

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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**In the Matter of the Interest Arbitration between**

STATE OF NEW JERSEY,  
Public Employer,

Docket No.  
IA-2023-021

and

NEW JERSEY INVESTIGATORS ASSOCIATION,  
FOP LODGE 174,  
Union.

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Before **DEAN L. BURRELL, ESQ., Impartial Arbitrator**

**APPEARANCES:**

**For the Union**

David Beckett, Esq.  
Beckett & Paris LLC

**For the State**

Joseph Hannon, Esq.  
Chris Manley, Esq.  
Genova Burns LLC

I. **PROCEDURAL HISTORY**

The New Jersey Investigators Association, FOP Lodge No. 174 (“NJIA” or the “Union”) and the State of New Jersey (the “State” or the “Employer”) are signatories to a collective bargaining agreement with a duration from July 1, 2015, to June 30, 2019, covering the unit of “All full-time permanent and provisional employees of the State of New Jersey in title of Investigator, Secured Facilities; Senior Investigator, Parole and Secured Facilities; Principal Investigator, Parole and Secured Facilities.” After bargaining from 2019 until 2022, on January 17, 2023, the Union filed the instant Petition to Initiate Compulsory Interest Arbitration in this matter pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the “Act”). The Union listed as economic issues: salary increases for each year of the contract as well as the size of those across-the-board increases; health benefits including cost and contributions, and the range of health benefit plans available to unit employees; compensation for on-call work; and compensatory time off. According to the Petition, the non-economic issue was limited to “Union leave (as not listed squarely in section 16(2), it is listed here as non-economic.)”

The undersigned was randomly selected by the New Jersey Public Employment Relations Board (“PERC”) on March 8, 2023. The parties submitted their Final Offers on May 1, 2023. After the matter did not settle at the required mediation session on March 8, 2023, interest arbitration hearings were held May 8 and 10, 2023 on the campus of Thomas Edison State University in Trenton, New Jersey. The Union submitted sixteen (16) exhibits and testimony from Union President (and retired unit member) Adrian Ellison; Union Executive Vice President and unit member Joseph Santiago, Jr.; and Raphael Caprio, Professor, and Economist. The State provided four binders containing eighty-one (81) exhibits and presented testimony from Lynn

Azarchi, Acting Director, State of New Jersey Office of Management and Budget; and Camille Warner, Esq., Deputy Director, State of New Jersey Governor's Office of Employee Relations.

Both parties were afforded the full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. The parties submitted briefs by May 22, 2023, and the record was closed. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation of this Interest Arbitration and Award.

This proceeding as governed by the Act requires the application of the nine §16g interest arbitration criteria to the extent deemed relevant. See N.J.S.A. 34:13A-16.7(b) and 16g. Pursuant to P.L. 2014, c.11, the arbitrator has ninety (90) days from appointment, or by June 9, 2023, in which to render an award. This has resulted in a greatly compressed time period for issuance of the Award.

## II. PARTIES FINAL OFFERS ON DISPUTED ISSUES

In accordance with the Act, each party submitted a Final Offer (the “Final Offer”). These Final Offers are set forth in their entirety.

### THE EMPLOYER’S FINAL OFFER

This Final Offer does not include issues already agreed upon in negotiations:

1. Term of Agreement: July 1, 2019 through June 30, 2023 (4-year agreement)
2. Salary Increases: Across-the-board salary increases to all employees employed by the State as of the date of ratification. Across-the-board salary increases having retroactive effect will be paid in accordance with N.J.A.C. 4A: 3 – 4.20.
  - a. Effective retroactive to first pay period following October 1, 2019: 2.00% increase.
  - b. Effective retroactive to first pay period following July 1, 2021: 2.00% increase
  - c. Effective first pay period following December 1, 2021: 2.00% increase
  - d. Effective first pay period following July 1, 2022: 2.00% increase
3. Salary Increments: Normal increments shall be paid to all employees eligible for such increments on their anniversary date in accordance with the State Compensation Plan. Increments for those employees not at top step shall continue to be provided to eligible employees in accordance with the State Compensation Plan after expiration of the agreement.
4. Article XXXII, Health Benefits: Delete current Article and Replace with revised Article XXXII as set forth in Attachment 1.
5. Article XIII, Section C, Uniform and Equipment Allowance: Delete Section C and Replace with Section C as set forth in Attachment 2.
6. Article XXV, Section A(1), Leave for Association Activity: Effective July 1, 2021, increase paid leave from 50 to 70 days per year. Delete current Article XXV and Replace with revised Article XXV as set forth in Attachment 3. Delete Article VII, Section B.

**ATTACHMENT 1**

**HEALTH BENEFITS LANGUAGE**

**ARTICLE XXXII**

**Fringe Benefits**

**A. State Health Benefits Program**

As with any provisions of this Agreement that reflect statutory or regulatory mandates, the provisions of paragraphs (A)(B)(C) and (G) of this Article, are for informational purposes only and provide an explanation which is subject to change due to legislative action.

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

2. Effective July 1, 2003, the Traditional Plan shall be closed as to all current and future members of this bargaining unit, including unit members retiring after said date. The Traditional Plan and the NJ Plus POS Plan have been abolished. Effective immediately, no new hires shall be enrolled in the Traditional Plan.

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

4. As soon as practical after ratification, the new NJ Direct plan (available to employees hired prior to July 1, 2019) and NJ Direct 2019 plan (available employees hired on or after July 1, 2019) will be the only PPO Plan available to active negotiations unit members.

**B. Contributions Towards Health and Prescription Benefits**

1. Employees shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of the health care benefits coverage for the employee and any dependent provided under NJ Direct and NJ Direct 2019 through the State Health Benefits Program in an amount that is a percent of salary to the cost of the premium:

- a.) Active members participating in an HMO plan or High Deductible Plan (HDHP) will contribute a percentage of premium.
  - b.) Active members participating in a Tiered Network plan shall contribute at a rate that is equal to 75% of the new PPO plan contribution rate.
  - c.) The contribution rates for available plans may be found on the Division of Pension and Benefits website.
2. Effective for benefits plan year starting January 1, 2021, the employee contribution amounts are subject to the agreed upon reopener provisions as set forth in Appendix III. The parties recognize that any agreements by the parties reached during the reopener discussions regarding plan design are subject to the approval of and implementation by the Plan Design Committee.
  3. The amount payable by any employee, pursuant to N.J.S.A. 52:14-17.28(c)(2) (added by L. 2010, c.2) shall not under any circumstance be less than the 1.5 percent of the base salary. No employee shall contribute more than the employee would have contributed under section 39 of P.L. 2011 c. 78 (C. 52:14-17.28c)
  4. The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan and provide a certification to the State that he/she has other health insurance coverage, the State will waive the contribution for the employee.
  5. An employee on leave without pay who receives health and prescription drug benefits provided by the State Health Benefits Program shall be required to pay the above-outlined contributions and shall be billed by the State for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.
  6. Active employees will be able to use pre-tax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be by deductions from pay.
  7. Eligible negotiations unit employees and their spouses who complete the NJ Well Program shall each receive a \$350 incentive.

### **C. Dental Care Program**

1. It is agreed that the State shall continue the Dental Care Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Plan Design Committee, in accordance with P.L. 2011, c. 78. Through December 31, 2011, active eligible employees are able to participate in the Dental Care Program as described in the parties' July 1, 2007 – June 30, 2011 collective negotiations agreement. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs

for all plans in the program and has the sole discretion to determine the plan design, plan offering and coverage levels under the program.

2. Participation in the Program shall be voluntary with a condition of participation being that each participating employee authorize a bi-weekly salary deduction not to exceed fifty percent (50%) of the cost of the type of coverage elected, e.g. individual employee only, husband and wife, parent and child or family coverage.
3. Each employee shall be provided with a brochure describing the details of the Program, enrollment information and the required forms.
4. Participating employees shall be provided with an identification card to be utilized when covered dental care is required.

The provisions of Sections (A), (B) and (C) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article X.

#### **D. Eye Care Program**

1. Full-time employees and eligible dependents shall be eligible for the State-administered Eye Care Program. The Program shall provide for each eligible employee and dependent to receive a \$40 payment for prescription eyeglasses with regular lenses and a \$45 payment for such glasses with bi-focal lenses. Each eligible employee and dependent may receive only one (1) payment during the two (2) year period ending June 30, 2021 and only 1 payment during the two (2) year period commencing July 1, 2021. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.
2. Eligible dependents of full-time employees shall be eligible for a maximum payment of \$35 or the non-reimbursed cost whichever is less, of an eye examination by an Ophthalmologist or Optometrist, during the two (2) year period ending June 30, 2021 and only one payment during the two (2) year period commencing July 1, 2021.
3. Proper affidavits or forms and submissions of receipts are required of the member in order to receive payment.

#### **E. Temporary Disability**

All employees in this unit are covered under the State of New Jersey Temporary Disability Plan. This is a shared cost plan, which provides payments to employees who are unable to work as the result of non-work connected illness or injury and who have exhausted their accumulated sick leave.

**F. Insurance Savings Program**

Subject to any condition imposed by the insurer, all employees shall have the opportunity to voluntarily purchase various insurance policies on a group participation basis. The policy costs are to be borne entirely by the employee selecting insurance coverage provided in the program. The State will provide a payroll deduction procedure whereby authorized monies may be withheld from the earned salary of such employees and remitted to the insurance company. The insurance company will provide information concerning risk covered, service offered, and all other aspects of the program to each interested employee.

**G. Health Insurance For Retirees**

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

Upon retirement, an active employee who is not Medicare eligible and who retires with 25 years of pensionable service after the enrollment date established in accordance with Section A4 of this Article shall be offered the option to enroll in the NJ Direct/NJ Direct 2019 plan at the time of retirement.

a. Current retirees and active employees who have accrued 25 years of pensionable service prior to the enrollment date established in accordance with Section A4 of this Article shall be offered the same plans in retirement as available at the time s/he acquired 25 years of pensionable service, as required by law and shall also be offered the option to enroll in the NJ Direct/NJ Direct 19 PPO plan based on the contribution rate required at the time s/he reached 25 years of service.

b. If an employee acquires 25 years of pensionable service after the enrollment date established in accordance with Section A4 of this Article, that employee shall contribute to the cost of health benefits in retirement based on the contribution rates of active employees, as established by this agreement, at the time of the retirement. Such employee shall have access to the plans available at the time s/he acquired 25 years of pensionable service.

The provisions of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article XI.

**Appendix III - Health Care Reopener (NEW)**

1. The actual premium cost for the new PPO plans, inclusive of medical and prescription costs, will be tracked each plan year following the plan's initial offering in plan year 2019.
2. In addition, the new PPO premium cost increases will be monitored and compared to the national, regional and state trending of healthcare costs.
3. Calculations:

- a. If the projected blended premium for the new PPO in a plan year exceeds the “Baseline Premium”, the Union and the State shall enter into negotiations to lower the premium and/or reduce the rate of premium increases. Such negotiations will commence upon receipt of the SHBP actuary’s rate renewal recommendation premium for the upcoming plan year, in or about the preceding July.
- b. The Union and the State shall also calculate the “Adjusted Premium Increase” (“API”). The API shall be calculated by (a) subtracting the aggregate percent of across-the-board salary increases received by represented State employees covered by this contract, not compounded, from (b) the percent by which the 2019 PPO premium exceeds the Preliminary Baseline Premium.
- c. Commencing in Plan Year 2019, the preliminary baseline premium rates shall be the following blended premiums – Single coverage - \$9570; Parent/Child coverage - \$19,140; Employee/Spouse - \$17,800; and Family \$27,370 – plus 3% (“Preliminary Baseline Premium”).

**Plan Year 2021:**

- a. If the projected blended premium for the new PPO plans in plan year 2021 exceeds the Preliminary Baseline Premium from plan year 2019, the Union and the State shall enter into negotiations to address such premium increases.
- b. The API for Plan Year 2021 shall be calculated by (a) subtracting the aggregate percent of across-the-board salary increases received by represented State employees covered by this contract, between July 1, 2019 and December 31, 2020, not compounded, from (b) the percent by which the new PPO premium exceeds the Preliminary Baseline Premium. For example, if the 2021 PPO premium is 8% more than the Preliminary Baseline Premium and if employees have received an aggregate of 6%, non-compounded, across-the-board salary increases since July 1, 2019, the API is 2%.
- c. If the Union and the State cannot agree upon plan design changes or other cost-saving measures that would reduce the API to at least a 0% increase over the Preliminary Baseline Premium by the September 1 preceding the start of the 2021 plan year, then an Escalator shall be applied to employee contribution rates. The Escalator to be applied to employee contribution rates shall be the percentage by which the API exceeds the Preliminary Baseline Premium. For example, if the API is 2%, then the Escalator is also 2%, which is applied to the employee’s contribution rate. If an employee’s contribution rate is 5% of base salary, then by applying the Escalator, the contribution rate will increase to 5.1% of base salary. Any increase in employee contributions will be effective the first pay period of the 2021 plan year.
- d. If the 2021 premium is below the Preliminary Baseline Premium by 6% or more, the Union and the State shall discuss options to share the savings in reduced costs or to improve the quality of the new PPO plans through design changes or other measures. If the Union and the State do not agree to either reduce costs or improve the quality of the new PPO plans or agree upon a reduction in the employee contribution rates by

September 1 preceding the start of the plan year then contribution rates shall be reduced by the application of a De-escalator. The De-escalator shall be the amount of the decrease in the new PPO 2020 premium below 6% of the Preliminary Baseline Premium. For example, if the 2021 premium is 6.5% below the Preliminary Baseline Premium, employee contribution rates shall be reduced by 0.5%. If an employee's contribution rate is 5% of base salary, then by applying the De-escalator the employee's new contribution rate shall be 4.975%. Any decrease in employee contributions will be effective the first pay period of the 2021 plan year.

### **Plan Year 2022**

- a. **The Baseline Premium for 2022 plan year shall be the PPO Plan's premium cost in plan year 2021 plus 1%.**
- b. If the projected blended premium for the PPO in plan year **2022** exceeds the new Baseline Premium, the Union and the State shall enter into negotiations to address such premium increases.
- c. The API shall be calculated by (a) subtracting the aggregate percent of across-the-board salary increases received by represented State employees covered by this contract, **between July 1, 2021 and December 31, 2021**, not compounded, from (b) the percent by which the PPO premium exceeds the 2022 Baseline Premium.
- d. If the Union and the State cannot agree upon plan design changes or other cost-saving measures that would reduce the API to at least a 0% increase over the Preliminary Baseline Premium by the September 1 preceding the start of the **2022** plan year, then an Escalator shall be applied to employee contribution rates. The Escalator to be applied to employee contribution rates shall be the percentage by which the API exceeds the Preliminary Baseline Premium. Any increase in employee contributions will be effective the first pay period of the **2022** plan year.
- e. Each subsequent plan year's PPO Plan's premium cost will be compared with previous year's PPO Plan's premium cost which will become the new Baseline Premium. The same process and methodology shall be used to review, and if necessary adjust, employee contributions rates, every year thereafter.

## **ATTACHMENT 2**

### **ARTICLE XIII, SECTION C**

1. **Employees in DOC**: Employees that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
  - a. The State agrees to provide a payment to unit employees of \$700 for July 2019 to those employees that had at least one (1) year of service as of June 30, 2019;
  - b. The State agrees to provide a payment to unit employees of \$840 for January 2020 to those employees that had at least one (1) year of service as of December 31, 2019;

- c. The State agrees to provide a payment to unit employees of \$840 for July 2020 to those employees that had at least one (1) year of service as of June 30, 2020;
  - d. The State agrees to provide a payment to unit employees of \$840 for January 2021 to those employees that had at least one (1) year of service as of December 31, 2020;
  - e. The State agrees to provide a payment to unit employees of \$840 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;
  - f. The State agrees to provide a payment to unit employees of \$840 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
  - g. The State agrees to provide a payment to unit employees of \$840 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
  - h. The State agrees to provide a payment to unit employees of \$840 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;
2. Employees in JJC: Employees that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
- a. The State agrees to provide a payment to unit employees of \$350 for July 2019 to those employees that had at least one (1) year of service as of June 30, 2019;
  - b. The State agrees to provide a payment to unit employees of \$420 for January 2020 to those employees that had at least one (1) year of service as of December 31, 2019;
  - c. The State agrees to provide a payment to unit employees of \$420 for July 2020 to those employees that had at least one (1) year of service as of June 30, 2020;
  - d. The State agrees to provide a payment to unit employees of \$420 for January 2021 to those employees that had at least one (1) year of service as of December 31, 2020;
  - e. The State agrees to provide a payment to unit employees of \$530 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;

- f. The State agrees to provide a payment to unit employees of \$530 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
  - g. The State agrees to provide a payment to unit employees of \$530 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
  - h. The State agrees to provide a payment to unit employees of \$530 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;
3. Employees in Parole: Effective July 2021, for employees that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
- a. The State agrees to provide a payment to unit employees of \$420 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;
  - b. The State agrees to provide a payment to unit employees of \$420 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
  - c. The State agrees to provide a payment to unit employees of \$420 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
  - d. The State agrees to provide a payment to unit employees of \$420 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;
4. No allowance will be paid to employees who are not required to own a uniform or wear a uniform at any time for work.
5. Effective for the Uniform Allowance payable in January 2022 and each January thereafter, employees (Corrections, JJC, and Parole) that did not report to work for more than six full pay periods during the first thirteen pay periods of the Fiscal Year shall not receive a Uniform Allowance payment in January. Effective for the Uniform Allowance payable in July 2021 and each July thereafter, employees who did not report to work for more than six full pay periods during the second thirteen pay periods of the Fiscal Year shall not receive a Uniform Allowance payment in July. Notwithstanding the foregoing, for any full pay period during which an employee was unable to report to work due to: (a) having tested positive for COVID-19, (b) due to the need to quarantine because of having close contact with someone that tested positive for COVID-19, or (c) being on a leave of absence while receiving Workers Compensation benefits due to a work-related injury or illness, said time away from work shall not count against the employee for purposes of

determining eligibility for the Uniform Allowance set forth above. Instead, the employee will be deemed to have reported to work during that pay period.

6. It is understood that the above payments are to be used for items of uniform and equipment and their maintenance and that all employees in the unit are expected to meet prescribed standards and regulations concerning individual items of uniform and equipment which are required and the reasonable standards of maintenance of such uniforms and equipment.

### **ATTACHMENT 3**

#### **ARTICLE XXV, LEAVE FOR ASSOCIATION ACTIVITY**

- A. The State agrees to provide leave of absence with pay for delegates of the Association to attend to Association activities. A total of 50 days of such leave may be used in the year July 1, 2019 to June 30, 2020. A total of 50 days of such leave may be used in the year July 1, 2020 to June 30, 2021. In each additional year of the Agreement, the State agrees to provide a total of 70 days of such leave.
- B. This leave is to be used exclusively for Association activities for which approval pursuant to Section D required. Except as expressly set forth in paragraph C of this provision, all leave for Association activities shall be chargeable, including but not limited to: (i) graduation ceremonies, (ii) random urine selection process, (iii) joint safety and health committee meetings held on the departmental level, and (iv) employee relations meetings that occur on the departmental level.
- C. The following sets forth the sole and exclusive circumstances where the Association shall be permitted leave for Association activity, but shall not be required to utilize the days of leave for Association activity provided in paragraph A above:
  1. Convention leave that is taken pursuant to, and in accordance with, the provisions of New Jersey law and ordinarily granted under that statute.
  2. Employee Relations Meetings or Joint Safety and Health Committee Meetings that occur at the departmental level to the extent that they are required by the department on more than a quarterly basis. An Employee Relations Meeting shall be defined as any meeting that the Administration agrees to participate in that relates to aspects of the Collective Bargaining Agreement, terms and conditions of employment, or pay and benefits for Association members. This definition shall not include meetings that relate to an individual employee's grievance or individual employee's discipline. A Joint Safety and Health Committee Meeting shall be defined as any meeting that the Administration agrees to participate in that affect the health, safety, or welfare of the employees and/or inmates employed with or housed by the New Jersey Department of Corrections.
  3. Leave taken by representatives of the Association to represent Association members at: (i) hearings or appearances before an Administrative Law Judge at the Office of Administrative Law, (ii) arbitration hearings, conferences or appearances, (iii)

proceedings at the New Jersey Public Employment Relations Commission, (iv) appearances at alternative dispute resolution and/or JUMP Panel meetings, hearings or conferences, (v) pre-arbitration conferences held in accordance with Article X, Section H, Step 3, paragraph 1, or (vi) Lauderhill hearings.

4. The State agrees that during working hours, on its premises and without loss of pay, properly designated and mutually agreed upon Association representatives shall be allowed to:
  - a. represent employees or assist counsel in representing employees in the negotiating unit at grievance proceedings or departmental disciplinary hearings; also to represent employees at investigative interviews in accordance with Article XI, Section L, paragraph 2 (Weingarten representatives); these activities must be done by the on-site representative unless the on-site representative is unavailable, in which case the Association can designate a replacement to act as the representative. The sole exception to this requirement is where the Association President or a member of the Association's Executive Board has requested to represent an employee instead of the on-site representative pursuant to Article X (G) (step one) or Article XI (F) of the Agreement based on showing of a particular need to assist in the grievance or hearing, and such request has been granted by the Office of Employee Relations.
  - b. Submit Association notices for posting;
  - c. Attend negotiating meetings or contract negotiation sessions with the State if designated as a member of the negotiating team to a maximum of six (6) employees. Provided, however, that where the representative, upon completion of the representational activities set forth in Section C(2), C(3) and C(4), above, could return to work with at least one (1) hour remaining on his/her scheduled shift, such representative must return to work and complete the remainder of his or her scheduled work shift. The determination of whether the representative could return to work with at least one (1) hour remaining on his/her scheduled shift shall take into account reasonable travel time from the location of the representational activity back to the representative's work location.
- D. Application for any leave pursuant to this Article shall be submitted in writing to the Governor's Office of Employee Relations at least fourteen (14) days in advance to be reviewed for contractual compliance, and then forwarded to the affected department to determine if the request will cause an undue hardship on the department. Timely requests will not be unreasonably denied. Leaves will only be granted to individuals authorized by the Association President.
- E. Any leave not utilized by the Association in a yearly period shall not be accumulated except where a written request of the Association for carry over of such leave for a particular

purpose is made not later than thirty (30) calendar days following the end of the year period. This request may be approved in whole or in part by the State.

In addition, the State agrees to provide leave of absence without pay for delegates of the Association to attend Association activities approved by the State. A total of ten (10) days of such leave of absence without pay may be used during the period July 1, 2019 to June 30, 2020; ten (10) days of such leave may be used during the period July 1, 2020 to June 30, 2021; ten (10) days of such leave may be used during the period July 1, 2021 to June 30, 2022; and ten (10) days of such leave may be used during the period of July 1, 2022 to June 30, 2023. This additional leave of absence without pay is to be used under the same conditions and restrictions expressed in connection with the leaves of absences with pay.

### **THE UNION'S FINAL OFFER**

These proposed terms represent a complete package on behalf of the New Jersey Investigators Association, FOP Lodge 174 that reflects the final position of the Association.

Term of Agreement: July 1, 2019 through June 30, 2023 (4-year Agreement)

1. Salary Increases: Across-the-board salary increases to all employees employed by the State as of the date of ratification and to all former employees that retired or died on or after July 1, 2019. Across-the-board salary increases having retroactive effect will be paid in accordance with N.J.A.C. 4A: 3 – 4.20.
  - a. Effective and retroactive to first pay period following July 1, 2019: 2.00% increase.
  - b. For the period from March 1, 2020 thru June 30, 2021, each unit employee who worked during each month shall receive a stipend (not to base) equal to \$400 per month in recognition of the hazards and difficulties posed during that period of the pandemic to the unit employees. Such pay shall be issued upon ratification.
  - c. Effective and retroactive to first pay period following July 1, 2021: 2.00% increase
  - d. Effective and retroactive to first pay period following December 1, 2021: 3.00% increase
  - e. Effective and retroactive to first pay period following July 1, 2022: 3.00% increase
2. Salary Increments: Normal increments shall be paid to all employees eligible for such increments on their anniversary date in accordance with the State Compensation Plan. Increments shall continue to be paid to eligible employees on their anniversary dates after expiration of the Agreement.
3. Article XXXII, Health Benefits: See modifications to language in Attachment 1.
4. Article XIII, Section C, Uniform and Equipment Allowance: Delete Section C and Replace with Section C as set forth in Attachment 2.

5. Article XIX, Section D, Compensatory Time Off: Increase maximum compensatory time accrual from 100 to 200 hours effective upon ratification.
6. Article XXV, Section A(1), Leave for Association Activity: Amend subpart A to read as follows; no change to subparts B-E.

A.

1. Effective July 1, 2019 thru June 30, 2022, the State agrees to provide 50 days leave of absence with pay for delegates of the Association to attend to Association activities. Starting July 1, 2022, the State agrees to provide a total of 90 days of such leave.

2. The total number of days of such leave that may be used in each year shall be exclusive of leave provided under the provisions of New Jersey law, leave ordinarily granted under that statute, and leave provided under Article VII of the Agreement.

7. Article XXVI, Section F(6), On-Call: Revise subsection 6 as follows:

On-call work will be compensated in accordance with NJAC 4A:3-5.7(a)(1). If an employee is required to perform work while on-call, and the time worked while on-call is overtime, applicable overtime rate will apply, and will be paid in time increments consistent with current department payroll practices, including:

- Employees on the TALRS Payroll System (Currently DOC): Employees shall be paid in 15-minute increments. For each 15-minute increment, if the time worked is 8 minutes or more, it will be rounded up, while time worked of 7 minutes or less will be rounded down. Notwithstanding, if an employee reviews or responds to one or more e-mail messages, text messages, and/or telephone calls, but spends 7 minutes or less in the aggregate with a given day on-call, the employee will still be entitled to a minimum of 15 minutes of pay for the time spent performing that work.
- Employees on the ECATS Payroll System (currently JJC and Parole): Employees shall be paid on a minute for minute basis for all time actually worked while on-call, including for the amount of time spent each day on-call reviewing and responding to e-mail messages, text messages, and telephone calls.
- If a unit employee is required to report to the workplace or other location while on-call, the employee shall be entitled to minimum call in rates under the conditions and limitations set forth in Section F(4).

However, the terms of Paragraph F.4. of this Article do not apply to work performed while on-call outside of the workplace that does not require the employee to report to his or her workplace or some other work location.

8. Tentative Agreements: The parties have reached tentative agreements on the following subjects, all of which shall be deemed part of this MOA, and copies of which are attached hereto:
  - a. Article IV, Non-Discrimination
  - b. Article V, Section A, No Strike Clause
  - c. Article VI, Dues Deduction
  - d. Article VII, Section A(5), Access to Premises
  - e. Article VII, Section B, Association Activity With Pay
  - f. Article VII, Section C, Bulletin Boards
  - g. Article VIII, Access to Personnel Folders and Evaluations
  - h. Article X, Grievance Procedure
  - i. Article X, Section G, Arbitration
  - j. Article XI, Discipline
  - k. Article XXIV, Leave of Absence Without Pay
  - l. Article XXVII, Section C, Job Posting
  - m. Article XLVI, Term of Agreement
9. Ratification by Union: This Memorandum of Agreement is subject to ratification by the employee members of the Association and shall not be effective absent ratification. Until such ratification, the terms and conditions of employment of members of this unit shall be governed by the prior collective negotiations agreement.
10. Recommendation: The NJIA Executive Board agrees that it will recommend ratification in accordance with the terms specified herein to its members of the Bargaining Unit.
11. Preparation of Agreement: The State of New Jersey, upon ratification, will commence the process of preparing a successor collective negotiations agreement setting forth the terms and conditions of employment for the applicable term.
12. Complete Agreement: This Memorandum of Agreement represents the entire understanding of the parties. Any proposal or counter-proposal, whether written or oral, not contained herein is deemed waived and withdrawn.
13. Binding Agreement: The State of New Jersey, through the Governor's Office of Employee Relations, represents that the foregoing has been approved by the State of New Jersey and that upon ratification, the parties will have entered into a binding collective negotiations agreement for the term set forth herein.
14. Separation and Severability: If any provision of this agreement is deemed unenforceable as a matter of law, the parties agree that the remainder of the agreement shall be deemed binding and enforceable. With respect to any provision deemed unenforceable, the parties will continue negotiations to bring said provision in compliance with applicable law.

**ATTACHMENT 1**

**ARTICLE XXXII**

**HEALTH INSURANCE AND FRINGE BENEFITS**

**A. State Health Benefits Program**

As with any provisions of this Agreement that reflect statutory or regulatory mandates, the provisions of paragraphs (A)(B)(C) and (G) of this Article that re-state such mandates are for informational purposes only and provide an explanation which is subject to change due to legislative action.

No Changes to subparts 1-3

Add New Subpart 4:

4. As soon as practical after ratification, the new NJ Direct plan (available to employees hired prior to July 1, 2019) and NJ Direct 2019 plan (available employees hired on or after July 1, 2019) will be made available to active negotiations unit members. **Unit employees shall retain access to select Direct 15 and other legacy PPO plans.**

**B. Contributions Towards Health and Prescription Benefits: Modify to read as follows:**

1. Employees shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of the health care benefits coverage for the employee and any dependent provided under the State Health Benefits Program as follows:
  - a.) Active members selecting NJ Direct 15 (legacy plan) any HMO plan or any High Deductible Plan (HDHP) will contribute a percentage of premium at the statutory rate (section 39 of P.L. 2011, c. 78.); those in 15/25 shall contribute at a rate that is equal to 95% of the statutory rate; those in 20/30 at 90% of the statutory rate, and those in 20/35 at 85% of the statutory rate.
  - b.) Active members participating in a Tiered Network plan shall contribute at a rate that is equal to 75% of the new PPO plan contribution rate.
  - c.) Contribution rates for plans referred to above are shown on the schedules from the SHBP submitted with this Final Offer as an attachment.
2. The amount payable by any employee, pursuant to section 39 of P.L. 2011 c. 78 under this subsection shall not under any circumstance be less than the 1.5 percent of base salary that is provided for in subsection c. of section 6 of P.L. 1996, c.8 (C.52: 14 – 17.28b).

NOTE: #3 and #5 deleted as obsolete; thus, renumbered, as shown below.

3. The contribution shall apply to employees for whom the employer has assumed a health care benefits payment obligation, to require that such employees pay at a minimum the amount of contribution specified in this section for health care benefits coverage.
4. The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan ("SHBP") and provide a certification to the State that he/she has other health insurance coverage; the state will waive the contribution for that employee.
5. An employee on leave without pay who receives health and prescription drug benefits provided by the State Health Benefits Program shall be required to pay the above-outlined contributions and shall be billed by the State for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.
6. Active employees will be able to use pre-tax dollars to pay contributions to health benefits under a Section 125 premium conversion option. All contributions will be by deductions from pay.
7. Eligible negotiations unit employees and their spouses who complete the NJ Well Program shall each receive a \$350 incentive each year.

**A. Dental Care Program. (NO CHANGES PROPOSED)**

1. It is agreed that the State shall continue the Dental Care Program during the period of this Agreement to the extent it is established and/or modified by the State Health Benefits Design Committee, in accordance with P.L. 2011, c. 78. Through December 31, 2011, active eligible employees are able to participate in the Dental Care Program as described in the parties' July 1, 2007 – June 30, 2011 collective negotiations agreement. Pursuant to P.L. 2011, c. 78, the State Health Benefits Plan Design Committee has the sole discretion to set the amounts for maximums, co-pays, deductibles, and other such participant costs for all plans in the program and has the sole discretion to determine the plan design, plan components and coverage levels under the program.
2. Participation in the Program shall be voluntary with a condition of participation being that each participating employee authorizes a biweekly salary deduction as set by the State Health Benefits Design Committee.
3. Each employee shall be provided with a brochure describing the details of the Program and enrollment information and the required forms.
4. Participating employees shall be provided with an identification card to be utilized when covered dental care is required.

**D. Eye Care Program**

1. It is agreed that the State shall continue the Eye Care Program during the period of this Contract. The coverage shall provide for a \$40.00 payment for regular prescription lens or \$45.00 for bifocal lens or more complex prescriptions. Included are all eligible full-time employees and their eligible dependents (spouse and unmarried children under 23 years of age who live with the employee in a regular parent-child relationship). The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

2. Full-time employees and eligible dependents, as defined above, shall be eligible for a maximum payment of \$35.00 or the non-reimbursed cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.
3. Each eligible employee and dependent may receive only one payment for glasses and one payment for examinations **every two years**. Proper affidavit and submission of receipts are required of the employee in order to receive payments. (modified from specific two year periods shown in current contract.)

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

**F. Temporary Disability**

All employees in this unit are covered under the State of New Jersey Temporary Disability Plan. This is a shared cost plan, which provides payments to employees who are unable to work as the result of non-work connected illness or injury and who have exhausted their accumulated sick leave.

**G. Insurance Savings Program**

Subject to any condition imposed by the insurer, all employees shall have the opportunity to voluntarily purchase various insurance policies on a group participation basis. The policy costs are to be borne entirely by the employee selecting insurance coverages provided in the program. The State will provide a payroll deduction procedure whereby authorized monies may be withheld from the earned salary of such employees and remitted to the insurance company. The insurance company will provide information concerning risks covered, service offered, and all other aspects of the program to each interested employee.

**H. Health Insurance For Retirees (modified as below.)**

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

Upon retirement, an active employee who is not Medicare eligible and who retires with 25 years of pensionable service or retires on a disability retirement after the enrollment date established in accordance with Section A4 of this Article shall be offered the option to enroll in the NJ Direct/NJ Direct 2019 plan at the time of retirement.

a. Current retirees and active employees who have accrued 25 years of pensionable service prior to the enrollment date established in accordance with Section A4 of this Article shall be offered the same plans in retirement as available at the time s/he acquired 25 years of pensionable service, as required by law and shall also be offered the option to enroll in the NJ Direct/NJ Direct 19 PPO plan based on the contribution rate required at the time s/he reached 25 years of service.

b. If an employee acquires 25 years of pensionable service after the enrollment date established in accordance with Section A4 of this Article, that employee shall contribute to the cost of health benefits in retirement based on the contribution rates of active employees, as established by this agreement, at the time of the retirement. Such employee shall have access to the plans available at the time s/he acquired 25 years of pensionable service.

**I. Health Care Reopener (NEW). Applies only to new plans: NJ DIRECT and NJ DIRECT 2019**

1. The actual premium cost for the new PPO plans, inclusive of medical and prescription costs, will be tracked each plan year following the plan's initial offering in plan year 2019.
2. In addition, the new PPO premium cost increases will be monitored and compared to the national, regional and state trending of healthcare costs.
3. Calculations:
  - a. If the projected blended premium for the new PPO in a plan year exceeds the "Baseline Premium", the Union and the State shall enter into negotiations to lower the premium and/or reduce the rate of premium increases. Such negotiations will commence upon receipt of the SHBP actuary's rate renewal recommendation premium for the upcoming plan year, in or about the preceding July.
  - b. The Union and the State shall also calculate the "Adjusted Premium Increase" ("API"). The API shall be calculated by (a) subtracting the aggregate percent of across-the-board salary increases received by represented State employees covered by this contract, not compounded, from (b) the percent by which the 2019 PPO premium exceeds the Preliminary Baseline Premium.
  - c. Commencing in Plan Year 2019, the preliminary baseline premium rates shall be the following blended premiums – Single coverage - \$9,570; Parent/Child coverage - \$19,140; Employee/Spouse - \$17,800; and Family \$27,370 – plus 3% ("Preliminary Baseline Premium").

**Plan Year 2021:**

- a. If the projected blended premium for the new PPO plans in plan year 2021 exceeds the Preliminary Baseline Premium from plan year 2019, the Union and the State shall enter into negotiations to address such premium increases.
- b. The API for Plan Year 2021 shall be calculated by (a) subtracting the aggregate percent of across-the-board salary increases received by represented State employees covered by this contract, between July 1, 2019 and December 31, 2020, not compounded, from (b) the percent by which the new PPO premium exceeds the Preliminary Baseline Premium. For example, if the 2021 PPO premium is 8% more than the Preliminary Baseline Premium and if employees have received an aggregate of 6%, non-compounded, across-the-board salary increases since July 1, 2019, the API is 2%.
- c. If the Union and the State cannot agree upon plan design changes or other cost-saving measures that would reduce the API to at least a 0% increase over the Preliminary Baseline Premium by the September 1 preceding the start of the 2021 plan year, then an Escalator shall be applied to employee contribution rates. The Escalator to be applied to

employee contribution rates shall be the percentage by which the API exceeds the Preliminary Baseline Premium. For example, if the API is 2%, then the Escalator is also 2%, which is applied to the employee's contribution rate. If an employee's contribution rate is 5% of base salary, then by applying the Escalator, the contribution rate will increase to 5.1% of base salary. Any increase in employee contributions will be effective the first pay period of the **2021** plan year.

- d. If the 2021 premium is below the Preliminary Baseline Premium by 6% or more, the Union and the State shall discuss options to share the savings in reduced costs or to improve the quality of the new PPO plans through design changes or other measures. If the Union and the State do not agree to either reduce costs or improve the quality of the new PPO plans or agree upon a reduction in the employee contribution rates by September 1 preceding the start of the plan year then contribution rates shall be reduced by the application of a De-escalator. The De-escalator shall be the amount of the decrease in the new PPO 2020 premium below 6% of the Preliminary Baseline Premium. For example, if the 2021 premium is 6.5% below the Preliminary Baseline Premium, employee contribution rates shall be reduced by 0.5%. If an employee's contribution rate is 5% of base salary, then by applying the De-escalator the employee's new contribution rate shall be 4.975%. Any decrease in employee contributions will be effective the first pay period of the 2021 plan year.

#### **Plan Year 2022**

- a. **The Baseline Premium for 2022 plan year shall be the baseline premium is the PPO Plan's premium cost in plan year 2021 plus 1%.**
- b. If the projected blended premium for the PPO in plan year **2022** exceeds the new Baseline Premium, the Union and the State shall enter into negotiations to address such premium increases.
- c. The API shall be calculated by (a) subtracting the aggregate percent of across-the-board salary increases received by represented State employees covered by this contract, **between July 1, 2021 and December 31, 2021**, not compounded, from (b) the percent by which the PPO premium exceeds the 2022 Baseline Premium.
- d. If the Union and the State cannot agree upon plan design changes or other cost-saving measures that would reduce the API to at least a 0% increase over the Preliminary Baseline Premium by the September 1 preceding the start of the **2022** plan year, then an Escalator shall be applied to employee contribution rates. The Escalator to be applied to employee contribution rates shall be the percentage by which the API exceeds the Preliminary Baseline Premium. Any increase in employee contributions will be effective the first pay period of the **2022** plan year.
- e. Each subsequent plan year's PPO Plan's premium cost will be compared with previous year's PPO Plan's premium cost which will become the new Baseline Premium. The same process and methodology shall be used to review, and if necessary adjust, employee contributions rates, every year thereafter.

**ATTACHMENT 2**  
**ARTICLE XIII, SECTION C**

1. Employees in DOC: Employees that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
  - a. The State agrees to provide a payment to unit employees of \$700 for July 2019 to those employees that had at least one (1) year of service as of June 30, 2019;
  - b. The State agrees to provide a payment to unit employees of \$840 for January 2020 to those employees that had at least one (1) year of service as of December 31, 2019;
  - c. The State agrees to provide a payment to unit employees of \$840 for July 2020 to those employees that had at least one (1) year of service as of June 30, 2020;
  - d. The State agrees to provide a payment to unit employees of \$840 for January 2021 to those employees that had at least one (1) year of service as of December 31, 2020;
  - e. The State agrees to provide a payment to unit employees of \$840 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;
  - f. The State agrees to provide a payment to unit employees of \$840 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
  - g. The State agrees to provide a payment to unit employees of \$840 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
  - h. The State agrees to provide a payment to unit employees of \$840 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;
  
2. Employees in JJC: Employees that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
  - a. The State agrees to provide a payment to unit employees of \$350 for July 2019 to those employees that had at least one (1) year of service as of June 30, 2019;
  - b. The State agrees to provide a payment to unit employees of \$420 for January 2020 to those employees that had at least one (1) year of service as of December 31, 2019;

- c. The State agrees to provide a payment to unit employees of \$420 for July 2020 to those employees that had at least one (1) year of service as of June 30, 2020;
  - d. The State agrees to provide a payment to unit employees of \$420 for January 2021 to those employees that had at least one (1) year of service as of December 31, 2020;
  - e. The State agrees to provide a payment to unit employees of \$530 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;
  - f. The State agrees to provide a payment to unit employees of \$700 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
  - g. The State agrees to provide a payment to unit employees of \$840 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
  - h. The State agrees to provide a payment to unit employees of \$840 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;
3. Employees in Parole: Effective July 2021, for employees that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
- a. The State agrees to provide a payment to unit employees of \$420 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;
  - b. The State agrees to provide a payment to unit employees of \$530 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
  - c. The State agrees to provide a payment to unit employees of \$700 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
  - d. The State agrees to provide a payment to unit employees of \$840 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;
4. No allowance will be paid to employees who are not required to own a uniform or wear a uniform at any time for work.

5. Effective for the Uniform Allowance payable in January 2023 and each January thereafter, employees (Corrections, JJC, and Parole) that did not report to work for more than six full pay periods during the first thirteen pay periods of the Fiscal Year shall not receive a Uniform Allowance payment in January. Effective for the Uniform Allowance payable in July 2022 and each July thereafter, employees who did not report to work for more than six full pay periods during the second thirteen pay periods of the Fiscal Year shall not receive a Uniform Allowance payment in July. Notwithstanding the foregoing, for any full pay period during which an employee was unable to report to work due to: (a) having tested positive for COVID-19 or any similar contractable disease, (b) due to the need to quarantine because of having close contact with someone that tested positive for COVID-19 or any similar contractable disease, or (c) being on a leave of absence while receiving Workers Compensation benefits due to a work-related injury or illness, said time away from work shall not count against the employee for purposes of determining eligibility for the Uniform Allowance set forth above. Instead, the employee will be deemed to have reported to work during that pay period.
6. It is understood that the above payments are to be used for items of uniform and equipment and their maintenance and that all employees in the unit are expected to meet prescribed standards and regulations concerning individual items of uniform and equipment which are required and the reasonable standards of maintenance of such uniforms and equipment.

### III. STIPULATIONS

The parties have reached tentative agreements on the following subjects, copies of which are attached to this Award:

1. Article IV, Non-Discrimination;
2. Article V, Section A, No Strike Clause;
3. Article VI, Dues Deduction;
4. Article VII, Section A(5), Access to Premises;
5. Article VII, Section B, Association Activity With Pay;
6. Article VII, Section C, Bulletin Boards;
7. Article VIII, Access to Personnel Folders and Evaluations;
8. Article X, Grievance Procedure;
9. Article X, Section G, Arbitration;
10. Article XI, Discipline;
11. Article XXIV, Leave of Absence Without Pay;
12. Article XXVII, Section C, Job Posting;
13. Article XLVI, Term of Agreement

#### IV. STATUTORY CRITERIA

In rendering my Award, I am bound to apply the statutory criteria set forth in 34:13A-16(g) which states;

The arbitrator shall 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 relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factor set forth in paragraph (6) of this subsection in any award:

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

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

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that 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 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of 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 a proposed local budget.

(7) The cost of living.

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

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

## V. BACKGROUND

### A. **The State of New Jersey**

New Jersey had more than nine million residents in 2020. For 2024 it has a total budget of approximately fifty-three billion dollars with a projected surplus of around ten billion dollars. After 13 credit downgrades between 2011-2022, the State's credit rating has been upgraded seven times since March 2022, though it remains below its past double A ratings. The State has also been making full pension contributions for the first time in a number of years. While a

marked improvement, the twenty percent budget surplus ranks tenth with forty other states having a greater percentage surplus.

## **B. The Bargaining Unit**

The Investigators Unit is responsible for conducting investigations regarding alleged misconduct by employees, individuals who visit state correctional facilities, and prisoners of the State of New Jersey. It functions essentially as the internal affairs department and serves as liaison to prisons, juvenile facilities, and parole. Unit members oversee investigations into violations of state laws, departmental policies, and procedures.

The unit is comprised of around ninety (90) members with approximately twenty (20) investigators, fifty (50) senior investigators, and twenty (20) principal investigators. Seventy-five (75) unit members are located at the Special Investigations Division (“SID”) of the New Jersey Department of Corrections (“NJDOC”), twelve (12) unit members at the Juvenile Justice Commission (“JJC”), and six (6) unit members at the State Parole Board (“Parole”).

Rank and file correctional police officers become investigators via a promotional examination, police sergeants must also take a promotional examination to become senior investigators, which comprise the bulk of the instant unit. Investigators may also be promoted to senior investigators. Senior investigators are promoted to principal investigators.

## **C. State Bargaining History**

Approximately fifty-one thousand State of Jersey employees are represented by unions. The Communications Workers of America (“CWA”) is the largest with four units totaling around thirty-one thousand full and part-time employees. The American Federation of State,

County and Municipal Employees (“AFSCME”) represents 5,671 healthcare workers, social workers, and food service workers; the International Federation of Professional and Technical Engineers (“IFPTE”) represents 4,200 maintenance and skilled trade including boiler operators, plumbers, electricians plus security guards; and the International Brotherhood of Electrical Workers (“IBEW”) has 1,300 members. Units in the NJ Department of Corrections include the Police Benevolent Association (PBA) which represents 5,216 correction officers, the New Jersey Superior Officers Law Enforcement Association (“NJSOLEA”) which represents two units of 36 and 254 members; New Jersey Law Enforcement Supervisors Association with 485 sergeants; New Jersey Law Enforcement Commanding Officers Association (“NJLECOA”) representing 3 units totaling 51 Majors; the Fraternal Order of Police (FOP) with approximately 100 in one unit and 120 in a second unit. The State Troopers SOA and State Troopers NCO Association represent 2,971 members.

Other than the State Troopers all of these contracts expired in 2019, with the CWA and State first agreeing to a successor four-year agreement in March 2019 with annual increases of 2% on July 1, 2019; July 1, 2020; July 1, 2021; and April 1, 2022. However, as a result of the State’s subsequent concerns over reduced revenues and other considerations stemming from the Covid pandemic the parties reopened negotiations, with the parties eventually agreeing to a new schedule changing the 2% wage increases to October 1, 2019; July 1, 2021; December 1, 2021; and July 1, 2022 (the “deferral dates”). This 2% wage agreement and schedule was also adopted by PBA 105, NJLESA, NJLECOA, IFPTE, AFSCME and IBEW.

Significantly, pursuant to an act of the State legislature, besides the negotiated 2% annual increase each year for four years (for a total of 8%) PBA Local 105 members received an additional 8% across the board wage increase effective April 23, 2022, with the starting wage

rate increased from \$40,000 to \$48,000, and all other unit members receiving 8% step increases. No other unit received this legislated increase.

Not all unions agreed to the deferred 2% increases and instead proceeded to interest arbitration. In State of New Jersey and NJSOLEA, IA-2022-005 (April 17, 2022), Arbitrator Ira Cure awarded increases of 2%, 2%, 3% and 3% on the deferral dates, citing inflation of 5.9% in 2021 and 7.48% as of the hearing date as the rationale for the higher final two-year wage increases. In a consolidated matter, State of NJ, Division of State Police and State Troopers SOA, Docket No. IA-2022-002, and State of New Jersey, Division of State Police and State Troopers NCO Association, IA-2022-003 (September 16, 2022), Arbitrator James W. Mastriani awarded a four-year agreement effective July 1, 2021 through June 30, 2025 with 2% on 7/1/21, 2% on 4/1/22, 2.75% on 7/1/23, and 2.75% on 7/1/24. He too specifically relied upon the increased cost of living as the basis for awarding 2.75% in the final two years.

## VI. POSITION OF THE PARTIES

### A. Wage Proposals

#### **The Employer**

There is a pattern of settlements that strongly supports granting the State's final 2% annual wage proposal in the instant matter. This pattern implicates numerous factors set forth in the statutory criteria contained in 34:13A-16(g). A pattern of this type is an important concept relied upon by both sides and promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge # 39, IA-2005-083, 2008 WL 199705, at \*6 (N.J. App. Div. Jan. 25, 2008). Accordingly, interest arbitrators often rely upon patterns

derived from other settlements in rendering their awards, an approach upheld by the Courts and PERC. City of Jersey City and Jersey City Police Officers Benevolent Association, 44 NJPER ¶ 77 (PERC 2017).

Such patterns implicate §16(g)(2)(c) which compares wages of the instant unit with those of other employees performing the same or similar services, and §16(g)(8) which considers continuity and stability of employment, since a deviation from a settlement can discourage future settlements and undermine morale in other units. See Somerset County, 2008 WL 199705, at \*6 (quoting Union County, 30 NJPER ¶ 38). The first factor in §16(g)(1), the interest and welfare of the public, is a statutory factor that implicates all others.

Here the State has shown a clear pattern of 2% annually resulting mostly through negotiations or interest arbitration, not just with law enforcement units but units comprising more than 50,000 State employees from 2019 through 2023. This includes NJLECOA, NJLESA, and PBA 105, particularly relevant units comprised of mostly uniformed members who work for DOC, Parole and JJC, as does the instant investigators unit. The State pattern is also established via civilian units, with the 2% pattern voluntarily adopted by the CWA, AFSCME and IFPTE. In fact, food service workers and nurses represented by AFSCME also work at correctional facilities, as do maintenance workers in the IFPTE unit.

The Union will argue that no pattern is established because of the passage of legislation raising PBA-represented correctional police officers starting salaries from \$40,000 to \$48,000, and the corresponding adjustments to other steps on their guide. However, this legislation has no impact where it was not enacted until January 2022, nine months after the PBA accepted the State's pattern offer. Most importantly, those wage increases were not the result of collective bargaining.

Arbitrator Cure's award in State of New Jersey and New Jersey Superior Officers Law Enforcement Association (NJSOLA), IA-2022-005 with wage increases of 2%, 2%, 3%, and 3% on the deferral dates also does not disrupt the 2% pattern, where Arbitrator Cure premised the higher final two years on unusually high inflation. However, such inflation has now substantially ceased, slowing from 7.48% at the time of that hearing in 2022 to 5.0% year-to-date at the time of this hearing, a percentage similar to when the correctional units agreed to the 2% pattern.

For the Arbitrator to follow the NJSOLEA award would continue to disrupt this pattern and therefore adversely affect harmonious labor relations by encouraging interest arbitration over voluntary agreement. Unions should not benefit by filing for interest arbitration at the last moment when the next round of negotiations has already commenced.

The Union's argument that the State has resources to pay for its proposed increases overly stresses the Employer's ability to pay, a non-statutory factor that ignores the importance of the pattern. The Union has demonstrated no unique considerations warranting deviation from the pattern, where challenges stemming from the pandemic and inflation are not unique to the investigators unit.

The statutory factors also favor awarding the State's final wage offer.

§16(g)(1) requires the interest arbitrator to consider the "interests and welfare of the public." While this factor has been interpreted as requiring that public safety employees be well compensated, it also focuses on the priority to be given budget considerations, since simply raising taxes to finance a public-sector interest award would render other factors hollow.

Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 NJ Super. 163, 188 (App. Div. 1993).

This reasoning is reflected in the 1996 Reform Act, which clearly shifted the outcome of interest arbitration from increasing police and fire wages beyond other public sector employees

to the public sector's ability to pay. For that reason, the interest and welfare of the public here is fostered by the 2% pattern, which promotes labor harmony by encouraging units to settle, and maintains morale of correctional units encouraging the efficient operations of the State prisons. Similar attempts by State law enforcement unions to reject a well-established pattern have been rejected under the public interest factor, which gives patterns great weight when conducting internal comparisons to other units. State of New Jersey and State Law Enforcement Conference, Docket No. 2000-4 (Mastriani, J); State of New Jersey and NJSOLEA, IA-2001-3 (Buchheit, S.)

§(16)(g)(6) looks to the financial impact on the municipality, residents and taxpayers; property tax limitations; and the ability of the governing body to maintain local programs and services and to expand and implement local programs and services for which monies have already been designated in the budget. Thus, in Fox v. Morris County Policemen's Association, 266 N.J. Super 501, 516 (App. Div. 1993), the arbitrator was faulted for not explaining how salary increases got priority over other items, and for inferring that monies saved by budget cuts should be applied to salary increases.

In this matter the State *could* fund the Union's proposal based on its stronger financial standing, where implementing the Union's proposal would only cost some \$237,000 more than the State's proposal over the life of the contract. However, the State's improved financial standing is based on favorable economic conditions and sound financial decision-making, so deviating from the 2% pattern would harm that improved financial standing. The State's budget surplus, while a marked improvement, still places the State in the lowest quartile. Plus, the State is not yet out of the woods, with April 2023 tax collections down 14.3% from April 2022, and

State revenues now projected at \$1 billion less than previous projections. Accordingly, while the State coffers are improving, it is not wise for the State to deviate from the pattern.

§16(g)(2), the comparison of the wages of the Investigators to comparable employees of the State, other public sector employees, and the private sector compels granting the 2% pattern. The pattern provides an appropriate wage rate for the investigator unit compared to units with like roles in DOC, Parole, and JJC. The following chart contrasting investigator wages with public and private sector New Jersey employees shows unit employees make significantly more, though there is no direct correlation with the other units to the investigator role. This favors the pattern rather than the Union proposal.

	<b>2020</b>	<b>2021</b>
<b>Private Sector</b>	\$74,085	\$76,623
<b>All Government</b>	\$73,202	\$74,610
<b>Federal Government</b>	\$84,327	\$88,679
<b>State Government</b>	\$79,344	\$79,252
<b>Local Government</b>	\$69,546	\$71,191
<b>TOTAL NJ AVERAGE</b>	\$73,957	\$76,345
<b>Investigator Top Step (State &amp; Union Final Offer)</b>	\$93,325.48	\$95,191.99
<b>Senior Investigator Top Step (State &amp; Union Final Offer)</b>	\$115,416.41	\$117,724.74
<b>Principal Investigator Top Step (State &amp; Union Final Offer)</b>	\$123,393.79	\$125,861.67

Contrary to the Union assertion under §16(g)(2) criteria, the instant NJIA-represented SID unit is not comparable to State of Division of Criminal Justice (DCJ) detectives and investigators. NJIA-represented investigators are not akin to PBA Local 383-represented DCJ Detectives; NJIA-represented senior investigators are not akin to DCJ Sergeants or State

Investigators, and NJIA-represented principal investigators are not akin to DCJ Lieutenants or State Investigators; so DCJ employees do not receive higher wages for doing similar work. The only support offered by the Union that they are comparable is those employees' attendance at the same training academy as the NJIA-represented Investigators, but that would be akin to claiming that arson investigators do the same work as SID investigators because they too undergo the same training.

The role of DCJ investigators is not comparable to unit SID investigators where SID investigators conduct internal affairs of other law enforcement officers in DOC, Parole, and JJC, whereas DCJ investigators handle potential criminal activity occurring throughout the State.

The Union's suggestion that SID investigator wages should be compared to County Prosecutor Detectives is also unsupported. The argument that since they attend the same training academy they must do the same work is again misguided. County detectives investigate a wide range of criminal activities but there is no evidence they conduct internal affairs investigations similar to unit SID investigators. The sometime coordination of SID investigators and county detectives is irrelevant where law enforcement agencies' natural coordination does not imply similar work duties, in fact, it suggests they have different work duties so coordination is necessary.

Conversely, investigator wages are comparable to other uniformed correctional employees though they perform different duties, based on the historical relationships between their salaries. This can be seen when contrasting salaries between the investigator titles in the unit salaries under both parties' final officers to DOC Sergeants, Lieutenants, and Majors:

	7/1/2019	10/1/2019	7/1/2021	12/1/21	7/1/22
<b>Investigator (State Final Offer)</b>		\$93,325.48	\$95,191.99	\$97,095.83	\$99,037.74
<b>Investigator (Union Final Offer)</b>	\$93,325.48	\$93,325.48	\$95,191.99	\$98,047.74	\$100,989.17
<b>Sergeant</b>		\$99,085.64	\$101,067.35	\$103,088.70	\$105,140.47
<b>Senior Investigator (State Final Offer)</b>		\$115,416.41	\$117,724.74	\$120,079.24	\$122,480.83
<b>Senior Investigator (Union Final Offer)</b>	\$115,416.41	\$115,416.41	\$117,724.74	\$121,256.48	\$124,894.17
<b>Lieutenant</b>		\$115,684.43	\$117,998.12	\$121,538.06	\$125,184.20
<b>Principal Investigator (State Final Offer)</b>		\$123,393.79	\$125,861.67	\$128,378.90	\$130,946.47
<b>Principal Investigator (Union Final Offer)</b>	\$123,393.79	\$123,393.79	\$125,861.67	\$129,637.52	\$133,526.65
<b>Major</b>		\$131,580.00	\$134,211.60	\$136,895.83	\$139,633.75

Here the Investigator's wage is below the Sergeant, the Senior Investigator is between the Sergeant and Lieutenant though almost the same as the Lieutenant, and the Principal Investigator is between Lieutenant and Major. This is the historical trend from which there is no cause to deviate, and which continues under the pattern.

During the hearing, the Union correctly pointed out as problematic that under the State's proposal, an Investigator would make approximately \$500 less at the top step than a PBA 105-represented correctional officer, because a promotion for correctional officer to Investigator should not result in a pay cut. However, this is a minor issue not warranting a change in the pattern, where time spent in grade as an investigator before promotion to senior investigator is short-term. For example, the Union President testified to only serving sixteen months as an investigator prior to his promotion to senior investigator. There still remains an incentive for

correctional officers to seek promotion to SID investigator because after spending a short time in-grade investigators move from a top salary of \$99,037 to \$122,480 as a senior investigator, minimizing the initial slight decrease from correction officer to investigator.

§16(g)(3) takes into account overall compensation including vacation, holiday, excused leave, insurance, pension, medical, hospitalization, and all economic benefits of the relevant unit. Investigator salaries are already significantly higher than average public and private sector employees in New Jersey and nationally, which supports the State’s offer of the pattern. When viewed along with their excellent health benefits, the overall compensation of the unit is appropriate.

Cost of living must be considered by the Interest Arbitrator in rendering this Award per §16(g)(7). While the Union’s concern regarding current inflation is understandable, it is more than likely a temporary aberration not warranting modification of the pattern. Most importantly, the 2% pattern was established in 2021 when inflation was already running above average, per the following chart.

<b>Month</b>	<b>Unit who Signed MOA with Pattern Settlement in Month</b>	<b>Consumer Price Index Monthly Increase (annualized) (national average)</b>	<b>Consumer Price Index Monthly Increase (annualized) (NY-NJ-PA)</b>	<b>Consumer Price Index Monthly Increase (annualized) (Northeast)</b>
April 2021	PBA 105	4.2%	3.2%	3.3%
September 2021	NJLESA	5.4%	3.8%	4.6%
November 2021	NJLECOA	6.8%	5.0%	6.0%
April 2022	NJSOLEA (IA Award)	8.3%	6.3%	7.2%

While the NJSOLEA award with its 2%, 2%, 3%, and 3% respective increases issued when inflation was highest, inflation slowed to an annual rate of 5.0% in March 2023 and dropped to 4.9% in April 2023, which matches the inflationary measure at the time of the pattern's establishment. It appears that the spike of 2021-2022 will turn out to be an aberration and the better comparison is 2019-2020, where inflation in the area was 1.7% but other employees got the 2% pattern. NJSOLEA was the only union to be granted a wage increase during this inflationary time in excess of the pattern, which is inherently unfair to those other employees who did not receive that increase during the same period.

The final factor supporting the 2% pattern is §16(g)(8), continuity and stability of employment, which considers likelihood of layoffs, "give-backs", salary features, the overall salary structure, the unemployment rate, turnover, and the lack of unemployment among police. Borough of Hillsdale, 263 N.J. Super. at 195; Fox, 266 N. J. Super at 519.

Here the unit has been highly stable with only 37 employees leaving the unit since July 1, 2019. This includes 27 retirements, one death, two resignations in good standing (meaning personal reasons such as health or relocation), and five promotions out of the unit to accept positions with other agencies. There were no layoffs during the term so investigators had total job security during the pandemic, in contrast to millions of others who were furloughed or laid off.

### **The Union**

The NJIA's wage proposal of 2%, 2%, 3% and 3% is virtually identical to the Cure Award for the NJSOLEA as upheld by PERC. Conversely the State's final offer of 2%, 2%, 2%, and 2% ignores the impact of the Cure Award, though it cannot be disputed that the most

important classification for comparison purposes for determining base pay for the Senior Investigator is the Lieutenant, since a Sergeant in Custody may take the promotion examination for either a Lieutenant in DOC or Senior Investigator in the instant NJIA investigators Unit. Further, for investigators to be promoted to senior investigator within the Unit, they must first be promoted from correctional officer to investigator. The Union's proposal provides a \$1,500 increase whereas the Employer's proposal results in a \$500 cut in pay for that same "promotion" from correctional officer to investigator. Given the intensive schooling and training, including Correctional Officers Training Academy ("COTA") training and the 22-week training at the Department of Criminal Justice ("DCJ") Academy, and the critical nature of the investigations conducted by the unit, the Union's proposal is in the public interest. The other difference in the competing wage proposals is the Union's proposed starting date of July 2019 versus the State's commencement of October 2019.

The State asks this Arbitrator to follow a non-existent pattern derived from 2019 settlements with civilian unions which occurred in a different context, was subsequently amended by deferral agreements in 2020 unsigned by law enforcement units, and fails to take into account the 16% total increase granted correctional officers. The Union's package is far more reasonable and should be granted.

The interest arbitration criteria of §16(g) strongly favors the Union's final offer. Interest arbitrators have routinely held that the most important criteria of the nine is §16(g)(1), the interests and welfare of the public. All other factors relate to this standard, which balances financial responsibilities with the need for effective public safety.

While courts have held that the ability to pay by raising taxes is not the relevant analysis and the interest arbitrator should consider the financial impact of the Award within the context of

the local municipal budget, Borough of Hillsdale, at 188, aff'd in part rev'd in part 137 NJ 71 (1994), such reasoning is inapposite here where there would be no need to raise taxes to cover the cost of the Award, nor any negative financial impact on the State with granting the Union's proposal given the State's strong financial standing. This is shown by the recent numerous credit rating upgrades and the minor cost difference between the State versus Union proposals.

Further, salaries and personnel costs for the State are less than 10% of the total State budget in contrast to up to 20% for just police-related personnel costs in municipal budgets. Here the investigators unit of around 90 employees is 1.11% of the corrections workforce and .014% of the entire state workforce, and FOP 174 salaries will be .031% of the State budget by the end of FcdY 2023.

In the Matter of Passaic County Prosecutors Office and PBA Local 265, IA-2022-008, Arbitrator Kronick noted the limited relevance of the State's focus on statutory constraints and limitations applicable to local government where the State is the employer. The State is not bound by Title 40A nor dependent on real estate tax revenue. The importance of the public interest of maintaining the vital work of the investigators unit is the most important element of this factor. These considerations coupled with the trend towards higher wages and the persistent impact of inflation supports the Union's wage proposal.

Besides the 1% difference between the competing proposals for each of the last two years, the Union has good reason for seeking a July 1, 2019 implementation date of the first increase rather than the State's proposal of October 1, 2019. With Unit members not having received a pay increase since 2018, the State should pay the price for refusing to acknowledge the Cure Award as a guidepost by stubbornly sticking to an 8% overall increase and falsely claiming a pattern. The total amount of the different proposals over the life of the contract is

estimated by the Union to be around \$237,000 and by the State around \$250,000, either amount constituting a miniscule amount in the annual \$639 Million DOC budget.

The cost of living and wage/inflation data support the Union's final wage offer. Unit members work in all parts of the State for NJDOC, JJC and Parole. The Bureau of Labor Statistics Report for NJ for 2022 establishes that average wage increases for New Jersey counties range between 4% to 8% with Mercer averaging 10%. New Jersey has a greater than 5% average wage change versus 4.3% for the country as a whole. Private sector wages are also increasing.

Statistics reporting inflation support the Union's higher wage proposal. Inflation was less than 2% for decades prior to 2020, but its persistence over the last several years undercuts any argument that it is less of a concern now than during the issuance of the Cure Award, especially when unit members have gone from 2018 through 2022 with no increase in base pay.

Other criteria support the Union's Final Offer. Criteria 2 (§16(g)(2)), the comparison criteria, correlates with Criteria 3 (§16(g)(3) which requires assessment and comparison of the contracts, and with Criteria 8 (§16(g)(8) which ensures continuity and stability along with the public interest. Comparisons to the most relevant State bargaining units begins with PBA Local 105-represented correctional and parole officers at NJDOC and JJC, and parole officers at Parole which comprise the pool of potential investigators; NJLESA-represented Sergeants in those departments who comprise the pool for potential senior investigators (besides promotable investigators); the NJSOLEA Lieutenants Union into which Sergeants may also chose to promote therefore requiring parity with the senior investigators; and the Majors union which represents Captains and Majors who have site specific responsibility similar to the Principal Investigators at SID, JJC, and Parole.

A promotional examination is a precondition to move from the custodial to investigator ranks. Every investigator must take the same COTA training as also required for a custodial correctional police officer, sergeant, or any higher rank. They must take training at the DCJ Academy, the same facility that also trains prosecutor investigators and detectives, therefore DCJ and County Prosecutor Offices are good comparators. Unit Investigators are also recruited by Prosecutor Officers and their peers are DCJ investigators. Accordingly, salary parity must exist between senior investigators and lieutenants, so ensuring Investigators make more than officers is crucial to creating the best pool of potential investigators.

Other units have shown large increases, which underlies the reasonableness of the Union's 8% final offer. Under the Union's Final Offer, the top salary for investigators in FY 2023 would be \$100,981, under the State Offer it would be \$99,037. Senior investigator step 10 under the Union Final's Offer would be \$124,895, under the State's Final Offer \$122,481.

The two lowest groups for the Deputy Attorney General unit represented by the IBEW tops out at \$124,980 and \$143,971, versus 2015 rates of \$92,521 and \$107,100, which are increases of more than 25% and in excess of \$36,000. This shows the State's commitment to more than 8% for a corresponding unit also in the legal enforcement area. The lowest titles for Detective State Investigators at DCJ show similar dramatic pay increases of more than 29% along with step increases for those progressing through the guide, going from a high in 2019 of \$81,079 or \$93,281 to a 2022 high of \$98,948 or \$113,839. The titles above Detective State Investigator represented by PBA Local 383A and 383B over the 2019-2023 contracts also show significant increases of more than \$25,000 at the top step, and the top step for the NCO unit increased at the top step from \$110,685 to \$135,070.9. The top step for SOA has gone from \$125,144 in 2019 to \$152,724 in 2022, an increase of more than \$27,000 and over 20% exclusive

of step increases. These raises demonstrate that salaries for Investigative Unit titles have lagged behind other comparator units.

Likewise, agreements with State Trooper units for 2017-2019 and an interest arbitration award for 2021-2025 show that the highest NCO salaries will top between \$121,655 and \$136,539, not including unique maintenance payments of more than \$16,000 per year. This increase is in excess of the Union's Final Offer and that received by other Corrections units, even without including the \$16,000 maintenance allowance.

Civilian units are not comparable to the instant Unit and any claim by the State that there is a pattern with respect to them requiring adherence is simply incorrect. The correct measure are County Prosecutors Detectives and Investigators who undergo the same training, receive the same certifications, and work in coordination with the instant NJIA Investigator unit.

Compensation is higher for them than NJIA-represented Senior Investigators and exceeds the base titles and supervisory NJIA-represented Principal Investigators, thus the NJIA proposed increase of 10% to base plus Covid pay (discussed elsewhere) is appropriate. In Monmouth rank and file investigators at the top step in 2022 receive \$145,651; in Gloucester detectives receive \$132,671; and pay has increased in Mercer in excess of \$15,000. This does not include Bergen, which is regarded as having the highest wages. These contracts demonstrate that as investigator salaries increase in other units the State must keep pace in the instant Unit.

The function of the NJIA unit is critical and its Final Offer is in the public interest. Principal investigators oversee the work of senior investigators and investigators in units including professional standards, sexual victims, joint terrorism task force, technical services unit, and task forces/operations with the U.S. Marshalls, FBI and Prosecutors. Most investigators are

located at the correctional facilities, including the women and supermax prisons, where they conduct investigations and assist.

Investigators perform lower-level investigations and are trained by senior investigators. There is a one-year hiring process stemming from the required training and background checks. This is true even for senior investigators when promoted from custodial Sergeants. Investigators become eligible for promotion to senior investigators after successfully passing the promotional examination but upon promotion receive further training. Senior investigators handle more complicated investigations and train new investigators.

Movement from custodial to investigative titles always entails a promotion, therefore the State's Final Offer fails because the move from Sergeant to senior investigator would no longer be as desirable since the pay would be less than Lieutenant pay. The promotion from corrections officer to investigator would now constitute a pay *decrease* under the State's final offer. In fact, the State's final offer would result in investigators making less than senior correction officers. The offer would not ensure that principal investigators be 5-6% above senior investigators, which is needed for promotional purposes and to keep them at Lieutenants pay. This is contrary to Criteria 8 (§16(g)(8)) by undermining continuity and stability of employment and is therefore not in the public interest per Criteria 1.

Conversely, the Union's Final Offer recognizes the Unit's key role in conducting investigations in the prisons and other facilities, interacting with other departments and jurisdictions and confirms the need for a deep applicant pool. Unit investigators perform all types of investigations and must maintain independence. They perform essentially the police investigative function for the entire NJDOC. They exposed sexual abuse at the EMCF. Their performance shows why Criteria 1 and 8, the interest and welfare and need for continuity and

stability, must be served. The Investigators' stability is key, and some have already left, which leaves an opening for a substantial period where it takes a year to replace such losses. Not only was the Unit designated "essential" during the pandemic, but they were critical and should be so paid.

Recruitment and retention are crucial issues, as shown by the legislation in 2021 raising correctional officers' salaries at a total cost of \$10 Million, such legislation proving public support. Further, there can be no pattern for law enforcement units derived from the civilian units when correctional officers got 16% while civilian units got 8%.

The State proposes that the raises begin October 2019 rather than July 2019, the original date for the new successor agreements and as originally agreed to by CWA. However, it was only as a result of the pandemic that CWA agreed to defer the first wage increase to October 2019 and forego a 2020 raise, with two raises in 2021. Contrary to the State the first wage date for the investigators should be July 2019 because, unlike civilian units, for law enforcement units there was no fear of layoffs, furlough days and they could not work remotely. Therefore, civilian implementation dates are not relevant for purposes of establishing a pattern.

The testimony and proofs demonstrate that the NJIA has met all relevant criteria and awarding its Final Offer is in the public interest.

## **B. Health Benefits**

### **The State Proposal**

The State has proposed the NJ Direct Plan for those hired before July 1, 2019 and the NJ Direct 2019 Plan for those hired on or after July 1, 2019. Under the State's proposal employees can no longer enroll in the prior Traditional Plan or NJ Plus POS Plan. Conversely, the Union

agrees that employees can enroll in the new plans contained in the State's final offer but wishes to retain their access to Direct 15 and other legacy (previously available) PPO plans.

Health benefit proposals are non-negotiable so the State proposal should be awarded as a matter of law. While healthcare is a mandatory subject of bargaining the NJ PERC has ruled that legislation creating the State Health Benefits Commission partially preempted negotiations over healthcare benefits, and therefore removed it from the scope of bargaining. Specifically, NJSA 52:14-17.27(b) states that "The committee shall have the authority to create, modify, or terminate any plan or component, at its sole discretion." This language acts to preempt bargaining over plan design or the decision of the plan the State chooses to offer. See State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); State of New Jersey and Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO, 24 NJPER ¶ 522 (1998); see also State of New Jersey and New Jersey Division of Criminal Justice Non-Commissioned Officers Ass'n, New Jersey Division of Criminal Justice Superior Officers Ass'n, and FOP, Lodge 91, 40 NJPER ¶ 177 (2014).

Besides being preempted as a subject of bargaining, the State's offer should be awarded in accordance with §16(g) as part of a pattern of settlements which promote harmonious labor relations, provide uniformity and high morale, and foster consistency in negotiations. Every interest award has adopted the State's final offer on healthcare identical to that proposed here. The State pattern will ensure uniformity of benefits by keeping investigators aligned with the 99.5% of State unionized employees, a total of 51,618 employees as shown by the attached chart.

UNION(S)	NUMBER OF EMPLOYEES (F/T AND P/T)
CWA	30,911
AFSCME	5,846
IFPTE	4,302
PBA 105	5,216
NJLESA	576
NJLECOA	51
NJSOLEA	254
STATE POLICE UNITS	2,971
IBEW	1,322
DIV. OF CRIM JUSTICE UNITS	169
<b>TOTAL EMPLOYEES</b>	<b>51,618</b>

The remaining 0.5% are comprised of this instant Unit (103 employees) and the State Enforcement Unit (164 employees) who have yet to settle their contracts. These employees should not be treated differently than the more than 50,000 other represented employees. Most importantly, by placing all State employees in one health plan the State can receive better overall premium rates.

Contrary to the Union's assertion, testimony has established that since individual premium rates are based on several criteria, including salary and family status, rates will vary with many employees actually paying *less* under Direct 19. The claim that since investigators comprise a small unit, they will have minimal impact on procuring lower rates fails because the Union's proposal if adopted would result in other small units making the same claim, causing a negative cumulative effect on rates and in turn State financials. There is also no legal justification in either case law or derived from past interest arbitration awards for the argument that a smaller unit warrants deviation from an established pattern. The Cure Award, which the Union alleges broke the wage pattern, awarded the identical healthcare proposal as the State's Final Offer in this matter. Accordingly, the State's offer should be awarded.

### **The Union Proposal**

Through its proposal, the Union seeks preservation of access and choice. It has agreed to the contribution rates proposed by the State which include higher rates for the existing legacy plans. However, the legacy PPO plans including NJ Direct 15, even with the higher rates will still be lower than the new PPO plans (NJ Direct and NJ Direct 19). Members are used to the existing coverage. They have better out-of-network benefits comparing legacy plans to new plans.

Conversely, the State demands that higher premium PPO plans with no out-of-network benefits, which will cost the State *more*, be the only plan options. The Union has proposed that members be permitted to select the lower premium cost legacy plan or the new plans. They should be able to choose and if the new plans are better, those will be selected. Less than five hundred members remain in the existing legacy plans, with almost all SHBP members in the new plans, so granting ninety employees their choice of plans will have no impact on rates.

The Union has proposed language changes reflecting that choice, along with correcting references to make clear that Chapter 78 healthcare rates are negotiable, deleting language stating terms are “advisory” or “non-negotiable.”<sup>1</sup>

The Union’s health benefit proposal should be awarded.

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<sup>1</sup> As both parties have noted the State’s Final Offer submitted during the hearing inadvertently omitted Temporary Disability coverage contained in E-1. The State provided the corrected Final Offer prior to the close of the record and that version has been included in this Award.

## **C. Covid Pay**

### **The Union**

The Union seeks not-to-base Covid hazard pay of \$400 monthly from March 2020 to June 2021, a one-time compensation benefit that will cost the State no more than \$582,000. The amount to be awarded to individual unit members will be less or equal to the amount made to direct healthcare workers for exposure to Covid between March and June 2020 though it covers a longer time period.

The Union has not sought an increase in FY 2021 in deference to the Lieutenants Award. While there was no Covid pay sought in that interest arbitration proceeding the Union seeks it here for the period when investigators were most heavily exposed to Covid, as were the Lieutenants. Covid presented unique risks and dangers to investigators who were designated essential, so paying them around \$20 daily for that period of time is reasonable, enhances morale, and is therefore in the public interest. Proposing this stipend as a not-to-base recognizes the risk of Covid without increasing base pay.

Employees received stipends at facilities run by DHS, DMAVAC, and DCFS and DHS workplaces. Assuming a low \$20/hour wage rate an employee would have received \$5,000; at \$60,000 salary per year it would be \$7,800; at \$90,000 annual salary the stipend would have been over \$9,000. The maximum amount to NJIA under the instant proposal is \$6,400.

Covid had a terrible impact on the unit. Prisons are old with no ventilation. At least one member became so disabled he was forced to retire. Members had to undergo quarantine, some on multiple occasions. Social distancing was impossible when conducting investigations in close proximity. Work for this Unit could not be conducted remotely, in contrast to most white-collar

and civilian jobs in units represented by the CWA and IFPTE. Unlike the investigators unit, deferral agreements covering civilian units allowed their members to make more money by “working” and collecting unemployment.

There is no relevance to other DOC units such as Sergeants, rank and file, and Lieutenants not having received Covid pay. While the investigators unit will not receive pay for FY 2021 (July 1, 2020-June 30, 2021) they were exposed to unique risks and could not isolate due to the nature of their jobs; touring jails, interviewing inmates and other people with Covid, fingerprinting the deceased at the morgue, and going to medical offices and hospitals with elevated Covid risk. Therefore, a Covid stipend is reasonable, fair, and equitable where investigators were akin to direct care staff who received a stipend.

### **The State**

Not a single unit has received Covid pay as part of a settlement or interest arbitration award. Such pay should not be awarded here because the Unit is situated the same as all other units, none of which received Covid pay.

While investigators reported to work during the pandemic so did all other law enforcement units at DOC, JJC and Parole, including rank-and-file represented by PBA 105, Sergeants in NJLESA, and Lieutenants represented by NJSOLEA. Essential workers not in law enforcement reported to work, such as food services workers. None of them received Covid pay. Exposure to Covid was not unique to the investigators, it included law enforcement units, civilian units, and the entire population of the country. Healthcare workers represented by AFSCME were also exposed but did not receive Covid pay. Everyone knew someone with Covid. The Union’s suggestion that investigators should receive Covid because they were

exposed to the deceased fails in the absence of evidence that the deceased can spread Covid. Other units were similarly exposed since law enforcement requires investigations and response to calls.

During the interest arbitration proceeding resulting in the Cure Award the Lieutenants' unit sought wage increases of 3%, 3%, 4% and 5%, relying in part on their status as the highest ranked officers in NJDOC who worked through Covid. They coordinated medical care for Covid positive patients and as a result, many of their members developed Covid. While the arbitrator did grant 3% in the final two contract years, this was only a slight deviation from the pattern and those increases were not premised on exposure to Covid.

Here the Union seeks similar higher wages in a differing manner, but there is no justification for a premium not received by any other law enforcement or civilian unit. Their proposal should be denied.

#### **D. Uniform Allowance**

The State and the Union propose the same uniform allowance for NJDOC comprised of a first payment of \$700 and then seven six-month payments of \$840. The parties, however, propose differing uniform allowances for JJC and Parole. For Parole, the State offers 4 annual increases of \$420. The Union seeks annual increases of \$420, \$530, \$700, and \$840. For JJC the Employer offers (six month) increases of \$350, \$420, \$420, \$420, \$530, \$530, \$530, and \$530. Conversely, the Union has proposed (six month) increases of \$350, \$420, \$420, \$420, \$530, \$700, \$840, and \$840. These conflicting proposals encompass 18 employees at JJC and Parole.

### **The Union**

The goal of the Union is to equalize uniform allowances for all unit employees by gradually increasing JJC and Parole uniform allowances after the 5<sup>th</sup> biannual payment to equal the NJDOC allowance of \$840 in the last year. The State seeks to keep uniform allowances for JJC and Parole lower than NJDOC despite unit employees in all departments having the same obligation to buy and maintain the same uniforms. The total cost in competing proposals is less than \$15k, with \$4,860 (six employees at \$810 more over four years) for Parole and \$9,480 (12 employees at \$790 more) for JJC.

### **The State**

The State's final offer regarding uniform allowances for JJC and Parole should be awarded. The increase in the JJC uniform allowance equals the percent increases the State has offered all other law enforcement unions. While this translates into a smaller monetary offer for investigators at JJC than other units this is because those unit members are not required to wear uniforms at all times. Unlike other corrections officers, they only wear a polo shirt and pants which is less expensive. For this reason, JJC-assigned unit members have historically received a smaller uniform allowance than other unit members. The Union's claim that they take the same Civil Service examinations for promotion and receive the same training and procure the same certification may be correct but is unrelated to their less onerous uniform requirements. Thus, the Union has failed to carry its burden to justify a change in the historical trend.

The Parole uniform requirement is brand new and applies to Senior investigators but not Principal Investigators. As a new and less onerous obligation the State's Final Award should be granted.

## **E. Union Leave**

§XXV Leave for Association Activity of the expired contract provides the Union with 50 days leave of absence annually for delegates to attend Association activities. The Union seeks an increase to 90 days effective July 1, 2022, the State has offered 70 days annually beginning July 1, 2021.<sup>2</sup> The State also seeks to delete the existing §Article VII(B) Association Right-Association Activity with Pay provision and adds new language to a redrafted §XXV which “sets forth sole and exclusive circumstances” permitting leave for Association activity exclusive of the 70 days of chargeable leave. The new language lists the sole and exclusive circumstances in detail and also adds a 14-day advance notice obligation.

The second issue is language proposed by the State requiring representatives, upon completion of union activities to complete the remainder of their scheduled work shift if they “could return to work with at least one (1) hour remaining on his/her scheduled shift. . . .”

### **The State**

The below chart demonstrates that the State’s Final Offer is in excess of that agreed to by other unions. With its offer of 70 days, comparing the size of this unit with others the State’s final offer would be .06 paid leave days above the mean per employee and .52 days above the median per employee agreed to by other uniformed correctional officers for paid leave per number of unit employees. Conversely, the Union’s proposal is .22 above the mean and .52 above the average far in excess of other units as shown by the below chart.

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<sup>2</sup> The two proposals differ in the implementation year. An explanation for that difference has not been presented but neither side has requested retroactivity of this specific term, which will be prospectively granted only.

Union and Employee Count <sup>3</sup>	Paid Leave	Unpaid Leave	Paid Leave days / # of Unit Employees
FOP 174 (94) - State Final Offer	70 days (for year beginning July 1, 2021)	10 days	.74
FOP 174 (94) - Union Final Offer	90 days (for year beginning July 1, 2022)	10 days	.96
NJSOLEA (285)	125	0	.44
PBA 105 (5,357)	<ul style="list-style-type: none"> <li>- 1400/year for union leadership</li> <li>- 160/year for other designees generally</li> <li>- 25/year for parole designee</li> <li>- 84/year for Institutional Vice Presidents</li> <li>- <b>Total: 1669</b></li> </ul>	400	.31
NJLESA (518)	195/year for final two years of Agreement (2021-2023) (previously 175/year)	35	.37
NJLECOA (50)	81/year	10	1.62

There is no basis for this unit to be treated so favorably compared to other units. Just because NJLECOA is a small unit that receives 1.62 paid union leave days per number of unit employees does not make the Investigators unit comparable where NJLECOA unit is comprised of a greater variety of titles that require representation at a number of locations. NJSOLEA and NJLESA have more members across more facilities yet have less days than that offered the investigators.

The second issue, language obligating a member to return to work after completing union activities should there be an hour remaining in the shift, has been adopted previously by other law enforcement units. The Union claims this provision is unnecessary and costs nothing because an investigator engaged in representational activities is not replaced by another investigator. However, there is a cost entailed in providing an unworked leave day. The Union's

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<sup>3</sup> Employee count is as of 01/14/2022.

argument overlooks lost productivity. The Union has credibly testified that its members are busy, so they need to return to work when union business is completed.

### **The Union**

The Union has proposed a minor amendment to §XXV(A)(1), leaving existing language and increasing chargeable Union leave from 50 to 90 days per contract year. The State has countered with 70 days of chargeable Union leave but also added “poison pill” language negating the proposal, where it has failed to establish a good faith reason to amend language in E-1. The Union’s proposal reflects agreements already reached during bargaining on union leave, specifically in §VII regarding non-chargeable leave, such as for conventions, grievance handling, OAL and PERC proceedings and preparation, and negotiations. The State seeks to move language from §VII to §XXV and conditions an increase in chargeable leave by expanding limitations on non-chargeable time. At no time has the Union been informed of problems with its use of non-chargeable time nor was such suggested during the hearing in this matter.

No testimony was presented by the State in support of its language changes other than the one-hour return-to-work provision. The State has the burden of presenting evidence in support of its proposed shifting of language and having failed to do so those modifications fail.

The State’s proposal that representatives return to their shift if an hour remains will only result in micro-managing of representational activities. The only supporting argument was that the custody unit had so agreed, which is without relevance because those employees must be replaced while on leave, unlike the investigator unit. The one-hour rule is without relevance where investigators are not replaced while on union leave.

Union testimony has established that 70 hours of chargeable union leave is insufficient based on the number of members and their locations. 90 days as proposed by the Union is barely manageable. Were the Union President not retired he would expend such time in a few months. The State's chart itself shows the Majors union has a ratio of 1.62 days to members and half the members of the NJIA investigators unit but gets 81 days. 90 days is needed for the NJIA investigators unit to be present as needed and actually improve the workplace, such as identifying the lack of female investigators in EMCF.

#### **F. Compensatory Time Off Accrual**

##### **The Union**

The Union has proposed amending §XIX(D) Compensatory Time Off to increase the maximum accrual from 100 to 200 hours upon ratification. This is operationally helpful where overtime at NJDOC may only be offered on a compensatory time off basis, so the Union's proposal is therefore in the public interest by improving morale and expanding the number of available unit members for overtime. This matches other law enforcement units at NJDOC including PBA 105 and NJLEASA and permits more members to accept overtime since they will not be limited to 100 hours. The State has not opposed this proposal which should be granted.<sup>4</sup>

#### **G. On Call Proposal**

##### **The Union**

The Union has proposed language changes that address the calculation of on-call pay under DOC's TALRS Payroll System, and the ECATS Payroll System utilized by JJC and

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<sup>4</sup> This proposal was not addressed by the State in its post-hearing brief.

Parole. The Union's proposal is "clean-up" and does no more than recognize how those departments report time. It was not opposed by the State so should be granted.<sup>5</sup>

## VII. ARBITRATOR'S FINDINGS/ANALYSIS

### A. WAGES

For reasons discussed *infra* I conclude that the effective dates for wage increases shall be the first pay period following October 1, 2019; July 1, 2021; December 1, 2021; and July 1, 2022. Having reviewed the competing wage proposals, I find that neither shall be accepted in their entirety. I partially adopt the State's wage proposal, retroactively granting 2% wage increases on October 2019 and July 1, 2021. However, I retroactively grant 2.75% wage increases on December 1, 2021, and July 1, 2022. This increase applies to employees in the negotiating unit on the payroll as of the date of these increases, regardless of whether they are currently in the negotiating unit.

The State has argued the existence of a well-established pattern for both civilian and law enforcement units of 2% wage increases during the dates adopted by the deferral agreements. Having agreed to the implementation dates it is unclear whether that pattern continues in light of the law enforcement interest arbitration awards issued by Arbitrators Mastriani and Cure, and the legislated increases provided corrections officers apart from the negotiated wage increases. Regardless, my analysis must encompass all nine statutory criteria, these interest awards, the legislated increase in the PBA 105 unit, and the cost-of-living as a significant event arising after the negotiated agreements granting the 2% wage increases.

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<sup>5</sup> This proposal was also not addressed by the State in its post-hearing brief.

The facts show that the cost of living, while higher than when the contracts granting in excess of 2% in the final years were awarded, including the 7.48% inflation rate at the time of the hearing in the Cure Award, has now abated. While inflation has not dissipated, and the effects of that higher inflation will continue to be felt, I do not believe that two 3% increases are warranted.

The Union raises a valid and significant concern regarding the need for the wage rate of investigators to be higher than correctional officers in order to maintain an adequate pool for promotional purposes. The State's Final Offer is deficient in that regard. Under my Award with 2.75% increases on 12/1/21 and 7/1/22, for investigators the step 10 rate will be \$100,499.53, while the final wages for correctional officers step 10 will be \$99,491.

It is also important that wages be properly spaced in order of sergeants, senior investigators, lieutenants, principal investigators, and majors. By the end of the contract, the top step of sergeants will have a salary of \$105,140.47; for senior investigators \$124,320.30; for lieutenants \$125,184.20; for principal investigators \$132,879.25; and for majors \$139,633.75. These differences in pay will incentivize sergeants to seek senior investigator positions, and for lieutenants to seek principal investigator roles.

Summarizing the requirements of NJSA 34:13-16(g), the most significant criteria is that the Award be in the interests and welfare of the public (§16(g)(1)) which encompasses §16(g)(2)-(9). I appreciate that this Award is being issued right after a period of high inflation, and after the height of the pandemic which may yet reappear. For that reason, I fully concur with the implementation dates proposed by the State as adopted by all other units in their settlements with the State and imposed in the Cure Award.

§16(g)(2) compares wage, salaries, hours, and conditions of employment of the Unit with that of other employees performing similar services and other employees in private employment, public employment in general, and public employment in same or similar comparable jurisdictions. As noted, the Award fits within the framework of the other relevant State law enforcement units, all of which will have the same implementation dates, and all of which were granted 2% wage increases for the first two payments. The other law enforcement units fit in the promotional pool and the salaries under my Award reflect that relationship.

County law enforcement salaries for investigators are much higher and their work is dissimilar so comparability of those units to the NJIA unit is not a factor in determining this Award. There are no equivalent roles to internal affairs investigators in the private sector. Accordingly, this Award meets the criteria in §16(g)(2)(a)-(c).

This Award is not disruptive of the overall compensation received by the NJIA Unit, including wages, salary, and all economic benefits received. It conforms with past agreements within the meaning of §16(g)(3).

The stipulations of the parties have been incorporated and made a part of this Award as required by §16(g)(4).

Criteria 5 and 6 consider the lawful authority of the employer to implement the Award in light of its financial impact. As this is a State of New Jersey matter local caps on wages for municipalities are inapplicable. The Award will have a less than negligible impact on State finances and surplus, and State ratings are showing an upward trend. Accordingly, there is compliance with §16(g)(5) and (6).

While I have addressed the statutory criteria seriatim, it is the cost of living as the key factor that has caused me to award the last two increases of 2.75% and outweighs the 2% pattern.

As noted, inflation has gone from a high of more than 7% at the time of the Cure Award hearing to 4.9% at the time of the instant hearing here. For that reason, 2.75% is in accord with §16(g)(7).

Any award imposes a financial impact which must be balanced with the continuity and stability of the Unit and other employees pursuant to §16(g)(8). While the evidence shows minimal movement this Award should aid in retention therefore complying with this criteria.

The final criteria, the statutory restrictions on the employer is not at issue here as a State entity, there is no issue regarding its ability to pay. See §16(g)(9).

#### **B. Health Insurance**

The State has proposed that employees hired before July 1, 2019, be required to enroll in the NJ Direct Plan, and those hired thereafter enroll in NJ Direct 2019, with participation ending in the prior “traditional” and “legacy” plans. The Union wants those prior plans to be available, but does not oppose those new plans also being made available to the Unit. The Union claims that the prior plans have lower premiums and better out-of-network coverage.

I award the State’s proposal. As the State points out every unit has either voluntarily adopted the State’s proposal or been awarded the State’s proposal via interest arbitration. The health care pattern has been firmly established without deviation, and the Union has not presented sufficient reason to depart from that pattern. To maintain prior plans entails unwarranted administrative processes and costs without adequate reason. The Union argument as to potential lower premiums is too speculative to warrant retention of the prior plans. It is equally likely that having every represented employee in the new State plans will lead to reduced premiums. This is conjecture.

The State is provided a reasonable period of time to transition the Unit to the new plans, which I define as sixty days.<sup>6</sup>

**C. Covid Pay**

I decline to award a Covid stipend to Unit members. Every law enforcement unit was required to report to work during the height of the pandemic, yet not a single law enforcement unit received a Covid stipend. The Union has not shown that the other law enforcement units had any difference in their members' exposure to Covid. A number of civilian employees were declared essential workers and required to return to work. Yet there is no evidence that other than a handful of employees who unilaterally received direct pay through Civil Service processes, any other State employee received the stipend and it is uncontested that none of the units, civilian or law enforcement, received a Covid stipend as a result of negotiations.

**D. Uniform Allowance**

While not tentatively signed off, the parties have made the same proposal for the NJDOC uniform allowance of an initial payment of \$700 with seven subsequent payments of \$840, which I herein award. Regarding JJC, the parties make identical proposals of \$350 in July 2019 and \$420 for January 2020. Those payments are awarded.

Thereafter the parties diverge, with the Union's goal being to equalize payments across the different departments. I credit the State's claim, that JJC does not have the same uniform requirements as NJDOC, that uniforms need not be worn all times while on duty, and the uniform is less expensive than NJDOC consisting of a polo shirt and shoes. Accordingly, there

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<sup>6</sup> The State has argued that health benefits are a non-negotiable subject. Having awarded the State's proposal, I do not reach that issue.

is no reason to diverge from the historical pattern. I, therefore, award the State's proposal with regard to JJC.

This leaves Parole, where the parties' proposals again diverge. The State argues, and the Union has not rebutted, testimony that the uniform requirement for unit employees is recent and is applicable to Senior Investigators but not Principal Investigators. There is no testimony regarding a uniform requirement for investigators. On the basis of this evidence, I find that the Union has provided sufficient grounds to grant its uniform proposal with regard to Senior Investigators only, adopting the State's Final Offer for the remainder of Parole.

I also do not grant any language changes related to Covid and the uniform allowance as proposed by the Union for the same reason I declined to grant a Covid stipend. There is no reason to upend the contract and deviate from the existing provision.

#### **D. Union Leave**

I grant the State's Final Offer with regards to the amount of Union Leave. I am persuaded that 70 hours provides adequate time for the Union to engage in chargeable representational duties when contrasted with other law enforcement units and the amount of time per unit employee is comparable, with NJOECA constituting an outlier.

I also award the State's Proposal regarding a new one-hour return to work requirement. It is reasonable. While it may involve some "micro-management," asking that time off for representation activities be used for that purpose is not an undue imposition. However, I deny the State's Final Proposal eliminating Article VII of the contract and making wholesale changes to Article XXV. The State has provided no evidence of the need and it is not my role as the

Interest Arbitrator to implement such significant contractual modifications. Such matters are best left to the parties via negotiations, and in accordance with their past dealings and practice.

#### **E. Compensatory Time Off Accrual**

I grant the Union's unopposed proposal amending §XIX(D) Compensatory Time Off to increase the maximum accrual from 100 to 200 hours upon ratification. I am persuaded by the Union's argument that this change increases the number of available unit members for overtime by allowing members to accept more over time, and exists in other law enforcement unit. The State has expressed no opposition.

#### **F. On Call Proposal**

I also grant the Union's unopposed proposal modifying the calculation of on-call pay under DOC's TALRS Payroll System, and the ECATS Payroll System utilized by JJC and Parole. The Union's proposal is described as "clean-up" and memorializes how those departments record time under the two payroll systems.

### **VIII. DETAILED SUMMARY OF THE AWARD**

Pursuant to the Discussion set forth above the Contract shall be amended as follows. All proposals by the State and Union not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of the Award. All Tentative Agreements as set forth herein are adopted.

1. Term of Agreement: July 1, 2019 through June 30, 2023 (4-year agreement)

2. Salary Increases: Across-the-board salary increases to all employees employed by the State as of the date of ratification. Across-the-board salary increases having retroactive effect will be paid in accordance with N.J.A.C. 4A: 3 – 4.20.
  - a. Effective retroactive to first pay period following October 1, 2019: 2.00% increase.
  - b. Effective retroactive to first pay period following July 1, 2021: 2.00% increase
  - c. Effective first pay period following December 1, 2021: 2.75% increase
  - d. Effective first pay period following July 1, 2022: 2.75% increase
  
3. Salary Increments: Normal increments shall be paid to all employees eligible for such increments on their anniversary date in accordance with the State Compensation Plan. Increments for those employees not at top step shall continue to be provided to eligible employees in accordance with the State Compensation Plan after expiration of the agreement.
  
4. Article XXXII, Health Benefits: Delete current Article and Replace with revised Article XXXII as set forth in Attachment 1 of the State’s Final Proposal. The State is provided a reasonable period of time to transition the Unit to the new plans, which is estimated to be sixty days.
  
5. Article XIII, Section C, Uniform and Equipment Allowance: Delete Section C and Replace with Section C as set forth in Attachment 2 of the State’s Final Proposal other than the following:
  - A. Senior Investigators in Parole: Effective July 2021, for senior investigators that are provided with a uniform that they may be required to wear at any time when on duty shall receive a uniform allowance as follows:
    - a. The State agrees to provide a payment to senior investigators of \$420 for July 2021 to those employees that had at least one (1) year of service as of June 30, 2021;
    - b. The State agrees to provide a payment to senior investigators of \$530 for January 2022 to those employees that had at least one (1) year of service as of December 31, 2021;
    - c. The State agrees to provide a payment to senior investigators of \$700 for July 2022 to those employees that had at least one (1) year of service as of June 30, 2022;
    - d. The State agrees to provide a payment to senior investigators of \$840 for January 2023 to those employees that had at least one (1) year of service as of December 31, 2022;

6. Article XXV, Section A(1), Leave for Association Activity: Effective July 1, 2021, increase paid leave from 50 to 70 days per year.

Add the following provision:

1. The State agrees that during working hours, on its premises and without loss of pay, Association representatives shall be allowed to:
  - a. Where the representative, upon completion of the representational activities could return to work with at least one (1) hour remaining on his/her scheduled shift, such representative must return to work and complete the remainder of his or her scheduled work shift. The determination of whether the representative could return to work with at least one (1) hour remaining on his/her scheduled shift shall take into account reasonable travel time from the location of the representational activity back to the representative's work location.

7. Article XIX, Section D, Compensatory Time Off: Increase maximum compensatory time accrual from 100 to 200 hours effective upon ratification.

8. Article XXVI, Section F(6), On-Call: Revise subsection 6 as follows:

On-call work will be compensated in accordance with NJAC 4A:3-5.7(a)(1). If an employee is required to perform work while on-call, and the time worked while on-call is overtime, applicable overtime rate will apply, and will be paid in time increments consistent with current department payroll practices, including:

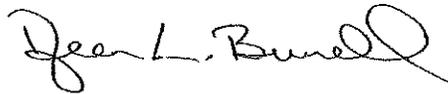
- Employees on the TALRS Payroll System (Currently DOC): Employees shall be paid in 15-minute increments. For each 15-minute increment, if the time worked is 8 minutes or more, it will be rounded up, while time worked of 7 minutes or less will be rounded down. Notwithstanding, if an employee reviews or responds to one or more e-mail messages, text messages, and/or telephone calls, but spends 7 minutes or less in the aggregate with a given day on-call, the employee will still be entitled to a minimum of 15 minutes of pay for the time spent performing that work.
- Employees on the ECATS Payroll System (currently JJC and Parole): Employees shall be paid on a minute for minute basis for all time actually worked while on-call, including for the amount of time spent each day on-call reviewing and responding to e-mail messages, text messages, and telephone calls.
- If a unit employee is required to report to the workplace or other location while on-call, the employee shall be entitled to minimum call in rates under the conditions and limitations set forth in Section F(4).

However, the terms of Paragraph F.4. of this Article do not apply to work performed while on-call outside of the workplace that does not require the employee to report to his or her workplace or some other work location.

**IX. CERTIFICATION**

**I hereby certify that I have given due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g) and I conclude the terms of this Award represent a reasonable determination of the issues.**

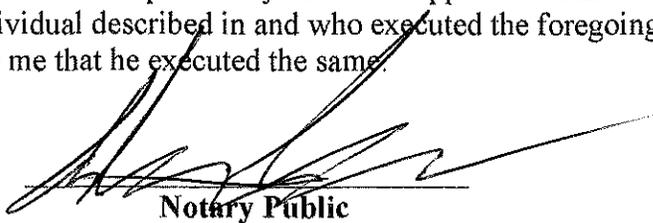
Dated: June 9, 2023  
Morristown New Jersey



\_\_\_\_\_  
Dean L. Burrell  
Arbitrator

State of New Jersey        )  
County of Morris            )

On this 9<sup>th</sup> day of June 2023 before me personally came and appeared Dean L. Burrell to me known and known to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



\_\_\_\_\_  
Notary Public

ASHTON BAILEY  
NOTARY PUBLIC OF NEW JERSEY  
COMMISSION EXPIRES FEBRUARY 19, 2023  
COMMISSION #50123099

For State

*CMW*

Date:

*4/24/19*

For Union

*A. Ellis*

Date:

*4/24/19*

04-24-19 NJIA Reply

## ARTICLE IV

### NON-DISCRIMINATION

Replace Article IV with the following:

The provision of this Agreement shall be applied equally to all employees and the Association and the State agree that there shall not be any discrimination, including harassment, based on race, creed, color, national origin, nationality, ancestry, age, sex, familial status, marital status, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for military service, mental or physical disability, including perceived disability and AIDS and HIV status, political affiliation, ~~or union membership~~, pregnancy or breastfeeding, gender identity or expression, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, or any other status protected by law.



For State  
Date:  
For Union  
Date:

VSC  
6/17/19  
6/17/19

06-07-19 State Offer

**ARTICLE V, SECTION A**

**NO STRIKE CLAUSE**

Revise sub-section 1 to state as follows:

During the term of this Agreement, the parties agree that  
neither the Association, nor any employee represented by it,  
shall engage in or support any strike, work stoppage,  
slowdown, sit-down, sit-in, cessation or interruption of  
work, sick out, sympathy strike, the display of an inflatable  
rat or similar symbol, or other interference with the  
operations of the Employer.

Deleted: or any extension thereof.

Deleted: will

Deleted: boycott, picketing, hand billing, bannering.

Deleted: or any job action

14750308v1(23492.009)

Deleted: 14750308v1(23492.009)



For State  
Date:  
For Union  
Date:

KEC  
6/17/19  
A. J. [Signature]

06-07-19 State Revised Counterproposal

Deleted: 10

ARTICLE VI

DUES DEDUCTION

Section A: Membership Dues

Paragraph 5: Add new Paragraph 5 stating as follows:

Union Information/Meeting: The Association shall have the right to have one 30-minute group meeting during each orientation period with employees that have been newly promoted into the negotiations' unit. This group meeting will be without charge to the pay or leave time of the newly promoted employee and will also be without charge to pay or leave time of the Association representative. The meeting shall take place at a time and location that is approved in advance by the appointing authority.

Deleted: per quarter

Deleted: employees

Within 10 calendar days from the date of hire of negotiations unit employees, the Employer shall provide the following contact information to the Association in a digital format agreed to by the Union: name, job title, worksite location, home address, work telephone numbers, and any home and personal cellular telephone numbers on file with the Employer, date of hire, and work email address and any personal email address on file with the Employer. Every 120 calendar days beginning on January 1, 2019, the



Employer shall provide the Association the same information for all unit employees in a digital format agreed to by the Union.

Paragraph 6: Add new Paragraph 6 stating as follows:

Notice of Dues and Fees: Prior to the beginning of each agreement year, the Association will notify the State in writing of the amount of regular membership dues, initiation fees and assessments charged by the Association to its own members for that agreement year.

Paragraph 7: Add new paragraph 7 stating:

Indemnification: The Association hereby agrees that it will indemnify and hold the State harmless from any claims, actions, or proceedings brought by any employee in the negotiations unit, which arises from deductions made by the State in accordance with this provision.

Paragraph 8: Add new paragraph 8 stating:

If, after the State receives a proper notice from an employee revoking dues authorization, the State mistakenly deducts union dues from the employee and transmits dues to the Association, the Association shall be solely responsible for returning to the employee the dues it received.

Paragraph B: Delete in its entirety



For State

Date:

For Union

Date:

YEO  
5/17/19  
[Signature]  
5-17

**ARTICLE VII, ACCESS TO PREMISES**

Section A., Subsection 5: Add the following sentence to the end of subsection 5

5. Nothing herein shall bar such Union representative from attending meetings or representing unit employees on the premises of the Governor's Office of Employee Relations unless the Governor's Office of Employee Relations, in the exercise of its discretion, decides to bar the Union representative for safety and security reasons. Similarly, nothing herein shall bar such Union representative from attending meetings or representing unit employees on the premises of an administrative office of the respective agency head unless, in the exercise of its discretion, the appointing authority makes the decision to bar the Union representative for safety or security reasons.



For State

Date:

For Union

Date:

KED  
5/17/17

A. J. L.  
5/17/17

## ARTICLE VII - ASSOCIATION ACTIVITY WITH PAY

Section B: Revise Section B as follows:

### B. Association Activity with Pay

The State agrees that during working hours, on its premises and without loss of pay, properly designated and mutually agreed upon Association representatives shall be allowed to:

1. represent employees in the ~~negotiating~~ negotiations unit at grievance proceedings,
2. represent unit employees in any disciplinary investigation or proceedings.
3. submit Association notices for posting,
4. attend negotiating meetings if designated as a member of the negotiating team to a maximum of six (6) employees.
5. attend scheduled meetings with the State and its representatives concerning the application of the Agreement

The accredited Association representative shall provide reasonable notification to his supervisor and to the appointing authority whenever he wishes to transact such Association business on State time.

05-02-19 Tentative Agreement



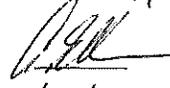
For State

Date:

For Union

Date:

KEO  
5/17/19

  
5/17/19

**ARTICLE VII - BULLETIN BOARDS**

Section C: Revise paragraph 5 as follows:

The State will provide bargaining unit representatives from the Division of Parole with access to an intranet page that shall serve as an electronic bulletin board. Use of this intranet page shall be subject to the same restrictions and requirements that apply to bulletin boards under this Section. At NJDOC and JJC, the Association may use the State email system to notify employees of meetings and similar information that would otherwise be posted on the intranet or a bulletin board. The Association's use of the State email system shall be subject to the same restrictions and requirements that apply to bulletin boards and the intranet under this Section and shall also comply with all applicable laws, regulations, work rules and policies. The State shall not be responsible for the Association's use of the State's email system.



For State

Date:

For Union

Date:

CNW

4/24/19

A. J. [Signature]

4/24/19

04-03-19 State Offer

**ARTICLE VIII**

**ACCESS TO PERSONNEL FOLDERS AND  
EVALUATIONS**

Section A: Change “working days” to “calendar days.”



For State  
Date:  
For Union  
Date:

KEA  
6/7/19  
UAW  
6/7/19

06-07-19 Revised State Offer

**ARTICLE X**

**GRIEVANCE PROCEDURE**

Section D:

Paragraph 1: Revise Paragraph 1 to state as follows:

Any member of the collective negotiations unit is strongly encouraged to orally present and discuss his/her grievance with his/her immediate supervisor on an informal basis. Any delay in having this discussion with the immediate supervisor does not impact the required timeframe to file the written grievance as expressly set forth in Section E(1) below.

Deleted: shall

Deleted: While employees are encouraged to have this discussion with the immediate supervisor as soon as possible once the employee is aware of the grievance, the

Deleted: , except

Section E:

Paragraph 1: Revise paragraph 1 to state as follows:

A grievance must be filed initially in writing within fifteen (15) calendar days from the date on which the act which is the subject of the grievance occurred or fifteen (15) calendar days from the date on which either the grievant or the Association should reasonably have known of its occurrence. All references to days in this process are working calendar days of the party to which they apply. Any grievance that is not timely filed in accordance with this time limit shall be deemed to have been permanently waived and is null and void.

Deleted:

Paragraph 3: Revise first paragraph of Section E(3) to state as follows:



Decisions after a scheduled step one conference or after a step two hearing shall be rendered in writing to the grievant and the Association within the established time limits. The decision will be considered timely if rendered within the following time limits:

- a. At Step One, within 14 calendar days of the receipt of the grievance;
- b. At Step Two, within 21 calendar days of the receipt of the appeal from the Step One decision;

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Paragraph 4: Revise paragraph 4 to state as follows:

Should a grievance not be satisfactorily resolved, or should the employer not respond within the prescribed time periods, either after the initial receipt of the grievance or after a hearing, the grievance may be appealed within five (5) calendar days (exclusive of weekends and holidays) to the next step. The lack of response by the State within the prescribed time periods, unless time limits have been extended by mutual agreement, should be construed as a negative response.

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Paragraph 6: Revise paragraph 6 to state as follows:

Time limits under this Article may be changed by mutual agreement, which is in writing. Requests for extensions of time limits must be made in writing and will not be unreasonably denied.

Paragraph 7: Add the following sentence to paragraph 7:

Such request must be made in writing to the Office of Employee Relations and such waiver must be provided in writing by the Office of Employee Relations to be valid.

Section G

Step One: Revise first sentence to state: "If a Step 1 grievance is filed, it shall be filed with the highest operational management representative."

Formatted: Underline

Deleted: The Step 1 grievance may



For State

Date:

For Union

Date:

KEC  
6/11/19  
J. E. L.  
6/7/19

**ARTICLE X, SECTION G, ARBITRATION**

Add the following sentences to the end of Paragraph 1 of Step 3: **(NEW)**

No arbitrator shall have any authority or jurisdiction to rule upon the merits of a grievance that was not initially timely filed in accordance with this Section. Moreover, if either the Union's appeal to Step Two or the request for arbitration at Step Three is not timely filed in accordance with this Section, then the decision made at the prior step shall be deemed final and binding and shall not thereafter be deemed subject to arbitration. Where the State asserts that the grievance was either: (i) not initially timely filed, (ii) not timely appealed at Step Two, or (iii) not timely submitted to arbitration at Step Three, the Arbitrator shall first decide the timeliness issue(s) before making any ruling on the merits. No arbitrator shall have any authority or jurisdiction whatsoever over the merits of any grievance that was not initially timely filed, or where a Step Two appeal or submission to arbitration at Step Three was not timely filed. If the State asserts a timeliness argument to the Arbitrator, then only after a finding that the grievance was timely filed, appealed, and submitted to arbitration does the Arbitrator have any authority or jurisdiction to rule upon the merits of the grievance. The foregoing language is not intended to either require or preclude an Arbitrator from bifurcating the procedural issue from the issue on the merits.



For State

Date:

For Union

Date:

*K20*  
*5/17/19*  
*[Signature]*  
*5/17/19*

**ARTICLE XI - DISCIPLINE**

Section K: Delete Paragraph 8 to remove the sunset provision on the JUMP Panel.

Section L: Change "Vice Chairman" to "Chairman" in paragraph 4.



For State

Date:

For Union

Date:

KSC  
5/17/19  
JSC  
5/17/19

**ARTICLE XXIV - LEAVE OF ABSENCE WITHOUT PAY**

**Section A: Revise to State:**

A permanent employee, upon written application setting forth the reason, may be granted a leave of absence without pay ~~in accordance with~~ for the types of leave covered by N.J.A.C. 4A:6-1.10 for up to a maximum total of ~~period of total equaling~~ one (1) year (either consecutive or intermittent) ~~for all such related leave~~ that is related to the reasons set forth in the written application. In exceptional circumstances, an employee that has utilized the maximum amount of leave set forth above may request additional leave, which ~~Further, leave in exceptional situations~~ may be granted where it is in the public interest. The decision to approve or deny an application for a leave of absence (or a request for additional leave) under this Article is the sole discretion of the appointing authority and is not subject to the Grievance Procedure.

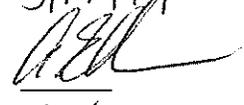


For State

Date:

For Union

Date:

KSO  
5/17/15  
  
5/17/15

**ARTICLE XXVII, JOB POSTING**

Section C: Revise to state as follows:

Any new or vacant position, which the appointing authority desires to fill shall be posted for a period of fourteen (14) days, during which responses must be submitted. The posting shall be sent via email to all unit employees in the respective agency and to the Association. Responses received after the 14-day period shall not be considered. The posting shall include the criteria for selection.



For State

Date:

For Union

Date:

*CPW*  
*4/24/19*  
*ASG*  
*4/24/19*

04-03-19 State Offer

**ARTICLE XLVI**

**TERM OF AGREEMENT**

Revise first sentence to state as follows:

This contract shall remain in full force and effect until June 30,  
2019 2023.

