

ISSUE U-1 -- ARBITRATION -- ARTICLE 12, SECTION 9

Current Contract Language.

Section 9. Arbitration. Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

A. Dismissals.

- 1) **Submission.** Submission shall be to the Connecticut Board of Mediation and Arbitration by letter, postage pre-paid, addressed to the Board; a copy of such letter will also be mailed concurrently to the Office of Labor Relations by certified mail;

Last Best Offer of the State.

Section 9. Arbitration. Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

1. **Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.

Last Best Offer of the Union.

9. Arbitration. Thirty (30) days following the effective date of this Agreement; Within forty (40) days from receipt of a Step III response, or if no response within forty (40) days of the due date, grievances during the life of this Agreement, shall be submitted for arbitration as follows:

A. Dismissals

1. Submission shall be to the Connecticut Board of Mediation and Arbitration by letter, postage prepaid, addressed to the Board; a copy of such letter will also be mailed concurrently to the Office of Labor Relations by certified mail;

ISSUE U-2 -- ARBITRATION -- ARTICLE 12, SECTION 2

Current Contract Language.

- 2) **Cost Allocation.** Effective July 1, 1994, and for each year of this Contract, the State shall allocate \$5,000.00 to cover the cost of arbitration at a rate of \$250.00 per case. Unexpended funds in any contract year shall carry over into the next contract year. Should the yearly allocation and the carry over funds combined be insufficient to pay for cases in any contract year, the parties agree to share equally in the per case cost;
- 3) **Arbitrators.** Arbitrators assigned to hear cases under this provision shall be mutually agreeable to the parties;
- 4) **Cases Submitted Under Previous Agreement.** For cases already submitted to the Board under previous contract provisions, those involving suspensions of fifteen (15) days or more shall remain with the Board. All other cases shall be processed under B. below. In the assignment of cases, discharge cases will be assigned first, all other cases will be assigned in the order of the date of filing, first filed, first assigned. Cases shall be assigned on a rotating basis to the arbitrators. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.

Last Best Offer of the State.

2. **Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
3. **Costs.** The parties shall share equally in the expenses of the arbitrator.
4. **Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.
5. **Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

Last Best Offer of the Union.

2. Thirty (30) days following the effective date of this Agreement submission of all arbitrations shall be done per the State Board of Mediation and Arbitration rules and regulations. All dismissal cases submitted up to 30 days following the effective date of this Agreement shall be submitted under the rules in effect at the time of their submission. Said submissions shall be in accordance with the provisions of the Collective Bargaining Agreement(s) under which they were filed.

Rationale U-1 and U-2

Historically, the dismissal grievance arbitrations for the NP-4 bargaining unit have always been handled by the State Board of Mediation and Arbitration (SBMA). Up until 1985 these hearings were per board rules to include a tripartite panel. After 1985 the parties agreed to utilize a small agreed upon panel of neutral arbitrators to be rotated for each hearing at the SBMA.

The Union proposals address how grievances filed both prior to and after the change will be handled. All dismissal grievances submitted prior to the language change will be in accordance with the provisions of the collective bargaining agreement under which they were filed. Those filed after the effective date will be handled strictly by SBMA regulations (X J-46). Therefore the Union proposes the current language regarding Cost Allocation and the selection of Arbitrators be deleted as the SBMA regulations govern these issues.

Union proposals U-1 and U-2 keep the dismissal arbitration hearings at the SBMA allowing the SBMA to handle them as they handle grievances for all the others who utilize their services. The advantages for both the employer and our members would be termination arbitration schedules should and would be quicker which would lead to resolution of the members' cases in a more expedient manner.

ISSUE U-3 -- ARBITRATION -- ARTICLE 12, SECTION B

Current Contract Language.

Last Best Offer of the State.

- 2. Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
- 3. Costs.** The parties shall share equally in the expenses of the arbitrator.
- 4. Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.
- 5. Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

Last Best Offer of the Union.

B. Other Discipline and Contract Interpretation

1. Thirty (30) days following the effective date of this Agreement submission shall be to the Connecticut Board of Mediation and Arbitration in accordance with their rules and regulations by letter, postage prepaid, addressed to the Board; a copy of such letter will also be mailed concurrently to the Office of Labor Relations by certified mail.

ISSUE U-4 -- ARBITRATION -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

3. **Costs.** The parties shall share equally in the expenses of the arbitrator.

Last Best offer of the Union.

No such language.

ISSUE U-5 -- ARBITRATION -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

- 4. Cases Submitted Under Previous Agreement.** Dismissal cases already submitted to the Connecticut Board of Mediation and Arbitration will remain with the Board in accordance with the prior contract provisions. Effective upon legislative approval of this Agreement, the State shall allocate \$5,000.00 to cover the cost of arbitration at the rate of: \$225 for day one of the hearing; \$150 per day for each additional hearing date; and \$175 for writing the arbitration award. Unexpended funds shall revert to the State. Should the yearly allocation be insufficient to pay for all remaining cases, the parties will share equally in the per case cost.

Last Best Offer of the Union.

Thirty (30) days following the effective date of this Agreement cases already submitted to OLR and not yet scheduled shall be resubmitted by letter to the State Board of Mediation and Arbitration for arbitration services under the SBMA rules and regulations. Cases that have been already scheduled shall be adjudicated in accordance with the provisions of the Collective Bargaining Agreement(s) in which they were filed.

ISSUE U-6 -- ARBITRATION -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

Section 9. Arbitration. Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

1. Submission. Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.

Last Best Offer of the Union.

The Union hereby withdraws Union Proposal Arbitration Number Six (6).

ISSUE U-7 -- ARBITRATION -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

Numbered appropriately.

Arbitrability. A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing.

Last Best Offer of the Union.

C. **Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing. This provision shall only be applicable until such time that the rules and regulations of the State Board of Mediation and Arbitration are enacted.

ISSUE U-8 -- ARBITRABILITY -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

Expedited cases. No language.

Last Best Offer of the Union.

No such language.

ISSUE U-9 -- ARBITRATION -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

Numbered appropriately.

Pending Cases. The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration case with the goal of resolving, thereby reducing, the numbers of the same.

Last Best Offer of the Union.

Pending Cases. The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration cases with the goal of resolving, thereby reducing, the numbers of same.

ISSUE U-10 -- ARBITRATION -- ARTICLE 12, SECTION

Current Contract Language.

Last Best Offer of the State.

Numbered appropriately.

Postponements. In any individual arbitration case, each party will be allowed one postponement. Thereafter, postponements shall only be by mutual consent of the parties.

Last Best Offer of the Union.

No such language.

Rationale U-3 through U-10

Issues U-3—U-10 are proposals that affect the grievance arbitration process for discipline other than dismissal as well as contract interpretation grievances.

These grievances were all handled by the State Board of Mediation and Arbitration (SBMA) until 1997. In the 1994- 2001 Collective Bargaining Agreement (CBA) (X J-21), the parties agreed to have all the contract interpretation grievances as well as suspensions of up to five (5) days be heard by a separate panel of arbitrators. Finally in the 2001 to 2004 CBA (X J-20), we have the present language where all grievances with the exception of dismissals are to be heard through this separate panel of arbitrators.

Through proposals U-3—U-10, the Union is simply bringing the contract interpretation grievances and the discipline grievances, other than dismissals, back to the SBMA.

SBMA Director Catherine Serino testified that the SBMA has the ability and capacity to again handle these additional grievances. She testified that she would assist in dealing with the grievance backlog. Director Serino cited the City of Bridgeport as being one of the worst areas with regard to grievance backlogs. She went on to testify that in an effort to address their backlog, they schedule two hearings in a day. She stated that even a written reprimand out of the City of Bridgeport would be heard within six (6) months. Director Serino said it is the policy since at least 1999 that any employer with ten (10) or more grievances on file with the SBMA will have two cases scheduled on the same day.

The Union proposes to delete Section 9, B, 3 regarding cost (proposal U-4) as the applicable fees will be governed by the SBMA regulations (X J-46). These are the same costs that each and every other unit that utilizes the SBMA would pay whether in the public or private sector. The State's advocate, Mr. Bodenhofer, extracted from the Union's witness Catherine Serino, that the taxpayers fund the majority of the SBMA budget and would have you believe that the Union is trying to get a free ride.

If one were to look at the rates (X U-36) paid to the arbitrators, you would conclude that the Union's proposal would even save the State money as they have been responsible for fifty percent of these fees.

Within the Union's proposal U-5, we are asking for all the non-dismissal discipline grievances and contract interpretation grievances that have not yet been scheduled for arbitration services within the closed panel to be resubmitted to the SBMA for scheduling in accordance with their rules and regulations. Therefore there is no need for the present language under Section 9, B, 4 regarding the rotation of arbitrators within the closed panel. The Union withdraws the proposal designated as U-6 as there is no need to be redundant. This is already accomplished through proposal U-3.

The Union proposal regarding arbitrability (U-7) allows the present practice to raise a claim of arbitrability to exist until such time as the SBMA regulations (X J-46) become effective. At that time the parties will be bound by SBMA regulations regarding an arbitrability claim.

The State and the Union have enjoyed the benefits in section 9, D, which allows for expediting cases out of the first filed, first assigned rotation. While this section has been utilized, the Union is looking to abide strictly by the SBMA regulations, which does not have this same level of benefit.

As the current language under Union proposal U-9 is also the last best offer (LBO) of both the State and the Union, neither party has a desire to change it. The Union proposal to eliminate section 9, G would be to be compliant with the regulations under the SBMA with regard to postponements.

The Union believes that their proposals to bring the arbitration process squarely under the SBMA regulations to be more reasonable and therefore should be awarded. As has been presented through testimony and exhibits during this arbitration process, the process that is currently being utilized is not working. The backlog of cases is tremendous with individuals waiting at times for more than seven years to have their particular case adjudicated. It is well founded within the principles of labor that this type of delay serves neither the employer nor employee, justice delayed is justice denied.

ISSUE U-11

This issue was withdrawn by the Union.

**ISSUE U-12 -- SUSPENSION IMPLEMENTATION
ARTICLE 13, NEW SECTION**

Current Contract Language.

No current language.

Last Best Officer of the State.

Retain current language as follows:

Section 3. Discipline. No employee who has completed the working test period shall be disciplined or discharged except for just cause. In determining just cause, the regulations of the Blue Book governing disciplinary action as defined above are hereby incorporated by reference.

Last Best Offer of the Union.

Implementation of a Suspension. Effective July 1, 2009 the implementation of a suspension action by the employer shall be forestalled until the Step III Response has been rendered regarding the grievance filed under Article 13 of the grievance process.

Rationale U-12.

The nexus issue is: Should the implementation of a suspension be forestalled until a Step III Response has been rendered regarding the grievance filed under Article 13 of the grievance process?

The Union offers that at the present time the current NP-4 Agreement does not have language regarding the Union's LBO. The Union is not looking to change or delete Article 13, Section 3 of the Agreement. The Union LBO affords both the State (OLR) and the Union an opportunity to hear the merits of the case before the suspended party serves his/her suspension. Stephen Carbone offered testimony and support documentation that suspended parties do serve the suspension presently prior to Step III grievance conference. He offered that at the Step III grievance conference the parties do negotiate settlement agreement (stips) approximately 50% of the time to resolve the suspension grievance. Normally, the stipulated agreements do entail that some of the suspension time is given back to the suspended party. He offered that under normal circumstances the suspended employee is replaced by an employee working overtime at time and a half. The Union offers that the State loses nothing by forestalling the implementation of the suspension until after the Step III response. Money will be saved by DOC payroll, DOC Human Resources and DOC Labor Relations Units in that work will not be done on more than one

occasion. The present system lends itself to duplicity and redundancy of core tasks. Doing things over and making changes costs time and money.

The Union concludes that Union LBO #12 should be awarded due to the aforementioned.

Also, the Union argues that the State LBO is not on point regarding the Union proposed new language addition. A review of the Initial Union Proposals (X J-; Proposal 21) shows that this was and has been from day one newly proposed language.

The Union concludes that the Union argument is on point in that the State LBO for Union Issue #12 is not on point and flawed. The Union LBO should be awarded.

**ISSUES U-13, 14, 15 and 16 -- GENERAL WAGE INCREASE
ARTICLE 17, SECTIONS 1A (1) (2) (3) (4)**

Current Contract Language.

Section 1. Salaries

A. General Increases. Employees shall receive pay increases as follows:

- 1) The salary schedule in effect during 2003-2004 shall remain in effect during 2004-2005.
- 2) Effective June 24, 2005, the base annual salary of all employees shall be increased by three percent (3.0%).
- 3) Effective June 23, 2006, the base annual salary of all employees shall be increased by three percent (3.0%).
- 4) Effective June 22, 2007, the base annual salary of all employees shall be increased by three percent (3.0%).

Last Best Offers of the State.

Section 1. Salaries.

A. General Increases. Employees shall receive pay increases as follows:

- 1) Effective July 4, 2008, the base annual salary of all employees shall be increased by three percent (3.0%).
- 2) Effective June 24, 2009, the base annual salary of all employees shall be increased by two and one-half percent (2.5%).
- 3) Effective June 23, 2010, the base annual salary of all employees shall be increased by two and one-half percent (2.50%).
- 4) Effective July 1, 2011, the base annual salary of all employees shall be increased by three percent (3.0%).

Last Best Offers of the Union.

- (1) Effective and retroactive to the pay period including July 1, 2008, the base annual salary of all employees shall be increased by three and a quarter percent (3.25%).
- (2) Effective the pay period including July 1, 2009, the base annual salary of all employees shall be increased by three and a half percent (3.50%).

- (3) Effective the pay period including July 1, 2010, the base annual salary of all employees shall be increased by three and a half percent (3.50%).
- (4) Effective the pay period including July 1, 2011, the base annual salary of all employees shall be increased by three and a half percent (3.50%).

Rationale U-13, 14, 15 and 16

The nexus issue(s) are: When should the GWI increase for each year of the Agreement be implemented? How much should the GWI increase be?

The Union offers that the State LBO forestalls implementation of the GWI if the GWI is implemented, "Effective July 4, 2008." By making this GWI "effective July 4, 2008" the State 3% GWI is a delayment of two weeks for pay purposes regarding retroactivity.

I offer that a review of the existing NP-4 Agreement (X J-1) shows that the GWI's were implemented effective the pay periods that included July 1. The aforementioned delay is one reason as to why the Union LBO should be awarded.

The Union concludes that a review of the MASS SALARY INCREASE DOCUMENT (X J-15) shows that no Unit has received a GWI of less than 3% overall since they received a 0% GWI for the years covering Agreements during or subsequent to Fiscal Year '02. Also, a review of the aforementioned Document (X S-15) shows that some of the Unit(s) have received GWI's of more than 3% for some of the years since they received their 0% GWI. I refer to the Administrative and Residual Unit (P-5). For Fiscal years '05, '06 and '07, their GWI's were 3.5%. Also, for Fiscal Year '10 they received a GWI of 3.25%.

I refer to the Engineering and Scientific Unit (P-4). For Fiscal Years '07, '08 and '09, their GWI's were 3.5%.

I refer to the Maintenance and Service Unit (NP-2). For Fiscal Years '07 and '08 their GWI's were 3.5%.

I refer to the State Police (NP-1). For Fiscal Year '08, the classification of SP 1 received a 3.25% GWI for Steps 9, 10 and 11, and SP 3/SP 4 received a 3.5% GWI. For Fiscal year '10 the classification of SP 1 received a 3.25% GWI for Steps 9, 10 and 11, and SP 3/SP 4 received a 3.5% GWI.

The Document (X J-15) shows that this Unit (NP-4) received a 0% GWI for Fiscal Year '05. The Document shows that this Unit (NP-4) received a 3% GWI for Fiscal Years '06, '07 and '08. Again, the pattern is 3% to 3.5%, not less than such. The State LBO is not in line with the pattern of GWI raises. The Union notes that the State never offered a GWI during the negotiation process.

The second nexus issue is: How much should the GWI for the first year be. The State LBO calls for a GWI of 3% and the Union LBO calls for a GWI of 3.25%. The difference is .25%. The dollar difference is approximately \$647,500 when we review and use the NP-4 Spreadsheet Base (X U-31) to make the calculation.

The third nexus issue is: How much should the GWI be for the second year of the contract during Fiscal Year '10. The State LBO calls for a GWI of 2.5% and the Union LBO calls for a GWI of 3.5%. The difference is 1%. The dollar difference is approximately \$2,667,000 when we review and use the NP-4 Spreadsheet Base (X U-31) to make the calculation.

The fourth nexus issue is: How much should the GWI be for the third year of the contract during Fiscal Year '11. The State LBO calls for a GWI of 2.5% and the Union LBO calls for a GWI of 3.5%. The difference is 1%. The dollar difference is approximately \$2,750,000 when we review and use the NP-4 Spreadsheet Base (X U-31) to make the calculation.

The fourth nexus issue is: How much should the GWI be for the fourth year of the contract during Fiscal Year '12. The State LBO calls for a GWI of 3% and the Union LBO calls for a GWI of 3.5%. The difference is .5%. The dollar difference is approximately \$1,450,000 when we review and use the NP-4 Spreadsheet Base (X U-31) to make the calculation.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.”

The Union has offered under the statutory guideline criteria factors reasoning as to why the LBOs should be awarded to the Union.

ISSUES U-17, 18, 19 and 20 -- ANNUAL INCREMENTS
ARTICLE 17, SECTION 2.1, 2.2, 2.3, 2.4

Current Contract Language.

Section 2. Annual Increments.

1. Annual increments shall not be paid for 2004-2005.
2. Annual increments for 2005-2006 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$500 lump sum payment.
3. Annual increments for 2006-2007 shall be delayed three months. Employees at the top step of the pay scale shall receive a \$500 lump sum payment.
4. Annual increments for 2007-2008 shall be on time. Employees at the top step of the pay scale shall receive a \$500 lump sum payment.

Last Best Offers of the State.

Section 2. Annual Increments.

1. Annual increments for 2008-2009 shall be delayed six months. Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 46] lump sum payment.
2. Annual increments for 2009-2010 shall be delayed six months. Employees at the top step of the pay scale shall receive [subject to award on Issue No. 47] lump sum payment.
3. Annual increments for 2010-2011 shall be delayed six months. Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 48] lump sum payment.
4. Annual increments for 2011-2012 shall be delayed six months. Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 49] lump sum payment.

Last Best Offers of the Union.

1. Annual increments shall be retroactive for 2008-2009 year and shall be on time.
2. Annual increments for 2009-2010 shall be on time.
3. Annual increments for 2010-2011 shall be on time.
4. Annual increments for 2011-2012 shall be on time.

Rationale U-17, 18, 19 and 20

The nexus issue is: When should the Annual Increments be implemented during each year of the Agreement.

The initial Union Proposal was: “Employees will continue to be eligible for and receive annual increments during the term of this contract in accordance with the existing practice. All Annual increments shall be on time. The Union notes that the State never offered Annual Increments during the negotiation process nor did they communicate that they were tying Annual Increments to Lump Sum to Top Step Employees.

The first issue addressed by the Union is: When shall the Annual Increments be implemented during each year of the Agreement. Annual Increments represent advancement for satisfactory service until the employee reaches their top step. Annual Increments are a mechanism to delay wages. The top step is actually the wage that the job is worth.

The Union offers that the Annual Increments should not be delayed by six months as the State proposes in their LBOs. The NP-4 Unit has had more delays or no Annual Increment than any other State Unit. The Union offered a document called AI Comparison of Connecticut Contracts (X U-25). The document shows that a number of the State Units (NP-1, NP-2, NP-6, P-1, P-3A, P-4, Judicial Marshals and Judicial Supervisory Marshals) did not receive a delay of their Annual Increments in any of the Fiscal Years cited on the document.

The NP-4 Unit had delays in the implementation of their Annual Increments during Fiscal Years '06 and '07. I note that the NP-4 Unit agreed to the delays in a conscious effort to help the State. For the years cited on the document (X U-25) this Unit (NP-4) paid a price that a number of other Units did not in that they had delays twice and some had no delays. Also, the Union refers to the Union Argument under Factor #1 in this brief. A review of Factor I information regarding Annual Increments shows that this Unit (NP-4) has lost Annual Increments and had delays of Annual Increments too often.

A review of the NP-4 Spreadsheet Base (X U-31) shows that over half the NP-4 Unit is at the top step. They do not receive Annual Increments. By delaying the Annual Increments by six months, the State is looking to achieve a savings of 50% of their costs for the Annual Increments. The cost of the Annual Increments on time is approximately \$2,800,000 for the first year. The cost for the second, third and fourth years are approximately \$2.9 million, \$3.1 million and \$3.2 million.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

Also, the Union argues that the State LBO is defective by and through their language, “Employees at the top step of the pay scale shall receive a [subject to award on Issue No. 46]

lump sum payment. The State does not have the right to tie one issue incumbent upon the award of another disputed issue. The issues are distinctly separate. The Union made these separate issues when the initial Union Proposals (X J-5) were put in. The State had the ability to make a State Proposal that did such, but they did not. Due to the aforementioned, the Union respectfully requests that LBOs be awarded to the Union.

**ISSUE U-21 -- LONGEVITY
ARTICLE 17, SECTION 4 (A)**

Current Contract Language.

No current language.

Last Best Offer of the State.

Retain current language as follows:

Section 4. Longevity. The longevity schedule based on the pay plan effective on June 30, 1977 shall remain unchanged in dollar amounts during the life of this Agreement, and is appended.

Last Best Offer of the Union.

The longevity schedule is appended under Appendix B (1), and shall be effective on July 1, 2009.

Rationale U-21

The nexus is that the Union offered this section as an addition to the existing longevity language. This is a prelude to Union LBO #67. If Union LBO #67 is awarded, then this language would be incorporated into the Successor Agreement.

This issue only concerns the language of the heading for implementation. The Union, therefore, will present their rationale for the increase under Issue 67.

**ISSUES U-22, 23, 24 and 25 -- NIGHT SHIFT DIFFERENTIAL
ARTICLE 17, SECTION 6 B, C, D, E**

Current Contract Language.

No current language.

Last Best Offers of the State.

Retain current language as follows:

Section 6. Night Shift Differential . All employees who are in this bargaining unit and who are eligible to receive shift differential in accordance with current practice and whose assigned work shift begins any time after 2:00 P.M. and before 6:00 A.M. shall receive a night shift differential of eighty (80) cents per hour. Shift differential will only be paid when an employee is actually working.

A. Effective June 18, 2010, the night shift differential shall be increased to ninety (90) cents per hour. Shift differential will only be paid when an employee is actually working.

Last Best Offers of the Union.

B. Effective and retroactive to the pay period including July 1, 2008, the night shift differential shall be increased by ten (10) cents per hour.

C. Effective the pay period including July 1, 2009, the night shift differential shall be increased by ten (10) cents per hour.

D. Effective the pay period including July 1, 2010, the night shift differential shall be increased by ten (10) cents per hour.

E. Effective the pay period including July 1, 2011, the night shift differential shall be increased by ten (10) cents per hour.

Rationale U-22, 23, 24 and 25

The nexus issue is: Should the night shift differential be increased by 10¢ per hour effective and retroactive to the pay periods including July 1, 2008, and effective the pay periods including July 1 of 2009, 2010 and 2011.

The State never offered a proposal regarding the Night Shift Differential during the

negotiation process. The initial Union proposal (X J-5) called for an increase to 90¢ per hour for the Night Shift Differential. The Union Open Arbitration Document (X J-2) called for a 10¢ increase each year on top of the existing rate.

The Union offers that the 10¢ increase would be added to the previously existing rate. The Union LBO does not affect the existing language, “Shift differential will only be paid when an employee is actually working.” Under the Union LBOs the existing language is retained under Article 17, Section 6A and if the Union LBOs are awarded, then Article 17, Section 6 B, C, D and E would be incorporated into the Successor Agreement.

The Union offers that the 1988 to 1994 NP-4 Agreement (X J-22) called for the Night Shift Differential of 65¢ per hour effective July of 1990. The 2001 to 2004 Agreement (XJ-19) called for a Night Shift Differential of 70¢ per hour effective July of 2002 and a Night Shift Differential of 75¢ per hour effective July of 2003. The 2004 to 2008 Agreement (X J-1) calls for a Night Shift Differential of 80¢ per hour effective June of 2005. The Union cites the fact that from 1990 to 2008 the Night Shift Differential has gone up 15¢. That does not equal out to a penny a year. The addition of 15¢ over 18 years did not keep pace with the CPI. This is shown by the Stodder inflation figures in his document (X U-34). The Night Shift Differential should be over a \$1.05 an hour if the CPI had been used since 1990.

A review of the Differential Payments Document (X U-24) leads me to conclude that a 10¢ per hour increase in the Night Shift Differential would cost the State an increase of approximately \$500,000 when straight time and overtime calculations are utilized. Each increase would cost \$500,000.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBOs should be awarded to the Union.

The Union points out that the Last Best Offers of the State do not address properly the issues before the Arbitrator, and therefore should not be awarded.

**ISSUES U-26, 27, 28, and 29 -- WEEKEND DIFFERENTIAL
ARTICLE 17, SECTION 7 B. (2) (3) (4) (5)**

Current Contract Language.

No current language.

Last Best Offers of the State.

Retain current language as follows:

Section 7. Weekend Differential . For the purposes of this Section, a weekend is defined as beginning with the start of the third shift on Friday and terminating with the end of the second shift on Sunday inclusive.

A. Minimum. The weekend differential shall be paid for working a minimum of six (6) hours on a shift defined in Section 7 above.

B. Rate. The rate shall be fifty-five (55) cents an hour.

(1) Effective June 18, 2010, the weekend differential shall be increased to sixty-five (65) cents an hour.

Last Best Offers of the Union.

B. (2) Effective and retroactive to the pay period including July 1, 2008, the weekend shift differential shall be increased by ten (10) cents per hour.

B. (3) Effective the pay period including July 1, 2009, the weekend shift differential shall be increased by ten (10) cents per hour.

B. (4) Effective the pay period including July 1, 2010, the weekend shift differential shall be increased by ten (10) cents per hour.

B. (5) Effective the pay period including July 1, 2011, the weekend shift differential shall be increased by ten (10) cents per hour.

Rationale U-26, 27, 28 and 29

The nexus issue is: Should the Weekend Shift Differential be increased by 10¢ per hour effective and retroactive to the pay period including July 1, 2008 and effective the pay periods including July 1 of 2009, 2010, and 2011.

The State never offered a proposal regarding the Weekend Shift Differential during the negotiating process. The initial Union proposal called for an increase to 65¢ per hour for the Weekend Shift Differential. The Union Open Arbitration Document (X J-2) called for a 10¢ increase each year on top of the existing rate.

The Union offers that the 10¢ increase would be added to the previously existing rate. Under the Union LBOs the existing language is retained under Article 17, Section 7 B. (1) and if Union LBOs are awarded, then Article 17, Section B. (2) (3) (4) and (5) would be incorporated into the Successor Agreement.

The Union offers that the 1988 to 1994 NP-4 Agreement (X J-22) called for a Weekend Shift Differential of 40¢ per hour effective July of 1990. The 2001 to 2004 NP-4 Agreement (X J-19) called for a Weekend Shift Differential of 45¢ per hour effective July of 2002 and for a 50¢ per hour Weekend Shift Differential as of July of 2003. The 2004 to 2008 Agreement (X J-1) calls for a Weekend Shift Differential of 55¢ per hour effective June of 2005. The Union cites the fact that from 1990 to 2008 the Weekend Shift Differential has gone up by 15¢ per hour. That does not equal out to a penny a year. The addition of 15¢ per hour over 18 years did not keep pace with the CPI. This is shown by the Stodder inflation figures in his document (X U-34). The Weekend Shift Differential should be over 65¢ per hour if the CPI had been used since 1990. A review of the Differential Payments Document (X U-24) leads me to conclude that a 10¢ per hour increase in the Weekend Shift Differential would cost the State an increase of approximately \$181,000.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBOs should be awarded to the Union.

The Union points out that the Last Best Offers of the State do not address properly the issues before the Arbitrator, and therefore should not be awarded.

ISSUES U-30, 31, 32 and 33 -- MEAL RATE
ARTICLE 17, SECTION 9 B. (2) (3) (4) (5)

Current Contract Language.

No current language.

Last Best Offers of the State.

B. Rate. Effective July 4, 2008, the meal reimbursement rate shall be \$8.50 for each shift actually worked.

Effective June 18, 2010, the meal reimbursement rate shall be \$9.00 for each shift actually worked.

Last Best Offers of the Union.

B. (2) Effective and retroactive to the pay period including July 1, 2008, the meal reimbursement rate shall be increased by two (2) dollars.

B. (3) Effective the pay period including July 1, 2009, the meal reimbursement rate shall be increased by one (1) dollar.

B. (4) Effective the pay period including July 1, 2020, the meal reimbursement rate shall be increased by one (1) dollar.

B. (5) Effective the pay period including July 1, 2011, the meal reimbursement rate shall be increased by one (1) dollar.

Rationale U-30, 31, 32 and 33

The nexus issue is: Should the Meal Reimbursement Rate be increased by \$2 retroactively for each shift actually worked as proposed by the Union effective and retroactive to the pay period including July 1, 2008. Should the Meal Reimbursement Rate be increased by \$1 for each shift actually worked as proposed by the Union effective the pay periods including July 1 of 2009, 2010 and 2011.

The State never offered a proposal regarding the Meal Reimbursement Rate during the negotiation process. The initial Union proposal called for the Meal Reimbursement Rate effective July 1, 2008 of \$10.00. The Union Open Arbitration Document (X J-2) called for

an increase of \$2 the first year, and \$1 the second, third and fourth year on top of the existing rate.

The Union offers that the \$2.00 increase July 1, 2008, the \$1.00 increase July 1, 2009, July 1, 2010, and July 1, 2011 would be added to the previously existing rate. The Union LBO does not affect the existing language of Article 17, Section 9 B. (1) and if Union LBO is awarded, then Article 17, Section 9 B. (2) (3) (4) and (5) would be incorporated into the Successor Agreement.

The Union offers that the 1988 to 1994 NP-4 Agreement (X J-22) called for a Meal Reimbursement Rate of \$5.00 per shift effective June of 1991. The 1994 to 2001 NP-4 Agreement (X J-21) called for a Meal Reimbursement Rate of \$6.00 per shift worked effective July of 1999. The 2001 to 2004 Agreement (X J-20) called for a Meal Reimbursement Rate of \$7.00 per shift worked effective July of 2003. The 2004 to 2008 NP-4 Agreement (X J-1) called for a Meal Reimbursement Rate of \$8.00 per shift worked effective June of 2005. The Union cites the fact that the Meal Reimbursement Rate has gone up \$3.00 from 1990 to 2008. That does not equal out to 17¢ a year.

Also, the NP-1 Unit (State Police) receives a meal reimbursement for a normal shift. As of July 1, 2008 they will be receiving \$17.37 for each normal shift. The NP-1 rate is more than double the NP-4 rate at the present time. This is a gross inequity when we compare the NP-4 rate to the NP-1 rate.

A review of the Differential Payments Document (X U-24) leads me to conclude that a \$2.00 increase in the Meal Reimbursement Rate in 2008 would cost the State an increase of approximately two million dollars. For the \$1 increase in 2009, 2010 and 2011, it would cost approximately 1 million dollars each year.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBOs should be awarded to the Union.

The Union points out that the Last Best Offers of the State do not address properly the issues before the Arbitrator, and therefore should not be awarded.

**ISSUE U-34 -- MEAL RATE REIMBURSEMENT -- O.T. UNANTICIPATED
ARTICLE 17, SECTION 9 C. (1)**

Current Contract Language.

No current language.

Last Best Offer of the State.

Retain Current language as follows:

C. Eligibility. The minimum time for eligibility for such reimbursement shall be equal to one-half (½) of the shift, except unanticipated overtime after a regular scheduled shift the employee shall be provided with a sandwich and a beverage, prepared by a staff member.

Last Best Offer of the Union.

B. (1) Effective July 1, 2009, in lieu of the meal being provided, employees will be paid the full meal reimbursement rate when working unanticipated overtime after a regular shift.

Rationale U-34

The nexus issue is: Shall a NP-4 member be paid the meal reimbursement rate when they are working unanticipated overtime after a regular shift.

The Union LBO becomes effective July 1, 2009. By postponing the implementation the Union is offering the State an opportunity to take appropriate action(s) fiduciarly and non-fiduciarly. The Union offered testimony from CO Rudy Demiraj. His testimony included a number of reasons as to why a mandatorily held employee should receive the meal reimbursement money instead of a sandwich and a beverage. He offered that the sandwiches were not provided more often than not, and that the provided sandwiches were substandard. One of the sandwiches was offered to Mr. Arbitrator. CO Demiraj offered that on numerous occasions "held staff" had to buy meals from the vending machines or send out for food. Due to such there is a financial cost. When a CO is working unanticipated overtime, they do not bring a meal or a beverage. The State did not offer testimony that the sandwich and the beverage were being offered appropriately. The State created this problem by and through their acts of omission and commission. This matter is easily fixed with the awarding of the Union LBO. The cost is not prohibitive in that the State will not be providing the beverage nor the sandwich under the Union LBO. If 5% of all overtime is due to unanticipated overtime, that would equal out to approximately 8,333 shifts. At the present rate of \$8.00 per

meal that equals a DOC payout cost of \$68,000 approximately. If we factor in the cost of the sandwich and the beverage at \$4.00, the dollar cost to the State is \$34,000 per year approximately. If the number of holds goes down, the dollar amount goes down. The payments document (X U-24) was used to do my monetary compilations.

The State never made a proposal during the negotiation process regarding this matter. The Union modified their initial proposal (X-U) by putting “in lieu of” and “of Also.”

I note that the NP-1 Unit employees are provided additional meal money when they go beyond 12.5 hours. This is cited in NP-1 Agreement (X J-9) under Article 19, Section 2. That shows a disparity in treatment.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

The Union points out that the Last Best Offers of the State do not address properly the issues before the Arbitrator, and therefore should not be awarded.

**ISSUE U-35 -- TOP STEP ADJUSTMENT
ARTICLE 17, SECTION 11. (A)**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

A. The top step of all pay classifications shall be increased in the following manner.

Rationale U-35

The nexus is that the Union offered this new language as a prelude to Union #36, #37, #38 and #39.

If any one of the aforementioned LBOs (#36, #37, #38 or #39) is awarded, this language would be incorporated into the Successor Agreement.

**ISSUES U-36, 37, 38 and 39 -- TOP STEP ADJUSTMENT
ARTICLE 17, SECTION 11. A. (1) (2) (3) (4)**

Current Contract Language.

No current language.

Last Best Offers of the State.

No new language.

Last Best Offers of the Union.

- (1) Effective and retroactive to the pay period including July 1, 2008, immediately following the application of the General Wage Increase, the top step shall be increased by three percent (3%).
- (2) Effective the pay period including July 1, 2009, immediately following the application of the General Wage Increase, the top step shall be increased by two and a half percent (2.5%).
- (3) Effective the pay period including July 1, 2010, immediately following the application of the General Wage Increase, the top step shall be increased by two percent (2%).
- (4) Effective the pay period including July 1, 2011, immediately following the application of the General Wage Increase, the top step shall be increased by two percent (2%).

Rationale U-36, 37, 38 and 39

The nexus issue is: Should the top step of each pay grade be increased retroactive to July 1, 2008 by 3%; effective the pay period including July 1, 2009 increased by 2.5%; effective the pay period including July 1, 2010 increased by 2%; and effective the pay period including July 1, 2011 increased by 2% immediately following the application of the General Wage Increase.

The Union points to the history of negotiations between the parties over the last 17 years. It is well referenced in this brief under Factor I Union Argument that the NP-4 Unit has lost numerous GWI's and Annual Increments due to the rejection by the Legislature of two NP-4

Agreements. The Union believes that those historical proceedings have caused inequities and deficiencies in the pay grid salaries of NP-4 members. Also, please refer in this brief to Factor I argument.

Under Factor II the Union offers that there are a number of on point comparisons that show that similar groups of employees have received top step bumps or more to raise their pays. The Union points to the DOC Top Steps Document (X U-26). The document shows that DOC manager top step pays were bumped by 20% by the State from Fiscal Year '07 to Fiscal Year '08.

The Union points to the comparison document CO – SPT – Probation (X U-30) and to the comparison document 1981 to 2009 CO – SPT (X U-32). They show a year-by-year comparison that leads a reasonable person to believe that there is a gross pay inequity that has been fostered by the State. I offer that the NP-1 Unit Troopers (State Police) received bumps on their top step pays of approximately \$7,600 in the Rinaldo Interest Arbitration Award (X J-36). For Fiscal Year '05, they received a bump of \$2,700 approximately. I note that they received a 0% GWI in Fiscal Year '05. For Fiscal Year '06, they received a bump of \$3,500 approximately. I note that they received a 3% GWI in Fiscal Year '06 besides the bump. For Fiscal Year '07, they received a bump of \$1,400 approximately. I note that they received a 3% GWI in Fiscal Year '07 besides the bump.

The 3% bump to the top step July 1, 2008 would be less than \$1,600 per person on average; the 2.5% bump to the top step July 1, 2009 would be less than \$1,300 per person on average; the 2% bump to the top step July 1, 2010 would be less than \$1,200 per person on average; and the 2% bump to the top step July 1, 2011 would be less than \$1,200 per person on average.

Also, the Rinaldo Award (X J-36) gave all NP-1 classifications bumps similar to the troopers and in the case of classes other than trooper, there was compression. First Steps were abolished with a new higher first step being implemented. I offer that Arbitrator Rinaldo was correct in fixing the monetary inequities. This Arbitrator should do the same.

The Union points to the Judicial Professional Agreement (X J-35) where the members were given a 1% bump on their top step besides their GWI. Also, please refer in this brief to Factor I Argument(s)

The cost is not prohibitive. It is approximately 4.4 million dollars in 2008, approximately 3.65 million dollars in 2009, approximately 3 million dollars in 2010; and approximately 3.1 million dollars in 2011.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments” for further reasons why the LBOs should be awarded to the Union.

**ISSUE U-40 -- TOP STEP ADJUSTMENT
ARTICLE 17, SECTION 12. A.**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

A. Employees shall receive additional steps as follows:

Rationale U-40

The nexus is that the Union offered this new language as a prelude to Union #41, #42, #43 and #44.

If any one of the aforementioned LBOs (#41, #42, #43 or #44) is awarded, this language would be incorporated into the Successor Agreement.

**ISSUES U-41, 42, 43 and 44 -- ADDITIONAL STEP
ARTICLE 17, SECTION 12. A. (1) (2) (3) (4)**

Current Contract Language.

No current language.

Last Best Offers of the State.

No new language.

Last Best Offers of the Union.

- (1) Effective the last pay period of the first year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than Step Ten (10).
- (2) Effective the last pay period of the second year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than the existing top step.
- (3) Effective the last pay period of the third year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than the existing top step.
- (4) Effective the last pay period of the fourth year of the Agreement, a new additional top step shall be added to the pay plan for each grade. The new top step shall be three percent (3%) greater than the top step.

Rationale U-41, 42, 43 and 44

The nexus issue is: Should a new additional top step 3% greater than the existing top step be added to the pay plan for each grade during Fiscal Years '09, '10, '11 and '12.

The Union points to the history of negotiations between the parties over the last 17 years. It is well referenced in this brief under Factor I Argument that the NP-4 Unit has lost numerous GWI's and numerous Annual Increments due to the rejection by the Legislature of two NP-4 Agreements. The Union believes that those historical proceedings have caused inequities and deficiencies in the pay of NP-4 members. Also, please refer to Factor I Argument in this brief.

Under Factor II the Union offers that there are a number of on point comparisons that show that other State Units have received additional top step(s) since Fiscal Year '02. This was reference by Albert Chiucarello in the New Top Step Document (X U-29). The document shows that the P-3A Unit received a new additional top step 3% above the existing top step on 7/1/06. The document shows that the P-3B Unit received a new additional top step 3% above the existing top step on 7/1/02 and that they received another new additional top step 3% above the existing top step on 7/1/04. The document shows that the P-4 unit received a new additional top step 2.5% above the existing top step on 7/1/02, and that they received another new additional top step 2.5% above the existing top step on 7/1/04.

The document shows that the P-5 Unit will be receiving a new additional top step 3% above the existing top step on 7/1/10. This is on top of the 2.5% lump sum to top step employees. The document shows that the NP-6 Unit received a new additional full top step on 7/1/02, and another new additional full top step on 7/1/04.

The NP-4 Unit has not received new additional steps during the 2000 decade.

Also, I point to the fact that the NP-1 Unit has an eleventh step. In Fiscal Year '07, their eleventh step was almost \$9,000 more than their tenth step. If the NP-4 Unit were to receive an additional eleventh step 3% above the tenth step, the difference would be less than \$1,700 on average. To have a \$9,000 difference between the tenth and eleventh step, the NP-4 Unit would need a new eleventh step that is approximately 17.5% above the existing average tenth step.

The Union is not being unreasonable. I would offer that the cost of a new eleventh step is not prohibitive in that the new eleventh step would cost about 3.2 million dollars in 2008, 3.296 million dollars in 2009, 3.39 million dollars in 2010 and 3.49 million dollars in 2011. Also, please refer in this brief to Factor II Arguments.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments" for further reasons why the LBOs should be awarded to the Union.

**ISSUE U-45 -- LUMP SUM TOP STEP
ARTICLE 17, SECTION 13. A.**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

A. Employees shall receive a lump sum if they are at their top step as follows:

Rationale U-45

The nexus is that the Union offered this new language as a prelude to Union #46, #47, #48 and #49.

If any one of the aforementioned LBOs (#46, #47, #48 or #49) is awarded, this language would be incorporated into the Successor Agreement.

**ISSUES U-46, 47, 48 and 49 -- LUMP SUM TOP STEP EMPLOYEES
ARTICLE 17, SECTION 13. A. 1, 2, 3, 4**

Current Contract Language.

No current language.

Last Best Offers of the State.

Section 2. Annual Increments.

1. Annual increments for 2008-2009 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.
1. Annual increments for 2009-2010 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.
1. Annual increments for 2010-2011 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.
1. Annual increments for 2011-2012 shall be delayed six months. Employees at the top step of the pay scale shall receive a \$750 lump sum payment.

Last Best Offers of the Union.

Commencing and retroactive the first year of this Agreement (July 1, 2008 to June 30, 2009), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

Commencing and retroactive the second year of this Agreement (July 1, 2009 to June 30, 2010), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

Commencing and retroactive the third year of this Agreement (July 1, 2010 to June 30, 2011), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

Commencing and retroactive the fourth year of this Agreement (July 1, 2011 to June 30, 2012), employees at their maximum step of their pay plan who are not eligible for an annual increment shall be paid a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. Payments shall be made at the time the employee would have received an annual increment (July or January).

Rationale U-46, 47, 48 and 49

The nexus issue is: How much of a lump sum payment should employees at their maximum step of their pay plan who are not eligible for an annual increment be paid for year one, two, three and four of the Successor Agreement.

The Union offers that the State LBOs are defective in that part of their LBO language “Annual increments for 2008-2009 shall be delayed six months,” “Annual increments for 2009-2010 shall be delayed six months, “Annual increments for 2010-2011 shall be delayed six months, and “Annual increments for 2011-2012 shall be delayed six months goes beyond the Union initial proposal on this issue. The Union language was specific to the amount of the lump sum and when the lump sum would be paid. The Union does not view the lump sum as an increment. Due to the aforementioned, the LBOs should be awarded to the Union..

Also, the Union contends that there is a difference in the amount the State LBO offers, which is \$750, and the Union LBO that calls for a lump sum payment equal to two and a half percent (2.5%) of their annual base salary. The difference is approximately \$583 in the first year, approximately \$600 in the second year, \$618 in the third year and \$640 in the fourth year of this Agreement per person at the top step. The dollar difference between the parties year 1 is 1.6 million dollars, year 2 difference is 1.65 million dollars; year 3 difference is 1.7 million dollars; and year 4 difference is 1.76 million dollars.

Albert Chiucarello testified that other Units had received lump sum payments of 2.5%. This is shown in the Lump Sums Analysis Document (X U-27). The document shows that the NP-2 Unit, P-4 Unit, NP-8 Unit and the P-5 Unit received 2.5% lump sum payments at different times. The P-5 Unit received the 2.5% lump sum payment for top step employees during the Fiscal Years '08, '09, '10 and '11. I offer that the P-5 salaries are much higher than the NP-4 salaries. Also, the P-5 Unit will receive a new top step that is 3% above their old top step on July 1, 2010. That in itself leads me to conclude that NP-4 Union LBOs should be awarded in that they are not unreasonable. The difference in sustaining the Union LBOs is not unreasonable when we look at the other State Units.

Also, I refer Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments” for further reasons why the LBOs should be awarded to the Union.

The Union points out that the Last Best Offers of the State do not address properly the issues before the Arbitrator, and therefore should not be awarded.

**ISSUE U-50 -- REVISED PAY PLAN
ARTICLE 17, SECTION 14. A.**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

A. Employees shall receive revised pay plan rates as follows:

Rationale U-50

The nexus is that the Union offered this new language as a prelude to Union #51, #52, #53 and #54.

If any one of the aforementioned LBOs (#51, #52, #53 or #54) is awarded, this language would be incorporated into the Successor Agreement.

**ISSUES U-51, 52, 53 and 54 -- REVISED PAY PLAN
ARTICLE 17, SECTION 14. A. (1) (2) (3) (4)**

Current Contract Language.

No current language.

Last Best Offers of the State.

No new language.

Last Best Offers of the Union.

- (1) Effective and retroactive to the pay period including July 1, 2008, each step of each NP-4 pay grade shall be increased by \$1,000 prior to the 2008-2009 GWI being implemented.
- (2) Effective the pay period including July 1, 2009, the top three steps of each NP-4 pay grade shall be increased by \$1,000 prior to the 2009-2010 GWI being implemented.
- (3) Effective the pay period including July 1, 2010, the top three steps of each NP-4 pay grade shall be increased by \$2,000 prior to the 2010-2011 GWI being implemented.
- (4) Effective the pay period including July 1, 2011, the top three steps of each NP-4 pay grade shall be increased by \$2,000 prior to the 2011-2012 GWI being implemented.

Rationale U-51, 52, 53 and 54

The nexus issues are: Should retroactive to the pay period including July 1, 2008 each step of each NP-4 pay grade be increased by \$1,000 prior to the 2008-2009 GWI being implemented. Should the top 3 steps of each NP-4 pay grade be increased by \$1,000 prior to the 2009-2010 GWI being implemented. Should the top 3 steps of each NP-4 pay grade be increased by \$2,000 prior to the 2010-2011 GWI being implemented. Should the top 3 steps of each NP-4 pay grade be increased by \$2,000 prior to the 2011-2012 GWI being implemented.

The Union points to the history of negotiations between the parties over the last 17 years.

It is well referenced in this brief under Factor I Union Argument that the NP-4 Unit has lost numerous GWI's and Annual Increments due to the rejection by the Legislature of two NP-4 Agreements. The Union believes that those historical proceedings have caused inequities and deficiencies in the pay grids salaries of the NP-4 employees. Also, please refer in this brief to Factor I Argument.

Under Factor II the Union offers that there are a number of on point comparisons that show that similar groups of employees have received pay plans that were beneficial to their interests financially.

The Union points to the NP-1 Unit, the Judicial Professional Unit and the DOC Managers.

The DOC Managers in certain classifications received 20% increases in their pay plans between Fiscal Year '07 to Fiscal Year '08. This was shown by the Union in their DOC Top Step Document (X U-26). The Judicial Professional Unit Employees received a revised pay plan in their Agreement (X J-35). The revised plan gave them 1% more on their top step. The NP-1 Unit employees (State Police) received a revised pay plan from Arbitrator Rinaldo in his Interest Arbitration Award (X J-36). I ask Mr. Arbitrator to refer to Union Issue #36 Rationale that addresses the NP-1 revised pay plan. Also, in the brief please refer to Factor II Argument.

The cost is not prohibitive. The cost July 1, 2008 is \$5.259 million dollars, July 1, 2009 is \$3.182 million dollars, July 1, 2010 is \$6.364 million dollars, and July 1, 2011 is \$6.364 million dollars when we utilize the NP-4 Spreadsheet Base Document (X U-31).

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments" for further reasons why the LBOs should be awarded to the Union.

**ISSUE U-55 -- COMPENSATION RESPONSE DEVICE
ARTICLE 17, SECTION 15**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

Effective the pay period including July 1, 2009, employees carrying a state issued response device during off-duty hours will be compensated at the rate of fifty dollars (\$50.00) per pay period.

Rationale U-55

The nexus issue is: Should NP-4 members carrying a State issued response device during off-duty hours be compensated at the rate of \$50 per pay period effective July 1, 2009.

The Union LBO and the State LBO are diametrically opposite. The Union LBO takes into consideration the fact that a number of NP-4 members are required by DOC to carry response devices 24/7.

CO Frank Collier testified that NP-4 CERT members, NP-4 SOG members, NP-4 K-9 members and Parole Officers do carry response devices during off hours 24/7. He testified that they receive no compensation for such.

Michael Messina testified that Correction Officers in other states do receive response compensation. This is illustrated in the Standby Pay Document (X U-19)

Albert Chiucarello testified that in Connecticut a number of the State Units have contractual language whereby they are compensated for carrying a State issued response device Document Standby/Response Device (X U-22).

The aforementioned illustrates that others in and out of State are monetarily compensated.

Also, I note that the State has LBO #A 13 S whereby Maintenance employees would receive On-call/Standby Pay. Their LBO calls for an employee to receive \$100 per week maximum.

The Union LBO #55 is for \$25 per week. This illustrates that the State has the ability to pay for Union LBO #55.

The Union does not believe that any employee should work without monetary compensation.

The cost is not prohibitive. Management determines who will carry the State issued response device.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE U-56 -- VACATION
ARTICLE 25, SECTION 1. (a)**

Current Contract Language.

No current language.

Last Best Offer of the State.

Retain current language as follows:

Section 1. Schedule. Employees who were hired prior to July 1, 1997 shall continue to accrue vacation at the rate of one and one-quarter (1-1/4) days per month, except that employees who have completed twenty (20) years of service shall earn paid vacation at the rate of one and two-thirds (1-2/3) work days for each calendar month of service. For employees who were hired on or after July 1, 1977, the following vacation leave shall apply:

Years of Service	Vacation
Zero (0) to five (5) years	One (1) day per month
Over five (5) and under twenty (20) years	One and one-quarter (1-1/4) days per month
Twenty (20) or more years	One and two-thirds (1-2/3) days per month

Last Best Offer of the Union.

(a) The following vacation leave shall apply for all NP-4 members vacation accruals:

Effective July 1, 2009, employees shall be entitled to:

YEARS OF SERVICE VACATION

Zero (0) to five (5) years: One (1) day per month.

Over five (5) and under sixteen (16) years: One and a quarter (1.25) days per month.

16 years:	16 days
17 years:	17 days
18 years:	18 days
19 years:	19 days
20 years:	20 days
21 years:	21 days
22 years:	22 days
23 years:	23 days
24 years:	24 days
25 years:	25 days

Vacation leave beyond fifteen (15) days is granted as bonus day(s) each January 1st of the calendar year.

RATIONALE U-56

The nexus issue is: Should the NP-4 Vacation Accrual methodology change when a member has 16, 17, 18, 19, 21, 22, 23, 24 or 25 years.

A review of the NP-8 Unit contract (X J-14) Article 33, Section 1 shows that DOC State employees do have a vacation accrual methodology that is much more beneficial for employees in the NP-8 Unit as of December 3, 2001. Union LBO #56 would benefit employees with 16 or more years of service. The NP-4 member receiving a benefit by Union LBO #56 would have been in the NP-4 Unit prior to 1992. Also, DOC managers have a vacation accrual methodology similar to the NP-8 Unit.

Mike Messina testified that the NP-4 vacation accruals were substandard to other Correctional employees in Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont.

The Union offered a Vacation Accrual document (X U-18). The document shows that after 10 years, all are getting more vacation time than Connecticut and that after 20 years Connecticut is not competitive.

The Union offers that the State does have the ability to pay in that there is no cost to the State. Dan Callahan testified that the DOC vacancy rate was at about 2%. With a 98% staffing rate, DOC should have more than enough staff available to fill the posts without a cost to the Agency.

The Union offered testimony and/or exhibits through numerous parties that included Professor Stodder, Dr. Prino, Michael Messina, Larry Tyler, James Zuccalo, Luke Leone, Jon Pepe, Steven Curran and Albert Chiucarello that NP-4 members' jobs are highly stressful. Commissioner Lantz testified before the Legislature at an Appropriations Hearing (X U-35) and at another Legislative Hearing (X U-38 and X U-38A) about the dedication and hard work exemplified by Correction Officers. She alluded to the fact that during these trying times the NP-4 staff were working at a capacity beyond what she ever expected. The Prino Report (X U-39) details the stressors of the NP-4 employee and the effects of such.

The Stodder Document (X U-34) concludes that the levels of stress for the Correction Officer is very high.

The Union concludes that more vacation time off would lead to more positive time off for NP-4 members. More time off would help NP-4 members in relieving the stress of the job to some extent. This is a start.

The Union points out that the Last Best Offer of the State doesn't address properly the issue before the Arbitrator, and therefore should not be awarded.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments." The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE U-57 -- DRY CLEANING DELETION AND
STIPEND APPEARANCE/CLEANING
ARTICLE 27, SECTION 3. B. AND ARTICLE 27, SECTION 6**

Current Contract Language.

Article 27, Section 3, B.

B. Uniformed Personnel. The Department of Correction shall provide uniforms in accordance with Appendix E, "Uniform Specification and Allotment," except that the Commissioner of Correction may change the color and style of the uniform upon notice to the Union. Uniform items which require dry cleaning shall be maintained by the Department through a designated vendor. A limit of three (3) pairs of uniform pants per week and one (1) Department issued winter coat per year, shall be maintained by the Department. Uniforms shall only be worn as provided in this Directive. No portion of a uniform shall be worn with any other clothing not authorized herein. Uniforms shall not be worn while off duty except as necessary to travel to and from the employee's worksite, fulfill family responsibilities, or while volunteering and officially representing the Department of Correction. The consumption of alcohol while in uniform is strictly prohibited.

Article 27, Section 6

No existing language.

Last Best Offer of the State.

Retain Current Language as follows:

B. Uniformed Personnel. The Department of Correction shall provide uniforms in accordance with Appendix E, "Uniform Specification and Allotment," except that the Commissioner of Correction may change the color and style of the uniform upon notice to the Union. Uniform items which require dry cleaning shall be maintained by the Department through a designated vendor. A limit of three (3) pairs of uniform pants per week and one (1) Department issued winter coat per year, shall be maintained by the Department. Uniforms shall only be worn as provided in this Directive. No portion of a uniform shall be worn with any other clothing not authorized herein. Uniforms shall not be worn while off duty except as necessary to travel to and from the employee's worksite, fulfill family responsibilities, or while volunteering and officially representing the Department of Correction. The consumption of alcohol while in uniform is strictly prohibited.

No New Section 6 providing for a stipend to wear clean clothes.

Last Best Offer of the Union.

- B. Uniformed Personnel.** Effective the pay period including July 1, 2009, the Department of Correction shall provide uniforms in accordance with Appendix E, “Uniform Specification and Allotment,” except that the Commissioner of Correction may change the color and style of the uniform upon notice to the Union. Uniforms shall only be worn as provided in this Directive. No portion of a uniform shall be worn with any other clothing not authorized herein. Uniforms shall not be worn while off duty except as necessary to travel to and from the employee’s worksite, fulfill family responsibilities, or while volunteering and officially representing the Department of Correction. The consumption of alcohol while in uniform is strictly prohibited.
6. Stipend. Effective the pay period including July 1, 2009 and annually thereafter, in lieu of the request for dry cleaning, NP-4 members shall receive a stipend of six hundred dollars (\$600.00) to maintain personal appearance and to clean their work clothing.

Rationale U-57

The nexus issue is that the NP-4 Contract language under Article 27, Section 3, B. will be changed. The language “Uniform items which require dry cleaning shall be maintained by the Department through a designated vendor. A limit of three (3) pairs of uniform pants per week and one (1) Department issued winter coat per year, shall be maintained by the Department” shall be deleted if the following, “6. Stipend. Effective the pay period including July 1, 2009 and annually thereafter, in lieu of the request for dry cleaning, NP-4 members shall receive a stipend of six hundred dollars (\$600) to maintain personal appearance and to clean their work clothing” is awarded.

The Union LBO anticipates that the State will be saving money with the deletion proposed under Article 27, Section 3, B. The State will no longer have to pay for the dry cleaning of certain items of clothing apparel. This portion is a this for a that, financially. The Union points to the language under Union LBO #57 which is “to maintain personal appearance and to clean their work clothing.” I point to the existing NP-4 Agreement (X J-1). Specifically Article 27, Sections 1, 3, 3 B.1, 4, 4 B (1, 2, 3, 4) of the Agreement call for personnel to maintain a neat and clean appearance while on duty/or in uniform. There are financial costs to maintain the appearance that DOC calls for under Article 27 of the Agreement.

The cost is not prohibitive if we deduct the present DOC expenditures incurred under Article 27, Section 3, B. from the 3.1 million dollars that it would cost.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE U-58 -- PAID LEAVE DRILLS
ARTICLE 28, SECTION 1. (A.)**

Current Contract Language.

No current language.

Last Best Offer of the State.

Retain current language as follows:

Section 1. Paid Leave for Drills, Emergencies. A full-time permanent employee who is a member of the armed forces of the State or any reserve component of the armed forces of the United States shall be entitled to military leave with pay for required field training, provided such leave does not exceed two (2) calendar weeks in a calendar year, in addition to up to seven (7) days of military leave for weekend drills. Additionally, any such employee who is ordered to active duty as a result of an unscheduled emergency (natural disaster or civil disorder) shall be entitled to military leave with pay not to exceed thirty (30) calendar days in a calendar year. During such leave the employee's position shall be held, and the employee shall be credited with such time for seniority purposes.

Last Best Offer of the Union.

1. A. Effective July 1, 2009, a full-time permanent employee who is a member of the Armed Forces of the State or any reserve component of the Armed Forces of the United States shall be entitled to military leave with pay for required field training, provided such leave does not exceed two (2) calendar weeks in a calendar year, in addition to up to fourteen (14) days of military leave for weekend drills. Additionally, any such employee who is ordered to active duty as a result of an unscheduled emergency (natural disaster or civil disorder) shall be entitled to military leave with pay not to exceed thirty (30) calendar days in a calendar year. During such leave the employee's position shall be held, and the employee shall be credited with such time for seniority purposes.

Rationale U-58

The nexus issue is: Whether there should be up to 7 or up to 14 days of military leave for weekend drills.

The main Union argument is that reserve duty military personnel go to weekend drills each month for a minimum of two days and sometimes for three days. This was testified to by

CO Fred Bogalhas, CO Steve Curran, CO Justin Anderson and Retiree Gene Tewksbury. Their testimony included that they were on weekend drills a minimum of 24 days per year. That due to their 5/3 work schedule seven paid weekend drill days is an insufficient allotment of days each year. They offered that in some instances they did use some accrual time other than sick leave to be paid but there were instances where they took a military leave authorized without pay for a day or days. For the without pay day, there are negative impacts. Specifically, no DOC pay equals no pension credit for the day. The day has to be made up for pension purposes.

The Union offers that NP-4 employees attending military weekend drills should have any and all days paid as worked. These employees are serving their country by being highly trained. The weekend drills are being done by employees on reserve duty. The weekend training insures that if activated they are prepared to go into combat. The weekend training is not something that is optional.

The Union offers that the difference between 14 days and 7 days is not a monetary deal breaker for the State. The State offered a number of documents (X S-16, S-17 and S-18) that showed financial enhancements that the State gave to activated State employees. The time is right for non-activated NP-4 members to be taken care of regarding paid weekend drills. The Union LBO #58 goes a long way to righting a wrong.

I would offer that the language pertaining to the number of days is preceded by the words, "up to," which is important. The Union contends that there will be times when the employee does not use the 14-days for weekend drills due to the nuances of their 5/3 schedule. The State offered testimony that was not on point. During cross examination, through their witness, Susan Smedes, they attempted to paint a picture that an employee could purchase his or her lost time if it was lost time due to weekend drills. During cross examination, that was shown to be not accurate.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments." The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

The Union points out that the Last Best Offer of the State doesn't address properly the issues before the Arbitrator, and therefore should not be awarded.

ISSUES U-59, 60 and 61 -- TUITION FUND AMOUNT
ARTICLE 33, SECTION 2. A., 2.B. and 2.C., 1 and 2

Current Contract Language.

No current language.

Last Best Offer of the State.

Section 2. Fund Amount. Effective July 1, 2008, there shall be \$80,000 appropriated for each year of this Agreement for the purpose of tuition reimbursement. Funds committed for reimbursement in one fiscal year shall carry over into the next fiscal year in order to allow payment of tuition reimbursement claims for prior year courses.

Last Best Offers of the Union.

- 2.A. Effective July 1, 2008 there shall be \$75,000 appropriated for the purpose of tuition reimbursement.
- 2.B. Effective July 1, 2009, there shall be \$75,000 appropriated for the purpose of tuition reimbursement.
- 2.C.1. Effective July 1, 2010, there shall be \$85,000 appropriated for the purpose of tuition reimbursement.
- 2. Effective July 1, 2011, there shall be \$90,000 appropriated for the purpose of tuition reimbursement.

Rationale U-59, 60 and 61

The nexus issue(s) are: How much money should be appropriated for the purpose of tuition reimbursement each year of the Agreement.

The State proposes that the tuition reimbursement appropriation be \$80,000 each year of the Agreement.

The Union proposes that effective July 1, 2008 and July 1, 2009 that the tuition reimbursement appropriation be \$75,000 for each year.

The Union proposes that in the third year effective July 1, 2010 that the tuition reimbursement appropriation be \$85,000, and that in the fourth year effective July 1, 2011 that the tuition reimbursement appropriation be \$90,000.

The difference monetarily is minimal. The total cost for a 3-year Agreement is \$235,000 for the Union, and \$240,000 for the State. The total cost for a 4-year Agreement is \$325,000 for the Union, and \$320,000 for the State. The totals are not very different.

An annual review shows that the first and second year totals are not dissimilar, with the State proposing a total cost of \$160,000, and the Union proposing a total cost of \$150,000.

In the third year of the Agreement, the Union proposes \$85,000 and the State proposes \$80,000. Again, there is not a major difference in the dollar amounts.

In the fourth year of the Agreement the Union proposes \$90,000, and the State proposes \$80,000. There is a \$10,000 difference.

The Union predicated their dollar amounts in the third and fourth year of the Agreement to the fact that the per credit reimbursement amounts were raised by 50% by the parties during negotiations for this successor agreement. The NP-4 Agreement (X J-1) called for a tuition reimbursement appropriation of \$60,000 effective July 1, 2007. The Union rationale was to backload due to the fact that the parties agreed to a 50% higher per credit reimbursement. Once more employees are aware of this factor, the funds would, based on this equation, expire much more rapidly.

Albert Chiucarello testified that other State units received allocations far greater if we look at the issue with the number of employees versus the allocation of funds. The Tuition Funds document (X U-33) was offered and it shows the disparity. NP-4 has 5,249 employees with \$60,000 allocated. The NP-4 allocation is the second lowest on a pro rata basis.

The Union points out that the Last Best Offer of the State doesn't address properly the issue before the Arbitrator, and therefore should not be awarded.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments." The Union has offered under the statutory guideline criteria factors reasoning as to why the LBOs should be awarded to the Union..

**ISSUE U-62 -- TUITION ROLLOVER SUCCESSOR AGREEMENT
ARTICLE 33, SECTION 2. D.**

Current Contract Language.

No current language.

Last Best Offer of the State.

This is a non-mandatory subject of bargaining. Union must withdraw.

Last Best Offer of the Union.

2. (D) Tuition funds not expended during the life of this Agreement shall roll over into the successor to this Agreement under the provisions of this Article.

Rationale U-62

The nexus issue is: Should tuition funds not expended during the life of this Agreement roll over into the Successor to this Agreement.

The Union postulates that the unexpended funds should rollover into the Successor to this Agreement in that the funds are allocated each year. The parties agree that the unexpended funds do rollover during a four year Agreement from year one to year two, year two to year three and year three to year four. The Union LBO would roll over the unexpended funds from the last year of this Successor Agreement to the first year of its Successor Agreement. If it is a three year Agreement, the rollover would take place in July of 2011. It would only happen once in 2011.

Albert Chiucarello testified that the Union anticipated more people taking advantage of the Tuition Reimbursement Funds. He testified that the parties had agreed to up the per credit reimbursements by 50%. If we add together those two components, it is likely that there will not be enough money in the Tuition Reimbursement Fund on July 1, 2011 without this rollover.

The Union concludes that the money has been allocated and that the State is taking an unreasonable position if we look at the Tuition Funds Document (X U-33). The NP-4 pro rata dollar to employee ratios are much lower than 90% of the Units on the Tuition Funds Document. The Union postulates that there is no additional cost to the State.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

The Union points out that the Last Best Offer of the State doesn’t address properly the issue before the Arbitrator, and therefore should not be awarded.

**ISSUE U-63 -- MEAL MONEY PAROLE SERIES EMPLOYEES
ARTICLE 35, SECTION 15**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

Effective the pay period including July 1, 2009, NP-4 members working in the classification of Parole Officer II, Parole Officer I, Parole Officer Trainee and Parole Officer Aide shall receive the meal reimbursement for each shift worked at the rate cited under Article 17 of the NP-4 Agreement.

Rationale U-63

The nexus issue is: Should NP-4 members working in the classifications of Parole Officer I, Parole Officer II, Parole Officer Trainee and Parole Officer Aide receive the meal reimbursement for each shift worked at the rate cited under Article 17 of the NP-4 Agreement.

The Union offered the testimony of Parole Officer II John Duca. He testified Parole Officers work an eight and a half hour day. He considers his half hour lunch period to be unpaid in that there is no time to do such. He testified that most of a Parole Officer's times are spent in the field. He testified that the pager and cell phone are on and that they have to respond at all times. He testified that Parole Officers are interviewing, transporting and managing paroled inmates.

The Union refers to the fact that employees who transport inmates or parolees outside of the institution receive the same meal reimbursement as if they were working inside the institution under Article 17, Section 9, F. of the NP-4 Agreement (X J-1)

The Union contends that the Parole Officer employees should receive the meal reimbursement in that their work responsibilities are not different than other NP-4 members. Also, Parole Officer Duca made it crystal clear that he works and responds during his purported lunch break in and out of the office. The cost is not prohibitive.

Albert Chiucarello testified that there are approximately 100 Parole Officers at the present rate of \$8.00 the cost would be approximately \$190,000 per annum.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

The Union points out that the Last Best Offer of the State doesn’t address properly the issue before the Arbitrator, and therefore should not be awarded.

**ISSUE U-64 -- MEAL MONEY COUNSELOR COMMUNITY SERVICES
ARTICLE 35, SECTION 15**

Current Contract Language.

No current language.

Last Best Offer of the State.

No new language.

Last Best Offer of the Union.

Effective the pay period including July 1, 2009, Counselors working in Community Service shall receive the meal reimbursement for each shift worked at the rate cited under Article 17 of the NP-4 Agreement.

Rationale U-64

The nexus issue is: Should NP-4 members working as Counselors in Community Service receive the meal reimbursement for each shift worked at the rate cited under Article 17 of the NP-4 Agreement.

The Union contends that the provisions of the Contract should be applicable for all members of the NP-4 Unit.

The cost is not prohibitive. There are not many of the aforementioned employees within the NP-4 Unit. All employees of the NP-4 should be equally compensated.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments." The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

The Union points out that the Last Best Offer of the State doesn't address properly the issue before the Arbitrator, and therefore should not be awarded.

**ISSUE U-65 -- PAROLE PAGERS
APPENDIX D, SECTION 1) A.**

Current Contract Language.

No current language.

Last Best Offer of the State.

Retain Current Language as follows:

PAROLE - PAGERS

- 1) When a Parole Officer is paged during their non-work hours by a Parole Supervisor or by the answering service, the Officer shall be eligible for one (1) hour of callback compensatory time if required to make phone calls/faxes;
- 2) If the Parole Officer is paged during their non-work hours by a Parole Supervisor or by the answering service, the Officer shall be eligible for a minimum four (4) hours of callback compensatory time if required to take further action such as picking up a parolee, going to a police station or going to court;
- 3) Should a Parole Officer be paged during their non-work hours by a Parole Supervisor or by the answering service on a State holiday, Article 21 "Holidays," shall apply for the accrual of callback compensatory time. This shall not be used for the purpose of earning any additional pay;
- 4) The Board shall continue its practice of providing tinted windows for cars that have cages as long as DAS Fleet Services permits.

Last Best Offer of the Union.

- 1) A. Effective the pay period including July 1, 2009, the compensation rate shall be set at one and a half (1.5) hours of compensatory time.

Rationale U-65

The nexus issue is: Should the amount of compensatory time be 1 or 1.5 hours of compensatory time under Appendix D, Section 1) A. effective July 1, 2009.

The Union offered the testimony of Parole Officer John Duca. He testified that one hour of compensatory time was insufficient if he was paged and had to make phone calls or send faxes.

He testified that within the last year the dynamics have changed regarding what a Parole Officer has to do when responding to a call during off duty hours. The average time is one hour in general for responding to the page inquiry, if we have the best case scenario. He testified that there are occasions when the Parole Officer is not home. The Officer has to go home from where they are and respond immediately. He testified that they are driving their own vehicle home. All of this takes time and money.

The Union concludes that due to the aforementioned, it is not unreasonable for the one hour to be changed to 1.5 hours. These employees work a forty hour workweek. Mr. Duca testified that the normal time needed to respond is approximately one hour during the best case scenario. The one hour of work should be paid at time and a half. Thus, the 1.5 hours is reasonable. The worst case scenario is when the Parole Officer is not at their residence and they have to go home to respond properly. This could take more than an hour. Again, 1.5 hours of compensatory time is more reasonable than the 1 hour. There is no cost to the Agency in that the Parole Officers are not receiving a cash reimbursement. Also, I point to the fact that the Union LBO would not be implemented until July 1, 2009.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

The Union points out that the Last Best Offer of the State doesn’t address properly the issue before the Arbitrator, and therefore should not be awarded.

**ISSUE U-66 -- DURATION
ARTICLE 38, SECTION 1**

Current Contract Language.

Section 1. Effective Date. Although this Agreement covers the period July 1, 2004 to June 30, 2008, the provisions contained herein shall not be effective until legislative action under the State Employees Relations Act, unless a specific provision is stated to the contrary.

Last Best Offer of the State.

Section 1. Effective Date. Although this Agreement covers the period July 1, 2008 to June 30, 2011, the provisions contained herein shall not be effective until legislative action under the State Employees Relations Act, unless a specific provision is stated to the contrary.

Last Best Offer of the Union.

Section 1. Effective Date. Although this Agreement covers the period July 1, 2008 to June 30, 2012, the provisions contained herein shall not be effective until legislative action under the State Employees Relations Act, unless a specific provision is stated to the contrary.

Rationale U-66

The nexus issue is: Will the duration of the Successor Agreement be 3 years as proposed by the State or 4 years as proposed by the Union.

The Union LBO has merit in that the Successor Agreement will not be implemented in July of 2008. In fact, the Successor Agreement will most likely be implemented during April or May of 2009.

A 3 year Agreement retroactive to July of 2008 and up to June 30, 2011 is problematic. The parties will be back in negotiation for a Successor Agreement in August or September of 2010.

If Union LBO #66 is awarded, the duration will be 4 years for the Agreement and the parties will return to negotiations for a Successor Agreement in August or September of 2011.

One of the problems with a 3 year Agreement is that the parties will not have an opportunity to work with the Successor Agreement for any duration of time before they are back in negotiations. Also, the State will have an opportunity with a four year Successor Agreement to plan ahead fiduciarly. The Union contends that Union LBO #66 is more reasonable.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE U-67 -- LONGEVITY SCHEDULE
APPENDIX B (1)**

Current Contract Language.

No current language.

Last Best Offer of the State.

State's Last Best Offer:

Appendix B

Longevity Semi-Annual Payment

Collective Bargaining Unit Np-4

Effective July 1, 2008 Through June 30, 2011

Salary Group	10 Years	15 Years	20 Years	25 Years
CO-1	\$75.00	\$150.00	\$225.00	\$300.00
CO-2	75.25	150.50	225.75	301.00
CO-3	92.00	184.00	276.00	368.00
CO-4	94.75	189.50	284.25	379.00
CO-5	97.50	195.00	292.50	390.00
CO-6	100.50	201.00	301.50	402.00
CO-7	103.25	206.50	309.75	413.00
CO-8	106.00	212.00	318.00	424.00
CO-9	109.00	218.00	327.00	436.00
CO-10	111.75	223.50	335.25	447.00
CO-11	114.75	229.50	344.25	459.00
CO-12	117.50	235.00	352.50	470.00
CO-16	141.50	283.00	424.50	566.00

Last Best Offer of the Union.

APPENDIX B (1)

LONGEVITY SEMI-ANNUAL PAYMENT

EFFECTIVE JULY 1, 2009 AND ANNUALLY THEREAFTER

SALARY GROUP	10 YEARS	15 YEARS	20 YEARS	25 YEARS
CO 1	225.00	450.00	675.00	900.00
CO 2	225.75	451.50	677.25	903.00
CO 3	276.00	552.00	828.00	1,104.00
CO 4	284.25	568.50	852.75	1,137.00
CO 5	292.50	585.00	877.50	1,170.00
CO 6	301.50	603.00	904.50	1,206.00
CO 7	309.75	619.50	929.25	1,239.00
CO 8	318.00	636.00	954.00	1,272.00
CO 9	327.00	654.00	981.00	1,308.00
CO 10	335.25	670.50	1,005.75	1,341.00
CO 11	344.25	688.50	1,032.75	1,377.00
CO 12	352.50	705.00	1,057.50	1,410.00
CO 13	370.50	741.00	1,111.50	1,482.00
CO 14	388.50	777.00	1,165.50	1,554.00
CO 15	406.50	813.00	1,219.50	1,626.00
CO 16	424.50	849.00	1,273.50	1,698.00

Rationale U-67

The nexus issue is: Should the longevity pay schedule stay the same as the previous NP-4 Agreement or should the Union LBO that implements a sound and rational scale be awarded.

The issue of the longevity pay schedule was addressed by the Union during Interest Arbitration. The Union witnesses (Barselau, Demiraj, Chiucarello, etc.) conveyed that this was one of the top issues for the NP-4 members. The Union established that the Longevity Semi-Annual Payment Schedule has not changed since 1977.

The Union established through the testimony of Michael Messina that the NP-4 longevity annual payment rates for CO's are well behind when we look at his Annual Longevity Payment document (X U-17).

Albert Chiucarello established that the CPI Inflation Calculations shows that a \$100 in 1977 has the same buying power in 2008 if you have \$349.33 to spend in 2008. The Union established through their Document(s) (U-21) that the rates are the same as in 1977 and what amount of dollars would be needed today to keep inflationary parity. An example would be that CO 7 at the ten year level receives semi-annually \$103.25 today as they did in 1977. If the \$103.25 dollar amount had kept pace with inflation since 1977 to 2008 the CO 7 dollar amount would be \$360.68. I note that if Union LBO #67 is awarded, NP-4 members would still be behind the inflationary dollar worth from 1977.

The Union established that Correctional Lieutenants and Correctional Training Officers in the NP-8 Unit on or before December 3, 2001 are eligible and receive their longevity payments in accordance with the longevity schedule of the classified service Management Pay Plan per the NP-8 Agreement (X J-14). The aforementioned illustrates that there are Bargaining Unit members receiving a Longevity Pay Plan other than the 1977 Longevity Pay Plan.

The Union established through the Blue Book (X J-45) that percentage increases were implemented previously. This illustrates that the dollar amount(s) should not have stayed fixed from 1977 to the present.

The cost if the Union LBO is awarded is not prohibitive. Payments document (X U-24) leads to a conclusion that the NP-4 longevity payments would go from approximately one million dollars to approximately three million dollars per year for over 5,000 employees.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments." The Union has offered under each of the seven statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

Also, the Union contends that for argument purposes that the State LBO is defective in that it is not on point with the Union issue. This was a Union proposal and this was encapsulated as an addendum effective July 1, 2009 to the existing language regarding the Longevity Payment Schedule. The Union points to the Union Proposal Arbitration #67 under the Union Submissions document (J-2). It is evident that the State LBO is defective.

The Union points out that the Last Best Offer of the State doesn't address properly the issue before the Arbitrator, and therefore should not be awarded.

**ISSUE A I S -- TRANSFER LIST EMPLOYEES ON W.C.
ARTICLE 10, SECTION 2, C, (1)**

Current Contract Language.

C. (1) Transfer List. As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated quarterly.

Last Best Offer of the State.

Section 2 (C) 1

(1) Transfer List. As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision, but only if the anticipated return to work date is within ninety (90) calendar days of the date of transfer. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. [Such list will be updated quarterly. (This language subject to proposal A2S below.)]

Last Best Offer of the Union.

C. (1) Transfer List. As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated quarterly.

Rationale A 1 S

The nexus issue is: Should an employee on Workers' Compensation leave be eligible to transfer only if his/her anticipated return to work date is within ninety (90) calendar days of the date of transfer.

The history of this issue is that the Union proposed and had language added for employees on Workers' Compensation to transfer from facility to facility during the 2001-2004 Agreement (X J-20) negotiations. The language of the NP-4 Agreement (X J-1) stayed status quo regarding transfers for employees on Workers' Compensation. From 2001 to 2008 NP-4 members on Workers' Compensation leave were allowed to transfer from facility to facility under all sets of circumstances. There were no bars to such.

The State offered the testimony of Dan Callahan as to why the State needed the new language. He testified that NP-4 members were at times out for long durations of time on Workers' Compensation. He offered that it caused problems regarding staffing at facilities. During cross, he testified that DOC had a 2% vacancy rate. During cross he testified that NP-4 members were at times out for long durations of more than 90 days on sick leave, leave of absences due to medical or personal reasons, paid leave for an investigation and military leave. He testified that they were allowed to transfer under the aforementioned circumstances. He testified that the State LBO #A 1 S would prohibit only NP-4 members out on Workers' Compensation from transferring if they didn't have an anticipated return to work date within 90 calendar days of the date of the transfer. His testimony was not compelling. He offered no substantive numbers depicting the number of times DOC encountered problems due to NP-4 members being transferred while they were out on Workers' Compensation leave.

The Union offered the testimony of Jim Zuccalo. He testified that he represented NP-4 members regarding Workers' Compensation matters. He offered that he had been injured on the job and he had been out for six months on Workers' Compensation. He testified that, "My injury: I was stabbed 7 times helping in rescuing two officers in the chow hall, and to be out for that length of time and be told that I'm being punished or having a privilege taken away that I've earned just because I saved two people's lives and was injured on the job, it would not sit well with me." His testimony offered the fact that by and large the State language would punish employees out on Workers' Compensation for doing their job in the right manner. The Union agrees that NP-4 members should not be punished by and through this State LBO. CO Zuccalo testified that he had addressed this issue with other NP-4 employees. Employees felt that the State proposal was a form of punishment.

The State did not offer testimony showing that there was or is a financial impact.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as "The Factor Arguments." The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE A 2 S -- TRANSFERS DONE TRI-ANNUALLY
ARTICLE 10, SECTION 2, C, (1)**

Current Contract Language.

C. (1) Transfer List. As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated quarterly.

Last Best Offer of the State.

**Seniority
Section 2 (C) 1**

(1) Transfer List. As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. [An employee on Workers' Compensation leave will be eligible to transfer under this provision (This language subject to Proposal 1 above).]. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated thrice-yearly on January 1, May 1 and September 1 of each year.

Last Best Offer of the Union.

C. (1) Transfer List. As the correctional institutions, centers and units develop vacancies, the senior institution, center or unit employee in the same classification whose name appears on the transfer list for institutions, centers or units will be transferred, with the exception of transfers into the Central Office, Center for Training and Staff Development and the K-9 Unit. Employees assigned to the Central Office, Center for Training and Staff Development or K-9 Unit may transfer out of the unit in accordance with this Article. An employee on Workers' Compensation leave will be eligible to transfer under this provision. An employee requesting transfer under this Section must put his/her name on the departmental transfer list in accordance with the departmental procedures in order to be considered. Such list will be updated quarterly.

Rationale A 2 S

The nexus issue is: The State proposes to change when the transfer list will be updated from quarterly to thrice-yearly on January 1, May 1 and September of each year.

A review of the previous NP-4 Agreements shows that the transfer lists have been updated quarterly since the NP-4 Agreement (X J-27) that was effective July 1, 1977.

The State offered the testimony of Dan Callahan and Patricia Meskers. Dan Callahan testified that there is a large amount of work involved in compiling the transfer list each quarter. His testimony referenced the fact that DOC wanted to update the list semi-annually.

Patricia Meskers testified that the State had problems updating the transfer list quarterly.

During cross examination, Meskers agreed that she received transfer applications right up to the beginning of each quarter and sometimes a few days later. During cross examination, she testified that the transfer list (X U-2C) for the quarter beginning January 1, 2008 was done by the close of business on January 3, 2008.

The Union offers that if the task of updating the quarterly transfer list was so labor intensive, the list would not be out two days subsequent to the January 1 Holiday. The Union offered the testimony of Albert Chicquarello and he testified that he did a mock updating of the transfer list. He testified that it would have taken him approximately 10 hours of work to update the quarterly list.

The testimony and documents offered showed that it was not such an intensive labor task. Also, Albert Chicquarello testified that a review of the transfer list document (X U-2C) shows that if the list were updated on a semi-annual basis, the list would be totally depleted with no one on it for more than 3 months at some facilities. I offer that the same thing would happen if the updating of the list was done three times a year.

This would not be right in that new hires would be slotted at facilities before senior employees in some instances. This manifestation would occur more often if the updating of the transfer list was elongated. The State LBO would cause consternation on the part of the NP-4 members.

The Union offered the testimony of President Jon Pepe. He testified that the Union met with Kathy Riberio and Patty Meskers regarding transfers and transfer lists in 2007. The parties reviewed the practices with both sides agreeing that the NP-4 Agreement (X J-1) would be adhered to.

He testified that at the meeting in 2007, Riberio and Meskers conveyed that if they adhered to the NP-4 Agreement there would not be a problem getting the list updated at the beginning of the quarter. I note that his testimony regarding the aforementioned was not rebutted by the State. President Pepe testified that the testimony of Patty Meskers led him to conclude

that she did not understand the DOC A.D. 2.3 Transfers (X U-5) nor did she have a sense of the history of the transfer language.

He testified that it was his belief that the list was updated on an ongoing basis for each facility so they are not cramming at the end of the quarter to develop this list. His belief was that if we go to a six month list it is not going to be any less paperwork in that officers are still going to send in their request whenever they want to send in their request.

The Union concludes that the DOC LBO #A 2 S should not be awarded. The State has not proven that there is a need to change the updating of the list from quarterly to thrice-yearly. The quarterly language has been in place since 1977 with the implementation of NP-4 Agreement (X J-27).

The Union proved that the contractual requirement to update the list is not labor intensive and that it would have negative impacts to senior NP-4 members.

The Union respectfully requests that the Union LBO be awarded for State Issue #A 2 S due to the aforementioned.

The Union refers Mr. Arbitrator to the Union sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE A 3 S -- SHIFT TRANSFERS LISTS
ARTICLE 10, SECTION 10**

Current Contract Language.

Section 10. Shift Transfer Lists. Each facility shall maintain a shift transfer list which will be updated on a quarterly basis. An employee on Workers' Compensation shall be eligible for shift transfer under this provision.

Last Best Offer of the State.

Section 10. Shift Transfer Lists. Each facility shall maintain a shift transfer list which will be updated on a thrice-yearly basis on January 1, May 1 and September 1 of each year. An employee on Workers' Compensation shall be eligible for shift transfer under this provision.

Last Best Offer of the Union.

Section 10. Shift Transfer Lists. Each facility shall maintain a shift transfer list which will be updated on a quarterly basis. An employee on Workers' Compensation shall be eligible for shift transfer under this provision.

Rationale A 3 S

The nexus issue is: The State proposes to change when the shift transfer list will be updated from quarterly to thrice-yearly on January 1, May 1 and September 1 of each year.

A review of the previous NP-4 Agreements shows that the shift transfer lists have been updated quarterly since the NP-4 Agreement (X J-23) that was effective July 1, 1988.

The State offered testimony from Dan Callahan that State proposal No. 3 is duly there to be consistent with State proposal No. 2.

The Union concludes that the Callahan testimony does not offer a reason as to why the list should be updated thrice-yearly instead of quarterly.

The Union offered the testimony of President Pepe. He testified that if they went to an updating of the shift transfer list on a semi-annual basis it would not be in the interest of the facility employee who waited possibly years to get on the day shift.

The State did not offer testimony that there is a problem due to the task being daunting.

This shift transfer language has been in place for over 20 years.

The State did not meet their burden to show that a change to thrice-yearly is needed.

The Union believes that there would be a negative impact to NP-4 members.

The Union refers Mr. Arbitrator to the Union Sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE A 4 S -- MEDICAL CERTIFICATE
ARTICLE 26, SECTION 3**

Current Contract Language.

Section 3. Medical Certificate. If an employee is absent on sick leave for five (5) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence. When continued absences from work constitute an abuse of sick leave, the employee and the Union shall be notified in writing. After such notification, the Employer may deny sick pay. Such denial of sick pay is subject to the grievance and arbitration provision of this Agreement. Continued abuse of sick leave will subject the employee to progressive discipline.

Last Best Offer of the State.

Section 3. Medical Certificate. If an employee is absent on sick leave for three (3) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence. When continued absences from work constitute an abuse of sick leave, the employee and the Union shall be notified in writing. After such notification, the Employer may deny sick pay. Such denial of sick pay is subject to the grievance and arbitration provision of this Agreement. Continued abuse of sick leave will subject the employee to progressive discipline.

Last Best Offer of the Union.

Section 3. Medical Certificate. If an employee is absent on sick leave for five (5) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence. When continued absences from work constitute an abuse of sick leave, the employee and the Union shall be notified in writing. After such notification, the Employer may deny sick pay. Such denial of sick pay is subject to the grievance and arbitration provision of this Agreement. Continued abuse of sick leave will subject the employee to progressive discipline.

Rationale A 4 S

The nexus issue is: Should the Medical Certificate language of the NP-4 Agreement (X J-1) remain as is with “sick leave for five (5) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence,” or should the Medical Certificate language be changed to “sick leave for three (3) or more consecutive working days, the employee must submit a medical certificate stating reasons for the absence.”

The difference is that the State proposed to change it from five (5) or more to three (3) or more.

The Union reviewed the previous NP-4 Agreements regarding the issue of when a medical certificate must be submitted. The Sick Leave/Medical Certificates language of the NP-4 Agreement was implemented and placed into the NP-4 Agreement (X J-26) effective July 1, 1979. The Agreement called for a medical certificate “if an employee is absent for five (5) or more consecutive working days.”

In the NP-4 Agreement (X J-21) effective July 1, 1994 the term “on sick leave” was added after the word absent. The existing NP-4 Agreement (X J-1) has the language that delineates “for five or more consecutive days.” The history is clear that for thirty (30) years a medical certificate has been needed by NP-4 employees for absences/sick leave for five (5) or more consecutive days.

I would cite that for historical purposes that NP-4 members accrue 1.25 days of sick leave per month, or 15 sick days per annum.

The history is clear that for thirty (30) years or more NP-4 employees have been accruing 1.25 sick days per month, which equals 15 sick days per annum.

The Union offered testimony from Albert Chiucarello. He testified that he did an analysis to see when other State Unit employees needed to bring in a medical certificate. He testified that his medical certificate analysis document (X U-3) encapsulates the fact that ten State Units (NP-3, NP-6, P-2, P-5, NP-2, NP-8, P-4, NP-1, P-3A and NP-5) have language that calls for a medical certificate with more than five consecutive working days of absence/sick leave. He testified that State Statute 5-247-11 (X J-37) states that a medical certificate is needed when it is more than five (5) consecutive days.

The comparison by the Union illustrates how far out of line the State proposal (A 4 S) is. Their proposal calls for a medical certificate on the third consecutive day. Other State Agreements by and large call for a medical certificate on the sixth consecutive day. The proposed State language is outrageous when we compare it to other State Units.

The State offered testimony from Dan Callahan that NP-4 members were abusing sick leave. He testified that there was a dramatic financial impact to the State due to the excessive use of sick leave. He offered that the excessive sick use would go down if the State proposed language (A 4 S) was awarded. The State offered a number of documents which showed different nuances of the use of sick leave. One of the problems with the offered documents is that they did not offer documents for each and every DOC facility. It is evident that the State cherry-picked facilities to make a point.

Dan Callahan testified that NP-4 members were using an average of 16.5 days of sick leave per annum. Earlier, under the history segment, the Union established that NP-4 members accrue 15 days of sick leave per annum. Basic logic tells us that if I'm accruing 15 sick days

per year and I'm using an average of 16.5 sick days per year that I am not abusing sick leave. NP-4 members are averaging a use of sick leave of 10% more than they are accruing each year. Carrying this logic a step forward, the NP-4 membership has extra sick leave on their accrual books if they are using more than the fifteen accrued sick days each year. That does not sound like abuse.

Dan Callahan testified about FMLA issues pertaining to sick leave. The Union offers that FMLA has no bearing on the medical certificate issues. During cross examination, Dan Callahan testified that the DOC does have the ability to place a person on a medical certificate requirement without the person using five or more consecutive days if they believe that the person is abusing sick leave. This would be done under Article 26, Section 3 of the NP-4 Agreement (X J-1).

He testified that the State has not acted on that component as a mechanism to stop sick leave abuse. He offered that the DOC has not utilized that component in that they would be inundated with grievances. He did not know if using the medical certificate requirement would curb sick leave abuse.

During cross examination Dan Callahan was asked: Do you know on these occasions here how many people were forced to work overtime or how many doubles they worked overtime before taking off sick leave. His response was: No, I don't. During cross examination Dan Callahan was offered the Callahan DOC Reorganization letter (X J-42). Callahan testified that Lori Kolakowski would be looking at dependability issues and sick leave usage for abuse. He offered that this was a new initiative by DOC.

During cross examination Dan Callahan testified that his testimony was his opinion that there is sick leave abuse. He agreed that at the present time there was no factual basis and that he didn't want to say the person mentioned was an abuser.

The Callahan testimony did not buttress the State claim that State Proposal A 4 S should be awarded. In fact, his testimony leads the Union to conclude that his opinion is biased and without a solid basis.

President Pepe testified that if the State LBO was awarded there would be negative impacts to the employees, the State and to the taxpayers. His testimony is on point if we look at the financial impacts to each of the aforementioned parties. The employee will have to pay the co-pay to visit the doctor plus the employee will have to travel to the office of the doctor.

The State insurance carrier will have to pay the doctor for the cost of the visit that is above and beyond the co-pay. With more usage it is not unfathomable that the insurance carrier(s) will charge the State a higher premium for each employee. The tax payers will end up paying more for health benefits for State employees.

I could go on with more negative impacts, but the aforementioned offers snapshots of the negativity. This portion leads to the conclusion that the interests and welfare of the employees is not being served nor are the interests of the public.

The State did not meet their burden to change the existing language that has been in place for 30 odd years.

The Union refers Mr. Arbitrator to the Union Sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE A 5 S -- GRIEVANCE PROCEDURE
ARTICLE 12, SECTION 9**

Current Contract Language.

Section 9. Arbitration. Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

A. Dismissals

- 1) **Submission.** Submission shall be to the Connecticut Board of Mediation and Arbitration by letter, postage pre-paid, addressed to the Board; a copy of such letter will also be mailed concurrently to the Office of Labor Relations by certified mail.
- 2) **Cost Allocation.** Effective July 1, 1994, and for each year of this Contract, the State shall allocate \$5,000.00 to cover the cost of arbitration at a rate of \$250.00 per case. Unexpended funds in any contract year shall carry over into the next contract year. Should the yearly allocation and the carry over funds combined be insufficient to pay for cases in any contract year, the parties agree to share equally in the per case cost;
- 3) **Arbitrators.** Arbitrators assigned to hear cases under this provision shall be mutually agreeable to the parties;
- 4) **Cases Submitted Under Previous Agreement.** For cases already submitted to the Board under previous contract provisions, those involving suspensions of fifteen (15) days or more shall remain with the Board. All other cases shall be processed under B. below. In the assignment of cases, discharge cases will be assigned first, all other cases will be assigned in the order of the date of filing, first filed, first assigned. Cases shall be assigned on a rotating basis to the arbitrators. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.

B. Other Discipline and Contract Interpretation

- 1) **Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.
- 2) **Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
- 3) **Costs.** The parties shall share equally in the expenses of the arbitrator.
- 4) **Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned.
- 5) **Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an

arbitrator(s): By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

- C. Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing.
- D. Expedited Cases.** Up to ten (10) cases per contract year by the Union and up to five (5) cases per year by the State may receive expedited arbitrator assignment as exclusions to the “first filed, first assigned” rule expresses herein.
- E. Pending Cases.** The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration cases with the goal of resolving, thereby reducing, the numbers of same.
- F. Multiple Case Assignments.** The parties by mutual agreement may assign multiple cases to an individual arbitrator for expedited arbitration.
- G. Postponements.** In any individual arbitration case, each party will be allowed one postponement. Thereafter, postponements shall only be by mutual consent of the parties.

Last Best Offer of the State.

Section 9. Arbitration. Within forty (40) days from receipt of a Step III response, or if no response, within forty (40) days of the due date, grievances, during the life of this Agreement, shall be submitted for arbitration as follows:

- 1) Submission.** Submission shall be by certified letter, postage prepaid to the Office of Labor Relations.
- 2) Selection of Panel.** The parties shall establish a panel of five (5) arbitrators selected by mutual agreement.
- 3) Costs.** The parties shall share equally in the expenses of the arbitrator.
- 4) Assignment of Cases.** Cases shall be assigned on a rotating basis (alphabetically) to the arbitrator panel based on the date of filing, first filed, first assigned except that Dismissal cases shall be given precedence in scheduling. For Dismissal cases resulting from progressive discipline, the underlying lesser disciplines shall also be heard by the same arbitrator.
- 5) Removal of Arbitrator.** Either party, upon written notice to the other, between March 1st and March 10th of each contract year may remove an arbitrator(s). By April 1st the parties will have a reconstituted mutually agreed upon panel of five (5) arbitrators for the succeeding contract year.

- 6. Cases Submitted Under Previous Agreement.** Dismissal cases already submitted to the Connecticut Board of Mediation and Arbitration will remain with the Board in accordance with the prior contract provisions. Effective upon legislative approval of this Agreement, the State shall allocate \$5,000.00 to cover the cost of arbitration at the rate of: \$225 for day one of the hearing; \$150 per day for each additional hearing date; and \$175 for writing the arbitration award. Unexpended funds shall revert to the State. Should the yearly allocation be insufficient to pay for all remaining cases, the parties will share equally in the per case cost.
- 7. Arbitrability.** A party raising an issue of arbitrability shall do so by notifying the other party at least seven (7) working days in advance of the scheduled hearing. Such notice requirement shall be waived in instances of new evidence discovered during the arbitration hearing.
- 8. Pending Cases.** The parties agree, immediately upon legislative approval of this Agreement, if not beforehand, to meet and discuss the backlog of pending arbitration cases with the goal of resolving, thereby reducing, the numbers of the same.
- 9. Postponements.** In any individual arbitration case, each party will be allowed one postponement. Thereafter, postponements shall only be by mutual consent of the parties.

Last Best Offer of the Union.

There shall be no such language.

Rationale A 5 S

The State proposal 'shifts' additional costs to the Union in paying more money for a service presently provided by the State Board of Mediation and Arbitration (SBMA) for dismissal grievances. This is not a minor increase in costs to pass along, as (X U-36) shows, and again this is only the hearing date. Those numbers do not include additional costs relating to writing the award, research, travel, lodging, etc. The unions have no control over the number of terminations that will occur in any given year, the employer hires and terminates employees in a unit of over 5000 employees the numbers could be huge. The union in its proposal has put forward a method that not only would expedite the timing process but would also save the employer and union money. This unit has always utilized the services of the SBMA for its dismissal grievances.

The State did not put forth any testimony to support their "need" for change. Their only claim may be that no other bargaining units in the executive branch utilize the SBMA. This unit does and always has. Most municipalities utilize the SBMA as well as private sector

employers. The SBMA is a professional agency that specializes in these services and should be utilized.

For these reasons and those previously mentioned, the Union believes that State proposal A 5 S should be awarded to the Union in that there should be no such language.

**ISSUE A 13 S -- MAINTENANCE ON-CALL STANDBY PAY
ARTICLE 17, SECTION 11**

Current Contract Language.

No current language.

Last Best Offer of the State.

Section 11 (new). Maintenance On-call/Standby. Effective thirty (30) days following legislative approval, management may establish a procedure to designate qualified employees in Correctional Maintenance positions by job classification and function as on-call/standby status. Management will solicit volunteers and provide any necessary training for the performance of on-call duties, which will be rotated among the volunteers. Such designation obligates the designated employee to be available and to respond in the event of a call. Employees designated to this on-call/standby status shall be compensated at the rate of \$1.00 per hour for each hour so assigned. Notwithstanding the duration of any on-call/standby assignment, such compensation shall not exceed \$100.00 per work week. Employees so designated shall be issued cell phones or similar equipment.

- A. An employee who is required to take or respond to a call while on such status shall receive one-hour's compensation at the applicable rate.
- B. An employee who is required to report for duty shall be compensated in accordance with the Overtime Article (Article 15).

Last Best Offer of the Union.

There shall be no such language.

Rationale A 13 S

The nexus issue is: Should the State be allowed to put Correctional Maintenance employees on an on-call/standby status that circumvents and denigrates the NP-4 Overtime provisions under Article 15 of the NP-4 Agreement (X J-1).

The Union offers that the proposed State language is new language and that the Union contends that there shall be no such language.

The State offered the testimony of Dave Batten. He is the Director of the Facilities Management and Engineering for the DOC. He testified that in a number of facilities there

is a problem getting maintenance people to respond to call-ins and that at other facilities it is very easy to get people to respond. His contention is that this proposal would give them flexibility. He testified that they would look for volunteers and that management would determine who was or was not qualified to go on the list for the on-call/standby work. He testified that he would be obliged to train. He testified that “We would set up some kind of informational sheet, you know, maybe a test that would say if this happened where would you go, if this happened what would you do.”

The Batten response, “We would set up some kind of informational sheet” to help determine if employees are qualified lends the union to conclude that the DOC process has not been formulated regarding how a person is deemed qualified or non-qualified. The present NP-4 Agreement (X J-1) affords all members the ability to sign up for overtime at their facility with the overtime being distributed by their work classifications. An entire Article of the NP-4 Agreement has been designated to address overtime issues. The State proposal dismisses and circumvents the negotiated overtime language in the Agreement (X J-1).

Also, he testified that he would “probably get the Union involved” regarding the type of training. Again, his response leads me to conclude that the training process has not been formulated by DOC regarding their proposed language.

He testified that he had not thought out what facility or facilities the on-call person could be sent to. Again, his response leads me to conclude that much of their new process has not been formulated regarding this proposed language.

Also, the Union points to Article 15, Section 10 of the NP-4 Agreement (X J-1). The language is crystal clear that employees work overtime at their assigned designated Unit under normal circumstances. Emergency situations change the dynamic allowing for an exception.

During cross examination, Dave Batten was asked the question: Was there a specific emergency situation where an emergency was not taken care of for a full day or days. He responded that yes, at Corrigan more than eight years ago.

His response leads me to conclude that the instance he cited was an aberration. He had to cite an incident that occurred 8 years ago. Under Article 15, Section 10 the State was empowered to remedy the situation of eight years ago. The cited instance of eight years ago illustrated poor management on the part of DOC.

The Union notes that the NP-4 Agreements have had provisions regarding the distribution of overtime in place since the first NP-4 Agreement (X J-27) was negotiated. Even the first NP-4 Agreement stated that overtime shall be distributed equally to employees within the same job class at each institution, regardless of shift. The cited language has not changed regarding the who, what, when and where’s when we look at the existing Agreement (X J-1)

This State proposal would change the who, what, where and when components for distribution of overtime for NP-4 members in the maintenance operation.

The Union argues that the State had the ability to put a comprehensive overtime proposal on the bargaining table for maintenance employees under Article 15. Article 15 is dedicated to overtime and it takes into consideration any and all nuances of overtime distribution. The State proposed LBO flies in the face of Article 15 and it is egregious to the interests of NP-4 members.

The Union cites the fact that the proposed language is contra to what Article 15 (Overtime) calls for regarding the who, where, when and what components.

The Union refers Mr. Arbitrator to the Union Sections in this brief delineated as “The Factor Arguments.” The Union has offered under the statutory guideline criteria factors reasoning as to why the LBO should be awarded to the Union.

**ISSUE A 14 S -- DRUG TESTING
ARTICLE 37, SECTIONS 2 THROUGH 8**

Current Contract Language.

Section 2. Probable Cause. An employee shall be subject to an immediate drug test if probable cause of drug use exists as determined by his/her supervisor, Warden, or designee. Such drug testing shall be administered by a qualified physician of the Employer's choice. The initial method of testing shall use an immunoassay. All specimens identified as positive on the initial test shall be confirmed using the chromatography/mass spectrometry test. If such test is again positive, a third more complex test on the same specimen can be administered at the request and expense of the employee. All initial tests shall be paid for by the Employer.

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

Section 4. Rehabilitation Program. Termination of the employee will result if he/she refuses to participate in or to complete such program.

Section 5. Return to Duty. Upon return to duty after successfully completing the drug rehabilitation program, the employee will be subject to a maximum of three random drug screens for the first eighteen (18) months following return to duty, in addition to drug screening based on probable cause for a period of two years during which time if the employee tests positive for drug use he/she will be subject to termination. Any employee refusing to be administered either a random or probable cause drug test during the time frames indicated above, as appropriate, when requested to by his/her supervisor, Warden, or designee, based on probable cause, shall be terminated.

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Section 2. Probable Cause. An employee shall be subject to an immediate drug test if probable cause of drug use exists as determined by his/her supervisor, Warden, or designee.

Section 3. Random Drug Testing. All bargaining unit members will be subject to random drug testing. During any contract year up to twenty-five percent (25%) of bargaining unit members may be so tested. No employee shall be subject to more than two (2) random drug tests in any contract year.

Upon notification that an employee is scheduled for random drug testing, such employee will appear as required at the location specified for drug testing. The

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

Section 4. Refusal to Take Test. An investigation will result if the employee refuses to be administered the test or if it is indicated that the sample has been tampered with. Termination will result if the employee for either refusing to take the test or being found culpable for tampering with the sample.

Section 5. Post-incident drug testing. An employee may be subject to an immediate post-incident drug test when involved in any incident which results in the death of or injury to a person.

Section 6. Drug Testing Procedures. Drug testing shall be administered by a qualified physician of the Employer's choice. The initial method of testing shall use an immunoassay. All specimens identified as positive on the initial test shall be confirmed using the chromatography/mass spectrometry test. If such test is again positive, a third more complex test on the same specimen can be administered at the request and expense of the employee. All initial tests shall be paid for by the Employer.

Section 7. Consequences of a Positive Test. Any test that indicates a positive presence of any prohibited drug shall result in the employee being relieved of duty and placed on sick or vacation pay, if the employee has sufficient accruals, or authorized leave without pay, pending completion of an Agency approved drug rehabilitation program. Termination of the employee will result if he/she refuses to participate in or to complete such program.

Section 8. Return to Duty. After return to duty following successful completion of the drug rehabilitation program, the employee will be subject to a maximum of three directed drug screens for the first eighteen (18) months following return to duty, in addition to drug screening based on probable cause or random selection. Any employee refusing to be administered a directed, random or probable cause drug test, as appropriate, shall be terminated.

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Section 2. Probable Cause. An employee shall be subject to an immediate drug test if probable cause of drug use exists as determined by his/her supervisor, Warden, or designee. Such drug testing shall be administered by a qualified physician of the Employer's choice. The initial method of testing shall use an immunoassay. All specimens identified as positive on the initial test shall be confirmed using the chromatography/mass spectrometry test. If such test is again positive, a third more complex test on the same specimen can be administered at the request and expense of the employee. All initial tests shall be paid for by the Employer.

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

Section 4. Rehabilitation Program. Termination of the employee will result if he/she refuses to participate in or to complete such program.

Section 5. Return to Duty. Upon return to duty after successfully completing the drug rehabilitation program, the employee will be subject to a maximum of three random drug screens for the first eighteen (18) months following return to duty, in addition to drug screening based on probable cause for a period of two years during which time if the employee tests positive for drug use he/she will be subject to termination. Any employee refusing to be administered either a random or probable cause drug test during the time frames indicated above, as appropriate, when requested to by his/her supervisor, Warden, or designee, based on probable cause, shall be terminated.

Rationale A 14 S

The nexus issue is: Should the Drug Testing provisions in the NP-4 Agreement be changed to include Random Drug Testing. Drug Testing language was incorporated into the 1994-2001 Agreement (X J-21).

The issue of Drug Testing was addressed extensively during the negotiations for the 2001-2004 Agreement (X J-20). The 2001-2004 Agreement (X J-20) incorporated new Drug Testing language in that Agreement. The 2004-2008 Agreement (X J-1) Drug Testing language was the same as the 2001-2004 Agreement Drug Testing language. The existing NP-4 Agreement (X J-1) Drug Testing language does not have a component for Random Drug Testing. The existing Drug Testing language under the 2004-2008 Agreement (X J-1) affords the State the ability to monitor the NP-4 employees. If there is probable cause, the State has language that affords them the ability to immediately drug test an employee under Article 37, Section 2 of the Agreement. The Union argues that the Probable Cause standard is fair and equitable. The Union is not proposing a change regarding the Drug Testing provisions of the Successor Agreement through their LBO on this issue. The Union believes that the existing language is fair, equitable and working.

The State LBO changes the existing Agreement provision under Refusal to Take Test. They added “or if it is indicated that a sample has been tampered with.” The State did not offer testimony as to why they need the aforementioned additional language nor did they cite instances that would lead to the conclusion that there is a need for the new additional language.

The State LBO added a component under Drug Testing that is totally new which they called Post-incident drug testing. The language “An employee may be subject to an immediate post-incident drug test when involved in any incident which results in the death of or injury to a person.” This concept goes well beyond the Probable Cause standard, and is not fair or equitable. This language would allow the State to do drug test employees at any time. There are numerous incidents where employees and inmates are injured. The concept is too broad. This language would nullify “Probable Cause.” The State offered no testimony as to why they have a need for this new Agreement provision. The State LBO added “any prohibited drug” under Section 7 of their LBO. The State never offered any testimony as to why there is a need for this language. The Union believes that the addition of “any prohibited drug” is problematic.

The Union concludes that the State LBO makes significant changes regarding Drug Testing. Specifically, their LBO changes the language regarding Refusal to Take Test, adds new language regarding post-incident drug testing and adds the new language “any prohibited drug” under their LBO.

The Union offered reasons as to why these changes are problematic. Also, the State offered no testimony regarding the aforementioned changes/additions.

For the aforementioned reasons, State LBO #A 14 S should not be awarded by Mr. Arbitrator and the LBO should be awarded to the Union.

Under State LBO #A 14 S the State offers a Random Drug Testing provision.

During negotiations for the 2001-2004 Agreement, the parties addressed the issue of Drug Testing. The Union agreed to a comprehensive Drug Testing provision and it was incorporated into the NP-4 Agreement (X J-20).

The subsequent Agreement (X-J-1) carried forward the Drug Testing Language from the 2001-2004 Agreement in its entirety.

During negotiations for a Successor Agreement, the State proposed Random Drug Testing. The Union has continually conveyed a response that there is no need for a Random Drug Testing provision in the NP-4 Agreement. The Union points to the fact that no other Bargaining Unit with DOC employees has a provision in their Agreement for Random Drug Testing. Also, I offer that the DOC management employees do not have a provision whereby they are drug tested on a random basis. The deduced conclusion from the aforementioned is that there would be a disparity between the treatment of NP-4 employees versus NP-3 employees, P-5 employees, NP-8 employees, P-3B employees and 1199 employees. The State LBO should not be awarded by Mr. Arbitrator in that a Random Drug Testing provision in the NP-4 Agreement would not be equitable nor would it be fair or reasonable. The Union argument is on point.

The State offered the testimony of Dan Callahan regarding Random Drug Testing. He testified that the Agency does have a provision for “Probable Cause” testing but that he believed that there is a need for Random Drug Testing. He conveyed that it was important that drug users do not supervise inmates. He believes that the “Probable Cause” drug testing provision was inadequate. During his testimony he testified regarding the amount of off-duty drug arrests that had been made in 2004, 2005, 2006 and 2007. He testified that in 2007 there were 4 off-duty drug arrests; in 2006 there 5 off-duty drug arrests; in 2005 there were 9 or 10 off-duty drug arrests and that in 2004 there were 10 off-duty drug arrests. During cross examination, Dan Callahan testified that 3 of the off-duty drug arrested parties were members of other bargaining units.

The Union argues that if 4 out of 5,250 employees (NP-4) were arrested in 2007 for off-duty drug use, that is a deminimis number. The percentage is that .00076% of the NP-4 members were arrested for off-duty drug use.

The Union argues that if 5 out of 5,250 employees (NP-4) were arrested in 2006 for off-duty drug use that is a “de minimus” number. The percentage is that .00095% of the NP-4 members were arrested for off-duty drug use.

The Union argues that even if we do the percentages for 2005 and 2004, the ratio is “de minimus”.

The State offered the number of off-duty drug arrests for 2007, 2006, 2005 and 2004. The Union concludes that their numbers support the Union position that there is no need for a random drug testing provision in the NP-4 Agreement.

The Union offers that the State did not offer expert testimony that random drug testing would act as a deterrent to illegal drug use in the case of NP-4 members.

The Union concludes for the aforementioned reasons that the State has not offered evidence to support the fact that their Random Drug Testing provision should be awarded by Mr. Arbitrator.

The cumulative impact of the State LBO leads to the Union concluding that the Union Last Best Offer should be awarded.