

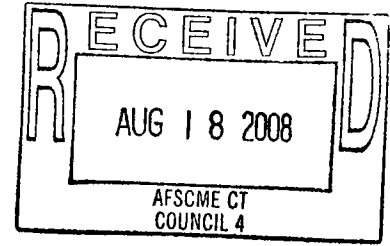
STATE OF CONNECTICUT

OFFICE OF POLICY AND MANAGEMENT

Office of Labor Relations

August 15, 2008

Mr. J. Larry Foy
12 Meadow Crossing
Simsbury, CT 06070



RE: State of Connecticut Reply Brief
Case No. AAA 12 390 00717 07
State of Connecticut and AFSCME
NP-4 Interest Arbitration

Dear Mr. Foy:

Enclosed, please find the State of Connecticut's Reply brief in the above entitled matter. As agreed by the parties during the Interest Arbitration proceeding reply briefs are to be sent to the Arbitrator via electronic mail and US mail.

Also enclosed is a copy of said brief for exchange (electronically and US Mail) with the Union once the Arbitrator has received the briefs for both sides.

Please feel free to contact me at 860-418-6215 if you should have any questions.

Very truly yours,

Paul Bodenhofer

Paul Bodenhofer
Labor Relations Specialist
Office of Labor Relations

cc: A. Chiucarello-AFSCME

**STATE OF CONNECTICUT
STATUTORY INTEREST ARBITRATION
BEFORE
HONORABLE J. LARRY FOY, ARBITRATOR**

In the matter of)	
)	
STATE OF CONNECTICUT)	Case# 2008-SBA-4
)	NP-4 Bargaining Unit
<i>and</i>)	
)	AAA Case 12 390 00717 07
)	
AMERICAN FEDERATION)	
OF STATE, COUNTY AND)	
MUNICIPAL EMPLOYEES,)	
Council 4, AFL-CIO)	
Locals 387, 391 and 1565)	August 15, 2008
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**REPLY BRIEF
OF THE
STATE OF CONNECTICUT**

**Paul Bodenhofer
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Office of Labor Relations
450 Capitol Avenue
Hartford, CT 06106**

INTRODUCTION

Both the State and the Union submitted extensive arguments and discussions regarding the outstanding issues before the arbitrator. The State's brief thoroughly addressed each issue; therefore, the State will not reargue the same points here. However, there are a few areas in the Union's brief that require further discussion.

The Factors:

As a reminder, the Connecticut General Statutes (C.G.S.), in Section 5-276a(e)(4), provides that the arbitrator "shall select the more reasonable last best offer proposal on each of the disputed issues based on the factors in subdivision (5)". Subsection (4) also provides that the arbitrator shall state, "...with particularity the basis for such decision" and "...shall not affect the rights accorded to either party by law or by any collective bargaining agreement". The factors to be considered by the arbitrator are listed in C.G.S. Section 5-276 a(e)(5) and are as follows:

1. The history of negotiations between the parties (including those leading to the instant proceeding);
2. The existing conditions of employment of similar groups of employees;
3. The wages, fringe benefits and working conditions prevailing in the labor market;
4. The overall compensation paid to unit employees; (including direct wages compensation, overtime and premium pay, vacations, holidays and other leave, insurance, pensions, medical and hospitalization benefits, food and apparel furnished and all other benefits received by unit employees);
5. The ability of the employer to pay;
6. Changes in the cost of living;
7. The interests and welfare of the employees.

The State asks the arbitrator to keep in mind that the above-referenced list of statutory factors is an all inclusive list. Neither the State, nor the Union or the arbitrator is at liberty to modify the factors that must be considered. Absent any statutory guidance to the contrary, the advocates and the arbitrator are bound to the principle that to expressly include one or more factors in a statute is to also exclude all possible others.—“*expressio unius est exclusio alterius*.” It should be noted, however, that the statute is conspicuously silent on the weight or importance that should be assigned to each factor. The State would, therefore, submit that the arbitrator has great latitude in assigning applicable weight to each individual factor as it pertains to the specific issues under consideration.

One thing that is perfectly clear, is that when assigning such weight, the overriding consideration is that the arbitrator is charged with choosing which of the last best offers—the State’s or the Union’s—is more “reasonable.” *Black’s Law Dictionary* defines “reasonable” as: “fair, proper, just, moderate, suitable under the circumstance, not excessive, rational, equitable or tolerable.” *Webster’s New World Dictionary* defines “reasonable” as: “amenable to reason, just, not extreme, sensible, sane and not expensive.” Ultimately, therefore, the arbitrator must elect the last best offer that makes the most sense. Shear volume of expensive, excessive, and irrational proposals cannot enter into arbitral determination, but rather what is fair, proper and just under the circumstances.

Initially, the Union argues that any concerns about the precedential use of an award that gives them their many requests for unreasonably high increases in compensation are “without support in fact, logic or history.” Six pages later, the Union brief starts referring to the increases received by other classes of employees as precedent for its own proposals, thereby demonstrating the precedential value of other awards in fact, logic and history! This is recognized not only by this office, but by the legislature as well.

In its “Factor #1” argument, the Union lays out the provenance of the four previous negotiations regarding this bargaining unit. The 1993-1994 wage re-opener went to arbitration with an initial award (J-32) being rejected by the legislature and a subsequent arbitrated award (J-31) being implemented. The successor agreement for 1994-2001 was initially arbitrated with the award (J-28) being rejected. Following the rejection, the parties agreed to an award that was mentioned in the State’s brief in some detail (pg 19 of State’s brief). The next two contracts were negotiated settlements (2001-2004, J-20 and 2004-2008-J-1). It is important to note that over the past seven years, the Union made no allegation that its members had been victimized in previous years. One has to question why it is now necessary to concoct this creative argument to not only make up for the perceived losses but to also pull significantly ahead of any other bargaining unit.

The Union continues to represent that the State can increase taxes on its citizens. Technically, this is correct. But, what the Union is really trying to say is that the State can increase the tax rate for Connecticut citizens who are, on average, wealthier than the Union’s members or for Connecticut’s

businesses because, in the estimation of the Union's experts, they are not taxed enough. Based upon this ill-conceived logic the Union argues that the State will be able to fully fund any increases for NP-4 members. This argument is fundamentally flawed on a number of fronts. Since the annualized total cost of all of the Union's proposals is \$177,081,900.00 (OPM cost estimate), Connecticut's citizens and businesses can expect a rather significant tax increase in order to fund major salary increases for a group of State employees during a period of economic recession. NP-4 bargaining unit members are Connecticut citizens who are subject to the Union's suggested increased taxation. It makes no sense to give these employees increased pay in one hand only to take it away from the other by taxation. Higher taxes!-- this will be most conducive to businesses considering relocating to Connecticut or expanding if already here.

The Union also persists, in its "Factor #2 section" in comparing its Correction Officers to employees elsewhere in Connecticut State Service, whether their duties are similar or not, and complaining that Correction Officers have been mistreated. In the Factor #2 argument in the Union's brief, it appears that the only condition of employment necessary for a one-to-one comparison is that classifications have hazardous duty status. This ignores the many differences in either minimum qualifications or required duties that provide the basis for the compensation of State Police Troopers and Probation Officers, which differences were fully explored in the State's brief, beginning on page 13.

State Police Troopers must have, as a matter of statute, a high-school education. This is not true for Correction Officers. It is particularly disconcerting that an argument is made that Correction Officers should be paid at the same level as the Wardens and Deputy Wardens who, as the only managers in the custody and treatment chains of command, are responsible and accountable for both day-to-day and long term operations of their respective facilities. Additionally, the Union, as predicted, completely ignored the fact that the two classifications most closely comparable in terms of duties (Parole Officer II, an NP-4 class and Probation Officer 2, a Judicial Department class) are almost identical in range of compensation. This clearly demonstrates that NP-4 compares very well to other non-NP-4 State classifications that are, in fact, comparable.

In “Factor #3” the Union references recent GWI’s received by three large private sector employers, again in support of its own proposals. The record does not reveal how many Correction Officers (or equivalent employees) that Hamilton Sundstrand, Pratt and Whitney or Sargent Manufacturing employ, but the Union’s argument also does not acknowledge that pay plan steps such as are in the NP-4 and other State bargaining unit pay plans do not exist for private sector manufacturing employees.

It is also common knowledge that the benefits package for State employees, including medical insurance and retirement, far exceed anything in the private sector. The fringe benefits enjoyed by the employees in this bargaining unit are very costly. Annualized, these benefits add almost 70% to the employer’s costs. These costs simply cannot be ignored—they are by no

means insignificant. The arbitrator must give this appropriate factorial consideration as such costs are in large measure driven by and increased based upon other economic enhancements such as general wage increases and annual increments. The most costly benefit received is that of hazardous duty retirement. The members of this bargaining unit receive half pay after twenty years with no minimum age requirement.

As anticipated, the Union cites the dangerous working conditions of its members as justification for its requested compensation increases. One of the factors used is the purportedly high suicide rates for Connecticut's Correction Officers. The actual figures for Connecticut covered only a 3 year period during which a total of 3 people committed suicide. No comparison was made to the number of suicides among all State employees, or among all persons living in Connecticut during the same period. The study used to justify the conclusion that Connecticut CO's have a higher suicide rate was from 1997 (U-34, pg 13) and relied on data from 1990 (testimony of Prof. Stodder).

That study also only looked at 21 states, so to reach the conclusion in U-34 is a rather incredible stretch. The Union failed to establish any causal connection between the employee's suicides and the job. The statistics are, therefore, meaningless. One fact that cannot be ignored is that State Police Troopers are regularly not just injured, but killed, in the line of duty. They are shot, they are victims of hit and run drivers, and these are hazards that corrections officers do not face in the normal performance of their jobs, although they are deemed hazardous duty as well.

The present compensation of NP-4 members has already taken into consideration the working conditions of the employees as part of the Objective Job Evaluation process and they are eligible for hazardous duty retirement, as previously mentioned. There is any number of resources available through the Employee Assistance Program that can assist employees if needed, and the Union actually has significant input for resolution of issues under Article 29, the Stress Management Article of the NP-4 Contract (J-1). As also mentioned in the State's Brief, the Union has failed to demonstrate how paying an employee more money will make him or her any safer.

The State discussed each of the individual issues thoroughly in its initial brief. To avoid redundancy and belaboring any particular point, the State shall structure the remaining portion of this reply brief by grouping the related issues. Hopefully, this will in some way facilitate the arbitrator as he approaches this daunting task.

UNION ISSUES 1 through 10

Arbitration

The State established through the cross-examination of the Union's witnesses why the Union's proposals are fraught with mischief. The Union's proposal for addressing grievances arising under the prior agreement is an illegal subject of bargaining. It is effectively inviting this arbitrator to aid and abet it in its illegal pursuit. The State would encourage the arbitrator to decline the Union's invitation.

The Union proposes to increase the number of cases submitted to an already over-burdened Board and concludes that the outcome would somehow "be quicker." In support of its contention, the Union relies on the testimony of Catherine Serino, the Director of the State Board of Arbitration who related how the Board would deal with the massive influx of cases if all NP-4 grievances were again filed with the Board. Her solution was to schedule two hearings in a day and quickly schedule all cases brought before the board, but any thought that this could actually be done can be nothing more than wishful thinking at best or a pseudo kangaroo court, with less due process for the members at worst.

As the first cases to be heard, under any circumstances, will be dismissals, it is unrealistic to believe that either the State or the Union will agree to limit the presentation of evidence in such a serious matter to half a day. If that is the case, then why bother? Just imagine how this would have to play out. Each

side would be limited in the amount of time for its presentation of opening statements, direct and cross-examination of witnesses, and the neutral would effectively have to sit silently or else encroach upon somebody's precious minutes. This would be a disaster! In addition to the continuous filing of grievances that are to be expected for a bargaining unit with over 5,200 members (J-52) employed by a single agency, the Board will first have to deal with the backlog of hundreds of cases created due to the earlier ability of the Union to file anything to arbitration and pay nothing other than a filing fee. Since the Union is again seeking a process in which they pay nothing but the filing fee while the taxpayers of Connecticut foot the rest of the bill, the number of cases can do nothing but go up and languish unattended. There will be no incentive for the Union to actually look at the merits of its cases and therefore no incentive to be selective in what is sent to an arbitrator.

Additionally, no other bargaining unit serviced by the Office of Labor Relations has such a peculiar arbitration process—not even the other AFSCME bargaining units. This alone should give the arbitrator pause and query—why would the Union want to propose something that would be so obviously NOT in the interest of its members? It is designed for the sole purpose of placing the entire financial burden of arbitration on the tax payers of Connecticut. During these austere fiscal times, the State realizes that it would also benefit financially from this proposal but in the long term, there would be no winners, just degrees of losers. On that basis alone, these proposals should be rejected.

In regard to Union Issues 1-10 and State Issue A5S, which addresses the same section of the contract, the Union pointed out that no witnesses were called by the State in support of its proposal. Such was not necessary inasmuch as the best witnesses for the State were the Union's witnesses as they established the folly of the Union's proposals and the reasonableness of the State's proposal. The State's proposal in Issue A5S remains the more reasonable and should be awarded.

Union Issue 12:

Discipline

The Union proposes delaying the imposition of a disciplinary suspension until after the grievance is heard at Step 3 of the grievance process. Contrary to the Union's argument that this proposal would not change the current language of Article 13, Section 3, the fact is that it would greatly change the meaning of just cause. An essential element of just cause is the prompt imposition of discipline (Labor and Employment Arbitration; Bornstein, Gosline and Greenbaum (second edition, 1999) see discussion on page 14-10 {Section 14.03[2][a]}). In addition to extending the effective date of the discipline to some unknown future time, the Union's proposal will also muddy the waters in regard to the imposition of progressive discipline, as it will permit the argument that a higher level of discipline cannot be imposed until the preceding lower level became effective. The result would be litigation over whether or not the discipline letter or the actual effective date of the discipline constitutes notice to the employee that future similar conduct will result in greater discipline.

While the Union appears to be concerned about savings to the State if this proposal is awarded, it is also likely that the fact that the employer does not have to worry about making an employee whole for a suspension for which there was no just cause since it will not be imposed until a third party examines the case will actually result in an increase in suspensions. This can only result in an increase in the already overwhelming backlog of cases which is not a reasonable outcome.

