jersey compels the Interest Arbitrator to act conservatively when it comes to spending the State's money. The State cites the testimony of Charlene Holzbaur, Director of the Office of Management and Budget (OMB)¹³, that the State of New Jersey is operating under the most serious budget shortfalls in its history, requiring drastic cost cutting measures throughout every department of State government, including line-by-line analyses of departmental budgets, hiring freezes, layoffs, etc. In addition, the State has had to "pay down" its budget surplus almost to the point of risking fiscal integrity.

Director Holzbaur testified that in fiscal year 2002, when the McGreevey administration took office, the State was facing a \$3 billion shortfall. Moreover, in fiscal

¹³ The OMB's mission, according to Director Hozbaur, is the development, monitoring and conclusion of the State's budget as well as the maintenance of the State's accounting structure. (4T198:17 - 4T198:21). The Director explained that among her duties is to ensure that the State's budget is balanced, in accordance with State law requiring a balanced budget. (4T200:3 - 4T200:10).

year 2003, OMB projected an additional \$5.3 billion shortfall. These budget shortfalls, according to Holzbaur, are “significantly larger than (they have) . . . been in the past.” Moreover, they are the “largest nationally.”

Director Holzbaur testified that expenses for fiscal year 2002 had to be significantly reduced, i.e., by \$3 billion. As a result, the State required the State colleges and universities to forgo part of the appropriation that they had been promised in fiscal year 2002; diverted money away from several fund sources, including the unemployment insurance fund; undertook a line-by-line analysis with each department’s budget to look for areas where there might be cuts or costs that might be delayed or diverted to subsequent years, and instituted a state-wide hiring freeze, with the exception of law enforcement and institutional direct care employees. Besides these measures, the State was forced to spend approximately \$800 million of its budget surplus, reducing it from \$1.3 billion at the close of fiscal year 2001 to a projected \$500 million by the close of fiscal year 2002.¹⁴

Whether this \$500 million surplus adequately covered the needs of the State, Director Holzbaur testified that “we are walking a fine line,” explaining that while rating agencies like to see anywhere from a 4.5 to 5.5 percent surplus, the \$500 million figure represents only a 2 percent surplus. Due to the depleted surplus, Director Holzbaur explained, Moody’s has already reduced the State’s bond rating and Standard & Poor’s is “watching very closely.”

Concerning the projected \$5.3 billion deficit for fiscal year 2003, the State has enhanced revenues by \$2.9 billion and curtailed spending by \$2.4 billion. Specifically concerning the curtailment of spending, OMB required each department to come up with

¹⁴ We would like the Interest Arbitrator to take judicial notice that the State’s budget surplus is, at the time of the writing of this brief, only \$ 100 million.

“management efficiencies”, i.e., reduce spending by 5 percent. In addition, a continued hiring freeze was imposed, along with an expected layoff of approximately 1,000 unclassified employees, and a freezing of all management increases. Furthermore, the State was forced to withhold funding from municipalities and local school districts. Even after these efforts, it is projected by OMB that the surplus at the close of fiscal year 2003 will be \$525,000,000, still at approximately 2 percent, well below the preferred 4.5 to 5.5 percent ratio demanded by rating agencies.

Because of these significant financial concerns, which place the State in a very different situation than existed in 1999 and 2000, the State asserts that its final offer, which is within the confines of the State package designed when New Jersey’s economy was “booming,” is more than fair. The State repeats its argument that when a negotiations unit insists upon pursuing Interest Arbitration, rather than reaching settlement, it runs the risk of being adversely affected by the timing and resulting change in circumstances. Nevertheless, the State submits that it has not sought to propose a reduced economic package to this unit, but instead, has simply tried to maintain its uniform approach to collective negotiations.

Interests and Welfare of the Public

The State points out that the New Jersey Supreme Court stated in Hillsdale PBA, Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), that an analysis of the interests and welfare of the public must take into consideration the priority given to the wages and benefits of public employees within an employer’s overall budget. This statement by the judiciary is reiterated by the State Legislature in the revised Interest Arbitration statute, which compels an arbitrator to consider the impact of his award on a public employer’s spending decisions. The State cites the testimony of OER Director Phil Whitcomb that the State’s overall negotiations objectives in 1999 focused on providing a fair economic package

to employees, while simultaneously providing for a level of employee contributions to help offset the cost of enhanced employee wages and benefits. Hand-in-hand with these general objectives was the overriding desire to maintain equity among employee groups, and to ensure that the public money was not misspent on benefits with no logical basis.

The State points out that the legitimacy of its goal to maintain equity among employees and achieve uniform offsets to cost was acknowledged by Arbitrator J.J. Pierson, who stated in an award involving rank-and-file Correction Officers:

The State has taken affirmative steps in considering the interests and welfare of the public by drawing on a strategy of uniform economic proposals to develop consistency of results.

Pierson went on to say:

In this Arbitrator's opinion, the State has demonstrated a concerted effort to lessen the economic impact on the taxpayer by offering each bargaining unit a consistent and uniform economic proposal. The strategy of the State (to effectuate fiscal stability by standardizing the economic proposal to each bargaining unit) . . . has been productive, and the interests and welfare of the public have been well pursued by the State.

The State asserts that its final offer is in line with the pattern established with the State's other negotiations' units covering the period 1999-2003, and is in the *interests and welfare of the public*. The State argues that the Union's final offer ignores the firmly established settlement pattern and seeks economic and other enhancements without legitimate justification or evidentiary support. The State asserts that such a result would be contrary to the *interests and welfare of the public*.

The State maintains that an award in favor of the Union will give the Union better contract terms than received by any other State unit, simply because the Union held out the longest. The State asserts that such a result would not only be inconsistent with the principle of uniformity espoused by both Pierson and Mastriani, but it would also create a dangerous

precedent of rewarding employee representatives for their unwillingness to accept the pattern of settlement.

The State offered the following specific arguments on the individual open issues proposed by the State and the Union:

Wage Increases

The State asserts that its non-retroactive 14.5% increase to both Correction and Non-Correction Sergeants is mandated by its inability to realize employee contributions from the Sergeants Unit in a timely fashion and in a time frame in line with all other employee groups. The State points out that the fully retroactive increases awarded to other State employee units were inextricably linked to early contract settlements and the ability to achieve real dollar savings over the term of the respective contracts. The State argues that since these savings have not been achieved with the Sergeants, the percentage increases must be correspondingly reduced. The State asserts that any other result would reward Sergeants for the delay, deprive the State of its right to receive employee contributions in accordance with its established pattern, and ignore the current adverse economic realities.

Shift Overlap

The State asserts that its shift overlap proposal is in line with the pattern established by the approximate 6,000 New Jersey rank-and-file Correction Officers. It includes, as an essential element, the elimination of the contractually mandated shift overlap currently provided to every Correction Sergeant on every shift, regardless of need. The State notes that its proposal does not seek to prevent overtime from being earned when an officer is required to stay after or engage in work before a regular shift. The State submits that its proposal envisions that officers will be paid on a minute-by-minute basis at the overtime rate whenever they are required to work past shift end as specified in the overtime provisions of the contract.

The State submits that the record established that shift overlap is a separate incremental overtime scheme mandated in the contract as a way to supplement regular wages. Moreover, shift overlap is not the only method available to communicate information between shifts. Currently information is effectively communicated to Correction Officers without the use of shift overlap. The State asserts that this was confirmed by both State and Union witnesses, including John Cunningham, a member of the Union's executive board, who conceded that the entire concept of shift overlap was introduced as a "monetary benefit in lieu of regular pay raises." The State cites Cunningham's testimony that his objection to the elimination of shift overlap was motivated not by safety, but by the reduction in pay associated with its elimination.

The State cites the testimony of Scott Faunce, Deputy Commissioner of the Department of Corrections. Faunce, a former Administrator of Bayside State Prison, and a 25-year veteran of the Department of Corrections, testified that no amount of mandatory shift overlap is needed to communicate information between shifts effectively or maintain the safety of officers.¹⁵ Rather, Faunce testified that shift overlap could be worked on an as needed basis and compensated at overtime rates minute for minute. In support of his position, Faunce relied in part on the successful elimination of mandatory shift overlap for Correction Officers. Faunce testified that the elimination of mandatory shift overlap for the State's rank-and-file Correction Officers would not impact on the effective operations of New Jersey's prison system. Faunce further testified that since the elimination of shift overlap for Correction Officers, there has been a decrease within the institutions of crime,

¹⁵Faunce testified that the information which must be exchanged between outgoing and incoming Correction Sergeants could easily be communicated in ways other than shift overlap. Faunce stated that information could be provided in both tour reports, which the outgoing Sergeant has a hand in preparing and which must be reviewed by the incoming Sergeant, and in log books located at each post. Faunce stated that there are advantages to relying primarily on documentary information, namely clarity and accountability.

drug use, gang activity, assaults and the time inmates spend in administrative lock-up. Faunce testified that the elimination of shift overlap for Sergeants would be achieved with the same results.

Faunce reiterated that the elimination of contractually mandated shift overlap would not prevent officers from being compensated when held over as needed, or staying to communicate information face-to-face when written reports will not suffice. The significant difference is that shift overlap would not be automatically mandated by the contract, but rather, would be based on operational need. Faunce testified that since the elimination of mandatory shift overlap for Correction Officers, he has personally called line-ups resulting in officers working beyond their regular shift and being compensated on a minute by minute basis. In each instance, the officers held over received premium pay for each minute worked beyond their regular shift in accordance with contractual provisions. Faunce further stated that holdovers would occur whenever a Shift Commander or other authorized supervisor determined that additional time was necessary to communicate information or for other operational reasons.

Faunce testified that the State proposal to eliminate mandatory shift overlap for Correction Sergeants would not impact negatively on the safety of any officer within the State's Correction Institutions, nor would it prevent the effective flow of information between shifts. Faunce further testified that if he thought for one second that safety would be negatively impacted, he "would be in here saying we should have line-ups." Faunce testified that he would not testify for the State if he were against the elimination of mandatory shift overlap. The State notes that Deputy Commissioner Faunce's credibility was unchallenged and his testimony unrebutted.

The State contends that the overwhelming weight of the evidence presented by both the State and the Union supports the conclusion that contractually mandated shift overlap is not necessary for the safe and effective operation of the State's Correctional Institutions. Rather, it is an economic benefit which accounts for nearly 25% of all overtime worked by Correction Sergeants annually. As an economic benefit, the State asserts that its proposal to eliminate shift overlap for Sergeants, as it did for Correction Officers, falls squarely within its pattern of settlement. The State maintains that equity demands its elimination in this Interest Arbitration.

The State asserts that a mandatory 20 minutes of shift overlap for every Correction Sergeant on every shift is wasteful, inefficient and unnecessary.¹⁶ The State asserts that a more enlightened and fiscally responsible approach is to use shift overlap on an as-needed basis and pay officers for the time actually worked. The State maintains that based on the pattern of settlement and the compelling evidence produced, mandatory shift overlap must be eliminated.

Timing of Disciplinary Charges

The State seeks to extend the time limit for bringing disciplinary charges from the existing thirty days to six months from when the appointing authority becomes aware of the offense. The State relies on the testimony of Thomas Sawey, Director of the Department of Corrections Office of Employee Relations. Sawey testified that many of the more factual complex and/or sensitive allegations of employee misconduct, such as those regarding race discrimination or sexual harassment, require a significant amount of investigation which cannot be completed effectively within 30 days. The State contends that the 30-day time

¹⁶As has been noted previously, many State Correctional Institutions across the country do not have a mandatory shift overlap. (S-3)

frame often results in rushed investigations and hastily filed charges serving neither the interests of the employee, nor the State or the public.

Sawey also testified specifically about employee discipline regarding pending criminal matters. The Department of Personnel rules provide that an appointing authority may suspend an employee indefinitely, awaiting the outcome of the criminal proceeding to decide whether it is appropriate to either (1) seek forfeiture of the individual's job under the forfeiture law, or (2) bring administrative charges based on the employee's underlying conduct. See N.J.A.C. 4A:2-2.7. Under the existing 30 day time limits, the Department is often forced to bring administrative charges prior to the outcome of the criminal proceedings (i.e., within 30 days), before all the facts can be adequately investigated, to preserve its right to act.

The State asserts that extending the time frame to six months would enable the Department to thoroughly investigate all offenses prior to bringing charges. In addition, the 6-month time frame does not extend the investigation period to such an extreme that the imposition of discipline is negatively impacted.

The State provided specific arguments opposing the following Union proposals that the State asserts are outside the established pattern and unsupported by the record.

Uniform Allowance

The Union proposes increasing the uniform allowance for Non-Correction Sergeants from \$1,435 to \$1,635 annually; and for Correction Sergeants from \$1,610 to \$1,810 annually, an increase of \$200 per officer over the term of the contract. The State contends that the Union failed to justify its requested increase

In support of its increase, the Union offered only the testimony of Joseph Carroll, a Second Vice President on the Executive Board and member of the Department's uniform

committee. The State argues that Carroll's testimony demands its rejection. Carroll testified that a Correction Sergeant spends approximately \$1,200 to \$1,500 per year on the purchase and maintenance of his uniform, less than the amount currently provided. In addition, Carroll testified that based on his own experience, only \$1160 per year is needed for the cleaning and purchasing of uniforms. Specifically, he testified that he purchases one uniform per year, which costs him between \$110 and \$120, and spends approximately \$20 per week on "cleaning and maintaining" his uniform. Even assuming Carroll incurs cleaning and maintenance costs during every week of the year, including those weeks when he is on vacation or otherwise away from work, his total expense for purchasing, cleaning and maintaining his uniform would be only \$1160 per year, well below the \$1,610 and \$1,435 currently provided Correction and Non-Correction Sergeants, respectively.

The State maintains that the Union's proposed increase cannot be justified and must be rejected.

Leave for Association Activity

The State opposes the Union's proposal that its current entitlement to 35 days of paid leave annually for Association activity be increased to 200 days, an increase of 571%. The State disputes the testimony of Robert Cardone, President of the New Jersey Law Enforcement Supervisors Association, that the additional days were needed for the handling of discipline and grievances, for appearances at Office of Administrative Law proceedings, and to meet with administrators at particular facilities on labor management issues.

The State cites the testimony of Thomas Sawey who stated that leave for the following activities is provided by the Department, without limitation, and is not chargeable against the allotted 35 Association days: (1) meetings with management representative, (2) grievance meetings, (2) negotiations meetings, (3) departmental disciplinary hearings, (4)

Weingarten interviews, (5) interest arbitration hearings, and (6) representation at appeals to the Merit System Board and/or the Office of Administrative Law. The only days charged against the Union's allotted 35 Association days are those days used to conduct internal union business in the absence of any management representative, i.e., if a member of the Union's executive board met with an elected official to lobby for the Union, that would be charged as leave for Association activity and deducted from the bank of 35 days. The State asserts that the Union presented no support for an increase in these internal union days.

Sawey testified that as of April 9, 2002, with only two months remaining in the fiscal year, the Union had used only 21 of their 35 allotted Association leave days. The State submits that this suggests that a decrease may be appropriate. Sawey testified that given the distinction between chargeable and unchargeable days, the 35 days is more than adequate to satisfy the Union's need for leave to attend to Association business.

Convention Leave

The Union proposed that the State provide 260 paid convention leave days to attend PBA conventions because of the finding by the New Jersey Appellate Division in New Jersey State Fireman's Mutual Benevolent Association v. North Hudson Regional Fire and Rescue, 340 N.J. Super. 577 (App. Div. 2001), that the convention leave statute (N.J.S.A. 40A:14-177) was unconstitutional. It is undisputed that this decision eliminated the Union's statutory right to convention leave as of 2001.

On January 3, 2002, a new convention leave statute was passed, which again provides police and fire units in New Jersey (including the Sergeants unit) with guaranteed paid convention leave for either 10 percent of its membership or 10 members, whichever is less, up to five days to attend each Association convention. The State contends that this new statute addresses the Union's stated concerns for convention leave.

The State submits that the convention leave statute preempts negotiations on convention leave. The State maintains that the Union has failed to justify its proposal.

Premium Pay for Representation at Hearing Beyond Shift

The State opposes the Union's proposal that its representatives be compensated at the overtime rate for all hearing appearances conducted and/or completed after the representative's working hours. The State contends that the Union failed to provide any argument in support of its proposal.

The Department's current practice is to release a Union representative from duty with pay (without charging any leave account) during his/her work hours to attend hearings. In addition, if the hearing continues beyond the representative's shift, the representative is compensated at the straight time rate for all additional time spent at the hearing in excess of his or her regular shift. The State contends that the Union failed to offer any reasonable justification for increasing the current benefit.

Preferential Work Shift for Executive Board Members

The State opposes the Union proposal that Association Executive Board members be assigned only to the first shift, with both Saturdays and Sundays scheduled off. The State disputes the Union's claim that its Executive Board members should be given shifts which correspond with administrative hours to better enable them to meet with management and conduct business.

The State cites Thomas Sawey's testimony that it provides representatives at each facility a first shift assignment with part of the weekend off. These institutional representatives handle, among other things, Weingarten interviews, disciplinary hearings and grievance hearings. Sawey testified that the State's current practice is to schedule Executive Board members off on either Saturday, Sunday or both. Sawey testified that implementation

of the Union's proposal could severely limit management's ability to assign staff on weekends effectively as dictated by operational needs. The State asserts that the Union's proposal is not justified and should be rejected.

**Paid Leave to Take DOP Examinations
and Attend Interviews When Off-Duty**

The State opposes the Union's proposal that unit members receive paid leave for all examinations and interviews, including those which occur outside work hours, and that Association members not be scheduled for promotional/transfer/reassignment interviews on regular days off. The Department's current practice is to release an employee taking a promotional examination from work without loss in pay, including travel time to and from the examination site. The State points out that the Department treats all law enforcement units in the same manner. The general rationale behind the Department's approach is that employees should not be penalized with loss of pay for taking advantage of promotional opportunities, however, they should also not be allowed to take voluntary promotional exams and interviews at the State's expense.

Sawey testified that the Union's proposal would allow employees to be released and/or paid for attendance at any Department of Personnel examination, not just in-line promotional exams, as is the current practice. Sawey explained that since the Department of Personnel offers many tests throughout the year in a whole variety of titles, a contract provision such as that proposed by the Union would result in the Department having to release employees from work with pay to take an array of open-competitive examinations having no relation to those individuals' in-line series. The State maintains that the Union's proposal is unjustified and should be rejected.

**Dismissal of Disciplinary Charges for Failure to Conduct Hearing
Within 20 Days or Failure to Render Decision Within 20 Days**

The State opposes the Union's proposal that disciplinary charges be dismissed if the Department fails to convene a hearing or render a decision within 20 days. Sawey testified that the Department makes every effort to comply with the 20 day time frames. However, there are many factors beyond the Department's control which make it impossible to comply on every occasion, including the unavailability of witnesses, charging parties and staff and the huge volume of cases which must be scheduled. Charges are not dismissed when time frames are not met. Rather, the employee has the option of waiving the departmental hearing and proceeding directly to the Merit System Board on major disciplinary action or to the Joint Association Management Panel on minor discipline. Sawey testified all parties will suffer if the Union's proposal is awarded since hearing officers may be forced to render hasty decisions to preserve the viability of the disciplinary action or move forward without all witnesses. The State contends that this circumstance could result in improper findings without the benefit of a more thorough examination of the evidence.

Audio Tape of Departmental Hearings

The State opposes the Union proposal to require an audio recording of Departmental disciplinary hearings. The State understands this proposal to mean that the Union wishes to have the right to bring their own tape recorder to disciplinary hearings and make their own tapes of those proceedings. The State contends that the Union provided no support for its proposal.

Sawey testified that hearings are intended to be informal and the taping of disciplinary hearings is not permitted. Testimony is not under oath and all review on appeal is de novo. The State submits that since recorded testimony will not be considered on appeal, it is not clear what justification could be argued for the making of such a tape.

The State contends that there are logistical problems that could result from the introduction of an Association tape recorder into the hearing process. Sawey testified that if the Association brings in a recorder, then both the management representative and hearing officer will likely want to bring in their own tape recorders. Disputes may then arise about which tape recording will serve as the official record of the proceedings. The State contends that there is no way to ensure the authenticity of tapes made by the Union, nor is there any way to effectively limit the use of such tapes. Finally, the State notes that the tape of a hearing that involves sensitive personal or operational matters could easily be duplicated and released.

The State maintains that the Union failed to address the State's stated concerns and asks that its proposal be rejected.

Provide Discovery 14 Days Prior to Departmental Hearing

The State opposes the Union's proposal that all relevant documents and witness lists be provided by the Department no less than 14 days prior to any Departmental Hearing. The Department's current practice is to provide a list of documents and witnesses within three days of the hearing. Sawey testified that this practice has remained unchanged and has been reflected in law enforcement contracts for many years. Sawey testified that the 3-day rule has worked well over the years, and he has received "very few arguments, grievances or concerns," regarding this issue. Sawey stated that increasing time to 14 days is simply not necessary and considering the workload, is untenable. The State maintains that the Union has failed to offer any supporting justification why more than 3 days is needed.

Stay Disciplinary Action Pending Appeals

The State opposes the Union's proposal that the Department be prohibited from requiring an employee to serve discipline during the pendency of any departmental appeal

or appeal to the State Department of Personnel, Merit System Board. The Department's current practice is that an employee is not required to serve discipline until after the departmental hearing. If found guilty, an employee is served with a final notice of disciplinary action, pursuant to State DOP rules, and is required to serve the discipline contained in the final notice. The employee then has the right to appeal major disciplinary action to the DOP within 20 days for a hearing before the Office of Administrative Law. If the Administrative Law hearing results in a dismissal or reduction in the penalty, the employee is made whole by an award of back pay.

The State contends that there is no reason to stay the imposition of discipline given the availability of a make whole remedy. Conversely, there are several reasons, as testified to by Sawey, which support the need to immediately impose discipline following the completion of a departmental hearing and issuance of a final notice of disciplinary action. Those reasons were not only explained by Sawey, but were acknowledged by the Union's own witness, Willis Morton.¹⁷ Sawey testified that in order for disciplinary action to serve its intended purpose, to correct inappropriate behavior and not merely be punitive, it must be proximate in time to the action causing the discipline. Due to the backlog of cases at the Office of Administrative Law, which can be between 18 to 24 months, if discipline waited, the corrective effect of disciplinary action would be lost.¹⁸ Moreover, any number of additional offenses might occur during the intervening period, thereby making any attempt

¹⁷ Willis Morton testified before the Interest Arbitrator with regard to the disciplinary process that, "if there was a penalty to get it out and get it served and be done with the process. It's important to the person that is being disciplined that it doesn't linger and hang on forever and ever and he doesn't know whether or not he is going to get 15 days or 20 days or 10 days, an official reprimand or nothing. And that affects - - that can affect his - - the way he works, the way the employee works..."

¹⁸ Under the Union's proposal, where a full departmental hearing has resulted in a finding that the removal of a particular Correction Sergeant is justified, the State will be required to permit that employee to remain on the job for the entire pendency of his or her appeal to the Merit System Board, regardless of the egregiousness of the offense. This result unacceptably inhibits the State's ability to effectively manage its workforce and clearly does not serve the interest or welfare of the public.

at progressive disciplining a virtual impossibility. The State asserts that delaying the imposition of discipline until the exhaustion of all appeals would frustrate the essential purpose of the disciplinary process and, because of the availability of back pay as a make-whole remedy, is entirely unnecessary.

**Receipt of Compensatory Time at Premium Rate for
Treatment of Injuries During Off-Duty Time**

The State opposes the Union's proposal that employees receive "compensated time off" on the date of an injury and all subsequent treatment dates, and if treatment occurs outside normal working hours, premium compensation rates shall apply. The Department's current practice is that if an employee is injured on the job, he or she is taken to an emergency room and will be paid through the end of his or her shift. An employee is not required to use any of his or her leave time for the absence on the date of the injury.

In addition, under the State's generous Sick Leave Injury (SLI) program, any employee who is disabled due to a work-related injury or illness is granted a leave of absence with pay for up to one year. See N.J.A.C. 4A:6-1.6. The individual may even use his or her SLI leave intermittently during that year to seek necessary treatment for the injury or illness.

The State asks the Union's proposal be rejected.

Replacement of Security Vests

The State opposes the Union's proposal that the uniform allowance provision be modified to provide that, "the State of New Jersey will replace security vests free of charge, if the old vest is returned." The State contends that the Union failed to link its proposal to any need and failed to limit its proposal in any way. Under the Union's proposal, any time an employee chooses to hand in his vest, for any reason, regardless of how long the vest has been in use, the State will be obligated to replace it.

The State's current practice is to replace any vest when it has outlived its useful life, as that term is defined by the vest's manufacturer, not at the whim of every employee.

The State asks the Union's proposal be rejected.

Payment of Loss Claims within 30 Days

The State opposes the Union's proposal that it be required to pay loss claims within 30 days of the filing of a claim. The current practice is that upon receipt of a loss claim, the institution's business office investigates the claim to determine the value of the damaged or lost item and the cause of the loss or damage. Approved claims are submitted to the Department of Treasury for payment. Once the claim leaves the institution business office and is sent to Treasury for processing, the matter is out of the hands of the Department. Consequently, despite the Department's best efforts, the entire procedure, including processing by the Department of Treasury, may go beyond 30 days. The State contends that the Union failed to offer any support for its proposal and asks that it be rejected.

Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been found relevant, although the weight given to different factors varies, as discussed below. I have discussed the weight I have given to each factor. I have also determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the statutory criteria.

The parties related the evidence and arguments regarding the criteria primarily to its offer and to that of the other party. I shall not do so because, in this conventional proceeding, I have the authority and responsibility to fashion a conventional arbitration award unlike the prior statute which required an arbitrator to select the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. This principle shall also be applied to new proposals.

The parties agree that the duration of the new four-year agreement shall be July 1, 1999 to June 30, 2003. I accept this agreement as a stipulation to the term of the new agreement and award a four-year agreement. The agreement shall be effective July 1, 1999 to June 30, 2003.

I have determined that the 1999 base salary for the Corrections/JJC Primary Level Supervisors is \$32,307,000 for 548 employees. The Union proposes annual salary increases of 4% across-the-board to be effective July 1, 1999; July 1, 2000; July 1, 2001 and July 1, 2002 for Corrections/JJC Sergeants. The maximum salary for Corrections/JJC Sergeants is currently \$60,228. The maximum salary under the Union's proposal will increase to \$62,638 effective July 1, 1999; to \$65,143 effective July 1, 2000; to \$67,749 effective July 1, 2001; and to \$70,459 effective July 1, 2002.

The total cost of the Union's 4% across-the-board salary proposal in FY 2000 is \$1,292,280. This increases the FY 2000 base to \$33,599,280. The total cost of the Union's 4% across-the-board salary proposal in FY 2001 is \$1,343,971. This increases the FY 2001 base to \$34,943,251. The total cost of the Union's 4% across-the-board salary proposal in FY 2002 is \$1,397,730. This increases the FY 2002 base to \$36,340,981. The total cost of the Union's 4% across-the-board salary proposal in FY 2003 is \$1,453,639. This increases the FY 2003 base to \$37,794,620.

I have determined that the 1999 base salary for the K Unit is \$5,021,000 for 84 employees.¹⁹ The Union proposes annual salary increases of 4% across-the-board to be effective July 1, 1999; July 1, 2000; July 1, 2001 and July 1, 2002 for employees in the K Unit. The 1999 base salary for the K Unit is \$5,021,000 for 84 employees. The total cost of the Union's 4% across-the-board salary proposal in FY 2000 is \$200,840. This increases the FY 2000 base to \$5,221,840. The total cost of the Union's 4% across-the-board salary proposal in FY 2001 is \$208,874. This increases the FY 2001 base to \$5,430,714. The total cost of the Union's 4% across-the-board salary proposal in FY 2002 is \$217,229. This increases the FY 2002 base to \$5,647,942. The total cost of the Union's 4% across-the-board salary proposal in FY 2003 is \$225,918. This increases FY 2003 base to \$5,873,860.

¹⁹These figures are derived from State Exhibits 39A and 39B. The average salary for the Corrections Unit is \$58,954. The average salary for the K Unit is \$59,774.

The State proposes across-the-board salary increases of 2.5% effective July 1, 1999; 2% effective July 1, 2000; 1.5% effective January 1, 2001; 2% effective July 1, 2001; 2% effective January 1, 2002; 2% effective July 1, 2002; and 2.5% effective January 1, 2003. The State proposes that all of the above salary increases shall be effective upon the execution of the new CBA and that none of the above across-the-board wage increases shall be retroactive. The State incurs no cost above the 1999 base of \$32,307,000 for Corrections/JJC Sergeants and the 1999 base for \$5,021,000 for K Unit employees for forty months — the period from July 1, 1999 to the date of this award.

The new base for Corrections/JJC Sergeants effective on the date of this award is \$36,357,527 under the State's proposal. The new base for Corrections/JJC Sergeants effective January 1, 2003 is \$37,248,643 under the State's proposal. The increased cost of the State's four-year salary proposal for Corrections/JJC Sergeants is \$4,941,643. The payout under the State's proposal is reduced by the "split" raises.

The new base for K Unit employees effective on the date of this award is \$5,678,212. The new base K Unit employees effective January 1, 2003 is \$5,789,000. The increased cost of the State's four-year salary proposal for K Unit employees is \$768,000.²⁰ The payout under the State's proposal is reduced by the "split" raises.

The Union proposes a 16% across-the-board salary increase over the four years of the new CBA with full retroactivity. The State proposes a 14.5% across-the-board salary increase over the four years of the new CBA with no retroactivity.

The State's position to provide no retroactivity on salary increases is predicated on the Corrections/JJC Primary Level Supervisors unit members continued receipt of the shift

²⁰The above salary calculations are based on the 1999 data included in S-39A and S-39B. These calculations do not include step increases and roll up costs nor do they assume any resignations, retirements, promotions or new hires. The State's estimates are minimally higher with adjustments made in 2000, 2001 and 2002 based on changing data.

overlap. The State calculates that the shift overlap costs \$3,750 annually for 562 bargaining unit members.²¹ The annual cost attributable to the 20 minute shift overlap is \$2,107,500.

I shall now discuss the evidence and the parties' arguments in relation to the statutory criteria.

Interests and Welfare of the Public

The interests and welfare of the public require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Correction Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Correction Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Correction Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

²¹S-38 shows the average overtime attributable to shift overlap as \$3,749.74 annually. This was derived by calculating the 100 weekly minutes to be equal to 1.66 hours per week and 86.32 hours annually. The State calculated the hourly rate of a top step employee at \$60,228.40 with an hourly rate of \$28.96 and an overtime hourly rate of \$43.44. \$43.44 overtime rate times 86.32 hours of shift overlap equals \$3,749.90. I rounded this figure up to \$3,750 to simplify calculations.

“The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the ‘unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State’ and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony.”

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. The terms of this award will not cause an adverse financial impact on the State, its residents or taxpayers nor do the terms conflict with the lawful authority of the State. Arbitrator Mastriani notes in his award that the parties conceded that the lawful authority of the employer criterion is directed primarily to counties and municipalities covered by the CAP law. The State in this matter, as it did in the SLEC arbitration, points to the financial impact of an award in excess of its proposal. I note that in the Mastriani Award, the estimated expenditure for the Department of Corrections in FY 2000 was \$934 million. This represented a \$70 million increase over the FY 1999 budget.

The Union asserts that all of its economic issues can be funded without an adverse financial impact on the State. I will discuss each of the Union’s economic issues separately in my discussion. The main financial issue in this matter is the cost of the mandatory 20-minute shift overlap. This issue does not impact on bargaining unit employees in the K Unit who do not receive shift overlap. The terms of my award for the K Unit are similar to the

terms of other State settlements and follow the pattern of the CWA, PBA Internal Affairs Unit and the F Unit in the SLEC bargaining unit.

Salary/Mandatory Shift Overlap

The State's proposal providing for no retroactivity is directed to both the financial impact of retroactivity and the pattern of settlement reached with nearly all other State employees. The State's arguments are primarily directed to the labor relations aspects of maintaining uniform salary increases and other economic terms and conditions of employment. I find considerable merit in the State's argument that "pattern" requires that similar groups of employees receive similar economic benefits.

The State has emphasized the importance of "pattern of settlement." The importance of "pattern" has been acknowledged by Arbitrator J.J. Pierson in an earlier interest arbitration award in the SLEC bargaining unit. Arbitrator Mastriani in the 1999-2003 SLEC award, notes that the State accurately quoted the Pierson Award "as recognizing the importance of pattern of settlement and this assertion must be accorded great weight." I agree with Arbitrators Mastriani and Pierson that "pattern of settlement" in State negotiations is an important, if not the most important, element for consideration. A party seeking to deviate from an established pattern of settlement bears a heavy burden in an interest arbitration matter.

Arbitrator Mastriani, in the SLEC award, found that the value given to the "State Package" had to be measured against all of the statutory criteria." Arbitrator Mastriani reviewed the terms of all of the State settlements as of July 2000 finding that "the State Package provides increases totaling between 13.5% and 14.5% over four years to other State bargaining units." Arbitrator Mastriani reasoned that a 14.5% increase was appropriate for the K Unit (non corrections). The State seeks to extend this 14.5% increase to the supervisory K Unit and the Corrections/JJC Sergeants in this matter.

I agree with Arbitrator Mastriani's reasoning and award the same 14.5% increase awarded to the K Unit in the SLEC matter. This is consistent with the State's "pattern of settlement" argument and maintains uniformity of salary increases for K Unit rank-and-file and supervisory members. There is simply no basis to disturb the long time differential between supervisory and rank-and-file K Unit members. The record includes no evidence to support a salary increase above the 14.5% increases received by the rank-and-file. The State proposed a 14.5% increase as follows:

7/1/99	2.5%
7/1/00	3.5% (2.0% payable on 7/1/00; 1.5% payable on 1/1/01)
7/1/01	4.0% (2.0% payable on 7/1/01; 2.0% payable on 1/1/02)
7/1/02	4.5% (2.0% payable on 7/1/02; 2.5% payable on 1/1/03)

The State's proposal provides for no retroactivity for both the K Unit and Corrections/JJC Sergeants. The State's argument for no retroactivity is directly related to the mandatory shift overlap issue and the cost of paying for this beyond the July 2000 effective date of the Mastriani Award. The State calculates the value of the mandatory shift overlap to be \$3,750 per year. It is undisputed that K Unit supervisors do not receive payment for mandatory shift overlap. The State cannot argue that employees in this unit received additional compensation outside the "pattern" or that members of this unit benefitted from the delay in final resolution of this matter. Accordingly, I find that all of the above salary increases for K Unit employees are fully retroactive. Full retroactivity is consistent with the State's emphasis on the importance of "pattern of settlement." An award without full retroactivity would be a deviation from the pattern of settlement.

I shall now discuss the salary increases for the Corrections/JJC Sergeants in the bargaining unit. Before I detail the terms of my salary award, I shall discuss the issue of shift overlap.

Shift Overlap/Hours of Work

The parties agree that the single most important issue in this matter is mandatory shift overlap and its relationship to the respective salary final offers of the State and the Union. The presentations of the State and the Union have focused on the operational aspects and the economic aspects of this issue. I shall first address the operational aspects.

It is undisputed that mandatory shift overlap began as an economic benefit. This is acknowledged by the testimony of both State and Union witnesses. The record includes extensive testimony by Union and Department of Corrections witnesses on this issue. I have reviewed the testimony of President Cardone, Vice President Cunningham, former Director of Operations Morton and current Assistant Commissioner Faunce. All witnesses testified credibly as to the impact of the mandatory shift overlap on operational issues. All witnesses testified that maintaining communication between shifts is a very important consideration in maintaining a safe and secure environment. All witnesses acknowledged that a certain amount of shift overlap (at the end or the beginning of a shift) may be necessary in certain situations.²² All witnesses acknowledged that a mandatory twenty-minute shift overlap was not required for all Corrections/JJC Sergeants.

The Union's primary witness on mandatory shift overlap was Willis Morton, former Director of Operations for the Department of Corrections. Morton testified that shift overlap plays a critical role in administering the prisons. Morton emphasized the need for communication between the custody staff. Morton explained that inmates are always looking for an edge on the Corrections staff, and that the only defense to what inmates may be planning is good communication between shifts. Observations of unusual behavior or

²²The State and PBA 105 have operated without shift overlap for more than two years. A number of different protocols have been implemented during that period to maintain effective communications for relief personnel.

changing patterns of behavior by inmates often signify risks. Morton testified that these observations, when communicated to following shifts, serve as an intervention tool to head off potentially dangerous situations. Morton testified that he would advocate the elimination of mandatory shift overlap for posts that are not relieved by another shift since there is no functional need for an information exchange and its is not operationally warranted. Morton testified that it remained critical that operational information be disseminated.

The Union acknowledged that shift overlap was not originally established to enhance operational safety — it was strictly an “economic tool” — allowing the parties to increase the value of base salary settlements beyond the “pattern.” Vice President Cunningham, in agreement with Morton, candidly testified that shift overlap is not functionally justified for every Corrections Sergeant — only for those in direct relief assignments.

The State’s primary witness on mandatory shift overlap was Scott Faunce, Deputy Commissioner of the Department of Corrections. Faunce testified that mandatory shift overlap is not needed to communicate information between shifts effectively or to maintain the safety of officers. Faunce testified that information which must be exchanged between outgoing and incoming Correction Sergeants could be communicated in ways other than mandatory shift overlap. Faunce stated that information could be provided by tour reports prepared by the outgoing Sergeant which must be reviewed by the incoming Sergeant and by setting up log books located at each post. Faunce stated that relying primarily on documentary information provided better clarity and accountability.

Faunce testified that shift overlap could be worked on an as needed basis and compensated at overtime rates minute for minute. Faunce’s testimony relied in part on the successful elimination of mandatory shift overlap for rank-and-file Correction Officers. Faunce noted that since the elimination of shift overlap for rank-and-file Correction Officers,

there has been a decrease in crime, drug use, gang activity, assaults and the time inmates spend in administrative lock-up. Faunce testified that the elimination of shift overlap for Sergeants would be achieved with the same results.

Faunce emphasized that the elimination of contractually mandated shift overlap would not prevent officers from being compensated when held over as needed, or staying to communicate information face-to-face when written reports would be insufficient. Faunce stressed that the difference is that shift overlap would be based on operational needs. Faunce testified that since the elimination of mandatory shift overlap for rank-and-file Correction Officers, he has personally called line-ups resulting in Correction Officers working beyond their regular shift and being compensated on a minute-by-minute basis. Faunce stated that holdovers would occur whenever a Shift Commander or other authorized supervisor determined that additional time was necessary to communicate information or for other operational reasons.

Faunce testified that the elimination of mandatory shift overlap for Correction Sergeants would not impact negatively on the safety of any officer within the State's Correction Institutions, nor would it prevent the effective flow of information between shifts. Faunce, a career Department of Corrections employee, stated that he would not testify for the State if he opposed the elimination of mandatory shift overlap.

The testimony of former Director Morton on behalf of the Union and Deputy Commissioner Faunce on behalf of the State was credible and sincere. It is readily apparent that both men have great concern for the safety and well being of Department of Corrections personnel. Both Morton and Faunce agree that maintaining communication between shifts is a very important consideration in maintaining a safe and secure environment. Morton and Faunce both testified that a certain amount of shift overlap (at the end or the beginning of

a shift) may be necessary in certain situations. Morton and Faunce testified that a mandatory twenty-minute shift overlap was not required for all Corrections/JJC Sergeants.

The State has established that elimination of the mandatory shift overlap will result in significant savings to the State. I find, in agreement with the decision of Arbitrator Mastriani, that “while overtime worked is required and would remain as paid overtime, the record does not reflect a need for a regular required shift overlap in the absence of work which is required and performed.” The record includes no evidence that the elimination of mandatory shift overlap for the State’s 6,000 rank-and-file Correction Officers more than two years ago has had a negative impact on the effective operations of the New Jersey prison system or the safety of Correction Officers. To the contrary, Faunce’s uncontroverted testimony shows that there has been a decrease in crime, drug use, gang activity, assaults and the time inmates spend in administrative lock-up since the elimination of shift overlap for rank-and-file Correction Officers.

After reviewing the testimony of Union and State witnesses, I find that there is sufficient basis to eliminate the mandatory shift overlap. I find that such elimination will not undermine the effective operations of the New Jersey prison system nor will it jeopardize the safety of Correction Sergeants and other Department of Corrections personnel. While the Union has raised legitimate concerns about the methodology or protocols to be implemented to maintain communication between shifts, I find, on balance, that the State is committed to maintaining a safe and secure environment.

It is undisputed that not all Sergeants who currently receive shift overlap use the twenty minutes for operational purposes. Testimony confirms that mandatory shift overlap is not the only method to provide effective communications between incoming and outgoing shifts. While shift overlap will no longer be mandatory it will continue to be available as

needed in certain situations and will be compensated at overtime rates. Shift overlap will continue to occur but not on a mandatory basis.

It is undisputed that operational needs do not require that all Correction Sergeants work overtime. The elimination of the twenty-minute shift overlap, by removing operationally unessential overtime, will create greater efficiencies and is in the interest and welfare of the public.

My decision to eliminate mandatory shift overlap is consistent with the decision of Arbitrator Mastriani in the SLEC award and consistent with the principle of maintaining the pattern of settlement.

For all of the above reasons, I award the State's proposal to eliminate the shift overlap. Article XXVI (Hours of Work) is amended to eliminate Section H and add a new Section H as follows:

Effective November 1, 2002, Correction Sergeants shall be employed on a normal work schedule of eight (8) hour per day (40 hour per 5 day week). Each Correction Sergeant shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond those normal work schedules.

Salary Increases/Retroactivity

I shall now discuss the annual salary increases awarded to the Corrections/JJC Sergeants in the bargaining unit and the effective dates of these annual salary increases.

I agree with Arbitrator Mastriani's reasoning that Correction Sergeants, like rank-and-file Corrections Officers, are entitled to receive higher annual salary increases above the patter for other State bargaining units:

While recognizing the need to compensate employees for the loss of the shift overlap benefit, the State's proposal within the confines of the State Package, is insufficient to adequately compensate employees for the elimination of a significant benefit. As a result, for the L Unit employees the salary and

benefits provided in this award must exceed the salary increases and benefits in the State Package to provide a fair exchange for the elimination of the shift overlap.

I have not awarded the State's proposal for no retroactivity nor have I awarded the Union's proposal for full retroactivity. My award is crafted to take into account the additional money received by the Corrections/JJC Primary Level Supervisors for shift overlap beyond the June 30, 2000 Mastriani Award to the SLEC bargaining unit. The Mastriani Award must be given great weight because of the intrinsic relationship between Correction Sergeants and the rank-and-file Correction Officers they supervise and the related issues of mandatory shift overlap and non-contributory health benefits. The major difference is that my decision is effective twenty-eight months after the issuance of the Mastriani Award. I am required to evaluate the impact of this twenty-eight month delay on the economic tradeoff of mandatory shift overlap savings for higher than pattern salary increases and non-contributory health benefits relied on by Arbitrator Mastriani.

The SLEC unit, with approximately 6,000 members, received salary increases above the pattern established with the State's civilian units. The SLEC unit also continued to receive health benefits at no cost unlike the State's civilian units who now contribute 25% of the premium for "indemnity" coverage and 5% of the cost of certain HMOs. My award takes into account the State's argument that an award to Sergeants above the established State pattern for the nearly 6,000 Correction Officers would be unreasonable. I also have factored in the State's argument with respect to the approximately 60,000 State employees who accepted or were awarded the State package in 1999 and 2000 and made employee contributions for health insurance for the past two and one-half years.

The State received considerable value and savings for three of the four years in the 1999-2003 agreement from the elimination of the mandatory shift overlap language

applicable to Correction Officers in the SLEC bargaining unit. It is this value and savings that Arbitrator Mastriani relied on in awarding salary increases above the State package. It is also this value and savings that Arbitrator Mastriani relied on in allowing Correction Officers and “grandfathered” L Unit employees to maintain non-contributory health insurance. The State is entitled to receive value and savings from the elimination of mandatory shift overlap if the Correction Sergeants are to receive higher salary increases and non-contributory health insurance. The Sergeants cannot have it both ways.

I have already decided that mandatory shift overlap is to be eliminated. It follows, for all of the reasons expressed by Arbitrator Mastriani, that my salary award must exceed the salary increases and benefits in the State Package to provide a fair exchange for the elimination of mandatory shift overlap. The key words are “fair exchange”. Fair exchange requires that the State receive value (during the term of this four-year agreement) for providing higher salaries and benefits to the Sergeants. We are now in the fourth year. The prospective value of the elimination of mandatory shift overlap (during the term of this four-year agreement) is only for eight months of a forty-eight month agreement. The State cannot possibly recoup commensurate value and savings in eight months. Obviously, such value and savings can only come from fashioning retroactive effective dates of the higher than pattern salary increases to regain commensurate value. This commensurate value must be measured against the value and savings that the State received for thirty-six months, beginning in July of 2000, from rank-and-file Correction Officers. I shall now detail the terms of my award on salary increases.

I award 16% across-the-board salary increases to the Corrections/JJC Sergeants. This is the same increase received by the 6,000 rank-and-file Correction Officers (L Unit) however the salary increases have delayed effective dates for the last three years of the CBA.

These later effective dates will reduce the retroactive payout and are intended to offset the additional money paid out from July 1, 2000 to October 31, 2002 pursuant to the mandatory shift overlap provisions of the predecessor 1995-1999 CBA. This 16% award is consistent with the "pattern of settlement" argument put forth by the State. It also maintains uniformity of salary rates (and rate increases) for all rank-and-file and supervisory Correction Officers. The Mastriani Award provided the following salary increases for Correction Officers in the L Unit:

7/1/99	4.0%
7/1/00	4.0% (2.0% payable on 7/1/00; 2% payable on 1/1/01)
7/1/01	4.0% (2.0% payable on 7/1/01; 2.0% payable on 1/1/02)
7/1/02	4.0%

I award the following salary increases for the Corrections/JJC Primary Level Supervisors:

7/1/99	4.0%
1/1/01	4.0%
1/1/02	4.0%
1/1/03	4.0%

I shall discuss my reasoning for each of the four years separately. I find no merit to the State's argument that Corrections/JJC Primary Level Supervisors receive no retroactivity for the period July 1, 1999 to June 30, 2000. The Mastriani Award was issued on June 30, 2000. 6,000 Correction Officers in the SLEC unit received full retroactivity on the 4% salary increase awarded. The 6,000 Correction Officers also received the full economic value of the mandatory shift overlap for the 1999-2000 work year. Arbitrator Mastriani valued the annual cost of the mandatory shift overlap as \$2,940 based on the 1998 average salary of \$47,050.

Consistent with pattern, there is no basis to deny the supervisors of the 6,000 Correction Officers full retroactivity for the 1999-2000 salary increase. This is best

illustrated by calculating the value of a 4.0% salary increase for a maximum step employee currently paid \$60,228. The value of the 4% salary in 1999-2000 is not simply the \$2,409 increase on the \$60,228 maximum step salary. The value would be limited to \$2,409 if the State's proposal sought to freeze the salary increase only for the 1st year of the CBA. It does not. It seeks to freeze the 1st year increase for more than three years. The "roll up" value of the \$2,409 increase (not including the compounding of the 2nd, 3rd and 4th year salary increases) is \$8,030. This is computed by adding up the value of the \$2,409 which is paid out in each of the first three years from July 1999 to June 30, 2002 for a total of \$7,227. The value of the \$2,409 paid out from July 1, 2002 to October 31, 2002 is approximately \$803 to bring the total to \$8,030. The 1st year salary increase is a recurring obligation and cannot be measured against the \$3,750 shift overlap cost which is a non-recurring obligation.

I illustrated the recurring value of the 4% increase to show its true value. It is not the primary reason that I have awarded full retroactivity for the 1st year increase. The primary reason is that it would be inconsistent with pattern to deny the supervisors of the 6,000 rank-and-file Correction Officers full retroactivity for the 1st year salary increase received by their subordinates. The rank-and-file Correction Officers received both the 4.0% salary increase and the shift overlap payments in 1999-2000. Consistency and pattern require that their supervisors receive the same salary increases.

I have a different view of the across-the-board salary increases for the 2nd, 3rd and 4th years of the CBA. The payment of mandatory shift overlap to rank-and-file Correction Officers ended on June 30, 2000. Full retroactivity of the 16% salary increase awarded to rank-and-file Correction Officers and 28 months of continued payment of mandatory shift overlap is outside the pattern of settlement. The Union's salary proposal seeking full retroactivity exceeds the established pattern of settlement. Moreover, it completely discounts

the value and savings that Arbitrator Mastriani relied on in awarding salary increases above the State package to rank-and-file Correction Officers. The Union demand for full retroactivity also discounts the value and savings that Arbitrator Mastriani relied on in allowing Correction Officers and “grandfathered” L Unit employees to maintain non-contributory health insurance. As previously stated, the State is entitled to receive value and savings from the elimination of mandatory shift overlap if the Correction Sergeants are to receive higher salary increases and non-contributory health insurance. The Union has not met its burden to justify receipt of full retroactivity of salary increases on top of twenty-eight additional months of mandatory shift overlap. As previously stated, I awarded later effective dates for salary increases (than rank-and-file Correction Officers) to reduce the retroactive payout and to offset the additional money paid out from July 1, 2000 to October 31, 2002 pursuant to the mandatory shift overlap provisions of the predecessor CBA.

The structure of the delayed effective dates for across-the-board salary increases is not patterned on a simple dollar-for-dollar offset. There are several reasons why I did not reduce the across-the-board salary increases dollar-for-dollar.

First, it is undisputed that the removal of the mandatory shift overlap clause from the CBA did not end the need to have overtime on a minute-to-minute basis for rank-and-file Corrections Officers and it will not end the need to have minute-to-minute basis for supervisory Corrections Officers. The State saved tens of millions of dollars by eliminating the payment of mandatory shift overlap for rank-and-file Correction Officers during the past twenty-eight months. The State’s proposal does not prevent overtime from being earned when an officer is required to stay after or engage in work before a regular shift. The State’s proposal clearly contemplates that officers will be paid on a minute-by-minute basis at the overtime rate whenever they are required to work past shift end as specified in the overtime

provisions of the contract. This is confirmed by the State's primary witness in mandatory shift overlap.

Deputy Commissioner Faunce testified that the elimination of mandatory shift overlap would not prevent officers from being compensated when held over as needed, or staying to communicate information face-to-face when written reports would be insufficient. Faunce also testified that since the elimination of mandatory shift overlap for rank-and-file Correction Officers, he has personally called line-ups resulting in Correction Officers working beyond their regular shift and being compensated on a minute-by-minute overtime basis.

Faunce stated that holdovers would occur whenever a Shift Commander or other authorized supervisor determined that additional time was necessary to communicate information or for other operational reasons. Faunce's testimony confirms that shift overlap on a minute-to-minute overtime basis continues to be received by rank-and-file Correction Officers and will continue to be received by Corrections/JJC Sergeants. There is nothing in the record to show how much minute-to-minute overtime was authorized and paid under the SLEC collective bargaining agreement during the past twenty-eight months. There is simply no way to accurately estimate how much minute-to-minute overtime would have been authorized and paid to Corrections/JJC Sergeants during the past twenty-eight months. The salary offset cannot be dollar-for-dollar. It must be mitigated based on the testimony of the State's own witness that a certain amount of overtime would be required to maintain effective communications between incoming and outgoing shifts.

Second, the State and the Union have now gone nearly forty months without a contract. This is an abnormal period with no benefit to the State or the Union. Extended periods of time working without a contract negatively impact on morale, productivity and

the mission of the Department. The State correctly argues that a Union should not be rewarded with better contract terms simply because it held out longer than other employee organizations nor should a Union be rewarded for the delay in resolving the impasse. The State has not suggested that the Union acted in bad faith to delay this proceeding or that it intentionally “held out” to get better economic benefits. I would be inclined to deny retroactivity if that were the case.

Third, it is common for units of superior law enforcement officers to “sit back” and wait for the results of negotiations and/or interest arbitration proceedings to be completed before engaging in serious negotiations. This practice is condoned by employers on the basis that once a settlement is reached with the rank-and-file bargaining unit, the negotiations with the unit of superior officers will be quickly finalized by using the rank-and-file settlement as a “blueprint” or “model”. This is usually the case in uncomplicated matters where traditional “bread and butter” issues remain to be resolved. Pattern of bargaining and the need to maintain rank differentials usually facilitate speedy resolution following a rank-and-file settlement or award. Mandatory shift overlap is not a simple issue.

Fourth, evidence in the record shows that the parties in this matter did not file for interest arbitration until December 21, 2000. I was appointed as arbitrator on August 16, 2001. This is more than two years after Arbitrator Mastriani was appointed as interest arbitrator in the rank-and-file bargaining unit and more than a year after the Mastriani Award was issued. This delay in filing for interest arbitration cannot be attributed solely to the Union. The Public Employment Relations Commission’s Interest Arbitration Rules and Regulations provide under 19:16-5.2 (Initiation of Compulsory Interest Arbitration) that “a petition requesting that an impasse be resolved through compulsory interest arbitration may be filed by an employee representative and/or public employer.” The State and the Union mutually filed the petition to initiate compulsory interest arbitration in this matter and

mutually agreed to my appointment as arbitrator. In other words, both parties waited more than two years after the expiration of the 1995-99 collective bargaining agreement and more than one year after the Mastriani Award was issued before mutually agreeing to my appointment as interest arbitrator. Nothing prevented the State from filing a unilateral request to initiate interest arbitration at an earlier date. The State must accept some responsibility for the delay in this matter.

I am persuaded that all of the above reasons favor mitigation of the salary offset against the twenty-eight additional months of mandatory shift overlap overtime payments. The delayed effective dates for the across-the-board salary increases reduce the payout to provide an offset in accord with the above discussion. I must factor in the dollars received by the Corrections/JJC supervisors for the mandatory twenty-minute shift overlap. The State estimates this to be \$3,750 for a maximum step employee. This is equivalent to 6.25%.²³

Rank-and-file Correction Officers received a 4.0% increase in the 2nd year of the CBA with 2.0% payable on July 1, 2000 and 2% payable on January 1, 2001. The "split" raise for rank-and-file Correction Officers provides for a 3% payout in the 2000-2001 work year with a 1% rollover into the 2001-2002 work year. My award in the 2nd year of the CBA provides for a 4.0% raise to be effective January 1, 2001. This provides for a 2% payout in the 2000-2001 work year and a 2% rollover in the 2001-2002 work year.²⁴

My award in the 3rd year of the CBA also provides for a 4.0% raise to be effective January 1, 2002. This provides for a 2% payout in the 2001-2002 work year and a 2% rollover in the 2002-2003 work year.²⁵

²³The mandatory twenty-minute shift overlap equates to 2½ additional hours of pay per week. On a forty-hour workweek this is equivalent to 6.25%.

²⁴By delaying the 4.0% increase to January 1, 2001, the payout is made for six months or 50% of the work year. This provides for a 2% payout. The payout in the rank-and-file Corrections with a 2% increase on July 1, 2000 and additional 2% increase on January 1, 2001 is 3%.

²⁵By delaying the 4.0% increase to January 1, 2002, the payout is made for six months or 50% of the work year. This provides for a 2% payout. The payout in the rank-and-file Corrections with a 2% increase on July 1, 2000 and additional 2% increase on January 1, 2001 is 3%.

My award in the 4th year of the CBA also provides for a 4.0% raise to be effective January 1, 2003. This provides for a 2% payout in the 2002-2003 work year and a 2% rollover in the 2003-2004 work year.²⁶

The delayed salary increases provide for a financial offset against the continued payment of mandatory shift overlap beyond the July 1, 2000 deletion of this benefit from rank-and-file Corrections Officers collective bargaining agreement. The financial offset is mitigated in accordance with the above reasons. The State calculates the annual cost of shift overlap for 562 Corrections/JJC supervisors to be \$2,107,500. The actual cost is somewhat less since the State's calculations assume that all Corrections/JJC supervisors are at the maximum step. The Corrections/JJC supervisors received the mandatory shift overlap for twenty-eight additional months beyond the date it was eliminated for rank-and-file Correction Officers. The maximum potential savings to the State is \$4,917,500 for the twenty-eight month period.²⁷ This is the same \$4,917,500 that Corrections/JJC Sergeants received in mandatory shift overlap overtime pay for the twenty-eight month period. This must be offset by the delayed salary increases. As previously discussed, I have mitigated the offset for several reasons. The savings to the State during the last three years of the CBA is nearly \$1.5 million.²⁸

I have awarded a 16% salary rate increase for four years to the Correction Sergeants. This is identical to the 16% salary rate increase received by the rank-and-file Correction Officers. This is consistent with the pattern of settlement and while the delay in

²⁶By delaying the 4.0% increase to January 1, 2003, the payout is made for six months or 50% of the work year. This provides for a 2% payout. The payout in the rank-and-file Corrections with a 4% increase on July 1, 2002 is 4%.

²⁷The \$5 million is calculated by dividing the \$2,107,500 annual cost by 12 and multiplying by 28: $\$175,625 \times 28 = \$4,917,500$.

²⁸This calculation is based on 562 Corrections/JJC supervisors and assumes, as the State did, that all 562 are at the maximum step. When measured against the Mastriani Award, the delayed effective dates for salary increases for Sergeants at maximum reduces the payout by \$626 in 2000-2001 (\$63,891 vs. \$64,517); \$652 in 2001-2002 (\$66,445 vs. \$67,097); and \$1,355 in 2002-2003 (\$69,104 vs. \$70,459). The annual savings are \$351,812 in 2000-2001; \$366,424 in 2001-2002; and \$758,800 in 2002-2003 for a total savings of \$1,477,036 over the last three years of the CBA.

implementation dates reduces the payout below that of rank-and-file Correction Officers to offset the continued payment of shift overlap, it brings the Correction Sergeants supervisors in line with the rank-and-file on January 1, 2003. The major difference is the reduced payout in the 2000-2001, 2001-2002 and 2002-2003 work years.

I have determined that the 1999 base salary for the K Unit is \$5,021,000 for 84 employees. I have determined that salary increases for the K Unit shall be 2.5% effective July 1, 1999; 2% effective July 1, 2000 and 1.5% effective January 1, 2001; 2% effective July 1, 2001 and 2% effective January 1, 2002; 2% effective July 1, 2002 and 2.5% effective January 1, 2003. This is an annual average of 3.625%.

Based upon the across-the-board increases, the award in the K Unit results in a total economic change of \$698,760 for the period July 1, 1999 to June 30, 2003. For the K Unit, the total economic change of the salary increase is \$125,525 in FY 2000; in FY 2001 the total net economic change is \$141,529; in FY 2002 the total net economic change is \$198,399; in FY 2003 the total net economic change is \$233,307. There is an additional \$69,246 for the K Unit that is chargeable to FY 2004. The total economic change with the "rollover" into FY 2004 is \$768,000. My award increases the K Unit base to \$5,789,000 on January 1, 2003. The State's proposal also increases the K Unit base to \$5,789,000 on January 1, 2003.

I have determined that the 1999 base salary for the Sergeants Unit is \$32,307,000 for 548 employees. I have determined that salary increases for the Sergeants Unit shall be 4% effective July 1, 1999, 4% effective January 1, 2001, 4% effective January 1, 2002 and 4% effective January 1, 2003. The maximum salary pursuant to my award will increase to \$62,638 effective July 1, 1999; to \$65,143 effective January 1, 2001; to \$67,749 effective January 1, 2002; and to \$70,459 effective January 1, 2003.

Based upon the across-the-board increases, the award in the Sergeants Unit results in a total economic change of \$4,760,804 for the period July 1, 1999 to June 30, 2003. For the Sergeants Unit, the total economic change of the salary increase is \$1,292,280 in FY 2000; in FY 2001 the total net economic change is \$671,986; in FY 2002 the total net economic change is \$1,370,852; in FY 2003 the total net economic change is \$1,425,686. There is an additional \$726,820 for the Sergeants Unit that is chargeable to FY 2004. The total economic change with the "rollover" into FY 2004 is \$5,487,624.²⁹ My award increases the Sergeants Unit base to \$37,794,620 on January 1, 2003. The payout in each of the last three years is reduced 50% by delaying the effective dates to January 1st. The State's proposal also increases the Sergeants Unit base to \$37,248,643 on January 1, 2003.

I have placed great weight on the Mastriani Award. I have modified the effective dates of the salary increases to offset the delayed elimination of mandatory shift overlap. The *interests and welfare of the public* factor has been given significant weight and are served and furthered by the terms of this award.

As previously stated, interests and welfare of the public considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. The terms of my award provide a more cost effective system with the elimination of the mandatory shift overlap. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. The terms of my award are balanced by the granting of higher salary increases

²⁹The above salary calculations are based on the 1999 data included in S-39A and S-39B. These calculations do not include step increases and roll up costs nor do they assume any resignations, retirements, promotions or new hires. The State's estimates are minimally higher with adjustments made in 2000, 2001 and 2002 based on changing data.

and the continuation of non-contributory health benefits. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. This completes my discussion of salary increases and retroactivity.

Health Benefits

The State proposes to modify Article XXXVI A. as follows:

1. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.
2. Effective on the first day of the next open enrollment period, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
3. Effective on the first day of the next open enrollment period, employees who elect coverage in an HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
4. Active employees will be able to use pretax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be deducted from pay.
5. Employees who retire on or after January 1, 2002 will be required to contribute to their health coverage under the same terms as above.

The State's Health Benefits proposal is patterned on agreements reached in 1999 and 2000 with its civilian bargaining units. The State's main argument is that the better health benefits terms included in the Mastriani Award were predicated on savings from the elimination of the mandatory shift overlap. The State contends that it cannot recoup the potential savings from the elimination the mandatory shift overlap because of the delay in finalizing the CBA.

The Union is opposed to any changes in the current health benefits. The Union is also opposed to a health benefits program that has different levels of benefits for Correction Sergeants and K Unit supervisors. The Union is opposed to any premium contributions

being paid by its members. The Union notes that bargaining unit members currently enjoy a health benefits package that has no premium contribution. The Union proposes that the status quo be continued.

The Union notes that its members are usually promoted into rank from titles represented by PBA 105. The current PBA 105 CBA provides for health benefit premium contributions only for new employees hired into State Law Enforcement Unit {non-corrections} titles. The status quo for all existing PBA 105/State Law Enforcement Conference employees was maintained by the Mastriani Award. The Union contends that any program for health benefit premium contributions should be first established as a term and condition at the time employees are initially hired and if promoted would follow the employee.

The Union points out that the New Jersey State Police NCO did not include any contribution for health benefits. The Union contends that its final offer is consistent with comparable bargaining units and generally follows the Mastriani Award.

I find that the most important consideration on the health benefits issue is uniformity. Uniformity is an integral part of the State's argument for maintaining an established pattern of settlement. Uniformity of benefits between supervisory members of this bargaining unit and rank-and-file members of the SLEC bargaining unit is consistent with maintaining an established pattern of settlement. It is undisputed that only employees in the rank-and-file Corrections Officer F Unit, hired after June 30, 2000, make contributions to health insurance premiums. All other members of the L Unit and F Unit continue to enjoy non-contributory health benefits.

I adopt the following terms of the Mastriani Award to maintain uniformity of health benefits:

Health Benefits

Article XXXVI shall be unchanged for all Corrections/JJC Sergeants and all current employees in the K Unit.³⁰

For all employees within the K Unit hired after the date of this Award, modify Article XXXVI (A) to incorporate the following:

- A. The State of New Jersey Managed Care/point of Service (New Jersey Plus) will remain without premium payment during the term of this Agreement.
- B. Effective November 1, 2002, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- C. Effective November 1, 2000 employees who elect coverage in an HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- D. Active employees will be able to use pretax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be deducted from pay.
- E. The State agrees to assume upon retirement the full cost of Health Benefits coverage for State employees and their dependents for employees who accrue 25 years of pension credit service as provided under the State Plan by July 1, 2000 or who retire on disability on the basis of fewer years pension credit in the State Plan by July 1, 2000. In addition, employees who accrue 25 years of pension credit or retire on a disability retirement during the period July 1, 2000 through June 30, 2003 are eligible to receive the following when they retire:
 - 1) Employees in this group who elect to enroll in the Managed Care/Point of Service (NJ Plus) or any of the approved HMO Plans shall not have to contribute to the cost of any health insurance premium.
 - 2) Employees in this group who elect to enroll in the Traditional Plan shall pay 25% of the premium costs of the Traditional Plan for health insurance coverage.

³⁰Rank-and-file Correction Officers and F Unit employees promoted into F Unit positions in this bargaining unit from the SLEC bargaining unit shall retain their health benefits upon promotion. This means that F Unit employees hired on or after July 1, 2000 promoted into F Unit positions will be subject to premium contribution upon promotion.

Uniform Allowance

The Union proposes that the Uniform Allowance be structured as follows:

State Law Enforcement Unit

January 2000	\$1,485
January 2001	\$1,535
January 2002	\$1,585
January 2003	\$1,635

Corrections Sergeants

Year One - \$1,660

July 1, 1999	\$830
January 1, 2000	\$830

Year Two - \$1,710

July 1, 2000	\$855
January 1, 2001	\$855

Year Three - \$1,760

July 1, 2001	\$880
January 1, 2002	\$880

Year Four - \$1,810

July 1, 2002	\$905
January 1, 2003	\$905

The Union contends that its proposal represents a reasonable estimate of the actual expenditures related to acquisition and maintenance of uniforms. Joseph Carroll, Second Vice President of the Association, serves on the Uniform Committee of the Department of Corrections. Carroll testified that annual unreimbursed uniform related expenses are approximately \$1,500. Dry cleaning of the uniform costs approximately \$20 per week, or \$1,000 per year. The Union contends that the current uniform allowance of \$1,610 annually represents approximately half the actual uniform cost incurred.

The Union asserts that its proposal seeks only to cover its members' expenses and is consistent with the structure of the benefit provided to other New Jersey law enforcement bargaining units. The Union asserts that an annual \$50 increase will not adversely impact the financial well-being of the State.

The State proposes that Article XXXVII be revised as follows:

The State agrees to provide a cash payment of \$1435 on January 1, 2002 and a cash payment of \$1435 on January 1, 2003 to all members in the unit who have attained one (1) year of service as of December 31, 2001 and December 1, 2002 with the exception of the Correction Sergeants.

In exception to the program outlined herein, Correction Sergeants will be granted in lieu of uniform allowances, cash payments of \$805 in January 2002, \$805 in July 2002 and \$805 in January 2003.

The State contends that the Union failed to justify its requested increase. The State submits that testimony revealed that a Correction Sergeant spends approximately \$1,200 to \$1,500 per year on the purchase and maintenance of his uniform, less than the amount currently provided. Specifically, the testimony showed that the total cost of new purchases and cleaning and maintenance would be only \$1160 per year, well below the \$1,610 and \$1,435 currently provided Correction and Non-Correction Sergeants, respectively.

There is no evidence in the record to show that the costs associated with the purchase, cleaning and maintenance of uniforms for members of the SLEC bargaining unit and this bargaining unit are any different. I note that the rank-and-file Corrections Officers and F Unit employees enjoyed the same clothing allowance in the 1995-99 CBA which is the current benefit received by this bargaining unit. The Union has not met its burden to justify an increase in the clothing allowance above that awarded by Arbitrator Mastriani in the SLEC bargaining unit.

Accordingly, I adopt and award the same uniform allowance modifications awarded by Arbitrator Mastriani. I take arbitral notice that the terms of the awarded clothing allowance were clarified by Arbitrator Mastriani in an award issued on December 17, 2000. All uniform allowance payments shall be paid retroactively to July 1, 1999.

I find that the most important consideration on this issue is maintaining uniformity of benefits. Uniformity of benefits between supervisory members of this bargaining unit and rank-and-file members of the SLEC bargaining unit is consistent with maintaining an established pattern of settlement. I find unpersuasive the State's argument that the uniform allowance payments not be fully retroactive. There is simply no legitimate reason to award a uniform allowance to supervisors that is higher (or lower) than the uniform allowance received by rank-and-file employees.

Article XXXVII shall be revised as follows:

The State agrees to provide a cash payment of \$1435 on January 1, 2000 and a cash payment of \$1435 on January 1, 2001, a cash payment of \$1435 on January 1, 2002 and a cash payment of \$1435 on January 1, 2003 to all employees in the unit who have attained one (1) year of service as of December 31, 1999, December 31, 2000, December 31, 2001 and December 1, 2002 with the exception of the Correction Sergeants.

In exception to the program outlined herein, Correction Sergeants will be granted in lieu of uniform allowances, cash payments of \$830 in July, 1999; \$830 in January 2000; \$830 in July, 2000; \$830 in January 2001; \$830 in July, 2001; \$830 in January 2002; \$830 in July, 2002; and \$830 in January 2003.

**Dismissal of Disciplinary Charges for Failure to Conduct Hearing
Within 20 Days or Failure to Render Decision Within 20 Days**

The Union seeks to modify Article XI (F) as follows:

Failure to convene a hearing within twenty (20) days or render a written decision within twenty (20) days, unless said periods are extended by mutual agreement, shall result in dismissal of the disciplinary charges.

The Union seeks to establish firm time frames for the issuance of disciplinary charges, scheduling of hearings, and response on appeals after hearing. The Union seeks the above modifications to assure that the primary corrective purpose of discipline is fulfilled. The Union contends that nothing precludes setting firm dates for commencement of the hearing within 20 days. The Union submits that where the issues are exceedingly complex, or where special circumstances hinder the ability of the hearing officer to issue a decision such as vacation or illness, it can work cooperatively to reasonably extend the time for issuance. The Union maintains that twenty days provides sufficient time for summary of the hearing testimony and issuance of an opinion.

The State opposes the Union's proposals. Sawey testified that every effort is made to comply with the 20 day time frames. However, there are many factors beyond the Department's control which make it impossible to comply on every occasion, including the unavailability of witnesses, charging parties and staff and the huge volume of cases which must be scheduled. Charges are not dismissed when time frames are not met. Rather, the employee has the option of waiving the departmental hearing and proceeding directly to the Merit System Board on major disciplinary action or to the Joint Association Management Panel on minor discipline. Sawey testified all parties will suffer if the Union's proposal is awarded since hearing officers may be forced to render hasty decisions to preserve the viability of the disciplinary action or move forward without all witnesses. The State contends that this circumstance could result in improper findings without the benefit of a more thorough examination of the evidence.

The Union's arguments, while laudable, are not supported by any documentary evidence showing a pattern of conduct by the State that would justify sanctions for failure to meet a 20-day deadline. Sawey's testimony that employees can waive hearings and that

all parties will suffer if hearing officers are forced to render hasty decisions is credited. I note that the current SLEC CBA includes the same twenty-day requirements with no sanctions.

The Union's 20-day proposal is denied.

Timing of Disciplinary Charges

The State proposes the following revisions to Article XI L (4):

All disciplinary charges shall be brought within six (6) months of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within six (6) months, the charge shall be considered dismissed.

The State seeks to extend the time limit for bringing disciplinary charges from the existing thirty days to six months from when the appointing authority becomes aware of the offense. The State submits that many of the more factual complex and/or sensitive allegations of employee misconduct, such as those regarding race discrimination or sexual harassment, requires a significant amount of investigation which cannot be completed effectively within 30 days. The State contends that the 30-day time frame often results in rushed investigations and hastily filed charges serving neither the interests of the employee, nor the State or the public.

The State notes that Department of Personnel rules provide that an appointing authority may suspend an employee indefinitely, awaiting the outcome of the criminal proceeding to decide whether it is appropriate to either (1) seek forfeiture of the individual's job under the forfeiture law, or (2) bring administrative charges based on the employee's underlying conduct. See N.J.A.C. 4A:2-2.7. Under the existing 30 day time limits, the Department is often forced to bring administrative charges prior to the outcome of the criminal proceedings (i.e., within 30 days), before all the facts can be adequately investigated, to preserve its right to act.

The State asserts that extending the time frame to six months would enable the Department to thoroughly investigate all offenses prior to bringing charges.

The Union also seeks to modify Article XI (L)(4) as follows:

Failure to file disciplinary charges within thirty (30) days of the date of the incident and/or offending conduct shall constitute an absolute bar to discipline.

The Union also cites the testimony of Willis Morton that it is in the interests of management to timely process discipline cases. Morton stated that timely action is intended to be corrective. Morton stated that as Administrator, if his management staff failed to meet the noted deadlines, he would dismiss charges based on fairness principles. The Union disputes the State's contention that established guidelines cannot be worked into their disciplinary protocol. Filing of charges cannot be done in 30 days due to the complexity of the underlying investigation. The scheduling of hearings is complicated by the unavailability of participants, vacations, illnesses and the like.

The Union submits that the Department of Corrections is no different from other government units subject to Title 40A which operate within statutory time frames and are subject to preclusion of actions if deadlines are missed. Those governmental units prioritize their activities to fit within the rules. The Union submits that the Department of Corrections will comply with these negotiated standards if there is an enforceable remedy. The Union notes the Department is now working under established time frames with enforceable conditions for noncompliance in the SLEC bargaining unit. The Union notes that hearings may be subject to adjournment at the discretion of the hearing officer, based on a showing of good cause — no different from court proceedings or arbitration hearings.

The State presented this issue to Arbitrator Mastriani in the SLEC case. Arbitrator Mastriani reasoned as follows:

The record supports the State's contentions that the reduction from six months to 30 days was too steep and that the present 30-day deadline does not provide the State with sufficient time to complete its investigations before filing disciplinary charges. However, the record also reflects that the State is able to complete its investigation within 45 days, in cases such as those involving sexual harassment. As a result, the State's proposal to increase the deadline for filing charges to six months is excessive. Sound policy requires that the charged employee has a legitimate need to defend himself or herself and there is a need to resolve disciplinary complaints as expeditiously as possible.

Therefore, a modification to the present deadline for filing disciplinary charges to 60 days would balance the State's need to have adequate time to complete its investigation without creating a loss to due process to the charged employee. Therefore, the State's proposal to revise Article XII, Section H4 is granted to the extent that the deadline is extended but denied to the extent that the deadline is extended to 60 days rather than six months.

Arbitrator Mastriani awarded the following revision to Article XII, Section H4:

All disciplinary charges shall be brought within 45 days of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within the 45-day period, the charge shall be dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed. Charges under EEOC shall be brought within 60 days.

Arbitrator Mastriani's award on this issue is directly related to the two issues involving Article XII, Section L4. I adopt the Arbitrator's reasoning and incorporate his decision in this matter. This is for several reasons.

First, Arbitrator Mastriani's decision in the SLEC bargaining unit, a unit that members of this bargaining unit supervise, is directly applicable. Adoption of his decision provides for uniform treatment of timeliness issues for disciplinary and EEOC matters. This is important to both the Union and the State in its administration of contractual deadlines and time frames.

Second, it gives the State sufficient time to complete its investigations before filing disciplinary charges.

Third, it incorporates the Union's proposal that failure to file disciplinary charges within a specified time "shall constitute an absolute bar to discipline" by requiring that all disciplinary charges that are not "brought within 45 days of the appointing authority reasonably becoming aware of the offense" will be dismissed.

Article XI (L)(4) shall be amended as follows:

All disciplinary charges shall be brought within 45 days of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within the 45-day period, the charge shall be dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed. Charges under EEOC shall be brought within 60 days.

Audio Tape of Departmental Hearings

The Union seeks to modify Article XI (F) as follows:

The Association and/or employee shall have the right to an audio recording of the hearing. The State of New Jersey may obtain a copy of any such audio tape and shall be responsible for payment of any reproduction costs.

The Union seeks contractual provisions that provide for verbatim recording of disciplinary hearings. The Union submits that the cost of the current court stenographer procedure is prohibitive. The Union submits that audio transcription using the process that many courts, local agencies, land use boards, and other governmental units employ, are much less costly and would serve the same purpose as the stenographic transcription. The Union would bear the cost of this procedure.

The Union notes that Sawey expressed concerns about audio recording of proceedings, particularly as it related to assuring integrity of the record. The Union submits that procedures can be established to address both the Department's concern and the Union's need to create an economical record. The Union further points out that Sawey did not find objectionable the concept of using an outside recording service to assure integrity of the record.

The State opposes the Union proposal to require an audio recording of Departmental disciplinary hearings. The State's primary objection is that the Union seeks to have the right to bring their own tape recorder to disciplinary hearings and make their own tapes of those proceedings.

The State offered valid reasons against one party taping of Departmental disciplinary hearings: 1) hearings are intended to be informal; 2) testimony is not under oath and all review on appeal is de novo; 3) recorded testimony will not be considered on appeal; and 4) disputes may arise about which tape recording will serve as the official record of the proceedings; 5) and possible questions concerning the authenticity of tapes.

An award in favor of the Union's proposal is not justified at this time. However, there may be some confusion as to the Union's intent on this issue. The Union seems to be saying that it will work with the State to maintain the integrity of the taping process including the use of an outside recording service to assure integrity of the record. I remand this issue back to the parties for further discussions to possibly flesh out the details of a mutually accepted procedure. I shall not retain jurisdiction.

Preferential Work Shift for Executive Board Members

The Union proposes that its Executive Board members be assigned the first shift with Saturday and Sunday off. The Executive Board is a group of six Corrections Sergeants charged with conducting all labor-management relations and addressing employment related issues with the State and the Department of Corrections. The Union contends that setting a fixed work schedule of first shift, weekends off for this limited group of six Executive Board members will not adversely impact operations of the correctional facilities, and will facilitate efficient completion of labor-management business. The Union submits that its proposal is consistent with the manner in which SLEC is handled.

The State opposes the Union's proposal. The State disputes the Union's claim that its Executive Board members should be given shifts which correspond with administrative hours to better enable them to meet with management and conduct business. Sawey testified that the State's current practice is to schedule Executive Board members off on either Saturday, Sunday or both. Sawey testified that implementation of the Union's proposal could severely limit management's ability to assign staff on weekends effectively as dictated by operational needs.

I award the Union's proposal. The Union's proposal is reasonable. I accept the Union's representation that a Monday-Friday schedule will facilitate efficient completion of labor-management business. I find unpersuasive the State's contention that the release of six employees Saturday and Sunday versus Saturday or Sunday will severely limit its ability to assign staff and its impact on operational needs. Article VII (C), Association Rights, shall be amended to provide:

Six Association Executive Board members shall be assigned first shift with Saturday and Sunday off.

Premium Pay for Representation at Hearing Beyond Shift

The Union seeks to modify Article VII (B) (1) as follows:

Overtime on Hearings Commenced/Completed after Shift. The New Jersey Law Enforcement Supervisors Association, Inc. representatives shall be compensated at premium rates for hearings conducted and/or completed after working hours.

The Union notes that its Institutional Representatives are sometimes required to stay beyond their scheduled work day, or to come in on their regular day off to attend hearings. The Union's proposal appears to be aimed at preventing this practice. The Union submits that the assigned work schedules of its Institutional Representatives can be checked to assure hearings are not set down on days off. The Union asserts that these revisions will not

adversely impact the State of New Jersey. The Union acknowledges that when Union representatives are required to stay beyond their shift to complete hearings involving their members, hour-for-hour compensation is afforded.

The State opposes the Union's proposal that its representatives be compensated at the overtime rate for all hearing appearances conducted and/or completed after the representative's working hours. The Department's current practice is to release a Union representative from duty with pay (without charging any leave account) during his/her work hours to attend hearings. In addition, if the hearing continues beyond the representative's shift, the representative is compensated at the straight time rate for all additional time spent at the hearing in excess of his or her regular shift.

The Union did not submit any documentation to show that any other State bargaining units enjoyed such a benefit. There is simply no basis for a Union representative to be paid at overtime rates to represent its members at a hearing.

The Union's proposal is denied.

**Receipt of Compensatory Time at Premium Rate for
Treatment of Injuries During Off-Duty Time**

The Union seeks to modify Article XXXV, (F) to provide that employees shall receive compensated time off on date of injury and all subsequent treatment dates, and if treatment occurs outside normal working hours, premium compensation rates shall apply. The Union contends that it is simply seeking to ensure that its members are treated consistently with other State employees related to treatment for work related injuries. Employees injured on duty are required to dedicate personal time for work related injury treatment when such treatment is provided outside their normal shift. The Union submits that affording compensation to employees who cannot avail themselves of this opportunity assures that all State employees are treated equally in the administration of this policy.

The State opposes the Union's proposal that employees receive "compensated time off" on the date of an injury and all subsequent treatment dates, and if treatment occurs outside normal working hours, premium compensation rates shall apply. The Department's current practice is that if an employee is injured on the job, he or she is taken to an emergency room and will be paid through the end of his or her shift. An employee is not required to use any of his or her leave time for the absence on the date of the injury.

The State points out that under the Sick Leave Injury (SLI) program, any employee who is disabled due to a work-related injury or illness is granted a leave of absence with pay for up to one year. See N.J.A.C. 4A:6-1.6. An individual may even use his or her SLI leave intermittently during that year to seek necessary treatment for the injury or illness.

The payment of premium compensation for treatment administered outside normal working hours is unreasonable. The Union offered no evidence that any other State collective bargaining agreements included such a provision. The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied.

Replacement of Security Vests

The Union seeks to modify Article XXXVII to provide that the State will replace a security vest, free of charge, if an old vest is returned. It is undisputed that protective vests are an essential safety component of the equipment used by Corrections Sergeants. Protective vests carry a five-year warranty and require replacement because daily use causes the knit of the protective fibers to break down. Protective vests were first issued in 1997. The Union contends that the Department of Corrections is not required to provide this essential safety equipment. The Union notes that Director Sawey confirmed that the Department is now following the terms of the Union proposal. The Union asks that this policy be included in the new CBA.

The State opposes the Union's proposal that the uniform allowance provision be modified to provide that, "the State of New Jersey will replace security vests free of charge, if the old vest is returned." The State's current practice is to replace any vest when it has outlived its useful life, as that term is defined by the vest's manufacturer.

The Union concedes that there is no current issue regarding the replacement of security vests. There is no controversy. There are no pending grievances. The State correctly notes that the Union failed to link its proposal to any need and failed to limit its proposal in any way. The State also notes that under the Union's proposal, the State would be required to replace a security "if the old vest is returned." The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied.

Payment of Loss Claims within 30 Days

The Union seeks to modify Article XLIV to provide that the State will pay loss claims within thirty days of the filing of the claim. The Claim Adjustment procedure is the means by which Corrections Sergeants obtain reimbursement from the Department of Corrections for losses in the workplace. The Union contends that the current process for simple garment replacement claims payments takes up to two years. The Union contends that the imposition of a reasonable time frame for the claims adjustment process is fair and will not be a burden on the Department of Corrections.

The State opposes the Union's proposal that it be required to pay loss claims within 30 days of the filing of a claim. The current practice is that upon receipt of a loss claim, the institution's business office investigates the claim to determine the value of the damaged or lost item and the cause of the loss or damage. Approved claims are submitted to the

Department of Treasury for payment. The State acknowledged that the entire procedure may go beyond thirty days noting that an approved claim must be submitted to Treasury for processing.

The Union offered no documentary evidence to show any hardships that have occurred by delays in processing these claims. There is also no evidence as to the scope of this issue. How many claims were filed in past years? How long after submission were claims paid? I note that the 1999-2003 SLEC and the 2000-2004 State Troopers NCO collective bargaining agreements include the identical claims adjustment language. The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied.

Cooperative Effort

The Union seeks the modification of Article XIII, E which reads as follows:

The parties to the agreement understand that the public services provided to the citizenry of the State of New Jersey require a continuing cooperative effort *particularly during this period of severe fiscal constraints*.

The Union seeks to delete the italicized language. The Union asserts that the *fiscal constraints* terminology was implemented in the CBA to reflect conditions that prevailed at the time of settlement in September 1997. The Union notes that the State has not sought to retain this language, and that it should accordingly be deleted.

The Union is free to discuss the deletion of the "fiscal constraints" terminology in the finalization of the language in the new CBA. The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied

Provide Discovery 14 Days Prior to Department Hearings

The Union seeks to modify Article XI (L)(5) as follows:

Documents and list of witnesses to be provided by the State of New Jersey not less than fourteen (14) days before the hearing.

The Union contends that a policy has been developed at the Department of Corrections that delays release of discovery on disciplinary matter to not earlier than 72 hours before a hearing. The Union asserts that this practice places it and the employee at a distinct disadvantage, as hearing preparation and identification of witnesses must take place around the regular work schedules of the charged employee and the assigned Association representative. The Union maintains that three days is not enough time to review documentation and prepare the case.

The State opposes the Union's proposal that all relevant documents and witness lists be provided by the Department no less than 14 days prior to any Departmental Hearing. The Department's current practice is to provide a list of documents and witnesses within three days of the hearing. Sawey testified that the 3-day rule has worked well over the years, and he has received "very few arguments, grievances or concerns," regarding this issue.

The Union and the State disagree on the effectiveness of the current three-day rule. The State claims that this practice has existed for many years in law enforcement contracts. The Union offered no evidence of other State law enforcement or civilian contracts that provide that documents and witness lists be provided "no less than 14 days prior to any Departmental Hearing." I see no reason to disturb the current practice. The Union has not met its burden to demonstrate a need for a change in the existing practice.

The Union's proposal is denied.

Stay Disciplinary Action Pending Appeals

The Union seeks to modify Article XI (L)(6) to provide that the State not require employees to serve discipline during the pendency of any Departmental appeal or appeal to the Department of Personnel, Merit System Board. The Union contends that implementation of its proposal will facilitate early resolution of discipline.

The State opposes the Union's proposal. The Department's current practice is that an employee is not required to serve discipline until after the departmental hearing. If found guilty, an employee is served with a final notice of disciplinary action, pursuant to State DOP rules, and is required to serve the discipline contained in the final notice. The employee then has the right to appeal major disciplinary action to the DOP within 20 days for a hearing before the Office of Administrative Law. If the Administrative Law hearing results in a dismissal or reduction in the penalty, the employee is made whole by an award of back pay. The State contends that there is no reason to stay the imposition of discipline given the availability of a make whole remedy. The State notes that the Union's own witness, Willis Morton, testified that discipline should be meted out on a timely basis.

It's important to the person that is being disciplined that it doesn't linger and hang on forever and ever and he doesn't know whether or not he is going to get 15 days or 20 days or 10 days, an official reprimand or nothing. And that affects - - that can affect his - - the way he works, the way the employee works..."

The Union's proposal is unique. The State correctly notes that delaying the imposition of discipline until the exhaustion of all appeals would frustrate the essential purpose of the disciplinary process. Progressive discipline is intended to offer an employee the opportunity to correct behavior (rehabilitation) and to prevent continued misconduct and disruption in the workplace. Staying the imposition of penalties for months, if not years, after the misconduct would undermine the central purpose of progressive discipline.

The Union contends that a program exists in the SLEC contract that delays disciplinary penalties up to 18 months under a program established by the Department of Corrections. Sawey testified that a “pilot” program was in place with SLEC. There is insufficient evidence in the record to award this “pilot” program. However, consistent with my reasoning that rank-and-file Correction Officers and Correction Sergeants maintain uniform disciplinary procedures, I strongly recommend that the Department of Corrections implement the same program for Correction Sergeants.

**Paid Leave to Take DOP Examinations
and Attend Interviews When Off-Duty**

The Union seeks to modify Article IX (B) to provide that employees shall be afforded professional days for any examinations and/or interviews and shall not be scheduled for promotional/transfer/reassignment interviews on regular days off. The Union contends that Corrections Sergeants, given the nature of their daily assignments, may face work-related constraints, particularly involving emergent events that are commonplace in correctional facilities, that prevent participation in scheduled examinations and interviews. Affording professional days where promotional examinations and interviews have been scheduled will enable Association members the full opportunity, like other State employees, to participate in the promotional process, and create a better opportunity for successful participation. The Union submits that scheduling of personnel interviews for promotion, transfers and reassignments on days when its members are on duty is a fair practice that will not adversely affect the State.

The State opposes the Union’s proposal. The Department’s current practice is to release an employee taking a promotional examination from work without loss in pay, including travel time to and from the examination site. The State points out that the

Department treats all law enforcement units in the same manner. The general rationale behind the Department's approach is that employees should not be penalized with loss of pay for taking advantage of promotional opportunities, however, they should also not be allowed to take voluntary promotional exams and interviews at the State's expense.

The Union offered no evidence that any other State collective bargaining agreements include such a provision. Uncontroverted testimony indicates that the Department treats all law enforcement units in the same manner. The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied.

Leave for Association Activity

The Union seeks to increase the number of days that the State provides for leaves of absence with pay for delegates of the Association to attend Association activities. The current CBA provides for thirty-five days. The Union seeks to increase the number of days to two-hundred. The Union proposal provides that "appearance days before the New Jersey Office of Administrative Law not being charged against the two-hundred (200) day allotment."

The Union contends that it is not afforded adequate time to conduct its business. Days are charged for conducting union business such as grievance and disciplinary hearings, and Office of Administrative Law proceedings. The Association contends that it regularly exhausts the 35-day allotment, resulting in vacation and personal day allotments being used to conduct union business. The Union claims that available days are being used completely on formal proceedings, precluding labor management meetings from being scheduled.

The Union notes that the current policy is now discretionary in application, and while Sawey has been fair in its handling, the Union contends that established standards are more appropriate.

The State opposes the Union's proposal. The State disputes the Union's contention that additional days are needed to handle discipline and grievances, for appearances at OAL proceedings, and to meet with administrators at particular facilities on labor management issues.

It is undisputed that leave for the following activities is provided by the Department, without limitation, and is not chargeable against the allotted 35 Association days: (1) meetings with management representative, (2) grievance meetings, (2) negotiations meetings, (3) departmental disciplinary hearings, (4) Weingarten interviews, (5) interest arbitration hearings, and (6) representation at appeals to the Merit System Board and/or the Office of Administrative Law. The 35 Association days are charged to days used to conduct internal union business in the absence of any management representative.

There is no basis to justify the Union's proposal to increase the number of Association days from 35 to 200. This is nearly a 600% increase in the current allotment. The record indicates that the Association had used 21 Associations days as of April 9, 2002. The Union had used only 21 of the 35 allotted days after more than ten months. The Union's current usage of the 35 allotted days favors maintaining the status quo on this issue. The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied.

Convention Leave

The Union proposes that a Convention Leave provision be established providing for two hundred and sixty days of annual leave for convention leave. The Union, a State PBA affiliate, participates in two conventions annually, each for a five-day period. The Union

contends that the participation by all institutional representatives and Executive Board members has been authorized in the past, but is now an issue due to a change in the statute. The Union seeks to establish a contractual provision affording ten convention leave days for its twenty institutional representatives and six Executive Board members, totaling 260 days. The Union submits that it seeks only to maintain the status quo. The Union contends that its proposal is consistent with the terms of the SLEC contract.

The State points out that the Union's statutory right to convention leave as of 2001 was eliminated by the Appellate Division in New Jersey State Fireman's Mutual Benevolent Association v. North Hudson Regional Fire and Rescue, 340 N.J. Super. 577 (App. Div. 2001), that the convention leave statute (N.J.S.A. 40A:14-177) was unconstitutional. It is undisputed that this decision eliminated the Union's statutory right to convention leave as of 2001.

A new convention leave statute was passed on January 3, 2002. The new statute provides police and fire units in New Jersey with guaranteed paid convention leave for either ten percent of its membership or ten members, whichever is less, up to five days to attend each Association convention. The State contends that the convention leave statute preempts negotiations on convention leave.

The Union contends that its proposal is consistent with the terms of the SLEC contract yet there is no documentary evidence in the record to support this contention. The Union is obligated to provide evidence of any convention leave agreements that the State has with other law enforcement bargaining units that are consistent with its position in this matter. The Union has not submitted such evidence.

The Union's proposal is denied.

Travel Reimbursement

Article XIII(C) provides:

All employees serving in the title below who are not provided transportation shall be compensated at the rate of twenty-one (21) cents per mile of travel to and from their place of assignment and permanent place of residence in excess of twenty (20) highway miles each way.

The Union seeks to increase the travel expense reimbursement from the current twenty-one cents per mile to twenty-seven cents per mile. This is a limited provision applicable only to eligible employees serving in the following titles: Chief Ranger II, Chief Ranger I, Conservation Officer II, Police Sergeant-Human Resources and Principal Marine Police Officer. The State Troopers NCO agreement provides for a twenty-seven cent reimbursement rate.

I award the Union's proposal to increase the reimbursement rate from twenty-one cents to twenty-seven cents to be effective November 1, 2002.

Prescription Eyeglasses/Bifocals

The Union seeks to increase the reimbursement to \$50 for prescription eyeglasses and \$75 for bifocals. The current agreement provides \$35 for prescription eyeglasses and \$40 for bifocals. The Union asserts that an increase in this benefit more accurately reflects the actual cost of vision care services.

The Union submitted no evidence to support its contention that an increase in this benefit more accurately reflects the actual cost of vision care services. The Union offered no evidence that any other State collective bargaining agreements include such increases. I note that the 2000-2004 State Trooper NCO and the 1999-2003 SLEC collective bargaining agreements provide \$35 for prescription eyeglasses and \$40 for bifocals. The Union has not met its burden to demonstrate a need for a change in an existing term and condition of employment.

The Union's proposal is denied.

**Comparison of The Wages, Salaries, Hours
and Conditions of Employment**

Comparisons of the wages, salaries, hours and conditions of employment of the County's Correction Officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions.

I agree with the analysis of veteran Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

The second part of this factor requires a comparison with other employees generally in private employment. National wage increases in the private sector are somewhat below the State and Union salary proposals for 1999, 2000 and 2001. The State and Union proposals are both above any private sector comparisons because of the need to provide additional compensation and the continuation of non-contributory health insurance. The savings from the elimination of the mandatory shift overlap narrows the comparison.

There is a trend toward higher salary increases in the private sector which is consistent with the awarded salary increases. The four-year salary increases awarded at maximum may be slightly higher than the average private sector salary increases over the same four-year period.

The only other evidence on private sector employees in general is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJ DOL") for the Public Employment Relations Commission in accordances with N.J.S.A. 34:13A-16-6. This survey is provided to members of the Special Panel of Interest Arbitrators by the Commission. Neither the State nor the Union submitted data compiled by the NJ DOL. I note that Arbitrator Mastriani considered this information in his SLEC award:

According to the NJ DOL report showing changes in the average wages of private sector jobs covered under the State's unemployment insurance system, comparing wages between 1996 and 1997, the following data is reflected. The overall percentage statewide change was 4.76%. When state, local, and federal government figures are added to the private sector data an overall increase of 4.5% is reflected.

The next comparison is with public employees in general. This has two parts: comparisons with public employees in the same jurisdiction and comparisons with public employees in comparable jurisdictions.

The first comparison is with employees in Burlington County. Neither party submitted extensive data. Salary data in the record shows that maximum salaries increased by 4% in 2001 and 2002 in the PBA Local 320 CBA. (P-15). This is more in line with the awarded maximum increases than either the County or PBA proposals.

The next part involves comparison with employees in comparable jurisdictions. It is undisputed that Correction Sergeants are among the highest paid in the United States. S-3, a comparison of the terms and conditions of employment of Sergeants and Lieutenants in State and Federal Prisons, reveals that Correction Sergeants in New Jersey are paid approximately 40% more than the average State Correction Sergeant in the Country in terms of maximum base pay. S-3 further shows that New Jersey Sergeants are ranked number one in maximum base pay when compared with other State Correctional Sergeants. In terms of starting pay, New Jersey Correction Sergeants are also significantly above average. The relative rank of Correction Sergeants will be maintained under the terms of my award.

The terms of my award are consistent with salary increases received by Correction Sergeants in county correctional facilities throughout the State. I have served as interest arbitrator in cases involving Correction Officers in Middlesex County, Ocean County, Union County, Burlington County, Atlantic County, Morris County, Essex County, Sussex County, and Somerset County in the past five years. The salary terms of the Mastriani Award, which I have adopted, are consistent with salary increases received in the above counties. Salary increases in some counties (Atlantic, Monmouth, and Burlington) are much higher. This is

for reasons unique to those counties which experienced recruitment and retention problems that were remedied by major salary schedule restructuring, i.e., reduction of steps, compression of steps, and substantial increases in minimum and/or maximum salaries. Arbitrator Mastriani detailed the terms of salary increases for Correction Officers that ranged from 2.9% to 5% in 1999, from 2.2% to 6.3% in 2000, 2.9% to 5% again in 2002 and 2.25% to 3.75% in 2002. PERC salary data shows that Middlesex County Correction Officers negotiated a 3.5% salary increase in 2000 and 4.75% increases in 2001, 2002, 2003 and 2004. Burlington County Correction Officers received 4.5% salary increase at maximum in 2001, 2002, 2003 and 2004.

The terms of this award are consistent with salary increases received by law enforcement officers generally throughout the State. PERC data shows that the average salary increases for all police and fire awards issued is 3.75% in 2001 and 3.84 in 2002. PERC data shows that the average salary increase for all police and fire voluntary settlements are 3.91% in 2001 and 4.06 in 2002.³¹

All of the above data is consistent with the average salary increases of 3.625% for the K Unit and 4% for the Sergeants unit. I have placed great weight on the Mastriani Award and the need to maintain comparable salaries and other terms and conditions of employment between rank-and-file Correction Officers/F Unit employees and the members of this bargaining unit who are their supervisors. The terms of my award are consistent with the requirements of the comparability factor.

³¹The PERC data does not measure year-by-year increases. It is an average of all of the salary increases reported to PERC by calendar year. The 4% average salary increases in this case would be reported as 2002 data. It would not be applied to 1999, 2000, 2001, 2002 and 2003. The State salary increases are applied on a fiscal year basis whereas the county and municipal salary increases are applied on a calendar year basis.

Overall compensation

Overall compensation levels within the State, in terms of benefits are reasonably similar. All employees are covered by or receive social security, workers' compensation, disability and health care benefits. They are covered by State pension plans. The Police and Fire Retirement System, to which Correction Sergeants and K Unit employees belong, is much richer than that available to employees in the Public Employees Retirement System, although employee contributions to PFSR are appreciably higher than those to PERS. All law enforcement personnel belong to the same pension system and enjoy identical vacation, holidays, sick leave and personal leave.

The overall compensation factor favors an award on salary, uniform allowance and health benefits that maintain overall compensation at the same level as other Correction Officers in State service. I have determined that the uniform allowance shall be paid retroactively in the same manner and at the same level as Correction Officers and F Unit employees. This ensures that overall compensation will be maintained in 1999-2003 at the same levels that existed in 1995-1999 for rank-and-file Correction Officers and primary level Correction supervisors.

I have determined that the Correction Sergeants continued receipt of mandatory shift overlap payments requires lower percentage payouts in 2000-2001, 2001-2002 and 2002-2003. I determined that the State is entitled to receive value and savings from the elimination of mandatory shift overlap if the Correction Sergeants are to receive higher salary increases and non-contributory health insurance.

The terms of my award are consistent with the requirements of the overall compensation factor.

Stipulations

The only substantive point of agreement between the parties in this proceeding is the term of agreement. Both parties submitted four-year proposals which I have adopted in my award.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Employer by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases.

The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. The terms of this award will not cause an adverse financial impact on the State, its residents or taxpayers; nor do the terms conflict with the lawful authority of the State. Arbitrator Mastriani notes in his award that the parties conceded that the lawful authority of the employer criterion is directed primarily to counties and municipalities covered by the CAP law. The State in this matter, as it did in the SLEC arbitration, points to the financial impact of an award in excess of its proposal. I note that in the Mastriani Award, the estimated expenditure for the Department of Corrections in FY 2000 was \$934 million. This represented a \$70 million increase over the FY 1999 budget.

The State has not asserted that its lawful authority is implicated in this matter. There is absolutely no evidence in the record to demonstrate that any aspect of this award will cause the State to exceed its lawful authority.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The financial impact of my award will be minimal. This is because the parties' positions on the long term aspects of the salary increases are similar. The State proposed a 14.5% salary increase for all employees over four years. The Union proposed a 16% salary increase for all employees over four years. I awarded a 14.5% increase to K Unit members and a 16% increase to Sergeants. I reduced the impact of the 16% increase by delaying the effective dates of the salary increases. The impact of the awarded salary increases is also reduced by the "split" raise format which reduces the payout to employees, i.e., the 3.5% salary increase (2% payable on July 1, 2000 and 1.5% payable on January 1, 2001) costs the State 2.75% in FY 2001. This reduction in payout is realized by the State for all split raises.

Based on the evidence in the record, I conclude that the award's financial impact will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

The cost of living data shows that increases in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), are well below the salary proposal of both the State and the Union and my award in this matter. These CPI figures demonstrate that the awarded salary increases will result in an increase in real earnings of bargaining unit members for the 1999-2003 duration of the new CBA.

The State introduced evidence showing that Correction Sergeants have significantly outpaced the Consumer Price Index ("CPI") since 1983, and will continue to do so under its final offer. The State presented the salary history of 2 Officers, labeled Officer A and B. Officer A started his career in 1983 and received one promotion - to Sergeant - in 1990. From hire date through June 1998, Officer A's salary increased by 279%, compared with a CPI increase of 63%. Officer A's wages outpaced the cost of living by 216%, or 13.5% per year for sixteen years.

The State correctly points out that its salary proposal continues the pattern of exceeding the cost of living. Given a CPI increase of 2.0%, 3.1% and 2.5% for 1999, 2000 and 2001, the State's final offer, which provides for 2.5%, 3.5% and 4.0% in those years, exceeds the cost of living index by 2.4%.

The salary increases that I have awarded exceed the above CPI increases in 1999, 2001 and 2001. The 2002-2003 salary increase will also exceed the CPI increase. However, I have not placed great weight on this factor. Evidence in the record shows that the State reached agreements with more than 60,000 employees in more than ten bargaining units. In all of those voluntary settlements, the terms of the salary increases exceeded the CPI. The salary terms in the voluntary settlements reached by the State with its civilian bargaining units are identical to the salary increases I have awarded to the K Unit. The salary terms in the voluntary settlements reached by the State with its civilian bargaining units are identical to the salary increases I have awarded to the Sergeants Unit when the elimination of shift overlap is considered. The salary terms in the voluntary settlements reached by the State with State Police bargaining units are identical to the salary increases I have awarded to the Sergeants Unit.

Thus, I conclude that the awarded salary increases, while higher than the increases in the cost of living provide for an acceptable increase in real earnings that must be measured against the higher productivity that will be achieved by the elimination of the mandatory shift overlap.

Continuity and Stability of Employment

The State accurately states that the Union cannot claim that its proposal is necessary to ensure the continuity and stability of employment of unit members. There is no evidence in the record to suggest that unit members might leave State employment to seek better

wages and benefits if its final offer is not awarded. The record shows that there is no better compensation and benefit package offered for comparable work in New Jersey or elsewhere in the United States.

The State points out that it offers an unblemished record of employment stability for Sergeants Unit members. The Union offered no evidence to suggest that current levels of employment will be eroded or that recruitment and retention issues will be created by the terms of this award. The State notes that Sergeants and other bargaining unit members have never suffered a layoff and that 35 new positions have been added to this unit, 25 of which were additional Correction Sergeant positions, since July 1999. I have had considerable experience arbitrating negotiations impasses in county correctional bargaining units throughout the State. Many of these impasses included serious issues involving recruitment and retention of Correction Officers with high turnover rates. These high turnover rates created instability in the workplace. No such issue exists in this matter.

The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the State to continue to recruit and retain qualified Correction Officers. The terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this criterion.

Summary

I have carefully considered the evidentiary record in this matter including the testimony of the parties' witnesses and the numerous exhibits. I have calculated the cost of the award each year. I have also carefully considered the arguments advanced by the parties in support of their respective positions. I considered the evidence and arguments in relation to the statutory criteria which I am bound to consider and apply. Each of the statutory criteria has been considered. I found each factor to be relevant although I have given more weight to some factors than others.

The most important factors which led to my adoption of the State's proposal to eliminate the mandatory shift overlap provision were the interests and welfare of the public, comparisons in public employment in the same jurisdiction (internal comparisons) and continuity and stability of employment. I have determined that the elimination of mandatory shift overlap will provide the State with greater efficiencies without jeopardizing the safety of the Corrections staff or diminishing the effective operations of the New Jersey prison system. These same factors were given great weight in following the terms of the Mastriani Award on salary increases, health insurance benefits and uniform allowance. The State's "pattern of settlement" argument was given great weight.

The financial impact of this award is balanced by the elimination of mandatory shift overlap. This will provide considerable long-term savings to the State. The State estimates this to be more than \$2 million annually. I have determined that the Union's proposal for full retroactivity exceeds the established pattern of settlement and discounts to the State the value and savings that Arbitrator Mastriani relied on in awarding salary increases above the State package to rank-and-file Correction Officers. It also discounts the value and savings that Arbitrator Mastriani relied on in allowing Correction Officers and "grandfathered" L Unit employees to maintain non-contributory health insurance.

The Union submitted 15 noneconomic proposals; the State submitted one noneconomic proposal. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. This principle is also applied to new proposals. I have denied most of the Union's noneconomic proposals. The Union simply did not meet its burden by demonstrating the need for change nor did it submit any documentary evidence in support of its proposals. Changes in contract language, after more than thirty years of collective bargaining, require considerable evidence of such need. The 1999-2003 CBA will expire in eight months giving the Union an opportunity to submit meritorious noneconomic issues consistent with the enunciated principle of demonstrating the need for such change.

Accordingly, I respectfully issue the following award:

AWARD

1. **Term of Contract:** July 1, 1999 through June 30, 2003.
2. **Wages:**

K Unit

The following increases are added to base the base salary step retroactive to the effective date:

7/1/99	2.5%
7/1/00	3.5% (2.0% payable on 7/1/00; 1.5% payable on 1/1/01)
7/1/01	4.0% (2.0% payable on 7/1/01; 2.0% payable on 1/1/02)
7/1/02	4.5% (2.0% payable on 7/1/02; 2.5% payable on 1/1/03)

Sergeants Unit

7/1/99	4.0%
1/1/01	4.0%
1/1/02	4.0%
1/1/03	4.0%

3. **Health Benefits:**

Article XXXVI shall be unchanged for all Corrections/JJC Sergeants and all current employees in the K Unit.³²

For all employees within the K Unit hired after the date of this Award, modify Article XXXVI (A) to incorporate the following:

- A. The State of New Jersey Managed Care/point of Service (New Jersey Plus) will remain without premium payment during the term of this Agreement.
- B. Effective November 1, 2002, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- C. Effective November 1, 2000 employees who elect coverage in an HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- D. Active employees will be able to use pretax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be deducted from pay.

³²Rank-and-file Correction Officers and F Unit employees promoted into F Unit positions in this bargaining unit from the SLEC bargaining unit shall retain their health benefits upon promotion. This means that F Unit employees hired on or after July 1, 2000 promoted into F Unit positions will be subject to premium contribution upon promotion.

E. The State agrees to assume upon retirement the full cost of Health Benefits coverage for State employees and their dependents for employees who accrue 25 years of pension credit service as provided under the State Plan by July 1, 2000 or who retire on disability on the basis of fewer years pension credit in the State Plan by July 1, 2000. In addition, employees who accrue 25 years of pension credit or retire on a disability retirement during the period July 1, 2000 through June 30, 2003 are eligible to receive the following when they retire:

- 1) Employees in this group who elect to enroll in the Managed Care/Point of Service (NJ Plus) or any of the approved HMO Plans shall not have to contribute to the cost of any health insurance premium.
- 2) Employees in this group who elect to enroll in the Traditional Plan shall pay 25% of the premium costs of the Traditional Plan for health insurance coverage.

4. **Hours of Work:** Article XXVI is amended to eliminate Section H and add a new Section H as follows:

Effective November 1, 2002, Correction Sergeants shall be employed on a normal work schedule of eight (8) hour per day (40 hour per 5 day week). Each Correction Sergeant shall have thirty (30) minutes for meal time within each work shift which shall be duty status.

The overtime provisions of this Agreement shall pertain to all time worked beyond those normal work schedules.

5. **Uniform Allowance:**

Article XXXVII shall be revised as follows:

The State agrees to provide a cash payment of \$1435 on January 1, 2000 and a cash payment of \$1435 on January 1, 2001, a cash payment of \$1435 on January 1, 2002 and a cash payment of \$1435 on January 1, 2003 to all employees in the unit who have attained one (1) year of service as of December 31, 1999, December 31, 2000, December 31, 2001 and December 1, 2002 with the exception of the Correction Sergeants.

In exception to the program outlined herein, Correction Sergeants will be granted in lieu of uniform allowances, cash payments of \$830 in July, 1999; \$830 in January 2000; \$830 in July, 2000; \$830 in January 2001; \$830 in July, 2001; \$830 in January 2002; \$830 in July, 2002; and \$830 in January 2003.

6. **Discipline:** Article XI (L)(4) shall be amended as follows:

All disciplinary charges shall be brought within 45 days of the appointing authority reasonably becoming aware of the offense. In the absence of the institution of the charge within the 45-day period, the charge shall be dismissed. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed. Charges under EEOC shall be brought within 60 days.

7. **Audio Tape of Departmental Hearings**

I remand this issue back to the parties for further discussions to possibly flesh out the details of a mutually accepted procedure. I shall not retain jurisdiction.

8. **Preferential Work Shift for Executive Board Members**

Article VII (C), Association Rights, shall be amended to provide:

Six Association Executive Board members shall be assigned first shift with Saturday and Sunday off.

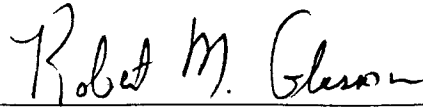
9. **Travel Reimbursement**

Article XIII (C) shall be amended effective November 1, 2002 as follows:

All employees serving in the title below, who are not provided transportation shall be compensated at the rate of twenty-seven (27) cents per mile of travel to and from their place of assignment and permanent place of residence in excess of twenty (20) highway miles each way. Such payment shall not be started nor enlarged as the result of an employee voluntarily moving his/her residence at a time that is not coincidental to a change in their place of assignment.

10. All other proposals are denied.

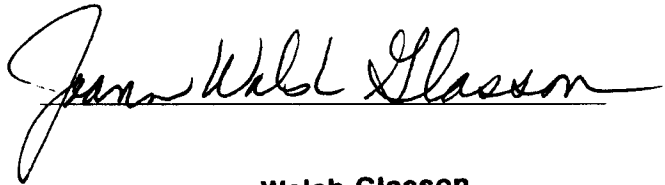
Dated: November 1, 2002
Pennington, NJ



ROBERT M. GLASSON
ARBITRATOR

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 1st day of November 2002, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-06

EXHIBIT LIST

JOINT

- JOINT-1: Collective Bargaining Agreement between the State of New Jersey and the New Jersey Law Enforcement Supervisors Association (Primary Level Supervisory Law Enforcement Unit) (July 1, 1995 through June 30, 1999)
- JOINT-2: Arbitration petition, filed on December 21, 2000.
- JOINT-3: Union Final Offer, submitted on January 3, 2002.
- JOINT-4: State's Final Offer, submitted January 4, 2002.
- JOINT-5: Mastriani Arbitration Award (PBA 105)

STATE

- STATE-1: George M. Camp Resume
- STATE-2A: (Marked for Identification) The 2000 Corrections Yearbook (Adult Corrections).
- STATE-2B: (Marked for Identification) The 2000 Corrections Yearbook (Jails).
- STATE-2C: (Marked for Identification) The 2000 Corrections Yearbook (Private Prisons).
- STATE-3: Comparative Analysis of the Terms and Conditions of Employment of Sergeants and Lieutenants in State and Federal Prisons, prepared by George M. Camp, Criminal Justice Solutions, LLC.
- STATE-4: (Marked for Identification) Appendix to the report on the Comparative Analysis of the Terms and Conditions of Employment of Sergeants and Lieutenants in State and Federal Prisons, prepared by George M. Camp, Criminal Justice Solutions, LLC.
- STATE-5: Agreement between the State of New Jersey and Communication Workers of America, AFL-CIO, Primary Level Supervisory Unit (July 1, 1999 through June 30, 2003)
- STATE-6: Agreement between the State of New Jersey and Communication Workers of America, AFL-CIO, Administrative & Clerical Services Unit (July 1, 1999 through June 30, 2003)
- STATE-7: Agreement between the State of New Jersey and Council of New Jersey State College Locals, AFT, AFL-CIO, State Colleges/Universities Unit (July 1, 1999 through June 30, 2003)
- STATE-8: Agreement between the State of New Jersey and Council of New Jersey State Colleges Locals, AFT, AFL-CIO, State Colleges/Universities Adjunct Unit (July 1, 1999 through June 30, 2003)
- STATE-9: Agreement between the State of New Jersey and Council No. 1 and its affiliated Locals and Councils, American Federation of State, County and Municipal Employees, AFL-CIO, Health, Care and Rehabilitation Services Unit (July 1, 1999 through June 30, 2003)

- STATE-10: Agreement between the State of New Jersey and Local No. 195, International Federation of Professional and Technical Engineers, AFL-CIO, Operations, Maintenance and Services and Crafts Units AND Local No. 195, International Federation of Professional and Technical Engineers, AFL-CIO AND Local No. 518, New Jersey State Motor Vehicle Employees Union, SEIU - AFL-CIO, Inspection and Security Unit (July 1, 1999 through June 30, 2003)
- STATE-11: Agreement between the State of New Jersey and the State Troopers NCO Association of N.J., Inc., for the unit consisting of Sergeant, Detective Sergeant, Sergeant First Class of the Division of State Police (July 1, 2000 through June 30, 2004)
- STATE-12: Agreement between the State of New Jersey and Communication Workers of America, AFL-CIO, Professional Unit (July 1, 1999 through June 30, 2003)
- STATE-13: Agreement between the State of New Jersey and State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association, Law Enforcement Unit (July 1, 1999 through June 30, 2003)
- STATE-14: Agreement between the State of New Jersey and Communication Workers of America, AFL-CIO, Higher Level Supervisory Unit (July 1, 1999 through June 30, 2003)
- STATE-15: Agreement between the State of New Jersey and the Internal Affairs Investigators Association, Affiliated with the New Jersey State Fraternal Order of Police, Lodge 174, Internal Affairs Investigations Unit (July 1, 1999 through June 30, 2003)
- STATE-16: Agreement between State of NJ and State Troopers Fraternal Association (July 1, 2000 through June 30, 2004).
- STATE-17: Cost of Living Increases 1980-2000
- STATE-18: Dates of Settlements/Awards for State Negotiations Units
- STATE-19: CWA/Administrative Clerical Percentage Wage Increases 1980-2003
- STATE-20: CWA/Primary Supervisors Percentage Wage Increases 1980-2003
- STATE-21: CWA/Professionals Percentage Wage Increases 1980-2003
- STATE-22: CWA/Higher Level Professionals Percentage Wage Increases 1980-2003
- STATE-23: IFPTE Percentage Wage Increases 1980-2003
- STATE-24: AFSCME Percentage Wage Increases 1980-2003
- STATE-25: SLEC Percentage Wage Increases 1980-2003
- STATE-26: Corrections Sergeants Percentage Wage Increases 1980-1999
- STATE-27: Corrections Lieutenants Percentage Wage Increases 1980 -1999
- STATE-28: Corrections Captains Percentage Wage Increases 1993-1999
- STATE-29: Internal Affairs Percentage Wage Increases 1993-2003
- STATE-30: State Troopers Percentage Wage Increases 1980-2004
- STATE-31: State Troopers Sergeants Percentage Wage Increases 1980-2004

STATE-32A: 1999 W-2 Wage Data - Correction/JJC Sergeants
STATE-32B: 1999 W-2 Wage Data - Unit K
STATE-33A: 2000 W-2 Wage Data - Correction/JJC Sergeants
STATE-33B: 2000 W-2 Wage Data - Unit K
STATE-34A: 2001 W-2 Wage Data - Correction/JJC Sergeants
STATE-34B: 2001 W-2 Wage Data - Unit K
STATE-35A: Cost of Health Benefit Contribution and Participation Levels -
Correction/JJC Sergeants
STATE-35B: Cost of Health Benefit Contribution/Participation Levels - Unit K
STATE-36: Count of State Employees Who Premium Share with Participation
Levels
STATE-37A: Cost-Out of State Proposal - Correction/JJC Sergeants
STATE-37B: Cost-Out of State Proposal - Unit K
STATE-38: Shift Overlap as Percentage of Overtime
STATE-39A: Cost-Out of Union Proposal - Correction/JJC Sergeants
STATE-39B: Cost-Out of Union Proposal - Unit K
STATE-40: Employee Counts
STATE-41A: (Reserved) Officer "A" Wage Progression
STATE-41B: (Reserved) Officer "A" Actual Wage Progression Compared to CPI
STATE-42A: (Reserved) Officer "B" Wage Progression
STATE-42B: (Reserved) Officer "B" Actual Wage Progression Compared to CPI
STATE-43A: (Reserved) Officer "C" Wage Progression
STATE-43B: (Reserved) Officer "C" Actual Wage Progression Compared to CPI
STATE-44: Fiscal 2003 State of New Jersey Budget
STATE-45: Office of Management and Budget Mission Statement

UNION

UNION-1: State Troopers NCO Collective Bargaining Agreement, June 1, 2000
to June 30, 2004