

Before the Arbitration Panel

In the Matter of the Arbitration of an Interest Dispute Between

THE ILLINOIS DEPARTMENT OF STATE POLICE

and

**ILLINOIS TROOPERS LODGE #41,
FRATERNAL ORDER OF POLICE**

2015-2019 Collective Bargaining Agreement
Case No. S-MA-15-347

Daniel Nielsen, Neutral Chair
Bruce Bialorucki, Union Delegate
Joseph Hartzler, Employer Delegate

Appearances:

Asher, Gittler and D'Alba, by **Joel D'Alba, Ryan Hagerty and Amanda Clark**, Attorneys at Law, 200 West Jackson Boulevard, Suite 1900, Chicago, IL 60606, appearing on behalf of Illinois Troopers Lodge #41, Fraternal Order of Police.

Laner Muchin, by **Violet Clark, Mark Bennett, Thomas Bradley, Brian Jackson, David Moore and Joseph Gagliardo**, Attorneys at Law, 515 North State Street, Suite 2800, Chicago, IL 60654, appearing on behalf of the Illinois Department of State Police.

ARBITRATION AWARD AND OPINION

The Illinois Department of State Police (hereinafter referred to as the State or the Employer) and the Illinois Troopers Lodge #41, Fraternal Order of Police (hereinafter referred to as the Lodge or the Union), selected the undersigned to serve as the Neutral Chair of an arbitration panel to resolve a dispute over the terms of the collective bargaining agreement for troopers, agents, inspectors and sergeants in the employ of the Illinois State Police. Mediation sessions were held on October 30, November 11, November 20 and November 30, 2015, at the

conclusion of which final offers for arbitration were solicited.¹ Hearings were held in Springfield, Illinois on December 23, 2015; January 11, 13, 14 and 15, 2016; February 4, 15, 16, 17, and 29, 2016; March 30, 2016; and April 8, 2016, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. All hearings were transcribed, and the Arbitration Panel received transcripts. The parties submitted the case on post-hearing briefs and reply briefs, the last of which were exchanged through the Neutral Chair on July 1, 2016, whereupon the record was closed.

On August 9, 2016, the State advised the members of the Arbitration Panel that the Illinois Labor Relations Board had announced that it was reversing the Executive Director's dismissal of an unfair labor practice charge brought by the State against the Lodge, alleging that the Lodge had insisted to impasse on group health insurance, which the State argued was a non-mandatory topic of bargaining. The ILRB set the matter for hearing before an administrative law judge. The State drew the Panel's attention to 80 Ill. Admin Code 1230.90(k):

Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue.

On this basis, the State advised the Panel that the topic of group health insurance, which is a central issue in this proceeding, could not be considered by the Panel. The State made a Motion that the panel refrain from ruling on any of the economic issues in dispute until such time as the ILRB resolved the status of the group health insurance issue. The Lodge opposed the State's Motion. Given the sweeping implications of the Motion, the record was reopened to allow full consideration of the Motion and the parties' arguments in favor of, and in opposition to, the Motion.²

¹ The Final Offers are appended to this Award and Opinion as Appendix A (State) and Appendix B (Lodge) and are incorporated herein.

² The dispute was remanded for a period of further negotiations from September 6 to September

On October 3, the majority of the Panel issued its Order denying the State's Motion, on the grounds that it was not technically made in good faith, in that it was brought well after the deadline for the filing of objections, and because the existing decisional law of the Illinois State Labor Relations Board established that the topic of group health insurance was a mandatory topic of bargaining. With the issuance of the Order, the record was closed.

Having considered the evidence, the arguments of the parties, the statutory criteria, and the record as a whole, the Arbitration Panel makes and issues the following Award.³

Statutory Criteria

Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315, provides the specific factors for an arbitrator to use when analyzing the issues in an interest arbitration dispute:

[T]he arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.

20, but the negotiations proved unsuccessful.

³ The Award was issued on December 2, 2016, with an Opinion stating the Panel's reasoning to follow.

- (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
 - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
 - (7) Changes in any of the following circumstances during the pendency of the arbitration proceedings.
 - (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

All of the criteria have been fully considered in arriving at this Award, although not every criterion is discussed in the analysis of every issue.

Issues⁴

The parties' dispute extends to both economic and non-economic issues. With respect to economic issues, the Panel is limited to selecting the offer of one party without modification, on an issue by issue basis. On non-economic issues, the Panel has the authority to craft different language than that proposed by the parties.

⁴ As more fully set forth below, the State has asked that its economic proposals, other than health insurance, be considered as a single comprehensive offer, to be accepted or rejected in its entirety. The listing of Economic Issues shows what the State considers to be the component parts of its proposal.

Economic Issues⁵

The following Economic Issues are in dispute:

1. Base Wages

The State proposes that base wages be frozen for the duration of the collective bargaining agreement. The Lodge proposes that base wages be frozen for the first two years of the collective bargaining agreement, and increased by 1% across the board on July 1, 2017 and 1.5% across the board on July 1, 2018.

2. Step Increases

The State proposes that step increases be frozen for the duration of the collective bargaining agreement, other than step increases required under the Illinois State Police Act.⁶ This includes the longevity stipend at 21 years. The Lodge proposes that step movement continue as in the predecessor agreement.

3. Longevity Step at 28 Years

The Lodge proposes that a new longevity step be added at 28 years, effective July 1, 2016. The State proposes status quo on the number of steps.

4. Merit Pay/ Gain Sharing

The State proposes that a system of merit pay be established, whereby annual non-pensionable, non-cumulative bonuses would be awarded to at least 25% of the members of the bargaining unit. The bonuses would total 2% of payroll, and would be awarded on the basis of merit, as judged by criteria to be agreed upon by the parties or, failing agreement, established by the employer.

⁵ The Lodge proposes to update the fiscal years specified in Article 23 - Tuition Reimbursement, while leaving the amounts and the substance unchanged from the predecessor contract. The State has proposed status quo, which the Lodge contends may create confusion, given that the fiscal year descriptions would be out of date. The Panel takes this to be a clerical matter that requires no discussion. The Lodge's proposal is adopted.

⁶ As more fully discussed in the accompanying Opinion, the Lodge disputes this interpretation of the State's offer, and argues that by its plain language the statutory steps would be frozen as well.

The State further proposes a gain sharing program, whereby an employee or group of employees who identify economies or efficiencies resulting in savings would be entitled to a one-time non-pensionable bonus reflecting a portion of those savings. The specifics of the program would be developed by the employer with the opportunity for discussion and input from the Lodge. The Lodge proposes no merit pay and no gain sharing.

5. Hazardous Duty Pay

The State proposes that hazardous duty pay be increased from \$50 per month to \$100 per month, effective January 1, 2016. The Lodge proposes the status quo on hazardous duty pay.

6. Advancement Pay

The Lodge proposes to modify Article 28, Section 2, to increase monthly wages for officers with one year or more of service by \$150 per month, effective July 1, 2016. The State proposes no change in this provision.

7. Shift Differential

The Lodge proposes to increase the existing midnight shift differential by \$0.05 to \$0.80, and the existing afternoon shift differential by \$0.30 to \$0.80, effective July 1, 2015. The State proposes status quo on the shift differential.

8. Maintenance Allowance

The Lodge proposes to maintain the current level of the clothing allowance, but adds language requiring that, if the allowance is not paid by October 1st of each year as required, the officer or officers will be credited with 16 hours of compensatory time. That State proposes status quo on the clothing allowance.

9. Addition of Casimir Pulaski Day to the list of Holidays

The Lodge proposes to add Casimir Pulaski Day to the list of holidays. The

State proposes to maintain the status quo on holidays.

10. Overtime Allotment

The Lodge proposes to reduce the fully funded overtime allotment from \$6,000,000 to \$5,000,000 in each year of the contract. The State proposes to maintain the status quo.

11. Interest on Delayed Back Wages and Monetary Benefits

The Lodge proposes to add a provision requiring the payment of interest at the rate of 6% per annum for all monetary improvements contained in a settlement or interest arbitration award, if those amounts are not paid in full within 120 days of the settlement or award. The State proposes that no such provision be added to the contract.

12. Health Insurance

The State proposes that the health insurance premiums, benefits structure and/or plan design be changed to provide for a cost sharing of 60% by the State and 40% by the employee, unless the employee voluntarily executes a non-revocable waiver of retiree health benefits for the employee and his or her dependents, in which case the employee will retain the current health insurance plan, premium and benefits for the duration of the contract. The State proposal includes a variety of plan design options, including some as yet to be developed options, and the possibility of a State operated insurance exchange. The Lodge proposes to maintain the current level of premiums, benefits structure and plan design, but to specify those terms in a separate Appendix to the collective bargaining agreement, rather than incorporating them by reference in Article 26. It further proposes a hiatus on increased health insurance costs during any period when negotiated wage increases have not been paid, and a “me too” provision for voluntarily negotiated improvements in health care benefits for other State workers.

Non-Economic Issues

The following Non-Economic Issues are in dispute:

1. Article 6 - Fair Share

The State proposes to eliminate the fair share provisions of the collective bargaining agreement, including the collection of fair share fees and the employee's obligation to pay fair share. The Lodge proposes to retain fair share.

2. Article 7 - Officers' Bill of Rights – Misconduct Allegation Settlement Agreements

The Lodge proposes to amend the Misconduct Allegation Settlement Agreements (MASA) process, the parties' existing "fast track" resolution procedure for officer discipline. Under MASA, the officer admits the misconduct in return for a penalty one step below that usually demanded by the existing penalty matrix. The MASA is negotiated by the Department and the employee/Lodge. The Lodge proposes to add language to the contract setting forth the MASA process which is currently a matter of policy, with three changes: (1) To require that a MASA be offered for all offenses at Level 6 or below; (2) To make the MASA binding on all parties once it is signed by the Officer; and (3) To acknowledge that Merit Board review is required for all MASAs providing for penalties in excess of 30 days, and that if the Board rejects the settlement, all admissions and statements are voided. The State proposes to maintain the status quo.

3. Article 7 - Officers' Bill of Rights – Disclosure and Review of Audio and Video

The Lodge proposes to amend the Officers' Bill of Rights to require the Department to notify an officer if it has audio or video evidence relevant to a matter for which the officer is being investigated or asked for a statement, and prohibits charges against the officer for untruthfulness if the officer is not allowed to either review the evidence beforehand or revise an already given statement after reviewing the evidence. The Lodge would further require proof of

a willfully false statement about a material fact before an officer could be charged with making a false statement. The State proposes to maintain the status quo.

4. Article 7 - Officers' Bill of Rights – Requirement of Firsthand Knowledge / Sworn Affidavits for Complaints Not Involving Criminal Conduct

The Lodge proposes to amend the Officers' Bill of Rights to require that a complaint against an officer be supported by an affidavit from someone who was present for the complained of incident, and who has firsthand knowledge of the complained of incident, and that the use of a complaint by a sworn command officer without a sworn affidavit be limited to cases of criminal allegations. The State proposes to maintain the status quo.

5. Article 10 - Modification of the Good Standing Requirements

The Lodge proposes to amend the Maintenance of Benefits provision to allow for retirement in good standing for officers who separate without pending felony charges, or without administrative charges that would normally result in termination, and the extension of good standing status to officers who are disqualified for pending felony charges and are not found guilty of those specific charges. The State proposes to maintain the status quo.

6. Article 14 - Bulletin Boards

The State proposes to amend Article 14, the contract provision allowing the Lodge access to bulletin boards in ISP facilities, by adding a more detailed explanation of what is meant by prohibited "political" purposes: "including solicitation relating to political campaigns, of funds or volunteers for a political candidate or political party as prohibited per statute." The Lodge proposes the status quo.

7. Article 15 - Access to ISP Facilities

The State proposes to amend Article 15, Section 1, the contract provision allowing the Lodge access to ISP facilities for meetings, by adding a sentence

specifying that “Such use of Department facilities, equipment, and/or property shall not include union sponsored political activity as prohibited per statute.” The Lodge proposes the status quo.

8. Article 28 – Job Bids - Minority Underutilization

The State proposes to amend Article 28, which provides for selection of senior candidates, to provide an exception for underrepresented minorities: “Except where skills and ability are relatively equal and there exists an underutilization of a minority class in a given geographical region and/or category, the Department may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.” The Lodge proposes the status quo.

9. Article 30 - Unavailability for Force Back Overtime

The State proposes to define the circumstances under which it cannot force an employee to work overtime, even though it is that employee’s turn under the existing rules. The Lodge accepts this as new language, inserted to the Article with the remaining provisions renumbered accordingly but not substantively changed.

10. Article 36 - Savings Clause

The State proposes to eliminate the second paragraph of Article 36, which provides that economic benefits unilaterally granted to other Department employees by the Director, outside of the collective bargaining process, are automatically extended to bargaining unit members. The Lodge proposes the status quo.

11. A New Article – Electronic Multimedia Equipment

The Lodge proposes a new Article 42 covering the use of in-car audio video systems and body worn cameras. The new Article would, inter alia, prohibit the imposition of discipline solely on the basis of a routine review of video or audio

from these sources, prohibit activation of the equipment when an employee had a reasonable expectation of privacy, and prohibit the use of the equipment to surreptitiously record conversations with other Department employees or conversations regarding collective bargaining. It would also require the Department to provide logs of their routine video reviews to officers if asked to do so. Finally, the Article would make the Department responsible for inspection and maintenance of recording equipment. The Department proposes the status quo on these issues.

12. A New Article Regulating Residency

The Lodge proposes to modify the residency restrictions in the contract to allow officers to reside anywhere within the limits of their assigned geographical area, and up to 15 miles outside of those limits, if it does not significantly impair the Department's operation. The State proposes to retain the status quo.

AWARD ⁷

On full consideration of all of the statutory criteria, and the record as a whole, the Arbitration Panel concludes that the 2015-2019 collective bargaining agreement shall incorporate the provisions of the predecessor agreement, as modified by the tentative agreements and as follows:

Base Wages

Award: The final offer of the State is adopted, and will be incorporated to the 2015-2019 collective bargaining agreement. There will be no base wage increase for the duration of the contract.

Step Increases ⁸

Award: The final offer of the State is adopted, and will be incorporated to the 2015-2019 collective bargaining agreement.

Longevity Step at 28 Years

Award: The final offer of the State is adopted. There will be no additional longevity step at 28 years.

Merit Pay/ Gain Sharing

Award: The final offer of the Lodge is adopted. There will be no merit pay or gain sharing program added to the collective bargaining agreement.

^{7 7} An errata sheet is hereby incorporated. The Chair's original sheet incorrectly stated that the proposal of the State was adopted on the issues of Bulletin Boards and Facilities, while the text stated the status quo would be maintained. This was a drafting error. The offer of the Lodge, which was status quo, is adopted on both. Also, the phrasing of the offer on Retirement in Good Standing left some room for confusion, and the final sentence was amended to remove that possibility.

⁸ As more fully developed in the accompanying Opinion, the Arbitration Panel's conclusion on Step Increases is expressly premised on the State's representations that (1) the Step Freeze does not affect the statutory steps due to Troopers over the term of the agreement, and (2) that the State disclaims any intention to clawback or otherwise recover steps, longevity and promotional increases already paid to Troopers before or during the contract hiatus, and (3) the Step Freeze does not affect the entitlement of bargaining unit members to promotions due to length of service.

Hazardous Duty Pay

Award: The final offer of the State is adopted, and the monthly amount of Hazardous Duty Pay will be increased by \$50 to \$100 total, effective January 1, 2016.

Advancement Pay⁹

Award: The final offer of the State is adopted, and there will be no additional one year step in the 2015-2019 collective bargaining agreement.

Shift Differential

Award: The final offer of the State is adopted, and shift differential will remain status quo in the 2015-2019 collective bargaining agreement.

Maintenance Allowance

Award: The final offer of the State is adopted. The Maintenance Allowance provision will remain status quo, as per the prior agreement.

Addition of Casimir Pulaski Day to the list of Holidays

Award: The final offer of the State is adopted. The Holidays provision will remain status quo, as per the prior agreement.

Overtime Allotment

Award: The final offer of the State is adopted. The Overtime Allotment provision will remain status quo, as per the prior agreement.

Interest on Delayed Back Wages and Monetary Benefits

Award: The final offer of the Lodge is adopted, and will be incorporated to the 2015-2019 collective bargaining agreement. Article 20, Section 6 – E will be created to read:

- A. All arbitration awards or other settlements providing for the

⁹ The State's offer on this Article, which freezes Advancement during the contract terms, is substantively addressed as part of the Step Freeze discussion.

payment of any negotiated salary, wage rate(s), or any other monetary or economic benefit required under this Agreement shall be paid in full to an officer within 120 calendar days of the date of the award or settlement, unless a different period of time is agreed to by the Lodge and the Department. Failure to pay within the period of time required by or otherwise agreed to under this Paragraph will invoke the interest provisions of Paragraphs B or C of this Section.

B. For claims submitted to the Department of Central Management Services (“CMS”) by the Department (i.e., ISP) for payment from any fund, and subject to the provisions of 20 ILCS 405/405-105(13), any officer who is not paid the negotiated salary, wage rate(s), or any other monetary or economic benefit required under this Agreement shall be paid interest accrued at the rate of 6% per annum for the period of time beginning with the first calendar day following the expiration of the 120-day payment period (or other period agreed to by the parties) required by Paragraph A of this Section, and ending on the date claims are received by CMS from the Department. The requirement to pay interest pursuant to this Paragraph shall be in addition to – not in lieu of – the requirements of 20 ILCS 405/405-105(13).

C. For claims submitted directly to the Comptroller by the Department (i.e., ISP) for payment from any fund, any officer who is not paid the negotiated salary, wage rate(s), or any other monetary or economic benefit required under this Agreement shall be paid interest accrued at the rate of 6% per annum for the period of time beginning with the first calendar day following the expiration of the 120-day payment period (or other period agreed to by the parties) required by Paragraph A of this Section, and ending on the date claims are received by the Comptroller from the Department.

D. The provisions of this Section shall not apply in the event an interest arbitration award/decision is affirmed by a circuit court pursuant to Section 14 of the Illinois Public Labor Relations Act.

Health Insurance

Award: The final offer of the Lodge is adopted, and will be incorporated to the 2015-2019 collective bargaining agreement as a separate Article.

Article 6 - Fair Share

Award: The final offer of the Lodge is adopted. The Fair Share provisions of Article 6 will remain status quo, as per the prior agreement.

Article 7 – Discrepancies between Statements and Recordings

Award: The following provisions shall be added to Section of the Officers' Bill of Rights as subsection K and L, and the current subsections K and L will be re-designated as M and N:

K. The Department shall not charge an Officer with any rule of conduct violation related to untruthfulness, unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.

L. An Officer will not be charged with making a willfully false or incomplete statement based on inconsistencies between the Officer's statement and any recordings of the Officer's statements, actions or interactions during the incident under investigation, unless the Department determines that circumstances are such that the untruthfulness or incompleteness is not reasonably attributable to an innocent failure of memory or difference of perception.

Article 7 – Misconduct Allegation Settlement Agreement

Award: A provision shall be added to Section 2, §O of the Officers' Bill of Rights as follows:

O. Where the Department declines to offer an officer the option of a Misconduct Allegation Settlement Agreement, the reasons for that decision shall be stated in writing and provided to the officer and the Lodge.

Article 7 – Affidavits in Support of Complaints

Award: The proposal of the State is adopted and the 2015-2019 collective bargaining agreement will maintain the status quo on Affidavits.

Article 10 - Retirement in Good Standing

Award: The following language shall be added to the Maintenance of

Benefits provision in Article 10:

3. Where a denial of retirement “in good standing” is due to pending criminal investigations or charges (including cases in which the denial is attributed to pending administrative investigations or charges directly related to the pendency of the criminal investigation or charge), and the officer is not found guilty of the charges, or of related charges which, if found guilty, would normally result in a termination decision before the State Police Merit Board, the officer will be designated as having retired in good standing.

Article 14 - Bulletin Boards

Award: The proposal of the Lodge is adopted and the 2015-2019 collective bargaining agreement will maintain the status quo on Article 14 - Bulletin Boards.

Article 15 - Use of Facilities

Award: The proposal of the Lodge is adopted and the 2015-2019 collective bargaining agreement will maintain the status quo on use of facilities in Article 15, §1.

Article 23 - Tuition Reimbursement

Award: The Lodge’s offer updating the listed fiscal years is adopted.

Article 28 - Minority Underutilization

Award: The proposal of the Lodge is adopted and the 2015-2019 collective bargaining agreement will maintain the status quo on Job Bidding in Article 28

Article 30 – Unavailability For Foreceback Overtime

Award: The State’s offer is adopted. A provision shall be added to Article 30 addressing unavailability for forceback overtime. The new language will be inserted as subsection 5, and the existing subsections 5 and 6 will be renumbered as 6 and 7, respectively:

In the event an overtime detail cannot be staffed with volunteers, the Department shall staff the detail in accordance with Article 30,

Section 4.A.5. The Department will assign the overtime by other means or “force back” the least senior officer who has not been previously forced to work scheduled overtime. There are four situations in which the Department cannot “force back” an officer to work scheduled overtime:

- A. Sick Time: when officers are utilizing 515 Sick Time or 516 Family Sick Time.
- B. The Six Hour Rule: when an officer’s scheduled work shift begins within six hours of the end of the scheduled overtime assignment.
- C. Consecutive Hours of Work: when an officer would be scheduled for more than 16 hours in a 24 hour period.
- D. Attached Additional Day(s) Off: When an officer has been granted an additional day(s) off using accumulated time in conjunction with their regular day(s) off prior to the dissemination of the scheduled overtime details seeking volunteers. Any time off request received by the Department after the dissemination will be held until the details are filled and will not prevent the officer from being forced back.

Article 36 - Savings Clause ¹⁰

Award: The last sentence of Article 36, §2 is modified to read: “This section is not applicable to economic benefits negotiated in other collective bargaining agreements or imposed as a consequence of an impasse in such negotiations.” The remainder of paragraph 2 of the Savings Clause remains unchanged.

Proposed New Article – Electronic Multimedia Equipment

Award: The proposal of the State is adopted and the 2015-2019 collective bargaining agreement will maintain the status quo on Electronic Multimedia Equipment.

¹⁰ As more fully discussed in the accompanying Opinion, the Arbitration Panel concludes that the State’s offer on the Savings Clause was litigated as, and is properly analyzed as, a non-economic proposal.

Proposed New Article – Residency

Award: A new Article 41 entitled “Residency” will be added to the contract as follows:

Article 41 – Residency

1. In considering an Officer’s request for residence in a given area, the operational needs of the Department will be the primary consideration. The Department will judge whether the request is consistent with the operational needs of the Department, considering, among other things, such factors as distance to the officer’s assignment, response times, and the geographical distribution of officers in the same area of assignment. If the request does not materially impair the Department’s operational needs, the request will be granted. If the request does materially impair the Department’s operational needs, a written explanation will be provided to the Officer.
2. Any Officer granted an exemption to live outside of the geographical boundaries of their unit of assignment will travel on their own time between their residence and the geographical boundary of their unit of assignment.

The Neutral Chair will retain the official record and jurisdiction over the dispute until the parties notify him that any issues related to the implementation of the interest arbitration award have been resolved.

Signed this 27th day of November, 2016: ¹¹ / ¹²

/s/ Daniel Nielsen

Daniel Nielsen, Neutral Chair
*Signed as to errata on Bulletins Boards, Use of
Facilities and Retirement in Good Standing
on December 4, 2016.*

¹¹ The Panel reserves jurisdiction to revise the accompanying Opinion in accordance with its deliberations.

¹² For the purposes of Section 14(n) of the Illinois Public Labor Relations Act, the issuance of this award is December 2, 2016.

Concurrence and Dissent of Bruce Bialorucki, Labor Delegate

I concur and dissent as follows:

Base Wages

I concur _____ I dissent X

Step Increases

I concur _____ I dissent X

Longevity Step at 28 Years

I concur _____ I dissent X

Merit Pay/ Gain Sharing

I concur X I dissent _____

Hazardous Duty Pay

I concur X I dissent _____

Advancement Pay

I concur _____ I dissent X

Shift Differential

I concur _____ I dissent X

Maintenance Allowance

I concur _____ I dissent X

Addition of Casimir Pulaski Day
to the list of Holidays

I concur _____ I dissent X

Overtime Allotment

I concur X I dissent _____

Interest on Delayed Back Wages
and Monetary Benefits

I concur X I dissent _____

Health Insurance

I concur X I dissent _____

Tuition Reimbursement

I concur X I dissent _____

Fair Share

I concur X I dissent _____

Officers' Bill of Rights – Misconduct Allegation Settlement Agreements

I concur X I dissent _____

Officers' Bill of Rights – Affidavits Requirement of Firsthand Knowledge

I concur _____ I dissent X

Officers' Bill of Rights – Disclosure and Review of Audio and Video

I concur X I dissent _____

Retirement in Good Standing

I concur X I dissent _____

Bulletin Boards

I concur X I dissent _____

Access to ISP Facilities

I concur X I dissent _____

Minority Underutilization

I concur X I dissent _____

Forceback Overtime

I concur X I dissent _____

Savings Clause

I concur _____ I dissent X

Electronic Multimedia Equipment

I concur _____ I dissent X

Residency

I concur X I dissent _____

/s/ Bruce Bialorucki

Bruce Bialorucki, Labor Delegate

Date: December 2, 2016 (original)

Date: December 5, 2016 (errata)

Concurrence and Dissent of Joseph Hartzler, State Delegate

I concur and dissent as follows:

Base Wages

I concur X I dissent _____

Step Increases

I concur X I dissent _____

Longevity Step at 28 Years

I concur X I dissent _____

Merit Pay/ Gain Sharing

I concur _____ I dissent X

Hazardous Duty Pay

I concur X I dissent _____

Advancement Pay

I concur X I dissent _____

Shift Differential

I concur X I dissent _____

Maintenance Allowance

I concur X I dissent _____

Addition of Casimir Pulaski Day
to the list of Holidays

I concur X I dissent _____

Overtime Allotment

I concur X I dissent _____

Interest on Delayed Back Wages
and Monetary Benefits

I concur _____ I dissent X

Health Insurance

I concur _____ I dissent X

Tuition Reimbursement

I concur X I dissent _____

Fair Share

I concur _____ I dissent X

Officers' Bill of Rights – Misconduct Allegation Settlement Agreements

I concur X I dissent

Officers' Bill of Rights – Affidavits Requirement of Firsthand Knowledge

I concur X I dissent

Officers' Bill of Rights – Disclosure and Review of Audio and Video

I concur X I dissent

Retirement in Good Standing

I concur X I dissent

Bulletin Boards

I concur I dissent X

Access to ISP Facilities

I concur I dissent X

Minority Underutilization

I concur I dissent X

Forceback Overtime

I concur X I dissent

Savings Clause

I concur X I dissent

Electronic Multimedia Equipment

I concur X I dissent

Residency

I concur X I dissent

/s/ Joseph Hartzler

Joseph Hartzler, State Delegate

Date: December 2, 2016 (original)

Date: December 5, 2016 (errata)

OPINION

This case involves a dispute between the Illinois Department of State Police and Lodge 41 of the Fraternal Order of Police, representing the State's nearly 1500 active duty Troopers, Agents, Inspectors and Sergeants, over a successor to the collective bargaining agreement that expired on June 30, 2015. Twenty-five issues are presented for resolution, twelve of them economic issues, and thirteen non-economic.

OPINION – Economic Issues - General

Nature of the Process

The offer of one party or the other on each economic issue must be accepted in its entirety. Unlike non-economic issues, the Arbitration Panel may not revise an offer to make it more reasonable or workable. If the offer is flawed - even seriously flawed - but is better supported by the statutory criteria than the competing position, the offer must be accepted with all of its flaws.

Here the parties disagree as to what constitutes an economic offer. The State seeks to have all of its economic proposals other than health insurance considered as a single package rather than as discrete issues. Its rationale is that, taken as a whole, they represent a quid pro quo, offering some benefits in return for some concessions. The Lodge objects to this approach, noting that the statute does not contemplate any such bundling. It provides for the selection of offers on “each economic issue”, and is not a package vs. package system.

As the Panel Chair observed when this issue was first raised before the first day of hearing, the Lodge has the better of this argument, since the statutory language and the historical treatment of economic proposals in interest arbitration cases mandate consideration of each issue on its own merits as measured by the statutory criteria. In an e-mail exchange on December 17, 2015, the State asserted its desire to proceed on a total package basis, and asked the

Chair to reserve judgment on the question until the Award was issued:

Dear Mr. Nielsen:

Attached Is the ISP's Statement of Issues. It is ISP's position that, with the exception of Health Insurance, the economic issues should be combined into one issue. Further, it is our position that the decision on whether or not to combine the issues ultimately is yours. Further, it is our position that this issue does not in any way impact how the cases will be presented and need not be decided until after the hearing is closed. We propose that each party have the opportunity to present its arguments in its post-hearing brief.

We do not believe a call in the morning is necessary, if that is the only reason for the call.

In response, the Chair expressed his reservations about that approach:

My concern about just taking the question under advisement and issuing a ruling as part of my Award is that the parties would have no idea how to construct their economic offers and the arguments in support of those offers. If the Union offer is constructed on the assumption that each item stands or falls on its own merits, without directly affecting the other items, it may be that proposals would be included that, taken as a whole, would not be a reasonable total package. Finding that out after the fact would be a difficult problem. In the same vein, if the State constructed its arguments on the assumption that all economic items would be considered as a package, there might be a temptation to address total cost without addressing the individual merits. Discovering after the fact that the package will be judged by its component parts would be a difficult problem.

This is a pretty basic question to leave up in the air. I think it makes more sense to sort this out in advance, so we should go ahead with the call.

A conference call was held on December 18, and following that call, the Chair issued a summary of the discussions on this question, among others:

Economic Issues - How Presented and Considered - The State wishes to present its economic issues, other than health insurance, as an overall package and have the economic issues treated as a single issue. The Lodge wants to present its economic issues individually and have them considered individually. I have

indicated that the statute clearly contemplates that the issues will be presented individually and analyzed on their own merits under the statutory criteria. However, the State has every right to argue that the individual economic items, even if they might be justified if viewed in isolation, when taken as a whole are unaffordable or unrealistic given the budget and the economic climate. Considerations of overall cost of the economic proposals would be relevant under the interests and welfare of the public, overall compensation, changes in the foregoing, and other factors criteria of the statute.

Parties are always free to stipulate to a package vs. package approach, and any party may, as the State does here, argue in favor of some elements of its offer by urging acceptance of other elements. The Panel is not required to ignore the totality of the offers before it when considering the merits of the individual elements, any more than it can ignore changes in other elements of compensation that are beyond bargaining but directly affect the value of the compensation package. The outcome of arbitration should be realistic beyond simply the confines of each of the criteria as individually applied to each discrete element of the offer. This is not an academic exercise - these issues involve real dollars, and real human beings. All of that being said, the statute is the statute, and no party can dictate adoption of a whole package approach, when that is not the structure put in place by the General Assembly. All or nothing is the system for each economic issue, but not for all economic issues, and the Arbitration Panel is required to consider the merits of each proposal.

The Lawful Authority of the Employer

Both parties have raised questions about the lawful authority of the employer to enter into portions of these final offers. For its part, the Lodge questions the State's ability to declare merit pay bonuses non-pensionable, since they are compensation for services, and annuities are calculated on the basis the average of the highest four years of total compensation during the last ten years of employment. 40 ILCS 5/14-103.12(a). Using arbitration to compel a waiver of

statutory rights is, the Lodge asserts, improper. The Lodge also questions the validity of individual irrevocable waivers of retiree health insurance, which the State proposes as tradeoff for employees who wish to retain their current health insurance benefits and premiums for the duration of the contract, again on the grounds that an arbitration panel may not properly compel a waiver of statutory rights. The State claims that the Lodge's proposal to have step increases paid past the expiration of the Governor's term in January 2019 would violate Section 21.5 of the Labor Act: "No collective bargaining agreement ... may provide for an increase in salary, wages or benefits starting on or after the first days of the terms of office of executive branch constitutional officers and ending June 30th of that same year." 5 ILCS 315/21.5.

Given the decision on the merits of step increases, health insurance and merit pay, the Panel finds it unnecessary to address these arguments. As to the remaining issues, there is no question of the employer's lawful authority.

The Interests and Welfare of the Public and Ability to Pay

There is no argument to be made that the State lacks the ability to pay the costs of the Lodge's final offer. Instead, the State argues that the interests and welfare of the public are best served by a fiscally prudent approach to negotiations, given the financial condition of the State. The Panel believes that this argument is better addressed under the criterion of other factors "normally or traditionally taken into consideration" in negotiations and arbitration. That discussion is set forth below.

Comparable Employers

These parties have not engaged in interest arbitration with one another before, and there are no established comparables for the State of Illinois and its Troopers. The State proposes to use the border states of Michigan, Indiana,

Kentucky, Missouri, Iowa and Wisconsin, as well as the nearby state of Ohio, as external comparables on the grounds that these represent the actual labor market for police employees. The State asserts that while highly specialized professionals may be recruited nationally, the market for police employees is more regional in nature, and thus the far flung comparables proposed by the Lodge should be discounted in favor of states which might actually compete for employees with Illinois. As internal comparisons, the State proposes Attorney General Investigators, Secretary of State Investigators, ISP Master Sergeants, and ISP Command Council, although only the Master Sergeants have a contract settled.

The Lodge agrees that Iowa, Michigan, Wisconsin and Ohio are appropriate comparisons. It would exclude Indiana, Kentucky and Missouri because employees in those states do not have bargaining rights. The Lodge would add Alaska, California, Massachusetts, New Jersey, New York, Oregon, and Pennsylvania. The Lodge notes that the State has previously used New Jersey and Pennsylvania as comparables for an interest arbitration involving the State Police Master Sergeants. There is no plausible reason, in the Lodge's view, for the State to now contend that these are not comparable states. The remaining proposed comparables are all within the general parameters of the agreed comparables in terms of the size of their departments, the per capita income levels of their citizens, their population, government revenues, and their general economic conditions. All of them fall within the plus or minus 50% standard that many arbitrators employ to determine comparability on most or all of the economic measurements.

In response to the Lodge's proposed comparables, the State again points out that bordering states are far more relevant because they share the actual labor market for police officers. While the Lodge seeks to exclude Indiana, Kentucky and Missouri on the grounds that they do not engage in bargaining, nothing in the Act suggests that bargaining rights are relevant. Another jurisdiction is comparable or it is not, but that must be judged on the economic

and demographic factors that are points of comparison in all interest arbitration proceedings. It would be an arbitrary exercise of the Panel's authority to exclude neighboring states on grounds that the statute does not contemplate. While seeking to exclude other Midwestern states, the Lodge seeks to include far distant states with no relevance to the Illinois labor market. Although the Lodge claims that Pennsylvania and New Jersey were used as comparables for the Master Sergeants, in fact they were proposed as comparables, but no decision on comparable jurisdictions was made in that case. The arbitrator expressly declined to rule and left the question open. As for the reliance on the plus or minus 50% standard, that standard may be appropriate where there are not sufficient nearby comparables, but using it to construct the entire comparison pool is misguided. If the Lodge actually employed that test, it would generate an enormous comparable pool filled with vastly dissimilar states. In fact, though, the Lodge excluded many states that meet that standard, presumably because they do not support its offer.

Discussion: The Labor Act compels the consideration of "Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally ... in comparable communities." The parties do not have an established set of comparable communities, but they agree that the states of Iowa, Michigan, Ohio and Wisconsin can be fairly treated as comparable. The State proposes to use Indiana, Kentucky and Missouri as well, while the Lodge objects that these states do not allow collective bargaining and are of no use in determining what a voluntary agreement between these parties would have looked like. The Lodge proposes to look beyond adjacent states to departments and states having statistical similarities to Illinois, as measured by a plus or minus 50% standard.

A plus or minus 50% rule of thumb is commonly used by arbitrators to exclude much larger and much smaller jurisdictions from a comparable pool. It

is not used as the sole measure of comparability, since doing so would, in most interest arbitration cases, result in hundreds of comparables. Instead it is used to winnow down the list of communities that are plausibly comparable in the first place. The State is correct that geographic proximity is the beginning point in identifying the relevant labor market, at least for wage comparisons.¹³ It is possible to construct an argument that Illinois and California have many statistical similarities, but the simple fact is that they do not compete in the same market for Troopers, any more than Alaska, Oregon, New Jersey, New York, or Massachusetts, the other more distant states proposed by the Lodge.¹⁴ The remaining proposed comparable, Pennsylvania, is a closer call. It is the closest geographically and is statistically quite similar to Illinois. It has a similar mix of industry and agriculture, and urban, suburban and rural areas to be patrolled. It can plausibly be said to fall within the same general labor market as Illinois. For purposes of this proceeding, the Panel would characterize Pennsylvania as a secondary comparable, entitled to weight but not the same weight as the primary comparables of Wisconsin, Iowa, Michigan and Ohio.

As for the bordering states that have no collective bargaining, the Panel would also treat them as secondary comparables. Conditions in the labor market

¹³ While California's wages may be irrelevant to a wage dispute in Illinois, there may be practices or procedures in the California Highway Patrol that shed light on the workability of a given language proposal in Illinois. A vacation scheduling policy, for example, might prove workable in another jurisdiction with similar duties and work schedules. The fact that the jurisdiction itself is not comparable does not mean that the operations of the agency are irrelevant to what is and is not reasonable or practical in a state police or highway patrol agency.

¹⁴ The Lodge argues that New Jersey is comparable because the State proposed it as a comparable in the Master Sergeants' interest arbitration in 2008 (*CMS and Teamsters Local 726 (Master Sergeants) - S-MA-08-262* (Benn, 1/27/09)). The Panel would note, however, that the arbitrator in that case expressly declined to rule on what would be appropriate comparables, and based his Award on the impact of the 2008 economic collapse: "My selection of the ISP's offer for the 2008-2012 Agreement is without prejudice to the Union's ability to make similar comparability arguments in future interest arbitration proceedings. I have not addressed the merits of the Union's comparability arguments in this case. I have neither rejected or accepted the Union's positions. I have only found that even assuming the Union's comparability arguments are strong, the other factors relied upon by me dictated by the economy outweigh the Union's arguments in this most extraordinary set of circumstances and uncertain economic times." *Id.*, at page 22. Parties make tactical choices on what to argue as comparables in a given case. Unless the proposed comparables have been analyzed and accepted as valid, the fact that a party proposed a particular comparable in a different dispute does not bind a succeeding arbitration Panel.

are obviously an important consideration, and thus these states, which do share the labor market, cannot be ignored. They are comparable in that respect. Yet, the statute is intended to replicate as nearly as possible what a voluntary agreement between these two parties might have looked like. Any such agreement would be the result of bargaining, and not unilateral action. Giving full weight to jurisdictions in which bargaining does not occur would be at odds with the overall purpose of this exercise.¹⁵ The appropriate balance is to give these jurisdictions some weight, but less than the clearly comparable primary jurisdictions.

For purposes of this dispute, then, the Panel concludes that the external comparable jurisdictions are:¹⁶

Primary:

Iowa

Michigan

Ohio

Wisconsin

Secondary:

Indiana

Kentucky

Missouri

Pennsylvania

¹⁵ The Lodge cites the Chair's Award in *St. Clair County (Corrections) and Illinois FOP Labor Council*, Case No. S-MA-12-080 (Nielsen, 10/31/13) for the proposition that jurisdictions without collective bargaining should be completely ignored. *St. Clair County* involved an effort to add three Missouri jurisdictions as comparables for a corrections center in the Metro East area. The exclusion of those proposed comparables was based in part on their unrepresented status, but also on the facts that there were completely different statutory frameworks between the states, there was already a well-established comparable pool of Illinois counties, and there was "nothing to suggest that St. Charles County and St. Louis County are comparable to St. Clair County in terms of funding sources, required services, or a myriad of other factors. The City of St. Louis shares these defects as a comparable, as well as being distinguished by virtue of being a city, and a major population center." *Id.*, at page 10. In the case of comparisons across states, the lack of common statutory frameworks and such will be a given, whether there is bargaining or not. If the grounds cited in *St. Clair County* stood as a basis for excluding comparables in cases involving states, there would be no comparables.

¹⁶ In applying the admittedly nebulous concept of secondary comparability, and constructing several comparisons of data, the Panel has assigned a weight of 50% to the data from secondary comparables in calculating weighted averages.

Cost of Living

The Consumer price index has increased modestly during the term of this agreement. Between July of 2015 and October 2016, the CPI-U has increased by 1.01%. The Philadelphia Federal Reserve's Survey of Professional Forecasters Third Quarter 2016 Report projects headline CPI inflation to average 1.6 percent in 2016, 2.3 percent in 2017, and 2.3 percent in 2018.

Overall Compensation

Overall compensation is addressed in the specific sections to which it is relevant.

Changes in the Foregoing

The statutory criteria require consideration of changes in any factor during the pendency of the arbitration proceedings. During the pendency of this proceeding, the State raised an objection to the Panel's consideration of health insurance, contending that there was a good faith doubt as to whether it was a mandatory topic of bargaining. As more fully detailed in Appendix "C" of this Award, the majority of the Panel concluded that the objection was not a good faith objection, in that it was lodged well after the deadline for such objections had passed. The Panel further concluded that the issue raised by the State had twice been disposed of by declaratory rulings issued by the Labor Board's General Counsel. Clearly if health insurance, the most significant benefit provided to most employees and a major point of contention in these negotiations, had been declared off the table and subject to unilateral implementation of the State's offer, it would have represented a substantial change in overall compensation during the pendency of the proceedings. However, given the Panel's determination that health insurance is properly a subject for our consideration, this criterion need not be further addressed.

Other Factors - The General Fiscal Picture

The State asserts that Illinois' fiscal condition is such that it cannot maintain, much less improve, the current structure of wages and benefits. The State Police has historically been funded from the General Revenue Fund (GR Fund), other State funds, and federal funds. Federal funds are earmarked for specific purposes, and the availability of revenues from other State funds has declined, leaving the GR Fund as the principal source of money for Police operations. In 2009, the GR Fund provided 56% of the ISP's budget. Now it is 75%. 89% of that GR Fund revenue goes to personnel costs. Clearly, the health of the GR Fund is a driving force in what the State can and cannot do in contract negotiations. The State argues that the health of the GR Fund is presently poor, and getting worse.

The Governor's Office of Management and Budget (GOMB) projected a \$9 Billion shortfall in the GR Fund in FY16, including a backlog of \$4.4 Billion in unpaid bills from the prior fiscal year. This is exacerbated by a \$112 Billion gap between pension liabilities and pension funding, an amount that has quadrupled since the turn of the century. In order to address the gap, 25¢ of every dollar spent on operations must be devoted to pension funding and financing.

While the State has implemented program cuts and layoffs to reduce its shortfall, those changes only amount to \$701 Million overall, \$426 Million of which is in the GR Fund. Anticipated tax revenues will add only an estimated \$600 Million in FY17 and \$700 Million in FY18, leaving a substantial on-going deficit. As a consequence of these fiscal problems, credit rating agencies have downgraded the State's credit rating to negative, and this has increased the cost of borrowing. There can be no question, the State argues, that the State's financial picture is presently poor, and in decline. With this as a backdrop for negotiations, no responsible negotiator could tolerate the status quo on personnel expenses, much less voluntarily agree to increase those expenses. IPLRA

specifically provides that the Arbitration Panel must consider “the interests and welfare of the public and the financial ability of the unit of government to meet those costs.” Given the crisis in State finances, this criterion must be given the greatest and controlling weight in these proceedings.

The Lodge disagrees with the State’s assessment of its ability to pay the costs of either offer. The State faces challenges, as it has before, but in down times it has always maintained its normal operations by drawing on some of the 700 plus special funds it maintains. While the State focuses its attention on the GR Fund, it has billions of dollars in other funds under its control. The fact is that the State has surmounted fiscal problems in the past by conducting “sweeps” of other funds.¹⁷ As recently as the Spring of 2015, the General Assembly took roughly \$1.3 Billion from these funds to close a budget gap. In 2016, educational funding to universities was provided through sweeps. This option remains available now.

The Lodge points out that the State had in fact budgeted 2% of payroll to pay for its proposed merit plan, and that this amount would suffice to pay for a large portion of the Lodge’s wage proposals. This is an admission that the State has the funds to pay these increases, and even the intent to expend those funds on wages. The State is merely unwilling to agree to the Lodge’s proposal to continue the traditional methods of compensation, rather than its own radical departure from the norms established by the current agreement.¹⁸

The Lodge notes that the State’s claims of fiscal problems are in large part the result of its own decision-making. The choice to allow the income and corporate tax surcharges to lapse on January 1, 2015 cost the State \$3.5 Billion in

¹⁷ See Lodge Exhibit 101, and the discussion at pages 30-38 of the Lodge’s initial brief.

¹⁸ The Lodge points out that the State also has sufficient funds to pay an extraordinary interest rate of 12% on its unpaid bills, wasting hundreds of millions of dollars, more than enough to pay the modest pay raises sought by the Lodge. Despite its claimed fiscal emergency, it has not taken the obvious step of changing this odd piece of legislation.

tax revenues. Those lost revenues increase as the personal incomes of Illinois residents increase. Personal income in the state increased by 2.7% in 2015, after the surcharge lapsed. Personal income is now the fourth highest in the nation, and easily the highest in the Great Lakes region. Beyond the failure to restore the pre-2015 tax rate, the inability of the political leaders to reach a budget agreement after two years has prevented action to ameliorate the deficit. These choices have nothing to do with the merits of the Troopers' requests for modest increases in salary. The fact is that the State has the resources at its disposal to easily agree to the Lodge's proposals without in any way affecting its fiscal situation in the short or the long term, even if it does not take any of the obvious and necessary steps to put its overall house in order.

Discussion: The State of Illinois is a financial mess. It has had no budget for two years, and is operating on court orders and stop gap legislation. Its operating budget is in deficit, and its legislative and executive leaders are mired in close quarters combat with little indication that there is any plan to begin to remedy the fiscal situation. The pension plans are dramatically underfunded, with a gap of over \$110 Billion between funding and pension obligations. The State was ranked 50th in fiscal condition among all states in FY2013. The bond rating agencies have taken notice of the situation, and have downgraded the State's ratings, thereby increasing the cost of its borrowing. Large portions of the State's revenues are devoted to the payment of interest on its pension obligations and its unpaid bills. The fact that the State continues to operate as smoothly as it does is a tribute to its managers and employees. They are not the ones who have brought it to this pass.

The Lodge persuasively argues that these financial woes are the result of the State's own poor decision making. It cut taxes in the face of a deficit, knowing that this would worsen the deficit. It consistently failed to meet its pension obligations. It failed to even put in place a budget, the framework in which these problems could most reasonably be addressed. It continues to pay absurd

amounts in interest on its unpaid bills. All of this is true. It would almost have to be true, since a financial picture like Illinois’s could not be the result of years of prudent and intelligent financial decision making. But knowing that a wound is self-inflicted does nothing to stanch the bleeding. The State’s fiscal condition is an established fact.

OPINION – Economic Issues – Issue by Issue

1. Base Wages

The State proposes that base wages be frozen for the duration of the collective bargaining agreement. The Lodge proposes that base wages be frozen for the first two years of the collective bargaining agreement, and increased by 1% across the board on July 1, 2017 and 1.5% across the board on July 1, 2018.

While inflation is relatively modest, it exists, and almost by definition supports the Lodge’s offer to a greater degree than it would support the State’s freeze. As for the comparable jurisdictions, certainly the rate of increase supports the Lodge’s offer:

Increases over the term of the contract				
Primary:	2015	2016	2017	2018
Iowa	2.85	2.00		
Michigan	2.00	2.00	1.25	
Ohio	2.50	2.50	2.50	
Wisconsin	3.00			
<hr/>				
Average - Primary	2.45	2.166	1.875	
Lodge	0.00	0.00	1.00	1.50
State	0.00	0.00	0.00	0.00
Secondary:	2015	2016	2017	2018
<i>Pennsylvania</i>	<i>2.50</i>	<i>3.00</i>		

Settlements with other State bargaining units have included the State’s proposed wage freeze and step freeze, although the trades units are paid at the

prevailing rate, and the wage freeze is more of a nominal concession by those workers. With that caveat, the internal comparables support the State’s offer.

Consideration of CPI, and the rate of increase for external comparables, supports the Lodge, while the settlements with other bargaining units of the State supports the State’s offer. The support for the Lodge based on external comparisons is somewhat muted by considering the overall salary picture for Illinois Troopers relative to those in the other states:

2015 Schedule benchmarks ¹⁹					
Primary:	5 yr	10 yr	15yr	20 yr	25 yr
Iowa	75132	78132	79632	81132	81132
Michigan	62411	66737	67711	68841	68841
Ohio	58049	58168	60287	61402	61402
Wisconsin	49534	55640	61484	63897	63897
Average - Primary	61,281	64,669	67,278	68,818	68,818
Illinois	73,944	85,884	95,076	103,752	114,528
Secondary:	5 yr	10 yr	15yr	20 yr	25 yr
<u>Pennsylvania</u>	<u>87378</u>	<u>87963</u>	<u>90675</u>	<u>94806</u>	<u>103347</u>

The Lodge points out that these salary figures are somewhat misleading, because Illinois Troopers pay more towards pensions and health insurance than most of the comparable jurisdictions. Troopers pay 12.5% of salary to pensions, and depending upon which plan they enroll in, either \$4140 per year for HMO or \$5976 per year for PPO if they are at the top salary tier. These two elements alone reduce the take home by roughly \$20,000. In Iowa, the comparable figure would be \$7,000; Michigan would be \$5,800; Ohio would be \$10,000; and Wisconsin \$9,400. Other jurisdictions also have elements of compensation, such as merit pay, uniform allowances, shift differentials, and certification pay, that do not show up in base salary and are in many cases more generous than those available to Illinois Troopers.

¹⁹ Source – Lodge Exhibits 38 through 42-1

Granting the Lodge's point that salary must be viewed in context, and that the Illinois Troopers are subject to many higher deductions than their peers, it remains the case that overall compensation shows the Troopers to be well paid relative to their comparable group. This is not to say that the Troopers, Agents, Inspectors and Sergeants are overpaid. They perform difficult and dangerous work. Their pay is the result of years of examination, discussion, tradeoffs and agreements between the parties and it reflects their collective judgment, which this panel has no reason to question.²⁰ But even using the primary comparables, which are more favorable to the Lodge than the secondary comparables, the members of the bargaining unit are paid at an above average rate, and there is no basis on which to conclude that either wage offer would render them non-competitive in the market place.

As noted, consideration of CPI and increases granted to troopers in other states both favor the Lodge's wage proposal. The State clearly has the ability to pay the amounts demanded in the Lodge's offer. The amount the Lodge seeks is very modest. The bargaining unit is relatively small. The State can reallocate funds from other programs or agencies. It can conduct sweeps of other state funds. It can borrow. It can tax. That is not the point. The Lodge makes a good case that the deficit is not as severe as the State makes it out to be, but the record strongly supports the notion that the State is in a chronic deficit position. Arguing about the exact size of the deficit is akin to two men debating how hot the fire is while standing in a burning house. The question is whether any reasonable employer in this posture would agree to wage increases for employees who are and will continue to be well compensated.

²⁰ We do note the testimony of Dr. Michael Gibbs, who testified principally on the topic of merit pay, but also presented his opinion that public employees in general are better compensated than private sector employees. Attorney Bradley also made a presentation to the effect that rates of increase between the public sector and the private sector have diverged since 2000, tripling the gap, in dollar terms, in pay between public employees and their private sector counterparts. These are very general observations, and they do not form the basis of any of the Panel's findings.

Arbitrators are required to consider more than the ability to pay, comparability and CPI. They are required to give consideration to the interests and welfare of the public (which usually would involve issues and judgments beyond the scope of an arbitrator's expertise and authority), and to consider "other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment." It is this latter factor that persuades the Panel in this case. To ignore the financial condition of the State of Illinois would be to utterly fail to account for factors normally considered to be of central importance in collective bargaining and arbitration between any parties.

We recognize that the State's fiscal condition is not the result of the Lodge's success at the bargaining table, or the compensation received by the Troopers. It is the result of years of poor stewardship of State finances, and it would be unfair to penalize the Troopers for that poor stewardship. Yet it would also be unrealistic to think that an employer in this position would not demand and obtain some measure of relief in wage negotiations with a bargaining unit which is well paid relative to others in the state and in the same profession in other states. The State's proposal leaves the Troopers in a strong position on wages and does not take away anything they already have. Acknowledging that the Lodge itself put forward a moderate and responsible wage proposal, the Panel is persuaded that the proposal of the State is preferable under the "other factors" criterion, which on the peculiar facts of this set of negotiations is entitled to greater weight.

2. Step Increases

The collective bargaining agreement has always included step increases at specified years of experience. Some of these are purely contractual, while others

are set forth in the contract but are mandated by the Illinois State Police Act. The steps listed in the contract are at years 1 and 2 for Trooper, years 3, 4, 5, 6.5, 7, 8, 10 and 12.5 for Trooper First Class, years 14, 15, 17.5 and 20 for Master Trooper, and years 21, 22.5 and 25 for Senior Master Trooper. Special Agents receive steps from year 1 through 6.5, Senior Agents from years 7 through 12.5, Inspectors from years 14 to 20, and Senior Inspectors in years 21, 22.5 and 25. Sergeants have steps at years 2, 3, 4, 5 and 6.5, years 8, 10 and 12.5, years 15, 17.5 and 20, and years 22.5 and 25. The contract also provides a longevity stipend at 21 years. Of these, the statutory steps are at years 5, 10, 15, 20 and 25.

There is a threshold dispute over the exact meaning of the State's proposal. The State proposes that step increases be frozen for the duration of the collective bargaining agreement. This includes the longevity stipend at 21 years. The State contends, however, that its offer does not contemplate suspension of the statutory longevity steps, nor does it prevent the awarding of higher ranks owing to longer service, although it does prevent the higher pay associated with the rank. Moreover, the State contends that the steps that have been paid since the expiration of the predecessor agreement were paid subject to a settlement agreement between it and the Lodge in litigation over the continuation of the steps, and that it does not seek to recover any amounts paid as a result of that settlement agreement. The Lodge proposes that step movement continue as in the predecessor agreement, and disagrees with the State's reading of the freeze proposal. The Lodge argues that the plain language of the State's offer does freeze the statutory steps, and does not make any allowance for employees to retain the steps they have been paid under the settlement agreement. The State's final offer says that "Effective July 1, 2015, step increases shall be frozen for the duration of the agreement" and cannot be read as exempting any increases in the past or in the future. The Lodge notes that in the settlement with the Master Sergeants, the State expressly exempted the statutory steps from the scope of the freeze, but has failed to do so here. In its offer on Longevity, it specifically noted that longevity would be frozen "except as required by statute." The State knows

how to word its offers so as to avoid freezing statutory payments. Having failed to do so here, the Lodge asserts, the State should not be allowed to modify its final offer simply by stating at the hearing that it means something other than what it says. In support of this proposition, the Lodge cites the decision of Arbitrator Krinsky in *City of Elgin and Local 439 IAFF*, ILRB Case No. S-MA-04-11 (2011) wherein the City proposed an employee contribution of 8.5%, but then asserted in its brief that it would not really seek that, and would permit a cost sharing arrangement it had entered into with other unions. The arbitrator there found that this was an impermissible amendment of the final offer after the time for changes had passed.

These are obviously substantial issues, as the State calculates that 1,153 of the 1,465 unit employees, or nearly 80%, will receive statutory steps during the life of the agreement. Moreover, clawing back step increases already paid would result in employees owing the State significant sums of money, which, given the freezes in the first two years of both offers, would not be offset by any back pay. The proposed freeze could also require a reduction in rank for those advanced since July 1, 2015, and denial of increases in rank going forward. All of these would represent substantial hardships, arguing strongly against the State's position.

Clearly no party may unilaterally amend its offer once the time set for submission of final offers and any amendments has passed. However, we conclude that this case is distinguishable from *City of Elgin*, in that the State is not disclaiming the wording of its offer, or suggesting that it will implement some different offer, but rather is disagreeing with the Union over what its obligations are under the statute and under the settlement agreement if its offer is accepted exactly as proposed.²¹ The State's proposal is latently ambiguous, given the need to cross-reference to external documents – the statute and the settlement – but in

²¹ It is also worth noting that the State at all times represented that its offer would include the payment of statutory steps, unlike the employer in *Elgin*, which sought to disclaim its offer in the post-hearing brief.

light of those external constraints, it is susceptible to the interpretation they are claiming for it.²²

The Lodge argues in opposition to the freeze on steps, advancements and longevity in part because advancing in salary is part and parcel of advancing in rank, and a freeze on salary advancement would, it contends, mean denial of increased rank, even though it has been earned. In response, the State asserts that there is a distinction between rank and pay, and that its offer does nothing to disturb the awarding of higher rank to any officer. There is no conceptual reason for a freeze on salary advancement to mean a freeze on rank, particularly given that the great majority of officers will move to the appropriate pay level via statutory steps at some point during the contract.

Discussion: For the same reasons that a wage freeze is warranted, we find that a temporary freeze on payment of step increases, as opposed to progression to higher ranks, is justified. The State's fiscal condition is not the fault of the Lodge or the Troopers, but they are employees of an employer which faces a genuine need to moderate the costs of its operations. The withholding of further contractual step payments is unfair, given the long history of steps under this agreement and the expectation that creates, but it cannot be said to be unreasonable given the State's financial picture and the clarifications of how the State's offer is to be implemented.²³ / ²⁴ Specifically, the freezing of steps is

²² The separate \$25 per month longevity stipend at 21 years is encompassed in the step freeze, even though it is set out in the different contract provision. The State's offer on the stipend, as the Lodge notes, contains a reference to freezing it "except as required by statute." The Panel has some difficulty in knowing what weight to attach to this statement, since there is no statutory basis for the 21 year stipend. It is purely a matter of contract.

²³ Given the conclusion on step increases, the Panel finds it unnecessary to address the State's argument that pay increases in the final year of the agreement would violate Section 21.5 of the Labor Act, and would render the entire contract null and void under the rule announced by the Labor Board's State Panel in *American Federation of State, County and Municipal Employees, Council 31 v. State of Illinois, Dept. of Central Management Services*, Case No. S-CA-16-006 (5/25/16).

²⁴ This conclusion is expressly premised on the representations of the State that advancement to higher ranks continues as provided in Article 28, Section 2, that statutory steps will be paid, and that step payments pursuant to the settlement agreement will not be disturbed.

considerably ameliorated by the continued payment of steps during the hiatus to this point, the clarification that there will be no effort to rescind or recover any steps already paid, and the continued payment of statutory steps for the duration of the contract.

3. Longevity Step at 28 Years

The Lodge proposes that a new longevity step be added at 28 years, effective July 1, 2016. The Lodge's rationale is that the current top longevity step, at 25 years, is one year and eight months prior to normal retirement. However, the General Assembly created a new set of normal years of service and retirement ages for new hires. The result is that a normal retirement for Tier II officers would be age 60 with over 29 years of service. The new step is necessary, the Lodge submits, in order to maintain the current expectation of a step increase within roughly two years of normal retirement.

The State proposes status quo on the number of steps. There is no comparable jurisdiction with a 28 year step. The Lodge alleges that its proposal is merely an equitable adjustment to the schedule to accommodate Tier II employees with a step before retirement. However, the proposal is not limited to Tier II employees. All employees would receive the new step. The State points out that Tier II employees who were affected by the new retirement age are those hired in 2011 and after. They would not reach this step for at least 23 years, and the State suggests that there is no particular need to create the step at this point in time.

Discussion: Without going on at undue length, the State has a valid argument that the new step, even though it is offered to remedy a problem affecting persons impacted by the Tier II retirement age, actually affects all employees and, over the next two decades, will affect only Tier I employees. Even assuming that the lack of a step in the two years before retirement was a genuine

problem, the Lodge's proposed solution provides all of its benefit for the next 23 years to employees who will not experience the problem.

Award: Status quo on the number of longevity steps.

4. Merit Pay/ Gain Sharing

The State proposes that a system of merit pay be established, whereby annual non-pensionable, non-cumulative bonuses would be awarded to at least 25% of the members of the bargaining unit. The bonuses would total no more than 2% of payroll, and would be awarded on the basis of merit, as judged by criteria to be agreed upon by the parties or, failing agreement, established by the employer, to at least 25% of the bargaining unit. The State further proposes a gain sharing program, whereby an employee or group of employees who identify economies or efficiencies resulting in savings would be entitled to a one-time non-pensionable bonus reflecting a portion of those savings. The specifics of the program would be developed by the employer with the opportunity for discussion and input from the Lodge:

The parties agree to develop and implement a merit incentive program which will begin in the Fiscal Year starting July 1, 2016, to reward and incentivize high-performing employees, or a group's/unit's performance. As a part of such efforts, the Department *may create an annual bonus fund* for payout to those individuals deemed high performers or for a group's/unit's level of performance for the specific group/unit. Payment from this bonus fund will be based on *the satisfaction of performance standards to be developed by the Department in consultation with the Union*. Such merit compensation either for a group/unit or an individual shall be considered a one-time bonus and will be offered only as a non-pensionable incentive, and that any employee who accepts merit pay compensation does so voluntarily and with the knowledge and on the express condition that the merit pay compensation will not be included in any pension calculations.

Additionally, as a part of overall efforts to improve efficiency of state operations and align the incentives of the Department with its employees, *the Department shall develop gain sharing*

programs. Under such programs, employees or agencies that achieve savings for the State will share in such savings. Savings shall be calculated based on achieved savings for the State and shall not include savings from other funds, such as Federal funds, if the State is forbidden from disbursing such monies as rewards. Such compensation either for a group or an individual shall be considered a one-time bonus and will be offered only as a non-pensionable incentive, any employee who accepts gain-sharing compensation does so voluntarily and with the knowledge and on the express condition that the merit pay or gain-sharing compensation will not be included in any pension calculations.

In each subsequent contract year in which a merit incentive program is created, *no less than twenty-five percent (25%) of the employees* subject to this Agreement will receive some form of merit compensation under such programs. Funding for these performance bonuses is subject to annual approval as a part of the State's overall budget, and *limited to two (2) percent of the budgeted base payroll costs for bargaining unit employees.*

The Department will develop specific policies for both of these programs *and will give the Union an opportunity to review and comment on such policies prior to their implementation.* The Department's intent is to develop policies that will reward employees or group of employees based on specific achievements and to prevent payouts that are influenced by favoritism, politics, or other purely subjective criteria. Compliance with the policies for both of these programs shall be subject to the grievance and arbitration procedure. Whenever the Department pays an employee or group of employees as part of the merit incentive program or gain-sharing initiatives, the payments shall be funded by the Department's operating funds. The Department shall forward all requests for payment to the Comptroller, and payments shall be issued as required by the obligations of this Agreement.
[Emphasis added]

In support of this proposal, the State argues that there is strong evidence for the efficacy of merit pay in increasing productivity, and fairly compensating employees without favoritism, politics or other improper factors entering the picture. Expert testimony by Dr. Michael Gibbs, a noted author and scholar from the University of Chicago - Booth School of Business, illustrated the value of a well-designed merit plan, incorporating subjective and objective factors to incentivize employees. Such plans are in widespread use in the private sector, but

have also been adopted in government, including the Departments of Defense and Homeland Security. Moreover, 18 bargaining units in the State's workforce have agreed to this exact proposal, and merit pay is used by police agencies in Florida, California, Alaska and Iowa. Given the financial straits of the State of Illinois, it is perfectly reasonable to seek a compensation system that fairly rewards workers, does not further burden the pension system, and improves their overall productivity. It is the classic win-win scenario.

The Lodge proposes no merit pay and no gain sharing, noting that there is no support whatsoever for such a system in any external comparable, and that the State's proposal cannot meet the stringent requirements for a breakthrough proposal. A breakthrough is, in essence, a major or unusual change in conditions which would not normally be expected to be achieved other than through voluntary negotiations. It reflects the notion that arbitration is not intended to be an innovative process, and should if possible reflect an outcome that reasonable parties might have achieved if negotiations had not broken down. The originally articulated test was that a party seeking a breakthrough must establish that:

1. The old system or procedure has not worked as anticipated when originally agreed to;
2. The existing system or procedure has created operational hardships for the Employer or equitable or due process problems for the Unions; and
3. The party seeking to maintain the status quo has resisted attempts to bargain over the change (i.e., refused a *quid pro quo*).²⁵

²⁵ See, *Will County Board and the Sheriff of Will County*, S-MA-88-09, at page 52. (Nathan, 1988). The burden has since been phrased in somewhat more general terms by some arbitrators. In *FOP and Sheriff of Cook County*, ILRB Case No. L-MA-96-009, at page 20, (McAlpin, 1998) the arbitrator held that "The party desiring the change must show that:

- (1) There is a proven need for the change;
- (2) The proposal meets the identified need without imposing an undue hardship on the other party; and
- (3) There has been a *quid pro quo* offered to the other party of sufficient value to buy out the change or that other groups were able to achieve this provision. [Footnote 19]

The Lodge submits that merit pay is a classic breakthrough, and that the State has not in any way met the test for imposing it through arbitration. It works a major change in the system for compensating employees, when there is no need to change the current system of compensation. The current system works exactly as intended, and has created no operational hardships or difficulties. The proposed system is purely theoretical, and there is no evidence that it will solve any actual problem. Quite the opposite, it raises the specter of a compensation system completely under the control of the employer, with no realistic safeguards against favoritism, discrimination or simply poor administration.

The Lodge notes that the State's own expert, Dr. Gibbs, raised questions about the design of its merit pay system. He said that an effective merit pay system should pay bonuses of 10 to 15% of base pay. The State's system would provide nowhere near that amount. He also said that merit pay works best in conjunction with general wage increases. The State proposes a wage freeze. He stated that a lump sum system is not as effective as a bonus system tied to general wages. The State proposes a lump sum, non-pensionable bonus.

The Lodge also notes that the design of the State's system is problematic. It has no details. It has no criteria. It grants unilateral control over most aspects of the system to the employer. It attempts to make these amounts non-pensionable, which would be illegal, given that they are clearly compensation in the same manner as wages, and thus must be included in the pensionable compensation.

Discussion: Merit pay is a concept that is hard to argue with, in theory. The difficulty, of course, lies in defining merit, measuring it and identifying the infallible men and women who will administer the system in such a way as to instill and maintain confidence in a skeptical work force. There are many metrics that can be used, but none are specified in the State's proposed system. It is all "to be determined." The State argues vigorously that it would be determined in

consultation with the Union, but this is already an impasse proceeding, and on the chance that agreement could not be reached, the State would unilaterally decide the definition of merit, how it would be applied and to whom it would be awarded. In the context of a contract with scant other pay increases available, that is a goodly amount of discretion to vest in the employer. In the context of a contentious relationship between the parties, it is an invitation to suspicion and discord.

The proposal to introduce a major component of compensation that is largely controlled by the employer, is specifically designed to exclude some employees,²⁶ and would almost certainly result in significant disparities even as between those who did receive compensation, is the very definition of a breakthrough. The basic requirement for a breakthrough proposal to be accepted is that it addresses a problem. Yet there is no proof that the current compensation system does not work as intended, that employees are not motivated or productive, or that a switch to a discretionary system is somehow needed. If this was purely an add-on to a normal pay package, the fact that it is an add-on and not a replacement would make it less dramatic. But in the context of an offer that has no other general salary increase, and the withholding of experience increments that are built into the salary grid and the promotional system, merit pay becomes the classic solution in search of a problem - it is the “good idea” described by Arbitrator Benn.²⁷ On this record, it does not come close to meeting the test for a breakthrough in arbitration.

The offer on gain sharing, like the offer on merit pay, is more of a concept than a proposal. Yet it does not have the same disruptive potential as merit pay,

²⁶ The State notes that while its proposal promises a bonus to at least 25% of the work force, it had floated a figure as high as 50% in negotiations. The Lodge complains that this is a change in the offer after it was made, but in fact the language of the State’s offer (“no less than” 25%) would allow it to pay merit to 100% of the workforce if it chose.

²⁷ “...it is not the function of an interest arbitrator to make changes to terms of existing collective bargaining agreements based only on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change...” *City of Chicago and Fraternal Order of Police Chicago Lodge 7* (Benn, 2010).

since there must be identifiable savings flowing from the identifiable contribution of one or more identifiable employees. Certainly there could be the possibility of disagreement and disputes, but standing on its own, it would appear to be nothing but a complement to the compensation system, and quite likely non-controversial. It does not, however, stand on its own. It is part and parcel of the merit pay proposal, and it is decidedly the minor part. Whatever its possible upside, it cannot outweigh the negatives associated with the merit pay proposal.

Merit pay, as a concept, has much to recommend it, so long as it is transparent, thoroughly understood and broadly acceptable. To simply say “we will pay on the basis of merit” is at best to state an aspiration. The bargaining of wages is one of the most elemental rights and duties of a labor organization. If a union wants to give over the bulk of the decision making on that subject to an employer, that is its right, but no arbitrator would lightly order a union to do so. There is no evidence in this record that would compel such a result, and accordingly the State’s proposal on merit pay and gain sharing cannot be accepted.

Award: Status quo on merit pay and gain sharing.

5. Hazardous Duty Pay

The State proposes that hazardous pay be increased from \$50 per month to \$100 per month, effective January 1, 2016. The basis for this proposal is simply that the remainder of the State’s offer on wages contains little in the way of increases. The Lodge offers the status quo on hazardous duty pay, but takes no position on the State’s offer.

Award: Hazardous duty pay will be increased to \$100 per month effective January 1, 2016.

6. Advancement Pay

The Lodge proposes to modify Article 28, Section 2, to increase monthly wages for officers with one year or more of service by \$150 per month, effective July 1, 2016. It points out that this is roughly the same cost as the merit pay proposed by the State. The State proposes no monthly increase along these lines, although it does propose a line out of the provisions for advancement in keeping with its step freeze for the duration of this contract.

The rationale for the Lodge's advancement pay proposal is not immediately apparent, and the Panel declines to adopt it. The step freeze element of the State's proposal is addressed above. The Panel has adopted it, freezing salary enhancements for advancement in rank during the term of the contract, except as may be triggered by the payment of statutory steps. The awarding of increased rank, title and insignia is unaffected by this change.

Award: Status quo as to the number of advancements.

7. Shift Differential

The Lodge proposes to increase the existing midnight shift differential by \$0.05 to \$0.80, and the existing afternoon shift differential by \$0.30 to \$0.80, effective July 1, 2015. The Lodge argues that modest increases in these differentials are appropriate, given that they rank near the bottom of the comparable group. The State proposes status quo on the shift differential, given the state of the financial picture and the lack of any compelling need for an increase in these amounts.

Discussion: The Lodge's proposal would create a shift differential for the afternoon shift that is identical to the shift differential for the midnight shift, which would be somewhat out of the ordinary, even with their own chosen set of comparisons. The Panel notes that the shift differentials were only introduced in

the last contract, with the afternoon shift differential coming in six months before expiration. Certainly the 5 cent increase in the midnight shift differential is modest, and would not turn a decision either way. The 30 cent increase in the afternoon shift differential is more substantial, both in terms of percentage and in terms of economic impact, and is difficult to justify after only six months of experience with any differential at all for those hours.

Award: Status quo as to the shift differential.

8. Maintenance Allowance

The Lodge proposes to maintain the current level of the clothing allowance, but adds language requiring that, if the allowance is not paid by October 1st of each year as required, the officer or officers will be credited with 16 hours of compensatory time. It bases this demand on prior instances in which the State has failed to pay the maintenance allowance on a timely basis. The State proposes status quo on the clothing allowance.

As discussed in Section 11, below, the State has a somewhat checkered history of making timely payments to members of the bargaining unit after the resolution of contracts. The Lodge's desire for some disincentive for this behavior is understandable. However, the awarding of 16 hours of compensatory time as a remedy for a delay in paying the clothing allowance does not seem to be in proportion to the evil its seeks to address. Sixteen hours of comp time is worth more than the clothing allowance itself for many officers, and it is payable whether the delay is one day or one months or six months. There is no reasonable connection between a delay in paying the clothing allowance and the awarding of 16 hours of comp time, and thus the Panel declines to accept the Lodge's proposal.

Award: Status quo as to the maintenance allowance.

9. Addition of Casimir Pulaski Day to the list of Holidays

The Lodge proposes to add Casimir Pulaski Day to the list of holidays. The State proposes to maintain the status quo on holidays. Given the overall economics of this round of bargaining, there is no substantial basis for this improvement in the holidays benefit.

Award: Status quo on Holidays.

10. Overtime Allotment

The Lodge proposes to reduce the fully funded overtime allotment from \$6,000,000 to \$5,000,000 in each year of the contract. The State proposes to maintain the status quo. The actual effect of reducing this amount would be to increase the State's costs, since it is liable for double time compensation rather than time and one-half once the overtime allotment is exhausted. There is no justification for this proposed change.

Award: Status quo on Overtime Allotment

11. Interest on Delayed Back Wages and Monetary Benefits

The Lodge proposes to add a provision requiring the payment of interest at the rate of 6% per annum for all monetary improvements contained in a settlement or interest arbitration award, if those amounts are not paid in full within 120 days of the settlement or award, until the date on which the Department submits the claims for payment to the Comptroller or the Director of CMS, as the case may be. The Lodge's proposal is based on prior experiences with very lengthy delays in receiving payments due for back pay and other

monetary improvements in the last round of negotiations. Those negotiations resulted in an Award by the Chair of this Panel, which was issued in July 2014. The members of the unit did not receive their back pay and returned to the arbitrator, raising the problem as a matter of implementation of the Award and seeking among other things, interest on the unpaid amounts. The State argued that there was no inherent authority to award interest, and that such a remedy must be based on a contract provision. The Arbitrator accepted that argument, even while offering the opinion that it was not reasonable for employees to wait a year for their back wages. The Lodge now seeks such a provision to protect its members should the State again prove to be incapable of providing back pay amounts in a timely fashion.

The State proposes that no such provision be added to the contract. The State points out that the Central Management Services Law already governs payment of interest on monies owed pursuant to final judgments and settlements for wages, and suggests that the Lodge's effort to move to the front of the line and receive preferential treatment relative to other employee groups is unreasonable and likely illegal.

Discussion: The Lodge has provided compelling grounds for its concern over payment of back wages and benefits. The Lodge has previously encountered these problems, and has tried to address them through the arbitrator. The problems related to the inability of the Department to make calculations of the amounts it owed. The arbitrator advised the Lodge that they must seek contract language in order to receive interest, which is what this proposal is. Contrary to the State, the Panel can discern no conflict between the Lodge's proposal and the CMS Law. The proposal of the Lodge merely holds the Department to account for delays in computing and submitting amounts for payment to CMS or the Comptroller. It does not seek interest once the Department has fulfilled its responsibility to submit the back wages for payment. It does not interfere with the work or the jurisdiction of the CMS Director or the Comptroller. It

supplements remedies currently available, but does not conflict with them, and it does so in response to a demonstrated problem.

Award: The offer of the Lodge is adopted, and Article 20, Section 6 – E will be created to read:

A. All arbitration awards or other settlements providing for the payment of any negotiated salary, wage rate(s), or any other monetary or economic benefit required under this Agreement shall be paid in full to an officer within 120 calendar days of the date of the award or settlement, unless a different period of time is agreed to by the Lodge and the Department. Failure to pay within the period of time required by or otherwise agreed to under this Paragraph will invoke the interest provisions of Paragraphs B or C of this Section.

B. For claims submitted to the Department of Central Management Services (“CMS”) by the Department (i.e., ISP) for payment from any fund, and subject to the provisions of 20 ILCS 405/405-105(13), any officer who is not paid the negotiated salary, wage rate(s), or any other monetary or economic benefit required under this Agreement shall be paid interest accrued at the rate of 6% per annum for the period of time beginning with the first calendar day following the expiration of the 120-day payment period (or other period agreed to by the parties) required by Paragraph A of this Section, and ending on the date claims are received by CMS from the Department. The requirement to pay interest pursuant to this Paragraph shall be in addition to – not in lieu of – the requirements of 20 ILCS 405/405-105(13).

C. For claims submitted directly to the Comptroller by the Department (i.e., ISP) for payment from any fund, any officer who is not paid the negotiated salary, wage rate(s), or any other monetary or economic benefit required under this Agreement shall be paid interest accrued at the rate of 6% per annum for the period of time beginning with the first calendar day following the expiration of the 120-day payment period (or other period agreed to by the parties) required by Paragraph A of this Section, and ending on the date claims are received by the Comptroller from the Department.

D. The provisions of this Section shall not apply in the event an interest arbitration award/decision is affirmed by a circuit court pursuant to Section 14 of the Illinois Public Labor Relations Act.

12. Health Insurance

The State proposes that the health insurance premiums, benefits structure and/or plan design be changed to provide for a cost sharing of 60% by the State and 40% by the employee, unless the employee voluntarily executes a non-revocable waiver of retiree health benefits for the employee and his or her dependents, in which case the employee will retain the current health insurance plan, premium and benefits for the duration of the contract. The State proposal includes a variety of plan design options, including some as yet to be developed options, and the possibility of a State operated private insurance exchange. The development of those options, including premiums and plan design, is delegated to a Labor/Management Committee, unless that committee fails to report by January 1, 2016, in which case the authority over those matters devolves to the State, guided by parameters specified in the offer. The State also proposes four new salary tiers for persons earning over \$100,000. The State and the Lodge use salary tiers to determine how much employees will pay for their premiums, with more highly paid employees paying more in premiums. The State proposes, at least under some options, to insert new tiers to a maximum of 110% of the \$100,000 premium level.

The Lodge proposes to maintain the current level of premiums, benefits structure and plan design, but to specify those terms in a separate Appendix to the collective bargaining agreement, rather than incorporating them by reference in Article 26. It provides for premium increases of 2.5%, 3% and 3% following the implementation of the Award. It further proposes a hiatus on increased health insurance costs during any period when negotiated wage increases have not been paid, and a “me too” provision for voluntarily negotiated improvements in health care benefits for other State workers.

The State contends that its health insurance proposal is the same as has been accepted by all other unions in this round of voluntary collective bargaining,

other than those that directly provide health coverage to members and is thus, on its face, reasonable. Moreover, the State's offer continues the historic norm of having one uniform health insurance benefit for all State employees. The Lodge's proposal, by contrast, represents a dramatic breakthrough, by allowing a single unit to go its own way on health insurance benefits. This creates a potentially chaotic situation, with multiple plans and multiple versions of plans being administered, greatly increasing the complexity and administrative burden of this benefit. At the same time, it diminishes the cost saving power of grouping all employees together to purchase health care on the most favorable terms possible.

The State pays, on average, \$1611 per month per employee for medical coverage. This amount increases to an average of \$2000 per month when the costs of retiree health care benefits are added in. Between current costs and retiree costs, the State pays 85% of the cost of medical coverage. The State proposes a modest realignment of costs, to 75% of current and retiree costs. This is part of a necessary \$815 Million program of cost savings, which includes increased contributions from universities, renegotiations with vendors, audits to ensure that only qualified recipients are on the coverage, and the use of Medicare Advantage. The vast majority of the savings have been realized by means other than cost shifting to employees.

The State's strategy in terms of employee coverage involves maximizing employee choice. Healthy employees may elect a Bronze plan, allowing them to avoid any premium cost, while affording an actuarial value of 0.60, meaning that the State assumes 60% of the overall cost of coverage. A Silver plan allows employees to retain their current premium level, with a net actuarial value of 0.70. Gold (0.80) and Platinum (0.9) plans are available for a higher premium cost. In each case, the combination of the plan design and the premium contribution yields a net actuarial value of 0.60. The State stresses, however, that adding in the value of retiree health insurance benefits raises the overall State contribution to 75%. This is higher than the plans in all comparable states.

Given this, and in light of the massive budget deficits the State must grapple with, the offer is more than reasonable.

The State notes that the Lodge is opposed to its new salary tiers. The State has negotiated with its unions to charge higher premium costs to higher paid employees. Since Troopers are among the more highly paid employees, they pay relatively high premiums. The State proposes to add four more tiers above \$100,000 to the current premium contributions scale. These tiers would be spread out equitably. The State expresses its intention that no employee pay more than 110% of the premiums paid by the current top rate.

The State points out that, contrary to the Union's complaints that it never had a chance to consider its insurance proposal at the table, its final offer reflects the same insurance options that were discussed in bargaining, and that the main substantive difference between the existing Quality Care and Managed Care plans and the State's proposal is the doubling of the premium. There is nothing difficult to understand about what the State is proposing. Indeed, this proposal is far, far more specific than the current contract language, which simply refers to "such terms and at such rates as are made available by the Director of Central Management Services pursuant to the State Employees Group Insurance Act..." The detailed description of benefits and plan features is taken nearly verbatim from the language of the AFSCME contract, where insurance was traditionally bargained, as is the final offer of the Lodge. The two final offers are nearly identical in that respect.

The State asserts that its insurance plan offers greater flexibility to employees in selecting a plan design. It improves employee input to the insurance system through joint committees to discuss plan design and plan modifications. And it offers a chance to keep exactly what the employee has now, if the employee voluntarily waives retiree health benefits. On every measure, the State's proposal allows for greater employee control, and greater employee

choice.

The State rejects the Lodge's complaint that its offer allows for unilateral changes or impairs its right to bargain mid-term over changes to the health insurance plan. Certainly the plan allows for increases or decreases to premiums, but only in amounts reflecting changes in net insurance liability, and then in amounts not to exceed a ten percent increase. The ILRB General Counsel reviewed this and concluded that it was not a waiver of bargaining, since there were clear parameters, and the Union could, in any event, seek offsetting wage increases. She said much the same about the establishment of the new contribution tiers for those making more than \$100,000.

Likewise, the establishment of the new insurance options are within the State's control, but only to the extent of satisfying the parameters of being richer than the plan below them and less rich than the plan above them, with costs split evenly between premium contributions and out of pocket costs for treatment. None of these elements give the State unfettered discretion to make changes, increase or decrease costs. Likewise, the exchange proposed for development during the terms of the contract must offer plans with actuarial values tracking those of the plans set forth in the State's final offer as Options 1, 2 and 3, meeting the requirements of Platinum, Gold, and Silver plans under the Affordable Care Act. As the ILRB General Counsel observed, the State retains some necessary discretion to implement these future developments, but only within the confines of the existing plans.

While the Union contends that the costs under Option 2 and Option 3 are indeterminate, that is misleading. Deductibles, co-pays and out of pocket maximums are not specified, but they must ultimately achieve a 0.60 net actuarial value. The cost features needed to attain that value will be calculated and known before the employees make their elections in open enrollment. Thus there is nothing indeterminate about what will go into calculating the cost

factors, and the actual numbers will be known to employees, who can make their own well informed choices.

Finally, the State argues that it intends to develop a Bronze Plan option, having a net actuarial value of 0.60 and no premium cost to employees, and that the Panel should consider that option in deciding which offer is most desirable. While the Union complains that this option is not specifically mentioned in the State's final offer, the fact is that this plan will be offered to non-unit employees and the State Employees Group Insurance Act requires the State to offer all plans available to non-bargaining unit employees to the bargaining units. Thus, as a matter of law the State must make this plan available to the Troopers once it becomes available to other State employees. An employee electing such a plan would make more under the State's final offer than he or she would currently, since there would be no premium payments, and there is no plausible reason for the Lodge to prevent its members from having access to it.

Beyond the merits of the plan's design and implementation, the State points out that it stacks up well against the health plans in comparable jurisdictions. The Union claims that premium costs for the State's plan make it uncompetitive, but of course premiums are but a small element of cost. If the net cost, including out of pockets, is considered, and the value of retiree health benefits is folded in, the State's current medical insurance benefit is exceptionally generous and the proposed plan is well within the range of the comparable states. External comparisons, when done on a basis that considers all factors and the entire benefit, support the offer, as do internal comparisons. In this regard the Union's attempt to diminish the internal settlement pattern because the Teamsters receive a higher contribution from the State than do the employees in the State Plan should be disregarded. The Teamsters have taken the full responsibility for covering the medical costs of those employees, which is a substantial burden the State need not shoulder. The fact that the State pays something for being relieved of liability and administrative costs does nothing to

undercut the validity of the pattern of settlements.

The State's final offer takes account of the terrible fiscal challenges of the GR Fund, the steadily increasing gap between insurance costs and employee contributions, and the general rate of increase in the cost of medical care. The State cannot ignore the dismal state of its General Fund, or the need for major cost saving to keep the insurance plan viable. The State's offer does that while, as noted, maximizing employee choice. It ties premium increases to actual increases in the State's liabilities, with the State paying the greater portion, and the employee's share being capped. Given the realities of the State's finances, the proposal is reasonable and should be adopted.

The Lodge urges acceptance of its position on health insurance, and more to the point, rejection of the State's. The final offer of the State was revised after negotiations to propose a 17 page long, highly involved construct that the Lodge never had a chance to bargain over. Throughout negotiations, the State bargained in concepts and generalities. Only in its final offer before the arbitrator did it provide any substance at all. Even there, the State proposes to create new plans, which cannot be analyzed since they do not exist. As the Chair of this Panel noted three years ago, in his *Palos Heights Fire Protection District Award*²⁸, a party that does not reveal the substance of its proposals until arbitration faces a nearly impossible burden in proving the need for the proposal.

The substance of the State's proposal is a massive shift of costs to employee and their families. The ratio of costs between the State and the workers is now 76-24. The State proposes to change that abruptly to 60-40. In order to accomplish this, the State would double premiums and increase point of service payments. This would all be accomplished in a fog of uncertainty, since the State does not actually specify what premiums would be under its plan. The premiums for Lodge members doubled under the last contract, so this would represent a

²⁸ *Palos Heights Fire Protection District and Palos Heights Professional Firefighter Union, Local 4254, IAFF, S-MA-12-389* (2013)

quadrupling of health insurance premiums in a four year period.

The State proposal would use a framework similar to the Affordable Care Act's Platinum, Gold, Silver and Bronze designations. Those correlate to 0.90, 0.80, 0.70 and 0.60 actuarial values. The only plan that is described in any detail in the State's offer is the current Platinum plan. As the State's own witnesses conceded, there is no Bronze option, and the Silver and Gold plans would need to be developed before they could be offered, as would the nebulous private exchange option. There is nothing in the proposal that would assure the continuation of choice between the current QCHP and Managed Health Care plans in the new Silver and Gold structures.

While there is no specificity to the proposed Silver and Gold plans, it is clear that they would increase the out of pocket costs to members in order to maintain the 0.60 actuarial value sought by the State. While the State claimed in testimony that there would also be a Bronze option, with no premium but high out of pocket costs, there is no language at all in the offer suggesting that possibility, explaining its cost structure or features, or authorizing such a plan. The State's expert, Ms. Armstrong, testified that no such plan had been adopted. This simply illustrates the notional nature of the State's proposal – it has plans with no detail, an exchange that may come into being for some purpose at some point, and even one plan the existence of which the State's witnesses disagree over. Health insurance is a vitally important benefit, and employees should not be expected to buy into a proposal that is nothing more than a bunch of half-formed concepts.

The Lodge again points out that premiums for employees who remain in the existing Platinum plan will increase by just over 100%. For most employees using managed care, the increase will be 145%. In July of 2008, an employee with single coverage paid \$870 per year. The State's proposal would put that cost at \$5,124, just under six times as much. It would also end the longstanding

practice of negotiating actual dollar amounts to be paid for premiums, and instead index the premium to the State's calculations of liabilities, up to a 10% premium increase per year. That dramatic departure from past practice introduces uncertainty for employees and for the Lodge. The increase in costs is greatly in excess of what the Employment Cost Index would suggest is common in public employment – an increase rate of roughly 3.5%. All in all, the State's proposal, to the extent that it can be understood, is extreme and unreasonable. By contrast, the Lodge offers premium increases of 2.5%, 3% and 3%, which recognize the increasing costs of health care and track those increases through the use of moderate, knowable premium increases.

One very significant feature of the State's proposal that further clouds any level of certainty employees might have about their benefits is the "Joint Labor/Management Committee" to develop and recommend changes to the plan, including the actual design of the Silver and Gold options. The State's proposal would have those proposals submitted by January 31, 2016. If the proposal was not received by that date, the State could act unilaterally to design and implement the plans. Since that deadline passed without the formation of the Committee, and prior to the conclusion of the hearing in this case, the State gives itself carte blanche to assemble two of the three plans contained in its offer. This includes the new salary tiers, which are left to the State's discretion for the Silver plan, including as to the number of new tiers over \$100,000 and premiums to paid at those tiers. The State pretends to have addressed those items in its offer, but it has not, and the assurances it provides in its brief are not binding.

The Lodge argues that the State's entire health care scheme is a breakthrough of monumental proportions. It sharply reduces the actuarial value of the medical insurance benefit, fundamentally changes the premium system, creates at least four new salary tiers to increase premiums on employees over \$100,000 without any indication of what those premiums might be, and creates at least two entirely new health plans, plus a cafeteria style private exchange. Yet

the State has not shown any of the preconditions for a breakthrough on this issue. There is no proof that a complete overhaul of the existing health care system is needed. The current system works well at providing good quality care to employees. There has been no dramatic change in circumstances, or even in health care costs. There has been no offer of a quid pro quo to induce agreement, and no unreasonable refusal by the Lodge to accept some modification of the plans. The State seeks to impose through arbitration a health insurance plan that it did not seek in bargaining and could not have obtained in bargaining. It has no proof that insurance costs in particular have been rising. Operating expenses for the Health Insurance Reserve Fund have, in fact, declined to their lowest point since 2011. In this year, they are projected to rise 0.9%. The State's experts conceded that the favorable financial picture was a consequence of the move of retirees to Medicare Advantage and the outcomes of the last round of bargaining, when employees agreed to shoulder higher out of pocket costs and higher premiums. In the last contract, the cost sharing transitioned from 82-18 to 76-24. Now the State seeks to transfer a substantial portion of its remaining costs to the same employees who made its current positive results possible. That simply makes no sense.

The essence of the State's insurance plan is to shift the costs of retiree health care onto active employees, by adopting plan structures that are largely unknown and will not be bargained. These cost shifts have no support in the health plans of any comparable jurisdiction. The current actuarial value of the State's health plan is 0.93, while the State's own studies show an average actuarial value in state employment of 0.92. The State subsidy is 0.88, which is .03 above the median. By every measure, the current health plan is well within the norm for costs and cost sharing for comparable states. The State's proposed plan, by contrast, would drop the State plan to the bottom of all states.

Neither, in the Lodge's view, is there internal support for the State's proposal. While other bargaining units without the option of going before an

arbitrator have reached settlements that include the State's proposals, a significant portion of those units – the Teamsters and the building trades – have their own union sponsored health and welfare plans. Those units have opted out of the State plan, and in return have received subsidies that exceed what the State currently pays for health insurance per employee. The State will contribute roughly \$21,000 per year per employee to the various funds of those unions, while it currently contributes just under \$15,000 per year for other State employees, including Troopers. This allows those employees to receive health coverage at no cost. The Lodge also notes that those contracts do not contain any of the unusual language of the State's insurance proposal allowing for unilateral changes and the like. Thus it is a fallacy to claim that there is some sort of persuasive internal pattern of settlements that would support the State's offer. Nor has the State exercised its right to impose a 0.60 cost structure, or any increased costs, on unrepresented employees.

The Lodge concludes that there is no basis under the bargaining statute for the Arbitration Panel to seriously consider the State's health insurance offer. No need for a change in the current system has been demonstrated. Actual costs have not changed dramatically, and are in line with those of other states. The proposed change has no support externally and little support internally. The change represents a dramatic break with the customary approach to setting premium shares, cost shares and plan benefits, when there is no evidence of any problem with the functioning of the current system. Faithfulness to the law demands that the State's proposal be rejected.

Discussion: While the State's final offer on health insurance has multiple levels of complexity, at its core it seeks to have a 60-40 split of medical costs between the State and the employee no matter what plan is selected. Its proponents justify it in terms of employee choice, innovation and such, but its purpose is to save money by shifting costs currently borne by the State to the employees, and to keep them there. This is not in response to a problem of

paying abnormal amounts for hip replacements or other procedures, or even in response to medical costs in general. It is an effort to trim costs in response to the State's general financial situation. That is the long and the short of it. The Lodge's proposal, with relatively minor changes, leaves the current cost sharing arrangement and current plan design unchanged.

Both parties characterize the other's proposal as a breakthrough, requiring enhanced levels of proof in order to be accepted. The State's argument is that no individual bargaining unit has negotiated health care benefits and design, leaving it to the Director of CMS and the negotiations with AFSCME Council 31 to set the standard for premiums, benefits and the remaining substance of the benefit. That has been true historically, but the argument ignores the fact that (1) both parties have final offers that incorporate much of the AFSCME Appendix on the current health insurance structure into this contract rather than simply by reference, and (2) the State has negotiated separately with other unions, notably the trades and the Teamsters, on the topic of health insurance in this round of bargaining. The reason that the parties have changed their practice of accepting the outcome of the AFSCME negotiations is, quite simply, no one has any clear idea what the outcome of those negotiations might be. This round of negotiations has been different from those in the past, in that there is a real possibility of an impasse, and the potential for unilateral implementation and/or a work stoppage. For the portion of the AFSCME unit covered by interest arbitration, the Panel takes arbitral notice that health insurance is an issue in that proceeding, and that raises at least the possibility of different plan structures applicable to different portions of the AFSCME represented workforce. This changed circumstance makes it unsurprising that the Lodge would exercise its statutory right to negotiate over the health benefits of its members, without using AFSCME or the Director as its agent.

The State's proposal, unlike the Lodge's, goes beyond a different format, and has a set of very significant substantive changes to the existing system for

health insurance. It has a different cost structure, in the sense of a significant premium increase, but there is nothing particularly radical or new about that. As the Lodge itself notes, premiums have doubled several times in the past under the current system. The State plan, however, has a completely new approach to devising and offering insurance plans, and to setting future premium costs.

With respect to the current Platinum plans, the immediate change is in the premium, and as noted that is not groundbreaking. The new feature is the manner in which future premiums are determined for that plan and for others established under the offer. The future premiums for all plans are whatever is necessary to provide the same cost sharing in aggregate as the Platinum plan established in Section 2 of Employer's Revised Final Offer. Historically, the parties have dealt with premiums on the basis of negotiated dollar amounts. As the State's witnesses pointed out, that approach has the disadvantage of seldom keeping up with increases in costs, resulting in a declining share of those costs being covered by premium contributions. While it is a problem for the State, premium contributions expressed as dollar figures are also a material benefit to employees, who know what their likely costs are over the term of the contract. That stability, however, has come at the price of premiums doubling in each of the last two rounds of bargaining.

The State's offer proposes the creation of two new insurance plans at price points roughly equivalent to the ACA's Gold and Silver levels, as well as a plan designed to entice employees to waive retiree insurance benefits and a private health care exchange. It does not, contrary to the State's argument, provide for a Bronze level plan.²⁹ Per Section 7 of the State's offer, the new plans are nominally established through a Joint Labor / Management Committee,

²⁹ It may be, as the State argues, that a Bronze plan must be offered to Lodge represented employees if it is offered to other State employees. The Final Offer, however, makes no mention of this plan, and no Bronze plan has been offered to any State employee as yet. The State may offer such a plan, or it may not. For purposes of analyzing the actual offers before the Panel, we confine ourselves to what has actually been proposed, and any fair constructions of what has been proposed, and do not give weight to things that might come to pass in the future.

following parameters laid out in the offer. One would be designed to maintain the premium levels in effect on July 1, 2015, with the same aggregate cost sharing as the current plan would have after the premium increases. This is discussed as the Silver plan. The second would be richer than that plan design, but less rich than the current plan, with employee costs split between premiums and out of pocket costs. This is discussed as the Gold plan. Both plans would include additional salary tiers. The Gold plan would have the same limits on new salary tiers as the Platinum plan – four tiers with a cap of 110%. The Silver plan, however, describes only “additional salary tiers for determining employee premium contribution amounts for employees whose annual salary exceeds \$100,000.” This language would also apply to a fourth plan option to be developed, providing the coverage and premium received as of July 1, 2015 for the life of the contract, in return for a voluntary, irrevocable waiver of retirement insurance benefits for the employee and his or her dependents.

The various new plans are styled as a joint development, but the fact is that the Joint Labor / Management Committee envisioned in the offer has a deadline of January 31, 2016 to produce its recommendations, and if it does not do so, the power to act unilaterally vests with the State. The final offer containing this deadline was submitted only a few weeks before the deadline, when the arbitration hearing was barely begun. Needless to say, no such committee was formed and no such report was issued. In practical terms, the State’s offer authorizes it to unilaterally construct these plans, including the new tiers, and a private health insurance exchange to offer a menu of further insurance options to allow employees to construct their own insurance plans.

The State denies that its offer vests it with unilateral authority, but a reading of the plain language does not support that contention. It asserts that it intends all new salary tiers to follow the limit of four tiers and cap of 110% specified for the Platinum and Gold plans, but the Lodge is correct that that is not what the offer actually says with regard to the Silver and retiree benefit waiver

plans. It simply provides for additional tiers above \$100,000. The State argues that the parameters contained in the offer for how a Silver and Gold plan must be priced would substantially limit its discretion, and we agree that there are such limits, but nonetheless the details of plan design matter, and the notion of leaving matters such as premiums, co-pays and deductibles to the discretion of one party to a contract negotiation would be unusual, to say the least.³⁰

The State's approach is clearly a breakthrough. It is a complete change in how insurance has been negotiated, how premium increases have been set, how insurance plans have been constructed, and how decisions on issues such as plan design have been made. It is not possible for anyone looking at the State's offer to know with any certainty what the insurance plan or plans will look like during the run of the contract, how many there will be or whether instead employees will self-construct their plans. The State makes the valid point that the current contract does not contain any details at all about insurance, beyond referring to the decision-making authority of the Director of CMS. However, all parties understood in the past that the details of the plan would be set in the AFSCME negotiations, since AFSCME represents by far the largest set of bargaining units and largest group of employees. That system did not give autonomy to the Troopers, but it certainly did not give unilateral power to the State. Broadly speaking, the interests of employees were directly represented in the former structure. Under the State's offer in this case, they are not.³¹

Arbitration is intended as a conservative process. A breakthrough in arbitration is not generally accepted unless there is evidence of a genuine problem with the way the existing system operates, the proposed change

³⁰ The offer says that the Joint Committee – functionally the State – “shall provide for the development and introduction of overall plan design options and premium contributions.”

³¹ The State points out that the ILRB General Counsel found that its proposal was not a waiver of bargaining, in part because the State did not have unconstrained discretion, having identified parameters for its decision-making. The issue before this Panel is not whether this is a mandatory topic of bargaining or an unfair labor practice. It is what the proposal actually allows and what difference that makes in the context of the contract.

addresses that problem without unduly burdening the other party, and reasonable attempts to obtain relief in bargaining have been rebuffed.³² Here, there is no real problem with how the current system operates, or the range of options available to employees, other than the fact that the present system does not deliver the cost savings the State needs to meet the budgeted reduction in insurance costs. As noted at the outset of this discussion, the purpose of the proposed changes is not so much to change how insurance is provided as to shift costs to employees, as a means of addressing the State's overall financial problems. The Panel has already found that the State's financial problems are real. They are not caused by the insurance program, just as they are not caused by Trooper salaries, but certainly insurance is a large expenditure of funds, and a logical target for some form of savings. However, the question is not whether saving money is a legitimate goal. It is whether the particular structure of the State's insurance offer is warranted as a means to that end. The Lodge somewhat overstates the extent to which the insurance offer was a bolt from the blue, and this case is not perfectly analogous to *Palos Heights Fire Protection District, supra*. The overall cost distribution was on the table well before the final offer was made. The possibility of different plan designs had been raised. The Lodge knew what the State hoped to achieve, but it did not know the details of how it would seek to achieve it. That is what is different about the State's bargaining proposals and its final offer. Yet the problematic portions of the State's offer for purposes of a breakthrough analysis all come from the details. It is not only designed to shift costs, but it is designed to do so without meaningful input from the Lodge. Somewhat along the lines of the merit pay proposal, this is a set of concepts with the details to be announced at a later time. Put another way, it a set of "good ideas." Some of these concepts certainly make sense in the abstract. However, in the context of a proceeding in which an outcome is dictated to an unwilling party, there must be more than a general need to reduce costs and one party's good idea if an arbitrator is to impose fundamental changes in something

³² See, *Sheriff of Will County and Sheriff of Cook County, supra*, discussed in the context of merit pay.

as important as health insurance.

Even if the amount of the cost shift sought by the State could be justified, the offer it has put forward is quite vague in important respects, and functionally excludes the exclusive bargaining representative from decision making on large swaths of the most important fringe benefit in most contracts. It cannot be said to be carefully tailored to address the problem without unduly burdening the other party, and it was not pursued in this degree of detail at the bargaining table. The Panel concludes that this is a breakthrough proposal that does not meet the criteria for awarding a breakthrough proposal.

The Lodge's offer on health insurance includes a provision that suspends any premium increase for so long as any monetary benefit agreed to or ordered has not been paid. This provision is intended to address the same concern that is the focus of the Lodge's proposal for interest on unpaid wage increases and, to a lesser extent, its proposal on the maintenance allowance. Whether it is reasonable or not, its impact is slight in comparison to the negative features of the State's offer. Since one health insurance offer must be accepted without revision, and since the Lodge's offer is at least the less unreasonable of the two, the offer of the Lodge on health insurance is adopted.

Award: The final offer of the Lodge is adopted.

OPINION – Non-Economic Issues ³³

On non-economic issues, if the Arbitration Panel is satisfied that there is a genuine problem to be addressed, it is free to adopt the offer of one party or the other on the issue, or to modify the proposals to cure defects, narrow language

³³ The non-economic issues are addressed in roughly the same order as the parties argued them in their briefs.

that overreaches, or strike a balance between legitimate competing interests. In general, in order to warrant language change through arbitration rather than voluntary collective bargaining, a party must show that there is a problem that exists or a potential problem that is self-evident in the current language, and that the language it proposes solves that problem.

13. Fair Share

The State proposes to eliminate the fair share provisions of the collective bargaining agreement, including the collection of fair share fees and the employee's obligation to pay fair share. The State's rationale for this change is what it views as the likely course of the law at the Federal level, in light of doubts it discerns in the U. S. Supreme Court's Opinion in the *Harris v. Quinn*, 134 S.Ct. 2618 (2014)) about whether fair share for public employees is permissible under the First Amendment. The State asserts that the rationale for upholding fair share agreement, first articulated by the Supreme Court in *Abood v. Detroit Bd. Of Edu.*, 431 U.S. 209 (1977), no longer holds as the mainstream view, and that the State has an obligation to protect the free speech rights of its employees by insuring that any contributions they make to a public sector labor organization are freely made and not coerced.

The Lodge points out that fair share has been a feature of this and all other State bargaining agreements for many years, and that the current state of the law does nothing to draw its legitimacy into question. Moreover, there is nothing to even suggest that the Lodge would ever have agreed to this proposal, or that it would somehow have been the outcome of voluntary collective bargaining. The Lodge notes that it not only never hinted at agreement to eliminate fair share, it expended considerable resources in fight against the Governor in federal court over this very topic. *Rauner v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, AFL-CIO*, No. 15 C 1235, 2015 WL 2385698, at *1 (N.D. Ill. May 19, 2015).

Discussion: No public employee can be compelled to join a labor organization and thus no public employee can be compelled to pay dues to such an organization. However, fair share provisions require employees who choose not to join but who nonetheless enjoy the benefits of collective bargaining – in terms of improved wages, benefits and working conditions – and the benefits of representation – in terms of contract enforcement – to pay the cost of providing such bargaining and representation. For roughly 40 years, since the *Abood* decision, this has been a fairly non-controversial proposition.³⁴ Nor should it be controversial. Public sector unions have a duty of fair representation to all of the employees in the bargaining unit, not simply to those who choose to join the union and pay their dues. They are legally bound to incur the cost of representing non-member employees, and it makes no sense from an equitable or an economic standpoint to force the members of the union to bear the cost of the non-members. Non-members cannot be compelled to contribute to the costs of political activity or other functions not related to representation, but representation itself is a non-political act, and one which confers tangible and valuable benefits. An employee receiving that benefit should be expected to contribute to its cost.

The sole basis on which the State proposes to remove fair share from the collective bargaining agreement is its guess as to which way future court decisions will fall on challenges to fair share. If such decisions come, and they impair the State's ability to abide by the fair share provisions, Article 36 of the contract is specifically designed to address such an eventuality. The Savings Clause provides, in part: "If any provisions of this Agreement or any application thereof are found by competent authority to conflict with any existing or subsequently enacted federal or state legislation or executive order or by virtue of any judicial action, the remaining provisions of this Agreement shall remain in

³⁴ The State points out that the Court in *Harris* opined that the power of stare decisis is weakened by the fact that *Abood* was poorly reasoned. The fact that a later court disagrees with the decision of an earlier court does make the earlier decision poorly reasoned. It merely means that the later court gets to speak later.

full force and effect. In such event, upon request of either party, the parties shall meet promptly and negotiate with respect to substitute provisions ...” Unless and until such a decision is issued affecting the State’s ability to comply with the fair share provision, *Aboud* remains the law of the land.

Award: The status quo on the Fair Share provisions of Article 6.

14. Bulletin Boards

15. Access to Facilities

The State proposes to amend Article 14, the contract provision allowing the Lodge access to bulletin boards in ISP facilities. The relevant portion of Article 14 provides that “The material placed thereon shall not be subject to prior restraint by the Department. The items posted shall not be political, partisan or defamatory in nature.” The State would clarify what is meant by prohibited “political” purposes by adding the following parenthetical after the word “political”: “including solicitation relating to political campaigns, of funds or volunteers for a political candidate or political party as prohibited per statute.”

The State also proposes to amend Article 15, which in part provides for the Lodge to use Department facilities for its meetings. The proposed change would be an added sentence: “Such use of Department facilities, equipment, and/or property shall not include union sponsored political activity as prohibited per statute.” While these are two separate proposals, both parties have framed their arguments to address both simultaneously.

In support of these proposals, the State points out that the additional specified activities are already understood to be prohibited under the current language, and under the Illinois State Officials and Employees Ethics Act, 5 ILCS 430, *et seq.* It asserts that the language merely clarifies the status quo, to prevent any confusion or misunderstanding, but works no substantive change.

The Lodge disputes the State's rationale that these changes provide needed clarity. First, the Lodge points out that the party proposing a change in contract language has a burden to show that there is a problem being addressed by the change. There has never been a problem with either the bulletin board provision or the facilities language and the State's own argument belies the notion that there has been. Further, the language used by the State is vague and subject to disputation. At the arbitration hearing it was clear that what the State viewed as "political" could include information on the status of negotiations or other protected activity. The Lodge also points out that the Ethics Act includes specific exemptions for activities related to or protected by collective bargaining agreements, and excludes collective bargaining from the definition of political activity. There is, simply put, no good reason for these proposals and several good reasons to avoid the changes the State seeks.

Discussion: Without going on at undue length, the Lodge is correct in observing that the party proposing to change or add language has several burdens, and that the most basic of these is to show that a change is necessary to address a problem. As Arbitrator Benn observed, it is not sufficient to argue, even persuasively, that something is a good idea in the abstract. If an arbitrator is to impose it, it must have a real purpose. There is no evidence that the existing language has led to disputes or disagreements, or that one of the parties does not understand it. Changing language carries with it the implication that a change in meaning is intended, and unless the need for a clarification is so glaring as to be self-evident, an arbitrator should be guided by the principle of "first, do no harm." The changes proposed to these provisions do no good, and carry with them the risk of harm.

Award: The status quo on Article 14 - Bulletin Boards.

Award: The status quo on use of facilities in Article 15, §1.

16. Minority Underutilization

The State proposes to amend Article 28, which provides for seniority bidding for positions, to provide an exception for underrepresented minorities: “Except where skills and ability are relatively equal and there exists an underutilization of a minority class in a given geographical region and/or category, the Department may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.” The State asserts that it means to use this language to allow for seniority to be bypassed in bids to remedy the possible effects of past discrimination against minority groups, including women. The State asserts that the language advances the societal goal of rectifying discriminatory practices while also meeting the Lodge’s duty to treat all members fairly. The State stresses that this proposal is very limited. In order to pass muster under the law in the 7th Circuit, the provision can only come into play where there has been a showing, to a level of certainty that would satisfy a court, that the underutilization is a result of the agency’s past discrimination, and that it would be necessary to bypass seniority to remedy such discrimination. Thus the proposal is directed to a genuine problem, and is narrowly tailored to address the problem. The State also notes that this proposal has been agreed to in every voluntary settlement in this round of bargaining.

The Lodge opposes the State’s proposal and argues in favor of the status quo. First, the Lodge points out that this is a breakthrough proposal, designed to undermine important seniority rights with no justification and to very little practical effect. Well intentioned generalities do not provide a basis for fundamental changes to a collective bargaining agreement. Moreover, there are very few positions in the bargaining unit open for seniority bid. Only seven titles in the unit are subject to bid, each of which was bargained for. If the State’s purpose is generally to promote affirmative action, the Lodge suggests it makes no sense to target these limited positions. Beyond that, the proposal as written does not provide for any affirmative action initiative – it says just the opposite. Since it starts with the word “Except” it means that seniority cannot be bypassed

where skills and abilities are relatively equal and there has been underutilization, but it can be bypassed in all other circumstances. This may not be what was meant, but it is what the language says.

In addition to the “Except” problem, the Lodge believes the State’s proposal is vague to the point of being impossible to understand. It does not define underutilization or how it is measured. It does not say what a “category” is, or what “geographic area” means. The State has regular reports on utilization of minority employees, but none of the job categories measured in those reports match up with any of the job titles covered by the bidding provision. None of the areas used in the report match up with the districts and regions used within the agency. There is no guidance to resolve what it means to be underutilized, if the utilization rate varies across different regions and districts. There is no way to know when seniority rights may once again be used, after an underutilization has been identified.

Finally, the Lodge notes that the proposal fails to meet the legal standards for racially discriminatory negotiated affirmative action plans. The 7th Circuit has held that such plans are permissible only if they are voluntary, are designed for purposes which mirror those of Title VII itself, are intended to be temporary and to expire when their goals are met, and do not unnecessarily trammel the interests of white employees. *United Steelworkers America v. Weber*, 443 U.S. 193, 208-209 (1979). The Lodge argues that this proposal meets none of the criteria. By definition it would not be voluntary – it would be imposed by an arbitrator. It does not meet the purposes of Title VII, since there is no evidence at all of the racial or gender patterns of discrimination that would supposedly be addressed. It has no language that would render it temporary. There is no time limit, and no trigger point at which the parties would know seniority could again be relied upon. Nor is there any indication that the State could not bypass seniority for every bid in the future, given the impossibility of determining what is meant by underutilization, which minorities are covered, and which areas are

being measured. In sum, the Lodge believes the State's proposal is unsound as a matter of law, in that it seeks to remedy a problem that has not been shown to exist, through means which are so broad as to discriminate against senior white employees for no demonstrable remedial purpose.

Discussion: The State proposes to bypass seniority in bid positions in order to address underutilization of minorities, including women, in those positions:

“Except where skills and ability are relatively equal and there exists an underutilization of a minority class in a given geographical region and/or category, the Department may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.”

As the Lodge points out, the language suffers from a drafting problem in that, read literally, it achieves the opposite effect. It would be possible to infer the intended existence of a comma after the word “Except” which would make it an inartful but plausible statement of an exception to the general rule of seniority. In any event, this is a non-economic proposal, and the arbitration panel has the authority to revise the language to correct this error. However, even though its meaning can be salvaged, there are other more substantial problems with the structure of the proposal.

The State prepares annual reports on the utilization of minorities in broad job categories and defined geographical areas. However, it does not actually measure underutilization in categories analogous to the job titles used in the bid provisions of the contract, or in the geographic regions and districts the Department uses to organize its operations. It is therefore difficult to say how underutilization would be determined, and what would trigger this language. Illinois is a very large state, with a diverse population that is not evenly distributed. If geographic area is used as the trigger, it is possible that a minority group ratio in one District would constitute overutilization, while representing underutilization in another District. If job category is used, the meaning of the

contract would turn largely on how the bid positions were categorized within the confines of the EEO reports generated by the State. If all of them were placed within the same category, as would be a reasonably likely scenario, an underrepresentation within that category could mean that every bid for every job would be subject to bypassing seniority. There is no mechanism within the language for knowing when the obligation to bypass seniority begins or ends. The Department “may” bypass seniority, so long as it is done in accordance with applicable law. Thus it would appear that the Department could choose to always bypass seniority if underutilization is thought to exist, or it could choose to never do so.³⁵

Even though the evident purpose of the language is laudable, the ambiguities and uncertainties of this language are an invitation to grievances, misunderstandings and suspicions of abuse. Moreover, it is reasonably clear that the limitation within the language that the bypassing of seniority must be accomplished “in accordance with applicable law” would render this language more window dressing than substance. In describing the legal hurdles to be surmounted before seniority could be bypassed, counsel for the State was candid in admitting that this language would rarely if ever be used:

But with *Billish*, the Seventh Circuit noted that the Supreme Court has, you know, stated that the Constitution is color blind, but has also carved out an exception to cure -- or in the case where discrimination against whites is necessary to rectify a previous discrimination, and that has been committed by the public entity that's actually seeking to now remedy the discrimination. So we would have to establish that if we were going to utilize this provision, that not only are the minorities underutilized, but that that underutilization is a result of our past discrimination.

And even to that extent, a discriminatory remedy, according to the Seventh Circuit -- well, actually, according to the Supreme Court, in the *City of Richmond v. Croson*, has determined that a

³⁵ All of this assumes the underutilization is measured by category and/or area *within the agency's workforce*, as opposed to within the State workforce in general. The language does not actually say this, but otherwise it would be possible to have a seniority bypass in a bid title that was 100% staffed with minorities, but in a category or area that suffered from broad underutilization outside of the agency.

discriminatory remedy to pass constitutional muster must not discriminate – or must discriminate no more than is necessary to rectify the discrimination from which it is seeking to remedy. So it's also very narrowly defined. And that any remedy must be sensitive in good faith measure to remedy the unlawful practices that led to the underutilization.

So we're saying that this is not a clause or additional language that we're putting in the contract, that we actually believe would be utilized, you know, very often because there's a huge threshold that we would have to cross, but it's our belief that in the event that there is a situation there is an underutilization, and we've determined and believe that that underutilization is a result of actual discrimination, that it is worthwhile and necessary and allowable under the Supreme Court for us to be able to remedy that situation. And that's all we're attempting to do with this proposal.

(Transcript, January 15, 2016, Pages 126-128.)

In addition to this, counsel acknowledged that the Department had no proof of any past intentional discrimination that could have led to underutilization of minorities, or that underutilization actually existed. This lack of proof is somewhat offset by the contingent nature of the language – that is, it would not come into effect unless underutilization was shown. Still, this language solves a problem that might exist, but would be close to impossible to prove, and it does so in a confusing manner that makes it difficult to know how the problem would be identified and measured, and when the Department would choose to use its bypass authority. A minority employee looking at this language might be given the impression that it offered some avenue for relief in cases of perceived underrepresentation, but given that it is the Department, and not any employee, that has rights under this language, and that in order to exercise those rights, the Department must prove itself to be guilty of intentional past discrimination, that avenue for relief would be largely illusory.

This is a worthy concept, but the language is generic and lacks the specificity to be understood by the managers, union officials and employees who must live with it.

Award: Status Quo on Job Bidding in Article 28

17. Savings Clause ³⁶

The State proposes to eliminate the second paragraph of Article 36, which provides that economic benefits unilaterally granted to other Department employees by the Director, outside of the collective bargaining process, are automatically extended to bargaining unit members. In support of this proposal, the State notes that the language is clearly non-mandatory since it is a straight “me too” clause, and was only added to the contract in 2008 when the Troopers were concerned about what might happen in negotiations with the Teamsters over the newly organized Master Sergeants’ unit. Thus it is hardly some core provision of the contract. Moreover, it is increasingly problematic, in that this round of bargaining has seen impasses or potential impasses in some units, raising the possibility of unilateral implementation of a last, best and final offer. Any changes or increases in economic benefits in that case would not technically be “economic benefits negotiated in other collective bargaining agreements”, which are excluded from the scope of the me-too. They would be the result of the collective bargaining process but could fairly be understood to fall outside of the exclusion. For example, implementation of a merit pay system as the result of an impasse would create a benefit that the Lodge is rejecting in this round of bargaining. If the Lodge prevails on that point before the arbitration panel, but merit pay is included in implementation following an impasse in other units, the Lodge could make a claim for merit pay. Eliminating the language would, the

³⁶ The parties disagreed on whether this was an economic or non-economic issue. The Lodge contends it was agreed to be economic, while the State argues it as a non-economic issue. At hearing on January 15, the State presented evidence on this proposal, characterizing it as a non-economic proposal, and the exchanges between counsel and the arbitrator all clearly contemplated that it would be treated as a non-economic item. *Transcript, January 15, 2016, at pages 158-160.* While the subject matter of the language deals with unspecified economic items, the overall record persuades the Panel that this proposal should be analyzed as a non-economic item, subject to revision and clarification.

State argues, avoid the problem entirely without actually affecting members of the bargaining unit in any but a theoretical sense.

The Lodge opposes the proposed change, noting that the State has not met its burden of showing that some problem exists, and that this change is tailored to solve that problem. The State's concerns about implementation issues in the case of an impasse with other bargaining units is pure speculation, and it ignores the fact that implementation on impasse might well fall within the scope of the exception for benefits resulting from collective bargaining. That is a question best left to a grievance arbitrator under the existing language. Even if the Panel believed that the State's concerns were more than fanciful, the proposal goes far beyond what is needed to address those concerns. The State describes a specific scenario where there might be a problem, but asks the Panel to completely eliminate this language. The Lodge points out that the language has been used on two occasions to address disparities in economic benefits granted to Master Sergeants but not to Troopers, in the areas of lodging and gear. Thus it serves the exact purpose for which it was intended, and if some clarification is desirable, the Panel should provide such clarification without removing the language in its entirety.

Discussion: The State makes a reasonable point that circumstances have changed somewhat in this round of negotiations, in that impasse and unilateral implementation are realistic possibilities. The purpose of this language was to prevent the Department from sowing the seeds of dissension by favoring one group of employees over another, outside of the collective bargaining process. This language, when it has been used, has been used to address just such scenarios. It was not intended and has never been understood to permit the Troopers to automatically receive benefits that result from other units' collective bargaining. While the Panel agrees that the current language may plausibly be read to exclude all benefits resulting from the collective bargaining process, including impasses, that is only one possible interpretation. Given the clear

purpose of the provision, the changed circumstances in the surrounding negotiations, and the fact that the State’s concern can be easily addressed without in any way diminishing the benefit of the bargain made by the Lodge in 2008, the Panel is persuaded that the appropriate course of action is modify the last sentence of the existing provision to make it clear that economic benefits unilaterally imposed as a consequence of a bargaining impasse are excluded from the me-too provision.

Award: The last sentence of the existing provision is modified to read: “This section is not applicable to economic benefits negotiated in other collective bargaining agreements or imposed as a consequence of an impasse in such negotiations.” The remainder of paragraph 2 of the Savings Clause remains unchanged.

18. Officers’ Bill of Rights – Misconduct Allegation Settlement Agreements

The Lodge proposes to amend the Misconduct Allegation Settlement Agreements (MASA) process, the Department’s existing “fast track” resolution procedure for officer discipline. In its disciplinary process, the Department uses a matrix with seven levels of discipline, with Level 1 being the least severe and Level 7 permitting termination for a first offense:

<u>First Offense</u>	<u>Range of Penalties</u>
Level 1	Reprimand to 3 days suspension
Level 2	4 to 10 days suspension
Level 3	15 to 30 days suspension
Level 4	31 to 45 days suspension
Level 5	60 to 90 days suspension
Level 6	90 to 180 days suspension
Level 7	Up to termination

The matrix also has a range of increasing penalties for repeat violations of the same rule.

Under MASA, the officer must admit to the alleged misconduct in its entirety in return for a penalty in the range one step below the range called for by the existing penalty matrix. After a complaint is filed, the Department makes an initial determination of whether the alleged misconduct is appropriate for resolution through a MASA.³⁷ If it is, the accused officer is offered the option of a MASA, and if he accepts, the terms of the MASA itself are negotiated between the officer's commanding officer and the officer, with representation available from the Lodge. The officer is informed of the charges and the Department's proposed penalty reduction. Those terms are reviewed in the chain of command and signed off by the Director or his or her designee. If the discipline exceeds a 30 day suspension, the case and the settlement agreement must then be presented to the Police Merit Board for its approval.³⁸

When the process was introduced in 2007, it was available for all offenses, including Level 7 offenses other than DUI. Roughly two years later, the Department narrowed it to Level 6 and below. In 2012, the Department further restricted it to Level 3 and below, thereby excluding all offenses that could result in a suspension of more than 30 days.

The Lodge proposes to add the MASA process to the body of the collective bargaining agreement, and make three substantive changes:

- (1) To require that a MASA be offered for all offenses at Level 6 or below;
- (2) To make the MASA binding on all parties once it is signed by the Officer; and
- (3) To acknowledge that Merit Board review is required for all MASAs providing for penalties in excess of 30 days, and that

³⁷ This is a discretionary determination. The Department is not required to offer a MASA in any given case.

³⁸ The general power to discipline officers is vested in the Merit Board, but the Director is authorized to impose discipline of 30 days or less without Merit Board review.

if the Board rejects the settlement, all admissions and statements are voided.

In support of these proposals, the Lodge explains that it seeks to restore the MASA process to its originally intended purposes. MASA was intended to create efficiencies by avoiding the need for full blown investigations when the officer was willing to simply admit to the alleged misconduct. The Lodge complains that the Department has whittled away at the process and eroded those goals. There is no consistency across districts in when MASAs are offered and when they are not. It is at the point where it is now impossible to predict whether a MASA will be offered in any given case, and often that decision is deferred until a full investigation has been conducted. Since the Department can take up to 180 days for an investigation, countless man hours are wasted and months are lost in a case where the officer is willing to admit the conduct. This is very stressful for the officer, and extremely wasteful of the Department's resources.

The Lodge recognizes that the Department believes some cases may involve additional misconduct which will come to light only after full investigation. That may be true, but the Lodge points out that this is more a theoretical possibility than a real possibility. The Department has not pointed to an example of this occurring. In any event, nothing in the language prohibits the Department from doing an investigation before deciding whether to offer a MASA and on what terms to offer the MASA. As for the Department's expressed concern that the Merit Review Board might be unwilling to approve MASAs without a sufficient investigation to back up the recommendation, the Lodge points out that this has never happened, and that in hundreds of cases over the past decade, the only two settlements the Board expressed concern about were not MASAs – they were regular settlement agreements reached in the recent past. In one, the Board asked for more information, and then approved the settlement. In another, the Board rejected a settlement, without truly explaining why. One outlier case is hardly a basis for rejecting a system that will save all parties considerable time, expense and anxiety.

The State rejects the Lodge's proposal as inconsistent with the statutory rights of the Police Review Board and the Director. Discipline above 30 days is reserved to the Board, and the Board has determined that it wants a full investigation before it approves any settlement. Only recently, the Board advised the State that it would not "rubber stamp" their agreements. If a full investigation will be required before the Board approves a settlement, the speed and efficiency purposes underlying the MASA cannot be achieved in those cases. There is no benefit to the Department in applying the MASA procedure to cases with penalties in excess of 30 days. As for cases with penalties of less than 30 days, the Department argues that incorporating the MASA into the contract with a requirement that the Director offer the option in all cases without regard to aggravating circumstances, and that the MASA becomes binding once the employee signs it, all severely undermine the Director's statutory authority to administer discipline of 30 days or less.

Discussion: The principal effect of this proposal is to take a facet of the discipline system – essentially a structured plea bargain - that is now a matter of Department policy and subject to Department discretion, and place it in the contract with no discretion, requiring the Department to offer a reduction in penalty in every non-termination case no matter what the circumstances.

The Lodge offers no rationale for the requirement that the MASA be considered binding once the officer signs it – there is no explanation of what defect it is seeking to cure with this language. In fact, in defense of its offer, the Lodge argues that this change would make no difference whatsoever, since the Department could still conduct the same chain of command review it does now, so long as no one in authority finalized the agreement and presented it to the officer for signature before the review was concluded. If the change makes no difference, it is difficult to understand why it should be imposed by an interest arbitration panel.

In much the same vein, the Lodge rebuffs the State's contention that the mandatory use of MASAs would prevent the Merit Board from receiving a complete investigation in the settlements that come before it, by pointing out that the Department controls its own investigative process, and can do a complete investigation before offering the MASA. If the rationale for having a MASA in the first place is to reduce the time, expense and effort entailed in the investigation, this argument turns on itself.

The problems identified by the Lodge are that the MASA option has been narrowed to eliminate all discipline above 30 day suspensions, and is being made available on an inconsistent basis from district to district. The first of these is not a problem as such. It is a decision by the Department, made in deference to the perceived desires of the Police Review Board. The Lodge questions the validity of that desire, but it is consistent with the structure of the discipline system under the Act. The Board has jurisdiction over discipline above 30 days, and can judge the sufficiency of the evidence put before it.

The second is a problem, in that an unexplained refusal to offer a MASA to officers who are similarly situated to officers who are offered MASAs results in a disparate imposition of discipline. The answer to that, however, is not to create an opposite disparity, where officers whose cases disclose aggravating factors receive the same favorable treatment as officers whose cases disclose mitigating circumstances. The Department, as any employer, must retain the ability to make reasonable distinctions between cases. The Lodge, as any union, is entitled to know what distinctions are being drawn and why. The problem identified by the Lodge is adequately addressed by requiring the Department to inform the officer and the Lodge of the legitimate, non-discriminatory reasons for refusing to offer a MASA in any given case.

Award: A provision shall be added to the Officers' Bill of Rights as follows:
"Where the Department declines to offer an officer the option of a Misconduct Allegation Settlement Agreement, the reasons for that decision shall be stated in writing and provided to the officer and the Lodge."

19. Officers' Bill of Rights – Disclosure and Review of Audio and Video Evidence

The Lodge proposes to amend the Officers' Bill of Rights to require the Department to notify an officer if it has audio or video evidence relevant to a matter for which the officer is being investigated or asked for a statement, and prohibits charges against the officer for untruthfulness if the officer is not allowed to either review the evidence beforehand or revise an already given statement after reviewing the evidence. The Lodge would further require proof of a willfully false statement about a material fact before an officer could be charged with making a false statement:

K. Prior to ordering an officer to write a fact finding memo, or submission to administrative or criminal interrogation, the Department shall advise an officer if they are in possession of any audio or video evidence relevant to the matter under investigation.

1. An Officer who is not allowed to review the video or audio evidence prior to writing a statement or submitting to an interview shall not be charged with any rule of conduct violation related to untruthfulness, unless the Officer has been presented with the video or audio evidence and been given the opportunity to clarify or amend any original statement(s).

2. In any event, the Department shall not charge an officer with any rule of conduct violation related to untruthfulness, unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.

In support of its offer, the Lodge argues that the second paragraph of the proposal is non-controversial, and tracks the existing rules of conduct.³⁹ The Department does not claim to have any interest in charging false statements without proof of willful dishonesty, or where an inaccuracy goes to a non-material fact. The Department does object to disclosing its evidence, or even the existence of its evidence, before a statement is taken, but the Lodge argues that this serves no legitimate interest. The officer is typically the last person interrogated or asked for a statement in an investigation, and for varying reasons, ISP investigations often go on for a very long time. Thus by the time an officer is asked about an incident, his or her memory may well have faded. Fairness to the officer, and the accuracy of the investigation, would demand that the officer either be given access to the recordings, or not be held to the complete accuracy of a statement without the chance to review the recordings. After all, the Lodge explains, the purpose of the investigation is to secure accurate information about the incident complained of, not to ensnare an officer in a new charge of making incomplete or untruthful statements.

The Lodge stresses that the Department is free to question an officer without allowing the officer to review the video or audio evidence, and secure that officer's best recollection of events, but it must then either allow the officer to review the evidence and make corrections to his or her statement, or forego the right to bring charges against the officer for any inaccuracies or omissions in the statement. The Department retains the ability to pursue charges for untruthfulness or incompleteness if it allows a review of the evidence in advance, or corrections to the statement after a review.

³⁹ Rule III.A.33 provides: "Reports submitted by officers will be truthful and complete, and *no officer will knowingly make false statements*, charges or allegations in connection with any Department citations, warnings, assistance rendered, accident reports, field reports, investigative reports, computer entries or by any other means that creates an official record of the Department." [emphasis added]

The Lodge disputes any suggestion that its proposal might somehow disrupt or interfere with an investigation. Officers are presumably aware when a dash cam is in use, so they have an incentive to be as accurate as possible in the first place. Review of audio and video will improve the accuracy of the officer's statement. Officers are interviewed last in investigations, and ordered not to discuss the interviews, so there is little risk of leaks. Officers are routinely allowed to review video and audio in the preparation of their reports, to insure accuracy, and it makes no sense to wall them off only when the officer's behavior is in issue. In any event, this information is discoverable under the Freedom of Information Act, so it is unfair to preclude only the officer from having access to it.

The Lodge seeks to avoid having its officers disciplined because of the natural failings of memory, rather than any sort of misconduct. Research shows that failures of memory are common, and are not evidence of untruthfulness. Leading police researchers have urged that officers be allowed to review video and audio evidence before making statements, because it leads to more accurate statements, unaffected by stress or fear, and avoids apparent conflicts in evidence that can poison a criminal prosecution.

The State proposes to maintain the status quo. It points out that no other State employee is allowed to review the evidence against him before being asked about it, and that no prudent investigator shares the evidence before asking the subject of the investigation about it. The fact that officers review audio and visual evidence before preparing field reports has nothing to do with this proposal – insuring the accuracy of law enforcement reports is utterly different from disclosing the scope of the evidence to a Trooper under investigation before asking for his or her account of events. Again, no reasonable investigator would do this.

Discussion: The premise of the Lodge's proposal is that it is unfair to discipline an employee for dishonesty or incompleteness in a statement without allowing the Officer to review available recordings and refresh his or her memory, particularly since the Officer is generally not interviewed until the end of the investigation, which often takes place long after the incident. That is true as a general proposition, but the Lodge's proposal goes quite a bit further than what is necessary to address that problem. The general proposition advanced by the Lodge is encompassed by the second paragraph of the proposal, which the State does not even mention. That paragraph limits charges to situations where untruthfulness or incompleteness is willful and material. The Lodge's argument is that inconsistencies between recordings and statements may well be attributed to the passage of time, the fading of memory, and the unreliability of perception, which would mean that they are not willful. This paragraph answers that concern.

As it relates specifically to recordings, the Lodge proposal is overly broad in several important respects. Video or audio evidence "relevant to the matter under investigation" may have nothing to do with what the Officer may have done or observed. The recordings may be of other persons or events connected to the investigation. It would not therefore aid in the preparation of the officer's statement or improve the accuracy of the officer's recollections. Only recordings of the officer's actions, statements and interactions could accomplish that. The proposal also overreaches by flatly prohibiting discipline for untruthfulness if the Officer is not allowed access to the recordings, even though the untruthfulness may be of such a nature that it cannot be attributed to an innocent failure of memory or differing perceptions of events in the stress of a moment.

The general proposition that untruthfulness must be willful and material in order to form the basis of charges is non-controversial. As it relates specifically to inconsistencies between recordings and statements, the Lodge's proposal is overly intrusive in dictating the process of the investigation, rather

than the consequences of the investigation. The central point of the interview or statement is to ascertain the facts relevant to the incident, not to generate a new basis for discipline. An Officer unquestionably has a duty of honesty under the Department's rules, but there is a difference between being mistaken and being dishonest. An Officer should not be charged based solely on inconsistencies between recordings made at the time and a statement that may be made from memory long after the fact, unless the Department has cause to believe the inconsistencies are not reasonably susceptible to an innocent explanation.⁴⁰ That can be accomplished without constraining the Department's procedures for conducting their investigation.

Award: The following provisions shall be added to Section of the Officers' Bill of Rights as subsection K and L, and the current subsections K and L will be re-designated as M and N:

K. The Department shall not charge an Officer with any rule of conduct violation related to untruthfulness, unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.

L. An Officer will not be charged with making a willfully false or incomplete statement based on inconsistencies between the Officer's statement and any recordings of the Officer's statements, actions or interactions during the incident under investigation, unless the Department determines that circumstances are such that the untruthfulness or incompleteness is not reasonably attributable to an innocent failure of memory or difference of perception.

20. Officers' Bill of Rights – Requirement of Firsthand Knowledge / Sworn Affidavits for Complaints Not Involving Criminal Conduct

The Lodge proposes to amend the Officers' Bill of Rights to require that a complaint against an officer be supported by an affidavit from someone who was

⁴⁰ We would note, however, the testimony that initial statements are usually sought within a week of an incident. Inconsistencies in those statements would presumably be less susceptible to a "faded memory" explanation.

present for the complained of incident, and who has firsthand knowledge of the complained of incident, and that the use of a complaint by a sworn command officer without a sworn affidavit be limited to cases of criminal allegations. The current contract requires an affidavit from persons outside of the Department, but allows initiation of complaints by Department personnel with or without an affidavit. The Lodge proposes to take the existing language of Article 7, §2 I, J, and K, revise it to add these requirements and create a new §3, entitled “Complaint Requirements”:

- A. a written complaint from a person outside the Department supported by a sworn affidavit. *The person must have been present at the incident and have direct personal knowledge of the facts of the complaint.*
- B. a written complaint filed and signed by the Department member *must be supported by a sworn affidavit. The Department member must have been present at the incident and have direct personal knowledge of the facts of the complaint.*
- C. a Complaint Against Department Member form (ISP 3-23) signed by a sworn command officer *without a sworn affidavit is permissible only for criminal conduct allegations*, in which the Department is relying on independent corroborative evidence in lieu of a sworn affidavit from a citizen, in which case the independent corroborative evidence must be identified. A complaint of criminal conduct may be investigated whether or not supported by a sworn affidavit, in which case the 180 days will commence upon the filing of the file initiation sheet....

The Lodge notes that currently only complaints by persons outside the Department must be supported by affidavits, and those affidavits are not limited to the direct personal knowledge of the complaining person. The Lodge’s disciplinary counsel explained that it is not uncommon for complaint forms to be filed by Department members at the directions of their superior officers, when the officer has no knowledge at all of the incident described in the complaint. That officer is obligated to obey the order to prepare the complaint, but is liable for discipline if any of the information in the complaint proves to be false. While

there is a box on the complaint form stating that the preparer is acting on information from another source, that box is never checked, because it renders the complaint anonymous, and of limited use for initiating discipline.

The even greater problem is faced by the member who is the subject of the complaint, since he or she may have to answer charges that are based on hearsay, sometimes many times removed from the supposedly complaining officer's personal knowledge. As the allegations are inherently unreliable, the accused officer may have to face constantly changing versions of the story, rather than being able to rely upon the complaint to know what he or she is supposed to have done. A requirement of direct personal knowledge eliminates all of these problems and results in a cleaner, more accurate and more efficient complaint process. While the Department raised several unlikely scenarios in opposing the Lodge's offer, the Lodge points out that the Panel has the authority to make whatever revisions might be needed to accomplish the Lodge's legitimate objectives while still making allowances for peculiar situations.

The State rejects the Lodge's offer as unnecessary and unduly restrictive. Persons outside of the Department are already required to submit an affidavit when making a complaint against an Officer, to protect against harassment and frivolous charges. Members of the Department, however, are subject to rules of conduct requiring truthfulness and completeness in their reports and statements. There is no need for an affidavit in those cases, because there is already a strong incentive for those complaints to be accurate. The Lodge's witness was not able to identify any other employment setting in which an affidavit was required before an employee could be investigated for reported misconduct. The requirement of direct firsthand knowledge, and personal presence at the incident, interferes with the Department's ability to investigate reports from other sources, including other police agencies and the parents of minor children, and from initiating discipline based on behaviors observed remotely, such as an officer observed on a dash cam sleeping on duty. There simply is no need to make the

process of investigating officer misconduct more cumbersome and difficult than it already is.

Discussion: Complaints against officers from persons outside the Department must be supported by an affidavit. Complaints initiated by other Department personnel must be written out and signed, but do not require an affidavit, nor do they require certification that the person complaining has personal knowledge of the events and was present when they took place. The Lodge complains that this opens officers to complaints based on hearsay. The answer to that is that a complaint supported only by hearsay is unlikely to be sustained, but that does not mean that hearsay could not form a reasonable basis for further investigation. To some extent the Lodge's proposal conflates the quality of the evidence required to pursue an investigation with the quality of evidence needed to prove a charge. While it is doubtless true, as the Lodge argues, that a requirement of direct personal knowledge of events, and personal presence at the time of an incident, would improve the quality and accuracy of complaints, it would also preclude the investigation of meritorious complaints where probable cause to investigate exists but must be further developed in order to determine the truth of the matter. Given the nature of their jobs, Officers are subject to complaints brought for purposes of retribution and harassment, and they should be protected from that. However, it is also important that the process not be so protective of Officers that it has no credibility in the eyes of the Department or the public.

One concrete problem that the Lodge did identify is the tension between an Officer's obligation to follow an order to prepare and sign a complaint against another officer, and the Officer's liability for discipline should the contents of that complaint prove to be false. That concern is answered in two ways. First, the current complaint initiation form has a box that can be checked, indicating that the information is not based on the officer's personal knowledge. That box should be checked, both in the interests of protecting the officer filling it out and

providing the accused officer an accurate picture of the complaint. Moreover, elsewhere in this Award, the addition of a provision to Article 7 stating in part that: “The Department shall not charge an Officer with any rule of conduct violation related to untruthfulness, unless it has determined that: (1) the Officer willfully made a false statement...” would serve to protect the member who fills out a complaint on orders of his superior. An officer who prepares a complaint in accordance with the directions of his superior officer cannot be said to have been willfully false.

Award: Status quo on affidavits.

21. A New Article on Electronic Multimedia Equipment

The Lodge proposes a new Article 42 covering the use of in-car audio video camera systems (IAVCs) and body worn cameras (BWCs). The Department uses in-car audio video camera systems to record events in and around the squad, or through the Officer’s body worn microphone. That system is activated automatically if the squad’s emergency lights are in use, and Officers are expected to activate it in other situations where, in their judgment, its use is warranted. The current systems cannot be activated remotely. The Department does not currently use body worn cameras, but the Lodge’s proposal anticipates their future use.

The new Article would, inter alia, prohibit activation of the equipment when an employee had a reasonable expectation of privacy, and prohibit the use of the equipment to surreptitiously record conversations with other Department employees or conversations regarding collective bargaining. Supervisors are currently required to randomly review 20 minutes of video from each officer’s system every two weeks to ensure that the equipment is working properly, is being used properly, and that procedures and policies are being followed. The new Article would prohibit the imposition of discipline solely on the basis of these

routine reviews of video or audio and require the Department to provide logs of their video reviews to officers if asked to do so. The Article would make the Department responsible for inspection and maintenance of recording equipment, whereas officers are currently responsible for checking their equipment, reporting problems to their supervisor and the radio specialist, and arranging for an appointment to have the equipment repaired. Finally, the Article would provide for a Joint Labor-Management Committee to develop policies related to the use of audio-visual equipment for disciplinary purposes, and use by bargaining unit members in general, with a provision for arbitration of disputes if agreement could not be reached.

The Lodge notes that its proposals to regulate the use of IAVC and BWC are set forth separately but are substantively identical. The proposals seek to bring clarity and uniformity to the regulation of the IAVCs which are already in use, and to the anticipated introduction of BWCs. Many of the restrictions it proposes on these systems are contained in legislation adopted by the General Assembly for the use of BWCs (Law Enforcement Officer-Worn Body Camera Act, 50 ILCS 706/1). For example, the statute bars the use of recordings for discipline except in specific circumstances. It also makes the agency responsible for the care and maintenance of cameras. All in all, the Lodge argues that its proposal seeks to establish uniform rules for the use of technology, balancing its functional importance to law enforcement and officer safety with the privacy rights of officers.

The Department argues that the Lodge proposals unnecessarily restrict its ability to use audio and video to uncover Trooper misconduct, and illogically places the burden on the supervisor to know the status of an Officer's equipment, when it is the Officer who has the equipment and is using it, and should know if it is malfunctioning. The Department points out that the recording equipment is only activated when the emergency lights are on, or when the officer turns the equipment on, and that in neither of those circumstances is there any expectation

of privacy. The Department also objects that there is no legitimate reason for Officers to gain access to their supervisors' logs of video review.

Discussion: Much of the Lodge's proposal seems to be aimed at the possibility that video and audio systems could be remotely triggered at some point in the future. The restrictions on the activation of these systems when people have an expectation of privacy or have not consented to being recorded make no sense if, for example, the emergency lights on a squad are engaged, since all officers know that automatically turns on the recording devices. At least as far as the officer in the squad is concerned, the only other circumstance when the equipment is activated is when he or she has turned it on, in which case there can be no complaint about having been recorded. To the extent that the protections are aimed at other officers being recorded without their knowledge, again if the emergency lights are on, there can be no expectation that recording is not taking place. The only circumstance in which this language would currently have any meaning is if an officer or a supervisor turned their own system on manually to record another Officer or supervisor for some reason. In that case, there is no particular difference between using this equipment and using the recording function on a cellphone.

The prohibition on using recordings reviewed on a routine basis as the sole basis for discipline is proposed but not really explained. Counsel distinguished between using this information as the basis for an investigation of what was seen, and using it as the basis for discipline. However, there are cases in which the video may be the only evidence, and thus the only basis. The example posed at hearing was an officer sleeping in his or her squad who inexplicably left the recording system on. If the officer denies sleeping, the officer may presumably be disciplined for making a false statement, and the video could be evidence against him or her. However, it could not be used as evidence if the Department sought to discipline the officer for sleeping on duty. That simply makes no sense. It is not possible to identify what interest is being served by this language.

As for the proposal that the supervisor be primarily responsible for the inspection and maintenance of the equipment, the Department makes a legitimate point that the officers are spread out over a wide area, and it is not particularly practical to have a Master Sergeant do a daily inspection of their recording equipment. Certainly the Department is responsible for providing properly functioning equipment, and arranging a system for the maintenance and repair of that equipment, but the officer can be expected to play a part in that system. As described at hearing, the current policy requires the District Commander or designee – generally the supervisor – to “make every reasonable effort” to repair and return to the Officer defective equipment, which in practice means to have the Officer coordinate a time with the Radio Tech to have the equipment repaired:

A. Generally speaking, it's up to the officer to check his equipment and make sure it's functioning properly, and if there is an issue with the equipment -- it's malfunctioning or a portion of it's malfunctioning -- he's to notify his supervisor and the radio tech in writing about the issue so it can be scheduled for repair.

Transcript, April 8, 2016, page 15

The Lodge had not identified an actual problem with this system. It is not unreasonable to expect an Officer to advise his supervisor if there is a problem or a defect, since the Officer is more likely to know. If there is a problem scheduling or securing repairs, or some exigency, it is ultimately the supervisor's responsibility to make sure the repair or replacement is accomplished, but the officer can be expected to play a part in that, while the Lodge's proposal is that once a report is made, “The officer will not be responsible for any further action.” That language suggests that the officer need not communicate about scheduling the repair or otherwise be involved, and there is no explanation for why that is a better or more workable approach.

Finally, as to the request for access to the supervisor's logs of routine video review, this presumably goes to a fear that an officer may be targeted for more

frequent review by a supervisor seeking grounds for discipline. No example of this was offered, and it is not clear what value these logs would have if the video itself shows some form of actionable misconduct.

Award: Status Quo on Electronic Multimedia Equipment

22. A New Article to Modify Residency

The Lodge proposes to modify the existing residency restrictions by adding language to the contract to allow officers to reside anywhere within the limits of their assigned geographical area, and to reside up to 15 miles outside of those limits if it does not significantly impair the unit's operation. Officers living more than 15 miles outside of their geographical area at the time the contract is executed would be grandfathered, unless they subsequently relocated. Officers without a specific geographical area, or whose assignment spans more than one geographical area, would be permitted to live a reasonable distance from their assignment.

Unless otherwise authorized, an Officer must live within the geographical boundaries of his or her District. Officers currently make requests about residency to their District Commanders when first assigned to the District. The District Commander dictates where in the District the officer can locate, and subsequently whether the Officer can relocate on request. The District Commander may also allow an Officer to live outside of the District boundaries, although these exemptions may be withdrawn. The Lodge maintains that there is no consistency to these decisions, and that the use of hard and fast geographical boundaries results in hardships for no particular reason. The Lodge cites to cases in which Officers are compelled to live in high cost areas such as Chicago, despite the availability of more reasonably priced housing and better schools nearby. Other Officers are denied the opportunity to live in homes they own a few miles or less outside of Districts they are assigned to work in.

The Lodge believes that its offer addresses the inequities in the current system, without in any way impairing the Department's operations. The permission to live up to 15 miles outside of a District is conditioned on the move not significantly impairing the operations of the unit, which protects the Department's interests. The Department would not be required to let all Officers bunch together in a single community, for example. The Lodge points out that the 15 miles is measured by road miles, and that there are situations in which, because of the way the roads are laid out or the availability of expressways, this is actually a shorter response time.

Any operational concern the Department may claim should be balanced against the fact that Master Sergeants and command personnel are allowed to live outside of their Districts, and Officers assigned to the tollway may live up to 20 miles outside of their patrol zones. Some Officers already have exemptions allowing them to live outside of their District. Yet the Department's operations are unimpeded. The Lodge notes that, at various times in negotiations, the Department made proposals allowing for even greater latitude on residency than the Lodge now proposes, and this demonstrates that it is not an impossible burden for them. Other comparable states allow officers to live outside of their Districts, and those states have fully functioning state police operations. Clearly, a reasonable flexibility on residency is within the Department's power to administer, and would address a significant inequity in the current system. The Department's operational needs are more than adequately protected by the proposal, and the Lodge urges its acceptance.

The Department contends that the Lodge's proposal unduly restricts its ability to deploy its most important asset – the Troopers who carry out the day to day work of the Department. Geographical proximity is obviously critical to response times and coverage. The Lodge's proposal significantly intrudes on the Department's ability to judge the proper allocation of personnel in two ways.

First, it allows Troopers to choose to live up to 15 miles outside of their assigned Districts, with the District Commander's concerns subject to the whims of the grievance and arbitration provisions and the vague standard of whether the choice of residence would "significantly impair" operations. The second attack on the Department's discretion is the proposal to allow Troopers to live anywhere they choose within the District, without restriction. Given the size of some Districts, this could result in all of the Troopers being clustered in one corner of a District that sprawls across 20 counties, with the District Commander having no recourse to object. This makes no operational sense and poses a substantial risk to the safety of the State's citizens.

Discussion: The Department currently has near total discretion over the residency of Troopers. It can dictate not only that they reside in their assigned District, but that they live in a specific county within that District. This discretion is largely understandable for a police operation in which the officers start work from their homes, and must respond to calls for service and call-outs for emergencies. The distribution of officers across the District is a matter of great significance to the Department, and the Panel agrees with the State that the Lodge's offer, as written, poses considerable operational risks. Specifically, the Lodge's proposal that officers can live anywhere they wish within the District ignores the fact that some Districts are quite large, and that clustering all officers in one county or community in the District would adversely impact the Department's operations.

By the same token, the ability to choose one's place of residence is a matter of considerable importance to Troopers, and the Lodge, for its part, has a legitimate concern that decision making on residency requests is opaque and can be inconsistent, giving rise to suspicions of favoritism or arbitrariness. Rather than language setting a radius outside of the geographical area of assignment, and giving carte blanche within the area of assignment, the legitimate interests of the parties can be better accommodated by language recognizing that operational

needs are the primary consideration, but that an officer should be entitled to choose his place of residence if it does not materially impair the Department's operational needs. If the Department determines that a requested place of residence does materially impair their operational needs, it should provide an explanation to the officers, to allay concerns over arbitrary decision making or favoritism. This provides a quite deferential standard for the Department, but does offer some transparency to the process, and reduces the possibility of arbitrary decision making on residency requests.

Award: A new Article 41 entitled "Residency" will be added to the contract as follows:

Article 41 – Residency

1. In considering an Officer's request for residence in a given area, the operational needs of the Department will be the primary consideration. The Department will judge whether the request is consistent with the operational needs of the Department, considering among other things such factors as distance to the officer's assignment, response times, and the geographical distribution of officers in the same area of assignment. If the request does not materially impair the Department's operational needs, the request will be granted. If the request does materially impair the Department's operational needs, a written explanation will be provided to the Officer.
2. Any Officer granted an exemption to live outside of the geographical boundaries of their unit of assignment will travel on their own time between their residence and the geographical boundary of their unit of assignment.

23. Unavailability for Force Back Overtime

The State proposes to define the circumstances under which it cannot force an employee to work overtime, even though it is that employee's turn under the existing rules. The Lodge accepts the addition of this language, on the understanding that it does not replace the existing provisions in the contract. The

State's offer, and the arguments in support of its offer, do not evince an intent to replace existing provisions.

Award: A provision shall be added to Article 30 addressing unavailability for forceback overtime. The new language will be inserted as subsection 5, and the existing subsections 5 and 6 will be renumbered as 6 and 7, respectively:

5. In the event an overtime detail cannot be staffed with volunteers, the Department shall staff the detail in accordance with Article 30, Section 4.A.5. The Department will assign the overtime by other means or "force back" the least senior officer who has not been previously forced to work scheduled overtime. There are four situations in which the Department cannot "force back" an officer to work scheduled overtime:

- A. Sick Time: when officers are utilizing 515 Sick Time or 516 Family Sick Time.
- B. The Six Hour Rule: when an officer's scheduled work shift begins within six hours of the end of the scheduled overtime assignment.
- C. Consecutive Hours of Work: when an officer would be scheduled for more than 16 hours in a 24 hour period.
- D. Attached Additional Day(s) Off: When an officer has been granted an additional day(s) off using accumulated time in conjunction with their regular day(s) off prior to the dissemination of the scheduled overtime details seeking volunteers. Any time off request received by the Department after the dissemination will be held until the details are filled and will not prevent the officer from being forced back.

24. Modification of the Good Standing Requirements

The Lodge proposes to amend the Maintenance of Benefits provision to add a new provision, defining the right to retirement in good standing. Good standing status, which is currently governed by policy, allows a former officer certain privileges, including the right to receive a retirement star, carry a concealed weapon, and purchase his or her service weapon from the Department.

Currently, the Department denies good standing status to officers who retire while under investigation for administrative charges that would ordinarily result in termination (Level 7 offenses), or who are facing serious criminal charges. In the case of criminal charges, the good standing determination is held in abeyance pending disposition of the charges, unless the charges are felonies in which case there is no period of abeyance – good standing is simply denied. In the case of administrative investigations, the investigation is terminated by the Officer's retirement or resignation, and there is no opportunity to revisit the denial of good standing.

The Lodge proposes to withhold good standing status pending resolution of felony charges or administrative charges, and to grant the status where the Officer is not found guilty:

The Department prior to the separation date of an officer shall determine that the officer is in good standing and shall provide the officer with a determination of "good standing," a retirement star, and credentials for use consistent with the requirements of the Law Enforcement Officer's Safety Act, as amended.

The denial of retirement in "good standing" shall be issued prior to the officer's separation date and shall be limited to officers who are charged in a court of law with felony criminal violations, or charged with Department policy violations, which if found guilty would normally result in a termination decision in the State Police Merit Board. A final status decision on such officer shall be held in abeyance pending the outcome of the alleged violation or violations.

In the event an officer disqualified due to the pending criminal charges is not found guilty of the specified felony charges, the officer's good standing designation will be based on the officer's status as of the officer's date of separation.

This resolves a problem the Lodge sees in the State's current policy, which is that the mere pendency of an investigation that could result in termination, or of criminal charges, results in denial of good standing, even though the Officer may be wholly innocent of any wrongdoing. The existence of the investigation or a charge is not proof of anything. An Officer should have some opportunity to

secure good standing if it turns out that he is not found guilty of a felony, or of Level 7 administrative charges. Certainly there may be very limited circumstances in which an officer evades a felony conviction through a technicality, but if that occurs, the Department still has the option of pursuing Level 7 charges before the Police Review Board. The Lodge argues that its proposal resolves a serious inequity in the current system, without prejudicing the Department's interest in denying good standing to Officers who truly do not deserve it.

The State opposes the change in the status quo. Good standing status is an honor, and the Lodge's proposal creates a series of loopholes through which it can be claimed by those who are not deserving of that honor. The Lodge proposal requires that formal charges be pending in order to withhold good standing status, allowing Officers to retire knowing that investigations are under way but before formal charges are brought. It allows good standing for Officers charged with serious misdemeanors, such as a first offense DUI, even if they are subsequently found guilty. It requires that the Officer be found guilty of "the specified felony charges" in order to continue to deny him or her good standing, which means that officers who plead to lesser charges in a plea agreement, or even are found guilty of felonies other than that specifically charged at the time of retirement, may claim good standing. It holds out the fig leaf of pursuing administrative charges against a former employee, when in practical terms the Department would not waste its resources in litigating that case, and the Police Board would not waste its resources in hearing such a case.

Discussion: Good standing is a determination that an officer is honorably separated and is entitled to certain privileges, such as the right to carry a concealed weapon. The Lodge's proposal is aimed at what it perceives as an inequity, in that good standing can be denied on the basis of pending investigations, without regard to the merits of the underlying allegations or the outcome of those investigations. Separation terminates internal investigations

and administrative proceedings, so those are never resolved. As for criminal investigations, good standing can be conferred once the charges are disposed of, depending upon the disposition, unless the charges were felony charges, in which case the denial stands.

Certainly there is some unfairness inherent in the current system, but the Department has a legitimate point in opposing a proposal that would require it to continue to invest resources in investigations, including possible proceedings before the Police Board, when an employee has voluntarily left the agency's employ. The investigation and Board proceedings are intended to handle matters related to employment status, and once the officer has left, that purpose is no longer served.

The same cannot be said of denials based on pending criminal investigations and/or charges, which are not resolved by a retirement and do not require further expenditure of agency resources. Where the criminal matter is resolved, and is resolved on grounds that would not normally warrant termination in proceedings before the Police Board, there is no valid purpose served by continuing to deny good standing status. If the judgment of the outside authorities in conducting the investigation and/or bringing the charge is sufficient basis for withholding the status, the judgment of those same authorities, or of a judge or jury, as to the proper disposition of the criminal matter should be sufficient grounds for granting the status.

Award: The following language shall be added to the Maintenance of Benefits provision in Article 10:

3. Where a denial of retirement "in good standing" is due to pending criminal investigations or charges (including cases in which the denial is attributed to pending administrative investigations or charges directly related to the pendency of the criminal investigation or charge), and the officer is not found guilty of the charges, or of related charges which, if found guilty, would normally result in a termination decision before the State Police

Merit Board, the officer will be designated as having retired in good standing.

In the Matter of the Arbitration of an Interest Dispute Between

THE ILLINOIS DEPARTMENT OF STATE POLICE

and

**ILLINOIS TROOPERS LODGE #41,
FRATERNAL ORDER OF POLICE**

2015-2019 Collective Bargaining Agreement
Case No. S-MA-15-347

Appendix A

The Final Offer of the State of Illinois

BEFORE
DANIEL NIELSEN
ARBITRATOR

IN THE MATTER OF ARBITRATION)
BETWEEN)
FRATERNAL ORDER OF POLICE TROOPERS)
LODGE NO. 41)
) Case No. S-MA-15-347
 Union,)
)
 and)
)
 ILLINOIS DEPARTMENT OF STATE POLICE,)
)
 Employer.)

**ILLINOIS DEPARTMENT OF STATE POLICE'S
FINAL OFFER**

The Illinois Department of State Police ("Department") makes the following economic and non-economic final offers:

Except as modified below, the language in the collective bargaining agreement between the parties referenced above dated July 1, 2012 through June 30, 2015 shall remain unchanged.

I. ECONOMIC PROPOSALS

Economic Issue #1 - Wages and other pay provisions:

ARTICLE 20

Wages

1. ~~Increases to Basic Salary~~ Wage Modifications

a. ~~— Fiscal Year 2014~~

~~Effective July 1, 2013, the basic salary of officers covered by this Agreement shall be increased by two percent (2.0%).~~

b. ~~— Fiscal Year 2015~~

~~Effective July 1, 2014, the basic salary of officers covered by this Agreement shall be increased by two percent (2.0%).~~

~~e. Step Increases~~

~~In addition, employees will receive the step increases as set forth in the salary schedules in each fiscal year covered by the agreement.~~

Effective July 1, 2015, step increases shall be frozen for the duration of the agreement.

2. FTO/FTA Pay

Field Training Officers and Field Training Agents will be awarded one-half (1/2) hour of overtime for each complete work day (eight (8) or ten (10) hour work day) spent training an officer in a field training program.

3. Hazardous Duty Pay

~~Effective July 1, 2013, and each year thereafter each officer shall receive \$250.00 stipend for hazardous duty pay.~~

Effective July 1, 2015~~2014~~, and each year thereafter each officer shall receive a \$350.00 annual stipend for hazardous duty pay. In addition, ~~beginning on January 1, 2015,~~ each officer shall receive a \$50.00 monthly stipend for hazardous duty pay. Effective January 1, 2016, each officer shall receive an additional \$50.00 monthly stipend for hazardous duty pay for a total of \$100.00 monthly stipend.

4. Longevity Stipend

~~Effective July 1, 2014, employees who have reached the 21 year step and beyond on the salary schedule, will receive an additional twenty-five (25) dollars per month added to their base salary.~~ Effective July 1, 2015, the longevity stipend shall be frozen for the duration of the agreement, except for as required by statute.

5. Shift Differential

~~Effective January 1, 2011, officers who are permanently assigned to the midnight shift shall receive an additional twenty-five (25) cents per hour for all hours worked during the period of assignment.~~ Effective January 1, 2015, Officers who are permanently assigned to the midnight shift shall receive an additional fifty (50) cents per hour for a total of seventy-five (75) cents per hour for all hours worked during the period of assignment and all officers assigned to the afternoon shift shall receive an additional fifty (50) cents per hour for all hours worked during the period of assignment. Said increases will be applied to the base hourly rate.

For the purposes of this section, the midnight shift is defined as a work shift in which a minimum of half of the scheduled hours fall between the hours of 11 p.m. and 7 a.m. and the afternoon shift is defined as a work shift in which a minimum of half of the scheduled hours fall between the hours of 3 p.m. and 11 p.m.

6. Merit Incentive Program

The parties agree to develop and implement a merit incentive program which will begin in the Fiscal Year starting July 1, 2016, to reward and incentivize high-performing employees, or a group's/unit's performance. As a part of such efforts, the Department ~~may~~ shall create an annual bonus fund for payout to those individuals deemed high performers or for a group's/unit's level of performance for the specific group/unit. Payment from this bonus fund will be based on the satisfaction of performance standards to be developed by the Department in consultation with the Union. Such merit compensation either for a group/unit or an individual shall be considered a one-time bonus and will be offered only as a non-pensionable incentive, and that any employee who accepts merit pay compensation does so voluntarily and with the knowledge and on the express condition that the merit pay compensation will not be included in any pension calculations.

Additionally, as a part of overall efforts to improve efficiency of state operations and align the incentives of the Department with its employees, the Department shall develop gain sharing programs. Under such programs, employees or agencies that achieve savings for the State will share in such savings. Savings shall be calculated based on achieved savings for the State and shall not include savings from other funds, such as Federal funds, if the State is forbidden from disbursing such monies as rewards. Such compensation either for a group or an individual shall be considered a one-time bonus and will be offered only as a non-pensionable incentive, any employee who accepts gain-sharing compensation does so voluntarily and with the knowledge and on the express condition that the merit pay or gain-sharing compensation will not be included in any pension calculations.

In each subsequent contract year in which a merit incentive program is created, no less than twenty-five percent (25%) of the employees subject to this Agreement will receive some form of merit compensation under such programs. Funding for these performance bonuses is subject to annual approval as a part of the State's overall budget, and limited to two (2) percent of the budgeted base payroll costs for bargaining unit employees.

The Department, in consultation with the Union, will develop specific policies for both of these programs. Further, once developed, ~~and will give~~ the Union will be given an opportunity to review and comment on such policies prior to their implementation. The Department's intent is to develop policies that will reward employees or group of employees based on specific achievements and to prevent payouts that are influenced by favoritism, politics, or other purely subjective criteria. Compliance with the policies for both of these programs shall be subject to the grievance and arbitration procedure. Whenever the Department pays an employee or group of employees as part of the merit incentive program or gain-sharing initiatives, the payments shall be funded by the Department's operating funds. The Department shall forward all requests for payment to the Comptroller, and payments shall be issued as required by the obligations of this Agreement.

ARTICLE 22

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Issued Clothing and Equipment

2. Maintenance Allowance

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- A. ~~Effective July 1, 2013, each officer in active duty as of that date shall be entitled to an annual clothing maintenance allowance of \$500 and each plainclothes officer in active duty as of that date shall receive an annual clothing allowance of \$500.~~
- B. Effective July 1, 2015~~2014~~, and annually thereafter, each officer in active duty as of July 1 each year shall be entitled to an annual clothing maintenance allowance of \$600 and each plainclothes officer in active duty as of July 1 of each year shall receive an annual clothing allowance of \$500.

Payments made in accordance with this Section shall be received no later than October 1 of each fiscal year.

ARTICLE 28

Seniority Positions

2. Trooper/Agent Seniority Advancements

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- A. Effective July 1, 2015, Trooper/Agent Seniority Advancements shall be frozen for the duration of the agreement.
- A. ~~Effective July 1, 1991, there shall be a SEVENTY-FIVE DOLLAR (\$75.00) monthly wage increase for Agents at the seven (7) year level of service. This applies only to Agents who have not previously attained the "Senior Agent" level. At the seven (7) year level of service, Agents shall be recognized as "Senior Agent."~~
 - (1) ~~Effective July 1, 1998, there shall be a SEVENTY-FIVE DOLLAR (\$75.00) monthly wage increase for Troopers at the start of the three (3) year level of service. At the three (3) year level of service, Troopers will be recognized as "Trooper First Class" and receive collar insignia for that level.~~
 - (2) ~~Effective July 1, 2003, there will be an additional FIFTY DOLLAR (\$50.00) monthly wage increase for Troopers at the start of the three (3) year level of service and Agents at the seven (7) year level of service.~~
- B. ~~Effective July 1, 1991, there shall be a FIFTY DOLLARS (\$50.00) monthly wage increase for Troopers/Agents at the fourteen (14) year level of service. This applies only to Troopers/Agents who have not previously~~

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~~attained the "Master Trooper" or "Inspector" level. At the fourteen (14) year level of service, Troopers/Agents shall be recognized as "Master Trooper" or "Inspector", respectively, with Master Troopers receiving collar insignia for that level.~~

~~C. Effective July 1, 1992, there shall be a FIFTY DOLLAR (\$50.00) monthly wage increase for Troopers/Agents at the twenty-one (21) year level of service. At the twenty-one (21) year level of service, Trooper/Agents shall be recognized as "Senior Master Trooper" and "Senior Inspector" respectively, with "Senior Master Trooper" receiving collar insignia for that level.~~

Economic Issue #2 - Health Insurance:

Per agreement of the parties, final offers on health insurance will be exchanged on December 22, 2015.

II. NON-ECONOMIC PROPOSALS

Non-Economic Issue #1:

ARTICLE 6
Dues Deduction and Fair Share Payments

I. Dues Deduction

The Department agrees to deduct from the pay of those officers who individually request Lodge membership dues, assessments or fees. Request for any of the above shall be made on a form agreed to by the parties and shall be made within the provisions of the State Salary and Annuity Withholding Act and/or other applicable State statutes and/or procedures established by the Comptroller.

Upon receipt of an appropriate written authorization from an officer, such authorized deductions shall be made in accordance with law and the procedures of the Comptroller and shall be remitted semi-monthly to the Lodge in accordance with the current procedures, and at the address designated in writing to the Comptroller by the Lodge. The Lodge shall advise the Department of any increase in dues or other approved deductions in writing at least thirty (30) days prior to its effective date. During the term of this agreement, dues shall be increased by a percentage matching each increase in the basic salary schedule as provided for in Article 20 of this Agreement.

2. Revocation

All officers covered by this Agreement who have signed Lodge dues checkoff cards prior to the effective date of this Agreement or who signed such cards after such date shall only be allowed to cancel such dues deduction within the prescribed procedures of the Comptroller.

~~3. — Fair Share Payment~~

~~Pursuant to Section 3(g) of the Illinois Public Labor Relations Act effective July 1, 1984, the parties agree that the Lodge certified proportionate share, which shall not exceed the amount of dues uniformly required of members, shall be deducted from the earnings of the non-member employees as their share of the cost of the collective bargaining process, contract administration and the pursuance of matters affecting wages, hours and conditions of employment subject to terms and provisions of any such fair share agreement. The amount so deducted shall be remitted semi-monthly to the Union.~~

~~4. — Fair Share Obligation~~

~~Pursuant to Section 3(g) of the Illinois Public Labor Relations Act effective July 1, 1984, the parties agree that if the Lodge has or attains majority Lodge membership, or receives a majority decision by referendum as set forth below, the following shall be applicable:~~

~~Officers covered by this Agreement who are not members of the Lodge or do not make application for membership, within fifteen (15) days of employment, shall be required to pay, in lieu of dues, their proportionate share of the cost of the collective bargaining process, contract administration and the pursuance of matters affecting wages, hours and conditions of employment, but not to exceed the amount of dues uniformly required of members. The proportionate share payment, as certified by the Lodge pursuant to Section 6(e) of the Illinois Public Labor Relations Act, shall be deducted by the Comptroller from the earnings of the non-member officers and shall be remitted semi-monthly to the Lodge. Majority status shall be verified by the Comptroller's Office or by mutually agreeable means through the calculation of employees making dues deductions as of January 1, 1988, or any time thereafter. If such certification by the Comptroller's Office or other mutually agreeable means shows a majority status of bargaining unit employees being Lodge members, the proportionate share provision shall be implemented during the pay period following such certification.~~

~~Where the Lodge has fair share via majority Lodge membership, if the Department has reason to believe that the Lodge no longer has such majority membership status, it may request membership certification from the Comptroller. The parties shall meet within ten (10) days of such certification, to verify the majority status or lack thereof.~~

~~If less than a majority status is verified, the Lodge will be given thirty (30) days, which may be extended by mutual agreement, in which to secure the needed additional membership to secure majority status.~~

~~Should the Lodge fail to secure a majority within the above thirty (30) days or agreed extensions thereof, fair share deductions shall cease.~~

~~Should any officer be unable to pay their contribution to the Lodge based upon bona fide religious tenets or teachings of a church or religious body of which such officer is a member, such amount equal to their fair share shall be paid to a non-religious charitable organization mutually agreed upon by the officer affected and the Lodge. If the Lodge and officer are unable to agree on the matter, such payment shall be made to a charitable organization from an~~

approved list of charitable organizations established by the Illinois State Labor Relations Board. The officer shall, on a monthly basis, furnish a written receipt to the Lodge that such payment has been made.

~~Where the Lodge does not have a majority of officers as being Lodge members, the Lodge may request a referendum of Lodge members to determine whether or not the proportionate share provision shall apply to non-Lodge members. The referendum will be conducted within sixty (60) days of the Lodge's request by the American Arbitration Association. Such election shall be conducted by secret mail ballot and any cost associated with the process shall be assumed by the Lodge. If it is determined by the normal and standardized ballot and election procedures established by the AAA that a majority of valid votes cast favor the proportionate share provision, such provision shall be implemented in the pay period following the certification of election results. Such proportionate share provision shall remain in effect for the duration of the Agreement. If the majority of valid votes cast do not favor the proportionate share provision, such provisions shall not be implemented and the Lodge is precluded from requesting another election within one year of the certification of election results. The question on the ballot shall be "Shall the officers in this Lodge who are not members of the exclusive bargaining agent, FOP, pay a proportionate share of the cost of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment?"~~

~~For purposes of determining majority membership, or eligibility to vote in an election, the count or voter list will be based on those officers on the payroll in the most recent pay period.~~

~~The parties shall request the Comptroller to provide to the Lodge a monthly computer tape for the bargaining unit listing each officer and the amount deducted for dues or fair share fees.~~

~~Subject to the foregoing, the Department shall, with respect to any officer in whose behalf the Department has not received a written authorization as provided for above, deduct from the wages of the officer, the fair share financial obligation, including any retroactive amount due and owing, provided the Lodge has certified to the Department that the affected officer has been given a reasonable opportunity to prepare and submit any objections to the payment and has been afforded an opportunity to have said objections adjudicated before an impartial arbitrator for the purpose of determining and resolving any objections the officer may have to the fair share fees.~~

3. Liability

The Lodge agrees to indemnify, defend and hold harmless the Department for any and all claims, demands, suits or liabilities arising from its good faith efforts to comply with any of the terms of this Article or the deduction, collection and payment of funds hereunder.

Non-Economic Issue #2:

ARTICLE 14
Bulletin Boards

The Department will provide the Lodge with reasonable space on existing bulletin boards at each facility of the Department to which bargaining unit members are assigned. The material placed thereon shall not be subject to prior restraint by the Department. The items posted shall not be political, (including solicitation relating to political campaigns, of funds or volunteers for a political candidate or political party as prohibited per statute), partisan or defamatory in nature. After each rating period or promotional process, the Department will provide the Lodge with a copy of the promotion list for Troopers and Sergeants.

The Lodge representatives shall have reasonable access to the Department's electronic system (e-mail) for the purpose of posting the same kind of material that is allowed in this section for posting on bulletin boards.

Non-Economic Issue #3:

ARTICLE 15
General Provisions

1. Access and Use of Department Facilities

Authorized Lodge representatives shall be permitted by the Department to have reasonable access under reasonable circumstances to the premises of the Department, provided reasonable notice of the visit is given. Such visitation shall be for the reason of the administration of this Agreement. The Department reserves the right to designate a meeting place.

The Department agrees to permit the Lodge reasonable access to its facilities to conduct its meetings at reasonable times and by mutual agreement. It is understood that such access is subject to operating needs. The Lodge shall reimburse the Department for additional expenses incurred as a result of such use.

Such use of Department facilities, equipment, and/or property shall not include union sponsored political activity as prohibited per statute.

Further, the Department agrees that Lodge representatives shall be permitted reasonable access to recruits and trainees at the Department's Training Academy during two (2) periods of instruction in their training program selected by the Academy.

Non-Economic Issue #4:

ARTICLE 28
Seniority Positions

1. Position Subject to Seniority Bid

Should vacancies occur in any of the positions listed in Paragraph A of this Section, the most senior eligible Trooper / Special Agent (where applicable) (based on continuous service in the Department) within the district, bureau, or unit in which the position arises who bids for the position in accordance with the procedures established herein, shall be selected for the position, provided the senior Troopers / Special Agents (where applicable) qualifications for the position are substantially equivalent to or greater than those of other officers seeking the position. In determining qualifications, the Department shall not be arbitrary or capricious but shall consider training, education, experience, skills, ability and performance.

Where the geographic area of responsibility of the positions is larger than a single district, bureau, or unit then seniority hereunder shall be determined within the larger area.

When the Department determines that a job vacancy exists in a position listed in Paragraph A of this Section, the vacancy shall be posted for bid on the appropriate bulletin board(s) of the district, zone, bureau, or unit for a period of at least fourteen (14) calendar days prior to the filling of the position and distributed to the Troopers / Special Agents (where applicable) of the district, bureau, or unit by mail or other appropriate means. The Department shall determine, in its discretion, whether a job vacancy exists; provided, however, that a vacancy shall be posted within thirty (30) days after the Department makes this determination. Except for the positions of Riverboat Unit/Gaming Officer and Riverboat Unit/Gaming Sergeant which shall be bid statewide, all such vacancies shall be posted in the district where the vacancy occurs. Once the posting period has ended, no other bids shall be accepted and no appointment shall be made to any person except the successful bidder. Where vacancies for seniority positions posted in a district are not filled, the vacancy shall be posted in the zone and available to investigative personnel who reside within the geographic boundaries of that district, prior to being posted statewide. If the bidding process does not fill the vacancy, then the Department may fill the position by other means. The vacancy posting shall contain the position title, work location, a summary of duties and responsibilities of the position. Non-probationary employees within the above units may bid during the fourteen (14) day posting period on a form supplied by the Department. If the bidding process does not result in interested applicants, then the Department may fill the position by other means.

Where skills and ability are relatively equal and there exists an underutilization of a minority class in a given geographical region and/or category, the Department may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.

The Department retains the right, at any time during the procedure, to determine that a vacancy shall not be filled.

Non-Economic Issue #5:

ARTICLE 28
Seniority Positions

I. Positions

District Court Officer/Assistant

District Fleet Officer/Assistant
~~District Vehicle Investigation Bureau Officer/Assistant~~
District Desk Officer/Assistant
District Commercial Vehicle Enforcement Officer*
Riverboat Unit/Gaming Sergeant
Riverboat Unit/Gaming Officer

In Districts with more than one Commercial Vehicle Enforcement Officer, half of the positions shall be filled by seniority bid. In Districts with an odd amount of positions, the extra position shall be filled by seniority bid.

~~Troopers / Special Agents assigned as of July 1, 1994, on a permanent basis as Riverboat Unit/Gaming Officer and officers temporarily assigned as of that date as Riverboat Unit/Gaming Officer with more than fifteen (15) years of seniority shall remain in their current assignments and pay level and may not be displaced by seniority bidding under this Section. Any officer assigned to the Riverboat Unit/Gaming after commencement of this contract shall be paid commensurate with his rank. When the Department determines that a Riverboat Unit/Gaming Sergeant position vacancy exists, the position shall be filled by either:~~

- (1) Posting the vacancy for seniority bidding among sergeants; or,
- (2) submitting a qualified and eligible officer from the approved promotional list for the Riverboat Unit/Gaming for promotion to the rank of Sergeant, and if such person is a Riverboat Unit/Gaming Officer, then his vacant position shall be filled by seniority bidding among Troopers and Special Agents.

Non-Economic Issue #6:

ARTICLE 30
Overtime

5. Unavailability For Forceback Overtime

In the event an overtime detail cannot be staffed with volunteers, the Department shall staff the detail in accordance with Article 30, Section 4.A.5. The Department will assign the overtime by other means or "force back" the least senior officer who has not been previously forced to work scheduled overtime. There are four situations in which the Department cannot "force back" an officer to work scheduled overtime:

- A. Sick Time: when officers are utilizing 515 Sick Time or 516 Family Sick Time.
- B. The Six Hour Rule: when an officer's scheduled work shift begins within six hours of the end of the scheduled overtime assignment.
- C. Consecutive Hours of Work: when an officer would be scheduled for more than 16 hours in a 24 hour period.

- D. Attached Additional Day(s) Off: When an officer has been granted an additional day(s) off using accumulated time in conjunction with their regular day(s) off prior to the dissemination of the scheduled overtime details seeking volunteers. Any time off request received by the Department after the dissemination will be held until the details are filled and will not prevent the officer from being forced back.

Non-Economic Issue #7:

ARTICLE 36
Savings Clause

1. If any provisions of this Agreement or any application thereof are found by competent authority to conflict with any existing or subsequently enacted federal or state legislation or executive order or by virtue of any judicial action, the remaining provisions of this Agreement shall remain in full force and effect. In such event, upon request of either party, the parties shall meet promptly and negotiate with respect to substitute provisions rendered or declared unlawful, invalid or unenforceable.

~~2. In the event the Director of the Illinois State Police unilaterally grants an increase in economic benefits to any or all other collective bargaining unit members employed by the Illinois State Police, such increase shall be made applicable to the employees covered by this Agreement. Reduction in benefits, however, shall not be made applicable, and the provisions of this Agreement shall apply. This Section is not applicable to economic benefits negotiated in this or other collective bargaining agreements~~

Respectfully submitted,

Mark W. Bennett

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**BEFORE
DANIEL NIELSEN
ARBITRATOR**

IN THE MATTER OF ARBITRATION)	
BETWEEN)	
)	
FRATERNAL ORDER OF POLICE TROOPERS)	
LODGE NO. 41)	
)	Case No. S-MA-15-347
Union,)	
)	
and)	
)	
ILLINOIS DEPARTMENT OF STATE POLICE,)	
)	
Employer.)	

**ILLINOIS DEPARTMENT OF STATE POLICE'S
REVISED FINAL OFFER**

ARTICLE 26
Insurance

Economic Issue #2

During the term of this Agreement, the Department shall continue in effect for all eligible employees and their eligible dependents, the benefits, rights and obligations of group health, life and other insurance under such terms and at such rates as are made available by the Director of Central Management Services pursuant to the State Employees Group Insurance Act except as modified during the term hereof by agreement of the parties. Employer shall provide employees an opportunity to be given a hearing examination when hearing exams are being given to telecommunicators.

However, Employee Health Care Benefits shall be as set forth in Appendix ___ of this Agreement.

Appendix _____. Effective July 1, 2015

All benefits in this Appendix are effective July 1, 2016, unless otherwise noted. Benefit levels and premiums in place as of June 30th, 2015 apply to all services received through June 30th, 2016. Premium amounts specified in section 2 of this Appendix are based on the State's estimated Fiscal Year 2016 insurance liability and may be increased or decreased for State Fiscal Years 2017, 2018, and 2019 in proportion to net insurance liability changes for all the plans outlined within this appendix. For Fiscal Year 2017, such increases or decreases in employee contributions shall, in aggregate, be no greater than ten percent in comparison to the amounts specified in this agreement. For State Fiscal Years 2018 and 2019, such increases or decreases in employee contributions, in aggregate, shall be no greater than ten percent in comparison employee's contributions from the preceding year of this agreement.

SECTION 1. SUMMARY OF BENEFITS

The State shall maintain a program of benefits that shall include health, dental, vision, and life coverage. The health plan shall include medical, prescription and behavioral health coverage. Any and all services covered by the Plan must be medically necessary as determined by the Plan.

Eligible dependents of members shall have available benefits. All dependents enrolled in the Plan must be enrolled in the same health and dental plan as the member.

SECTION 2. CONTRIBUTION AMOUNTS

- 1) The premium contributions outlined in this Appendix are based on the FY16 rate analysis for the current plan-design. Future premiums are subject to change to achieve the same level of cost-sharing in aggregate between the State and its employees as outlined in this Appendix A. The employee's salary on April 1 shall govern for the next fiscal year.
- 2) The member shall pay the appropriate dependent premium for the plan that is selected.

Employee Contributions for the Quality Care Health Plan (QCHP)

- 1) Employees enrolled in the QCHP with salaries of \$30,200 or less per year shall pay \$188.00 per month for health plan coverage capped at 9.5% of income. Employees with salaries of \$30,201 but not more than \$45,600 per year shall pay \$225.00 per month for coverage. Employees with salaries of \$45,601 but not more than \$60,700 shall pay \$257.00 per month for coverage. Employees with salaries of \$60,701 but not more than \$75,900 shall pay \$291.00 per month for coverage. Employees with salaries of \$75,901 but not more than \$100,000 shall pay \$328.00 per month for coverage. Employees with salaries of \$100,001 or more shall pay \$427.00 per month for coverage.

Effective July 1, 2016, the amount of the contribution shall be adjusted to reflect any changes to the midpoint salary in each of the established brackets.

Four additional salary tiers will be added to adjust employee premium contributions for employees whose annual salary exceeds \$100,000. These additional salary tiers will be established by the Joint Labor/Management Advisory Committee. The amount of additional employee premiums for these new salary tiers shall be no more than 10% greater than the employee premiums for employees whose income is \$100,000 for identical coverage. In the event that the Joint Labor/Management Committee is unable to make recommendations on a timeline that allows such new salary tiers by July 1, 2016, the State may determine the new salary tiers.

- 2) Member contributions for dependent coverage shall be \$504.00 per month for one non-Medicare dependent, \$581.00 per month for two or more non-Medicare dependents, \$142.00 per month for one Medicare primary dependents and \$203.00 per month for two or more Medicare primary dependents.
- 3) Employees on leave of absence may be responsible for additional costs as enumerated in the State of Illinois Employee Benefits Handbook.

Employee Contributions for the Managed Care Health Plans (MCHP)

- 1) Employees enrolled in the MCHP with salaries of \$30,200 or less per year shall pay \$138.00 per month for health plan coverage capped at 9.5% of income. Employees with salaries of \$30,201 but not more than \$45,600 per year shall pay \$174.00 per month for coverage. Employees with salaries of \$45,601 but not more than \$60,700 shall pay \$208.00 per month for coverage. Employees with salaries of \$60,701 but not more than \$75,900 shall pay \$241.00 per month for coverage. Employees with salaries of \$75,901 but not more than \$100,000 shall pay \$277.00 per month for coverage. Employees with salaries of \$100,001 or more shall pay \$376.00 per month for coverage

Four additional salary tiers will be added to adjust employee premium contributions for employees whose annual salary exceeds \$100,000. These additional salary tiers will be established by the Joint Labor/Management Advisory Committee. The amount of additional employee premiums for these new salary tiers shall be no more than 10% greater than the employee premiums for employees whose income is \$100,000 for identical coverage. In the event that the Joint Labor/Management Committee is unable to make recommendations on a timeline that allows such new salary tiers by July 1, 2016, the State may determine the new salary tiers.

Effective July 1, 2016, the amount of the contribution shall be adjusted to reflect any changes to the midpoint salary in each of the established brackets.

- 2) Member contributions for dependent coverage shall be the weighted average of \$229.00 per month for one non-Medicare dependent, \$322.00 per month for two or more non-Medicare dependents, the weighted average of \$90.00 per month for one Medicare primary dependents and \$126.00 per month for two or more Medicare primary dependents.

- 3) Employees on leave of absence may be responsible for additional costs as enumerated in the State of Illinois Employee Benefits Handbook.

Dental Contributions for the Quality Care Dental Plan (QCDP)

- 1) Employees who elect to participate in the QCDP shall be required to pay \$20.00 per month for such coverage.
- 2) Employees who have one dependent enrolled in a health plan offered pursuant to the State Employees Group Insurance Act of 1971 may cover that dependent in the QCDP, for a contribution of \$15.00 per month. This amount shall be in addition to the amount required for the employee.
- 3) Employees who have two or more dependents enrolled in a health plan offered pursuant to the State Employees Group Insurance Act of 1971 may cover those dependents under the QCDP for a contribution of \$30.00 per month. This amount shall be in addition to the amount required for the employee.
- 4) Employees on leave of absence may be responsible for additional costs as enumerated in the State of Illinois Employee Benefits Handbook.

SECTION 3. HEALTH PLAN COVERAGE

THE QUALITY CARE HEALTH PLAN (QCHP)

- 1) The State shall continue to offer enrollment in the QCHP for members who wish to choose any physician or hospital for services.
- 2) With the exception of certain preventive benefits outlined in this appendix or exempted from copayments pursuant to state or federal law, all eligible services shall be subject to deductibles, co-payments, coinsurance amounts, out-of-pocket maximums, and plan provisions. Members who choose to receive services from a provider within the QCHP Provider Network shall receive an enhanced benefit.
- 3) Eligible services not received from a provider within the QCHP Network shall be subject to Maximum Reimbursable Charge (MRC) review and adjustment in addition to deductibles, co-payments, coinsurance amounts and out-of-pocket maximums.

A. PLAN YEAR DEDUCTIBLES

- 1) Member Plan Year Deductible
 - a. The deductible shall be \$350.00 per fiscal year for employees with annual salaries of \$59,300 or less; \$450.00 per fiscal year for employees with salaries from \$59,301 to \$74,300; and \$500.00 per fiscal year for employees with salaries of \$74,301 or more.
 - b. The employee's salary on April 1 shall govern for the next fiscal year.
 - c. Effective July 1, 2014, these amounts shall increase by \$25.00, for total plan year deductibles of \$375.00, \$475.00 and \$525.00, respectively.

- 2) Dependent Plan Year Deductible
 - a. The deductible for dependents shall be \$375.00
- 3) Family Plan Year Deductible
The deductible for a family unit shall be limited to two and one-half times the deductible for the member.
- 4) Additional Deductibles
 - a. Emergency Room Deductible
 - i. The deductible shall be \$450.00 for each hospital emergency room visit.
 - b. QCHP Network Inpatient Hospital Admission Deductible
 - i. The deductible shall be \$100.00 for each admission to a hospital within the QCHP Network.
 - c. Non-QCHP Provider Inpatient Hospital Admission Deductible
 - i. The deductible shall be \$500.00 per admission to a non-QCHP hospital.
 - d. Transplant Deductible
 - i. The deductible shall be \$100.00 for a transplant.

B. Plan Coinsurance

- 1) QCHP Network Services
 - a. The Plan shall pay eligible charges, including but not limited to, physician visits, inpatient hospital services, emergency room services, outpatient surgery or procedures, intensive outpatient and partial hospitalization for behavioral health services and laboratory/imaging services provided by a QCHP Network provider at 85% of the negotiated rate.
 - b. The benefit shall be subject to the applicable deductibles;
 - c. The applicable deductibles and coinsurance amounts shall be applied, dollar-for-dollar, toward the annual QCHP Network out-of-pocket maximum.
 - d. Behavioral health services must be referred by the Behavioral Health Administrator or Personal Support Program and treatment must be provided by licensed providers including psychiatrists, psychologists, Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Registered Nurse Clinical Nurse Specialists (RNCNSs) and Licensed Clinical Professional Counselors (LCPCs).
 - e. Behavioral health inpatient services must be authorized by the Behavioral Health Administrator.
- 2) Non- QCHP Network Services
 - a. The Plan shall pay eligible charges, including but not limited to, physician visits, inpatient hospital services, emergency room services, outpatient surgery or procedures, intensive outpatient and partial hospitalization for behavioral health services and laboratory/imaging services provided at a Non-QCHP Network facility or by a Non-QCHP Network provider at 60% of the MRC amount.
 - b. The benefit shall be subject to the applicable deductibles.
 - c. The applicable deductibles and coinsurance amounts shall be applied, dollar-for-dollar, toward the annual Non-QCHP Network out-of-pocket maximum.

- d. Behavioral health services must be referred by the Behavioral Health Administrator or Personal Support Program and treatment must be provided by licensed providers including psychiatrists, psychologists, Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Registered Nurse Clinical Nurse Specialists (RNCNSs) and Licensed Clinical Professional Counselors (LCPCs).
- e. Behavioral health inpatient services must be authorized by the Behavioral Health Administrator.

A. C. Out-of-Pocket Maximums

- 1) Applicable deductibles and coinsurance shall apply, respectively, toward the QCHP Network out-of-pocket maximum or the Non-QCHP Network out-of-pocket maximum. The Plan shall pay 100% of eligible charges for the remainder of the plan year after the out-of-pocket maximum has been met.
- 2) The Individual In-Network QCHP out-of-pocket maximum shall be \$1,500.00.
- 3) The family QCHP Network out-of-pocket maximum shall be two and one-half times the QCHP Network individual out-of-pocket maximum.
- 4) The Non-QCHP Network out-of-pocket maximum shall be \$6,000.00.
- 5) The family Non-QCHP Network out-of-pocket maximum shall be two times the Non-QCHP Network individual out-of-pocket maximum.

D. Medical Out-of-Pocket Maximum Exclusions

The following items do not accumulate toward the medical out-of-pocket maximums:

1. Prescription drug deductibles, co-payments, or coinsurance;
2. Reduction of benefit amounts imposed for failure to notify the Plan's Utilization Management Program administrator;
3. Any charges greater than the MRC amount and any ineligible charges;
4. The portion of the Medicare Part A deductible the member is responsible to pay.

E. Notification and Authorization

- 1) Notification shall be provided to the Utilization Management Administrator by the member prior to receiving any of the following services, including but not limited to:
 - a. Non-emergency hospital, partial hospitalization program, inpatient hospice, skilled care facility admissions and related continued stays;
 - b. All surgical procedures, except those that are performed in a physician's office;
 - c. High-tech imaging services (including but not limited to MRI, PET, and CAT scans);
 - d. Outpatient surgery, in locations other than a physician's office;
 - e. Emergency hospital admission (notification must be provided within 48 hours of an admission);
 - f. Transplant services;
 - g. Hospice Care;
 - h. Skilled Nursing.
- 2) Failure to provide notification to the Utilization Management Administrator shall result in a reduction in reimbursement of the medically necessary charges by \$800.00. Benefits

are limited to those covered services that are determined by the Administrator to be medically necessary.

F. Medical Case Management (MCM) Program and Disease Management (DM) Program

- 1) MCM and DM are two Programs designed to assist members or dependents during times of serious or prolonged medical conditions that require complex medical care.
- 2) A case manager may be assigned to the member's or dependent's medical case to ensure appropriate care under the Plan.
- 3) Cases shall be identified and referred to the MCM and/or DM Program by the Utilization Management Administrator and/or Medical Claims Administrator.
- 4) The Utilization Management Administrator shall evaluate the member's or dependent's medical case including treatment setting, level of care and intensity of service. The member or dependent shall be contacted directly by the MCM or DM Program professional who shall describe the program and make recommendations for settings and/or providers of care. The member will have the option of following or not following the recommendation.

G. Covered Services

- 1) Preventive Benefits
 - a. QCHP shall cover the following preventive physical examinations and immunizations:
 - i. Preventive physical examinations for children in accordance with the recommendations of the U. S. Preventive Services Task Force (USPSTF);
 - ii. Required school physical examinations;
 - iii. Child and adult immunizations in accordance with the recommendations of the Center for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP) guidelines;
 - iv. Adult routine physical examinations in accordance with the recommendations by the USPSTF up to a limit of \$250.00 per exam. Exams will be covered once every three years for adults under age 50 and annually for adults age 50 and over;
 - v. Annual pap smears, including associated office visit charges for women over age 18 or younger if medically appropriate; and
 - vi. Preventive services required pursuant to state or federal law.
 - b. For all of the routine physical exams discussed in this section, charges associated with these exams, including but not limited to, physician office charges, laboratory, immunization, imaging, and screening tests, will be covered at the applicable benefit level. The annual QCHP deductible shall not apply to any charges associated with these routine physical examinations. All preventive services received at non-QCHP Network providers are subject to MRC charge review and adjustment.
- 2) Prescription Drugs
 - a. Prescription Plan Year Deductible
 - i. The prescription deductible shall be \$125.00 per member or dependent;

- ii. This deductible shall apply to all prescriptions covered by the Plan and shall be separate and distinct from all other QCHP deductibles;
- b. Co-payments
 - i. Co-payments for a 30-day supply of medication shall be as follows:
 - a. \$10.00 for generic;
 - b. \$30.00 for formulary brand;
 - c. \$60.00 for non-formulary brand.
 - ii. Co-payments for a 60-day supply of medication shall be two times the amount of the applicable 30-day co-payment.
 - iii. If a member or dependent elects a brand name drug where a generic is available, the member or dependent is responsible for the brand co-payment plus the difference in cost between the generic and brand name drug.
 - c. Maintenance Medication Program
 - i. Maintenance medications are medications taken for chronic conditions as determined by the Plan.
 - ii. 90-day fills of maintenance medications at mail order, or at a PBM-contracted network retail pharmacy willing to participate in the maintenance medication program on the terms and conditions of the network agreement with the Plan's PBM, shall be available with co-payments equal to two and one-half times the amount of the applicable co-payments for a 30-day supply of medication.
 - iii. After two 30-day fills of maintenance medication obtained at a retail pharmacy, the co-payment of subsequent 30-days fills shall be two times the applicable co-payment for the initial 30-day fill.
 - d. Preferred Drug Step Therapy (PDST) program
 - i. The PDST is a program to be provided by the State's Pharmacy Benefit Manager (PBM) to encourage the use of certain generic and preferred brand drugs that are therapeutically-equivalent to more expensive brand-name drugs.
 - ii. In certain instances, members will be required to try the lower cost generic or preferred brand of pharmaceutical before the Plan would consider coverage of the more expensive brand.
 - e. Brand name drugs for which the generic equivalents have not proven to be effective clinical substitutions based on generally accepted clinical literature and/or medical research shall be treated as generics.
- 3) Physical and Speech Therapy
- a. Inpatient or outpatient therapy shall be covered as described in the State of Illinois Employee Benefits Handbook;
 - b. Services shall be provided by a licensed or certified therapist or physician.
- 4) Chiropractic
Shall be limited to 30 visits per plan year.
- 5) Transplants

- a. Evaluation shall be covered at a QCHP Network facility. The transplant shall be approved or denied as a result of this evaluation on the basis of whether it is viable and non-experimental;
 - b. All services must be performed at a QCHP Network facility;
- 6) Hospice Care
Shall be covered as described in the State of Illinois Employee Benefits Handbook.
- 7) Skilled Nursing
- a. Must be authorized by the Utilization Management Administrator. Medicare primary members and dependents are required to notify the Utilization Management Administrator for hospital stays and admission to skilled care facilities;
 - b. Care may be rendered at home or in a licensed skilled care facility. The Plan shall pay the lesser of either home health care treatment or care in a licensed skilled care facility within the same geographic region.
- 8) Infertility
Diagnosis and treatment of infertility shall be covered as described in the State of Illinois Employee Benefits Handbook.
- 9) Hospital Bill Audit Benefit
If a member or dependent discovers an error or overcharge on a hospital bill and obtains a corrected bill from the hospital, the member shall be paid 50% of the resulting savings.
- 10) Second Surgical Opinions
The plan will pay 100% of the charges for a second surgical opinion, if required by the Utilization Management Administrator. If the second opinion does not confirm the need for surgery, the plan will pay for a third opinion.

MANAGED CARE HEALTH PLANS (MCHP)

- 1) The State shall continue to offer enrollment in MCHP;
- 2) All eligible services including, but not limited to the following, shall be subject to deductibles, co-payments, coinsurance amounts and out-of-pocket maximums.

A. Co-payments

- 1) Primary Care Physician Office Visit
 - a. The co-payment shall be \$20.00 per Primary Care Physician (PCP) office visit.
- 2) Specialist Office Visit
 - a. The co-payment shall be \$30.00 per specialist office visit.
- 3) Home Health Care Visit
 - a. The co-payment shall be \$30.00 per home health care visit.
- 4) Patient Admission

- a. The co-payment shall be \$350.00 per admission to a hospital, hospice, or extended care facility.
- 5) Outpatient Surgery
 - a. The co-payment shall be \$250.00 per outpatient surgery.
- 6) Emergency Room
 - a. The co-payment shall be \$250.00, or 50%, whichever is less, per emergency room use.

B. Coinsurance

- 1) The following services shall be covered at 100% after the applicable co-payment:
 - a. Inpatient admission to a hospital, hospice, or skilled care facility;
 - b. Outpatient surgery;
 - c. Emergency room services;
 - d. Primary Care Physician office visits;
 - e. Specialist office visits;
 - f. Home health care visits;
 - g. Professional charges;
 - h. Psychiatric care;
 - i. Prosthetic devices;
 - j. Diagnostic lab and imaging services.
- 2) The following covered services shall be covered at 80%.
 - a. Durable Medical Equipment.

C. Prescription Drugs

- 1) Prescription Plan Year Deductible
 - a. The prescription deductible shall be \$100.00 per member or dependent;
 - b. This deductible applies to all prescriptions covered by the Plan and shall be separate and distinct from all other MCHP deductibles.
-
- 2) Co-payments
 - a. Co-payments for a 30-day supply of medication shall be as follows:
 - i. \$8.00 for generic;
 - ii. \$26.00 for formulary brand;
 - iii. \$50.00 for non-formulary brand.
 - b. If a member or dependent elects a brand name drug where a generic is available, the member or dependent is responsible for the brand co-payment plus the difference in cost between the generic and brand name drugs.
 - 3) 90-day Supply of Medication

The Plan shall make available a 90-day supply of medication, through certain managed care health plans that are operated on an insured basis. These health plans shall be specified each year during the Benefit Choice Period. Co-payments for the 90-day supply of medication shall be determined by the managed care health plans.

- 4) Brand name drugs for which the generic equivalents have not proven to be effective clinical substitutions based on generally accepted clinical literature and/or medical research shall be treated as generics.

SECTION 4. DENTAL PLAN COVERAGE

THE STATE MAY OFFER A MANAGED CARE DENTAL PLAN DURING THE TERM OF THIS AGREEMENT.

QUALITY CARE DENTAL PLAN (QCDP)

- 1) The State shall continue to offer enrollment in the QCDP.
- 2) Members who choose to receive services from a provider within the QCDP Provider Network shall receive an enhanced benefit.

A. Deductibles

- 1) The deductible shall be \$175.00 per member or dependent per plan year on all covered services except preventive and diagnostic services.

B. Annual and Lifetime Maximums

- 1) The annual maximum benefit for services provided by an in-network provider shall be \$2,500.00 per member or dependent.
- 2) The annual maximum benefit for services provided by an out-of-network provider shall be \$2,000.00 per member or dependent.
- 3) The lifetime maximum benefit for orthodontia services provided by an in-network provider shall be \$2,000.00 per child.
- 4) The lifetime maximum benefit for orthodontia services provided by an out-of-network provider shall be \$1,500.00 per child.

C. Covered Services

- 1) The QCDP shall cover certain preventive, diagnostic, and restorative services as follows:
 - a. Diagnostic and Preventive Services:
 - Initial oral exam;
 - Periodic oral exam;
 - X-rays;
 - Prophylaxis/Fluorides;
 - Sealants.
 - b. Restorative Services:
 - Amalgam fillings, 1 to 4 surfaces;
 - Composite fillings, 1 to 4 surfaces;
 - Crowns;
 - Post and core buildups and crown lengthening;
 - Inlays/Onlays;
 - c. Oral Surgery:
 - Simple extractions (non-surgical) ;
 - Additional single extractions;
 - Surgical extractions;

- Oral Biopsy;
- Alveoplasty;
- Frenectomy;
- General anesthesia, including intravenous sedation (where medically necessary);
- Conscious sedation (where medically necessary).
- d. Endodontal Services:
 - Root canal - anterior, bicuspid, molar;
 - Pulp capping;
 - Pulpotomy.
- e. Periodontal Services:
 - Gingivectomy or gingivoplasty;
 - Root planing;
 - Mucogingival surgery;
 - Osseous surgery.
- f. Fixed and Removable Prosthetics:
 - Full dentures;
 - Partial dentures;
 - Bridges;
 - Implants.
- g. Orthodontic Services:
 - Comprehensive treatment;
 - Minor Treatment.
- 2) Orthodontic treatment is limited to persons age 18 and under.
- 3) Orthodontic treatment of deciduous teeth is not covered.

D. BENEFIT LEVELS

- 1) The benefit levels for the QCDP shall be determined from a statewide fee schedule equivalent to reasonable and customary charges statewide for all covered services.
- 2) The schedule of maximum benefits shall be reviewed every two years and adjusted based on the most current statewide reasonable and customary data available at that time.
- 3) The benefit for replacement of crowns, bridges and dentures shall be limited to once every five years.

SECTION 5. VISION PLAN COVERAGE

A vision benefit shall be made available to all members and dependents enrolled in a health plan offered pursuant to the State Employees Group Insurance Act of 1971.

A. COVERED SERVICES

- 1) Well-care eye examination and, replacement of lenses, once every plan year;
- 2) Materials benefit once every two plan years. Frames benefit once every two plan years.

B. BENEFITS AT NETWORK PROVIDERS

For services provided by a network provider, the member and/or dependent co-payment shall not exceed the following:

- 1) \$20.00 for the eye exam;
- 2) \$20.00 for lenses;
- 3) \$20.00 for Standard Frames (Standard frames are defined as frames with a \$70.00 average wholesale cost);
- 4) The amount of each co-payment for services shall \$25.00;
- 5) In lieu of standard frames with lenses, there shall be a \$120.00 allowance for the cost of contact lenses.

C. Benefits at Non-Network Providers

For services provided by a non-network provider, reimbursement shall not exceed the following:

- 1) \$30.00 for the eye exam;
- 2) \$50.00 for single vision lenses;
- 3) \$80.00 for bifocals and trifocals;
- 4) \$70.00 for frames;
- 5) In lieu of standard frames with lenses, \$120.00 reimbursement for contact lenses.

Section 6. DISPUTE RESOLUTION

The Parties to this Agreement shall negotiate over the terms of an appeals process that is in conformance with the Affordable Care Act.

Section 7. JOINT LABOR/MANAGEMENT ADVISORY COMMITTEE ON HEALTHCARE BENEFITS

The State will offer, by July 1, 2016 or as soon thereafter as is practicable, a plan design that allows employees to obtain the same employee premium contribution levels, by salary tier, as those in place on June 30, 2015, with the exception that such a plan will also have additional salary tiers for determining employee premium contribution amounts for those employees whose annual salary exceeds \$100,000. For the salary tiers over \$100,000, the premium will be divided by a factor of 2.023 to adjust back to a comparable amount for those premiums in place on June 30, 2015. Such a plan will achieve the same level of cost-sharing in aggregate between the State and its Employees as that contained in this Appendix _____. The Joint Labor/Management Committee on health care benefits shall provide for the development and introduction of overall plan-design options and premium contributions. The State will conduct a Benefit Choice period following approval of plan-design. In the event that the Joint Labor/Management Committee is unable to make plan design recommendations on a timeline that allows for the state to offer such a plan to its employees by July 1, 2016, the State may develop and implement a plan design that satisfies these requirements.

The Committee will be composed of an even number of members, half selected by the State and half selected by unions participating in the Committee, and Troopers Lodge 41 will be afforded a seat on the Committee.

The Committee shall:

- a. Research and make recommendations and decisions within its authority related to the achievement of significant and measurable savings in the cost of employee health care during the terms of this Agreement;
- b. Develop incentives for employees to participate in offered programs including, but not limited to, waivers of co-payments, reductions in co-insurance and reward programs for participating in various preventive screenings and testing;
- c. Approve changes that will promote better health resulting in lower cost trends and significant cost containment or savings for either the self-insured or the managed care plans;
- d. The State will provide the Committee with data on the healthcare costs on a quarterly basis for the previous quarters' costs for fiscal year 2015 and for each subsequent quarter within 60 days of the close of the previous quarter;
- e. The Committee shall be charged with seeking to identify an additional \$150 million in annual savings across the State Employees Group Insurance Program for FY17.
- f. The Committee shall submit its recommended modifications, if any, to the plan no later than January 31, 2016 in order to provide for review and implementation for Fiscal Year 2017, and December 31st of the preceding year for Fiscal Years 2018 and 2019.

The State will also offer, by July 1, 2016 or as soon thereafter as is practicable, a plan design that is a richer plan design than the plan referred to in Section 7, and less rich than the plan design referenced in Section 2. Such a plan will, on average, evenly split employee costs between premium contributions and other charges incurred at the time of treatment, such as co-pays and deductibles. This plan will achieve the same aggregate level of cost-sharing between the State and its Employees as that contained in Sections 2 and 7. The employee salary tiers for such a plan will be the same as those outlined in Section 2 including additional salary tiers for employee premium contribution amounts for those employees whose annual salary exceeds \$100,000. The State will conduct a Benefit Choice period following approval of plan-design. The Joint Labor/Management Committee on health care benefits shall provide for the development and introduction of overall plan-design options and premium contributions. In the event that the Joint Labor/Management Committee is unable to make plan design recommendations on a timeline that allows for the state to offer such a plan to its employees by July 1, 2016, the State may develop and implement a plan design that satisfies these requirements.

Notwithstanding the above, employee premium contribution amounts may be increased or decreased in proportion to net insurance liability changes for all the plans outlined within this appendix.

On July 1, 2016, employees will also be offered the option to receive health insurance coverage at the same level of cost sharing between themselves and the State as that present on June 30th, 2015, from July 1, 2016 through June 30, 2019, with the exception that such a plan will also have additional salary tiers for determining employee premium contribution amounts for those employees whose annual salary exceeds \$100,000. For the salary tiers over \$100,000, the premium will be divided by a factor of 2.023 to adjust back to a comparable amount for those premiums in place on June 30, 2015. As consideration for this increase in coverage, employees

who choose this option will be responsible for the premiums for their member and dependent health insurance coverage after retirement.

Dual State Income Households. In some households, both the employee and their spouse or partner may hold jobs that qualify for state-funded health insurance. In such cases, an employee who selects this option may not place their spouse or partner on this plan as a dependent if their spouse has not also selected this option. Similarly, under such cases, Employees who select this option agree to pay the full cost of their retiree premiums and may not be listed as a dependent on their spouse's retiree coverage upon retirement. The preceding exclusions also apply to any employees that select this option and subsequently marry an individual who qualifies for state-funded health insurance.

If, for any reason, the above provisions relating to consideration for retiree healthcare are subsequently invalidated or deemed to not be in compliance with state law, employees who choose this option will reimburse the State an amount equal to the difference in value of the coverage they received under this option instead of the other plans offered under this agreement. Decisions made to select this option are irrevocable.

The Parties agree that the State will continue to explore cost containment initiatives to provide employees with greater choice and stimulate competition among carriers. As an alternative to the plans outlined under this Agreement the State may introduce a private medical exchange consistent with the conceptual framework of the Affordable Care Act. Within such an exchange, employees would have the ability to select amongst multiple plans of varying richness, including plans of comparable actuarial value to the three plans outlined under this agreement. Therefore, such an exchange would offer plans with actuarial values in the "Platinum", "Gold", and "Silver" ranges as defined by the Affordable Care Act. For plans under the platinum designation, employee premium amounts, on average, would equal those specified in Section 2 of this Agreement. For plans under a silver designation, employee premium amounts, on average, would equal employee premiums as of June 30, 2015, adjusted to reflect any projected increases or decreases in total liability while maintaining the same ratio of cost sharing between the State and employees as the three plans outlined under this agreement.

For such an exchange, State would provide employees with a contribution amount, on average, that is equal in value to the State's projected contributions under the 3 plans set forth in this agreement. This contribution amount would be adjusted on July 1, 2017 and July 1, 2018 to reflect any projected increases or decreases in total liability while maintaining the same ratio of cost sharing between the State and employees.

Other Savings Initiatives

The State pledges to continue to strive for health insurance cost savings in order to minimize costs for state employees. The State has already undertaken initiatives in pharmacy benefits management, dependent audits, and re-negotiation of rates for HMO and vision plans. Savings from these initiatives have been factored into the State's current proposal to reduce the increase in employee costs.

The State has identified additional initiatives that may achieve cost savings. These include wellness incentives, network modifications, and incentives to encourage lower cost carriers. Any reductions in total liability from such initiatives will be shared between the State and employees in proportion to each party's contribution level under the plans outlined in this agreement.

As a part of efforts to reduce costs for both the State and its employees, the Joint Labor/Management Committee on health care benefits will make recommendations to the Director of CMS regarding potential savings opportunities for the State. In the event that such recommendations result in increased costs to any individual employees beyond what is specified under this agreement, such increases shall be no greater than 10% for such employees. Such increases must be justified by expected savings to the overall liability.

Section 8. WELLNESS

- 1) Flu vaccines for members shall be covered under this program.
- 2) Reimbursement for participation in a smoking cessation program shall be 100% of the cost with an annual maximum of \$200.
- 3) Reimbursement for participation in a weight loss program shall be 100% of the costs with an annual maximum of \$200.00. This benefit is payable only once every three (3) years.
- 4) The Joint Labor/Management Committee on health care benefits may modify this Section with the goal of improving the health of the covered population.

Section 9. TERM LIFE INSURANCE

The State shall provide basic term life insurance equal to 100% of the employee's salary, at premiums to be paid by the State, unless the employee is on a leave of absence as enumerated in the State of Illinois Benefits Handbook. Employees may purchase, subject to medical underwriting requirements of the Life Insurance Administrator, up to eight (8) times their annual salary for optional (member paid) term life insurance and \$10,000.00 in term life insurance for spouses and children.

SECTION 10. LAID OFF AND FURLOUGHED EMPLOYEES

Certified employees on layoff status shall retain health, dental, and vision insurance coverage for a period of one month per year of service, with a minimum of six months and a maximum of twenty-four months following the effective date of the layoff with the Employer paying the full premium, single or family plan as appropriate. Employees who convert to intermittent or part-time status as a result of a layoff shall have their first year of health, dental, vision, and life insurance coverage treated as if they continued to work as a full time employee.

SECTION 11. COMMUTER SAVINGS BENEFIT PROGRAM

The employer shall provide a pre-tax payroll deduction program for transportation expenses in accordance with and to the extent permitted by the Transportation Equity Act for the 21st Century (TEA-21).

SECTION 12. PAID LEAVE FOR ORGAN TRANSPLANT DONOR

The employer shall grant up to six (6) weeks of leave with pay for living donors of organs including, but not limited to, kidneys, bone marrow, or any other organ that may be transplanted.

Section 14. HEARING BENEFITS

The Employer shall provide benefits for hearing exams and hearing aids, up to a maximum of \$150.00 for audiologist fee(s) and up to a maximum of \$600.00 for hearing aid(s), limited to once every three years.

SECTION 15. SAME SEX DOMESTIC PARTNERS

A domestic partner of the same sex, enrolled prior to June 11, 2011, shall be considered eligible for coverage under the health, dental and vision plans. The State shall require reasonable proof of the domestic partnership. For purposes of this Section, a domestic partner is defined as an unrelated person of the same sex who has resided in the employee's household and has had a financial and emotional interdependence with the employee, consistent with that of a married couple for a period of not less than one (1) year, and continues to maintain such arrangement consistent with that of a married couple. The benefit shall be administered in accordance with all applicable state and federal laws. The parties recognize and agree that persons who have entered into a civil union in accordance with the Illinois Religious Freedom and Civil Union Act, 750 ILCS 75/1 et seq. (PA 096-1513) and the children of those who have entered into such a civil union shall be entitled to coverage under the health, dental and vision plans as well as to other benefits conferred by the Act. In the event the Illinois Religious Freedom and Civil Union Act, 750 ILCS 75/1 et seq. (PA 096-1513) is repealed or otherwise rendered invalid, the civil union partner and children who were eligible to receive and who were receiving health, dental and/or vision benefits at the effective date of the repeal or invalidity shall continue to receive such benefits and coverages, and the limiting enrollment date of June 1, 2011, shall be null and void and the provisions of this section of Appendix A shall be made applicable to all same sex domestic partners who meet the definition of domestic partner contained herein.

Respectfully submitted,

Mark W. Bennett

Mark W. Bennett
Violet M. Clark
Thomas S. Bradley
LANER MUCHIN, LTD.

In the Matter of the Arbitration of an Interest Dispute Between

THE ILLINOIS DEPARTMENT OF STATE POLICE

and

**ILLINOIS TROOPERS LODGE #41,
FRATERNAL ORDER OF POLICE**

2015-2019 Collective Bargaining Agreement
Case No. S-MA-15-347

Appendix B

The Final Offer of
Illinois Troopers' Lodge #41,
Fraternal Order of Police

**Before Interest Arbitrator
Daniel Nielsen**

In re Interest Arbitration:

**Troopers Lodge No. 41, Labor
Organization**

and

Case No. S-MA-15-347

**Illinois Department of State
Police**

Final Offer of Troopers Lodge No. 41

The Lodge submits these final offers to resolve the issues in dispute in the collective bargaining negotiations with the Illinois Department of State Police. Economic offers are designated with the letter "E".

1. Dues Deduction and Fair Share Payments Article 6

The Lodge proposes no changes in this Article.

2. Officer Bill of Rights – Article 7

The Lodge submits the following to resolve this dispute, and the proposed language is underlined or stricken as follows:

Whenever a non-probationary officer is the subject of an administrative investigation which could result in discipline, the investigation shall be conducted in accordance with the following:

1. Internal Investigations

- A.** Internal investigations will be conducted by the Department only upon the filing of a file initiation report (form 4-1). If the investigation is based upon a signed complaint, a copy of the

signed complaint will be attached to the file initiation report, except for information the release of which is prohibited by law.

- B. The Department may make an initial (fact finding) inquiry of an officer or officers, through the request of a fact-finding memorandum, in order to determine if an internal investigation is required. The officer or officers must respond to the inquiry.
- C. No internal investigation will be conducted and no discipline may be issued unless a file initiation report has been completed.
- D. A copy of the file initiation report and any signed complaint will be provided to the officer who is the subject of the complaint prior to the officer's administrative interrogation in addition to and upon being presented with the other information provided to the officer in accordance with Paragraph 2 below.

2. Interrogations

- A. The interrogation of an officer shall be scheduled at a reasonable time, preferably while the officer is on duty, or if feasible, during daylight hours.

- (1) Anytime that an officer is requested to respond to a non-criminal inquiry, any facts the officer furnishes as a result of being compelled to respond to an official department inquiry shall not be used against the officer in whole, in part, or in total, as evidence supporting a sworn affidavit without independent corroboration of the facts contained therein.

This shall not apply to intentional misrepresentation or omission of the facts, or admissions of criminal conduct. In the event that the Department is relying on independent corroborative evidence in lieu of a sworn affidavit **in a criminal case**, the corroborative evidence must be identified on the Complaint Against Department Member form (ISP 3-23). Furthermore, the document (ISP 3-23) must be signed by a sworn officer who is accountable to the Rules of Conduct.

The types of evidence the Department must review and may rely upon will be dependent upon the type of case, but may include arrest and case reports, medical records, statement of witnesses and complainants, video and audio tapes, and photographs. The list is illustrative only and is not to be considered exclusive or exhaustive.

- (2) No officer will be required to participate in an Administrative Interview to answer any allegation of misconduct unless it is supported by an affidavit, ~~except as specified in sub-section I, J, or K, of this section, or a properly prepared form ISP 3-23 as described in sub-section 1.~~ In the event that no affidavit is received within a reasonable time, the investigation will be terminated and the case closed.
- (3) Nothing in section 2 of this Article shall prohibit the Lodge from enforcing the rights afforded to it under Article 8 of this agreement.

B. The interrogation, depending upon the allegation, will normally take place at a Department facility, or other convenient appropriate location.

C. Prior to the interrogation, and not less than twenty-four (24) hours when practicable, the officer who will be interrogated will be informed in writing of:

- (1) the identity of the officer conducting the interrogation;
- (2) the identity of all persons present during the interrogation;
- (3) the nature of the complaint and pertinent facts alleged;
- (4) the names of the complainants known at the time of the interrogation;
- (5) his statutory administrative proceedings rights if the allegation under investigation indicates that a recommendation for a discharge, demotion, or a suspension, in excess of summary punishment is probable against that officer.

D. The length of the interrogation will be reasonable, with interruptions permitted for personal necessities, meals,

telephone calls and rest.

- E. The officer who is interrogated will be provided, without unnecessary delay, with a copy of any written statements or recordings he has made. If the Department makes a written transcript of any recording, a copy will also be provided to the officer without unnecessary delay.
- F. The officer under interrogation shall have the right to counsel present at the interrogation or to have a member of the Lodge present during the interrogation. The Lodge representative shall not be involved in the incident and must be authorized to act on behalf of the Lodge.
- G. No anonymous complaint shall be the sole basis for taking disciplinary action against an officer.
- H. Disciplinary action shall be taken, or the result of the investigation shall be disclosed in writing to the officer as soon as practical following the completion of the investigation. The investigation shall be completed and final Departmental action taken or filed with the Merit Board within 180 days of the Department's receipt of a complaint which meets one of the following requirements:

(Old Section I, J, and K. now modified and included in new Section 3. "Complaint Requirements")

I The Director may in his sole discretion make exceptions to the one hundred eighty (180) day limit, but extensions should be granted only in those cases in which extenuating circumstances exist. Upon the Director's extension, the officer who is the subject of the investigation shall receive notice of the extension except when the Department determines that such notice could jeopardize the investigation.

E.J. Non-cadet probationary officers shall be afforded the right to the presence of an FOP representative, upon request, in any interrogation beyond the initial interview likely to result in

discipline or discharge at the will of the Director.

K. Prior to ordering an officer to write a fact finding memo, or submission to administrative or criminal interrogation, the Department shall advise an officer if they are in possession of any audio or video evidence relevant to the matter under investigation.

1. An Officer who is not allowed to review the video or audio evidence prior to writing a statement or submitting to an interview shall not be charged with any rule of conduct violation related to untruthfulness, unless the Officer has been presented with the video or audio evidence and been given the opportunity to clarify or amend any original statement(s).

2. In any event, the Department shall not charge an officer with any rule of conduct violation related to untruthfulness, unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation.

3. Complaint Requirements

The Department's receipt of a Complaint Against Department Member (CADMF) shall meet the following requirements:

I.A. a written complaint from a person outside the Department supported by a sworn affidavit. The person must have been present at the incident and have direct personal knowledge of the facts of the complaint.

I.B. a written complaint filed and signed by the Department member whether or not must be supported by a sworn affidavit. The Department member must have been present at the incident and have direct personal knowledge of the facts of the complaint.

K.C. a Complaint Against Department Member form (ISP 3-23) signed by a sworn command officer **without a sworn affidavit is permissible only for criminal conduct allegations**, in which the Department is relying on independent corroborative evidence in lieu of a sworn affidavit from a citizen, in which case the **type of** independent corroborative evidence must be identified. A complaint of criminal conduct may be investigated whether or not supported by a sworn affidavit, in which case the 180 days will commence upon the filing of the file initiation sheet. For the purposes of this section, notice to an EEO officer shall not constitute notice to the Department. Additionally, notice to a peer support advisor of policy violations, other than violations of law, shall not constitute notice to the Department. The Director may in his sole discretion make exceptions to the one hundred (180) day limit, but extensions should be granted only in those cases in which extenuating circumstances exist. Upon the Director's extension, the officer who is the subject of the investigation shall receive notice of the extension except when the Department determines that such notice could jeopardize the investigation.

3.4. Polygraph

When a polygraph exam, voice stress indicator or similar device is deemed necessary, the complainant must be requested to take and pass such exam before the accused officer can be requested to do so.

- A. If the complainant refuses to take a polygraph exam, the accused officer will not be required or requested to take a polygraph examination. If the complainant takes the polygraph exam and the results indicate truthful answers, the accused officer may be requested to take a polygraph exam covering those issues wherein the examiner determines that the complainant is truthful.
- B. When the polygraph is used, the accused officer shall be advised twenty-four (24) hours prior to the administering of the test, in writing, of the substantive nature of the questions.

- C. If the officer under investigation requests or agrees to take a polygraph exam, he may do so. However, the results of such exam will not be admissible in arbitration or administrative proceedings.
- D. In cases where the complainant is unknown or anonymous, an officer in the unit will not be required or requested to take a polygraph exam.
- E. The accused officer will be provided with the results of the polygraph exam.
- F. No disciplinary action will be taken against an officer in the unit who refuses to take such an examination.

4.5. Dissemination of Information to the News Media

The identity of an accused officer shall not be made available to the news media unless that officer has been charged or indicted for a criminal offense; or until a final decision has been rendered by the Merit Board or other final action by the Department.

5.6. Disclosure

An accused officer will not be required to disclose information concerning any items of his property, income, assets, source of income, debts, or personal or domestic expenditure, unless such information as reasonably determined by the Department is necessary during the course of an investigation of that officer or when such disclosure is required by law.

6.7. Compulsion of Testimony

An accused officer shall not be compelled by the Department to speak or testify before, or to be questioned by any non-governmental agency relative to the investigation of that officer.

7.8. Drug, Alcohol and Similar Testing

No officer shall be required to submit to a blood test, a breathalyzer test or any other test to determine the presence of alcohol in the blood for any reason, or any test to determine the use of or presence of drugs or other chemical substances, except pursuant to the Department's random drug testing policy, unless the Department has

reasonable cause to believe that the officer is then under the influence of alcohol, is a current user of non-prescribed controlled substances or upon proposed Proposal in personnel status or permanent Proposal in assignment. A split sample will be provided, if requested, for any blood or urine test. The Department shall develop a reasonable protocol for all such testing, including but not limited to, the specific tests to be conducted, retention and transportation of samples.

Nothing herein shall be construed to restrict the Department's right to insist upon a work force free of controlled substance abusers.

- A. Should an officer become involved in an on duty incident where deadly force as defined in OPS-002 was used, the officer shall submit to a blood test and breathalyzer test or any other test to determine the presence of alcohol or drugs in the blood for any reason, or any test to determine the presence of drugs or other chemical substance.

8-9. Random Drug Testing

A random drug testing policy for all sworn officers in the Department was developed and implemented, as a result of prior negotiations, by a joint committee of the Department and the Lodge. The parties further agree that any proposed substantive Proposal to the policy or procedure must be negotiated and agreed to prior to implementation.

9-10. Psychiatric or Psychological Evaluations

No officer shall be required to submit to or be subjected to any psychiatric or psychological evaluation, testing or questioning by psychologists or psychiatrists retained/employed by the Department except upon an assertion by the Department of disability for psychological reasons or upon proposed Proposal in personnel status or permanent Proposal in assignment. The order to an officer to submit to such exam must be in writing and set forth the specific reasons for which the test is being ordered. The order to submit to such exam and the results of such exam shall be kept confidential and shall be disclosed only to authorized personnel.

1011. Exercise of Rights

An accused officer will not be threatened with transfer, reassigned, have his duties changed, or disciplined, or threatened with any of the

foregoing, for disciplinary action or dismissal for exercising any of the rights enumerated above.

1112. Criminal Investigations

The provisions of this Article do not apply to criminal investigations, in which the Department acts in its capacity as a law enforcement agency to investigate potential violations of criminal law. In addition to being afforded Miranda Rights as required by law, an officer interviewed as part of a criminal investigation will be informed in writing that:

- A. the interview relates to a criminal investigation; and
- B. the Illinois State Police is acting as a law enforcement agency, and not as the officer's employer and thus no adverse employment action will be taken against the employee for refusing to participate in the interview; and
- C. the officer is free to choose not to participate in the interview and/or leave at any time.

1213. Suspensions

- A. An officer will not be suspended for a Level 6 or less Misconduct until after one of the following events has occurred:
 - 1. Discipline imposed within the Director's authority (30 day suspension or less) has become final because either it was agreed upon, no appeal was taken to the ISP Merit Board, or the ISP Merit Board within its discretion declined to hear the matter; or
 - 2. The ISP Merit Board has issued a final decision in accordance with its rules.
- B. An officer will not be suspended for a Level 7 Misconduct (termination offense) prior to a final decision by the Merit Board, unless the Director in his discretion orders the suspension to begin upon the filing of the Merit Board Complaint based upon exceptional circumstances. Exceptional circumstances include, but are not limited to, situations where the officer is considered a threat to the safety of the officer, the

public, other employees, or departmental operations, the officer failed a drug test, or the officer has been charged with a criminal offense arising out of the same incident for which termination is sought and the severity and nature of the offense warrant prompt action. If the Director orders the suspension to begin upon the filing of the Merit Board Complaint, the Department will provide written notification of the suspension and the exceptional circumstances to the Lodge prior to the start of the suspension.

13. Global Positioning System (GPS)

The Department shall not use evidence obtained through the GPS as the sole reason for issuing discipline against an officer.

GPS data involving an officer shall not be stored by the Department. GPS data can only be monitored in real time.

(Move to new Article 42)

14. Misconduct Allegation Settlement Agreements (MASA)

The Misconduct Settlement Allegation Agreement (MASA) shall be offered to all officers who are alleged to have violated a level six or below violation of the ISP Rules of Conduct. The MASA process shall include the reduction of one matrix level of punishment on all offenses. The officer shall have ten (10) days to respond to the Department's MASA offer. The MASA is final and binding on all parties when signed by the officer. The officer shall be provided with a signed copy of the agreement at that time. When applicable, the officer has the option to apply the provisions of non-economic punishment.

The officer has the right to Lodge representation in all cases. In addition, the Lodge Office must be notified by the Department of all MASA's prior to their implementation. All MASA's with punishment in excess of 30 days must be approved by the Illinois State Police Merit Board. In the event the Merit Board declines the discipline agreed upon in the MASA, the settlement

agreement is void and any statement or admission made in the negotiation process may not be used against the officer.

3. Maintenance of Benefits – Article10

The Lodge proposes the following addition as Section 3 to Article 10:

Effective July 1, 2010, for each bargaining unit member who separates from the Department and requests a determination of retirement “good standing” the department shall provide a determination of “good standing” a retirement star, and credentials for use consistent with the requirements of the Law Enforcement Officers’ Safety Act, as amended.

A. The denial of retirement in “good standing” shall be limited to officers who are charged in a court of law with felony criminal violations, or charged with Department policy violations, which if found guilty would normally result in a termination decision by the State Police Merit Board.

B. In the event an officer disqualified due to pending criminal charges is not found guilty of the specified felony charge, the officer will be reclassified as retired in good standing.

4. Bulletin Boards – Article 14

The Lodge proposes no changes for this article and opposes the changes offered by the Department.

5. General Provisions

The Lodge proposes no changes for this article and opposes the changes offered by the Department.

6. Seniority – Article18 –

The Lodge proposes the following changes to Section 6 and to relabel Section 6,

paragraphs B, C and D, as Section 6, paragraphs C, D and E:

6. Current Work Shift and Days Off Systems

A. During the term of this Agreement, the Department shall alter or modify any current system of work shifts (e.g., 4-10 days, rotational, permanent, etc.) or procedure for the determination of regular days off (e.g., Kelly, rotation, permanent, etc.) only:

- (1) after it has first met with the Lodge and discussed the proposed change and its reasons therefore; and
- (2) for good cause shown for such change.

B. Districts 6, 8, 10, 17, and 21 shall change to the 4/10 work schedule within 60 days of the implementation of the current agreement

All personnel assigned to a Patrol District on the 4/10 work schedule shall work the 4/10 work schedule unless otherwise mutually agreed to between the Department and the Lodge.

Within 60 days of the implementation of this agreement, the parties shall form a joint Labor/Management Committee to study the feasibility of the implementation of the 4/10 work schedule in the remaining work units in the Department not on the 4/10 schedule. The Committee shall make non-binding recommendations to the Director on the results of those reviews.

CB. During the term of this Agreement, the Department agrees to maintain 4/10 hour shifts in those work units which currently use them subject to the provisions described in Section 6 of this Article:

- (1) Proposal may be implemented in the month of January of each contract year; provided that the Department must give sixty (60) days written notice of such Proposal to the Lodge;
- (2) following this sixty (60) days written notice and at the request of the Lodge, the parties will exchange

- information relevant to the proposed Proposal and will meet and discuss the proposed Proposal;
- (3) if at the conclusion of such discussions the Lodge objects to the implementation of such Proposal, a grievance may be filed and submitted to expedited arbitration as defined by Article 8 of this Agreement.

Within any type of work shift system used in any district or zone, should the Lodge determine that the means by which the officers thereunder choose which shift they will work is inappropriate, it may meet with the Department for the purpose of negotiating the proposed change. If the parties are unable to reach agreement with respect to a change, the Department shall implement a procedure in which fifty percent (50%) of the available positions on the day shift and thirty percent (30%) of the available positions on the afternoon and night shifts shall be filled on the basis of seniority within the district or zone, etc., provided the senior officers are qualified to perform the work available on the shift. In exercising seniority rights under this section, seniority for Sergeants shall be determined by time served in the rank.

The foregoing shall not apply to probationary officers and their assigned Field Training Officers during the FTO program.

D Days off schedules and shift assignments shall be determined as listed in Section A of this section, except where operational needs due to staffing shortages resulting from a decline in sworn headcount, cessation of employment, retirements, resignations, terminations, transfers, leaves of absence, or other circumstances beyond the Department's control which require the non-emergency adjustments of personnel.

- (1) Said Proposal may not impact any more officers than necessary to address those lost due to the described circumstances;
- (2) Said Proposal may be implemented in the month of July of each contract year; provided that the Department must give thirty (30) days advance written notice of such Proposal to the Lodge.
- (3) Pre-approved time off shall not be affected by these

semi-annual personnel adjustments.

- (4) Nothing in sub-section C impacts Management's rights under Article 2, Section 4, or Section 8 under this Article.

3 Accumulated time off requests that are received more than 30 days in advance of the requested day shall be granted, absent legitimate operational needs, at least 28 days in advance of the requested day.

7. Article 20 Wages

The Lodge proposes the following changes to Article 20 Section 1:

1. Increases to Basic Salary – E

- a. Fiscal Year ~~2014 2016~~
Effective July 1, ~~2013, 2015, January 1, 2016,~~ the basic salary of officers covered by this Agreement shall ~~not~~ be increased. ~~by two percent (2.0%), one half percent (0.5%),~~
- b. Fiscal Year ~~2015 2017~~
Effective July 1, ~~2014, 2016,~~ the basic salary of officers covered by this Agreement shall be ~~not~~ increased ~~by two percent (2.0%).~~
- c.** ~~Fiscal Year 2018~~
~~Effective July 1, 2017, the basic salary of officers covered by this Agreement shall be increased by two and one half percent (2.5%) one percent (1%).~~
- d.** ~~Fiscal Year 2019~~
~~Effective July 1, 2018, the basic salary of officers covered by this Agreement shall be increased by three percent (3%) one and one half (1.5%).~~

8. Step Increases – Article 20 Section 1 c – E

The Lodge proposes no changes to this section and seeks to preserve the existing step salary system.

9. Longevity Step – 28 years Article 20 Section 2 – E

The Lodge proposes a new salary step as follows:

Longevity Stipend

A twenty eight (28) year longevity step shall be added effective July 1, 2016. This longevity step shall be included in the present sworn salary schedule. The new longevity step shall use the same formula to determine the appropriate levels of pay and be subject to the same conditions as all other current longevity step increases.

10. Hazardous Duty Pay – Article 20 Section 3 – E

The Lodge proposes no change in this section.

11. Longevity Stipend – Article 20 Section 4 – E

The Lodge proposes no change in this section.

12. Shift Differential – Article 20 Section 5 – E

The Lodge proposes the following change in this section.

Shift Differential

Effective January 1, 2011, officers who are permanently assigned to the midnight shift shall receive an additional twenty five (25) cents per hour for all hours worked during the period of assignment. Effective January 1, 2015, officers All officers who are permanently assigned to the midnight shift shall receive **eighty (\$.80) cents an additional fifty (50) cents per hour for a total of seventy-five (75) cents one dollar (\$1.00)** per hour for all hours worked during the period of assignment and all officers assigned to the afternoon shift shall receive eighty (\$.80) **an additional fifty (50) seventy five (75)** cents per hour for all hours worked during the period of assignment. Said increases will be applied to the base hourly rate.

For the purposes of this section, the midnight shift is defined as a work shift in which a minimum of half of the scheduled hours fall between the hours of 11 p.m. and 7 a.m. and the afternoon shift is defined as a work shift in which a minimum of half of the scheduled hours fall between the hours of 3 p.m. and 11 p.m.

Employees shall be paid a shift differential of 80 cents per hour in addition to their base salary rate for all hours worked if their normal work schedule provides that they are scheduled to work, and they work half or more of such work hours before 7 a.m. or after 3 p.m. on an 8 hour shift, or 6 a.m. or after 4 p.m on a 10 hour shift, and such payment shall be for all paid time.

For the purposes of hourly calculations, this section shall not apply to scheduled or unscheduled federal or non-departmental hirebacks. This section does apply to department sponsored hirebacks.

13. Back Wage/Award Interest – Article 20 Section 6 – E

The Lodge proposes the a new section as follows:

Back Wage/Award Interest

- A. Any officer who is not paid the negotiated salary, wage rate, or any other monetary benefit including the ratification bonus as scheduled in this Agreement shall be paid interest at a rate of 6% per annual interest for the period they are not paid the negotiated rate/benefit established in the wage and salary schedule, or any other article of this agreement. Unless subject to other provisions mutually agreed to by the parties.**
- B. All arbitration awards or other settlements shall be paid in full to an officer within 120 days of the date of the award or settlement. Failure to pay within the required date will invoke the interest provisions of Section A. of this section.**

14. Merit Incentive – Article 20 Section 8 – E

The Lodge proposes no change to the status quo on the issue of evaluations and pay incentives and opposes the employer proposal to create a new merit pay incentive system.

15. Maintenance Allowance – Article 22 Section 2 – E

The Lodge proposes new language to this section as follows but does not seek an increase in the maintenance allowance:

Maintenance Allowance

~~A. Effective July 1, 2013, each officer in active duty as of that date shall be entitled to an annual clothing maintenance allowance of \$500 and each plainclothes officer in active duty as of that date shall receive an annual clothing allowance of \$500.~~

B. Effective July 1, 2014, and annually thereafter, each officer in active duty as of July 1 each year shall be entitled to an annual clothing maintenance allowance of \$600.

Each and each plainclothes officer in active duty as of July 1 of each year shall receive an additional annual clothing allowance of \$500.

Payments made in accordance with this Section shall be received no later than October 1 of each fiscal year. **~~Any officer who has not received payment by the October 1st deadline will be credited with 16 hours of Compensatory Time.~~**

16. Training

The Lodge proposes the following language change in this section but no increase in the funding allocation.

During each year of this Agreement, and at the appropriate time, the Department will provide tuition reimbursement in the amount of FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00) in FY~~1316~~; FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00) in FY~~1417~~; **~~FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00) in FY18~~**; and FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00) in FY~~1519~~ for such approved work

related courses taken by the officers.

17. Health Insurance – Article 26

The Lodge proposes changes in this article in an offer to be submitted separately as ordered by the Arbitrator.

18. Seniority Positions Article 28 Section 2 Trooper/Agent Seniority Advancements -- E

The Lodge proposes the following change in this article:
Trooper/Agent Seniority Advancements

- A. Effective July 1, 1991, there shall be a SEVENTY-FIVE DOLLAR (\$75.00) monthly wage increase for Agents at the seven (7) year level of service. This applies only to Agents who have not previously attained the "Senior Agent" level. At the seven (7) year level of service, Agents shall be recognized as "Senior Agent."
 - (1). Effective July 1, 1998, there shall be a SEVENTY-FIVE DOLLAR (\$75.00) monthly wage increase for Troopers at the start of the three (3) year level of service. At the three (3) year level of service, Troopers will be recognized as "Trooper First Class" and receive collar insignia for that level.
 - (2). Effective July 1, 2003, there will be an additional FIFTY DOLLAR (\$50.00) monthly wage increase for Troopers at the start of the three (3) year level of service and Agents at the seven (7) three (3) year level of service.
- B. Effective July 1, 1991, there shall be a FIFTY DOLLAR (\$50.00) monthly wage increase for Troopers/Agents at the fourteen (14) year level of service. This applies only to Troopers/Agents who have not previously attained the "Master Trooper" or "Inspector" level. At the fourteen (14) year level of service, Troopers/Agents shall be recognized as "Master Trooper" or "Inspector", respectively, with Master Troopers receiving collar insignia for that level.
- C. Effective July 1, 1992, there shall be a FIFTY DOLLAR (\$50.00) monthly wage increase for Troopers/Agents at the twenty-one (21)

year level of service. At the twenty-one (21) year level of service, Trooper/Agents shall be recognized as “Senior Master Trooper” and “Senior Inspector” respectively, with “Senior Master Trooper” receiving collar insignia for that level.

D. Effective July 1, 2016, there shall be a ONE HUNDRED FIFTY DOLLAR (\$150) monthly wage increase for all members of the bargaining unit at the one year service level and above.

19. Seniority Positions – Article 28 Section 1 – E

The Lodge opposes any change in this section as proposed by the employer and seeks to preserve the status quo in this matter.

20. Seniority Positions Section 1. A – E

The Lodge opposes any change in this section as proposed by employer and seeks to preserve the status quo in this matter.

21. Holiday – Article 29 – E

The Lodge proposes the following change in this article:

1. Holidays

The Department agrees that the following days shall be considered holidays:

New Year’s Day

Martin Luther King’s Birthday

Abraham Lincoln’s Birthday

George Washington’s Birthday

Casimir Pulaski Day

Memorial Day

Independence Day

Labor Day

Columbus Day

General Election Day (on which members of House of Representatives are elected)

Veterans Day

Thanksgiving Day
Friday following Thanksgiving Day
Christmas Day

and any and all days declared as state holidays or non-working days by the Governor of the State of Illinois or national holidays as declared by the President of the United States.

22. Overtime – Article 30, Section 2 – E

The Lodge proposes the following change in the section.

2. Overtime Compensation

Officers shall be compensated for all authorized hours of overtime work at a rate of pay equal to one and one-half (1 1/2) times the officer's equivalent hourly rate or he shall receive one and one-half (1 1/2) hours of compensatory time off at the option of the officer. After July 1, 2001, cash payment of overtime shall be paid within two (2) payroll periods from which the overtime hours were worked. (For example: overtime earned during the 1st to the 15th of July will be paid on or about August 7th; overtime earned during the 16th to the 31st of July will be paid on or about August 22nd.)

For fiscal year ~~2013~~, ~~2016~~, the Department shall fully fund overtime with a budgetary overtime allotment of ~~\$6,000,000.00~~ ~~\$5,000,000.00~~ for personal services not including retirement and social security payments.

For fiscal ~~years 2014 and 2015~~, ~~year 2017~~, the overtime allotment amount shall be ~~\$6,000,000.00~~ ~~\$5,000,000.00~~ ~~respectively~~ for personal services not including retirement and social security.

~~For fiscal year 2018, the overtime allotment amount shall be \$5,000,000.00 for personal services not including retirement and social security.~~

~~For fiscal year 2019, the overtime allotment amount shall be \$5,000,000.00 for personal services not including retirement and social security.~~

These amounts reflect adjustments for cost-of-living allowances and step increases required by this contract.

If the Department exhausts the overtime allotment for any of fiscal ~~year years 2013, 2014, and 2015~~ and is not able to pay cash for overtime, officer's overtime shall be compensated at the rate of two (2) hours of compensatory time for each hour worked. During the term of the contract, overtime hours worked in response to natural disasters and prison riots may be compensated for, at the option of the Department, by granting compensatory time subject to Section 3 of this Article. Notwithstanding the foregoing, in a work day in which overtime hours of work occur, the hours of work performed in a hireback program up to the total number of all overtime hours earned in that work day shall be compensated for with pay only at one and one-half (1 1/2) times the officer's equivalent hourly rate.

23. Overtime – Article 30, Section 3 – E

The Lodge opposes any change to this section and seeks to preserve the status quo in this matter.

24. Overtime – Article 30, Section 5 – E

The Lodge opposes any change to this section and seeks to preserve the status quo on the issue of overtime forceback.

25. Limited Duty – Article 35

The Lodge proposes the following change in the article.

Limited Duty

1. Medical Duty Agreements/Medical Review Board

During the term of this Agreement, the Department will continue to provide ~~in accordance with and subject to the limitations of its established policies and procedures as set forth in PER 38, assignments to~~ medical duty status for officers on sick time or disability leave where it is in the best interests of the officer ~~and the Department~~. **The Department will continue to provide medical duty and reasonable accommodations for**

illness or injury to all officers as required by the FMLA and other State and Federal Statutes.

When an officer is scheduled to appear before the Medical Review Board the Lodge will be notified and the officer shall have the right to representation at the Board by the Lodge.

The Department will provide all Medical Duty Agreements to the Lodge prior to their implementation for review and compliance with the Collective Bargaining Agreement. The Department will not impose any Medical Duty Agreement which does not in conform the terms of the Collective Bargaining Agreement.

The Department will not restrict the possession, or use of firearms in Medical Duty Agreements unless the officer is lawfully prohibited from possessing or physically unable to operate their issued weapon.

Where an officer submits the report of his personal physician to the Medical Review Board, the Board shall confer with the Department's medical doctors.

2. Medical/Psychological Fitness for Duty Examinations

When the Department has reason to suspect that an officer is not fit for duty, the Department will monitor the officer and if necessary place the officer on administrative/medical leave with pay. Then, in complying with the provisions of this agreement may order a fitness for duty exam. In the event the results of the requested fitness for duty evaluation determine the officer is unfit for duty, the employer may place the officer on administrative/medical leave using the officer's accumulated time. The fitness determination is limited to a determination of fitness for duty. The determination may recommend but not mandate any medical procedure or course of treatment. The following procedure shall apply:

- A. The Department may rely upon the decision of its physician as to the employee's fitness for duty. Such examination shall be paid for by the Employer.**
- B. The physician/mental health professional's medical examination**

for fitness for duty shall be limited to a determination of whether an officer is able to perform the essential functions of his or her job (with or without reasonable accommodations). The result of the fitness determination will be documented on ISP Medical Evaluation Form and provided to the officer before any transition to medical/psychological leave using the officer's accumulated time.

C. The Department shall not mandate any additional evaluations, medical procedures or a particular course of treatment prior to an officer returning to work.

D. When the officer's treating physician/mental health professional determine that an officer may return to restricted medical duty (as evidenced by a ISP Medical Evaluation Form, completed in its entirety), the Department will return the officer to medical duty/unrestricted duty, or administrative leave with pay.

An officer who fails to provide a properly requested and completed fitness for duty certification is not entitled to reinstatement. Conversely, once an employee provides a fully completed fitness for duty certification, he or she will be reinstated to duty with pay, subject to Sections D and E of this Article.

E. In the event the Department, the officer, or the Lodge does not concur with either the initial fitness for duty exam or the subsequent return to work clearance, either party may invoke the provisions of a tie breaking examination.

3. Resolution of Leave Disputes

A. If a dispute exists regarding an employee's ability to perform their assigned duties, including medical duty, the parties shall seek and rely upon the decision of an impartial physician who is not a state employee. Any physician used in accordance with this section shall be mutually agreed to by the parties.

B. When it is necessary to order a tie breaking examination, the

Department and the Lodge shall agree upon an impartial third party medical professional who practices in the area of medicine at issue. The tie-breaking examination shall determine the status of the officer. Such examination shall be paid for by the Employer. In the event the third examination determines an officer is able to perform the essential functions of their job (with or without reasonable accommodations), the Department will continue the officer on medical duty/unrestricted duty with pay, or administrative leave with pay.

The tie breaking physician/mental health professional's medical examination for fitness for duty shall be limited to a determination of whether an officer is able to perform the essential functions of his or her job (with or without reasonable accommodations). The determination may recommend but not mandate any additional medical procedure or course of treatment.

C. If the medical examinations by the officer's and the Department's physicians demonstrate that an officer is not able to perform the essential functions of his or her job (with or without reasonable accommodations), then the employee will not be entitled to reinstatement under this agreement until such time as the officer is able to perform those functions. If the tie-breaking examination indicates the officer is still unfit for service, the officer will be returned to medical leave using the officer's sick or accumulated time until such time as the officer submits a new fully completed ISP Medical Examination form indicating the officer is able to perform the essential functions of his or her job (with or without reasonable accommodations), at which time the provisions of this process shall repeat itself.

D. In the case of a dispute involving service connected injury or illness, no action shall be taken which is inconsistent with relevant law and/or regulations of the Illinois Workers Compensation Commission. Such determination shall pertain solely to an employee's right to be placed on or continued on illness or injury leave, including service connected illness or injury.

4. Restricted Medical or Disciplinary Duty

A. In the event that an officer is temporarily unable to perform the essential functions of their current work assignment within the Department due to medical restrictions. Upon request, the officer will be assigned a temporary restricted duty assignment. The officer will be placed in any open position in the Department, or other state agency in which the officer may perform within their duty restrictions at no loss of pay or benefits. This assignment may involve changing of work shifts or work locations to other ISP or state facilities within a reasonable distance from the officer's current assignment.

B. An officer under disciplinary investigation may remain in their permanent assignment or be assigned to restricted duties at the discretion of the Director. The restricted duty with pay may be at the location of the officers permanent assignment or at another location nearby the officer's permanent assignment. During these types of assignments the officer's police powers or firearms possession may not be unreasonably withheld.

5. Travel on Limited Duty

If an officer commutes to their permanent work location in unpaid status, the unpaid commute will continue. The officer will be compensated for additional travel beyond their original commute. An officer on portal to portal travel in their permanent assignment will remain on portal to portal during the term of restricted medical or disciplinary duty. During these types of assignments the officer's police powers or firearms possession may not be unreasonably withheld.

26. Savings Clause 36 Section 2 – E

The Lodge opposes any change in this article, and the Lodge seeks to preserve the status quo in this article.

27. Electronic Multimedia Equipment

The Lodge proposes a new Article 42 consisting of Section 1, which is existing language moved from Article 7 Section 13, and Sections 2 through 7, which are

proposed as new sections.

Electronic Multimedia Equipment

1. Global Positioning System (GPS)

The Department shall not use evidence obtained through the GPS as the sole reason for issuing discipline against an officer.

GPS data involving an officer shall not be stored by the Department. GPS data can only be monitored in real time.

2. In-Car Audio Video Cameras Systems (IACV)

A. The IACV shall not be used to record non-work related personal activity. The IACV system shall not be activated in places where any employee has a reasonable expectation of privacy.

The IACV shall not be activated to record the activity of supervisors or fellow employees during routine, non-enforcement related activities without their knowledge.

B. No Department employee may knowingly tape and/or surreptitiously use an IACV to record a conversation of any other Department employee except with a court order or when documenting or reporting criminal activity.

C. IACV shall not be activated when two officers are discussing issues related to the Collective Bargaining Agreement.

D. Any routine viewing of IACV recordings shall not be arbitrary, capricious, or discriminatory and must meet some legitimate departmental need. Any supervisor reviewing IACV recordings shall be required to document his/her review on a standardized log which shall be made available to any RC-164 member upon request

E. The Department shall not use IACV audio/visual evidence obtained through any routine viewing of material originating

from a IAVC as the sole reason for issuing discipline against an officer.

3. Body Worn Cameras (BWC)

A. The BWC shall not be used to record non-work related personal activity. The BWC shall not be activated in places in which any employee has a reasonable expectation of privacy, such as locker rooms, dressing rooms, restrooms or any employee personal residence unless a criminal offense has occurred in these locations.

The BWC shall not be activated to record the activity of supervisors or fellow employees during routine, non-enforcement related activities without their knowledge.

B. No Department employee may knowingly tape and/or surreptitiously use a BWC to record a conversation of any other department employee except with a court order, or when documenting or reporting criminal activity.

C. BWC shall not be activated when two officers are discussing issues related to the Collective Bargaining Agreement.

D. Any routine viewing of BWC audio/visual camera system recordings shall not be arbitrary, capricious, or discriminatory and must meet some legitimate departmental need. Any supervisor reviewing the audio/visual body camera system recordings shall be required to document his/her review on a standardized log which shall be made available to any RC-164 member upon request.

E. The Department shall not use evidence obtained through any routine viewing of audio/visual recordings originating from the BWC as the sole reason for issuing discipline against an officer.

4. Inspection of Multimedia Recordings

Any time an officer is ordered to write a fact finding memorandum, or submit to a administrative or criminal interview as identified in Article

7 of this agreement, the officer will be provided a copy of any written, audio, video or GPS data of the incident prior to completing the initial fact finding memorandum, or submission to administrative or criminal interviews.

5. Supervisory Responsibility

Supervisors shall issue and inspect all body worn cameras and squad car video systems. Non-functioning units will not be placed into service, and any equipment malfunction shall be reported as soon as possible report via IWIN or e-mail to the supervisor. The supervisor then shall be responsible for coordinating replacement or maintenance of the unit. The officer will not be responsible for any further action. Once a malfunction is reported to the supervisor, the officer is no longer subject to discipline for the failure of the equipment to function or.

6. Use of Impermissibly Recorded Material

In the event any material is recorded in violations of this article, said material shall not be admissible in any disciplinary investigation or administrative proceeding against an officer(s) who were impermissibly recorded.

7. Labor/Management Policy Committee

The Department and the Lodge shall establish a Joint Labor/Management Technology Committee to develop and maintain comprehensive policies regarding the selection and use of squad car video cameras and body worn cameras as they relates to discipline and equipment use by bargaining unit members. In the event an issue cannot be resolved by the Labor/Management Technology Committee, regarding the use and potential discipline of officers using squad car video and body worn camera's, the matter will be submitted to an arbitrator for a binding resolution.

30. Residency – Article 43

The Lodge proposes a new article as follows:

Residency

- 1. Officers in any assignment will be allowed to live a maximum of fifteen (15) miles outside of their respective geographical area of assignment, provided the residency does not significantly impair the operations of the Unit. Any bargaining unit member living more than fifteen (15) miles outside of their respective geographical area of assignment as of the last date on which this Agreement is executed by all representatives of all parties to this Agreement shall be exempt from the requirements of this provision. Exempt bargaining unit members who relocate their primary residence after the last date on which this Agreement is executed by all representatives of all parties to this Agreement shall be subject to the fifteen (15) mile limitation. The Department will be consistent and will not be discriminatory, arbitrary, or capricious when determining significant impairment of operations.**
- 2. Officer in any assignment living within the geographical boundaries of their unit of assignment shall be free to locate their residence in any location within the geographical boundaries of that work unit.**
- 3. In the event an officer is voluntarily assigned to or transfers to an administrative position or a unit without geographical boundaries or an geographical area of more than one District or zone. The officer may reside a reasonable distance from their assignment. The Department will be consistent, and will not be discriminatory, arbitrary, or capricious when determining significant impairment of operations.**
- 4. Officers who are granted a residency exemption will travel on their own time from their residence to and from the nearest geographical boundary of their unit of assignment.**

31. Activity Code 518A Side Letter

The Lodge proposes to maintain the status quo on Activity Code 518A Side Letter.

Respectfully Submitted,

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ARTICLE 26

Insurance

1. Health Insurance

During the term of this Agreement, the Department shall continue in effect for all eligible employees and their eligible dependents, the benefits, rights and obligations of group health, life and other insurance under such terms and at such rates as are made available by the Director of Central Management Services pursuant to the State Employees Group Insurance Act except as modified during the term hereof by agreement of the parties and set forth herein **in Appendix A of this Agreement**

2. Managed Care Plans

In accordance with the provisions of Federal law and the regulations thereunder, if applicable, the Employer shall make available the option of membership in qualified managed care plans to employees and their eligible dependents who reside in the service area of qualified managed care plans. Each year the Employer will send a notice to the mailing address of record of all employees informing them of the benefit choice period which shall extend for at least 30 days from the date of the notice. The letter shall inform employees of the website(s) on which information regarding the alternative plans is available and that any individual who wants a hard copy of the information shall be provided such copy upon request.

3. Hearing Examination

Employer shall provide employees an opportunity to be given a hearing examination when hearing exams are being given to telecommunicators.

4. Increases of Benefits

In the event the Employer voluntarily agrees to give any other bargaining unit under the jurisdiction of the governor whose members are covered by the Illinois Pension Code or the State's Group Health and Life Plan a general wage increase greater than the increases provided for in this Agreement, or gives more favorable treatment for insurance premiums and/or health care plan design, excluding union's

opting out of the State Group Health and Life Plan, then such increases and/or favorable insurance treatment shall be disclosed to the Lodge, and the parties shall negotiate the applicability of any such changes to members of the bargaining unit covered by this agreement.

Any employee who is not paid the negotiated wage rate as scheduled in this Agreement shall not be charged any increased cost for health insurance premiums, co-payments, or deductibles provided for in this Agreement during the period he/she is not being paid the negotiated rate established in the wage and salary schedule.

APPENDIX A

Health Care Benefits

Effective July 1, 2015 through June 30, 2019

All benefits in this Appendix are effective July 1, 2015, unless otherwise noted. Prior benefit levels apply to all services received through June 30, 2019.

1. SUMMARY OF BENEFITS

The State shall maintain a program of benefits that shall include health, dental, vision, and life coverage. The health plan shall include medical, prescription and behavioral health coverage. Any and all services covered by the Plan must be medically necessary as determined by the Plan.

Eligible dependents of members shall have available benefits. All dependents enrolled in the Plan must be enrolled in the same health and dental plan as the member.

2. CONTRIBUTION AMOUNTS

A. The salary thresholds will be adjusted annually prior to the benefit choice period to reflect the lower of the increase in the Consumer Price Index from the most recent monthly CPI report available or the cost of living adjustments effective on July 1 to wages included in this Agreement. The employee's salary on April 1 shall govern for the next fiscal year. The mid-point for each salary band on May 1 shall govern for the next fiscal year.

B. The member shall pay the appropriate dependent premium for the plan that is selected.

C. Employee Contributions for the Quality Care Health Plan

(OCHP)

- (1) Employees with salaries of \$45,601 but not more than \$60,700 shall pay \$127.00 per month for coverage. Employees with salaries of \$60,701 but not more than \$75,900 shall pay \$144.00 per month for single employee only coverage. Employees with salaries of \$75,901 but not more than \$100,000 shall pay \$162.00 per month for single employee only coverage. Employees with salaries of \$100,001 or more shall pay \$211.00 per month for single employee only coverage.**

Effective July 1, 2015, the amount of the contribution shall be adjusted to reflect any changes to the midpoint salary in each of the established brackets.

- (2) Member contributions for dependent coverage shall be \$249.00 per month for one non-Medicare dependent, \$287.00 per month for two or more non-Medicare dependents, \$142.00 per month for one Medicare primary dependents and \$203.00 per month for two or more Medicare A and B primary dependents.**

Effective within sixty (60) days of the signing of the collective bargaining agreement, the contribution rates stated in paragraph 1 and 2 above shall be increased by 2.5%; effective July 1, 2017 the contribution levels shall be increased by 3%; effective July 1, 2018, the contribution rate shall be increased by 3%.

(3) Employees on leave of absence may be responsible for additional costs as enumerated in the State of Illinois Employee Benefits Handbook.

D. Employee Contributions for the Managed Care Health Plans (MCHP)

(1) Employees with salaries of \$45,601 but not more than \$60,700 shall pay \$103.00 per month for coverage. Employees with salaries of \$60,701 but not more than \$75,900 shall pay \$119.00 per month for single employee only coverage. Employees with salaries of \$75,901 but not more than \$100,000 shall pay \$137.00 per month for single employee only coverage. Employees with salaries of \$100,001 or more shall pay \$186.00 per month for single employee only coverage.

Effective within sixty (60) days of the signing of the collective bargaining agreement, the contribution rates stated in paragraph 1 above shall be increased by 2.5%; effective July 1, 2017 the contribution levels shall be increased by 3%; effective July 1, 2018, the contribution rate shall be increased by 3%.

Effective July 1, 2015, the amount of the contribution shall be adjusted to reflect any changes to the midpoint salary in each of the established brackets.

(2) Member contributions for dependent coverage shall be as follows:

DEPENDENT MONTHLY HEALTH PLAN CONTRIBUTIONS

Health Plan Name And Code	One Dependent	Two or More Dependents	One Medicare A and B Primary Dependent	Two or More Medicare A and B Primary Dependents
Blue Advantage HMO (Code: CI)	\$96	\$132	\$75	\$110
Coventry HMO (Code: AS)	\$111	\$156	\$88	\$130

Coventry OAP (Code: CH)	\$111	\$156	\$88	\$130
Health Alliance HMO (Code: AH)	\$113	\$159	\$89	\$133
HealthLink OAP (Code: CF)	\$126	\$179	\$102	\$149
HMO Illinois (Code: BY)	\$100	\$139	\$79	\$116
Quality Care Health Plan (Code: D3)	\$249	\$287	\$142	\$203

Effective within sixty (60) days of the signing of the collective bargaining agreement, the contribution rates stated in paragraph 2 above shall be increased by 2.5%; effective July 1, 2017 the contribution levels shall be increased by 3%; effective July 1, 2018, the contribution rate shall be increased by 3%.

- (3) Employees on leave of absence may be responsible for additional costs as enumerated in the State of Illinois Employee Benefits Handbook.**

E. Dental Contributions for the Quality Care Dental Plan (QCDP)

- (1) Employees who elect to participate in the QCDP shall be required to pay \$12.00 per month for such coverage.**
- (2) Employees who have one dependent enrolled in a health plan offered pursuant to the State Employees Group Insurance Act of 1971 may cover that dependent in the QCDP, for a contribution of \$7.00 per month. This amount shall be in addition to the amount required for the employee.**
- (3) Employees who have two or more dependents enrolled in a health plan offered pursuant to the State Employees Group Insurance Act of 1971 may cover those dependents under the QCDP for a contribution of \$9.50 per month. This amount shall be in addition to the amount required for the employee.**
- (4) Employees on leave of absence may be responsible for additional costs as enumerated in the State of Illinois**

Employee Benefits Handbook

3. HEALTH PLAN COVERAGE: The Quality Care Health Plan (QCHP)

A. The State shall continue to offer enrollment in the QCHP for members who wish to choose any physician or hospital for services.

B. With the exception of certain preventative benefits outlined in this appendix or exempted from copayments pursuant to state or federal law, all eligible services shall be subject to deductibles, co-payments, coinsurance amounts, out-of-pocket maximums, and plan provisions.

C. Members who choose to receive services from a provider within the QCHP Provider Network shall receive an enhanced benefit.

D. Eligible services not received from a provider within the QCHP Network shall be subject to Maximum Reimbursable Charge (MRC) review and adjustment in addition to deductibles, co-payments, coinsurance amounts and out-of-pocket maximums.

E. Plan Year Deductibles

(I). Member Plan Year Deductible

a. Effective July 1, 2016, the deductible shall be \$500.00 per fiscal year for employees with salaries from \$60,701 to \$75,900; and \$550.00 per fiscal year for employees with salaries of \$75,901 or more.

b. The employee's salary on April 1 shall govern for the next fiscal year.

(2). Dependent Plan Year Deductible

- a. Effective July 1, 2016, the deductible for dependents shall be \$400.00.**

(3). Family Plan Year Deductible

The deductible for a family unit shall be limited to 2.5 times the deductible for the member.

(4). Additional Deductibles

a. Emergency Room Deductible

- i. The deductible shall be \$450.00 for each hospital emergency room visit.**

b. QCHP Network Inpatient Hospital Admission Deductible

- i. The deductible shall be \$100.00 for each admission to a hospital within the QCHP Network.**

c. Non-QCHP Provider Inpatient Hospital Admission Deductible.

- i. Effective July 1, 2016 the deductible shall be \$600.00 per admission to a non-QCHP hospital.**

d. Transplant Deductible.

- i. The deductible shall be \$100.00 for a transplant.**

F. Plan Coinsurance.

(1). QCHP Network Services

- a. The Plan shall pay eligible charges, including but not limited to, physician visits, inpatient hospital services, emergency room services, outpatient surgery or procedures, intensive outpatient and partial hospitalization for behavioral health services and laboratory/imaging services provided by a QCHP Network provider at 85% of the negotiated rate.
- b. The benefit shall be subject to the applicable deductibles.
- c. The applicable deductibles and coinsurance amounts shall be applied, dollar-for-dollar, toward the annual QCHP Network out-of-pocket maximum.
- d. Behavioral health services must be referred by the Behavioral Health Administrator or Personal Support Program and treatment must be provided by licensed providers including psychiatrists, psychologists, Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Registered Nurse Clinical Nurse Specialists (RNCNSs) and Licensed Clinical Professional Counselors (LCPCs).
- e. Behavioral health inpatient services must be authorized by the Behavioral Health Administrator.

(2). Non-QCHP Network Services

- a. The Plan shall pay eligible charges, including but not limited to, physician visits, inpatient hospital services, emergency room services, outpatient surgery or procedures, intensive outpatient and partial hospitalization for behavioral health services and laboratory/imaging services provided at a Non-QCHP Network facility or by a Non-QCHP Network provider at 60% of the MRC amount.

- b. The benefit shall be subject to the applicable deductibles.
- c. The applicable deductibles and coinsurance amounts shall be applied, dollar-for-dollar, toward the annual Non-QCHP Network out-of-pocket maximum.
- d. Behavioral health services must be referred by the Behavioral Health Administrator or Personal Support Program and treatment must be provided by licensed providers including psychiatrists, psychologists, Licensed Clinical Social Workers (LCSWs), Licensed Marriage and Family Therapists (LMFTs), Registered Nurse Clinical Nurse Specialists (RNCNSs) and Licensed Clinical Professional Counselors (LCPCs).
- e. Behavioral health inpatient services must be authorized by the Behavioral Health Administrator.

G. Out-of-Pocket Maximums

- (1). Applicable deductibles and coinsurance shall apply, respectively, toward the QCHP Network out-of-pocket maximum or the Non-QCHP Network out-of-pocket maximum. The Plan shall pay 100% of eligible charges for the remainder of the plan year after the out-of-pocket maximum has been met.
- (2). Effective July 1, 2016 the Individual In-Network QCHP out-of-pocket maximum shall be \$1575.00.
- (3). The family QCHP Network out-of-pocket maximum shall be two and one-half times the QCHP Network individual out-of-pocket maximum.
- (4). Effective July 1, 2016, the Non-QCHP Network out-of-pocket maximum shall be \$6300.00.

- (5). The family Non-QCHP Network out-of-pocket maximum shall be two times the Non-QCHP Network individual out-of-pocket maximum.

H. Medical Out-of-Pocket Maximum Exclusions.

The following items do not accumulate toward the medical out-of-pocket maximums:

- (1). Prescription drug deductibles, co-payments, or coinsurance;
- (2). Reduction of benefit amounts imposed for failure to notify the Plan's Utilization Management Program administrator;
- (3). Any charges greater than the MRC amount and any ineligible charges;
- (4). The portion of the Medicare Part A deductible the member is responsible to pay;

I. Notification and Authorization.

- (1). Notification shall be provided to the Utilization Management Administrator by the member prior to receiving any of the following services, including but not limited to:
- a. Non-emergency hospital, partial hospitalization program, inpatient hospice, skilled care facility admissions and related continued stays;
- b. All surgical procedures, except those that are performed in a physician's office;
- c. High-tech imaging services (including but not limited to MRI, PET, and CAT scans);
- d. Outpatient surgery, in locations other than a

physician's office;

e. Emergency hospital admission (notification must be provided within 48 hours of an admission);

f. Transplant services;

g. Hospice Care;

h. Skilled Nursing.

(2). Failure to provide notification to the Utilization Management Administrator shall result in a reduction in reimbursement of the medically necessary charges by \$800.00. Benefits are limited to those covered services that are determined by the Administrator to be medically necessary.

J. Medical Case Management (MCM) Program and Disease Management (DM) Program.

(1). MCM and DM are two Programs designed to assist members or dependents during times of serious or prolonged medical conditions that require complex medical care.

(2). A case manager may be assigned to the member's or dependent's medical case to ensure appropriate care under the Plan.

(3). Cases shall be identified and referred to the MCM and/or DM Program by the Utilization Management Administrator and/or Medical Claims Administrator.

(4). The Utilization Management Administrator shall evaluate the member's or dependent's medical case including treatment setting, level of care and intensity of service. The member or dependent shall be contacted directly by the MCM or DM Program professional who shall describe the

program and make recommendations for settings and/or providers of care. The member will have the option of following or not following the recommendation.

K. Covered Services

(1). Preventive Benefits

a. QCHP shall cover the following preventive physical examinations and immunizations:

i. Preventive physical examinations for children in accordance with the recommendations of the U. S. Preventive Services Task Force (USPSTF);

ii. Required school physical examinations;

iii. Child and adult immunizations in accordance with the recommendations of the Center for Disease Control (CDC) and the Advisory Committee on Immunization Practices (ACIP) guidelines;

iv. Adult routine physical examinations in accordance with the recommendations by the USPSTF, up to a limit of \$250 per exam. Exams will be covered once every three years for adults under age 50; and annually for adults age 50 and over;

v. Annual pap smears, including associated office visit charges for women over age 18 or younger if medically appropriate; and

vi. Preventive services required pursuant to state or federal law.

b. For all of the routine physical exams discussed in this

section, charges associated with these exams, including but not limited to, physician office charges, laboratory, immunization, imaging, and screening tests, will be covered at the applicable benefit level. The annual QCHP deductible shall not apply to any charges associated with these routine physical examinations. All preventive services received at non-QCHP Network providers are subject to MRC charge review and adjustment.

(2). Prescription Drugs

a. Prescription Plan Year Deductible

- i. Effective July 1, 2016, the prescription deductible shall be \$150.00 per member or dependent;**
- ii. This deductible shall apply to all prescriptions covered by the Plan and shall be separate and distinct from all other QCHP deductibles;**

b. Co-payments

- i. Co-payments for a 30-day supply of medication shall be as follows:
 - a. \$10.00 for generic;**
 - b. \$30.00 for formulary brand;**
 - c. \$60.00 for non-formulary brand.****
- ii. Co-payments for a 60-day supply of medication shall be two times the amount of the applicable 30-day co-payment.**
- iii. If a member or dependent elects a brand name drug where a generic is available, the member**

or dependent is responsible for the brand co-payment plus the difference in cost between the generic and brand name drug.

c. Maintenance Medication Program

i. Maintenance medications are medications taken for chronic conditions as determined by the Plan.

ii. 90-day fills of maintenance medications at mail order, or at a PBM-contracted network retail pharmacy willing to participate in the maintenance medication program on the terms and conditions of the network agreement with the Plan's PBM, shall be available with co-payments equal to two and one-half times the amount of the applicable co-payments for a 30-day supply of medication.

iii. After two 30-day fills of maintenance medication obtained at a retail pharmacy, the co-payment of subsequent 30-days fills shall be two times the applicable co-payment for the initial 30-day fill.

d. Preferred Drug Step Therapy (PDST) program

i. The PDST is a program to be provided by the State's Pharmacy Benefit Manager (PBM) to encourage the use of certain generic and preferred brand drugs that are therapeutically-equivalent to more expensive brand-name drugs.

ii. In certain instances, members will be required to try the lower cost generic or preferred brand of pharmaceutical before the Plan would consider coverage of the more expensive brand.

- e. Brand name drugs for which the generic equivalents have not proven to be effective clinical substitutions based on generally accepted clinical literature and/or medical research shall be treated as generics.

(3). Physical and Speech Therapy

- a. Inpatient or outpatient therapy shall be covered as described in the State of Illinois Employee Benefits Handbook;
- b. Services shall be provided by a licensed or certified therapist or physician.

(4). Chiropractic

Shall be limited to 30 visits per plan year.

(5). Transplants

- a. Evaluation shall be covered at a QCHP Network facility. The transplant shall be approved or denied as a result of this evaluation on the basis of whether it is viable and non-experimental;
- b. All services must be performed at a QCHP Network facility;

(6). Hospice Care

Shall be covered as described in the State of Illinois Employee Benefits Handbook.

(7). Skilled Nursing

- a. Must be authorized by the Utilization Management Administrator. Medicare primary members and dependents are required to notify the Utilization Management Administrator for hospital stays and admission to skilled care facilities;

b. Care may be rendered at home or in a licensed skilled care facility. The Plan shall pay the lesser of either home health care treatment or care in a licensed skilled care facility within the same geographic region.

(8). Infertility

Diagnosis and treatment of infertility shall be covered as described in the State of Illinois Employee Benefits Handbook.

(9). Hospital Bill Audit Benefit

If a member or dependent discovers an error or overcharge on a hospital bill and obtains a corrected bill from the hospital, the member shall be paid 50% of the resulting savings.

(10). Second Surgical Opinions

The plan will pay 100% of the charges for a second surgical opinion, if required by the Utilization Management Administrator. If the second opinion does not confirm the need for surgery, the plan will pay for a third opinion.

4. HEALTH PLAN COVERAGE: Managed Care Health Plans (MCHP)

A. The State shall continue to offer enrollment in MCHP.

B. All eligible services including, but not limited to the following, shall be subject to deductibles, co-payments, coinsurance amounts and out-of-pocket maximums.

C. Co-payments

(1). Primary Care Physician Office Visit

a. The co-payment shall be \$20.00 per Primary Care Physician (PCP) office visit.

(2). Specialist Office Visit

a. Effective July 1, 2016, the co-payment shall be \$35.00 per specialist office visit.

(3). Home Health Care Visit

a. The co-payment shall be \$30.00 per home health care visit.

(4). Inpatient Admission

a. The co-payment shall be \$350.00 per admission to a hospital, hospice, or extended care facility.

(5). Outpatient Surgery

a. The co-payment shall be \$250.00 per outpatient surgery.

(6). Emergency Room

a. The co-payment shall be \$250.00, or 50%, whichever is less, per emergency room use.

D. Coinsurance

(1). The following services shall be covered at 100% after the applicable co-payment:

a. Inpatient admission to a hospital, hospice, or skilled care facility;

b. Outpatient surgery;

- c. Emergency room services;
- d. Primary Care Physician office visits;
- e. Specialist office visits;
- f. Home health care visits;
- g. Professional charges;
- h. Psychiatric care;
- i. Prosthetic devices;
- i. Diagnostic lab and imaging services;

(2). The following covered services shall be covered at 80%.

- a. Durable Medical Equipment.

E. Prescription Drugs

(1). Prescription Plan Year Deductible

- a. Effective July 1, 2016, the prescription deductible shall be \$150.00 per member or dependent;
- b. This deductible applies to all prescriptions covered by the Plan and shall be separate and distinct from all other MCHP deductibles.

(2). Co-payments

- a. Co-payments for a 30-day supply of medication shall be as follows:
 - i. \$8.00 for generic;
 - ii. \$26.00 for formulary brand;

iii. \$50.00 for non-formulary brand.

b. If a member or dependent elects a brand name drug where a generic is available, the member or dependent is responsible for the brand co-payment plus the difference in cost between the generic and brand name drugs.

(3). 90-day Supply of Medication

The Plan shall make available a 90-day supply of medication, through certain managed care health plans that are operated on an insured basis. These health plans shall be specified each year during the Benefit Choice Period. Co-payments for the 90-day supply of medication shall be determined by the managed care health plans.

(4). Brand name drugs for which the generic equivalents have not proven to be effective clinical substitutions based on generally accepted clinical literature and/or medical research shall be treated as generics.

5. DENTAL PLAN COVERAGE

The State may offer a managed care dental plan during the term of this Agreement.

Quality Care Dental Plan (QCDP)

A. The State shall continue to offer enrollment in the QCDP.

B. Members who choose to receive services from a provider within the QCDP Provider Network shall receive an enhanced benefit.

C. Deductibles

- (1). The deductible shall be \$175.00 per member or dependent per plan year on all covered services except preventive and diagnostic services.

D. Annual and Lifetime Maximums

- (1). The annual maximum benefit for services provided by an in-network provider shall be \$2,500.00 per member or dependent.
- (2). The annual maximum benefit for services provided by an out-of-network provider shall be \$2,000.00 per member or dependent.
- (3). The lifetime maximum benefit for orthodontia services provided by an in-network provider shall be \$2,000.00 per child.
- (4). The lifetime maximum benefit for orthodontia services provided by an out-of-network provider shall be \$1,500.00 per child.

E. Covered Services

- (1). The QCDP shall cover certain preventive, diagnostic, and restorative services as follows:
 - a. Diagnostic and Preventive Services:
 - i. Initial oral exam;
 - ii. Periodic oral exam;
 - iii. X-rays;
 - iv. Prophylaxis/Fluorides;
 - v. Sealants.

b. Restorative Services:

- i. Amalgam fillings, 1 to 4 surfaces;**
- ii. Composite fillings, 1 to 4 surfaces;**
- iii. Crowns;**
- iv. Post and core buildups and crown lengthening;**
- v. Inlays/Onlays;**

c. Oral Surgery:

- i. Simple extractions (non-surgical);**
- ii. Additional single extractions;**
- iii. Surgical extractions;**
- iv. Oral Biopsy;**
- v. Alveoplasty;**
- vi. Frenectomy;**
- vii. General anesthesia, including intravenous sedation (where medically necessary);**
- viii. Conscious sedation (where medically necessary);**

d. Endodontal Services:

- i. Root canal - anterior, bicuspid, molar;**
- ii. Pulp capping;**
- iii. Pulpotomy;**

e. Periodontal Services:

i. Gingivectomy or gingivoplasty;

ii. Root planing;

iii. Mucogingival surgery;

iv. Osseous surgery.

f. Fixed and Removable Prosthetics:

i. Full dentures;

ii. Partial dentures;

iii. Bridges;

iv. Implants.

g. Orthodontic Services:

i. Comprehensive treatment;

ii. Minor Treatment.

(2). Orthodontic treatment is limited to persons age 18 and under.

(3). Orthodontic treatment of deciduous teeth is not covered.

F. Benefit Levels

(1). The benefit levels for the QCDP shall be determined from a statewide fee schedule equivalent to reasonable and customary charges statewide for all covered services.

(2). The schedule of maximum benefits shall be reviewed every two years and adjusted based on the most current statewide

reasonable and customary data available at that time.

- (3). The benefit for replacement of crowns, bridges and dentures shall be limited to once every five years.

6. VISION PLAN COVERAGE

A vision benefit shall be made available to all members and dependents enrolled in a health plan offered pursuant to the State Employees Group Insurance Act of 1971.

A. Covered Services

Vision services shall be made available as follows:

- (1). Well-care eye examination and, replacement of lenses, once every plan year;
- (2). Materials benefit once every two plan years. Frames benefit once every two plan years.

B. Benefits at Network Providers

For services provided by a network provider, the member and/or dependent co-payment shall not exceed the following:

- (1). \$20.00 for the eye exam;
- (2). \$20.00 for lenses;
- (3). \$20.00 for Standard Frames (Standard frames are defined as frames with a \$70.00 average wholesale cost);
- (4). The amount of each co-payment for services shall be \$25.00;
- (5). In lieu of standard frames with lenses, there shall be a \$120.00 allowance for the cost of contact lenses.

C. Benefits at Non-Network Providers

For services provided by a non-network provider, reimbursement shall not exceed the following:

- (1) \$30.00 for the eye exam;**
- (2) \$50.00 for single vision lenses;**
- (3) \$80.00 for bifocals and trifocals;**
- (4) \$70.00 for frames;**
- (5) In lieu of standard frames with lenses, \$120.00 reimbursement for contact lenses.**

7. DISPUTE RESOLUTION

The parties to this agreement shall negotiate over the terms of an appeals process that is in conformance with the Affordable Care Act, and any impasse in such negotiations shall be resolved by a mutually agreeable arbitrator.

8. JOINT LABOR/MANAGEMENT ADVISORY COMMITTEE ON HEALTH CARE BENEFITS

A. The Joint Labor/Management Advisory Committee on health care benefits shall provide for the negotiation, development, and evaluation of programs, plan designs and strategic initiatives that focus on efficiency and cost effectiveness with the goal of improving the health of the covered population.

In addition, it will serve as a forum to evaluate, discuss and resolve state and/or federal regulatory and compliance matters and implement required changes, as mutually agreed to. Any such changes will be agreed upon by the parties to this agreement.

B. The State agrees to provide a funded position(s) and to budget appropriately to carry out the initiatives of the Committee.

C. The Committee will be composed of an even number of members, half selected by the State and half selected by the Lodge.

D. The Committee shall:

(1). Research and make recommendations and decisions within its authority related to the achievement of significant and measurable savings in the cost of employee health care during the terms of this Agreement;

(2). Develop incentives for employees to participate in offered programs including, but not limited to, waivers of co-payments, reductions in co-insurance and reward programs for participating in various preventive screenings and testing;

(3). Approve changes that will promote better health resulting in lower cost trends and significant cost containment or savings for either the self-insured or the managed care plans;

(4) The State will provide the Committee with data on the health care costs on a quarterly basis beginning in the first quarter after the implementation of this agreement and for previous quarters' costs for fiscal 2016 and for each subsequent quarter within 60 days of the close of the previous quarter;

(5). The Committee shall be charged with seeking to identify additional savings across the State Employees Group Insurance Program for FY17 and thereafter.

(6). The Committee shall submit its recommended modifications, if any, to the plan no later than January 31, 2017 in order to provide for review and implementation for

the following fiscal year.

(7.) Specific examples of initiatives the Committee may consider include:

Participatory and health-contingent wellness programs; reference-based pricing benefits, for example imaging and orthopedic surgical services; complex disease or centers of excellence programs designed to deliver high value for areas such as oncology, cardiology, musculoskeletal and transplants etc; evaluation of medical care management and disease management programs; evaluation of capabilities of carriers and pharmacy benefit manager care management programs and identification of short, medium and long term needs and opportunities; review of specialty drug cost, use, and clinical programs for drugs delivered through pharmacy and medical benefit; alternative delivery systems, including Accountable Care Organizations (ACOs), private exchanges and bundled payment arrangements; timing and impact of Excise Tax (so-called Cadillac Tax) and other Affordable Care Act-related changes on the state employee program.

Any modification of the plan shall be agreed upon by the parties.

9.

WELLNESS PLAN

- A. Flu vaccines for members shall be covered under this program.**
- B. Reimbursement for participation in a smoking cessation program shall be 100% of the cost with an annual maximum of \$200.**
- C. Reimbursement for participation in a weight loss program shall be 100% of the costs with an annual maximum of \$200.00. This**

benefit is payable only once every three (3) years.

D. The employer will implement value-based benefit design innovations in all health plans effective no later than July 1, 2015, which may include but not be limited to the following disease management programs: a) a prescription co-pay waiver program for individuals with chronic diseases, including diabetes, asthma, hypertension and cardio/vascular disease; b) coverage for prescription smoking cessation medications and behavioral modification counseling for individuals who agree to make an effort to quit tobacco, and c) "reward" programs for health behaviors including, but not limited to, discounts for health club memberships.

E. The Joint Labor/Management Advisory Committee on health care benefits may modify this Section with the goal of improving the health of the covered population.

10. TERM LIFE INSURANCE

The State shall provide basic term life insurance equal to 100% of the employee's salary, at premiums to be paid by the State, unless the employee is on a leave of absence as enumerated in the State of Illinois Benefits Handbook. Employees may purchase, subject to medical underwriting requirements of the Life Insurance Administrator, up to eight (8) times their annual salary for optional (member paid) term life insurance and \$10,000.00 in term life insurance for spouses and children.

11. COMMUNICABLE DISEASES

RC-164 bargaining unit employees shall have access to TB (tuberculosis) testing and hepatitis B vaccine at no cost to the employee.

The method for administration of this benefit shall be determined jointly by the Department of Central Management Services (DCMS)

and the Lodge.

12. LAID OFF AND FURLOUGHED EMPLOYEES

Certified employees on layoff status shall retain health, dental, and vision insurance coverage for a period of one month per year of service, with a minimum of six months and a maximum of twenty-four months following the effective date of the layoff with the Employer paying the full premium, single or family plan as appropriate. Employees who convert to intermittent or part-time status as a result of a layoff shall have their first year of health, dental, vision, and life insurance coverage treated as if they continued to work as a full time employee.

13. PAID LEAVE FOR ORGAN TRANSPLANT DONOR

The employer shall grant up to six (6) weeks of leave with pay for living donors of organs including, but not limited to, kidneys, bone marrow, or any other organ that may be transplanted.

14. HEARING BENEFITS

The Employer shall provide benefits for hearing exams and hearing aids, up to a maximum of \$150.00 for audiologist fee(s) and up to a maximum of \$600.00 for hearing aid(s), limited to once every three years.

15. SAME SEX DOMESTIC PARTNERS

A domestic partner of the same sex, enrolled prior to June 11, 2011, shall be considered eligible for coverage under the health, dental and vision plans. The State shall require reasonable proof of the domestic partnership. For purposes of this Section, a domestic partner is defined as an unrelated person of the same sex who has resided in the employee's household and has had a financial and emotional interdependence with the employee, consistent with that of a married couple for a period of not less than one (1) year, and continues to maintain such arrangement consistent with that of a married couple.

The benefit shall be administered in accordance with all applicable state and federal laws. The parties recognize and agree that persons who have entered into a civil union in accordance with the Illinois Religious

Freedom and Civil Union Act, 750 ILCS 75/1 et seq. (PA 096-1513) and the children of those who have entered into such a civil union shall be entitled to coverage under the health, dental and vision plans as well as to other benefits conferred by the Act. In the event the Illinois Religious Freedom and Civil Union Act, 750 ILCS 75/1 et seq. (PA 096-1513) is repealed or otherwise rendered invalid, the civil union partner and children who were eligible to receive and who were receiving health, dental and/or vision benefits at the effective date of the repeal or invalidity shall continue to receive such benefits and coverages, and the limiting enrollment date of June 1, 2011, shall be null and void and the provisions of this section of Appendix A shall be made applicable to all same sex domestic partners who meet the definition of domestic partner contained herein.

In the Matter of the Arbitration of an Interest Dispute Between

THE ILLINOIS DEPARTMENT OF STATE POLICE

and

**ILLINOIS TROOPERS LODGE #41,
FRATERNAL ORDER OF POLICE**

2015-2019 Collective Bargaining Agreement
Case No. S-MA-15-347

Appendix C

**Panel's October 3, 2016 Order
Denying The State's Motion
to Hold in Abeyance**

Before the Arbitration Panel

In the Matter of the Arbitration of an Interest Dispute Between

THE ILLINOIS DEPARTMENT OF STATE POLICE

and

**ILLINOIS TROOPERS LODGE #41,
FRATERNAL ORDER OF POLICE**

2015-2019 Collective Bargaining Agreement
Case No. S-MA-15-347

Daniel Nielsen, Neutral Chair
Bruce Bialorucki, Union Delegate
Joseph Hartzler, Employer Delegate

Appearances:

Asher, Gittler and D'Alba, by **Joel D'Alba, Ryan Hagerty** and **Amanda Clark**, Attorneys at Law, 200 West Jackson Boulevard, Suite 1900, Chicago, IL 60606, appearing on behalf of Illinois Troopers Lodge #41, Fraternal Order of Police.

Laner Muchin, by **Violet Clark, Mark Bennett, Thomas Bradley, Brian Jackson, David Moore** and **Joseph Gagliardo**, Attorneys at Law, 515 North State Street, Suite 2800, Chicago, IL 60654, appearing on behalf of the Illinois Department of State Police.

**ORDER DENYING MOTION TO HOLD THE AWARD IN ABEYANCE PENDING
RESOLUTION OF UNFAIR LABOR PRACTICE**

The Illinois Department of State Police (hereinafter referred to as the State or the Employer) and the Illinois Troopers Lodge #41, Fraternal Order of Police (hereinafter referred to as the Lodge or the Union), selected Daniel Nielsen to serve as the Neutral Chair of an arbitration panel to resolve a dispute over the terms of the collective bargaining agreement for troopers, agents, inspectors and sergeants in the employ of the Illinois State Police. Mediation sessions were held on October 30, November 11, November 20 and November 30, 2015, at the conclusion of which final offers for arbitration were solicited. The Lodge designated Bruce

Bialorucki as its delegate to the Arbitration Panel and the State designated Joseph Hartzler as its Delegate.

Hearings were held in Springfield, Illinois on December 23, 2015; January 11, 13, 14 and 15, 2016; February 4, 15, 16, 17, and 29, 2016; March 30, 2016; and April 8, 2016, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. All three members of the Arbitration Panel were present for the hearings. All hearings were transcribed, and the Arbitration Panel received transcripts. The parties submitted the case on post-hearing briefs and reply briefs, the last of which were exchanged through the Neutral Chair on July 1, 2016, whereupon the record was closed.

On August 9, 2016, the State advised the members of the Arbitration Panel that the Illinois Labor Relations Board (ILRB) had announced that it was reversing the Executive Director's dismissal of an unfair labor practice brought by the State against the Lodge, alleging that the Lodge had insisted to impasse on group health insurance, which the State argued was a non-mandatory topic of bargaining. The ILRB set the unfair labor practice charge for hearing before an administrative law judge. The State drew the Panel's attention to the first sentence of 80 Ill. Admin Code 1230.90(k):

Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue. However, except as provided in subsections (1) and (m) of this Section, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.140(b), to be a subject over which the parties are required to bargain.

On this basis, the State advised the Panel that it believed the topic of group health insurance, which had been one of the major issues in this proceeding, could not be considered by the Panel. The State made a Motion that the panel refrain from ruling on any of the economic issues in dispute until such time as the ILRB resolved the status of the group health insurance. The Lodge opposed the State's motion.

Under the IPLRA and the Board's Rules, it's clear that the interest arbitration panel is not to make any determinations as to whether there is a duty to bargain over any proposal. Instead, those determinations are reserved to the Board's exclusive authority. The only time the question of whether there is a duty to bargain over an issue becomes relevant to the interest arbitration panel is if and when the presence of that issue before the panel has been challenged by a good faith objection made by a party, pursuant to Board Rule 1230.90(k), on the ground that "the issue does not involve a subject over which the parties are required to bargain." If such a good faith objection is filed, "the panel's award *shall not* consider that issue." However, the panel "*may* consider and render an award on any issue" that "has been declared" by the Board, or by the General Counsel in a Declaratory Ruling, to be a subject over which the parties are required to bargain. Again, any and all determinations as to whether the proposal is permissive or mandatory are within the exclusive province of the Board.

Therefore, if a good faith objection has been made to a proposal, the panel cannot consider the issue in its award unless the Board or General Counsel has ruled that the issue is one over which the parties are required to bargain.

While the arbitration panel is not to determine whether a given proposal is a mandatory subject of bargaining, the Board Rules give directives to the panel, and in order to follow those directives, the panel must necessarily determine whether an objection that has been made constitutes a good faith objection within the meaning of the first sentence of Rule 1230.90(k), and whether the issue falls under the exception in the second sentence, for issues that have been ruled on by the General Counsel or the Board.

The timelines for submitting offers, identifying issues, and raising objections in an interest arbitration are left to the arbitration panel.¹ Here, final offers on all issues other than health insurance were due on December 21, 2015. The hearing commenced on December 23. By order of the arbitrator, final offers on health insurance were presented on January 8th, with an opportunity to object and to revise the offers in response to objections. The Lodge objected

¹ Section 1230.90(c) The neutral chairman shall preside over the hearing and shall take testimony. (Section 14(d) of the Act) The neutral chairman shall control the hearing to ensure that it is concluded expeditiously within 30 days after its commencement or within such longer period to which the parties may agree.

to the State's offer on health care, because it believed it contained an impermissible waiver of bargaining. The State amended the offer in response to the objection, but on January 13th the Lodge renewed its objection, and asked that the panel not consider the State's offer. In response, the State filed a unilateral petition for a Declaratory Ruling with the General Counsel of the Labor Board. The Lodge objected that the petition was untimely under the Rules, and also argued that the substance of State's proposal was non-mandatory. In its arguments to the General Counsel, the State asserted its petition was timely and, if not, that the General Counsel should grant a variance. On the merits, the State argued that its proposal was mandatory, but it also argued that the general topic of health care was not mandatory, because bargaining over plan design was inconsistent with State Employees Group Insurance Act (SEGIA) amendments of 2004, and because the burden of bargaining over the topic outweighed any benefits the bargaining conferred.

On March 1, General Counsel Kathryn Nelson issued her Declaratory Ruling, finding the State's proposal to the FOP on health insurance costs and plan design was a mandatory subject. She rejected the FOP's objections that the petition for Declaratory Ruling should be dismissed as untimely. While she found that the State's petition *was* in fact untimely, she also found that the untimeliness should be excused, in part because of the agreements of the parties as to when the offers would be submitted:

Here, the Employer's petition is untimely under the Board's rule because the Employer filed it on January 13, 2016, after the arbitrator held the first day of hearing in the parties' interest arbitration on December 23, 2015. The Employer claims that the interest arbitration had not commenced when it filed its request for declaratory ruling because the interest arbitrator had not yet taken testimony on the proposals at issue; however, plain language of the rule creates a bright-line test that gauges timeliness based on the start of hearing process rather than on the evidence that the parties have introduced.... Troopers Lodge 41 and Illinois State Police, Case No. S-DR-16-003 (3/1/16), at page 9

...strict application of the deadline would be unreasonable and unnecessarily burdensome where the parties agreed to submit their final proposals on health insurance well after the first date of the interest arbitration hearing. The timeliness rule reasonably contemplates that parties will exchange their proposals before the interest arbitration hearing because the arbitrator cannot consider proposals that the parties have not yet presented him. To that end, it requires parties to file unilateral declaratory rulings prior to the first day of

hearing, when parties are presumed to have already exchanged all their final proposals. Here, by contrast, the parties by agreement did not exchange final health insurance proposals until two weeks after the start of the arbitration hearing. Thus, applying the timeliness rule to this case would paradoxically require a party to file a unilateral petition for a declaratory ruling before it received the proposal that would be its subject. Id, at page 11

Turning to the merits, she found that the State's proposal did not seek a waiver of the FOP's statutory right to midterm bargaining over changes so as to render the proposal permissive, which was the basis of the FOP's objections to the State's proposal. As to the objections raised by the State to bargaining over health care, she concluded that health care is generally a mandatory subject, and that bargaining is not preempted by the SEGIA amendments. Describing the arguments made by the State in the Declaratory Ruling process, the General Counsel summarized the assertions regarding the impact of SEGIA that form the basis of the current ULP:

“On the merits, the Employer argues that it has no obligation to bargain over plan design, benefits, rates and other costs of insurance because the State Employees Group Insurance Act preempts the duty to bargain these matters. The Employer further asserts that Sections 7 and 14(h) of the Illinois Public Labor Relations Act (IPLRA) likewise relieve the Employer of any mandatory obligation to collectively bargain over the provisions of its statewide Health Insurance Plan and the plan design, benefits, rates, premiums, and other costs. It also asserts that plan design and health care costs are permissive subjects of bargaining under the Central City test. Finally, the Employer claims that the Board has already resolved this very issue in favor of the Employer.” Id, at pages 7-8

Responding to these arguments, the General Counsel deferred to the 2014 ruling of Jerald Post, her predecessor as General Counsel, on these same questions between these same parties, and to existing Board precedent. She expressly rejected the State's arguments that SEGIA preempted bargaining over plan design and that the burden of bargaining over health insurance plans exceeded the benefits derived from bargaining, under Central Cities, finding that plan design is inextricably linked to the cost of health insurance and the level of benefits received by employees:

“... questions regarding employees' health insurance benefits are mandatory subjects of bargaining because they affect employees' terms and conditions of employment and do not implicate matters of inherent managerial authority.

City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶2034 (IL SLRB 1993); *City of Blue Island*, 7 PERI ¶2038 (IL SLRB 1991); see also *Georgetown-Ridge Farm Comm. Unit School Dist. 4*, 7 PERI ¶1045 (IL ELRB H.O. 1991), *aff'd*, 7 PERI ¶1106 (IL ELRB 1991), *aff'd*, 239 Ill. App. 3d 438 (4th Dist. 1992); *Vienna School Dist. No. 55*, 3 PERI ¶1008 (IL ELRB 1986), *aff'd*, 162 Ill. App. 3d 503 (4th Dist. 1987). [Post] also resolved issues of preemption raised by the Employer and distinguished the case cited by the Employer as outcome determinative. He concluded that the proposal addressing the costs of health insurance was a mandatory subject of bargaining. The Employer has presented no basis for departing from the analysis set forth in the prior Declaratory Ruling.

Furthermore, although the prior Declaratory Ruling on health insurance focused on the cost of insurance, the analysis is also applicable to plan design, upon which the Employer additionally focuses in this case. Plan design is inextricably linked to plan cost and it also bears directly on the level of benefits offered to employees. In turn, that impacts their terms and conditions of employment. Finally, the prior General Counsel's analysis with respect to the issues of inherent managerial authority, the balancing test, preemption, and Board case law was couched in broad enough terms to sufficiently address the Employer's arguments with respect to the Employer's obligation to bargain over plan design." Id, at pages 12-13.

The General Counsel did not address the FOP's health care proposal in her Declaratory Ruling. While finding that the State's health care proposal was a mandatory topic, she expressed the view that there were "salient points" raised by State, and in effect invited the State to file an unfair labor practice charge so the Labor Board could have opportunity to "re-examine its caselaw and interpretations of the Act."

On March 11th, the State filed an unfair labor practice charge alleging that the FOP's decision to make health care an issue in the interest arbitration is bad faith bargaining because it is a non-mandatory subject. On June 6, ILRB Executive Director Melissa Mlynski dismissed the State's ULP charge because it had already bargained over insurance, and because, even if it is a non-mandatory subject, it is not an unfair labor practice to take a permissive topic of bargaining to interest arbitration. In support of this conclusion, Director Mlynski cited the decision and order of the Board in Wheaton Firefighters Union, Local 3706, IAFF v. City of Wheaton, Case No. S-CA-14-067 (1/26/15). In Wheaton, the Board majority specifically held "...we reaffirm our holding in Bensenville that submission of a permissive subject of bargaining to interest arbitration does not, in and of itself, violate the duty of good faith bargaining under Section 10(a)(4) or Section 10(b)(4). A party opposing presentation of a bargaining proposal to interest arbitration under

the theory that it concerns a permissive rather than a mandatory subject of bargaining may not file an unfair labor practice charge with the Board, but should instead object to the arbitrator's consideration of that topic under Board Rule 1230.90(k). If, after the arbitrator's consideration of the proposal is thus blocked, the other party is convinced that its proposal is actually a mandatory subject of bargaining, it may file an unfair labor practice charge with the Board alleging that the other party has failed to engage in good faith bargaining by its use of the Board Rule 1230.90(k) procedure." Id, at page 7.

On August 5, 2016 the Illinois Labor Relations Board reversed the Executive Director and issued a complaint for hearing, ruling that the State's charge presents a case of first impression as to effect of 2004 IPLRA amendments regarding SEGIA, and directing an ALJ hearing to develop a full record. On the basis of this decision to issue a complaint, the State asserts that it now has a good faith basis for objecting to the consideration of health care by the panel.

Discussion

A. Good Faith Objection

The State premises its objection to the Lodge's health care proposal on the August 5th decision of the ILRB to issue a complaint against the Lodge. However, the decision of the ILRB to issue a complaint is not an event under the statute or rules that has significance for the arbitration panel.² What is significant is a good faith objection raised to the panel, and the process for making such objections is one of the many procedural issues that is left to the agreement of the parties and/or the discretion of the panel. In this case, the time for objections was set at the beginning of the arbitration proceedings, and for health care the date was in January, roughly seven months before this objection was made. While the Lodge objected to the State's proposal on health insurance, the State did not make an objection to the Lodge's proposal. The State did reprise its arguments from prior years against bargaining health care coverage and plan design when it made its arguments to the General Counsel, but those arguments were made in the context of the Lodge's objections to the State's offer. It appears to the majority of the arbitration panel that the State's objection, while it may well be made in subjective good faith, is not a good faith objection as

² In fact, Section 14(d) of the Illinois Public Labor Relations Act expressly provides that "Arbitration proceedings under this Section shall not be interrupted or terminated by reason of any unfair labor practice charges filed by either party at any time."

contemplated by the rules, because it is was not submitted in compliance with the schedule for objections set by the panel.

B. Prior Declaration by the General Counsel

Even if one were to assume that the State made a timely objection to the Lodge's offer through its Declaratory Ruling petition on its own offer, the fact is that the second sentence of Board Rule 1230.90(k) itself provides an exception to the prohibition on considering issues after an objection is made:

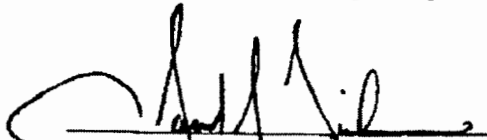
... However, except as provided in subsections (1) and (m) of this Section, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.140(b), to be a subject over which the parties are required to bargain.

The bases for the State's objection now are precisely the same bases on which it argued to the General Counsel in 2014 and in March of this year that health care was a non-mandatory issue. The current General Counsel expressly considered the State's theory, considered the prior Declaratory Ruling on this same argument between these same parties, considered the existing state of the law, and determined health care "to be a subject over which the parties are required to bargain."

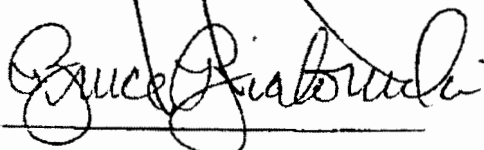
The State points to the wording of the rule, which is that "the arbitration panel *may* consider and render an award" on matters found mandatory by the General Counsel. The use of the word "may", it suggests, means that it is discretionary and that the panel is equally free to decide not to consider and render an award on those matters. The more plausible reading of the rule is that the first sentence flatly forbids a decision on matters subject to a good faith objection, while the second carves out an exception where the ILRB – the body charged with making distinctions between mandatory and non-mandatory topics – has through its processes already determined the issue to be mandatory. It does not create some new category of bargaining subject over which an arbitration panel may or may not exercise its authority, depending upon unnamed factors. Such a reading would make no sense in the context of the rule.

While the decision of the ILRB to issue a complaint on the State's charge may be an unexpected event, it does not wipe away the prior procedural rulings of the arbitration panel or the prior declaratory rulings by the General Counsel. No objection was raised by the State by the time set for objections. If the objection raised by the State in the process of litigating the Lodge's objection to the State's offer is treated as an objection to the Lodge's offer, it is still not timely under the schedule set by the panel. If the objection is treated as an extension of an objection to the Lodge offer that was somehow implicit in the State's March petition for a Declaratory Ruling, it has been ruled on by the General Counsel, and found to be mandatory. In either event, the panel finds that the Motion to hold economic issues in abeyance is premised on the theory that the panel may not consider health insurance, and given the facts of the case, that theory is not correct. Accordingly the Motion is denied.

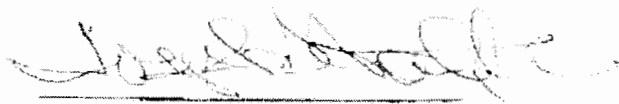
Signed and issued this 3rd day of October, 2016:



Daniel Nielsen, Neutral Chair



Bruce Bialorucki, Union Delegate – I respectfully concur, as set forth below.



Joseph Hartzler, Employer Delegate – I respectfully dissent, as set forth below.

Concurrence of Union Delegate Bruce Bialorucki

The Lodge respectfully concurs with the decision of the Neutral Arbitrator, and further provides additional support for concurrence in that decision as follows:

A. Good Faith Objection

The determination of procedural issues and the consequent determination of the good faith of the parties to comply with those procedural issues, lie with the arbitration panel and the parties. At the onset of the arbitration hearing, the panel identified a specific time period for the parties to file good faith objections. Both parties were fully aware of the deadline established by the panel, and did not raise objections to that determination. Clearly, the State did not file objections before the clear deadline established by the panel. This act, in and amongst itself should be sufficient to determine that the objection was not made in good faith, however, there are additional substantive issues which support the opinion of the majority of the panel.

B. Acknowledgement of the Arbitration Panel's Authority

There is further support from the State itself for the authority of the panel to determine that the panel has authority to consider health insurance. At the commencement of the hearing, the parties stipulated to the jurisdiction of the arbitration panel to consider wages, hours, and conditions of employment, including healthcare and health insurance matters. Both parties submitted final offers on health insurance. The State did not object to the Lodge's health insurance offer in Article 26. In its reply brief the State acknowledged the ULP, but also acknowledged the arbitrators had authority to consider the issue as to the parties' health care final offers.

During the parties' negotiations and interest arbitration, the State never stated that it had any issue or objection with its legal duty to bargain over health care insurance. This continued into the arbitration hearing and beyond the final offer stage, where the State submitted a health care proposal. Additionally, the State supplemented that offer with a

second submission for the purpose of attempting to make it a mandatory subject of bargaining.

In fact, after reporting on the nature of the State's charge against the Lodge, the State stated as follows:

“For purposes of efficiency and without waiving any arguments raised by the State before the ILRB which could impact this panel's jurisdiction to issue an award on health insurance, until such time as the ILRB issues a ruling in that matter, the State does not object to this panel's consideration of the parties' respective health insurance proposals.” (State of Illinois Post Hearing Brief, page 41, footnote 40.).

It is pertinent to note that not only did the State not object, the State actually consented to the arbitration panel's consideration of the health insurance issues by joining in a stipulation at the beginning of the arbitration hearing. A position that is in direct contradiction to the pending motion at hand.

C. Delaying Consideration of Remaining Economic Issues

The State has asked that besides health insurance, the arbitration panel withhold any award on the remainder of the economic issues. The Lodge concurs with the denial of the State's requested delay. The parties have been in negotiations since May of 2015. The collective bargaining agreement at issue expired June 30, 2015. These arbitration proceedings commenced more than one year ago. The arbitration hearing itself commenced in December 2015, almost ten months ago. It is not in the best interest of the parties, nor the spirit of the process, for the panel to ignore the testimony and evidence submitted by the parties to the panel for consideration. Furthermore, withholding the decision on all economic issues is clearly an impermissible interruption of the parties' arbitration proceeding in violation of Section 14(d) of the Illinois Public Labor Relations Act.

The parties empowered the arbitration panel to make decisions on the terms of the collective bargaining agreement after they came to impasse. The State had previously disagreed on the procedure used to review economic matters (State of Illinois Post Hearing Brief: page 13, footnote 6). The State, as with other matters, had the opportunity to voice its objections at the commencement of the arbitration in December 2015 or at any time during the

hearing process. The State chose not to do so. No objections to economic consideration by either party were made during the relevant time periods. The panel cannot shirk its responsibilities and simply decline to consider matters properly put forth before it. The arbitration panel does have the authority and duty to consider matters lawfully put before it at this point.

For these and other matters identified, the Lodge concurs with the decision of the neutral arbitrator.

Dissent of Employer Delegate Joseph Hartzler

A. The Importance of the State's Motion

The issue underlying the State's motion to suspend proceedings in this arbitration is of great importance, not only to members of Illinois Troopers Lodge #41 and the Illinois Department of State Police, but to all residents of Illinois and the fiscal health of the State. The issue is whether the State of Illinois can, with certain restrictions, determine the types of group health insurance it can afford and will offer its employees, or must the State negotiate the price and terms of its group health insurance with the State's public employees' union.

From the State's perspective, the General Assembly believes group health insurance is a matter for the State to determine, with certain restrictions and in accordance with explicit statutory policies. The State's Labor Act obligates the State to negotiate with its public employees' unions "over any matter with respect to wages, hours and other conditions of employment. 5 ILCS 315/7.5. But that law explicitly excludes from bargaining any matter "provided for in any other law." *Id.* The State argues that group health insurance is explicitly "provided for in . . . [an]other law," namely, the State Employees Group Insurance Act (SEGIA).

Section 5 of SEGIA authorizes the Director of the Department of Central Management Services to implement health insurance consistent with State policy and certain reporting requirements.³ 5 ILCS 375/5. According to the State, the General Assembly extinguished any doubt about which act controlled – SEGIA or the Labor Act – when it amended the Labor Act in 2004. Those amendments arguably exclude Section 5 of SEGIA from the supremacy clause of the Labor Act and render the Labor Act "subject to" Section 5 of SEGIA. 5 ILCS 315/15.

From the State's perspective, health insurance is not only "specifically provided for in . . . [an]other law" – SEGIA – but the General Assembly's amendment to the Labor Act makes

³ SEGIA does not give the CMS Director unfettered discretion in selecting the health insurance the State will offer its employees. Rather, it requires the Director to consider various specified factors "to assure quality benefits to members and their dependents." 5 ILCS 375/5. The Director also "may consider affordability [and] cost of coverage and care." *Id.*

clear that, in the event of any conflict between SEGIA and the Labor Act over what subjects must be collectively bargained, SEGIA controls. If this reading of Sections 7.5 and 15 of the Labor Act is correct, then the State is not obliged to bargain health insurance.⁴ And if the State is not mandated to negotiate health insurance with the Lodge, we should know that before we issue an award in this case, because the terms and cost of group health insurance for the State and the Lodge's members are major features of this arbitration.

So, the State is invoking its right under Rule 1230.90(k) to stop this panel from deciding health insurance. In support, the State argues that: (1) the Rule precludes consideration of health insurance proposals in the face of a good faith objection that health insurance is a non-mandatory subject of bargaining; and (2) even if this panel has the discretion under the Rule to decide health insurance, it should not do so because the General Counsel decisions (on which any such discretionary determination would depend) are inconsistent with the Board's recent ruling (that the health insurance issue is one of first impression) and, therefore, exercising any such discretion under the Rule to decide health insurance would be unwise.

The State adds that it would be inherently unfair to everyone to issue an award on the remaining economic terms when the panel does not know for certain whether it should include health insurance in the award. As explained below, the State makes a persuasive argument. This panel should grant the State's motion.

B. The State's Good Faith Objection

As the State argues, if it has "objected in good faith" to being required to bargain health insurance, then this panel *must* suspend consideration of health insurance. 80 Ill. Admin. Code 1230.90(k). The applicable rule so provides: "Whenever one party has objected in good faith to the presence of an issue before an arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider the issue." *Id.*

Here, the State made its objection timely and in good faith. That conclusion is driven by

⁴ The State supports a conclusion that health insurance is not a mandatory subject of bargaining with, among other things, the fact that the State and all its public employees' unions, other than AFSCME, never substantively bargained health insurance for nearly 30 years after passage of the Labor Act.

the Labor Board's ruling on August 5, 2016. The Board's Executive Director had previously dismissed the State's charge that requiring it to bargain health insurance was an unfair labor practice. On August 5, the Board not only reversed that dismissal and directed an administrative law judge to conduct an expedited hearing on the matter to develop a full record; but the Board ruled that the State had raised a case of first impression in arguing that SEGIA's Section 5 and the 2004 amendments to the Labor Act removed health insurance from mandatory bargaining.

That ruling gave the State a firm foothold to argue to this panel that health insurance is not a mandatory subject of bargaining. Until then, the State faced a greater challenge. Before the Board's ruling, its General Counsel had declared in 2014 that the State's obligation to bargain health care was mandatory. In March 2016, the Board's successor General Counsel acknowledged that the State had raised an argument worth pursuing, but she nonetheless deferred to her predecessor's declaration and rejected the State's claim that SEGIA preempted bargaining over health insurance plans.

So, if the State had made its objection before August 5, 2016, it would have been arguing against two General Counsel opinions, with no Labor Board ruling or court decision in its favor. The objection would have encountered a strong challenge that it was not coming in good faith.

To be sure, the State did not make its objection in compliance with this panel's schedule for objections.⁵ But no rule or law prohibits an arbitration panel from considering an objection that is made in good faith but misses the panel's deadline for objections. To the contrary, the first word of the Labor Board's "good faith" rule at issue here is "Whenever." The Rule itself tells an arbitration panel it must suspend consideration of a subject "[w]henever" a party makes a good faith objection that bargaining on that subject is not required. 80 Ill. Admin. Code 1230.90(k). Assuming "whenever" means "whenever," then the Rule imposes no time limit on good faith objections.

⁵ The State's objection should not have come as a surprise to either the Lodge or this panel. In the petition the State filed in January 2016 for a Declaratory Rule, the State argued specifically that it had no duty to bargain over health insurance

Nor should there be such a time limit. The facts of this case support that point. The State reasonably concluded that the earliest it could have made a good faith objection was after the Labor Board said the SEGIA-preemption issue was a matter of first impression worthy of an expedited hearing. Denying the State's motion because it was untimely and therefore lacked good faith implies that the State should have objected when doing so might not have been in compliance with the good faith requirement. That's a classic Catch-22, which would prevent the State from ever exercising its rights under the Rule. A more reasonable interpretation is that the clock for an objection under the Rule does not begin to run (or at least is tolled) until the moving party has the requisite good faith as reasonably dictated by the totality of circumstances in any given case.

Here, the State made its objection five days after its good faith arguably came into existence with the Labor Board's ruling. The objection was made timely and in good faith. So, this panel should not consider group health insurance unless the Labor Board rules against the State, finding that health insurance is a mandatory subject of bargaining.

C. This Panel May Decline to Consider Health Insurance

A finding that the State's objection is made in good faith does not serve as a complete bar to considering health insurance. The second sentence of the "good faith" rule creates a narrow escape hatch for some arbitrators. It says, "However, the arbitration panel *may* consider and render an award on any issue that has been declared by the Board, or by the General Counsel . . . , to be a subject over which the parties are required to bargain." 80 Ill. Admin. Rule 1230.90(k) (emphasis inserted). The word "shall" in the first sentence of the Rule and "may" in the second sentence mean what they say – that is, the panel shall not decide issues when a party has made a good faith objection, but it may do so if the Board or General Counsel has ruled on the issue.⁶

⁶ When used in a statute, the word "may" connotes discretion. *Krautsack v. Anderson*, 223 Ill. 3d 541, 544 (2006) (holding statute discretionary "[b]ecause section 10a(c) says the court 'may' award attorney fees and costs, and the word 'may' ordinarily connotes discretion"). This is particularly true where, as here, the word "may" is used along with the word "shall" in the same statute. See *People v. Ullrich*, 135 Ill. 2d 477, 484 (1990) (stating that legislature's repeated use of the word "may" in the Corrections Code – in contrast to the "shall be fined" language of the mandatory fine provision of the Vehicle Code – "indicates that section 5-9-1 of the Corrections Code was intended to apply to discretionary fines and not to fixed, mandatory fines").

Here, the Board's General Counsel declared that health insurance is a mandatory subject of bargaining. So, this panel has the discretion to consider the parties' health insurance proposals. Nevertheless, under the unusual circumstances of this case, this panel should exercise its discretion and not consider issuing an award on group health insurance. The Labor Board's August 5 ruling makes clear that the health-insurance issue is a matter of first impression. In light of the tension between the Board's ruling and the prior General Counsel's declarations, this panel should not rely on those declarations. Absent such reliance, this panel has no valid basis for exercising its discretion to consider health insurance.

Another reason to decline consideration of health insurance is that the very issue of whether health insurance bargaining is mandatory or permissive is before the Labor Board now. The Board ordered an expedited hearing on the issue. Rather than perhaps wastefully expending time and resources on considering health insurance proposals, this panel can await the Board's decision and then proceed without concern that its work will be nullified.

A third reason to wait is that the Labor Board constitutes a majority of the seven-member governing body that will either ratify or reject each term of this panel's award. 5 ILCS 315/3(h) & 14(n). That body has only 20 days to reject any such term. *Id.* Sec. 14(n). So, unless this panel adopts the State's health insurance proposal, it will force five members of the governing body to decide in 20 days the very issue on which those same five members seek an expedited hearing and full record on which to decide the issue. This panel can avoid the discourtesy of imposing such a deadline on members of the Labor Board by exercising its discretion to await the Board's ruling on the health insurance issue.

In light of those circumstances, this panel should not consider the parties' health-insurance proposals unless the Labor Board rules that health insurance is a mandatory subject of bargaining.

D. Conclusion: Grant the State's Motion

Regardless of whether this panel relies on the first or second sentence of Rule 1230.90(k), it should not decide health insurance. And, because health insurance is one of the major economic issues presented in this arbitration, any award that does not consider health

insurance will be like a jet without one engine. Let's park this arbitration in place until we know whether health insurance is in or out. We should grant the State's motion.