STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services,	)	
	)	
Charging Party/Respondent,	)	
	)	
and	)	Case Nos. S-CB-16-017
	)	S-CA-16-087
American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Respondent/Charging Party.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

TABLE OF CONTENTS

I. BACKGROUND 1

A. ILRB Case No. S-CB-16-017 1

B. ILRB Case No. S-CA-16-087 1

C. Procedural Posture of the Consolidated Case 2

II. ISSUES AND CONTENTIONS 3

A. ILRB Case No. S-CB-16-017 3

B. ILRB Case No. S-CA-16-087 4

III. STIPULATIONS 5

IV. ADDITIONAL FINDINGS OF FACT 8

A. Bargaining History 10

1. Bargaining for the 2012-2015 CBA 12

a. Fiscal Outlook at the Start of Bargaining 12

b. Wages and Steps 13

c. Health Insurance 13

d. Away from the Table Conduct and Communications 14

B. Value of Employee Healthcare Benefits as of the 2012-2015 CBA 15

C. Fiscal Situation Leading up to and During 2015-2016 Negotiations 16

D. 2015-2016 Negotiations 18

1. Labor/Management Meeting December 2014 18

2. Initial Comments and Proposals 19

a. Ground Rules 20

b. Union's first proposal 20

c. State's Initial Non-Economic Proposals 21

d. Union's Initial Non-Economic Proposals 23

e. State's Initial Economic Proposals 24

f. Union's Initial Economic Proposals 25

3. Packaging of Proposals and Packages on which the Parties Reached Agreement *29*

a. Classifications and Filling of Vacancies Package 30

b. Miscellaneous Package 30

c. Hours of Work and Overtime Package 31

d. CU-500 Package 31

e. Integrity of the Bargaining Unit and Authority of the Contract Package 31

f. Transfer on Recall, Acceptance of Position, Grading Package 33

g. Work Rules and Discipline Package.....33

h. Temporary Assignment, Grading and Timeliness of Filling Vacancies Package.....34

i. Grievance Procedure and Union Business Package.....34

j. Miscellaneous Pay Provisions Package 35

k. Article XXIV Personnel Files, Article XXVII Evaluations, Article XXXI Miscellaneous, Article XXXI Wages 36

4. Packages on which the Parties Failed to Reach Agreement 37

a. Wages and Steps 37

i. State's Offer of September 8, 2015 37

ii. Union's Offer of September 23, 2016 39

iii. State's Offer of October 6, 2015.....39

iv. Union's Offer of October 6, 2015.....40

v. State's Offer of November 3, 2015.....41

vi. Union's Offer of December 2, 2015.....41

vii. State's Offer of December 17, 2015.....41

viii. State's Offer of January 6, 2016.....42

ix. Union offer of January 6, 2016.....42

x. Union offer of January 8, 2016.....43

b. Appendix A – Health Insurance.....44

i. State's Offer of August 13, 2015.....44

ii. State's Offer of September 9, 2015 46

iii. State's Offer of October 20, 2015.....46

iv. State's Offer of November 19, 2015.....48

v. Union's Offer of December 2, 2015.....49

vi. State's Offer of December 17, 2015.....49

vii. Union's Offer of January 8, 2016.....50

c. Subcontracting Package 50

i. *State's Offer of May 12, 2015* 50

ii. *State's Offer of June 17, 2015* 51

iii. *State's July 15, 2015 Offer* 54

iv. *Union's Offers of August 26 and 27, 2015* 54

v. *State's Offer of September 9, 2015* 56

vi. *Union's Offer of September 10, 2015* 57

vii. *State's November 19, 2015 Offer* 57

viii. *Union's Offer of December 17, 2015* 59

ix. *Union's Offer on January 8, 2016* 59

d. Layoff Package 60

i. *State's Offer of July 17, 2015* 61

ii. *Union's Offer of August 27, 2015* 61

iii. *Offers of December 17 and 18, 2015* 62

e. Outstanding Economics Package 63

i. *Cash Payment for Holidays* 63

ii. *Overtime* 64

iii. *Pension issues* 64

iv. *Pay for Lunch Periods* 65

v. *Retiree Health Insurance* 65

f. Vacation, Holiday Scheduling and Leaves of Absence 66

i. *Cash Payment for Holidays* 66

ii. *Bargaining on other provisions in this package* 69

g. DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX, and XX) 70

i. *State's September 24, 2015 offer* 71

ii. *Union's Offer of November 3, 2015* 72

iii. *State's Offer of November 4, 2015* 72

iv. *Union's December 17, 2015 Offer* 73

v. *State's Offer of December 18, 2015* 73

vi. *Union's January 7, 2016 Offer* 74

vii. *Union's Offer of January 8, 2016* 74

h. Health and Safety Outstanding Issues Package 75

i. *Supplemental Bargaining over Parking* 75

ii. *Parole Agent Safety and Equipment MOU* 76

iii. *Reasonable Suspicion Drug and Alcohol Testing/ Reasonable Suspicion of Impairment* 77

i. Mandatory Overtime Package 81

i. *Offers Exchanged on June 30, 2015* 82

ii. *State's Offer of July 27, 2015* 83

iii. *Union's Offer of July 28, 2015* 84

iv. *State's Offer of December 18, 2015* 85

v. *Union's Offer of January 7, 2016* 85

j. Non-Discrimination, Upward Mobility Program (UMP), and Filling of Vacancies 86

i. *State's Offer of August 13, 2015* 87

ii. *Union's Offer of August 25, 2015* 88

iii. *State's Offer of September 25, 2015* 89

iv. *Offers Exchanged on October 7, 2015* 89

v. *State's Offer of November 17, 2015* 90

k. Management Rights and Check-off/Fair Share 91

l. Semi-Automatic/Classification In-Series Advancement 92

i. *Union's Offer of July 16, 2015* 93

ii. *State's August 26, 2015 offer* 93

iii. *Offers Exchanged on November 18*, 2015 95

iv. *Union's Offer of December 2, 2015* 96

v. *Offers Exchanged on January 6, 2016* 96

vi. *Union's Offer of January 7, 2016* 96

E. Information Requests Directed at the State 97

1. *Information related to Wages and Steps proposals* 100

2. *Information related to Healthcare* 101

3. *Information related to Subcontracting Proposals* 103

4. Information related to Vacations, Holidays and Leaves of Absence Proposals and Layoff Proposals.....103

5. Information on Underutilization Proposal 104

6. Information on Health and Safety Proposals.....105

7. Dues Checkoff and Fair Share.....106

8. Information regarding Integrity of the Bargaining Unit Erosion Language.....107

F. Comments at the Table Regarding the Parties' Intent.....107

G. Away from the Table Conduct by the Employer During Negotiations...122

1. Executive Order Nos. 16-08 and 16-09 122

2. Actions Related to Fair Share Payments 123

3. Public statements by the Governor or his administration 124

4. Jason Barclay memo of July 29, 2015 125

5. Governor Rauner's letter to legislators on September 2, 2015 126

6. September 1, 2015 Crain's article.....127

7. October 6, 2015 CapitolFax.com Posts.....128

8. Communications regarding agreements reached with other labor organizations.....128

9. December 11, 2015 Letter to Employees regarding healthcare.....129

10. Statewide Employee Engagement Survey 130

11. Jason Barclay memorandum of January 6, 2016 133

H. Away from the Table Conduct by the Union During Negotiations.....134

1. Interest Arbitration Legislation 135

2. Other communications.....136

I. Away from the Table Conduct by the Employer Other than During Negotiations 136

1. Comments by Governor prior to January 2015.....136

2. Comments by Governor following January 8, 2016.....138

3. Terranova Letter to Newman dated January 22, 2016.....138

J. Away from the Table Conduct by the Union Other than During Negotiations 139

K. Other CBAs successfully negotiated by the State 139

V. PRELIMINARY MATTERS 141

A. The Board has jurisdiction to decide S-CB-16-017 141

B. The Union did not initially agree to submit the impasse question to the Board but did not repudiate the Tolling Agreement 143

C. Many of the Union's unfair labor practice claims are untimely 145

D. Other procedural matters 147

VI. DISCUSSION AND ANALYSIS 148

A. The parties' bargaining history weighs in favor of a finding of impasse 150

B. The length of the 2015-2016 negotiations weighs in favor of a finding of impasse 152

C. The importance of the issues as to which there is a dispute weighs in favor of a finding of impasse 153

D. The parties' contemporaneous understanding as to the state of negotiations weighs against a finding of impasse 154

E. Good faith of the parties - The Union has not proven that the State exhibited overall bad faith in that it engaged in surface bargaining or that its approach to bargaining was otherwise intended to undermine the Union and to avoid reaching an agreement 157

1. Hostility to collective bargaining 159

2. Refusal to budge from pre-determined positions 162

3. Submission of proposals designed to frustrate the bargaining process 165

F. Good faith of the parties – the Union's conduct calls into question its commitment to reaching an agreement through bargaining 166

G. Good faith of the parties – The alleged unfair labor practices by the State 168

1. The State did not refuse to bargain over mandatory subjects of bargaining 168

2. The State did not engage in unlawful direct dealing with bargaining unit members. 170

a. Away from the Table Communications Made Public 172

i. Crain's article in September 2015 172

ii. State's Response on CapitolFax.com on October 6, 2015 173

iii. *Communications regarding agreements with other unions* 175

iv. *December 11, 2015 letter regarding healthcare*....176

v. *Barclay memorandum of January 6, 2016*....177

b. Employee Engagement Survey 177

3. *The State failed to provide information to the Union that was relevant and necessary for the Union to respond and formulate proposals*....181

a. Information requests related to Wages and Steps package 183

b. Information requests related to health insurance 185

i. *Examples of "silver plans"*....185

ii. *Amount paid to Teamsters for health insurance*....185

iii. *List and cost of cost savings initiatives*....186

iv. *Savings for increases to out-of-pocket costs*....187

c. Information requests related to subcontracting....188

d. Information requests related to the Vacations, Holidays, and Leave of Absence package....189

e. Information request related to temporary layoff....189

f. Information requests related to the Integrity of the Agreement proposal 189

g. Information requests related to Health and Safety package...190

h. Information requests related to Dues Checkoff and Fair Share 190

i. Information requests related to underutilization proposal 191

j. Information requests related to Reasonable Suspicion Drug Testing 192

H. Good faith of the parties - The State insisted to impasse on some permissive subjects of bargaining, namely proposals that required waivers of statutory rights....194

1. *The State has not proven that it has no duty to bargain health insurance*....196

2. *The State's last proposal on health insurance does not insist on such a broad waiver of the statutory right to midterm bargaining as to be permissive*....203

3. *The State's merit pay and gainsharing proposals do not insist on such a broad waiver of the statutory right to midterm bargaining as to be permissive* 208

4. *Provisions of the State's merit pay and gainsharing proposals require a waiver of the statutory rights to a pension calculated on whole "compensation."* 214

5. *The retiree opt-out provision of Option 4 of the State's proposal requires a waiver of statutory rights to subsidized retiree healthcare* 218

6. *The State's retiree health insurance proposal requires a waiver of statutory rights to subsidized healthcare* 219

7. *The State's merit pay, gainsharing, and health insurance proposals do not contain an unlawful waiver of employees' statutory right to negotiate collectively through their exclusive representative* 219

J. Applying the Impasse Factors to Bargaining on the Packages in the State's Last, Best, and Final Offer 221

1. *Wages and Steps* 222

2. *Appendix A – Health Insurance* 223

3. *Subcontracting* 225

4. *Layoff* 226

5. *Outstanding Economics* 227

6. *Vacation, Holiday Scheduling, and Leaves of Absence* 228

7. *DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX & XX)* 228

8. *Health and Safety Outstanding Issues* 229

9. *Mandatory Overtime* 230

10. *Non-Discrimination, Upward Mobility Program (UMP), and Filling of Vacancies* 231

11. *Management Rights and Check-off/Fair Share* 232

12. *Semi-Automatic/Classification In-Series Advancement* 233

K. Other Issues Arising out of the Amended Complaint 234

L. Crafting an Appropriate Remedy on the Declaration of Impasse 237

1. *Standard Remedy* 238

2. *Single Issue Impasse* 239

a. Actual existence of a good-faith bargaining impasse 240

b. The issue as to which the parties are at impasse is a critical issue 240

c. Impasse on the critical issue led to a breakdown in the negotiations 241

3. An Alternative, Limited Remedy Better Serves the Purpose of the Act. 242

VII. CONCLUSIONS OF LAW 245

VIII. RECOMMENDED ORDER 247

IX. EXCEPTIONS 250

State's Last, Best, and Final Offer .....**Appendix A**

Documents related to ILRB Case No. S-CA-16-006 .....**Appendix B**

Notice Posting .....**Appendix C**

I. BACKGROUND

A. ILRB Case No. S-CB-16-017

On January 15, 2016, the Illinois Department of Central Management Services (State or Employer) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), ILRB Case No. S-CB-16-017, alleging that American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union) violated Section 10(b)(4) and (1) of the Illinois Public Labor Relations Act (Act). Specifically, the State alleged that negotiations for a successor agreement had reached a legitimate impasse as of January 8, 2016, the date on which the State presented its last, best, and final offer. The State alleged that despite this, AFSCME failed to bargain in good faith when it refused to agree that the parties had reached impasse and did not agree to submit the dispute with respect to the existence of an impasse to the Board, as required by the parties' Tolling Agreement of September 9, 2015. Therefore, the State requested an Order holding that an impasse in bargaining exists, and that AFSCME has violated Section 10(b)(4) and (1) of the Act by insisting to bargain after impasse has been reached, refusing to mutually agree that an impasse exists, and by refusing to agree to submit the dispute with respect to the existence of an impasse to the Board, as required under the Tolling Agreement. The State has requested as a remedy that the Board's Order indicate that, because an impasse exists, the State is allowed to unilaterally implement its last, best, and final offer for all employees, except those who are prohibited by the Act from striking.

The charge was investigated in accordance with Section 11 of the Act, and, on March 22, 2016, the Board's Executive Director issued a Complaint for Hearing on this charge. The Executive Director also directed that this charge be consolidated with a charge filed by AFSCME, ILRB Case No. S-CA-16-087, described below. AFSCME timely answered the Complaint for Hearing, and raised the following affirmative defenses: (1) the Board lacks jurisdiction to enforce the Tolling Agreement, which is a collectively bargained agreement and (2) a finding of a bona fide impasse is precluded due to the existence of numerous, unremedied unfair labor practices by the State. The State denies these allegations in its response to the affirmative defenses.

B. ILRB Case No. S-CA-16-087

On February 22, 2016, AFSCME filed a charge alleging that the State committed a number of unfair labor practices away from the table that frustrated or interfered with the parties'

bargaining. AFSCME also claimed that the State engaged in a pattern of bad faith bargaining which reflects it did not have a sincere desire to reach an agreement. AFSCME specifically alleged that the State failed to provide necessary information to bargain over proposals; engaged in direct dealing; refused to bargain over mandatory subjects of bargaining; the last, best, and final offer included permissive subjects of bargaining; the last, best, and final offer included illegal subjects of bargaining; engaged in surface bargaining; and refused to meet with the Union to bargain after January 8, 2016.

The charge was investigated in accordance with Section 11 of the Act, and, on March 22, 2016, the Executive Director issued a Complaint for Hearing on this charge. The Executive Director also directed that this charge be consolidated with the charge filed by the State, ILRB Case No. S-CB-16-017, as set out above. The State timely answered the Complaint for Hearing, and raised the following affirmative defenses: (1) some of the allegations in the Complaint are untimely in that they occurred more than six months prior to the filing of the charge; (2) statements made away from the bargaining table wherein the State exercised its right to express its views, argument, or opinion, are protected by Section 10(c) of the Act and do not constitute or support a violation of the Act; (3) its actions related to fair share deductions were based on a good faith belief that the deductions are unconstitutional under the First Amendment of the United States Constitution and Article I of the Illinois Constitution; and (4) the allegations are defeated and/or barred in whole or in part under Section 21.5 of the Act. The State also raised the affirmative defense that it has no duty to bargain over the topic of health insurance.

On April 8, 2016, AFSCME filed a Motion to Amend the Complaint in Case No. S-CA-16-087, to add additional allegations of bad faith bargaining and to set out a Section 10(a)(1) violation. CMS did not respond to the Motion to Amend. On April 21, 2016, I granted AFSCME's Motion to Amend and issued an Amended Complaint for Hearing. CMS filed a timely answer on April 25, 2016, and raised the same affirmative defenses as it had raised to the preceding Complaint for Hearing.

C. Procedural Posture of the Consolidated Case

On March 31, 2016, I issued a Scheduling Order, which among other things, scheduled the hearing to begin on April 25, 2016. On April 5, 2016, CMS filed a Motion to Reconsider the Scheduling Order seeking, among other things, an order directing the parties to submit pre-filed direct evidence of their cases-in-chief. On April 14, 2016, AFSCME objected to the Motion on

multiple grounds. After consideration of the parties' arguments, on April 15, 2016, I entered an Order granting, in part, CMS's motion. The Order allowed either party to submit direct evidence in support of its charge by written submission, on the condition that the party proffering written direct examination make the witness available for cross-examination. On April 22, 2016, AFSCME filed a Motion to Reconsider Order Granting in part CMS's Motion to Reconsider Scheduling Order. That Motion was denied.

The State submitted written evidence in support of its case-in chief, specifically the affidavits of John Terranova, Scott Harry, and Jennifer Hammer, on April 22, 2016. The State submitted additional written direct evidence from Terranova on June 7, 2016, in rebuttal to the Union's case-in-chief.

At hearing on June 7, 2016, CMS filed a Motion to Expedite Decision by the Board with the Administrative Law Judge (ALJ). The parties agreed that, though the Motion had been filed with the ALJ pursuant to the Board's Rules, the Motion was for the Board to decide. The Union filed a timely response objecting to the Motion. The Board's State Panel met at a special meeting on July 7, 2016, and denied the Motion. In its written decision issued July 29, 2016, the Board also ordered strict adherence to the Board's Rules with respect to time requirements for filing exceptions, cross-exceptions, and responses in order to ensure the matter reaches the Board in the most expeditious manner.

The parties appeared for an oral hearing before the ALJ on the following dates: April 25, 26, 27, 28, and 29, 2016; May 3, 4, 5, 6, 9, 10,[1] 16, 17, 18, 19, 24, 25, 26, 27 and 31, 2016; and June 1, 6, 7, 8, and 9, 2016. At hearing, each side was given full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Each party also timely filed a post-hearing brief.

After full consideration of the stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

II. ISSUES AND CONTENTIONS

A. ILRB Case No. S-CB-16-017

The State argues that despite good faith bargaining by both parties, after 67 days of negotiation, the parties have reached impasse on the most significant issues in the negotiations,

[1] The parties met for hearing on May 10, 2016, but did not take any substantive testimony due to the witness's unexpected illness.

including health insurance and wages. According to CMS, the State's fiscal condition is so severe that it must negotiate significant savings. Despite extensive negotiations, the parties are so far apart that further negotiations would be futile; therefore, the State contends they are at impasse. The State contends that the Union's failure to agree that the parties are at impasse and its insistence on further bargaining despite the impasse is an unfair labor practice in that it runs afoul of the parties' Tolling Agreement.

The Union denies that the parties' negotiations are at a legitimate impasse. Moreover, it denies that it refused to submit the dispute to the Board. It further contends that the Board lacks jurisdiction to enforce the Tolling Agreement.

B. ILRB Case No. S-CA-16-087

AFSCME's charge makes a number of distinct, but intertwined allegations, which it contends compels a finding that the State failed to bargain in good faith, negating the possibility of a legitimate impasse. First, AFSCME argues that the State bargained in bad faith when it declared impasse, because the parties had not exhausted negotiations on the outstanding topics, and because the Union, on January 8, 2016, and beyond, indicated its willingness to continue bargaining. The Union also alleges that the State failed to provide necessary information to bargain over proposals, engaged in direct dealing, refused to bargain over mandatory subjects of bargaining, made proposals illegal under the Illinois Constitution, and refused to meet with the Union to bargain after January 8, 2016. Finally, the Union contends that the State never intended to reach an agreement and instead was engaged in surface bargaining. Namely, the State made voluminous proposals that were predictably unacceptable to the Union, attempting to eliminate or significantly modify existing contractual provisions and seek concessions on nearly every contractual provision, and insisting that the Union waive its statutory right to be the exclusive representative of its members with respect to wages, hours and other conditions of employment. According to AFSCME, these numerous unremedied unfair labor practices demand a finding that, even if the parties were at impasse, it was not a lawful impasse.

The State denies that it engaged in any unfair labor practices and that it negotiated without a sincere intent to reach agreement. Moreover, the State raises a number of affirmative defenses to the Union's charge. First, it argues that many of the complained-of actions are untimely or otherwise protected by Section 10(c) of the Act. The State asserts that the communications by the Governor or his administration were the expression of views, arguments,

and/or opinions that "contain[ed] no threat of reprisal or force or promise of benefit," and therefore, under section 10(c) of the Act, do not constitute an unfair labor practice or evidence in support of an unfair labor practice. Next, the State contends that its negotiating position on fair share deductions was based on a good faith belief that the fair share deduction provision of the 2012-2015 CBA is unconstitutional under the First Amendment of the United States Constitution and Article I of the Illinois Constitution. The State also argues that section 21.5 of the Act defeats or bars, in whole or in part, the allegations in the Amended Complaint for Hearing. Finally, the State argues that 2004 amendments to Section 15 of the Act, which also amended the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et seq.* and the Illinois Procurement Code, 30 ILCS 500/20-1 *et seq.* (collectively 2004 Amendments), excuse the State from any obligation to bargain over health insurance.

III. STIPULATIONS

The parties reached a number of stipulations prior to and during the hearing in this consolidated matter. The stipulations were included in ALJ Exhibit 2 and made part of the record. Those stipulations are as follows:

1. American Federation of State, County and Municipal Employees, Council 31 ("AFSCME" or the "Union") and the State of Illinois, Department of Central Management Services (the "State" or the "Employer") (collectively referred to as the "Parties") were Parties to a master collective bargaining agreement (CBA) with a stated expiration date of June 30, 2015.

2. Negotiations between the Parties for a successor collective bargaining agreement began on February 9, 2015.

3. The Parties met in twenty-four (24) bargaining sessions encompassing a total of sixty-seven (67) days, with the last day being January 8, 2016. The dates of all bargaining sessions are set forth below:

Session Number	Dates
1	February 9 & 10, 2015
2	February 25 - 27, 2015
3	March 16 - 18, 2015
4	April 13 - 15, 2015

5	April 27 - 29, 2015
6	May 4 & 5, 2015
7	May 11 - 13, 2015
8	May 26 - 28, 2015
9	June 1 - 3, 2015
10	June 15 - 17, 2015
11	June 29 - July 1, 2015
12	July 15 - July 17, 2015
13	July 27 - 29, 2015
14	August 11 - 13, 2015
15	August 25 - 27, 2015
16	September 8 - 10, 2015
17	September 23 - 25, 2015
18	October 6 - 8, 2015
19	October 20 & 21, 2015
20	November 2 - 4, 2015
21	November 17 - 19, 2015
22	December 1 & 2, 2015
23	December 17 & 18, 2015
24	January 6 - 8, 2016

4. Chief Spokesperson and Lead Negotiator in the negotiations on behalf of the Union was its Executive Director Roberta Lynch. On days that Ms. Lynch was not available, the Union's Deputy Director Michael Newman served as Chief Spokesperson and Lead Negotiator.

5. Chief Spokesperson and Lead Negotiator in the negotiations on behalf of the State was Department of Central Management Services Deputy Director, Labor Relations, John

Terranova. On days that Mr. Terranova was not available, outside counsel, Mark Bennett of Laner Muchin, Ltd. served as Chief Spokesperson and Lead Negotiator on behalf of the State.

6. On February 26, 2015, the Parties' agreed upon Ground Rules for negotiations. (Ex. Binder 1, Tab A)

7. On February 27, 2015, the State presented its initial comprehensive non-economic proposals. (Ex. Binder 1, Tab B)

8. On March 18, 2015, the Union presented its initial comprehensive non-economic proposals. (Ex. Binder 1, Tab C)

9. On May 13, 2015, the State presented its initial comprehensive economic proposals. (Ex. Binder 1, Tab D)

10. On June 17, 2015, the Union presented its comprehensive economic proposals. (Ex. Binder 1, Tab E)

11. Beginning on June 15, 2015, at least one (1), and at some sessions two (2), mediators from the Federal Mediation and Conciliation Service were present at most bargaining sessions.

12. At the bargaining session on January 8, 2016, State spokesperson, John Terranova, stated that the State believed that the Parties had reached impasse and presented a piece of paper called Last, Best and Final Offer.

13. The State's Final Offer listed its final offers on the twelve (12) package proposals on which the Parties had not reached agreement: (1) Wages and Steps; (2) Health Insurance Appendix A; (3) Outstanding Economic Issues; (4) Subcontracting; (5) Management Rights and Check-Off/Fair Share; (6) Vacation/Holiday/LOA including Pension; (7) Layoff; (8) Semi-Automatic/Classification; (9) DOC/DJJ Roll Call; (10) Mandatory Overtime; (11) Non-Discrimination/UMP/Filling of Vacancies; and (12) Health and Safety Outstanding Issues.

14. At the January 8, 2016 bargaining sessions, Terranova asked the Union's negotiators if the Union agreed that the Parties had reached impasse. Roberta Lynch responded that the Union did not agree that the parties were at impasse.

15. On February 22, 2016, the Union filed its Demand for Compulsory Interest Arbitration with the ILRB for the RC-6 and CU-500 bargaining units that are included in the Parties' negotiations for a successor agreement.

16. Respondent State of Illinois, Department of Central Management Services, is a public employer within the meaning of Section 3(o) of the Act.

17. The Charging Party, American Federation of State County and Municipal Employees, Council 31 is a labor organization within the meaning of Section 3(I) of the Act.

18. AFSCME is the exclusive bargaining representative of approximately 38,000 State employees who work in agencies, departments, boards and commissions subject to the Governor.

19. The parties did not discuss the State's Merit Incentive Pay proposal at bargaining sessions on September 9 and 10, 2016.

20. The Employer's typed bargaining notes for January 7 and 8, 2016, do not reflect an exchange between John Terranova and Roberta Lynch reflecting that the State had complied with the 14 requests for information contained in Union Exh. 18.

21. AFSCME received costing of both the Union and the State's initial healthcare proposals for the 2012-2015 collective bargaining agreement from the State` on June 5, 2012.

22. The portion of the Capitol Fax blog position posting on October 6, 2015, attributed as a response from the Governor's Office, accurately reflected the Governor's Office's statement.

23. Employer exhibits 23, 24, and 25 were created in July 2015.

IV. ADDITIONAL FINDINGS OF FACT

Bruce Rauner was inaugurated as Governor of the State of Illinois on January 12, 2015. CMS is the State agency charged with negotiating a master collective bargaining agreement with AFSCME. In December 2014, the State's representative was then-Deputy Director of CMS's Office of Labor Relations Robb Craddock. In mid-January 2015, Terranova was hired to replace Craddock as the Deputy Director of the Office of Labor Relations. Terranova served as the State's Chief Spokesperson for the 2015-2016 negotiations with AFSCME. In Terranova's absence, Mark Bennett served as Chief Spokesperson. Bennett was Chief Spokesperson on May 4 and 5, 2015, and October 6, 2015. A number of agency representatives and other staff were typically present at negotiations on behalf of the State. Amber Spainhour is an employee with CMS's Office of Labor Relations, who was involved in negotiations, including meetings of the parties' healthcare subcommittee. Also typically present at negotiations were Deputy Director of Government Transformation and Metrics Tim McDevitt, CMS Assistant Deputy Director of

Benefits Teresa Flesch, CMS Bureau of Benefits Health Program Administrator Marcia Armstrong, and then-Special Counsel to the Governor and Policy Adviser for Healthcare and Human Services Jennifer Hammer were also involved in the parties' healthcare subcommittee. The State called McDevitt and Hammer as witnesses at the hearing. CMS's Office of Labor Relations employees Jarrod Hill and Brandon White served as the State's designated note takers. Hill and White took notes by hand during bargaining sessions, and then later synthesized their notes into a typed document. In addition to Terranova, McDevitt, and Hammer, the State also called the Governor's Office of Management and Budget (GOMB) Chief of Staff Scott Harry in its case-in-chief. Terranova and McDevitt testified in rebuttal.

The Union's Executive Director is Roberta Lynch. Lynch served as the Union's Chief Spokesperson at most bargaining sessions. In her absence, Deputy Director Mike Newman served as Chief Spokesperson. AFSCME's bargaining committee is comprised of approximately 230-250 people. Representatives are elected to the bargaining committee from each of the 78 locals covered by the master agreement. Each local union president is also a member of the bargaining committee. Under AFSCME's structure, the bargaining committee is the authoritative body on proposals. The bargaining committee discusses the proposals made at the table, and ultimately votes whether to accept, reject, or counter. AFSCME Council 31 staff, including six regional directors and a number of staff representatives that sit with the bargaining committee, were also present at bargaining sessions. The following AFSCME Council 31 staff were typically present at the head table for AFSCME: Associate Director Claudia Roberson, Associate Director Tracey Abman, Director of Research and Employee Benefits Martha Merrill, Labor Relations Specialist Chuck Stout, and Labor Relations Specialist Ron Hudson. Merrill and AFSCME International Director of Research and Collective Bargaining Services Steve Kresiberg served on the healthcare subcommittee for the Union. Hudson served as the Union's designated note taker; like Hill and White, Hudson took hand-written notes that were later typed. The Union's witnesses at hearing included Lynch, Newman, Merrill, Kreisberg, Stout, and Hudson, as well as Correctional Officer Richard Metzger, Correctional Lieutenant Harry Gordon, Correctional Officer Jeremy Westlake, AFSCME Council 31 Director of Public Policy Anne Irving, AFSCME Council 31 Communication Direct Anders Lindall, and former Director of Research and Employee Benefits Henry Scheff.

A. Bargaining History

The parties have a lengthy bargaining relationship that began when then-Governor Dan Walker issued Executive Order No. 6 in 1974, which among other things, creating the Office of Collective Bargaining for administration of collective bargaining for employees of State government. At that time, AFSCME only represented two bargaining units. Over the years, AFSCME became the exclusive representative for more bargaining units, and the parties continued to negotiate CBAs for the employees in those units. In the more than 40 years the parties have collectively bargained, they have reached more than two dozen CBAs with administrations of six different governors, three Democrats and three Republicans. On only four occasions have the parties negotiated for a successor agreement beyond the stated termination date of an existing CBA. The successor for the agreement with a termination date of June 30, 1983, was executed on February 10, 1984. The successor agreement to the 2004-2008 CBA became effective on September 5, 2008. Again in 2012, the parties negotiated beyond the stated term of the contract, ultimately reaching agreement on February 27, 2015.

Negotiations for successor agreements typically begin with a Joint Labor/Management meeting in December of the year before the contract expires, with traditional negotiating sessions beginning in January. For example, when negotiating for a successor to the 2008-2012 CBA, the parties first met in December 2011. Traditionally at the December Joint Labor/Management meetings, the Union presents its initial non-economic proposal. In the normal course of bargaining between these parties, they would initially bargain over Ground Rules and reach an agreement relatively quickly. Sometime after bargaining has started, the State would present its non-economic proposals. The parties continue to bargain over non-economic issues, sometimes referred as "language" issues. Once the parties have made significant headway on those issues, the Union presents its economic proposals, followed by the State's economic proposals. During bargaining, the head table, a subset of the parties' bargaining committees that include the chief spokespeople, can agree to form subcommittees to discuss specific issues. Subcommittees can be empowered to continue bargaining over current proposals or can be limited to merely discussing technical aspects of proposals/issues. Each side designates a point person for each subcommittee. Once the subcommittees have finished their work by either reaching an agreement, gathering the desired information, etc., the issue can be returned to the head table for further negotiation or tentative agreement.

The current negotiations were atypical in a number of ways. First, when the parties met in December 2014, the Union did not present any proposals for consideration. Newman testified that the Union did not present proposals in December because the Union understood that a new administration would be taking over in January. Therefore, the Union reasoned, it would not be fruitful to present proposals to the officials from the administration of out-going Governor Pat Quinn. Next, the parties did not meet for negotiations until February 9, 2015. Due to the fact that a new administration was beginning mid-January, the State cancelled the January sessions. The January dates were cancelled before Terranova was brought on to serve as Chief Spokesperson. Further, unlike negotiations of the past, the parties spent a considerable amount of time negotiating over Ground Rules; specifically, the parties did not agree on Ground Rules until February 26, 2016, after four bargaining days. Additional atypical developments include that the first substantive proposals were not presented until February 27, 2015, and the proposals were presented by the State rather than by the Union. The Union did not submit its initial non-economic proposals until March 18, 2015. Similarly, the State was first to submit economic proposals, doing so on May 13, 2015. The Union submitted its initial comprehensive economic proposal on June 17, 2015.

The State first suggested seeking the assistance of a mediator on June 1, 2015. The Union agreed at the table the following day. Federal mediators were present at many bargaining sessions, the first of which was on June 15, 2015.

As the June 30, 2015, termination date approached, the parties negotiated the first of three Tolling Agreements, which was executed on June 25, 2015. Under the Tolling Agreement, the parties agreed to negotiate in good faith to reach a successor agreement and further provided that the parties would continue to abide by all legal obligations each may have. Subsequent agreements were reached on July 29, 2015, and September 9, 2015. Under each of the last two Tolling Agreements, the parties established the process for either mutually agreeing that impasse existed or, in the alternative, agreeing to submit the issue before the Board. Under the Tolling Agreement executed on September 9, 2015, the parties agreed to "continue meeting and negotiating in good faith for a successor collective bargaining agreement." They further agreed that the Tolling Agreement would remain in effect until "impasse is reached" or until the Board resolves the impasse question.

1. Bargaining for the 2012-2015 CBA

In total, the parties met for 66 days between January 2012 and February 27, 2013, before reaching a tentative agreement on the successor agreement. The State made numerous and wide-ranging proposals in 2012. The vast majority of the State's initial economic proposals were not included in the final CBA, and 30 such proposals were ultimately proposed again in 2015.[2] The parties continued to bargain, while terms and conditions of employment were governed by a contract extension agreement negotiated by the parties. When the parties were still unable to reach agreement, in November 2015, the State declined to further extend the contract and terminated the 2008-2012 CBA.

a. Fiscal Outlook at the Start of Bargaining

When the parties began negotiating for the successor agreement that would become the 2012-2015 CBA, the State was in a difficult fiscal situation. GOMB's January 2012 three-year projection reflected a relatively small budget deficit of $507 million for fiscal year (FY) 2012, two relatively flat years ($86 million surplus in FY 2013 after allocating a $200 million payment to bill backlog and a $1 million shortfall in FY 2014 after allocating a $800 million payment to bill backlog), and a projected $818 million shortfall in FY 2015. In addition to this forecast, the State had approximately $7 billion in unpaid bills, and was seeking to implement a 9% cut in spending in all areas besides education and health care appropriations. Given the fiscal situation

[2] The 2015 proposals that were identical to proposals made by the Employer in 2012 include the following: Definition of Terms (b); Article III, Non-Discrimination, Section 3, Membership Solicitation; Article V, Grievance Procedure, Section 2, Grievance Steps, Step 3; Article VI, Union Rights, Section 8, Rate of Pay; Article VIII, Work Rules, Section 3, State Officials and Employees Ethics Act; Article X, Vacation, Section 1, Amounts; Article X, Vacation, Section 2, Vacation Time; Article X, Vacation, Section 6, Vacation Schedules by Seniority; Article X, Vacation, Section 7, Payment in Lieu of Vacation; Article X, Vacation, Section 8, Payment on Death of an Employee; Article X, Vacation, Section 10, Vacation Pay/Academic Year Education (RC-63); Article XI, Holidays, Section 1, Amounts; Article XI, Holidays, Section 2, Equivalent Time Off; Article XI, Holidays, Section 7, Accumulated Holiday Scheduling; Article XII, Hours of Work and Overtime, Section 12, Flexible Hours; Article XII, Hours of Work and Overtime, Section 16, Time Off; Article XII, Hours of Work and Overtime, Section 20, Roll Call Pay; Article XV, Upward Mobility Program, Entire Article; Article XVIII, Employee Development and Training, Section 2, Courses of Instruction; Article XXXI, Miscellaneous Provisions, Section 5, Printing of the Agreement; Memorandum of Understanding on AFSCME Benefits Trust; Memorandum of Understanding on Call Back Pay; Mandatory Overtime Memorandum of Understanding; Memorandum of Understanding on Out of State Revenue Auditing and Revenue Auditors Supervisors; Part-Time Site Technicians I and II and Natural Resources Tech I and II Memorandum of Understanding; Pension Credits Memorandum of Understanding; Personnel Service Contracts Memorandum of Understanding; Personnel Service and Voucher Contract Memorandum of Understanding Red Circling, Pay on Promotion Memorandum of Understanding; and Revenue Tax Specialist Services Memorandum of Understanding.

that existed in 2012, which was projected to extend through the life of the CBA, the State sought numerous concessions. Based on the costing of the initial economic proposals completed in the 2012-2013 negotiations, the State sought concessions totaling nearly $2.7 billion (not including health insurance savings). The Union sought increased benefits totaling approximately $232 million (not including increased health insurance benefits).

b. Wages and Steps

With respect to wages and steps, the State initially proposed eliminating the contract language on steps and longevity pay, proposed a two-step reduction in general wages, and no across-the-board raises. The parties negotiated a $25 increase in longevity pay effective July 1 2013, at a cost of $5 million for FY 2014. The parties ultimately agreed to include steps increases for each of the three years of the contract, but AFSCME agreed to include three sub-steps at the beginning of the step plan applicable to newly hired bargaining unit employees. These sub-steps (Steps 1a, 1b, and 1c) allowed the State to hire employees at 9% less than the rate contained in Step 1 of the pay plan, and were projected to save $2 million for FY 2013 and $10 million per year for FY 2014 and FY 2015. The new step plan reflected a 40% difference between the lowest in-hire step and the top step. In addition to step increases, the parties negotiated no across-the-board increase for FY13, pay parity provisions at a cost of $74 million in FY14, a 2% increase for FY 2014 at a cost of $49 million, and another 2% increase for FY 2015 at a cost of $50 million. At the time the parties completed negotiations for the 2012-2015 CBA, the increases negotiated in the agreement were expected to cost the State $202 million.

c. Health Insurance

On the topic of health insurance, despite the State's fiscal situation, AFSCME proposed decreases in employee contributions for dependents and decreases in prescription deductibles and out-of-pocket costs at a cost to the State of $38.9 million for AFSCME members, and totaling nearly $202 million when applied to all plan enrollees. The State proposed premium increases and plan design changes (including increases to co-pays, deductibles, and out-of-pocket costs) resulting in savings of $293 million from AFSCME members over the life of the contract and totaling over $1 billion for all enrollees. These competing proposals were costed by the State in June 2012, and those costings were shared with the Union.

In the end, the parties agreed to changes to health insurance in years two and three of the CBA. Increases in employee contributions were projected to save $111 million in the second

year of the contract and $124 million in the third year of the contract. Retiree contributions were expected to save $64 million in years two and three of the contract. Plan design changes were expected to save $138 million over the life of the contract. Through other initiatives, including opt outs, wellness programs and initiatives generated from the Insurance Committee, the parties expected the contract to generate another $136 million in savings. Finally, the parties negotiated the implementation of a Medicare Advantage program that, at the time of ratification, was expected to save $58 million and $116 million respectively for the second and third years of the contract.[3] When negotiations were completed, the 2012-2015 CBA was expected to result in $845 million in healthcare savings over the last two years of the CBA.

d. Away from the Table Conduct and Communications

During the course of the 2012-2013 negotiations, which AFSCME characterizes as "acrimonious," the Union communicated its displeasure in the State's proposals and bargaining positions in a very public manner. The AFSCME bargaining committee arrived at the Capitol en masse to deliver a collection notice to the Governor. AFSCME also utilized members to appear and disrupt Governor Quinn's public speaking engagements, political events, and even his private birthday party/fundraiser. Members acting in this capacity were referred to by AFSCME as the "Quinn Truth Squad."[4] AFSCME posted numerous articles on its publicly accessible website regarding the "Truth Squads" and their intended purpose, which was to make public their displeasure with the Governor and to pressure the Governor to provide more favorable contract terms. Excerpts from these articles include the following:

- "Wednesday, Aug. 15, is Governor's Day at the Illinois State Fair. AFSCME will be there to ensure that fairgoers know about Governor Quinn's repeated attacks on working families in Illinois."
- "AFSCME's Quinn Truth Squad has followed the governor to public events throughout the past year, spreading the word about Quinn's disrespectful attitude towards state workers, which only worsened when Quinn, in an unprecedented move, decided in November to terminate the contract of 40,000 AFSCME members who provide valuable services."

[3] A later Commission on Government Forecasting and Accountability (COGFA) report updated the projected savings from the Medicare Advantage program to be $150 million for FY 2015.

[4] Newman testified that there was no set group of people that made up the "Quinn Truth Squad," and that it could be more accurately phrased "Truth Squads."

- "Around 500 AFSCME members put on a spirited protest in Springfield today as the Quinn Truth Squad showed Governor Quinn that state workers won't stay quiet in their demand for a fair contract and the pensions they were promised.

Newman confirmed at the hearing that the purpose of the Union's public action was "to make sure that wherever Governor Quinn went, that he saw state employees there, AFSCME members there, to remind him that there was a contract dispute, to make sure that it stayed on his mind, and to make sure that he understood that AFSCME members felt strongly about the issues." The intent of their tactics was put pressure on the Governor away from the bargaining table to get him to change his bargaining position.

B. Value of Employee Healthcare Benefits as of the 2012-2015 CBA

Under the existing health insurance plans, the State shares the cost of healthcare with each individual employee. Multiple factors contribute to the cost of health insurance, but they can generally be placed into two categories. The first is the premium. This is a front-end cost for insurance coverage, which is shared by the Employer and individual employees. Employees pay a pre-tax amount that varies based on their salary, and that amount is withdrawn from each paycheck for their insurance premium. The number of dependents also impacts the amount an individual employee may pay for his insurance premium. Under the 2012-2015 insurance plan, the State pays 83% of the premium cost, and the employee pays the remaining 17%.

The second category of costs is referred to as plan design costs, the back-end costs or costs paid when an individual actually receives healthcare. Plan design costs include co-pays, deductibles, and other out-of-pocket expenses. Plan design cost sharing is also referred to as the actuarial value of a health insurance plan. The actuarial value of the 2012-2015 plan is 92%, meaning that in the aggregate, the health insurance plan covers 92% of the cost of the benefits provided and the employee covers the remaining 8%.

Under the federal program developed through the Patient Protection and Affordable Care Act, 42 USCA § 18001 *et seq.*, metallic bands are assigned to plans of various actuarial values. Generally, plans with a 90% actuarial value are referred to as platinum plans. Gold plans have an actuarial value of 80%. Silver plans have an actuarial value of 70%, and bronze plans have an actuarial value of 60%. The 2012-2015 plan can be accurately described as a platinum-plus plan because it has a higher actuarial value than the 90% demarcation for a platinum plan.

The State's share of total costs, including premium share and plan design costs, is the net actuarial value of a plan. The 2012-2015 insurance plan has a net actuarial value of 76%,

meaning that, in the aggregate, the State pays 76% of the total costs and employees pay the remaining 24%. The total cost per employee per month, again in the aggregate, for health insurance is $1,611. Applying the net actuarial value to that cost, on average, the State pays $1,224 per employee per month.

C. Fiscal Situation Leading up to and During 2015-2016 Negotiations[5]

From the Labor/Management meeting in December 2014 through the final bargaining day on January 8, 2016, the Employer communicated the dire situation of the State's fiscal outlook. In December 2014, the Employer told AFSCME there was a $6.4 billion bill backlog, a structural shortfall for FY 2015 of approximately $1.6 billion causing seven State agencies to project running out of funds before the end of the fiscal year on June 30, 2015, and a projected $5 billion structural shortfall for FY 2016. The State's representative also pointed to healthcare and pension pressures as another basis for the assertion that the parties were working in a budget situation unlike one they had ever seen before.

In 2011, the General Assembly passed legislation temporarily increasing the income tax rate in Illinois. This temporary tax increase expired on January 1, 2015, further contributing to the FY 2015 deficit.

Like GOMB had in early 2012, shortly before formal bargaining started in February 2015, it had issued a three-year projection. Economists at the Department of Revenue and GOMB calculated a budget deficit for FY 2016 of approximately $6.2 billion (projected revenues of $32.049 billion and projected expenditures of $38.2 billion (or a $6.16 billion deficit)). For FY 2017, GOMB projected a budget deficit of approximately $5.9 billion (projected revenues of $32.972 billion and projected expenditures of $38.829 billion). It also projected an approximately $5.6 billion deficit for FY 2018 (projected revenues of $33.889 billion and projected expenditures of $39.454 billion).

The legislature had yet to craft a solution to the $1.6 billion FY 2015 shortfall,[6] and GOMB was projecting that without changes, the bill backlog could grow to $10.6 billion by the end of FY 2016. As the State is required by law to pay interest on unpaid bills, it paid $126 million in interest on unpaid bills during FY 2015. In May 2015, COGFA, which like GOMB

[5] For the purposes of this Recommended Decision and Order (RDO), when I refer to the negotiations period, I am referring to the period of December 2014 through January 8, 2016.

[6] The legislature eventually passed supplemental appropriation bills which, using fund sweeps, among other things, provided funding to resolve the $1.6 billion gap in FY 2015 funding.

conducts fiscal analysis and projects expected revenue, also projected FY 2016 revenues ($32.972 billion) that were approximately $6 billion less than projected expenditures (approximately $32.8 billion).

In addition to the budget deficits and bill backlog with accompanying interest penalties, the State was also faced with $111 billion in pension debt accumulated over years of failing to fully fund the State's pension systems. GOMB's Chief of Staff Harry testified that pension payments and pension financing accounted for approximately 25% of the State's expenditures from general funds.

As bargaining progressed, the State's fiscal situation worsened. For one thing, the legislature passed a FY 2016 budget (a series of appropriation bills and budget implementation bills) that allowed for expenditures at a level more than $4 billion above the expected revenues. Included in the FY 2016 budget passed by the General Assembly was appropriation for State Group Health Insurance at a level $700 million less than needed to maintain the level of appropriation from FY 2015. Governor Rauner vetoed all the budget bills except those providing appropriations for primary and secondary education. The State continued to make payments that were required by enacted appropriations, other laws, consent decrees, or court orders. For example, State employees continued to be paid pursuant to a court order entered in a case filed by AFSCME and other labor organizations representing State employees. The General Assembly did not override the Governor's vetoes or take other action to provide other appropriations. Therefore, there were no appropriations for expenditures not otherwise provided for in law or by court order. Further, these expenditures continued at the FY 2015 level, which, in November 2015, GOMB projected would result in a $351 million deficit for FY 2016.[7]

The State also experienced ratings downgrades by Moody's and Fitch in October 2015, which made it more expensive for the State to finance bond sales to raise revenue.

[7] GOMB projected that the FY 2016 expenditures required by enacted appropriations, other laws, consent decrees, or court orders would reach $32.4 billion (including $8.97 billion projected to be spent through continuing appropriations for Pension Payments, Pension Bond Debt, General Obligation Bond Debt, Retired Teachers Health Care and General Assembly Operations; $14.01 billion for consent decrees and court ordered expenditures; $2.471 billion in statutory transfers; and $6.949 billion for K-12 education pursuant to the education bill that the General Assembly passed and the Governor signed). The projected FY 2016 General Funds revenue of $32.049 billion results in a $351 million deficit, even where numerous other State programs received no funding at all, e.g. higher education and social service.

On January 6 2016, GOMB again issued a three-year projection. At that time, GOMB projected a $5.6 billion deficit for FY 2017 (projected revenue of $32.6 billion and projected expenditures of $38.2 billion). For FY 2018, GOMB projected a deficit of $5.3 billion (projected revenue $33.4 billion and projected expenditures of $38.7 billion). GOMB also projected a deficit for FY 2019 in the amount of $5 billion (projected revenue $34.3 billion and projected expenditures of $39.3 billion).

D. 2015-2016 Negotiations[8]

1. Labor/Management Meeting in December 2014

In December 2014, the Employer told AFSCME there was a $6.4 billion bill backlog, a structural shortfall for FY 2015 causing seven State agencies to project running out of funds before the end of the fiscal year on June 30, 2015, and projected $5 billion structural shortfall for FY 2016. Craddock, the State's spokesperson at this meeting, pointed to healthcare and pension pressures as another basis for the assertion that the parties were working in a budget situation unlike one they had ever seen before. AFSCME, through Lynch, commented that the State should continue the income tax surcharge, tax the wealthy, and support a tax structure whereby those who can afford to pay more should.

AFSCME also raised other substantive issues in the December 2014 Labor/Management meeting. The parties discussed staffing levels and outstanding back pay issues. They also discussed the Overtime Memorandum of Understanding (MOU) and the difficulty with getting applications graded in a timely fashion. With respect to staffing and mandatory overtime, the State indicated that increasing staffing was a goal that could not be reached without the General Assembly appropriating additional funding to increase headcount. Craddock noted that the General Assembly had so far not chosen to provide increases to allow the kind of additional staffing the State would like. AFSCME also raised health and safety issues, including condition of workplaces. Craddock noted that the parties already had a system in place and that when CMS gets involved, issues are resolved. Lynch indicated the Union's interest in having a point person for health and safety issues. When discussing an arbitration decision that reversed a State

[8] The parties proceeded very differently with respect to putting on evidence about these negotiations. The State presented evidence in an overview fashion, focusing on the packages on which the parties had not reached agreement as of January 8, 2016. The State's primary witness for the negotiations was Terranova. The Union proceeded to elicit evidence in a day-by-day, proposal-by-proposal, chronological fashion. The Union elicited the vast majority of its evidence regarding the negotiations from Newman.

subcontracting decision and resulted in setting additional hiring goals, Lynch asked Craddock to convey that "privatization is not the solution." He agreed to do so.

The final topic of discussion at the Labor/Management meeting was the schedule for negotiations. Lynch noted that they were in a unique situation with an incoming administration. At the time of that meeting, Craddock was not in a position to confirm January dates. Lynch then informed the State that the Union did not think it was best to present its proposals at that time, that they would await word on January dates, and would prepare to bargain in good faith.

2. Initial Comments and Proposals

When the parties first met on February 9, 2015, each side gave opening remarks. Terranova pointed to the State's fiscal crisis and the fact that the State would be making proposals in an effort to help address it, but not in terms of short-term fixes, as the State could not afford to kick the can down the road. Terranova cautioned that while the State may make proposals not to the Union's liking, they were necessary to get to an agreement. In her opening remarks, Lynch pointed out that the Union was disturbed by Governor Rauner's comments and it felt those comments did not show respect for employees. Lynch specifically rejected the premise of comments attributed to the Governor about "corrupt union bosses" and "sweetheart deals."

From the start and throughout negotiations, the State indicated its intent to seek contract changes that provided additional efficiency and flexibility. The State also notified the Union that the administration was looking to change the way it did business, and would submit proposals to that end. Moreover, the State indicated on numerous occasions that it was philosophically opposed to pay increases that were not linked to merit and that the State needed to obtain significant savings (in the proximity of $700 million) from the healthcare program. Finally, throughout negotiations, Terranova stated again and again that the Union should be concerned only with what was said at the table and that anything that happened away from the table was merely a distraction from the bargaining that would only occur at the table.

In the course of the early bargaining, Lynch voiced concerns about the State's commitment to bargaining in good faith, and time and again during the discussion on Ground Rules sought additional assurances. On February 26, 2015, when responding to the State's observation that they were several days into bargaining and the Union was still working on its proposals, Lynch asserted that bargaining this time was not the same as in the past and accordingly, things were not proceeding as they traditionally did.

a. Ground Rules

During February 2015, the parties discussed and agreed to Ground Rules to govern the negotiations. The State's initial Ground Rules proposal was identical to the parties' Ground Rules used for the negotiations resulting in the 2012-2015 CBA. The Union proposed several additional rules, including:

1. The State and AFSCME Council 31 agree to bargaining collectively in good faith towards the mutual goal of reaching an agreement for a successor collective bargaining agreement.
2. The State recognizes AFSCME Council 31 as the exclusive bargaining representative of all AFSCME bargaining unit employees, having been so chosen by bargaining unit employees, and having been legally designated as such by the Illinois Labor Relations Board. The State shall not take any action or engage in any communication to undermine or circumvent the Union's status as bargaining unit employees' exclusive bargaining representative or its ability to represent all bargaining unit employees.
3. All proposed modifications to the collective bargaining agreement, and all other proposed changes to the wages, hours or conditions of employment of bargaining unit employees shall be made exclusively to the Union and shall not be made to any other party or in any other forum.

In addition to the initial proposals, the parties exchanged seven subsequent proposals on Ground Rules. The State took the position that these additional provisions were not necessary, as the State was recognizing AFSCME as the exclusive bargaining representative and was giving assurances that all contract modifications would come through the bargaining table. On February 26, 2015, the State informed the Union that it had gone as far as it was willing to go on the permissive subject of Ground Rules, and was willing to move ahead without Ground Rules in order to get down to the task of bargaining substantive issues. The parties ultimately agreed to include the Union's first proposed Ground Rule recited above, but did not include number two or three in their signed Ground Rules.

b. Union's First Proposal

After the parties signed the Ground Rules, the Union presented the first substantive proposal of these negotiations. Lynch described the Union's submission as a comprehensive proposal dealing with an issue of great importance – subcontracting/privatization. Lynch stated that the proposal reflected the Union's position that there were too few safeguards to reduce the issues of lack of transparency and actual efficiency. The Union also indicated that it did not believe privatization should be used to lower wages and benefits or to break unions. Unlike

nearly every other proposal the parties had previously submitted for negotiation, this proposal did not identify which contract provisions it was intended to replace or supplement. The following day, the State asked a number of questions regarding this initial proposal, and then submitted its package of initial non-economic proposals.

Terranova testified that the Union's proposal on subcontracting/privatization was one of several in which the Union suggested more of a policy statement than contract language that was reasonably calculated to regulate the parties' relationship. For instance, the preamble of the Union's one and a half page document on subcontracting included that "[t]he parties further agree that public services should never be turned over to companies that seek to make excessive profits at the expense of service quality, public accountability, or fair treatment of employees." The Union proposal also offered principles to "ensure that there is no profiteering on the public services vital to Illinois citizens." Moreover, the Union's proposal included conditions for potential subcontractors, including that employees performing State services through a subcontractor should be fairly compensated for their work, and that "savings shall not be achieved through cutting employee' wages, health insurance, or other compensation." The proposal also sought agreement that "privatization shall not be used as a means to deny employees the right to union representation, to drive down employee wages and benefits, or to otherwise diminish the rights of employees."

In discussion at the table and at hearing, Terranova questioned how the parties could possibly administer provisions like those proposed. Newman testified that the Union chose to lead with this proposal in an attempt to build a relationship and get bargaining off on a better foot. He indicated the Union's belief that the proposal contained many things on which the parties could agree.

c. State's Initial Non-Economic Proposals

Newman testified that usually the Union would present its non-economic proposals first, because generally in successor agreements, unions are the more aggressive party seeking changes. Here, Newman testified, the parties were dealing with a mature CBA and the Union was not looking for wholesale or dramatic changes in the contract. The Union understood in this round of bargaining, the State would be seeking more changes than the Union; therefore, it made sense for them to present their initial package first.

In presenting its non-economic proposals, the State again pointed to the State's fiscal crisis, the projected structural shortfall of $1.5 billion for FY 2015, and indicated the proposal it was set to present represented the change the voters have indicated they wanted through the election of Governor Rauner. Therefore, the proposals were targeting increased efficiency and flexibility, including expanding management's rights and streamlining the layoff process. Lynch commented that there was "no way" the State's fiscal crisis would be solved at the bargaining table, and again stated that the Governor should go to the General Assembly to raise revenues.

The State made numerous, wide-ranging proposals seeking changes to many existing contract provisions. Among those proposals was a proposed deletion of provisions related to Art. I, Section 3, Integrity of the Bargaining Unit; Art. V, Checkoff/Fair Share; Art. XV, Upward Mobility Program; bumping rights in the case of layoff; leave of absences for union office; restrictions on subcontracting; Art. XXXII, Wages and Other Pay Provisions (with the exception of the provision regarding direct deposit); and automatic increase to benefit level afforded to non-bargaining unit members with no corresponding automatic decrease. The State proposed making substantial modifications to the language that had existed in the 2012-2015 CBA, including the following: limit the definition of grievance to alleged violations of an express provision of the CBA, restrict Union activity when it interfered with State operations, change calculation of vacation time accrual, delete four holidays (President's Day, Columbus Day, Friday after Thanksgiving, and Election Day), restrict overtime to hours worked beyond 40 hours in a week, modify payment of overtime in certain circumstances, add a disciplinary scheme for refusal of mandatory overtime, extend length of temporary assignments, allow for bypassing most senior candidate in order to address underutilization, allow for gender-specific assignments, eliminate restrictions on subcontracting, make the final CBA available online instead of providing that the CBA be printed by a union printer even if it is up to 10% more expensive than a non-union printer, and restrict employees' rights to wear politically partisan clothing or post politically partisan materials. Finally, the State also proposed a broad zipper clause and adding language that the CBA could be suspended in the case of emergencies.

The State made further proposals regarding MOUs between the parties. The State proposed deleting a number of MOUs, including those with the following titles: AFSCME Benefits Trust; Bargaining Unit Exclusion Procedure; Bumping of Trainee Employee; Call Back Pay; Fair Share; Governor's Volunteer Initiative; Labor Pool Side Letter; Mandatory Overtime;

Out of State Revenue Auditors and Revenue Auditor Supervisors; Part-time Site Technicians I and II and Natural Resources Tech I and II; Past Practice, Increase or Decrease in Fringe Benefits; Pension Credits; Personal Service Contracts; Personal Service and Vendor Contracts; Red Circling, Pay on Promotion; Revenue Tax Specialist Series; and Union Activities. The State proposed modifying a number of other MOUs, including those titled as follows: Affirmative Attendance Policy; Closure of a Facility; Commercial Driver's License; Commercial Driver's License Drug & Alcohol Testing; Grooming Standards; Layoff – Temporary, Provisional, Emergency Employees; New Positions within Split Classification; Non-Code Employees; Part-Time Employees; Position Classification – Promotions; Selection 3c Process; Social Service Career Trainee, Option 2; Special Grievances; Special Skills Side Letter; and Trainee Titles. Finally, the State proposed two new MOUs, one on Reasonable Suspicion Drug and Alcohol Testing and one related to Working Supervisors.

d. Union's Initial Non-Economic Proposals

On March 18, 2015, the Union presented its initial non-economic proposals. Prior to commencing negotiations for a successor Master Agreement, the parties had worked toward incorporating the CU-500 bargaining unit into the Master Agreement. The Union's proposals included provisions to accomplish that. In addition to CU-500 changes, the Union proposed additions to Integrity of the Bargaining Unit and Union Exclusivity and proposed deleting the section outlining the Rights Residing in Management. The Union proposed expanding language relating to non-discrimination and modifying the "loser pay" arbitration clause with a straight cost split. The Union also sought the right to use the State email system to communicate with its members and the right to allow local union officials to remain on state payroll while doing Union work, to be reimbursed by the Local. The Union also sought to impose additional restrictions for proceeding with discipline: (1) an employee would not serve any suspension until a grievance had been heard at the 3rd level of the grievance procedure; (2) the Employer must commence any pre-disciplinary meeting within 30 days of becoming aware of the underlying conduct; and (3) the Employer would be required to notify the Union of any counseling issued to a bargaining unit member. The Union also sought to have suspension pending discharge be a paid suspension, require the State to provide interpreters for investigatory interviews, and to have all discipline (not just reprimands or discipline for tardiness or absenteeism) removed from an employee's file after two years.

The Union proposed removing language conditioning vacation and holiday time scheduling on the Employer's operational needs. The Union also sought restriction on the timing of scheduled lunches. The Union further sought substantial restrictions on the State's ability to mandate overtime, and impose limits on the use of intermittent employees and the State's ability to rescind or change an employee's flexible hours. The Union also sought to restrict what information the Employer can provide to third parties related to bargaining unit employees, the Union, and matters related to collective bargaining.

e. State's Initial Economic Proposals

On May 13, 2015, the State made its initial economic proposals. Some of the proposal included in the economic package had been included in the non-economic package as well, such as proposals to limit vacation accrual, limit the amount of accrued vacation to be paid out at the end of State service or upon death, elimination of some holidays, reduction in time-and-a-half paid holidays (also referred to as "super holidays"), change overtime calculation, eliminate the Upward Mobility Program provisions, deletion of leaves of absence for Union Office, broaden the waiver clause, and allow for suspension of the contract in the case of an emergency. The State also reasserted deletion of a number of MOUs previously proposed for deletion in the State's non-economic proposal.

The State's initial economic proposals also included proposals not yet raised in negotiations, including: a proposal that employees voluntarily transfer to Tier II pension program, elimination of a number of titles subject to semi-automatic in-series advancement, elimination of uniform allowances at the Department of Veterans' Affairs, elimination of reimbursement for obtaining commercial driver's licenses, and replacement of references to AFSCME's Personal Support Program with "Employee Assistance Program," a program the State provides for non-AFSCME employees.

With respect to wages, the State again proposed eliminating longevity pay, pay adjustments related to classification upgrades, and maximum security pay; however, in this proposal, the State proposed that step increases would be frozen for the duration of the agreement. Moreover, the State proposed language that would make the economic terms of the CBA contingent on sufficient appropriations, and where appropriations were insufficient, the parties would further negotiate a supplemental agreement to address the circumstances.

The State's May 13, 2015, economic proposal also included its first proposal on employee healthcare (also referred to as Appendix A). The State proposed that the newly negotiated benefit levels would be effective January 1, 2016, unless otherwise noted, and left in place the benefit levels in the prior Appendix A for all services received through December 31, 2015. With respect to premiums, the State proposed deletion of the specific dollar amounts, and instead included language that employees would pay 40% of premium costs, capped at 9.5% of income for individual coverage and 40% of the premium costs for dependents. The State's initial healthcare proposal deleted most of the language regarding deductibles, coinsurance, and out-of-pocket maximums. In place of the specificity of the 2012-2015 CBA, the State proposed that the "final agreed plan-design will provide 60% actuarial value for active members and dependents." The State's proposal expanded the role of the previously established Joint Labor/Management Advisory Committee on Healthcare Benefits to include introduction of "cost savings including, but not limited to, overall plan-design changes that are categorized as 60% of actuarial value, with the employer covering 60% of associated medical claims. The State will conduct a Benefit Choice period following approval of plan-design." In light of this proposed change, the State also proposed deletion of language related to retiree healthcare.

f. Union's Initial Economic Proposals

On June 17, 2015, the Union presented its Economic Proposals. These proposals included extending double-time pay to employees who work 15 hours, instead of 16, in a 24-hour period, or 22.5 hours in a 48-hour period; extending double time pay for mandatory overtime where employees have been mandated three times in a quarter; amending language in the Upward Mobility Program article to include an annual allocation of $5 million; allowing returning intermittent employees to be eligible for insurance with a premium contribution not to exceed the rate that was effective when they were no longer scheduled; adding bereavement leave; treating vehicle accidents after working 15 hours as a service-connected injury; not counting absences related to service-connected injuries as leave under the Family Medical Leave Act (FMLA); extending paid maternity/paternity leave from four weeks to six weeks and extending this benefit to both parents even if both are State employees; increasing reimbursable costs for Attorney Registration and Disciplinary Commission (ARDC) and Bar Association fees for Technical Advisors and Hearing Referees from $300 to $500; and requiring reimbursement for required continuing education and/or certification courses and extending the ability to attend

courses on paid time to all employees for whom it is required rather than just attorneys and educators.

With respect to wages, AFSCME proposed a 2% increase in the first year, a 3% increase effective July 1, 2016, a 3% increase effective July 1, 2017, and a 3% increase effective July 1, 2018. The Union also proposed that effective January 1, 2016, "should the Bureau of Labor Statistics National CPR-U [Consumer Price Index for All Urban Consumers] exceed 3% (January to January), the pay rates for all bargaining unit classifications and steps shall be increased by the CPI-U in the subsequent year." AFSCME also proposed increasing longevity pay by $25 per month, to $100 per month above Step 8 for those with 10 years of service and three years at Step 8 and to $125 per month above Step 8 for those with 15 years of service and three years at Step 8. The Union also proposed allowing employees to continue receiving longevity pay if they change classifications due to promotion. AFSCME also proposed making employees at the Department of Human Services' (DHS) Illinois School for the Deaf eligible for bi-lingual pay, which they proposed to remain the greater of $100 per month or 5% of their monthly base pay. The Union also proposed a change to the practice of red-circling, which refers to when an employee is placed in a lower classification, often due to layoff, and is able to retain the salary of the higher title. When an employee is red-circled, he does not receive additional step increases or longevity pay. Under AFSCME's proposal, if continued red-circling would result in the employee being paid less than what he would be paid with the salary of the lower position, the employee would no longer be red-circled and would receive the higher salary and longevity pay if they had the required years of service. AFSCME also proposed adding language to allow a red-circled employee to receive longevity pay if they were red-circled as a result of a reduction in lieu of layoff of at least three pay grades. Finally, the Union proposed language that if the Employer failed to issue a general wage increase, the percentage of the general increase would automatically double.

In its initial economic proposal, the Union also included proposals seeking agreement for the parties to advocate for changes beyond those set out in a CBA between the parties. One such proposal called on the Employer to retain an independent expert to conduct a forensic audit of the state employee pension fund to investigate fees and bonuses paid to investment companies in light of investment returns. That provision also sought agreement for the parties to jointly advocate for amending the pension code to "(1) eliminate the exemption of hedge funds from

certain disclosure and conflict of interest standards, (2) model the Illinois State Board of Investment after the Illinois Municipal Retirement Fund, which has board members elected by participants in the pension system rather than appointed by state officials, and (3) establish a mechanism by which the pension fund board can compel payment of authorized pension contributions." The other such proposal was entitled "Meeting Illinois' Revenue Needs" and was set out as a new article to the CBA. The first line of this proposal read, "The Union and the Employer agree that our state budget cannot be balanced with existing revenue." It went on to list a number of principles on which the parties would work jointly to "modernize Illinois' tax system and rein in financial fees" before "any layoffs or service cuts are considered." These principles included the following:

- A fair tax system in Illinois will benefit the state economy, working families and communities
- Illinois can no longer afford to pay arbitrary and unreasonable fees to Wall Street financial institutions
- Financial institutions must be held accountable for unethical and questionable practices that have impacted Illinois' state resources and communities
- Frontline state employees can play an important role in building support for reforms throughout Illinois because they are active in their communities and can persuasively communicate the importance of public service
- Cooperation between the Union and Management can be the critical factor in overcoming decades of inaction in order to modernize the tax system

The proposal went on to seek the Employer's cooperation with the Union to advance a number of revenue generating measures, including:

- Identifying reforms to corporate tax loopholes, with a priority on those that research has shown to be ineffective, outdates and/or that unfairly favor one business or industry over another
- Expanding the base of the state sales tax to include consumer services to stabilize revenue generation and put sales tax policy more in line with the modern economy
- Supporting a Fair Tax constitutional amendment allowing an income tax that is adjusted in accordance with ability to pay, so that a greater tax burden is on the affluent rather than on middle income families
- Initiating fee transparency controls and negotiate a 20 percent reduction on all financial fees with Wall Street firms
- Negotiating and terminating the State's interest rate swap agreements with banks
- Requiring transparency in all financial contracts with institutions that do business with the State

- Ensuring everyone is paying their fair share by hiring additional revenue auditors, who collect $8 in taxes for every $1 they earn

In addition to the proposal laid out in its initial economic proposal, AFSCME also indicated its intent to add titles to the list of those that receive semi-automatic, in-series advancement, which it did on July 16, 2015. The Union further used its economic proposal to reject the Employer's proposal to pay overtime only after 40 hours in a work week.

The Union also made a healthcare proposal as part of its initial economic proposal. The Union proposed to extend full healthcare benefits, including 100% employer contribution for health, dental, vision, and life group insurance plans, to employees not considered full-time employees, so long as they are normally scheduled for at least 30 hours per week, and to employees who are in dock or suspension status for 30 or more calendar days. The Union's proposal also included moving oral surgery from the dental plan to the health plan, eliminating the restriction of orthodontic treatment only being covered for individuals age 18 or under, covering new eyeglass frames each year, and setting specific out-of-pocket maximums for each of three tiers of the Open Access Plan.

Like the State, the Union also proposed expanding the role of the Joint Labor/Management Advisory Committee on Healthcare Benefits. Most notably, AFSCME set out specific components to be included in a comprehensive wellness program established by the Committee. Specific components set out in the proposal include: health screenings, including a Personal Health Assessment and Biometric Screening; nutrition education, weight management, coaching, and other health education programs online or in a class setting to promotion health and wellness; broad access to preventative care programs; coverage for prescription smoking cessation medications and behavioral modification counseling for individuals who agree to make an effort to quit tobacco; premium reductions, co-pay waivers, and other plan incentives to drive education, behavior, and healthcare to improve participant's health and support healthier lifestyles; medical management (disease management and case management) to improve the treatment and health of participants with chronic conditions; and program monitoring to measure population health and program performance. AFSCME also proposed this Committee would work to evaluate existing coverage options to improve benefits and contain costs, research new initiatives and developments in the health care industry, make recommendations for achievement of significant and measurable savings in the cost of employee healthcare through the wellness

program, and make any other recommendations to the plan annually in January. To further this concept, the Union proposed additional wellness benefits, including reimbursement for up to $200 year for smoking cessation programs, up from a flat $200; reimbursement for participation in a weight loss program or nutrition or healthy living class up to $500 per year (up from a maximum of $200 for weight loss program); waiver of co-pays for prescriptions related to chronic conditions such as diabetes, asthma, hypertension and cardio/vascular disease; and reimbursement up to $300 per year for health club memberships.

AFSCME also proposed eliminating much of the Appendix B language related to retiree healthcare. Instead, it proposing that the Joint Labor/Management Committee shall ensure the Medicare Advantage Program conforms to Appendix A.

Finally, AFSCME proposed two new MOUs, one titled "Parole Agent Safety and Equipment," and a second titled "Reducing Inmate Recidivism Through Increased Rehabilitation Opportunities." The Parole Agent MOU sought the parties to seek additional funding to replace parole agents' vehicles or otherwise ensure the vehicles were properly equipped, to ensure that agents' body armor was replaced in a timely manner, and that the Employer develop an Officer Involved Shooting protocol. Through the Inmate Recidivism MOU, the Union proposed that "the Employer significantly improve education, vocational training, and transitional assistance for offenders in DOC," including the following specific steps:

1) By January 1, 2017, provide access to ABE, pre-GED and GED programs to the more than 3,000 inmates on the waiting list for such educational opportunities;
2) Hire a sufficient number of educators to ensure that the department can continue to meet inmate educational needs on an ongoing basis;
3) Ensure that each correctional facility has adequate technology, educational materials and classroom space to allow for an appropriate learning environment;
4) Expand opportunities for vocational education;
5) Provide for appropriate mental health treatment programs consistent with the Rasho settlement; and
6) Re-open and expand the number of Adult Transition Centers to aid inmates who have completed their sentences in finding employment and reintegrating in the community.

3. Packaging of Proposals and Packages on which the Parties Reached Agreement

As they had in prior negotiations, the parties put various proposals into packages and negotiated further on those packages. These packages were given titles for reference at the

bargaining table. When the parties reached agreement on a specific provision, they nearly always indicated such with the notation "TA," shorthand for "tentative agreement," next to the provision. The parties typically did not execute signed tentative agreements until agreement was reached on an entire article of the CBA. Further, at times, one party may propose moving a provision from one package to another, or linking acceptance of one provision to the other party taking specific action on another package.

During the course of negotiating a successor agreement, the parties were able to reach agreement on nine packages, each made up of a number of individual provisions. The agreed-to packages bear the following titles: Classifications and Filling of Vacancies; Miscellaneous Package; Hours of Work and Overtime Package; CU-500 Package; Integrity of the Bargaining Unit and Authority of the Contract; Transfer on Recall, Acceptance of Position, and Grading; Work Rules and Discipline; Temporary Assignment, Grading and Timeliness of Filling of Vacancies; and Grievance Procedure and Union Business. The provisions contained in these packages may have been discussed as part of other packages during the course of negotiations, but I describe them as they were placed on January 8, 2016.

a. Classifications and Filling of Vacancies Package

The parties negotiated over the provisions of the Classifications and Filling of Vacancies package on at least 14 days between May 5 and August 25, 2015. On August 25, 2015, the parties agreed to remove any outstanding provisions to other packages, leaving in the package the items on which they had reached agreement. The State withdrew ten of its proposals and agreed to the language as it appeared in the 2012-2015 CBA. The Union withdrew one of its proposals related to bumping for job assignments. The parties agreed to a number of provisions related to incorporating CU-500 bargaining unit members into the Master Contract, changes to provisions regarding employee transfers, notifying unsuccessful interviewees that the position was filled, and the deletion of a Labor Pool Side Letter.

b. Miscellaneous Package

The parties exchanged five proposals on the Miscellaneous package on four dates between June 16 and July 29, 2015, the date on which they had temporarily agreed to the provisions in the package. By July 29, 2015, the parties had each withdrawn a proposal deemed unacceptable to the other, the Union accepted the State's proposal to delete a proposed MOU allowing for reimbursement for employees to attend union negotiations, and the Union accepted

the State's proposal for a "Working Supervisor MOU," further clarifying the 21 titles to which the CBA's definition of "working supervisor" could apply. Other provisions discussed in earlier packages were moved to other packages for further negotiation.

c. Hours of Work and Overtime Package

The Hours of Work and Overtime package was discussed at least five times between June 29 and October 6, 2015. The parties exchanged proposals, reached agreement on a number of items, and on October 6, 2015, agreed to remove the remaining provisions in contention to an economic package for further discussion, which allowed the parties to reach agreement on the rest of this package. The parties agreed to negotiate further at the agency level (also referred to as "supplemental" negotiations) over provisions related to lunch periods and temporary changes to schedules for training or due to seasonal needs. In this package, the Employer agreed to the Union's proposals relating to notice given for changes to work schedules and scheduling and use of earned compensatory time. The Employer withdrew five proposals, and the Union withdrew another. Remaining issues in contention were moved to the economic package for further negotiation.

d. CU-500 Package

Prior to the start of bargaining sessions in 2015, the parties had met to discuss incorporating the CU-500 bargaining unit into the Master Contract; CU-500 had previously had its own CBA. The Union's initial proposals included provisions to merge contractual terms into the Master Agreement; however, the State had concerns that the proposal reflected an expansion of benefits to CU-500 members rather than just an incorporation of previous terms. In order to assist in the negotiation of these issues, the parties agreed to create a CU-500 subcommittee. The subcommittee met three times, and the parties created a package reflecting what was discussed in the subcommittee. Ultimately, the parties agreed on, or moved to other packages, with all but two of the provisions discussed in the CU-500 subcommittee. The parties agreed to defer one provision to supplemental negotiations and the Union agreed to withdraw the other proposal.

e. Integrity of the Bargaining Unit and Authority of the Contract Package

The Integrity of the Bargaining Unit and Authority of the Contract package was subject of a great deal of discussion and negotiation. At least eight proposals were exchanged and the parties discussed the topics on at least eight different bargaining dates before reaching agreement on all topics in the package on November 2, 2015. The topics covered in this package included

the State's proposal for additional broad and sweeping waiver language that would have limited the Union's ability to bargain over midterm issues, including the "impacts or effects of the State's exercise of its rights as set forth herein on salaries, fringe benefits or terms and conditions of employment, even though such subjects or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement." The State also sought the ability to suspend the terms of the CBA during times of emergencies where "the constraints imposed by this Agreement hinder the Employer's ability to provide services to the public without creating an unacceptable risk to the health and safety of the public." In keeping with its proposal to limit grievances to the express terms of the contract (discussed in the Grievance Procedure and Union Business package below), the State sought to have the parties agree that "no change in past practice with regard to an increase or decrease in fringe benefits enjoyed by employees shall take place without the mutual agreement of" CMS and the Union. The State also sought to amend CBA language to treat AFSCME like other labor organizations. Under AFSCME's 2012-2015 contract, if CMS increases benefits to non-AFSCME bargaining unit employees, those increases would be extended to AFSCME members, as well. The State proposed to apply both increases and decreases in benefits to AFSCME members. The State sought to return to the erosion language utilized in previous CBAs. Specifically, the State sought to replace "The Employer … will not take any action *having the effect* of eroding bargaining unit work" with "The Employer … will not take any action *directed at* eroding bargaining unit work." The State withdrew each of these proposals and agreed to status quo language; the withdrawal was accepted by the Union.

The State also accepted a Union counter regarding Employer Neutrality, which was designed to clarify that while the Employer would not oppose efforts of its employees to be represented by a union, the CBA did not limit the Employer's exercise of its rights under the Act.

The Union also proposed, then withdrew proposals in this package. The Union sought to add introductory language to the "Integrity of the Bargaining Unit" section noting that the Parties value a constructive and harmonious relationships built on trust, integrity and mutual respect and to that end, the Employer would commit to, among other things, provide the Union with various information related to its use of volunteers. The Union also proposed additional restrictions on the Employer's communications, similar to those proposed in the Ground Rules.

The parties also discussed a number of MOUs in this package, specifically Personal Service Contracts, Personal Service and Vendor Contracts, and the Governor's Volunteer Initiative. The parties agreed to move those proposals out of this package and continue to discuss them in the subcontracting package. With those moves, the parties reached tentative agreement on this package on November 2, 2015.

f. Transfer on Recall, Acceptance of Position, Grading Package

Various topics related to the filling of vacancies were discussed as part of this package. The Union had raised concerns about the amount of time it took to receive a graded application or to receive a decision when a grade is appealed, and the effect those could have on an employee's ability to receive a promotion. The Union proposed changing the Filling of Vacancies priority order to move intra- and inter-agency transfers from recall to the last priority, despite it having been historically the third priority. The Union also proposed language that would have placed additional obligations for filling positions where there had been a grade appeal. The Union sought to ensure that a selection was not made prior to all of the grades having been received, including the results of appeals of a grade denial. The Union also sought to impose a 14 working day deadline for processing grade appeals. Ultimately, the Union withdrew these proposals. The parties also agreed to move a proposal seeking to impose a 45 day deadline for placing an employee in a position for which he was selected to another package. In so doing, the parties reached a tentative agreement on this package on September 9, 2015.

g. Work Rules and Discipline Package

The parties exchanged numerous proposals in this package and discussed the topics on at least ten bargaining days. The State sought to further clarify its right to make rules of personal conduct and procedural work rules, and sought to limit its bargaining obligation before making changes to rules. The State also sought to limit union participation in pre-disciplinary meetings where the employee did not request union representation. The State withdrew these proposals.

The Union sought a number of changes from the discipline section of the 2012-2015 CBA. The Union wanted the State to notify it each time a bargaining unit member received a counseling. It also proposed that an employee not serve any suspension time until the 3rd level grievance had been heard. The Union wanted the CBA to include the promise that the Employer shall comply with the Ethics Act, where it had previously only said that employees agree to comply. In addition to the timeline of when discipline must be commenced after the pre-

disciplinary hearing, the Union also sought to place a 30-day deadline between the date the Employer was aware of the underlying conduct and when the pre-disciplinary meeting is held. The Union sought to have all discipline, not just discipline related to tardiness or absenteeism, be removed after two years without further discipline. The Union also wanted employees to be on paid status while serving a suspension pending discharge. The Union ultimately withdrew each of these proposals.

The parties also reached agreement on the Employer's obligation to provide interpreters as necessary for reasonable accommodation at meetings called by the Employer, such as pre-disciplinary hearings, and during any caucus time during the Employer's meeting. With that, the parties reached tentative agreement on this package on August 12, 2016.

h. Temporary Assignment, Grading and Timeliness of Filling Vacancies Package

This package, with its nearly 20 proposals discussed on 14 different bargaining days, went through a couple different iterations. Initially this package included only proposals by the State intended to increase management flexibility by doubling the amount of time an employee could be temporarily assigned and extending the length of time for detailing employees. The Union's proposals to limit the length of time bargaining unit Public Service Administrators can serve in non-bargaining unit positions was also part of the package. Union proposals regarding grading requirements for filling of vacancies language was added. The State also proposed paying employees the higher rate of pay for the time they actually performed duties of the higher title to the nearest quarter hour, rather than by half day. The parties ultimately met in the middle on the time lengths for using temporary assignments to fill a position; they agreed to 90 days, when the 2012-2015 language was 60 days and the State sought 120 days. The parties reached agreement on extending the length of time for grades to remain active from six years, to six years with the option of a six year renewal. The remaining proposals, including those seeking to place a time frame for grading applications and further extensions for temporary assignments, were withdrawn by the parties.

i. Grievance Procedure and Union Business Package

These issues were originally discussed separately before being packaged together. The State made a number of proposals to amend the grievance procedure. The proposals that garnered the most discussion were the State's proposal to limit grievances to alleged violations of the express provisions of the CBA and its proposal to move the Department of Juvenile Justice

(DJJ) to its own grievance committee. The State had, in its initial non-economic proposals, sought to eliminate paid time for handling grievances and to eliminate the language regarding payment for vacating an arbitrator's award. However, the State withdrew these proposals as it was putting the package together. The Union sought to increase the size of the Department of Corrections (DOC) grievance committee, and proposed that the cost of arbitration be borne equally by the parties, rather than through the "loser pay" system the parties have long employed. The proposals related to DOC and DJJ were removed from this package and placed in the DOC/DJJ Roll Call package. The State withdrew its proposals to change the definition of grievance and who paid for the attempt to vacate an arbitrator's award; the Union withdrew its proposal to split arbitration costs.

On the issue of Union business, the State's initial non-economic proposal, the State sought to put in place additional safeguards to ensure that union business did not interfere with the State's operations. For example, the State proposed requiring advanced notice and supervisory approval for Union activity during working hours, having grievance meetings held over lunch or other unpaid time, and limiting the Union's use of State property for political action. The Union sought limited expansion of its rights to include allowing employees who take time off from work for Union activity to remain in pay status on the condition that the local Union reimburse the Employer for the costs of keeping the employee in pay status and requiring the State to provide interpreters for union meetings.

After much discussion, the parties ended up withdrawing all of their respective proposals with the exception of the State agreeing to continue to provide certain information to the Union that it is already providing. The parties tentatively agreed to this package on July 15, 2015.

j. Miscellaneous Pay Provisions Package

As one might surmise from the title of this package, the proposals herein were those that had an economic impact that may have been taken out of other packages on the same topic. Since the proposals related to cost savings, it is not unexpected that the State proposed the majority of the items that were discussed in this package. The parties submitted at least 17 proposals on these topics and discussed the issues on at least 15 days.

The State proposed limiting call-back pay by paying time spent not in work status (travel time or the remainder of the mandatory two-hour period) at straight time rather than at the overtime rate. Similarly, the State proposed limiting stand-by pay to a guaranteed two hours'

pay, rather than four hours' pay, and paying only straight time except for the time the employee actually works if called in. The State also proposed deleting its obligation to reimburse employees for job-related courses, tuition costs, Attorney Registration and Disciplinary Commission and bar association fees, and providing State time for attendance at continuing legal education courses and costs of attaining a commercial driver's license.

The Union, on the other hand, proposed increasing the reimbursement level for Technical Advisors and Hearing Referees from $300 to $500 per year for Attorney Registration and Disciplinary Commission and bar association fees, and would extend the Employer's obligation to not just providing paid time to attend continuing education courses, but also reimburse for any attendance fee. It also proposed extending bi-lingual pay to DHS employees working at the Illinois School for the Deaf. The Union also sought to "undo" red-circling if maintaining the employee at the red-circled rate would result in that employee making less than they would otherwise be making in the classification via general wages and/or longevity pay. Finally, the Union also sought to impose a penalty on the Employer if, for any reason, there is a delay in making general wage increases. In that instance, the percentage of the general increase would double.

After much discussion and negotiation, the parties agreed to submit the issue of DHS bi-lingual pay to the DHS supplemental negotiations. The State withdrew its proposed changes to call-back pay, stand-by pay, and commercial driver's licenses. The Union withdrew its proposal on increasing reimbursement for attorneys and doubling any delayed pay increase. The parties reached agreement on the issue of red circling by dealing with the issue in an MOU, and reached agreement on reimbursement for job-related courses. With those movements, the parties reached agreement on January 7, 2016.

k. Article XXIV Personnel Files, Article XXVII Evaluations, Article XXXI Miscellaneous, Article XXXI Wages

The parties exchanged 15 proposals in the package between February and May. The package included a wide range of issues from timing of evaluations, wage garnishments, emergency closures, distribution of union literature, union bulletin boards, apparel in the work place, distribution of the agreement, and notification of leave balances. In this package, the parties successfully engaged in give and take, each withdrawing proposals, and each modifying in the direction of the other. For example on the topic of evaluations, the parties bargained over a grace period for completion of evaluations, with proposals allowing no grace period, counters

with six months, countered with two months, before settling on four months. Ultimately, despite having twelve different provisions in the package, the parties reached agreement on this package on May 12, 2015.

4. Packages on which the Parties Failed to Reach Agreement

On January 8, 2016, the parties had yet to reach agreement on twelve packages of proposals. These remaining packages were included in the State's last, best, and final offer. A copy of each package proposal included in the State's last, best, and final offer is attached to this RDO in Appendix A.

a. Wages and Steps

The parties discussed this package on nine different bargaining days and exchanged ten different package proposals, in addition to the proposals in the parties' respective initial economic proposals. The State's January 6, 2016, package was included in its last, best, and final offer.

i. State's Offer of September 8, 2015

On September 8, 2015, the Employer modified its initial proposal of a wage freeze and step freeze to include three distinct incentive bonuses. First, the State proposed a one-time, non-pensionable $1,000 bonus if the successor agreement is ratified prior to January 1, 2016. Second, the State proposed the parties develop and implement a merit incentive program to begin FY 2016. The proposal set out that the Employer may create an annual bonus fund for payout to individuals deemed "high performers or for a group's/unit's level of performance for the specific group/unit." Payments were proposed to be based on "the satisfaction of performance standards to be developed by the Employer in consultation with the Union." Third, the State proposed developing a gainsharing program, under which employees or departments may propose initiatives that would achieve substantial savings for the State. Once savings are realized, "the Employer may elect to return a portion of this saving to the employees who participated in the identified initiative." Payments under either the merit incentive or gainsharing program would be considered a one-time bonus offered as a non-pensionable incentive, noting 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." The proposal also indicated that "no less than twenty-five (25) percent of the employees subject to this Agreement will receive some form of merit compensation under such

programs," and that funding for the programs was subject to appropriation and limited to 2% of the base payroll for bargaining unit employees. Compliance with the programs' policies would be subject to the grievance procedure.

The parties first discussed the substance of the Employer's September 8, 2016, proposal on September 23, 2016. Lynch first confirmed that the incentives were intended to supplement the Employer's proposal of no general wage increase or step increase for the life of the contract. She then asked how "high performing employees" would be determined. Terranova indicated the parties would develop the program. Lynch also asked about whether there would be high performance standards for each position; Terranova stated that he would check but that he believed they would be developed by each agency with input from the Union. Lynch asked whether the proposal limited how much an employee could receive. If 2% of payroll was in the bonus pool and only 25% of employees received the bonus, then those employees could receive 4%, 6%, or even 8% while 75% of members received nothing. When asked about the rationale for such a plan, Terranova indicated that while not everyone does the same job the same way, the current system rewards everyone the same. The State indicated it was proposing to change the way employees are paid to make the system more fair and to reward those employees who are willing to step up to the challenge. The Union questioned how 25% of Correctional Officers could perform so differently from the other 75% to warrant a large raise, while others received nothing. During this initial discussion, Lynch became very upset. Lynch accused the State of coming in to negotiations with a proposal it did not know anything about and that whoever crafted the proposal had "never been to a fucking prison."[9] Lynch indicated that the State's

[9] Terranova testified that when Lynch was making these statements across the table, he understood Lynch to have said that whoever came up with the merit pay proposal "should go to fucking prison," meaning that the proposal was so bad it was criminal. Lynch and Newman deny that Lynch made that comment and instead testified that the context of her comment was that if a person had been to a prison and seen what correctional officers do, they would not have made the proposal. Of course, both Lynch and Newman have reason to sanitize inflammatory remarks that would shed an unflattering light on the Union. Because this interaction appears to have been a highly charged, emotional exchange, I find that Terranova, Lynch, and Newman could have been susceptible to misremembering the exact phraseology. Despite this, I credit Lynch and Newman, primarily because the bargaining notes for both the Union and Employer reflect a more benign comment. The Union's notes reflect, "Whoever dreamed this up never worked a day in a prison or a caseworker, or a Vet's Home." The State's notes reflect the comments as, "People who came up with this ought to go to a fucking prison…" Neither Lynch nor Newman dispute that Lynch may have used profanity in her comment on this point. That I credit Lynch and Newman on this point does not mean that I believe that Terranova was lying. I do not. He credibly testified as to what he understood was said to him in a heated discussion at the table. Similarly, the fact that the Union's

proposal was not one they would agree to. Moreover, she said that the proposal was an insult to all State employees.

ii. *Union's Offer of September 23, 2015*

Later in the bargaining on September 23, 2015, the Union indicated it was not going to agree to pay proposals "with no actual way to effectively and fairly monitor" whether people are high performing and that it was "not interested in bonuses." The Union indicated it calculated the $1,000 bonus for every member to be approximately 1.5%. Therefore, it then submitted a wage proposal which modified its initial proposal by decreasing the first year wage increase from 2% to 1.5%, while maintaining a 3% raise for each of the three other years of the contract. It also retained the provision that if the Consumer Price Index exceeded 3%, the pay rates and steps would be increased by the Consumer Price Index the following year, as well as a $25 increase in longevity pay per month.

iii. *State's Offer of October 6, 2015*

The State next presented a wages and steps package on October 6, 2015. In that package, the State added provisions from the parties' initial proposals, including: Intermittent Schedules, rejected the Union's proposal that no more than 5% of employees in a classification be intermittent employees; Promotion and Conversion of Intermittents, rejected the Union's proposal to promote all intermittent employees instead of just IDES Program Representatives to full-time positions in specific circumstances; Wage Schedule, State added to its proposal that the economic terms of the CBA would be subject to appropriation; Promotions/Voluntary Reductions, held to its deletion of a provision that longevity pay be considered in calculating promotional pay; Steps, added language to clarify that step increases will be frozen for the duration of the CBA; Severance Pay, accepted adding CU-500 to the 2012-2015 language; General Increases/Wage Modifications, rejected Union's proposed increases and held to its deletion of longevity pay language; Classifications/Upgrades, held to deletion of language on step increases resulting from negotiated salary upgrades; Court Reporters, State withdrew; Department of Human Services and Department of Veterans' Affairs, withdrew proposal to limit

---

notes do not include profanity is consistent with the Union note takers practice. Where the State's note takers took down the use of the word "fuck" 13 times, the Union's notes reflect it only once (on May 13, 2015, when Lynch directed Terranova to take the message "that this is not a fucking corporate takeover" back to his principals). Many of the occurrences noted in the State's notes were corroborated by Newman (for example, on October 6, 2015, Lynch told Bennett if he did not want to listen to her "Get the fuck out! Get the fuck out!").

increase in pay to LPNs working as lead worker or in the absence of an RN; Maximum Security, State withdrew proposal to eliminate maximum security pay; Academic Year Educators, held to language that step increases will be frozen for the duration of the CBA; Meeting Illinois' Revenue Needs, rejected; MOU regarding Out of State Revenue Auditors and Revenue Auditor Supervisors, withdrew proposed changes; Part-Time Site Technicians I and II, Natural Resources Technician I and II and Clerical Employees at the Department of Natural Resources Side Letter, held to deletion of side letter. The State also held to its September 8, 2015, proposal regarding $1,000 bonus, merit incentive pay, and gainsharing.

iv. Union's Offer of October 6, 2015

The Union responded on the same day. AFSCME agreed to each of the State's withdrawals and designated those items as tentatively agreed to within the package. The Union rejected each of the State's proposals that sought to freeze steps or increases and the State's bonus, merit incentive pay, and gainsharing proposal. With respect to the merit incentive pay proposal, Lynch again asked the State about standards that would be developed for each position, noting that the Union was not interested in the programs, but wanted to understand the proposal. AFSCME held on its proposal on the Promotion and Conversion of Intermittents. The State stated its concern that by creating one full-time position where two intermittent employees worked more than 1500 hours a year could leave the agency short-staffed during high volume time and over-staffed at other times. AFSCME also rejected the State's proposed deletion of the DNR Side Letter. That day, the Union also countered its Intermittent Schedule proposal to allow 10% of employees in a classification to be intermittent, up from 5%. Another counter presented that day related to steps. The Union sought to add the following language to the Steps provision of the CBA, "The Employer and the Union agree that a pay schedule that includes periodic increases, such as step increases, that recognizes the value of employees' accumulated skills and experience is an important element of the state's ability to recruit and retain qualified and motivated employees." The Union contended that this language could be incorporated into the CBA regardless of whether the parties ended up regarding freezing or allowing steps. Finally, the Union countered by modifying its "Meeting Illinois' Revenue Needs" proposal to delete the provisions intended to have the State work with the Union to advance revenue generating measures.

There was additional discussion of the State's merit incentive pay proposal on October 20, 2015. The Union presented the State with a memorandum created by Merrill gathering data and studies regarding merit pay programs. The Union contended that the memo, entitled "Pay for Performance – Why it doesn't work in the public sector" supported its opposition to merit pay. Lynch again pointed out that the State had not provided standards for core titles. When Terranova indicated that the State's team was putting something together for the Union to review, Lynch responded, according to the Union note taker's notes, that she hoped they were not spending too much time on it, as the Union does not "intend to agree to a non-fair pay system."

v. *State's Offer of November 3, 2015*

At bargaining on November 3, 2015, the State disputed the Union's scholarly memorandum on merit pay. One issue discussed was that merit pay has been shown to work when it is seen by employees as fair. Lynch responded that she absolutely did not believe there was a way to construct a fair merit pay system or that there is evidence that the current system of giving raises to all employees was unfair. After this discussion, the State made another package proposal with the modifications: allowing those employees currently receiving longevity pay to continue receiving it over the life of the CBA as long as they remain in the same or successor classification; made a technical change to add the specific date of September 8, 2013 for application of Steps 1a, 1b, and 1c; withdrew its proposal regarding negotiated salary upgrades; and modified its gainsharing proposal to reflect that rewards would be given for saving from state funds and not other funds, such as federal funds, from which the State is prohibited from disbursing rewards.

vi. *Union's Offer of December 2, 2015*

On December 2, 2015, the Union made another proposal on this package. It modified its wage proposal to lower its second year increase from 3% to 2.5%. It also agreed to the State's withdrawal of its proposal on negotiated salary upgrades. Other than these changes, the Union held to its proposals and continued to reject the State's proposals. There was no substantive discussion of the package on that date.

vii. *State's Offer of December 17, 2015*

The next bargaining day, December 17, 2015, the State again made a proposal on this package. The State withdrew its proposal to make economic terms subject to legislative

appropriation and its proposal to eliminate the DNR Side Letter regarding converting part-time Site Technician positions to full-time. Otherwise, it held to its proposals and rejected the Union's proposals. When presenting its package, the State indicated that while it was rejecting the Union's proposal on scheduling of intermittents, it would welcome information about where that was a problem. There was no further discussion.

viii. State's Offer of January 6, 2016

The State modified its package proposal. The January 1, 2016 deadline for ratification triggering a $1,000 bonus had passed. The State now proposed providing the one-time, non-pensionable $1,000 bonus to employees who are "in active employment status on June 30, 2016 and who have missed fewer than five (5) percent of their assigned work days." It also clarified what Terranova indicated was an oversight that the State "shall," rather than "may," create the bonus fund for its merit pay proposal. The bonus pool would still consist of funds in the amount of 2% of the bargaining unit's base payroll. However, the State modified the proposal with respect to disbursement of the funds. One quarter of the pool (0.5% of the bargaining unit pay payroll) would be distributed among all members who have "missed no more than seven (7) of their assigned work days (or no more than 56 of their assigned work hours) in the fiscal year in which a bonus is distributed" and "have committed no work policy violations during the same fiscal year." The remaining three-quarters of the bonus pool (1.5% of the bargaining unit payroll) would be distributed to no less than 25% of employees based on the satisfaction of performance standards "to be developed by the Employer in consultation with the Union" as part of a merit incentive program. The State held to the remainder of its proposals and continued to reject the Union's proposals in the package. Terranova stated that the State was modifying its proposal in light of the Union's position at the table that it would not agree to a contract that did not provide an increase to all employees. Lynch pointed out that the State's proposal was not universal and penalized people who were sick by prohibiting them from receiving merit pay.

ix. Union's Offer of January 6, 2016

On the afternoon of January 6, 2016, the Union made its own package proposal, wherein it withdrew its proposal on intermittent schedules and its introductory language on the value of step increases. It held to its other proposals and continued to reject the State's.

There was contentious discussion about these proposals on January 6, 2016. Lynch again stated that the Union would not agree to a system that penalizes people for getting sick, which

could be seen as retaliation in violation of the FMLA. She also said that the Union would not agree to a program where some people receive a bonus based on criteria where no one knows what the determining factors are. According to the State's bargaining notes, Lynch asserted that the Union would not "agree to fuck" employees. Terranova immediately responded that he did not appreciate Lynch's characterization of the State's intentions, specifically asserted that the State did not intent to punish sick people. Terranova further explained the purpose of the proposal, which was in response to the Union's contention at the table that it would not agree to bonuses unless everyone receives them. Terranova then asked the Union to give them something to work off of rather than just rejecting it out right. Lynch responded that she did not think creating an agreeable program could be done. Terranova again asserted that he was there to negotiate in good faith, was trying to address the Union's concerns, and asked the Union to make a proposal to help the parties reach an agreement. Lynch responded that it is a bad idea and that gave the example of a cancer patient receiving chemo not receiving a bonus based on attendance. Finally, Terranova stated that if the Union was not going to agree, to just say so and the parties would move on. Lynch responded that she thought she had already done that.

x. Union's Offer of January 8, 2016

On January 8, 2016, the Union made another proposal on this package. The proposal had three substantive changes. First, the Union modified its proposal of $1,000 for the first year by clarifying that it was a stipend and would be given to all employees who are in active status as of the effective date of the agreement. Second, AFSCME modified its wage increase proposal to lower its second year increase from 2.5% to 2.25%. Finally, it withdrew its proposal to increase longevity pay by $25 per month. The Union's proposal maintained a 3% raise for each of the last two years of the contract and the provision to allow for higher increases should the Consumer Price Index exceeded 3%. Other than these changes, the Union held to its proposals and continued to reject the State's proposals.

In describing its proposal, the Union indicated that it preferred the word stipend, as a bonus implied it was something in addition to what an employee is currently getting. Moreover, the Union, for the first time, indicated that its lawyers believed that any bonus or stipend must be pensionable or that bonus or stipend would be unconstitutional. By giving the stipend to all employees, there is no concern about punishing sick people. The State did not respond directly to this proposal, but raised it in the context of its statement regarding impasse.

b. Appendix A – Health Insurance

The parties both made proposals with respect to health insurance in their initial economic proposals. On May 27, 2015, the parties had general discussions regarding economic issues. Lynch indicated that the State's proposal of instituting a Bronze level health insurance plan would be "astronomical" for families and would result in enormous consequences. She further indicated that the proposal shows not a shred of respect for State employees and would put Illinois at the rock bottom of the entire nation. The Union stated its belief that the State was going in the wrong direction. In response to these comments and those related to other economic proposals, Terranova asserted that the administration did not intend to show any disrespect; rather, it was putting everything on the table that could save money. Lynch criticized the Rauner administration for its "cronies being paid more money than the Quinn administration," its "20 somethings being over paid," and leaving "corporate loopholes" intact while State employees are being "nickled and dimed." Terranova pointed out that the current proposals were not as far-reaching as the Quinn administration's proposal for a two-tier reduction in pay and the parties were still able to reach an agreement. Terranova further explained that they were at the table to look at everything in the agreement and that corporate taxes were not in the contract and could not be settled at the table; bargaining would be done at the table and that is where the parties would reach an agreement.

Again, on June 29, 2015, the parties generally discussed health insurance. The State was advocating for setting up a subcommittee; however, the Union wanted the State to respond to its proposal first. The Union was unsure how a subcommittee would work when the parties were so far apart and the proposals were not "synchronized."

On July 1, 2015, the Union put its initial health insurance proposals in a document that contained all of the prior Appendix A language. This was not a new proposal, but a reformatting of its initial proposal. The Union again asked that the State respond in the format of the prior version of Appendix A before establishing a subcommittee.

i. State's Offer of August 13, 2015

On August 13, 2015, the State made a new proposal on health insurance and made it in the format of the prior version of Appendix A, as requested by the Union. The proposal contained two options. The first option was to keep current benefits at increased premium levels. The proposal reflected premium increases that approximately doubled. The State's proposal

reflected an effective date of January 1, 2016, rather than July 1, 2015, as was initially proposed. The proposal also included a provision that the stated premium contributions were based on the FY 2016 rate analysis for the current plan-design. Future premiums would be subject to change to achieve the same 60/40 aggregate, net actuarial value cost-sharing between the State and its employees as outlined in this Appendix A. The State also modified Section 7 of Appendix A, related to the Joint Labor/Management Advisory Committee on Healthcare Benefits. This second option of the State's proposal provided for an additional plan to be created by the Joint Committee, which would allow employees to pay the same premium as they were paying as of June 30, 2015, with reduced benefits.[10] In this respect, the proposal stated as follows:

> 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 amount, by salary tier, as those in place on June 30, 2015. Notwithstanding the above, employee premium contribution amounts may be increased or decreased in proportion to net insurance liability changes. 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 A. The Joint Labor/Management Advisory 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.

The proposal also provided that the Committee would be charged with seeking to identify an additional $150 million in annual savings for FY 2017.

There was no discussion of the proposal on that date.

On August 27, 2015, the parties again discussed a health care subcommittee. Lynch had agreed to have a subcommittee to discuss technical issues, but not to negotiate. Despite this, the subcommittee had yet to meet. The State noted its frustration that there had not been discussion in a subcommittee. Lynch reasserted her preference to not discuss economic issues until the language issues were completed, or nearly so. She believed that economic discussions would not be fruitful until the language issues were completed, namely because the State "came in with mammoth changes to weaken [the] Union with justification of cost and most have nothing to do with cost," while the Union came in with "very modest proposals." She also contended that the subcommittee would likely face difficulty in continuing discussions without getting into negotiations.

[10] The parties agree that a plan with current premium contributions and resulting in a cost split of 60/40 of the net actuarial value would have to reduce benefits to the level of a silver plan under the ACA.

ii. *State's Offer of September 9, 2015*

On September 9, 2015, the State again modified its proposal on health insurance. The substance of this proposal had been included in a memorandum from Jason Barclay to agency directors. The proposal contained a number of new provisions, including:

- The Joint Labor/Management Advisory Committee would establish four additional salary tiers for additional premium contributions for employees who make more than $100,000.
- State would offer another plan [(Option 3)] between the "same premium, with less rich benefits"/silver plan in Section 7 [(Option 2)] of the August 13, 2015 offer and the "roughly doubled premium/platinum plus plan" of Section 2 of its proposal [(Option 1)]. The Joint Labor/Management Advisory Committee would "provide for the development and introduction of overall plan-design options and premium contributions" to, on average, evenly split costs between State and employee while resulting in the same cost share of 60/40 of the net actuarial value. This plan would be a gold plan under the ACA.
- Employees would be able to keep current benefits at the same cost sharing level (Option 4/retiree opt-out). "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." If an employee selects this option, they may not be listed as a dependent of their spouse/partner, State employee to avoid being responsible for their health insurance in retirement.
    - "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 State also agreed to implement other initiatives designed to achieve $150 million in combined annual savings.

This proposal was not discussed at the table, but was considered by the subcommittee at its September 17, 2015, committee meeting.

iii. *State's Offer of October 20, 2015*

The State again modified its proposal on health insurance on October 20, 2015. This time the State added a fifth option of establishing a private exchange from which employees would have the ability to select plans of varying richness. The additional language is as follows:

> 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. The 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 ration of cost sharing between the State and employees. Full payment of such an amount would be contingent on employee's participation in wellness initiatives. Lack of participation in such initiatives would result in a reduction to the State's contribution in proposal to the estimated cost savings that such an initiative would achieve.

The State also included additional language regarding 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.

The parties did not have a substantive discussion of the State's proposal on October 20, 2015. However, Lynch reiterated that the Union was awaiting health care costing information related to the Teamsters agreement. Terranova indicated that he had passed the request on and was awaiting a response.

The parties also discussed the State's health insurance proposals at the table on November 18, 2015. Newman walked through what the Union believed would be the financial result of the State's proposals, including premium increase on average of $3,100 per year. Newman framed the increases as pay cuts in the face of the State proposing no wage increases, noting that bonuses were not salary increases. Newman then indicated that the Union rejected the State's 60/40 split and encouraged the State to negotiate specific costs so that employees would have certainty. Newman indicated that the Union hoped the Employer's next proposal would not just be a further tweak of the 60/40 split. Terranova identified that the State had

made significant movement from its admittedly "severe" initial proposal and urged the Union to recognize the financial realities, especially in light of the fact that there was still no State budget. Newman responded that there was not an inability to reach a budget, the hold-up is the Governor's intent to destroy collective bargaining. Terranova disputed Newman's characterization of the Governor's intent, emphatically stating that the State had made many proposals indicating its intent to reach an agreement and that the status quo cannot be sustained. Newman denied the Union's approach was a continuation of the status quo and countered that bargaining is "not a sterile environment" where the Union can ignore what is happening outside. Terranova noted that it was the Union that had tried to change the Act. He also reiterated that the Union should not pay attention to what is happening away from the table. "We are here to reach a successor agreement[.] [W]hat I say at this table is what the administration wants."

iv. State's Offer of November 19, 2015

In its November 19, 2015 proposal on health insurance, the State proposed capping premium increases for employees making more than $100,000 per year to be no more than 10% greater than the lower tiers, and limited premiums increases or decreases resulting from increased or decreased liability to be limited to no more than 10% per year. The proposal also added, "In the event that the Joint Labor/Management Advisory 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 l, 2016, the State may develop and implement a plan design that satisfies these requirements." It also added language that would allow representatives from other unions to participate in the Joint Labor/Management Advisory Committee, "if such participation is required by the agreement between the State and such unions."

With respect to the proposed private exchange, the State proposed the following additional language:

> [S]uch 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.

After submitting this proposal, the Union asked whether each of the four tiers for employees making over $100,000 would have 10% increases. Terranova indicated he would

check. AFSCME also asked what would happen if the Committee was unable to identify an additional $150 million in savings, and indicated its understanding was that the State would implement a plan to reach that savings. Terranova first said that he would check, but later confirmed that the language reflected that the State could implement. In response to the Union's question about how soon a plan would have to be designed in order to be implemented by July 1, 2016, Terranova indicated that the State would provide that answer at the next health insurance subcommittee meeting.

v. *Union's Offer of December 2, 2015*

On December 2, 2015, the Union made its first health insurance proposal since July 1, 2015. In it, AFSCME proposed no change for the first year of the contract and an approximately 5% increase in premiums, ranging from $11 to $14 per month for individuals and $8 to $9 for dependents in the Quality Care plan and slightly less in the Managed Care plan, for all other years. At the table, AFSCME indicated it did not want any retroactive premium increases. The Union's proposal still included the increased benefits it sought in its initial economic proposal. The Union included no counter to any of the State's proposed changes. In submitting the proposal, AFSCME indicated that it was holding to plan design costs and rejecting the State's proposals. It also indicated that while it did not like what the State had proposed, it was open to discuss frameworks, but would not agree to any changes in later years of the CBA. Lynch said at the table that she wanted to indicate to the State that the Union was prepared to bargain over health care.

Newman testified that the premium increases would result in a $6-7 million savings just from the AFSCME bargaining unit members, which would be tripled by applying it to the other participants in the State's health insurance program. McDevitt testified that the Union's proposal provided for no savings, because the increased benefits cost approximately as much as the increase premiums would provide.

vi. *State's Offer of December 17, 2015*

On December 17, 2015, the State made another health insurance proposal. The proposal included each of the five options it had proposed between August 13, 2015, and November 19, 2015, and was included in its last, best, and final offer. This proposal was modified to include introductory language changing the effective date for any changes from December 31, 2015, to July 1, 2016, essentially leaving the current health insurance benefits for the first year of the

CBA. The State contends that this change reflects a concession of approximately $100 million in lost savings. The Union contends that this was not a concession but rather a recognition that the State was unable to make programmatic changes as quickly as would have been required to implement January 1, 2015. The State did not say that this proposal was their last, best, and final offer or that it did not have further room to move. However, it was ultimately included in the State's last, best, and final offer.

vii. Union's Offer of January 8, 2016

On January 8, 2016, the Union presented another proposal on health insurance. The proposal included matching the State's July 1, 2016 effective date, and modified its proposal to increase deductibles for employees and dependents by $25 per year, but retained the additional benefits. The Union did not provide a costing for the deductible increase, as it was still waiting for information from the State in order to calculate the amount of savings from this move. Lynch did not assert that this was the Union's last proposal or that it did not have room to move further.

c. Subcontracting Package

This was the first issue discussed by the parties after reaching agreement on Ground Rules. Once the parties began to package proposals, subcontracting language was included in 16 package proposals, 7 submitted by the Employer and 9 submitted by the Union. The topic was discussed on a total of 21 bargaining days. Over the course of bargaining, subcontracting provisions were included in packages containing other issues, such as Check-off/Fair Share and Integrity of the Bargaining Unit. Ultimately, the parties bargained over a package that addressed only subcontracting, which included managed competition and two MOUs related to personal service or vendor contracts.

i. State's Offer of May 12, 2015

Subcontracting proposals were initially included in a package with Check-off/Fair Share provisions and the MOUs on Personal Service Contracts and Personal Service and Vendor Contracts on May 12, 2015. This initial package contained the same proposals as the State's initial non-economic proposals, namely, deleting all subcontracting language but the reserving the right to subcontract, and deleting both MOUs. The Union responded to the proposal, saying that the Union was looking to ensure quality and accountability for State work. The State's proposed overhauling subcontracting would result in complete unrestricted subcontracting and does not provide for the responsibility or accountability necessary for privatization that is fair to

workers. Lynch also stated that the government should not be involved in profiteering. For those reasons, the Union verbally rejected the entire package the same day.

Subcontracting was also discussed on May 26, 2015, when the Union asked what standards would be applied to subcontracting decisions. Terranova explained that the State was looking to streamline the process and would be confined by the Procurement Code and Ethics Act. On June 1, 2015, the State verbally held to its subcontracting proposal; the following day, the Union followed suit, verbally holding to its rejection. On June 3, 2015, the Union asked that subcontracting issues be bargained separately from Check-off/Fair Share issues and the packages be separated.

ii. State's Offer of June 17, 2015

On June 17, 2015, the Employer made a second package proposal covering the various topics. On the issue of subcontracting, the Employer proposed new introductory language, set forth below, and continued to seek deletion of the Personal Service Contract MOU and the Personal Service and Vendor Contract MOU.

> The Employer reserves the right to subcontract bargaining unit work. The decision to subcontract, including the Employer's reasons for subcontracting. is an inherent management right. Unconstrained and unlimited by any provision of this Contract. Grievances regarding subcontracting are limited to procedural issues arising under this Article. Whenever the Employer's decision to subcontract services will have an effect on bargaining unit employees, the managed competition procedures within this article shall apply.

This proposal also introduced the concept of managed competition. Its proposal was as follows:

> a) The Parties agree that a fair and open competition between potential vendors is an effective method for contracting out services performed by public employees. The Parties further agree that groups of incumbent employees, including bargaining unit employees, competing against private vendors may improve the quality of bids and proposals from private vendors and improve the efficiency, productivity, and sense of ownership public employees have in the work they perform for the citizens of Illinois regardless of decisions to subcontract.
>
> b) Whenever the Employer's decision to subcontract will have an effect on bargaining unit employees, the Employer will forward all public notices regarding the request for services (bid and proposals) to the Union. The Union will be afforded at least 30 calendar days to study the parameters of the intended contract and to draft its counter bid or counter proposal. However. the Union will not be allowed more than the total number of days between the public notice and the close of the bidding period. The Employer will consider the Union's bid alongside all private bids and proposals before awarding a

contract or electing to use the labor of public employees to perform the services.

c) Union Bid & Proposal Team and Management Cooperation.

(1) The Union will designate a Union Bid & proposal Team (UBPT) comprised of up to four (4) bargaining unit employees. Bargaining unit employee participation In the UBPT is subject to supervisory approval based on the operational needs of the Agency. The Union may not change the designated members of the UBPT except with the Employer's approval and with good cause shown.

(2) The employee members of the UBPT shall be granted administrative leave for the period of time in which they are preparing the Union bid or proposal. They will be paid at their regular rate during this period, but any hours spent working on the bid or proposal will not count as hours of work for the purpose of calculating overtime.

(3) The Union may supplement the membership of the UBPT with others, including Union employees and non-public employees with the following limitations: (a) no one may assist the UBPT if they are involved in any other part of the bidding and source selection process, including the creation of bids for private vendors who are bidding on the request for services or any member or individual assisting members of the services evaluation team; (b) no individual will be paid by the employer for work on the Union bid or proposal except for the four bargaining unit employees officially designated by the Union as members of the UBPT.

(4) Management shall designate up to four (4) individual managers and supervisors who will work with the UBPT to assist in creating the Union's bid or proposal. Designated bargaining unit employee members of the UBPT will continue to have access to employer facilities as if they were not on administrative leave, including access to employer information systems, such as computer and electronic mail resources to prepare the Union's bid or proposal (but not access to any confidential information in violation of the Procurement Code). However, in an effort to maintain an objective and fair bidding process, no employee, including managers, can assist the UBPT if the employee is also involved in the contractor selection process, including those who would be prohibited bidders under Section 50-10.5 of the Procurement Code. Similarly, the UBPT is prohibited from accessing confidential information not readily available to the public.

(5) The Employer and the Union understand that any interaction between the UBPT and any individual that would have been prohibited under the Procurement Code for private bidders or private entities making proposals will disqualify the Union from submitting a bid or proposal to the Employer under this Article.

d) Final Award, Meet and Beat, Appropriate Arrangements for Affected Employees, and Incorporation of Union Bid or Proposal as Part of this Agreement.

(1) The Union bid is due no later than the close of the public bidding or proposal process. Upon timely submission, the Employer agrees to consider the Union bid or proposal alongside the bids and proposals submitted by private vendors. The decision to select a private vendor's bid or proposal or the Union bid or proposal is a matter of inherent managerial discretion.

(2) When a Union Bid meets the technical requirements of the solicitation, objectives and goals of the public notice requesting services and provides lowest cost to the Employer, or the Union Proposal results in the highest points awarded under the Procurement Code, the employer will endeavor to forgo contracting out and instead comply with part four 141 of this subsection (d) of this Section so that the services will continue to be provided by public employees.

(3)When the Employer decides to accept a bid or proposal from a private vendor, the Employer will inform the Union by forwarding the public notice of award to the Union and to the members of the UBPT. Such notification is not necessary for renewal of contracts, if the Union has been notified of a previous contract for such work, unless there is a substantial modification to the scope of work or cost in the renewal of the subcontract.

(4)When the employer decides to accept the Union Bid or Proposal as prepared by the UBPT, the Union Bid or Proposal shall be incorporated as an amendment to this Collective Bargaining Agreement, and fully binding upon the Parties as a part of this Agreement.

(5) The employer may also decide, within its complete discretion, to adopt the managed competition procedures whenever the Employer decides to subcontract out work, even when the decision to subcontract will not affect bargaining unit employees.

Terranova explained that this new component was in response to the Union's stated concerns with the proposal to simply eliminate all restrictive language. Terranova also indicated that the State looked for examples, including one advocated by AFSCME, and elements were included in the managed competition proposal submitted that day. There was no discussion of the proposal that day. Later, at the table, Lynch responded to the assertion about managed competition being advocated by an AFSCME council from another state, describing it as not a path to go down, but a last resort.

iii. State's July 15, 2015 Offer

On July 15, 2015, the State removed Fair Share concerns from the package with the subcontracting proposals. This time the State packaged proposal on Integrity of the Bargaining Unit with the subcontracting issues. The parties did not discuss the package on that date.

iv. Union's Offers of August 26 and 27, 2015

On August 26, 2015, the Union submitted a stand-alone proposal on subcontracting encompassing their initial proposal, as well as additional introductory language: "In addition, it is the policy of the Employer to work with the Union to ensure the input of frontline employees when consideration is given to subcontracting any work currently performed by bargaining unit employees in order to be able to fully evaluate the desirability and feasibility of proposed contracting out."

The majority of changes the Union proposed were placed in a new section of the Subcontracting article:

> A. The Union and the Employer agree that services provided by the State of Illinois are crucial to the well-being of the broader community and that privatization of an state government function without the/proper safeguards can be destructive to the services upon which the public relies. The parties further agree that public services should never be turned over to companies that seek to make excessive profits at the expense of service quality, public accountability, or fair treatment of employees.
>
> B. The parties further agree that when privatization does occur, state government must hold contractors accountable for their performance, and ensure that the public receives quality services at a reasonable cost. Proper oversight is also needed to protect public health and safety, allow government to catch waste, fraud, and abuse in real time instead of long after the fact, and correct mistakes before they result in serious harm.
>
> C. In order to ensure that there is no profiteering on the public services vital to Illinois citizens, the parties agree that all subcontracting of state services shall be based on the following principles:
>
> l) The public is entitled to and should receive high quality public services
>
> 2) Many state services are not readily replicated in the private sector and thus have unique workforce experience and skill requirements.
>
> 3) Employees who perform those services should be fairly compensated for their work
>
> 4) Savings shall not be achieved through cutting employees' wages, health insurance, or other compensation

5) There are certain core governmental functions that should not be privatized

6) Justification for privatization must be demonstrable and quantifiable

7) Privatization shall not result in waste or gross inefficiencies

8) Awarding and monitoring of contracts must be subjected to the highest ethical standards

9) Political considerations should never be a factor in deciding to privatize a public service.

10) There must be rigorous monitoring and sound evaluation procedures on an ongoing basis if any service is privatized.

D. The parties agree that when state government considers privatization of any state service, there must be compelling operational and/or economic reasons for such consideration and that the State must be able to demonstrate:

1) That the such subcontracting will not in any way diminish the quality of the service provided;

2) That such subcontracting can achieve demonstrable savings sufficient to justify the disruption attendant upon any subcontracting process.

E. No privatization of state services shall occur except in accordance with all provisions of the Agreement. The parties further agree that state contractors shall be required to comply with all non-discrimination laws and regulations, all health and safety standards, and any other applicable state or federal laws and regulations. The parties further agree that privatization shall not be used as a means to deny employees the right to union representation, to drive down employee wages and benefits, or to otherwise diminish the rights of employees. To that end, the Employer agrees that:

l) All contracts are subject to an open and transparent competitive bidding process.

2) In addition to all filling of vacancy, bumping, recall and all other rights under the collective bargaining agreement, state employees who are laid off as a result of subcontracting shall be offered the opportunity for employment with the subcontractor at comparable wages and benefits.

The Union's proposal also proposed the creating committees made up of front-line employees to work with the State to evaluate the prospect of subcontracting. This new language included the following:

c) In accordance with the Employer's policy to involve frontline employees in the decision making process concerning potential contracting out and to draw upon the knowledge and experience that employees can bring to any such process, the Employer and the Union shall establish a subcommittee to determine if and how the work could continue to be performed by bargaining unit employees. The Parties shall work cooperatively to ensure that all relevant information is reviewed and fully considered.

d) The subcommittee shall review and discuss any proposed alternatives to contracting out the work. Such discussions may include but not be limited to reorganization of Agency operations, consolidation or modification of job classifications, market and other analyses in order to identify improved methods of service delivery. The Agency and the Union shall also identify, and the Agency shall endeavor to provide, additional information needed to fully develop any proposed alternative and evaluate its feasibility. These discussions shall continue, upon request of either party, after the Agency issues a request for services.

Terranova asked a number of questions about the Union's proposal, including how the Union would define "excessive profits," whether references to "fair treatment of employees" referred to State employees or employees of a subcontractor, definition of "profiteering," and examples of State functions "not readily replicated." The Union asserted that government should work to lift up all employees, not just State employees, and should not drive down wages by subcontracting State employee work to a lower paying contractor. Terranova also asked what impact a potential subcontractor's position on having a union or non-union workforce would have on the Union's proposal. Lynch responded that employees employed by the subcontractor should have representation if they so choose. Lynch concluded that the Union feels strongly that the maintaining of existing standards and slightly expanding them in its proposal establishes safeguards the Employer must meet.

On August 27, 2015, the Union presented its proposals on the other issues contained in the State's subcontracting and Integrity of the Bargaining Unit package. The Union rejected the State's proposal to delete the MOUs relating to personal service and vendor contracts and held to its modification of the Personal Service Contracts MOU to limit them to 12 months.

v. State's Offer of September 9, 2015

On September 9, 2015, the State modified its proposal to restore some prior language from the introductory clause, with modifications, as set out below:

> It is the general policy of the Employer to continue to utilize its employees to perform work they are qualified to do~~, and to that end, the Employer will avoid, insofar as is practicable, the subcontracting of work performed by employees in the bargaining unit~~. However, the Employer reserves the right to contract out any work it deems necessary or desirable~~ because of greater efficiency, economy, or other related factors~~. Grievances regarding subcontracting are limited to procedural issues arising under this Article. Whenever the Employer's decision to subcontract services will have an effect on bargaining unit employees, the managed competition procedures within this article shall apply. The Employer

> may not use individual personal service contracts deemed illegal by the Civil Service Commission.

In presenting this proposal, Terranova indicated that the State had continually said that its goal was increased flexibility and to decrease costs. The State had moved from an unlimited right to subcontract to managed competition where the State would meet with the Union and let the Union bid on the proposed subcontract. Despite this, the Union's proposal adds further roadblocks to the State exercising its right to subcontract.

vi. *Union's Offer of September 10, 2015*

In this proposal, the Union deleted "excessive" and "profiteering," and indicated that since it had done so, it no longer needed to comply with the State's information request to provide definitions of those terms. The Union also deleted the requirements that there be a "compelling operational and/or economic reason" for considering subcontracting and that the State demonstrate that there will be no diminishment of quality and that subcontracting will result in demonstrable savings. In its place, the Union offered the following language, "The parties further agree that state contractors shall be required to comply with all non-discrimination laws and regulations, all health and safety standards, and any other applicable state or federal laws and regulations. The parties further agree that privatization shall not be used as a means to deny employees the right to union representation, to drive down employee wages and benefits, or to otherwise diminish the rights of employees."

vii. *State's November 19, 2015 Offer*

The State made significant modifications to its subcontracting proposal. In response to the Union pointing out that there are various protections in the prior subcontracting language, the State reconsidered its approach to managed competition. It deleted the language limiting grievances to procedural matters, and restored much of the introductory clause. It also deleted a large portion of its managed competition proposal.

> The Employer agrees that upon formal consideration to subcontract any work performed by bargaining unit employees which would result in the layoff of bargaining unit employees it shall:
>
> (a) Provide reasonable advance notice, in writing, to the Union. Such notices shall not be required for renewal of sub-contracts, if the Union has been notified of a previous contract for such work, unless there is a substantial modification to the scope of work or cost in the renewal of the sub-contract.
>
> (b) Meet with the Union prior to making a decision to contract out bargaining unit work for the purpose of discussing the reasons for considering such a contract

its proposal. During this discussion, the Union will be provided all reasonably available and substantially pertinent information in conformance with all applicable laws and be granted a reasonable opportunity to meet with the Agency for the purpose of reviewing the Employer's contemplated action and proposing alternatives to the contemplated sub-contract. In the event the Union does not seek to schedule a meeting or does not respond within ten (10) days, the Employer's obligations under this Article shall be considered met.

(c) If the Employer decides to contract out work, the Employer may offer the Union the opportunity to designate up to four (4) employees to form a labor-management team with the same number of managers and/or supervisors. The labor-management team can review the Employer's reasons for considering contracting out, prepare a proposal, and, before the designated bidding deadline, submit the labor-management team's proposal to be considered by the Employer. Prior to submission to the Employer, the proposal must be approved by the Union. The Employer will review the labor-management team's proposal and determine whether that proposal more effectively meets the Employer's needs than bids or proposals from external vendors. This approval will be at the discretion of the Employer based on operational need. If the Employer accepts the labor-management team's proposal and does not contract out the services, to the extent that any terms of the Union-approved, labor-management team's proposal conflict with the terms of this Agreement, the proposal will be memorialized as a Memorandum of Agreement between the Employer and the Union. The four (4) employees designated to the labor-management team to draft the proposal will qualify for paid administrative leave for the time spent preparing the proposal. Time spent working on the Union bid or proposal is subject to prior supervisory approval. Employees will be paid at their regular rate for such work during their normal work hours but prior supervisory approval must be obtained for any hours spent working on the bid or proposal outside of their normal work hours.

The State also withdrew its proposal to delete the Personal Services Contract MOU, instead proposing status quo language, and rejected the Union's proposed language to limit Personal Service Contracts to 12 months. The State held to its deletion of the Personal Service and Vendor Contract and Governor's Volunteer Initiative MOUs.

The parties had limited discussion on that date because the Union's bargaining committee did not have the proposal in front of them. However, Newman again asked Terranova what the standards would be for contracting out. In response, Terranova said that it would not be different from the State's current practice, especially in light of the fact that the Union had said at the table that the State can subcontract with the prior contract language. Newman pointed to the arbitration wherein the arbitrator found the State had violated the CBA because the subcontract was not more efficient or less expensive.

This proposal was ultimately included in the State's last, best, and final offer.

viii. Union's Offer of December 17, 2015

The Union modified its proposal by moving placement of language regarding the State ensuring that it has the input of front line employees prior to making subcontracting decisions. It also deleted the principle that "many state services are not readily replicated" from those on which subcontracting decisions would be based, and deleted the creation of a monthly labor-management committee to review privatization issues. The Union held to its additional limitation in the Personal Service Contract MOU and held to the status quo on Personal Service and Vendor Contract and Governor's Volunteer Initiatives MOUs.

There was little discussion of the issues on that day. The State verbally held to its last proposal.

ix. Union's Offer on January 8, 2016

On January 8, 2016, the Union made another proposal on subcontracting. It held to its position on the MOUs, its introductory language, and its last proposal on the new section entitled Quality and Accountability, which set out the principles with which the State would follow when subcontracting. The Union replaced the language it proposed to form committees and instead modified language previously proposed by the Employer. The new portion of the Union's proposal was, as follows:[11]

> If the Employer decides to contract out work, the Employer shall offer the Union the opportunity to designate union staff and up to six (6) employees to form a labor-management team with the same number of managers and/or supervisors. The labor-management team can review the Employer's reasons for considering contracting out, prepare an alternative plan, and submit the labor-management team's alternative plan, to be considered by the Employer. Prior to submission to the Employer, the alternative plan must be approved by the Union. ~~The Employer will review the labor-management team's proposal and determine whether that proposal more effectively meets the Employer's needs than bids or proposals from external vendors.~~ Unless the bids or proposals from any external bidder meet the standard of greater efficiency, economy or other related factors, the labor-management team's alternative plan shall be accepted. ~~This approval will be at the discretion of the Employer based on operational need.~~ If the Employer accepts the labor-management team's plan and does not contract out the services, to the extent that any terms of the Union-approved, labor-management team's plan conflict with the terms of this Agreement, the plan will be memorialized as a Memorandum of

[11] For ease to the reader, I did not include every strike through, but retained the substantive provisions stricken in the Union's proposal.

> Agreement between the Employer and the Union. The employees designated to the labor-management team to draft the plan will qualify for paid administrative leave for the time spent preparing the plan. Time spent working on the Union plan is subject to prior supervisory approval. Employees will be paid at their regular rate for such work during their normal work hours but prior supervisory approval must be obtained for any hours spent working on the plan outside of their normal work hours.

The State did not immediately respond to the proposal. Later that day, the State announced that it believed the parties were at impasse. In that discussion, Terranova pointed to the Union's insistence on adding restrictions to the process of subcontracting and managed competition. Lynch indicated that the Union was not intending to add further restrictions.

d. Layoff Package

Modifications to the prior layoff language was included in each party's initial proposals and was the subject of 7 additional proposals. Layoff was discussed at the main table on 13 occasions, and on or about September 10, 2015, the parties agreed to move the package from the main table for further discussion in a subcommittee. The layoff subcommittee met on multiple occasions between late September and early December. On December 2, 2015, the State sought to bring the topic back to the main table for further discussion. The record does not reflect what occurred in the subcommittee meetings other than that which is specifically set out in the proposals once the issue was brought back to the table.

From the outset, the State had identified its desire to streamline the layoff process in order to make it move more efficiently in the instances where a layoff was set to occur. Terranova noted at the table that the process to implement a layoff can take months and is very cumbersome. To that end, in its initial proposal, it deleted nearly all of the layoff language setting out bumping rights and other procedures applicable to implementing a layoff. The Union argued that the layoff procedures were intended to provide fairness to long-term employees and to prevent newcomers from coming in and keeping jobs while longer-term employees are laid off. In its initial proposal, the Union made only one substantive change to the prior language, which was to extend the limitation on laying off bargaining unit members while retaining certain other employees:

> No certified or probationary employee within a position classification within an appropriate organizational unit and work location shall be laid off until any temporary, provisional ~~or~~ emergency employee, or any other individual other than a bargaining unit employee and the Personal Service and Vendor Contract worker

who performs substantially similar duties to the position classification o the employee who otherwise would be laid off are terminated noncertified.

i. State's Offer of July 17, 2015

On July 17, 2015, in light of the Union's concerns, the State significantly modified its initial proposal on layoff and created a package addressing the layoff language in various articles of the prior contract and MOUs. The State proposed to limit recall for probationary employees laid off pursuant to the layoff procedures and offered that time in non-work status as a result of an emergency shut down of five days or less would be with pay. Temporary layoffs of five days or less would be made in reverse seniority order within classification and organizational unit instead of applying bumping priorities. The State held to its proposal to delete language that temporary layoff shall not be used for implementing a statewide furlough program. The State held to its deletion of language that would require it to terminate any Personal Service and Vendor Contract employees prior to a layoff.

The State modified its proposal to reinstate most of the language related to the first two bumping priorities, as well as transfer or voluntary reduction in lieu of layoff and inter-agency transfer on layoff. The State held to its deletion of language that would allow an employee who bumps to the lowest level in a semi-automatic progression to retain their higher classification in the semi-automatic series and to the deletion of language requiring the State to offer vacancies in any position for which a would-be laid off employee was previously certified. The State also withdrew five other proposals to modify the layoff language.

The State held to its proposal to remove trainees from being subject to being bumped from their position, and to the creation of an MOU that would apply to all facility closures rather than negotiating agreements each time a facility closes. The State also held to its proposal that full-time and part-time employees in the same classification would no longer be subject to separate bumping lines.

ii. Union's Offer of August 27, 2015

On August 27, 2015, the Union responded to the State's July 17, 2015, proposal. The Union accepted the State's proposal that non-work emergency shut down time be with pay, and accepted all of the State's withdrawals. The Union rejected every proposal made by the State except for the Facility Closure MOU, which they modified to, among other things, delete the provision that the "MOU shall apply for the closure process." As to that MOU, Lynch indicated

that the Union cannot agree not to bargain over the impact of a closure, but could agree to some of the aspects of the MOU, with modification, that bring order to the process.

Lynch explained that the Union could not agree to any provision that allows the State to lay off employees and bring in workers to do the work or to allow outside people to do work of employees subject to layoff. Lynch recognized that layoffs are time-consuming, but that losing a job is a big deal. In rejecting all of the State's proposals to make the process less cumbersome, Lynch commented that the State's proposal allows new employees to take jobs of those who have been there, which is a loss of valuable experience to the State. Therefore, despite saying that the Union "st[ood] ready to work with the Employer," the Union was rejecting proposals to take away any bumping rights.

In response to the Union's proposal at the bargaining table, Terranova noted that the State had initially proposed the quickest way to speed up layoffs was to eliminate bumping, and that while the State had made movement, the Union did nothing but reject. He identified that it was "just a proposal to generate dialogue." While he appreciated Lynch's comments, he pointed out that the Union had not offered any suggestions to make the process better.

On September 8, 2015, the Employer verbally held to its July 17, 2015 proposal, again asserting its desire to streamline the process, a concern to which the Union had not made proposals to address. On September 10, 2015, the Union made verbal proposal to create a layoff subcommittee, which the parties agreed to do.

iii. Offers of December 17 and 18, 2015

On December 17, 2015, the Union presented the first layoff package since the issue returned to the table from subcommittee. Apparently, in the subcommittee, the State withdrew four additional proposals, and the Union accepted those withdrawals. The Union withdrew its proposal to prohibit bargaining unit layoffs until "any other individual other than a bargaining unit employee" has been terminated. The State modified a proposal to allow organizational unit for Parole Supervisors to be determined through local supplemental agreements. The Union accepted this counter. However, the post-subcommittee proposal retained all but one of the Union's rejections of State proposals aimed at streamlining the process. With respect to the sixth step in the bumping process, the Union countered by proposing the following additional language, "Employees may not exercise this Bumping Priority Step if exercising such would result in a reduction of 4 paygrades or greater."

On December 18, 2015, the State supplied its own package proposal affirming what it understood was the result of the talks at the subcommittee. In that proposal, the State held to its proposals to streamline the layoff process and held to deletion of the sixth priority step. In doing so, it rejected the Union's counter. This proposal was included in the State's last, best, and final offer.

e. Outstanding Economics Package

As issues were resolved in other packages, the parties sometimes removed issues over which there was still disagreement. That allowed them to resolve packages. These orphaned proposals were then grouped together in other packages. One such package is the Outstanding Economics Package. On October 7, 2015, the State created a package of economic proposals that had not yet been placed in a package. The State made its first proposal on the newly-created package on October 21, 2015. The parties exchanged proposal on November 3, 2015. On November 17, 2015, the Union verbally held to its November 3, 2015 proposal. The State submitted another proposal on November 18, 2015. In response, on November 19, 2015 the Union agreed to a single, specific provision and held to its position on the rest. The State submitted the last proposal on this package on December 1, 2015. Over the course of bargaining over this package, the parties moved various proposals out of this conglomerate package and into other more topical packages. For example, they moved the proposal relating to the Parole Agency Safety and Equipment MOU to the Health and Safety package. To avoid confusion, I focus this section on the proposals that remained in the package as of January 8, 2016. Instead of going proposal by proposal here, where there was little movement between proposals on the remaining issues, I will go topic by topic.

i. Cash Payment for Holidays

The State proposed changing holiday payment from double time to one and one half time and changing pay for "super holidays" from double and a half time to double time. The parties had discussed this provision at length as part of other packages, usually as part of the Vacation, Holiday Scheduling and Leaves of Absence package, and on October 21, 2015, the State incorporated it in it then-current form into this package. In its only written proposal on this package, the Union continued to reject the proposal (as it had in discussion of the provision in other packages) and proposed keeping it in the Vacation, Holiday Scheduling and Leaves of Absence package. In discussion on this issue, the State indicated that its proposals on super

holidays would save the State $180 million dollars. On January 7, 2016, in discussion on the Vacation, Holiday Scheduling and Leaves of Absence package, Lynch indicated that the Union would not agree to move the proposal out of that package in order resolve the entire package.

ii. *Overtime*

The State proposed changes to various portions of the prior contract that would limit overtime to hours worked over forty hours in a work week, and that benefit time would not count toward work hours for purposes of calculating overtime. The State identified that the difference between paying overtime for anything after 37.5 hours and after 40 hours is $80 million. The State also proposed removing language that employees would receive double time for working in excess of 16 hours in one day. The State held to its position throughout; the Union rejected these proposals throughout.

The Union proposed deleting language from the prior contract providing that for certain bargaining units, an employee and his supervisor will work to avoid working more than 37.5 hours in a week by adjusting his schedule, and that any hours worked between 37.5 and 40 would be paid in compensatory time at the straight time rate. Under the provision the Union sought to delete, time worked between 37.5 and 40 hours or on a Saturday or Sunday would result in accrual of compensatory time at one and one half time rate. For time over 40 hours, it would be paid in cash or compensatory time at the Employer's discretion; overtime after 40 hours is paid at straight time. The State always rejected this deletion, and the Union held to it throughout. The Union's proposal to delete this provision was included in the Union's only written proposal on the package.

iii. *Pension issues*

Each side made proposals related to pensions. The State had initially proposed language that all members voluntarily agreed to transfer to the Tier II program; the State withdrew that proposal in July, but formalized it in the initial Outstanding Economics package. The State also proposed deleting old pension language, but the Union disagreed, saying that in the past, the parties had kept old language in when it dealt with pensions. The State moved this proposal to the Vacation, Holiday Scheduling and Leaves of Absence package and withdrew it. The State also proposed that employee who retired after ratification of the successor CBA voluntarily agreed to accept the same health insurance benefits as active employees and that employees hired

after ratification would receive the same health insurance as active employees. This provision was in the package on December 1, 2015, which became the State's last, best, and final offer.

The Union's proposal to require the State, among other things, in consultation with the Union, to retain an independent expert to conduct a forensic audit of the pension fund to investigate fees and bonuses paid to investment firms, was included in this proposal. The State initially rejected it, and the Union withdrew it on November 3, 2015.

iv. *Pay for Lunch Periods*

The parties bargained over whether an employee should be paid for what would otherwise be an unpaid lunch that is disturbed by virtue of being called away to work. The State modified its proposal to provide that employees who are not relieved for lunch will be paid at either the straight or overtime pay rate, whichever is applicable. The Union agreed.

v. *Retiree Health Insurance*

The State had initially proposed that effective July 1, 2015, employees voluntarily agree to receive the same health care in retirement as current employees receive. The State withdrew this provision on October 21, 2105. The State also proposed that any employees who join state service after the ratification of the CBA will receive the same benefits in retirement as current employees, except that they will pay 100% of the cost for any dependents. There was little discussion at the table on this proposal. When the package was first introduced, the Union noted that the retiree health insurance provision could cost employees $1,700 per month in deferred compensation. On November 2, 2015, Lynch asked if the State was aware of the Illinois Supreme Court's ruling that retiree health insurance premiums could not be increased. Terranova pointed out that this proposal only affected new employees. Other than the State's reporting that it was holding to this provision when it submitted its December 1, 2015 proposal, there was no further discussion on this proposal. The State's proposal as of its December 1, 2015 proposal is as follows:

> Section 4. Retiree Health Insurance
>
> ~~Effective July 1, 2015, all employees subject to this agreement who retire after July 1, 2018, voluntarily agree to receive the same health care benefits as provided for active employees as set forth in Appendix A of this agreement. Those employees who retire after July 1, 2018 further voluntarily agree to be responsible for 100% of the cost of health care coverage for any dependent after the date of such employees' retirement.~~

> For employees who enter state service after ~~July 1, 2015~~ the ratification of this Agreement, retiree health care benefits will be the same as the health care benefits provided for active employees as set forth in Appendix A of this agreement, regardless of date of retirement. However, those employees who enter state service after ~~July 1, 2015~~ ratification of this Agreement will be responsible for 100% of the cost of health care coverage for any dependents after the date of such employees' retirement.
>
> ~~Retiree health care benefits shall be as set forth in Appendix B of this Agreement.~~

f. Vacation, Holiday Scheduling and Leaves of Absence

The final iteration of this package contained 11 different provisions, some of which had been discussed in other packages, while other provisions had been removed from the package in an effort to reach agreement. In all, the parties exchanged 17 packages on these topics, and including discussion of these issues in the parties' initial proposals, these issues were discussed on 24 bargaining days. There was also much horse-trading on the issues in these packages. However, one provision was central to the parties' bargaining on this package – Cash Payment for Holidays. In an attempt to avoid confusion over the bargaining of issues in this package, I focus first on this central proposal. As of the State's January 6, 2016 proposal, the parties still disagreed over this proposal and even disagreed about its placement in this package. The State's January 6, 2016 proposal was included in its last, best, and final offer.

i. Cash Payment for Holidays

The parties had discussed this provision at length. Under the prior contract, employees that worked a holiday or an observed holiday received double time for their work. For the so-called "super holidays" of Labor Day, Thanksgiving Day, and Christmas Day, employees would be paid at double time and a half. The State initially proposed deleting any additional payment for super holidays and also deleted four paid holidays that had been in the prior CBA (Presidents' Day, Columbus Day, Friday after Thanksgiving, and General Election Day (when U.S. Representatives are elected)). On July 27, 2015, the State modified its proposal on the Cash Payment section to reinstate the distinction between holidays and super holidays, but sought to change holiday payment from double time to one and one half time and to change pay for super holidays from double and a half time to double time. It linked this move to restoration of the four holidays. The State explained that it was willing to restore the holidays at a cost of $163 million, because the change in holiday pay would result in $180 million in savings. In its August

12, 2015 proposal, the Union accepted the State's withdrawal of the deletion of the 4 holidays (with no mention of the proposed linkage), but rejected the linked proposal on Cash Payment.

The State again proposed a link between these two provisions in its August 25, 2015 proposal, in addition to withdrawing another proposal. Lynch thought the parties had reached a tentative agreement on holidays. She indicated that the Union understood from media reports that the State was withdrawing its proposal to decrease the number of holidays; therefore, the Union was surprised to see the Cash Payment provision still linked to a withdrawal of the proposed deletion of four holidays. Because of this understanding, the Union did not include holiday in its response of August 26, 2015. After conferring in caucus, the State made another proposal later that day. In it, the State agreed to withdraw its holidays provision and removed the linkage to Cash Payment, reaching agreement on the holidays issue. Terranova noted that the Union made moves based on away-from-the table comments, but that this new proposal was responding to what was said at the table. The next day, the Union rejected the State's Cash Payment provision in its written proposal that same day. The parties discussed this package on September 9 and 24, 2015, with the State and Union each verbally holding to their respective positions on this package.

On October 6, 2015, the State made another proposal. It held on its Cash Payment provision and proposed deferring the issue to economics. The parties exchanged two other proposal in October, moving on other issues, but the State continued to hold to and the Union continued to reject the Cash Payment provision. As it looked more like the parties would be able to reach agreement on the other provisions in the package, on October 21, 2015, the State proposed moving this provision to the Outstanding Economics package. The Union continued to reject the proposal and rejected any proposal to remove it to another package. In discussion on this issue, the State indicated that its proposals on super holidays would save the State $180 million dollars. In its November 2 and December 1, 2015 proposals, the State held to its proposal moving this provision out of the package.

On December 2, 2015, the Union made another proposal. The Union proposed linking the State's withdrawal of its Cash Payment provision to a number of moves within the package: (1) the Union's agreement to the State's modification as to the number of vacation days an employee can cash out, (2) the Union's withdrawal of its proposal to expand service-connected injury leaves, (3) the Union's withdrawal of its proposal to increase maternity/paternity leave, (4)

the Union's withdrawal of its proposal to eliminate the requirement that employees use paid sick leave concurrently with FMLA leave, and (5) a reduction in the amount per employee that the State contributed to the Union's Personal Support Program from $35 per employee to $25. In presenting this proposal, the Union argued that its movement in the package should wrap up the package, assuming the State withdrew its Cash Payment proposal. While not comparing them as a "money for money tradeoff," Lynch did point to the $10 per employee reduction in the cost of the Union's Personal Support Program. Assuming AFSCME's headcount is approximately 38,000 employees, the $10 Personal Support Program change would result in a savings to the State of $380,000 per year for a total savings of just over $1.5 million over the life of the contract.

Later on December 2, 2015, the State made another proposal holding to its position that Cash Payment should be dealt with in the Outstanding Economics package. Terranova explained that he thought by removing the Cash Payment provision, the parties could resolve the remaining package. In an attempt to reach resolution, the State added its pension proposal to the package and linked its willingness to withdraw that proposal and its acceptance of the Union's counter on bereavement leave with (1) the Union accepting the State's vacation pay out modification, (2) the Union's withdrawal of its service-connected injury provision, and (3) the Union's withdrawal of its FMLA proposal. Lynch indicated her disappointment in the State's counter, primarily because the Union had indicated all of its moves were linked to the State's withdrawal of Cash Payment.

On December 18, 2015, the Union verbally held to its December 2, 2015 proposal. The Union reiterated that all of its proposed movement was linked to the State's withdrawal of Cash Payment of Holidays. Lynch indicated that the State had pointed to the Teamsters contract as a model, but that the Teamsters 700 contract retained double pay plus holiday time. Lynch called the State's proposal offensive and indicated the Union would not agree to cute employees' holiday pay. Indicating that the Union was tired of watching the proposal bounce around, she indicated that they could go back to ground zero, but that they would not accept the State's proposals as they are linked to Cash Payment.

On January 6, 2015, the State made its final proposal on this package. Terranova made the State's argument to why it would not agree to Cash Payment. Among other things, he pointed to the fact that the State had withdrawn its proposal to limit pay out upon death of an

employee, which other bargaining units had agreed to. The State agreed to the vacation pay out provision, which was not what it wanted, but accepted because of the Union's good faith movement. Terranova also pointed out that the State gave the Union bereavement leave, which it had sought for 30 years and that the State had not given to other bargaining units. The State also agreed to contribute to the Union's Personal Support Program despite, even at the lower $25 monthly amount, it was more expensive that the State's Employee Assistance Program ($8 per month). Lynch asked for a costing of the to-be-agreed vacation pay out provision, arguing that it saved more money than the State's initial proposal on that provision. Terranova indicated that any difference in savings would not come close to the $180 million savings in the Cash Payment provision, if for no other reason than the change is not effective until 2018. Lynch indicated that the Union felt the State was being extremely unreasonable with respect to Cash Payment. With that explanation, Terranova again asked the Union to agree to move the Cash Payment provision to the Outstanding Economics Package.

On January 7, 2016, the parties discussed this package again. Lynch indicated that the Union was not going to agree to remove Cash Payment from the package. The Cash Payment provision was the last issue on which the parties could not reach agreement. In fact, the parties could not even agree on which package it was appropriately placed.

ii. *Bargaining on other provisions in this package*

The parties bargained over a plethora of other topics with much give and take. However, because the back and forth is not particularly relevant to this case, I summarize it below.

The State had for months rejected the Union's attempts to expand benefits such the Union's proposals on service connected injury leave, maternity/paternity leave, and FMLA leave, citing the cost of these proposals. In several sessions, the Union made its argument for an expansion of each of these benefits. For example, the Union argued that if an employee works a double shift and is in a car wreck on his way home, that should be treated as a work-related injury. On the issue of FMLA leave, the Union argued both that employees need to retain some sick time to cover any residual effects of the condition for which they utilize FMLA and that unpaid leave is actually a cost saving to the State in the short term.

On the issue of cash out of vacation time, the parties had been making incremental progress on the maximum amount that employees could carry from year-to-year that could then be paid out when an employee terminated employment with the State. The parties ultimately

settled on 50 days total (not 50 days carried over from year-to-year and the additional 25 days being accrued over the last year of work).

On the issue of the Union's Personal Support Program, the State had initially proposed not making any contributions to the program and instead making bargaining unit members use the State's Employee Assistance Program at a much lower cost ($35 versus $8 per month). The Union argued that its program had superior benefits and proposed that it would be able to run the program more efficiently such that contributions of $25 per month would be sufficient. The State agreed.

The Union sought creation of a bereavement leave of absence. The parties bargained back and forth about whether the leave would available for death of "immediate family" or specifically enumerated relatives. The bargained over the length of the leave. Eventually, the parties agreed to language that would allow a three-day bereavement leave, in addition to any other benefit time to which an employee is entitled, in the case of the death of a son, daughter, step son or step daughter.

The parties bargained over modification of Military Reserve Training leave and agreed to language that ensured that bargaining unit members who serve in the National Guard for a neighboring state still have access to the leave set out in the CBA. The Union initially sought to broaden the circumstances under which an employee could take Child Care Leave, but withdrew that proposal.

g. DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX, and XX)

When DJJ was formed, the parties negotiated terms that treated DJJ and DOC as a single agency despite no longer being so. For example, they share a grievance committee and employees enjoy rights to move between agencies that would not otherwise be afforded to employees of other agencies. The State desired to remove these distinctions and treat the departments as separate; it made proposals to accomplish it. Those proposals and others were placed in the DOC/DJJ Roll Call package. Other issues in this package include proposed changes to roll call such that employees' work days would be shortened if the Employer determined that roll call was not required. The Union also proposed increasing its access to State premises and email system, limiting instances when the State can provide information to third parties, and ensuring that employees are placed in positions for which they are the successful

bidder as soon as practicable. Issues related to CU-500, the bargaining unit covering command staff at DOC and DJJ, but were ultimately placed in a separate package.

In all, the parties exchanged 12 proposals on these issues. From June through early September, these issues were separated into two packages: Definition of Terms and DOC/DJJ and CU-500. On September 24, 2015, the State combined these two packages into one that was bargained through January 8, 2016.

i. State's September 24, 2015 offer

On September 24, 2015, the State's package proposal included amending the definition of "employer" to state that DOC and DJJ "shall be considered separate agencies." Thought the State had previously been proposing that DJJ covered by a grievance committee with other agencies, such as DCFS, ISP and HFS, it was now proposing that DJJ have its own committee made up of Union staff and 3 bargaining unit members. The State held to its prior proposals that roll call would be at the State's discretion, and that in doing so, Correctional Officers' work week would be 37.5 hours (8 hours per day) instead of 38.75 (8.25 hours per day). The State had initially proposed paying employees required to stand roll call at their regular straight time rate, but in August had modified that proposal to pay roll call time beyond eight hours at the applicable overtime rate. It held to the position.

The Union had initially made a proposal that prohibited the Employer from providing "information that is exempt from disclosure under the Freedom of Information Act [(FOIA)] (5 ILCS 140/7) and pertains to bargaining unit employees, to the Union, or to matters related to collective bargaining, to an entity that is not a party to this agreement." This proposal had been subject to lengthy and colorful discussion. As early as April, Lynch was comparing the requests for Union information to the KKK seeking information on black employees; similarly, she did not want union-haters to receive information about who the Union's stewards are. Terranova indicated that union steward information is not exempt from FOIA, so the Union's proposal would not even apply. Throughout, Terranova indicated that the Union had not given strong examples of what harm could be avoided by the Union's proposed language to justify the State waiving its statutory discretion. The Union had raised the issue of employee information being turned over to an inmate, which was luckily caught in the prison mail room. The State responded that that was an issue of human error, as disclosure was already prohibited, so it did not support the Union's position. Further, the State noted that it was not inclined to give up the

discretion it has under FOIA, and if AFSCME wanted to change the FOIA law, the CBA was not the place to do it. When the State asked for rationale for the Union holding to this proposal on September 9, 2016, Lynch it garnered another vehement response. On September 24, 2015, the State rejected this proposal.

The Union also made proposals regarding acceptance of a position. "Once the employee has accepted the position, the offer cannot be withdrawn, and the employee shall be placed in the position as soon as practicable." On September 24, 2015, this proposal reflected the Union's prior withdrawal to a hard timeframe of 45 days for employees being placed in their new position. The State continued to reject.

The parties also discussed Records and Forms on October 21, 2015. Lynch asked the State to explain its objection, so the Union could understand. Terranova stated that he believed it was a permissive subject of bargaining as the law allows discretion.

ii. Union's Offer of November 3, 2015

The Union held to its proposals on acceptance of a position and to have roll call time paid at one and one half time. The Union added its proposal seeking to extend its right to use State email from semi-annually to unlimited access "for the purpose of communicating with AFSCME represented members" to this package. The Union withdrew its proposal regarding paid lunches for Correctional Lieutenants whenever one lieutenant is scheduled on the shift, so a not to disrupt past practice. The Union modified its Records and Forms proposal to read, "The Employer shall not provide to any third party information pertaining to bargaining unit employees, to the Union, or to matters related to collective bargaining, if such information is exempt from disclosure under the Freedom of Information Act (5 ILCS 140/7) unless directed to do so by the Attorney General." The Union rejected every Employer proposal without counter.

iii. State's Offer of November 4, 2015

The next day, the State modified its proposals further. It withdrew its proposed definition of "employer" and withdrew all of its roll call modifications in favor of a new DOC/DJJ Roll Call Side Letter. The Side Letter reads, "The Parties agree that during the terms of this Agreement, if it desires, the Employer may implement an alternative to the existing roll call system. Before such implementation, the Employer agrees to meet and negotiate the impact of such decision with the Union including changes to" specific articles. The State accepted the Union's withdrawal of the Lieutenant lunch provision and the deferral of lunch scheduling to

supplemental negotiations. The State held on its proposal to create a separate DJJ grievance committee. It also rejected the Union's email proposal, holding to deletion of the Union's ability to use State email that was in the prior CBA.

Most of the discussion that day was rehashing issues with the Union's Records and Forms proposal and about the State's rejection of the Acceptance of Position proposal. The State gave a number of examples of times when it might need to withdraw an offer, such as if a mistake was made on the bid sheet and the wrong person was made the offer or the selected person failed the background check.

iv. Union's December 17, 2015 Offer

In its next proposal, the Union withdrew its proposal to expand its use of State email and rejected the State's deletion of its ability to use it on a semi-annual basis. The Union accepted all of the State's roll call withdrawals but rejected the replacement Side Letter. The Union countered with modifications to Records and Forms and Acceptance of a Position. The Union modified to allow for the Employer to withdraw an offer if the employee is unable to pass a background check. The new language on Records and Forms was, as follows: "In order to safeguard the privacy and safety of employees, the Employer shall not provide to any third party information pertaining to bargaining unit employees, to the Union, or to matters related to collective bargaining, If such information is exempt from disclosure under the Freedom of Information Act (5 ILCS 140/7) unless directed to do so by the Attorney General." There was no discussion on this package other than the Union presenting it.

v. State's Offer of December 18, 2015

The following day, the State responded with its own proposal. It held to its position that the DJJ have its own grievance committee and on treating DOC and DJJ as separate agencies for purposes of exercising bumping rights. The State linked its withdrawal of its proposed deletion of the Union's ability to access State email and all of its proposed roll call modifications, including the new side letter, to the Union's withdrawal of its Records and Forms and Acceptance of Position proposals.

The parties again discussed that the State, as a governmental employer, has a duty to provide transparency and was unwilling to give up its discretion when other contract provisions provide sufficient safeguards for employee privacy. The State also pointed out its belief that the proposal was a permissive subject of bargaining. The Union did not feel that other provisions of

the CBA sufficiently restricted the State's ability to release information the Union wants to avoid being released. Similarly, the State again stated that it did not want to tie its hands with respect to withdrawing an offer in light of all the things that could happen, including lack of funds or mistake.

The State also pointed to the purpose of its roll call proposals, which was to have flexibility to disseminate information via technology while acknowledging that it would have to bargain the impact eliminating roll call, as further support for the Union to accept the linkage and resolve the package.

This package was included in the State's last, best, and final offer.

vi. Union's January 7, 2016 Offer

On the second day after the parties returned from the holiday break, the Union made another proposal on this package. The Union rejected the State's proposed linkage, rejected all of the State's proposals that had been linked, rejected treating DOC and DJJ as separate agencies for bumping rights, held to its Records and Forms proposal, and withdrew its Acceptance of Position proposal. The Union countered the DJJ grievance committee proposal by adding this language:

> For the Department of Corrections/Juvenile Justice, the Union shall be represented by a committee made up of Union staff and ~~five (5)~~ seven (7) bargaining unit members. For the Department of Juvenile Justice, the Union shall be represented by a committee made up of Union staff and Department of Juvenile Justice bargaining unit member(s) from the Department of Corrections/Juvenile Justice committee, who shall meet only with Department of Juvenile Justice Employer representatives on that agency's grievances.

The parties discussed both the Records and Forms proposal and the DOC/DJJ bumping rights proposal, restating the same arguments they had previously made pitting union information privacy against statutory rights and historic practice with recognition of current realities. The State also said that the State views the proposal as permissive.

vii. Union's Offer of January 8, 2016

The following day, the Union made another proposal on this package to include its proposal on Reducing Inmate Recidivism Through Increased Rehabilitation Opportunities MOU. The Union modified its proposal from making the actions mandatory to forming a "joint committee to develop a plan to significantly improve education, vocational training, and transitional assistance for offender in DOC facilities" and included the same factors:

1) ~~By January 1, 2017, p~~Provide access to ABE, pre-GED and GED programs to the more than 3,000 inmates on the waiting list for such educational opportunities;
2) Hire a sufficient number of educators to ensure that the department can continue to meet inmate educational needs on an ongoing basis;
3) Ensure that each correctional facility has adequate technology, educational materials and classroom space to allow for an appropriate learning environment;
4) Expand opportunities for vocational education;
5) Provide for appropriate mental health treatment programs consistent with the Rasho settlement; and
6) Re-open and expand the number of Adult Transition Centers to aid inmates who have completed their sentences in finding employment and reintegrating in the community.

Lynch asked Terranova to explain why he believed the Records and Forms proposal was a permissive subject of bargaining. He indicated that the State's counsel had so advised, as nothing would impact terms and conditions of employment. Lynch voiced the Union's belief that it was a mandatory subject of bargaining.

h. Health and Safety Outstanding Issues Package

The Health and Safety package was subject to many, many proposals and a great deal of discussion. In total, the parties exchanged 26 proposals (in addition to their initial proposals) and issues in this package were discussed on 30 bargaining days. The parties were able to reach agreement on numerous provisions, including those dealing with the following issues: meals, hearing tests, travel reimbursement, pre-selection background checks and drug testing, Health and Safety Side Letter, violence in the workplace, equipment and clothing, and the Side Letter on the Department of Natural Resources Illegal Drug Production Areas. The parties eventually put together a package with just the remaining health and safety issues in the Health and Safety Outstanding Issues Package. The parties continued to bargain and by December (and through January) there were three issues remaining: bargaining over parking in supplemental negotiations, Parole Agent Safety and Equipment MOU, and Reasonable Suspicion Drug Testing/Reasonable Suspicion of Impairment.

i. Supplemental Bargaining over Parking

The Union proposed adding parking to the list of topics upon which the parties would have to bargain during supplemental negotiations. The State was resistant to this change, as it explained that in many places, the agency was not responsible for parking, and that the State dealt with parking problems where they arose. Moreover, the parties had recently proceeded to

arbitration over the issue of parking, and the State had prevailed. By the time the issue was placed in the truncated package with the remaining health and safety issues, the Union had modified its proposal to address the Employer's stated concerns as follows: "Facility negotiations … shall include: (q) Parking in all instances in which the Employer directly or indirectly controls access to parking spaces. Where the issue of parking involves more than one agency and/or is directly or indirectly controlled by Central Management Services, the supplemental agreement shall be negotiated between Central Management Services and AFSCME Council 31." The State rejected that proposal.

On November 4, 2015, the Union submitted a counter proposal on parking. It read, "Parking shall be made available at the current cost, if any to employees at all locations where parking is currently provided." The State rejected this proposal as it was unwilling to commit to continuing to provide parking as it currently did, because a number of unknown variable outside the State's control could cause such a provision could cause the State to incur additional costs. The State also contended that parking issue was permissive, and that the State was not interested in bargaining over parking. The Union held to this proposal through January 6, 2016.

ii. Parole Agent Safety and Equipment MOU

In its initial economic proposal, the Union sought to have the State replace Parole Agent cars and body armor. The parties recognized the need to keep these employees well-equipped, but the State was concerned about the cost.

The Union's proposed MOU read as follows:

> The parties agree that in order to protect the safety of employees and the public, Parole Agents shall be properly equipped and trained to provide the vital public safety function they perform. In order to achieve this goal, the parties agree as follows:
>
> 1. The parties shall jointly seek funding for a vehicle replacement program in a manner similar to PA 95-1009, December 15, 2008 in order to ensure that Parole Agents shall be issued properly equipped vehicles (including but not limited to: fully functioning radio/communication equipment, handheld emergency radios connected to local law enforcement network, parolee restraint cages with bodily fluid barriers, fixed hand controlled spotlights and bacteria resistant/non-porous back seats/floor boards), which will be replaced at the 80,000 mile threshold or when they are determined to no longer be practically functional, become a financial burden due to increased maintenance, or are unsalvageable.
>
> 2. Parole Agents shall be issued custom fitted body armor vests. Body armor vests shall be replaced in accordance with suggested manufacturer guidelines

regarding vest lifecycle or when normal wear and/or damage would require such.

3. The Employer shall develop an Officer Involved Shooting Response Protocol substantially similar to those suggested by the International Chiefs of Police, including a post incident mental health professional intervention: in order to reduce the long-lasting psychological and emotional problems resulting from an officer involved shooting incident.

In response to the Union's questions, the State reported that any Parole Agent who reports problems with his body armor to his supervisor, receives new. While the State recognized that many vehicles had high mileage, it was concerned about the potential cost of replacing them.

After some early discussion, the proposal was not discussed again until October 21, 2015, and the State rejected it based on the cost. Lynch voiced her shock that the State had failed to counter on this provision. On November 4, 2015, this MOU was discussed again in the context of this package. At the table, the parties discussed whether to defer issues to a DOC subcommittee that could better assess the issues. The Union proposed deferring its "Officer Involved Shooting Response Protocol" provision (#3 above) to the DOC Parole Advisory Board. The State suggested deferring the issues to the DOC Health and Safety Committee. The Union provided a picture of the interior of a parole agent's vehicle and also raised concerns about newer cars that did not have a cage installed. On December 1, 2015, the State agreed to refer the Union's proposed and held on referring the remainder of the issues to the DOC Health and Safety Committee. The State responded that if a car did not have a cage, a parole agent was not required to transport parolees.

The Union did not respond to this proposal until January 6, 2016. It TA'd the State's agreement to refer the above and provided a counter on the other issues. It countered on the issue of vehicles, adding language, "No parole agent shall be required to utilize a car that does not meet basic safety standards." The State responded that it still preferred that the vehicle and body armor issues be handled at the DOC committee level.

iii. *Reasonable Suspicion Drug and Alcohol Testing/ Reasonable Suspicion of Impairment*

The State included a Reasonable Suspicion Drug and Alcohol Testing MOU in its initial proposals. It was first placed into a package in May 2015, and in doing so the State modified the proposal to delete language that would have required that every employee who tested positive to

be discharged, instead limiting it to positive drug tests. The State's proposal on this MOU was as follows:

> Reasonable Suspicion Drug and Alcohol Testing
>
> The parties agree in order to protect the safety of employees and the public, the workplace should be free from the risk posed by employees impaired by the abuse of alcohol and controlled substances. While the parties recognize that abuse of alcohol and controlled substances is a treatable illness, employees found to be impaired while on duty shall be subject to discipline. Employees, not covered under an existing drug and/or alcohol testing policy, shall be subject to reasonable suspicion drug and alcohol testing. ~~Employees who test positive shall be discharged.~~
>
> The Employer may require drug and/or alcohol testing under the following conditions:
>
> A. a test may be administered in the event that a supervisor has reasonable suspicion ~~cause~~ to believe that an employee has reported to work under the influence of drugs or alcohol: Reasonable suspicion exists if specific objective facts and circumstances warrant rational inferences that a person may be under the lnf1uence of alcohol or a banned substance. Reasonable suspicion may be based on upon other matters:
>
> l. Observable phenomena such as direct observation of use or the physical symptoms of using or being under the influence of controlled substances such as, but not limited to: slurred speech, direct involvement in a serious accident, or disorientation.
>
> 2. A pattern of abnormal conduct or erratic behavior.
>
> 3 Information provided either by reliable and credible sources or which is independently corroborated.
>
> B. ~~a test may be required as part of a follow-up counseling or rehabilitation for substance abuse for up to a one (1) year period.~~ Procedures for testing shall be negotiated into agency supplementals.
>
> Initial and confirmatory test results which meet or exceed the cutoff levels for drugs set forth in the Department of Health and Human Services' guidelines (and as they may be amended) shall be regarded as "positive", and shall presumptively establish that the tested employee was under the influence of drugs.
>
> Initial and confirmatory (or breathalyzer) test results which meet or exceed the level of blood alcohol of 0.04 shall presumptively establish that the tested employee was under the influence of alcohol.
>
> Employees who test positive for alcohol shall be subject to the following discipline:

A. First offense: The employee shall serve a thirty (30) day suspension and be subject to random testing for one (1) year following a positive test and mandatory enrollment in EAP.

B. Second offense: The employee shall be discharged.

C. In the event it is found that an employee has operated a vehicle, or other equipment, on official state business while under the influence of alcohol the employee shall be discharged.

Employees who test positive for drugs shall be discharged.

Employees who refuse to submit to a test, attempt to tamper or adulterate the test, or positive results which cannot be justified will be considered a positive finding.

The Union raised concerns about employee privacy and questioned whether this was really a big problem or whether the potential cost outweighed the benefit. As a result of the discussions, the State added the following language: "Confidentiality of Records: Records concerning testing of employees will be maintained confidentially."

Over the summer and early fall 2015, the Union made a number of information requests about this program and responsive information for each was provided promptly by the State. On August 26, 2015, the Union asked about the number of employees covered by an existing reasonable suspicion policy; the State responded the following day. On September 9, 2015, the Union rejected the proposal, indicating that it was still researching the issue but that it did not believe the State had demonstrated a need. On September 10, 2015, the Union asked for information about agency protocols where reasonable suspicion drug testing occurs to better understand how it would actually work. The State provided this information on the next bargaining day, September 23, 2015.

The State had also added language regarding use of employee assistance programs to combat illegal drug use in response to the Union's concerns. The Union countered this additional language by proposing it refer to its Personal Support Program instead of the State's Employee Assistance Program. On December 1, 2015, in conjunction with the State's agreement to continue to fund AFSCME's Personal Support Program, it agreed to the Union's counter language. This provision read as follows:

> Employee Assistance Program: The Employer and the Union fully support the utilization of employee assistance programs and encourage employees to seek the confidential services of the ~~Employee Assistance Program~~ Personal Support Program or other such programs. ~~This~~ These programs plays an important role by providing employees an opportunity to eliminate illegal drug use. Referral can be made to appropriate treatment and rehabilitative facilities who follow-up with

individuals during their rehabilitation period to track their progress and encourage successful completion of the program.

The Union held to deletion of all other language in the State's proposal from November 4, 2015, through January 2016. On December 1, 2015, the State presented its last proposal on this package. It included this proposal, which, other than the modification above, had been in the same form since July 27, 2015.

On January 7, 2016, the Union presented a proposal that was not so much a counter as an alternative to the State's Reasonable Suspicion Drug and Alcohol Testing MOU with its own new MOU, entitled Reasonable Suspicion of Impairment. That proposal included the following language:

> MOU - Reasonable Suspicion of Impairment
>
> The parties agree that in order to protect the safety of employees and the public, the workplace should be free from the risk posed by employees impaired by the abuse of alcohol and controlled substances. While the parties recognize that abuse of alcohol and controlled substances is a treatable illness, employees found to be impaired while on duty may be subject to discipline.
>
> Reasonable suspicion of impairment of alcohol and controlled substances exists when two "qualified supervisors," as defined herein, determine that specific objective facts and circumstances warrant rational inferences that a person may be under the influence of alcohol or a controlled substance. Reasonable suspicion may be based on:
>
> 1. Observable phenomena such as direct observation of use or the physical symptoms of using or being under the influence of controlled substances such as, but not limited to: slurred speech, direct involvement in a serious accident, or disorientation.
> 2. A pattern of abnormal conduct or erratic behavior.
> 3. Documented evidence provided by reliable and credible sources independent of the two qualified supervisors referenced above. Inmate or client complaints shall not be cause for initiation of this policy.
>
> A "qualified supervisor" is defined as a supervisor who is outside the bargaining unit and who has received 24 hours of instructor-led training on the symptoms of alcohol abuse and the symptoms of controlled substances use. The purpose of this training is to teach supervisors to identify circumstances and indicators that may create reasonable suspicion that an employee is using or under the influence of alcohol or drugs.
>
> Where reasonable suspicion has been determined to exist, the employer may require an employee to seek assistance through the Personal Support Program, unless the employee is able to provide a legitimate explanation for the alleged

> behavior used as the basis for the reasonable suspicion determination. The employee shall be informed of his/her right to union representation.

The parties did not discuss this proposal prior to the State's indication on January 8, 2016, that it believed the parties were at impasse.

i. Mandatory Overtime Package

In addition to mandatory overtime, this package also contains provision related to overtime payments. Mandatory overtime had been a significant topic between the parties for years.[12] During the first bargaining session, the Union asked for updated information on implementation. The information showed that mandatory overtime had begun to go down, increased, and was getting to go down again. Mandatory overtime had been the subject of an arbitration award. Under the award, the State was reaching headcount targets at various agencies where mandated overtime was a problem, and the State could only mandate overtime for unexpected absences of which the State became aware 2 hours or less before the start of a shift.

The State's initial non-economic proposal included deleting the introductory language where the parties agreed "that mandatory overtime should be the exception and no the norm and employees shall not be disciplined for refusing a mandation[13] to work overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences discovered at the commencement of a shift as provided in the Mandatory Overtime MOU." It also provided a disciplinary ladder for refusing mandatory overtime. In describing the proposal, Terranova indicated that the State did not want mandatory overtime to become the norm, but that the increased hiring and commitment to continue hiring was working to limit the problem. Lynch indicated that the Union was not going back to the days of the problems of mandatory overtime. Lynch questioned why the State wanted to dismantle the progress the parties had achieved through the Mandatory Overtime MOU. Terranova indicated that he did not believe it was necessary in light of the State's commitment to hire more employees, which the Union pointed to during negotiations as support for its contention that overtime can be controlled by the Employer.

The Union's initial proposal included the following language:

---

[12] In the recent past, mandatory overtime was a significant problem. The Union won a grievance arbitration, and the arbitrator's award placed numerous requirements on the State, including reaching certain hiring targets, to alleviate mandatory overtime.

[13] "Mandation" is a term the parties use to refer to the State mandating a bargaining unit member to work mandatory overtime.

> The parties agree that there shall be no overtime mandation and employees shall not be disciplined for refusing a mandation to work overtime hours. Such prohibition of mandatory overtime shall not compromise security in youth centers and prison, or resident/veteran to staff rations in DHS or DVA facilities. Accordingly, no mandatory posts in DOC or DJJ shall be eliminated (including conversions from mandatory to "mandatory as needed") nor shall any staff rations (other than a reduction based on resident/veteran's acuity needs) in DHS or DVA be reduced.

It proposed deleting all other language on mandatory overtime.

The package with mandatory overtime initially also contained provisions on leaves of absence. However, in this section I only discuss bargaining over the proposals that remained in the Mandatory Overtime package on January 8, 2016. Proposals between May 13, 2015, and June 30, 2015, included mandatory overtime proposals, but there was little movement on those provisions. Notably, the Union modified its no-mandatory-overtime proposal to provide:

> The parties agree that mandatory overtime should be the exception and not the norm of the State operations. The Employer shall not mandate overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer. Including unexpected absences discovered at the commencement of a shift as provided in the Mandatory Overtime MOU. An employee shall not be disciplined for refusing a mandation to work overtime hours unless the mandation is due to such unforeseen or unusual circumstances. … As a means to limit the utilization of mandatory overtime the determination of all mandatory and/or essential positions will be by mutual agreement of the Union and Employer.

i. Offers Exchanged on June 30, 2015

The prior contract language allowed for one and one half time for hours outside an employee's work day up to 16 hours. For hours worked in excess of 16 hours in a 24 hour period, those hours are paid at double time. The Union proposed making double time start at 15 hours and also provide double time for any hours beyond 22.5 hours in a 48 hour period. The State rejected these proposals and noted that the Union should withdraw them. The State also rejected the Union's modified proposal limiting mandatory overtime to only unexpected absences discovered at the commencement of a shift. The State countered by including language that would allow for mandation in the case of unexpected absences discovered within 48 hours of the start of a shift, and withdrew the discipline ladder.

In the discussion of this proposal, the Union questioned how 48 hours' notice could be "unexpected." The parties were operating under a 2 hour window, and the State noted that the arbitrator had concerns about employees "gaming the system."

The Union responded that same day. It suggested deferring overtime payments to economics and added language that if an employee has worked at least three voluntary assignments covering overtime in a calendar quarter, and has been mandated on three occasions to cover overtime in that quarter, each subsequent occasion of mandated overtime in that calendar quarter would be compensated at double time. It also rejected the State's 48-hour window for unexpected absences in the Hours of Work article, countered with a three hour window, but did not counter the State's 48-hour window in the Mandatory Overtime MOU. Terranova responded that while he appreciated the movement, there is every expectation that the arbitrator would soon lift the two-hour window provision of his award and there will be no set window at all. Terranova hoped to get something more "realistic."

ii. State's Offer of July 27, 2015

The State held to its rejection of the Union's proposals but modified its proposal, as follows:

> The parties agree that mandatory overtime should be the exception and not the norm of the State operations and employees shall not be disciplined for refusing a mandation to work overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences ~~discovered within forty-eight (48) hours of the commencement of a shift as provided in the Mandatory Overtime MOU.~~ caused by call offs received during the two (2) preceding shifts. Prior to mandating for overtime, where there is not an agreement in place at the facility, the employer shall exhaust all efforts to seek volunteers to work the overtime, which may include:
>
> • Providing a volunteer sign-up sheet for mandation purposes at the employees' respective facility for future dates;
>
> • Exhausting all volunteer lists within the Facility including, but not limited to: Full Shift Voluntary Lists; Half Shift Voluntary Lists, Mandate Relief Voluntary Lists.
>
> • The Employer may seek volunteers who have noo signed up for a voluntary overtime list
>
> • The Employer shall solicit for voluntary overtime in accordance with the voluntary overtime distribution provisions in Article XII, Section 17.
>
> […]
>
> Once an employee has been mandated to work overtime, efforts shall be made to relieve said employee as soon as operationally possible.
>
> It is agreed that in the event of disciplinary action due to refusal of a mandation, all suspension shall be paper, with the exception of the last suspension prior to discharge.

iii. Union's Offer of July 28, 2015

The Union's proposal held to its positions, rejected the State's, and provided a counter on the general mandatory overtime language, as follows:

> The Employer shall not mandate overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences discovered less than 3 hours prior to the commencement of a shift as provided in the Mandatory Overtime MOU. An employee shall not be disciplined for refusing a mandation to work overtime hours unless the mandation is due to such unforeseen or unusual circumstances. Prior to mandating overtime, the employer shall exhaust all efforts to seek volunteers to work the overtime, which shall include:
>
> - Providing a volunteer sign-up sheet for mandation purposes at the employees' respective facility for future dates;
> - Exhausting all volunteer lists within the Facility including, but not limited to: Full Shift Voluntary Lists; Half Shift and/or Split Shift Voluntary Lists, Mandate Relief Voluntary Lists.
> - The Employer shall seek volunteers who have noo signed up for a voluntary overtime list
> - The Employer shall solicit for voluntary overtime in accordance with the voluntary overtime distribution provisions in Article XII, Section 17.
> - Once the Employer has exhausted all other attempts to relieve the mandate, nothing shall prevent the mandated employee from seeking a volunteer to relieve his/her mandate.
> - Where conflicts exist between current supplemental agreements on mandatory overtime relief and these provisions, the parties shall meet to resolve any such conflicts with the supplemental agreements.
>
> Once an employee has been mandated to work overtime, efforts shall be made to relieve said employee as soon as operationally possible, if requested by the employee.
>
> As a means to limit the utilization of mandatory overtime the determination of all mandatory and/or essential positions will be by mutual agreement of the Union and Employer.

These last two proposals sparked much discussion. The State asked for more time for its supervisors to be able to fill positions, indicating that closing posts because there is no one to fill them is a safety issue. The Union responded that too much overtime is a safety and fairness issue. The State indicated that it was looking to widen the parameter to manage the operations, not to go back to the days of tons of mandatory overtime.

Shortly after these proposals, the parties agreed to form a mandatory overtime subcommittee. It met a number of times before the issue was brought back to the table by the State on December 2, 2015. The record does not include the back and forth of what occurred in the mandatory overtime subcommittee. AFSCME point person for this subcommittee, Chuck Stout, testified that parties continued to discuss their concerns, and his description is similar to what the parties discussed at the main table. The subcommittee was not successful in resolving the parties' dispute over these issues, and on December 2, 2015, the State sought to bring the issue back to the main table. In the meantime, the mandatory overtime arbitrator's award was lifted.

iv. State's Offer of December 18, 2015

On December 18, 2015, the State made the first proposal after the issue came back from subcommittee. There was some change to the package from when it was in subcommittee. The State continued to reject the Union's proposals to extend double time pay and rejecting the Union's three-hour window for mandation. The State modified its proposal to shorten the mandation window from 48 hours to 16 hours (two shifts) and to add, "The Employer shall retain available records related to the use of mandatory overtime and provide such records to the local Union upon request." It also adopted the Union's proposed addition that mandated employees be relieved only if they request it. This proposal was included in the State's last, best, and final offer.

v. Union's Offer of January 7, 2016

The Union made another proposal on January 7, 2016. There was a transmission error with the email transmitting a Mandatory Overtime Proposal on January 6, 2016. The proposal passed across the table on January 7, 2016, was the proposal the Union intended to submit. This proposal linked withdrawal of the 3-voluntary-shifts-and-3-mandates-equals-double-time proposal to the State's acceptance of its proposals expanding double time to 15 hours in 24-hour period or 22.5 hours in 48-hour period. The Union also modified its general mandatory overtime proposal, holding to the three-hour window and adding numerous additional administrative steps to be completed before the Employer could mandate overtime. The additional requirements, included:

- Where the Employer fails to utilize EACH and EVERY step in a mandate relief supplemental agreement and as outlined in this Article prior to

mandating an employee, the mandated employee may refuse the assignment and shall not be subject to disciplinary action.

- Employer shall retain the following records (if applicable/used by the facility) and provide them to the local union upon request and without impediment:

  1. Call-in logs
  2. Facility telephone call logs or telephone digital reports documenting the number called/date/time
  3. Assignment rosters or like documents
  4. Voluntary overtime sign-up logs
  5. Mandatory overtime lists
  6. All call logs (Stateville C.C.)
  7. Non-Security or voluntary overtime beyond the overtime unit list

- A mandate checklist for each person mandated shall be filled out by the supervisor issuing the mandate and shall list the steps taken to avoid the mandate and shall include a place for the local union representative to sign documenting a conversation was held at the time of the mandate regarding the staffing levels and the need for specific assignments for the shift in question

- The complete mandate check lists will be placed with the shift report, assignment roster, work schedule or a like document for the shift of the mandate and provided to the local union for each shift where a mandate(s) occur.

- The Union and the Employer shall meet not later than January 31, 2016 at each DOC, DJJ, DJS and DVA facility for the purpose of reviewing day off and shift assignments, special assignments, and any other facility specific staffing issues for the purpose of reducing mandatory overtime.

- At facilities with more than 100 employees, the Employer shall assign a manager on each shift with the specific duty of monitoring mandatory overtime assignments. For employees on extended leaves of absence (a leave of more than 180 calendar days) with no reasonable expected date of return, the Employer shall fill a vacancy in the effected position classification and the employee utilizing the leave of absence shall retain all rights in accordance with Article XXIII Section 23.

The following day, the State indicated it was still looking at this topic. It did not present another proposal before indicating its belief that the parties were at impasse.

j. Non-Discrimination, Upward Mobility Program (UMP), and Filling of Vacancies

This package includes a number of provisions, with the two biggest areas of contention being finalizing the Upward Mobility Program (UMP) provisions and the State's proposal to bypass seniority to fill positions where there exists underutilization of a minority class in the labor category of the title to be filled. The package also includes proposals regarding posting;

Promotions, Voluntary Reduction and Parallel Pay Grade Movement; Revenue Tax Specialist Series MOU; Social Service Career Trainee, Option 2; and Special Grievances. The State initially proposed deleting all provisions related to the UMP.

Before these issues were placed in this package for bargaining, the parties had numerous discussions, and the Union made a number of information requests regarding underutilization. I detail those in Section VI. E. 5 below.

i. State's Offer of August 13, 2015

In the first package on these issues, the State modified its proposal on UMP to reinsert the vast majority of the prior language on UMP. The State held to its deletion of the section on financing and courses of instruction. The State withdrew its proposal that who have prohibited the Union or its members from soliciting members or potential members for political purposes on State property or using State equipment. The State rejected the Union's proposed expansion of the prohibition on discrimination to include discrimination in sub-contracting, vendor and personal service contracts, and any personnel transactions on the basis of political favoritism. The Union had proposed an additional section entitled "Fostering Diversity and Equal Opportunity." The State countered the Union's proposal on UMP as a mean of fostering advancement for women and minorities. The State's proposal read, "The parties agree that the full integration of women and minorities in the state workforce requires opportunities for training and development and therefore agree ~~to cooperate in increasing access~~ to utilize the Upward Mobility Program ~~which has a proven track record of fostering~~ to assist in the advancement ~~for~~ of women and minorities." The State rejected the Union's broad section B with prohibits discrimination in hiring.

The State also included a modification of its underutilization proposals in this package. These proposals inserted the following language into various portions of prior language related to applying seniority: "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 Agency, after utilizing the Upward Mobility Program where applicable, may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization." Similar language was modified and proposed for the section referring to applications. The State withdrew a proposal that would have allowed it unfettered discretion to fill a vacancy where underutilization exists when 2 of 3 vacancies had been filled by internal moves. The State

withdrew a number of proposals it made that were no longer applicable since it was proposing to continue the UMP. In response to the State's proposal to delete UMP, the Union had proposed adding "all other qualified bidders regardless of bargaining unit" to various sections of the contract related to order of selection of candidates. The State rejected these in light of its restoration of UMP language. The State withdrew its proposals on the Social Service Trainee MOU and Revenue Tax Specialist Series MOU in line with its restoration of UMP language. Finally, the State modified its proposal on Special Grievances to all the agency head 15 days, instead of 10, to respond in writing.

The Union again pointed out that it had asked for data a long time ago. The Employer's note takers took down Lynch's comment as "We want to know what underutilization is."

ii. Union's Offer of August 25, 2015

The Union responded to this package on August 25, 2015. It agreed to the State counter regarding utilizing UMP to assist in the advancement of women and minorities. It held to its political favoritism prohibition language and its new, broad non-discrimination in hiring provision. The Union countered on UMP, proposing the prior language for the entire article with the only modification being the deletion of the specific $5 million allocation for FY 2014 and FY 2015. The Union added its proposal on job assignments to this package and withdrew it. On the issue of underutilization, the Union rejected the proposal, saying that until it gets information regarding bargaining unit titles where there is underutilization, it did not see a reason to forego seniority. Lynch stated that the Union believe political favoritism to be the most prominent form of discrimination. Terranova asked how a provision like the one it proposed could be enforced.

The parties discussed these issue of underutilization on September 24, 2015, in response to the State providing information the previous day. The Union contended that historically, minority employees had done better in bargaining unit positions than merit compensation, and stated that it did not believe the Employer's proposal had been justified. Terranova explained that the proposal would give the Employer the ability to address underutilization in the areas where it existed, not necessarily State-wide. The Union indicated that it is proud of its record in terms of fighting for justice in the workplace and working for equal opportunity; as such, it find the State's proposal offensive to imply this is something the parties need to address in the CBA.

iii. State's Offer of September 25, 2015

The following day, the State again made an offer on this package . It continued to reject the political favoritism language and broad hiring discrimination prohibition. Terranova noted his belief that these proposals were permissive subjects of bargaining and that the State was not interested in language that would expand the existing discrimination prohibition. It held to its UMP proposals, explaining that the bargaining team had discussed putting in language related to funding, but that they ultimately decided it was inappropriate because they knew there would not actually be funding for the program. There had not been funding for years. Newman voiced concern that the State was saying there would not be funding, because the State clearly needs to negotiate over UMP. Terranova agreed that the State would negotiate it, but he was explaining that funds for the program have not been in the budget.

The parties next talked about underutilization on October 6, 2015, when the State provided more information from the Illinois Department of Human Rights (IDHR) regarding underutilization by agency, category, region, and title, but not by bargaining unit, as IDHR does not keep that information.

iv. Offers Exchanged on October 7, 2015

In light of Newman's comments at the table about their last proposal, this time the State proposed, "For FY 2016 and subsequent fiscal years covered by this agreement, the allocation shall be limited to those funds specifically appropriated by the legislature to fund the Upward Mobility Program up to 5 million annually." The State encouraged the Union to withdraw its proposals adding "all other qualified and eligible bidders," as the State's deletion of UMP was cited as the basis for the proposal. The State's held on its underutilization proposals and its rejection of the Union's proposal to add "all other qualified bidders regardless of bargaining unit" to the order of selection for promotions, voluntary reductions, and parallel pay grade movement.

The Union responded with another package proposal. It continued to reject underutilization and to hold on discrimination proposals. It also proposed its own UMP funding language, which it linked to its withdrawal of its cross bargaining unit bidding rights proposals: "The annual fiscal year allocation shall be 5 million." The Union indicated that the State's proposal seemed to require a specific line item for UMP, whereas the Union wanted the State to include the money in the CMS Budget and commit to spend $5 million from CMS's budget.

Terranova explained that the problem in the past was that UMP money was not included in CMS's budget, but CMS had to absorb the $5 million spent on UMP.

On October 21, and November 3, 2015, the Union again asked for specific examples of titles associated with underutilization language. On November 4, 2015, the State explained that it could not give the information in the manner the Union was requested because IDHR does not keep it like that, but described in greater detail how it would work. Terranova gave the example of a position posted and two applicants (1 more senior and 1 a minority). If the position fits into an underutilized title, qualifications are equal, and the representative minority group is underrepresented in the region, then the State could fill the position with the minority candidate, bypassing the most senior candidate. The Union indicated it would look at the issue again.

v. State's offer of November 17, 2015

In this proposal, the State held to its position on the discrimination provisions, held to underutilization, and countered the Union's UMP proposal. The State's proposed funding language was, "For each fiscal year covered by this agreement, the annual allocation shall be 5 million dollars, subject to sufficient appropriations." Given this commitment, the State asserted that the Union should withdraw its cross-bargaining unit bidding proposals. In the discussion on this point, Newman raised concerns about the Union's ability to determine whether there were sufficient appropriations/funds for the $5 million to be allocated. Terranova explained that the State had earlier said specific appropriation by the General Assembly, meaning a specific line item, but that Lynch balked at that idea. Terranova said the point was if the State got $5 million for UMP, they would spend it on UMP. If they did not get the appropriations, they would not have the program. This proposal was included in the State's last, best, and final offer.

The parties again discussed underutilization on December 2, 2015. Lynch indicated an inconsistency between language relating to relatively equal skills in different provisions of the CBA. She also indicated for the first time, that in 2012, the State had provided the Union with the specific information it was now seeking. They also discussed application of the principles of the State's underutilization proposal to the data they did have. Terranova also indicated that the State was attempting to propose something progressive, that diversity is important and that the State thinks that allegations of favoritism or political cronyism could be grieved through the underutilization language. Lynch responded something to the effect of "seniority is the worst

system, besides all the others," which is also said about democracy. Terranova invited the Union to counter to help them reach their goal. The Union declined to do so.

k. Management Rights and Check-off/Fair Share

Each party proposed modifications to the Management Rights article in their initial proposals, and the State proposed deleting the portions of the contract dealing with fair share fees on the grounds that the administration believed them to be unconstitutional. These issues had been parts of various packages, at times including subcontracting and authority of the contract. In all, packages including these provisions were discussed on eight bargaining days in addition to the presentation of initial proposals.

Since September 10, 2015, when the last proposal on these issues was made, the package contained three topics: Management Rights, Checkoff/Fair Share, and Records and Forms. The Records and Forms proposal continued to be bargained in the DOC/DJJ Roll Call Package. I recount the bargaining history related to the other two issues below.

The State initially proposed deletion of language qualifying that exercise of management rights was limited where "amended, changed or modified by" the CBA and that exercise of statutory obligations "shall not conflict with" the CBA. The Union responded by deleting the entire Management Rights provision entitled Rights Residing in Management. These issues were first put into a package on July 15, 2015. In that proposal, the State modified its proposals to reinsert prior language restricting its rights as defined in the CBA, but limiting that restriction by linking it to the *express provisions* of the CBA. On August 25, 2015, the Union responded and proposed retaining prior language on the entire Management Rights article. On September 10, 2015, the State made its final proposal on this package. It withdrew its proposal on the Rights Residing in Management and held to its proposal limiting the restriction on its exercise of statutory rights to the express provisions of the CBA.

On the topic of Checkoff/Fair Share, the State initially proposed deleting the provisions in their entirety, saying that it did not believe this should be the duty of the government and that it puts a burden on the payroll office. On May 12, 2015, the State put this issue in a package. In that package proposal, the State restored prior language regarding dues deduction, with the exception of deducting contributions for AFSCME's political action fund, Public Employees Organized to Promote Legislative Equality (P.E.O.P.L.E), and held to its deletion of fair share provisions. On that same day, the Union rejected these proposals. On June 1, 2015, the State

verbally held to its May 12, 2015 proposal. The following day, the Union held to its rejection. On June 17, 2015, the State made another proposal, holding to its Checkoff/Fair Share modification, but made changes to the subcontracting provision that were still included in the package at that time. On July 15, 2015, the Union rejected the package.

Later in the day on July 15, 2015, the State further modified its proposal to restore prior language whereby the Employer agreed to deduct employee contributions for P.E.O.P.L.E. and restored the prior language on Fair Share, both in the Checkoff/Fair Share article and in the Fair Share MOU. The State modified the prior language by proposing to include the following language in both the Fair Share section of the CBA and in the Fair Share MOU:

> Such fair share provision shall remain in effect for the duration of the labor agreement or until it can be, demonstrated that fewer than a majority of employees are union members or either the Illinois Supreme Court or the United States Supreme Court declares that the fair share fees are unconstitutional.
>
> The Employer asserts that compulsory fair share fees of non-union members are unconstitutional. The Union disagrees. The parties agree, however, that by agreeing to this provision, the Employer does not waive the right to continue to challenge the enforceability or constitutionality of this provision or provisions like it.

On July 27, 2015, the Union countered. It rejected the inclusion of any additional language in the Fair Share MOU, instead proposing no change from the prior MOU. In the Checkoff/Fair Share article, the Union countered with the following language, while rejecting all other language proposed by the State: "Such fair share provision shall remain in effect unless the United States Supreme Court declare that the fair share fees are unconstitutional." In its September 10, 2015 proposal, the State held to its Fair Share language.

The record reflects that after September, the parties agreed to have their lawyers look at the State's proposed language on Fair Share to see if they could hammer out something that would be amenable to both sides. They apparently were unable to come to an agreement and on December 2, 2015, Terranova brought the issue back to the table holding to its last proposal, though the issue was never again discussed. The State's proposal from September 10, 2015, was included in its last, best, and final offer.

l. Semi-Automatic/Classification In-Series Advancement

This package deals with semi-automatic, in-series advancement, the Union's proposals to upgrade certain position and increase pay grades for other positions, split classifications

(classifications where some employees are in the bargaining unit and others are not), and a side letter dealing with specialized skills for certain titles.

The prior contract provided for 52 different titles for which an employee could be promoted through semi-automatic, in-series advancement. In its initial economic proposal, the State proposed to delete all but four of these advancements.

i. Union's Offer of July 16, 2015

On July 16, 2015, the Union made the following 10-point proposal:

1. Technical Advisor II to III Semi-Automatic
2. Environmental Protection Engineer III - one pay grade increase RC-62 (18) to (19)
3. Environmental Protection Specialist III- one pay grade increase RC-63 (19) to (20)
4. Department of Corrections Library Associate upgrade to Librarian I
5. Department of Juvenile Justice Office Administrator 3 upgrade to Executive 2
6. Administrative Assistant I and II shall have the same bidding rights as RC-62 employees when bidding on an Executive I vacancy
7. Lottery Telemarketing Representative will be placed into the Lottery Sales Representative series
8. Evidence Tech I and II will be placed into the Forensic Scientist series
9. Natural Resources Tech will be placed into the Site Assistant Superintendent series
10. Information Services and Systems Analyst Subcommittee at State Retirement Systems. Committee to address grading exams and ISS to ISA career path.

The State noted that in the last round of bargaining, the Union did not make a proposal to add to semi-automatic, in-series advancement or to provide for salary upgrades. He agreed to do due diligence, cost out the proposal, and respond.

ii. State's August 26, 2015 offer

On August 26, 2015, the State responded. It modified its initial proposal to put titles back in, with the exception of Bank Examiner I to II, II to III, Financial Institutional Examiner I to II, II to III, Geographic Information Specialist I to II, Gaming Special Agent to Gaming Senior Special Agent, Information /Service Specialist I to II, Revenue Auditor I to II and II to III, Social Service Program Planner I to II and II to III, and Revenue Officer I to II and II to III. It rejected the Union's proposal on the basis that its costing information reflected that it had a combined cost of $10 million. The State also added the Side Letter on Bargaining Unit Exclusion Procedure and MOU on New Positions within a Split Classifications to the package. These proposals set out how the parties deal with particular positions in titles where not all

incumbents are in the bargaining unit. The State proposed striking the provision of the Bargaining Unit Exclusion Procedure side letter that the parties would seek ILRB certification to clarify that for split titles, all positions not specifically excluded are included in the bargaining unit. The State withdrew its deletion of the New Positions within a Split Classifications MOU and proposed retaining the prior language.

On September 9, 2015, the Union requested the number of employees in semi-automatic titles. The State provided this information on September 23, 2015. Also on that day the parties discussed the rationale for the State's proposal. Terranova indicated that the State did not have enough employees in the lower tiers to perform work of the lower title. Lynch indicated that the Union's understanding was that much of the duties were essentially the same, but that employees were becoming more skilled and competent, thereby completing more work. Terranova understood that they would also be getting more difficult work as they progress, noting that there had to be a difference between the titles or they would just be a single title. Lynch asked how the State reached the number of $10 million and noted that the Union's proposals expanding bidding rights do not cost anything. Terranova asked for the rationale for those proposals; Lynch agreed to provide it.

The following day, the parties discussed this again at length. Terranova indicated that a specific employee involved in classifications/technical services at CMS did the costing and arrived at $10 million. Terranova specifically asked for the rationale for pay grade increases and why bidding rights between Administrative Assistants and Executives are logically connected. Terranova also noted that the upgrade to Librarian I from Library Associate was problematic for DOC because the titles require different degrees. Newman responded for the Union. The placement of Evidence Technicians into the Forensic Scientist series is to allow the otherwise qualified Evidence Technicians the ability to receive the Forensic Scientist positions over off-the-street hires, which would benefit the State because Evidence Technicians are already committed to State employment and the employer knows their work record. In some DOC facilities, there is only a Library Associate, who is essentially doing the same things that Librarians do at other facilities. The State was reporting hearing that the agencies have too many employees in the higher titles and not enough in the lower, and less costly, titles. The Union reported that agencies need more higher titled employees to do the work of the higher title.

On September 24, 2015, the Union indicated that it was waiting to make a proposal on semi-automatic advancement until it got additional costing information. The State provided that information on September 25, 2015. In the discussion over the data, the parties agreed that the net cost for just the semi-automatic advancement would be $2.9 million, and that the $10 million number also included the AFSCME-requested raises as part of the increased salaries from the semi-automatic advancement.

In early October, the State gave the Union additional information on costing. The Union requested the cost of upgrades, isolated from other proposed increases, such as across-the-board wage increases. The State provided that information on November 2, 2015.

iii. Offers Exchanged on November 18, 2015

On November 18, 2015, the Union held on its rejection of the State's proposal and modified its 10-point proposal to delete item #2, pay grade increase for Environmental Protection Engineer III. In support of its proposal, the Union pointed to the provisions that had no cost, explained that the committee had met before and wanted to continue, and that the Technical Advisor II to III promotions regularly occur by virtue of grievance resolutions.

Later that day, the State responded. It withdrew its proposal to modify prior semi-automatic, in-series advancement contingent upon the Union's withdrawal of its now-9-point proposed modifications. The State held to its positions on the side letter and MOU. The Union informed the State that it had learned that only two DOC librarians have Master's degrees, most do not, and others meet the requirements of the position through equivalencies.

The parties discussed the State's rejection again the following day. Specifically, the Union was looking for whether the State's sole concern was economic and whether they could agree that the increase is otherwise appropriate. The State responded that in addition to cost, it did not believe it had received sufficient justification to agree to the Union's proposal. The Union provided additional rationale, namely additional and more difficult duties to the Environmental Protection Specialist IIIs, Library Associates acting as Librarians in their absence, DJJ Office Administrators are performing work of the higher Executive 2 title, that the progression between Administrative Assistant and Executive is logical, Lotto Telemarketers already have relationship with vendors, and the difficulty of hiring Forensic Scientists.

On December 1, 2015, the parties had yet another discussion of these proposals. Terranova indicated that CMS Classifications opposed the link between the Administrative

Assistants and Executives, as Executives are managerial, while Administrative Assistants perform support functions, and the pay grades are different. ISP indicated that Evidence Technicians do not get sufficient experience to be linked to Forensic Scientists. Newman indicated that if the Union did not withdraw its proposals, it would provide a rationale.

iv. *Union's Offer of December 2, 2015*

On December 2, 2015, the Union withdrew its proposal to place Natural Resources Technicians in the series with Site Assistant Superintendents, but held to the rest, and rejecting the State's proposals. Lynch recited the Union's rationale for the remaining 8 items. Lynch gave the example of Administrative Assistants and Executive working side by side and a Lotto Telemarketer with an A grade not being selected as a Lotto Representative. Later that day, the State held to its position.

v. *Offers Exchanged on January 6, 2016*

On January 6, 2016, the Union modified #8 of its proposal. Instead of seeking to add Evidence Technicians to the series with Forensic Scientists, it proposed making Forensic Scientist Trainee a certificate title in the Upward Mobility Program.

Later that day, the State responded. It still held to its position on the Side Letter and MOU, accepted a modified #5 from the Union's proposal (reclassifying instead of upgrading DJJ Office Administrator 3 to Executive 2), and modified an earlier proposal on specialized skills. The State had previously proposed allowing it to impose specialized skills on seven additional positions than were in the prior contract. In its January 6, 2016 proposal, it withdrew all but one, Human Resources Representative. The State linked its movement (withdrawal of its proposal on prior in-series advancement and accepting a modified #5) to the Union's withdrawal of the remaining seven items and acceptance of the Human Resources Representative position being subject to specialized skills. The State explained its proposal was based on information from the agencies that where there is no Librarian, Librarian work is not being done, that a certificate program for Forensic Scientist Trainees would not provide the requisite education, and that the SERS issues are currently being handled through a class study with CMS. This proposal was included in the State's last, best, and final offer.

vi. *Union's Offer of January 7, 2016*

The Union made another proposal the following day. It rejected the State's linkage and rejected the proposed addition of Human Resources Representative to the list of positions with

specialized skills. The Union agreed to the State's modification in #5 and countered the rest of the proposal by deleting #10 (the SERS committee); limiting the Technical Advisor II to III to Property Tax Appeal Board, Guardianship and Advocacy Commission, and the Environmental Protection Agency; limiting the Library Associate upgrades to DOC facilities where there is not Librarian, but adding DJJ Librarians to the proposal; and making the Forensic Scientist Trainee a credential title instead of a certificate title. For the first time, the Union made a proposal regarding the side letter and MOU. On the side letter, the Union rejected the State's deletion of historic language and instead offered to clarify that it is referring to the parties conduct as of the time the side letter was initially effective, September 22, 2004. It countered the Split Classification MOU to add a "complete" list of titles that are split classifications.

Terranova voiced his frustration with the Union's offer. He indicated that the State had made significant movement on semi-automatics, but that the Union had made very little, while rejecting the States specialized skills. Lynch responded that the State was trying to take away rights, while the Union came in with modest proposals in light of the State's financial situation. Terranova responded that upgrades and semi-automatics would cost between $20-30 million. Lynch indicated she was surprised by the State's response, as they had modified this proposal more than any other, and while the list only went from 10 to 7, the Union had modified other proposals. The Union thought it was addressing the State's concerns.

E. Information Requests Directed at the State

During the last week of bargaining, Terranova indicated at the table that the State believed that it had complied with all outstanding information requests and asked the Union to confirm this was the case or bring any outstanding requests to its attention. Lynch indicated on at least two occasions that the Union team would have to check and get back to them. The Union did not do so before the conclusion of the session on January 8, 2016. On February 11, 2016, Newman sent a letter to Terranova "responding to [his] request." In the five-page letter, Newman details 18 specific topics on which AFSCME had made or was making requests for information related to bargaining.

In its post-hearing brief, AFSCME points to a number of requests it made during bargaining to which the State either never responded or responded after some passage of time. [14] Some of the requests outlined in the brief were referenced in Newman's letter of February 11,

[14] I have inserted AFSCME's tables with only a few minor formatting changes.

2016, and others were not. When his letter went unanswered, Newman renewed his requests by way of a letter dated April 5, 2016. Therein, Newman writes that his February 11, 2016, letter "identified and renewed a number of outstanding information requests, as well as making several additional requests," and noted that the "Employer's failure to provide the requested information continues to prevent the Union from being able to fully evaluate the Employer's proposals and, in many instances, continues to prevent the Union from developing and presenting counter proposals."

Issue	Information Requested	Dates of Request(s)
Merit Pay	Examples of Criteria for Highly Performing Employees	9/23/15 (Tr. 3243, 4567-9); 10/6/15 (Tr. 3457-8); 10/20/15 (Tr. 3547-8); 1/6/16 (Tr. 3925)
Wages	Cost Analysis for Promotion of Intermittent Employees	5/29/15 (Tr. 2044); 12/17/15 (Tr. 3877)
Health Care	Cost savings initiatives the State was interested in pursuing and associated projected cost savings	9/27/15 (Tr. 2704-5, 2706-7, 5132-4); 11/2015 (Tr. 5160)
Health Care	Examples of Plan Designs for "Silver" Plans	9/17/15 (Tr. 3311-3, 5140-2)
Health Care	Cost Savings from Changes to Out-of-Pocket Items in "Appendix A" Insurance	12/21/15, 1/4/16, 1/6/16 (Tr. 3075-9, 5142-4, 5146-9; UX44, UX45)
Subcontracting	Standards State Agencies Would Use in Making Subcontracting Decisions	5/26/15 (Tr. 1972)
Subcontracting	Increased Costs from Current Language in the Agreement	4/15/15 (Tr. 1648)
Vacations, Holidays and Leave of Absence	Cost differences between tentatively agreed to vacation payout proposal and State's initial vacation payout proposal	1/6/16 (Tr. 3922)
[Layoff]	Circumstances Where Temporary Layoff Would Apply	8/27/15 (Tr. 2978-9); 9/10/15 (Tr. 3222-3); 9/23/15 (Tr. 3232)
Integrity of the Agreement	Rationale for Erosion Proposal	9/9/15 (Tr. 3191); 9/23/15 (Tr. 3232-4)
Health and Safety	Cost of Providing Lunch	7/1/15 (Tr. 2272-3); 7/16/15 (Tr. 2348)

Dues Checkoff and Fair Share	Savings from Elimination from Agreement	4/14/15 (Tr. 1648-9)

INFORMATION THAT WAS PROVIDED AFTER A DELAY OF 30 DAYS OR MORE

Issue	Information Requested	Date Information Requested	Date Information Provided
Merit Pay	Whether the State would commit to including funding sufficient to fund the merit pay proposal	9/23/15 (Tr. 3239-40)	1/6/16, wages and steps proposal ((JX3-3(d)) changed "may" to "shall" create an annual bonus fund
Health Care	Amount the State was Contributing to Teamsters Local 727 Health and Welfare Funds for Employees Covered by Teamster Contracts	9/23/15 (Tr. 3232-4); 10/6/15 (Tr. 3446); 10/20/15 (Tr. 3546); 10/21/15 (Tr. 3653)	11/2/15 (Tr. 3579)
Wages	Impact of Attrition on Calculations Regarding the Cost of the Step Plan	8/11/15 (Tr. 2486); 8/25/15 (Tr. 2552-3); 9/9/15 (Tr. 3161-2, 3170-2); 11/3/15 (Tr. 3653)	On 11/4/15, State told the Union that it could not provide such information (Tr. 3691-2)
Wages	Calculations for Assertions Regarding the Cost of the Union's Economic Proposals as Set Forth in 7/29 Barclay Letter	8/11/15(Tr. 2486); 8/25/15 (Tr. 2552-3); 9/9/15 (Tr. 3161-2, 3170-2)	9/8/15 (Tr. 3027-40); 9/10/15 (Tr. 3205)
Underutilization	Documentation Showing Underutilization	4/14/15 (Tr. 1645-6); 5/15/15 (Tr. 1841-2); 5/11/15 (Tr. 1882); 8/12/15 (Tr. 2507-9); 8/13/15 (Tr. 2536-8); 10/21/15 (Tr. 3570-1)	

Underutilization	Documentation on Underutilization by Job Title and County	8/25/15 (Tr. 2557-8); 10/21/15 (Tr. 3570-1); 12/2/15 (Tr. 3848-51) 12/18/15 (UX138)	9/23/15, UX130A-D (information by agency statewide, not by region and title) (Tr. 3226-8); 10/6/15 (information by broad job categories, not by title) (Tr. 3689); 1/7/16, UX139, UX140 (Tr. 4054-5)
Underutilization	Documentation on Code promotions	9/24/15 (Tr. 3377); 2/10/16 (UX74)	
Reasonable Suspicion Drug Testing	Cost	3/18/15 (Tr. 1611)	
Reasonable Suspicion Drug Testing	Where problem exists	5/4/15 (Tr. 1813-14)	8/27/15 (Tr. 2998-9), number of tests done
Reasonable Suspicion Drug Testing	Number of Tests done, process, cost	8/26/15 (Tr. 2608-10)	8/27/15 (Tr. 2998-9), number of tests done; 9/23/15 (Tr. 3261), protocols used at DOT and ISP; 11/4/15 (Tr. 3689), supervisory checklist
Reasonable Suspicion Drug Testing	Training of Supervisors	11/18/15 (Tr. 3732)	

1. Information related to Wages and Steps proposals

The Union made a number of requests related to the State's merit pay plan. With respect to the Union's request for examples of criteria for highly performing employees, Terranova responded at the table on numerous occasions that the criteria would be developed in consultation with the Union. When pressed for examples, Terranova indicated on at least two occasions that he would get examples for AFSCME, but has never produced them. The Union also questioned whether the State could commit to including funding sufficient to fund a merit pay plan. At the table, Terranova indicated that it was the State's intent to fund the program. On January 6, 2016, the State modified the language of its proposal consistent with that stated intent by changing "may" to "shall" in relation to the creation of an annual bonus fund.

An outstanding request related to costing of the Union's proposal to promote intermittent employees was not included in Newman's February 11, 2016 letter. At the table, Terranova identified that the State objected to promotion of intermittent employees based on the cost to the agencies associated with making them full-time employees. He acknowledged AFSCME's request for those costs, but the record reflects that no response was given.

The Union asked about the impact of attrition rates on calculating the cost of the step plan, first in Lynch's letter of August 11, 2015, to which she referenced again later in August. Governor Rauner's General Counsel Jason Barclay responded to Lynch's August 11, 2015 letter by way of his own letter dated September 8, 2015. In that letter, Barclay notes that the State does not "expect any abnormal 'attrition' rates in the state workforce over the next four years that would generate any cognizable savings." On the day following the Barclay letter, the parties again discussed the cost of the step plan and indicated that they reached different costs, namely because a number of employees would reach step 8 in year 2 or 3 of the CBA. At one point in his testimony, Newman testified at hearing that "steps are funded through attrition," and at another point, he indicated that in the last round of bargaining, the State had costed the step plan at $22 million per year. The final 2012-2015 costing document reflects a cost of $22 million for the step plan, while the State's costing of its original economic proposal identifies the savings accomplished from freezing steps to be $23.7 million per year *not including* FICA or retirement. On November 3, 2015, Lynch asked for the State's projected attrition rates, even if those were not calculated as a savings when looking at the cost of the step plan. On November 4, 2015, Terranova indicated that the State did not maintain attrition projections and that to do so would be very difficult, requiring the State to review every transaction where there was a retirement to determine if/how the position was filled.

In her letter of August 11, 2015, Lynch also sought calculations for how the State arrived at the cost of the Union's initial economic proposal, which she again mentioned on August 25, 2015. The State responded by way of Barclay's letter of September 8, 2015, and responded to Lynch's September 9, 2015, follow-up inquiries the following day.

2. Information related to Healthcare

In the parties' Healthcare Subcommittee, the parties discussed a number of cost savings initiatives. It is uncontested that the State provided the Union with the menu of options developed by Deloitte by email between two subcommittee meetings. Martha Merrill and Steve

Kreisberg testified that after further discussion in a subsequent subcommittee meeting of the options outlined in the Deloitte report, the Union asked the State to develop a list of initiatives for them to consider further and to identify associated savings for each initiative. Amber Spainhour and Tim McDevitt also attended the Healthcare Subcommittee meetings. Spainhour was the State's designated note taker for the subcommittee meetings. Spainhour's notes do not reflect a request for a list of cost savings initiatives other than the Deloitte PowerPoint document the State provided. McDevitt testified that he did not recall any other, more specific, information request made in the healthcare subcommittee. Terranova testified that no one from the State's bargaining team or from the Union made him aware of such a request. Prior to January 8, 2016, the Union did not put such a request in writing. The State included a list of specific savings initiatives in its proposal submitted on October 20, 2015. However, the State did not ever provide the associated savings for the listed initiatives. Newman's February 11, 2016, letter includes the following: "[T]he Administration has stated that it retained Deloitte and Touche to identify a menu of cost savings initiatives. The Administration has promised to provide the Union that information on numerous occasions. To date, none of this information has been provided."

With respect to the Union's request for examples of plan designs for silver plans, Merrill and Kreisberg both testified that in the subcommittee, Union officials asked for either examples of a silver plan or, as Kresiberg testified, a "menu of benefit reductions" that would occur under the State's proposed two new plans and the associated savings. From September 2015 through January 2016, the State's proposals indicated that plan design of alternative plans (silver and/or gold plans) would be developed by the Joint Labor/Management Committee. The State had not designed plans that would fall within those metallic bands and still meet the 60/40 net actuarial value.

Merrill made a request for the cost savings associated with increases to out-of-pocket items in the existing plan by email in December 2015. When the State had difficulty running the numbers due to Merrill having requested that the numbers be run using percentage increases, the parties discussed and clarified the request in a sidebar on January 6, 2016. At the State's request, Merrill agreed to accept a response that showed the cost of savings of increases to out-of-pocket items in $25 increments rather than percentages. The State did not provide that cost information

before January 8, 2016, and the record does not contain any evidence that the State has ever provided that information.

In September and October 2015, the Union requested information related to the CBAs the Employer settled with units represented by the Teamsters, and specifically was looking for the amount the State contributed for healthcare. In October, the State provided various Teamsters contracts to the Union, and on November 2, 2015, it provided the CBAs and the dollar amounts the State had agreed to contribute for each.

3. Information related to Subcontracting Proposals

At the table, the Union sought information regarding what standards agencies would use to make subcontracting decisions under the State's proposal. Terranova indicated that the State would be guided by the Ethics Act and the Procurement Code. This exchange occurred on May 26, 2015.

The Union also contends in its brief that it sought information on April 15, 2015, regarding the cost of maintaining the contract language in the 2012-2015 contract. Neither party's bargaining notes reflect a discussion of subcontracting on April 15, 2015, and the Union's citation to the record reflects questions and answers related to the cost of dues deduction/checkoff language changes. In discussions on subcontracting proposals, Terranova justified the State's proposals as necessary to make the subcontracting process more efficient and to improve the State's flexibility in running government operations more efficiently and economically. Newman did not indicate this was an outstanding information request in his letter of February 11, 2016.

4. Information related to Vacations, Holidays and Leaves of Absence Proposals and Layoff Proposals

On December 2, 2015, the Union agreed to the State's proposal on Vacation Payout in Lieu of Vacation, linked to acceptance of other provisions. On January 6, 2016, the Union asked for a cost analysis of the vacation payout proposal as compared to the State's initial proposal; Lynch stated that she believed that what the Union was willing to agree to would save the State more money than its original proposal. The record does not contain any evidence that this information was provided before January 8, 2016, or at any time after. Newman identified this request as pending in his February 11, 2015, letter.

On at least three occasions, when the parties discussed the State's temporary layoff proposal, the Union indicated it was unclear on when a temporary layoff would occur.

Terranova responded that he would get back to the Union on that issue. On September 23, 2015, Terranova gave the example of a lack of budget as being cause for a temporary layoff, but indicated that he would also get more examples. The record does not reflect that the State did so. However, Newman did not identify this request as pending in his February 11, 2015, letter.

5. Information on Underutilization Proposal

The parties discussed the State's underutilization proposal numerous times. On April14, 2015, the parties discussed the IDHR definition of underutilization that had been previously requested and provided. Terranova explained that the proposal would work to define underutilization by classification and work location/region. Lynch asked whether the State had an estimated goal in every title in every geographic location, to which Terranova indicated he would check. On May 5, 2015, Lynch characterized the information that the State owed the Union as information demonstrating a problem within and outside the bargaining unit. Terranova indicated that the State would provide that. On May 11, 2015, when the Union was going over outstanding information requests, Lynch indicated that the Union wanted figures for bargaining unit and non-bargaining unit positions, broken down by title. Lynch commented that when the parties had negotiated over a similar proposal in the 2012-2013 negotiations, the data reflected underutilization mostly in management titles and for off-the-street hires. When going over outstanding information requests referenced in her August 11, 2015 letter on the following day, August 12, 2015, the Union's bargaining notes reflect Lynch again seeking the "definition of underutilization," which the State had provided back in May. On August 13, 2015, Lynch again indicated that the Union had asked for data a long time ago and stated that the Union wanted to know what is underutilization. On August 25, 2016, the Union rejected the State's underutilization proposal, pointing to the information requests. Lynch further clarified that the Union was looking for every title in every region where the State was contending underutilization exists, and asserted that the Union did not feel the State had shown a need for forgoing seniority. On September 10, 2015, the Union reasserted its request for data on underutilization in all bargaining unit and non-bargaining unit titles.

On September 23, 2015, the State provided the Union with information reflecting the race, agency, and gender of bargaining unit incumbents, as well as non-bargaining unit positions by race. The following day, Lynch indicated that this information was not sufficient to show that there was an underutilization problem that could be remedied by the State's proposal. Newman,

acting as spokesperson, referenced the 2012 proposal, and indicated that after the Quinn administration provided the numbers, it withdrew the proposal. According to the Employer's notes, Newman indicated that in 2012 the Union also received information about promotions, which the State had not yet provided. Terranova asked Newman how the parties could work together to address underutilization that may exist in specific regions of the State. Newman responded by saying that the State had thus far failed to show that a problem existed.

On October 6, 2015, the State provided additional underutilization from IDHR broken down by IDHR's categories, but not by State government title. The State explained to the Union that IDHR does not track data by bargaining unit or any State title, and instead tracks data by broad-based category (i.e., clerical). That was the information being provided. On October 21, 2015, and November 3, 2015, the Union again sought information regarding specific titles where the State contended underutilization existed. Terranova again explained on November 4, 2015, that information is tracked by broad categories and by region.

On December 2, 2015, Lynch again asked for information by title, and for the first time, indicated that in 2012, the State had provided what the Union was now seeking. Terranova asked for a copy of what the State had previously provided which the Union indicated was an example of what it was seeking. The Union agreed to do so and did on December 18, 2015. The State provided the requested information during the next bargaining session, on January 7, 2016.

After the final bargaining session, AFSCME Labor Relations Specialist Hudson directed an information request to Terranova seeking, among other things, "a list of all promotions under the jurisdiction of the Governor since July 1, 2012 which include employee name, classification title (prior title and title the employee was promoted to), agency, race, gender, hire date, promotion date, work county, bargaining unit, pay grade and salary." The State did not respond.

6. Information on Health and Safety Proposals

In July 2015, the Union sought cost information for the State's proposal to not pay per diem for lunch if an employee is travelling to a facility that would provide them with lunch. The State indicated that the cost savings associated with this proposal was $300,000 and sought to move the proposal to economics. The Union disagreed with the numbers and asked for clarification. Terranova, at one point, indicated he had been as of yet unable to come up with additional costing information, but that he was still proposing moving the issue to economics. In

2012, the State had provided the Union with a cost for the identical proposal, valued at $426,600 over the three years of the CBA.

The Union also sought information regarding the State's Reasonable Suspicion Drug Testing MOU. Newman testified that like other MOU proposals discussed on March 18, 2015, the Union sought the cost of the new MOU. Neither party's notes reflect any request related to costs of the new MOU. The Employer's notes specifically reflect Lynch's question about the cost of the MOU discussed immediately prior to this proposal, but with respect to the Reasonable Suspicion Drug Testing Proposal, the notes reflect that she only asked about the kind of procedure the State was proposing to use.

On May 4, 2015, the parties bargaining notes reflect Lynch asking whether the Reasonable Suspicion Drug Testing MOU proposal was "based on major problems," "an ongoing problem," or "a widespread problem." Lynch then asked why the State is focusing on state employees, saying "Where is the evidence for this proposal?" Terranova responded questioning whether the Union agreed that employees using drugs or alcohol at work is dangerous. Lynch agreed, but indicated her belief that a better solution would be to send an employee to counseling. As the parties continued to discuss the Reasonable Suspicion Drug Testing MOU proposal, the Union never again questioned whether there was a widespread problem of State employees appearing to have been using drugs or alcohol at work. Instead, the conversation turned to the process. Specifically, on August 26, 2015, the Union asked about the number of tests done, cost, and process used at agencies that already have drug testing, including IDOT and ISP. The following day the Employer provided the number of tests conducted and in September provided the protocols used at DOT and ISP.

On November 4, 2015, the State provided a checklist that supervisors would use to determine if an employee is under the influence. On November 18, 2015, the Union brought up the issue of US DOT providing training to supervisors. Terranova indicated that supervisors would be trained on the check list and indicated that the State could also look to see what training the federal government provides. The record does not reveal that the discussion of training included a request for information to which the Employer did not respond.

7. Dues Checkoff and Fair Share

In April 2015, the Union asked what savings the State thought it was achieving if it stopped processing dues deduction and fair share fees. The State acknowledged at the table that

the cost was likely minimal, but that the proposal was aimed at efficiency. Further, the State argued that tax payers should not have to pay for State employees to process dues deductions for the Union. The Union never made the request again, and the State later withdrew its proposals on dues deduction and to eliminate the collection of fair share fees.

8. Information regarding Integrity of the Bargaining Unit Erosion Language

In September 2015, the Union asked about the rationale for the State's proposal to change language from the 2012-2015 CBA prohibiting action "having the effect of eroding the bargaining unit" to the language which had been used prior to 2004 that required actual erosion of the bargaining unit. Terranova indicated that the 2012-2015 language was a lower standard to prove, "effect of" erosion rather than "action directed at" eroding the bargaining unit, and saw no reason why the parties could not go back to the pre-2004 language. Lynch asked for examples, which Terranova did not supply prior to the State's withdrawal of that proposal on November 2, 2015.

F. Comments at the Table Regarding the Parties' Intent

While the parties each took notes of what occurred at the bargaining table, the parties agreed that there would be no transcription and that these notes are not a verbatim record of what occurred. However, witnesses for each side testified that the notes generally reflected what occurred. Where there were discrepancies, the parties pointed those out at hearing. In order to give a flavor of the commentary at the table that reflects on the parties' conduct and outlook, I include several exchanges here. The portions of each side's bargaining notes[15] I include here were not challenged or otherwise deemed inaccurate by either party.

February 10, 2015 – excerpt from the Union's bargaining notes

RL – Here today to bargain in good faith. We reject and honor Collective Bargaining process. Bargaining is a 2-way street. Don't intend to bargain with ourselves.

JT – Intent yesterday to assure everyone that we are committed to bargain in good faith. And be no question on our side what the intent is. We believed strongly in the process and the principles of bargaining in good faith. We have not seen that in this room.

[15] I include the bargaining notes largely unaltered, in the imperfect, shorthand of the note takers. The parties use "P" as shorthand for proposal, proposed, etc.
Where I added information for clarity or context, I included the change in brackets. For example, the parties use "P" as shorthand for proposal, proposed, etc. The different formats are indicative of the different format each used by the parties.

February 25, 2015 – excerpt from the State's bargaining notes

John Terranova	Roberta Lynch
	Looking for assurances about attitude to collective bargaining process. Didn't impose language to restrict freedom of speech. ... we're trying to protect the bargaining process...
Let's take a look. I've said we're here to bargain in good faith. I understood the anger and frustration and don't take that personally and hope you don't either. We're here to get to an agreement. I'm concerned addressing what ifs is delaying the process of what we're here to do. I'm anxious to get your proposals and I'm sure you're anxious to get our proposals. We're going to try to get to the middle ground. Freedom of speech- He was elected to do a job and that's what he's doing... No one saying anything about your freedom of speech... If you are concerned about attitude, it's good because I'm here to get an agreement. I'm anxious to get down to business at hand...	
	We're here prepared to negotiate... I will say please take a serious look at what we're proposing. ...We've tried to outline assurances that we think will help the process go smoothly.

March 18, 2015 – excerpt from Union's bargaining notes

R[Lynch] – Again disappointed in your proposals is an understatement. Not leaving with good feeling. You will find in our proposals we don't believe this administration.

We believe the administration believes to destroy labor movement. We would hope he will recognize legally responsibility to negotiate in good faith to reach a collective bargaining agreement. We would like to see a governor who values the process. If we can't we want to see a governor who will follow the law.

J[Terranova] – We are leaving on a happy note because we have your proposals. If you are calling on Governor that believes in collective bargaining, you got one. If he didn't we wouldn't be here.

R – Example in court right now challenging executive order. Other venues we need to go and we will.

J – I appreciate your vision quality state commitment. Attainable goal. We have similar but different way to get there.

March 18, 2015 – excerpt from State's bargaining notes

John Terranova	Roberta Lynch
	We have a governor who sees the destruction of the union as aiding the state... We hope he recognizes the duty to bargain in good faith... If we can't get a governor who will reach agreement, we want a governor who will bargain in good faith.
I know you said that you team is not leaving on a happy not. We are happy because we finally have you proposals. I don't know what's in them, but without looking at them I may assume they are like the prior ones and I understand you may not like our proposals but to call the governor […] IF he didn't believe in the CBA, I would not be here. So we come here and we are serious about reaching a resolution. You said the negotiations will go to through this table. Despite all the forums, you only negotiate at this table.	
	...We intend to bargain in good faith. I was alluding to other venues we might have to use. For instance, we're in court now....

April 15, 2015 - excerpt from the State's bargaining notes

John Terranova	Roberta Lynch
If we can get support that will be helpful. I think we made some progress this week. In eve[ry] meeting I believe we have made great progress. We are seeing there has been movement towards reaching resolution on this agreement. You wanted to hold on Article on no strike or lock out and we understand your positions. In your discussion you brought up a strike. Both sides found this as distasteful because not strike or lockout I felt we were both were sincere. We are both providing services to taxpayers at this point to even mention those words of "Strike" I don't want to go backwards. I want us to continue our services to the Illinois citizens. We truly believe we are making progress towards a resolution.	

	To your other point our intent to raising strike is no indication that we are strike happy. We have never had to strike with Illinois. Our concerns we raise was with the number of proposals on the table with waiver clause , management rights and grievance procedure. All thing that have the ability to resolve disputes more than any other round of state negotiations there is an elephant in the room that is an approach by the state to effectively destroy the Union. There may be people in the room who built this Union. You know last round we have come up with proposals to save the state money they do not want to see unions ability hindered by these proposals. Until the state looks at the issues we will not be able to get this contract done. Both sides have shown professionalism, but that doesn't back down our worries.
I know you have said at the table that our proposals are to destroy the union. Our goal since the beginning is that we are seeking to increase management's flexibility to manage its operations. These are our initial proposals and waiting for responses from you. In the past, I have heard this Union asking the State for Change from employees perspective now we want some changes to help us get to our goal.	
We have always been doing this and getting to the middle. We have to keep the line of communication going every session if we are to reach an agreement	
	Our goal as well the items we talked about earlier. You should know when this going and meeting in the middle doesn't work with extreme proposals.
Understand where we have been able to meet you guys we do now we are asking you for the same treatment.	

April 27, 2015 – excerpt from State's bargaining notes

John Terranova	Roberta Lynch
	I was responding to the "clump" of issues. My point here is the totality of your proposal is to make it harder for due process, have a voice, have an efficient transparent government.
Let me just respond. There is a reason why I asked about the elephant in the room. I took it by the rhetoric in this room that our proposal is insulting. I have said from the beginning that we want to expand management rights. These are only proposals. This is where we want to go. We want to know How can we agree? So how can we accomplish what we are seeking.	
If it is not what you want, then help us get to a mid ground. You accepted all of our proposals that were for you and rejected management friendly proposals in the previous package. To quote you "nickel and Diming" let's address the elephant in the room. Let's start a dialogue on these issues.	
	Management flexibility is not something we believe. You have not made any case that any unfettered privatization has saved the state money. We don't look at taxpayers, but citizen taxpayers because they deserve State services. If we only think of savings then we are missing big part of the picture. We think it's wrong to only think of people as tax payers.
If I gave the impression taxpayers are not citizens, I am sorry, but they are also customers. The fiscal crisis brings everything to the table to be as efficient as possible. We have to look at cost savings.	
	We believe subcontracting language has saved state 17 million dollars according to the Arbitrator. We have demonstrated we are dedicated to the most efficient way to provide services.
	Its our belief that the state has a messed up tax system. Even though other states don't have a fiscal crisis with same pensions because politicians did not take from pension system to fix the problem.

Like I said, we don't disagree with why this crisis happened, but we do disagree on how to fix it by more flexibility we can control management operations. We have record of what hasn't worked.	
	What hasn't worked?
Bumping is an example. The need to layoff could take up to 4 months to implement layoff. We can streamline the processes to increase efficiency. I don't know where you are pulling these quotes. The Governor has supported us at this table. We are not negotiating through the media. I don't believe union marches have been criticized. We are not bringing outside information about your activities like protests to this table.	
	We don't believe dues deductions is hampering
	your flexibility. Many of your proposals do not affect your flexibility.
	I am not objecting to the governor speaking to the press, but the lack of factual statements he has made is ridiculous. We have to be able to communicate with our members. We turn down an interview a day, because we try to avoid bargaining In the press. From members email to the TV is a short jump. We try but we can't control that about our members.
I just don't know the context of your quotes. What matters is this table.	
	Many of these proposals would have adverse consequences for employees and state services. I gave you the story about digitalization because the people coming up with these proposals are confused and don't know anything and are deriving these proposals with animosity. Is bumping problematic? We will see.

May 27, 2015 – excerpt from Union's bargaining notes

JT[erranova] – [explaining economic proposal, including] eliminating Maximum Security Pay, all economics in our attempt to reduce cost, look at wages, freeze steps, eliminate additional rates such as longevity and maximum pay.

RL[ynch] – Relatively small cost, and incentives for dangerous jobs, maximum prisons very dangerous jobs. Long standing tradition and can't imagine the money you save which would find it more difficult to have a good workforce.

JT – Reality is financial fiscal crisis, everything on the table to work together to get us out of this mess. That's our rationale, nothing about disrespect. It is our initial proposal on economics. Last time we proposed a 2-tier reduction and we aren't proposing that here.

RL – Very clear in the proposal made. We don't see examining 2 billion of corporate tax breaks. If everything is on the table, why isn't that being looked at.

JT – We are looking at everything in this book. Maximum pay in this book and that's why we are looking at it. This is our initial proposal. Our intent to reach a success agreement

RL – We interpret the proposal as disrespect.

JT – That's not the intent.

RL – What's in front of us, we interpret lack of respect for state employees

May 27, 2015 – later excerpt from State's bargaining notes

	In all seriousness we are working on our economic P. Usually parties wrap up language before economics. We don't appreciate the governor's office saying we are not Bargaining in good faith. WE are doing everything we can to avoid the press, but unfortunately we have 30K members and comm[ents] have ended up in the media. We avoid speaking to the media I would hope details of this process stay out of the press.
I would say I appreciate your comment because this is difficult process. For me, not too uncommon to have this many proposals. A proposal is just a proposal. It has never been intent of mine or this administration. Neither of us have control out of this room. Your comments go a long way	

June 1, 2015 – excerpt from Union's bargaining notes

RL[ynch] - Very direct with you, a lot of concern with members June 30 and subsequent months. Desire to reach settlement at bargaining table. Disrupt state agencies services not a good way to move forward. Commitment in place would be extremely important. Don't feel you have been clear on commitment moving forward. Last week we passed legislation to alternative of interest arbitration.

[…]

JT[erranova] – Appreciate remarks of reach settlement. It's our intent to reach successor at this table. Our concern at the time June 30 fast approaching. Over several years negotiations since late 80's we always reach agreement except the last 2 times. That's why we were pushing for more dates. That's why we went ahead to give our proposals 1st, to utilize time at the table.

June 16, 2015 – excerpt from State's bargaining notes

John Terranova	Roberta Lynch
	[...]You're sending a very bad signal [by holding to grievance definition proposal]. I heard the Governor say if parties operate in good faith I don't see why we can't reach agreement by 6/30. ... I don't see any indication of finishing by June 30th under these circumstances.
I agree with the Governor. If we do bargain in good faith we will reach agreement. I believe what the Governor said was in good faith. […]	

August 11, 2015 – excerpt from the State's bargaining notes

John Terranova	Roberta Lynch
	[discussion of Administration's comments made public …] We supported SB 1229 because we want to reach agreement at the bargaining table. If the Governor doesn't want SB 1229[,] sit down and bargain fair contract. More the Governor does this the more legislators are asking what's he up to? ...We're here to negotiate a fair contract. We're prepared to work in good faith. But we're not prepared to agree to... garbage. So I'm giving letter requesting documentation. It reads as follows: [read letter]

August 13, 2015 – excerpt from Union's bargaining notes

RL[ynch] - … [w]e have long way to go in language proposals. We've moved a lot and ones we're holding to are important to us. ...We can get this done with due diligence. ...We don't intend to go backwards and we believe settlement can be found. Best way to get there is to settle language proposals. I think we can reach agreement with hard work. We think we can get it done in this climate.

JT[erranova] - I understand concerns with language and it's problems but you said there's no set order to go in. We've made movement and I think you've seen that. But we'll keep trying to reach agreement. We believe non-economic issues are very important

August 27, 2015 – excerpt from Union's bargaining notes

RL[ynch] - Well I think we can say we're done. Won't meet until after Labor Day... I think it's good time to discuss with your principals the importance of employees. Sub-committee on Health Insurance-purpose is to work out technical issues not negotiate health insurance. Won't get to that until we're done with language proposals. We have some work to do and big proposals still out from our perspective... We hope after we return from Labor Day we move with a little more dispatch.

JT[erranova] - I agree. We're moving and bringing in new proposals every day. We want agreement as well. With regard to health insurance, I know in past we've waited to do it but these are new times. These aren't like normal times. We've conducted negotiations different. You said in beginning that just because we've done it that way in the past doesn't mean that's how we've Got to do 'em... Disappointed with health insurance. I envisioned discussion but last 3 or 4 times we haven't been able to do so...

[…]

RL – You are talking about things you want and we don't believe you made the case. We came in with very modest proposals. Example Grade appeals, modest improvement.

You came in with mammoth changes to weake[n] Union with justification of cost and most have nothing to do with cost.

We are here to bargain and not setting any pre-conditions.

JT – Good to hear your response.

September 8, 2015 – excerpt from State's bargaining notes

John Terranova:	Mike Newman:
I'll find out. But it's frustrating after last week [the failed override of the SB 1229 veto]. We've tried to come in friendly manner... All we want to do is reach agreement on contract.	
	This is a false document
I am glad you used false and not "lies, lies, lies"	
	Then you have to tell the truth. Way paragraph reads to me is you're claiming our proposal and then calculating pension costs on our proposal... It's either very poorly written or you're deliberately misleading people. That's way it reads and to get to $791 million I don't know. We can't figure this out and it doesn't shed light on the matter. Don't know how you came up with these numbers
We're trying to come in and shed light. I'm coming here in good faith	
	You're coming in not in good faith.

Yes we are. You can't say that. Roberta Lynch said these aren't like other negotiations so we gave economic proposal first.	
	It's written as if you already gave the proposal.
If I were to give it on Friday would it make any difference? This is the first chance to give it to you so that's what we're doing.	
	Your principals P[roposals] gave it to press last week?
I have said before it only matters what we do here	
	"In the coming days..." Here at the bargaining table.
Yes that is P to give you this week.	
	To your members? Across the bargaining table?
Yes I have to print them off	
	We're gonna look at all numbers very carefully. I've tried to cite ones that are questionable. Needless to say I'm not gonna respond to specifics. It also said we've made not movement on health care. I've said we're not bargaining health care.
You said we can't negotiate health care and you said we are neg. Health Care.	
	...You came in with dozens of junk proposals. We're not negotiating economics because of junk proposals.
Not once have I said you[r] proposals are junk proposals.	
	You came in with unprecedent[ed] P[roposals] and spent months on these. You knew we don't negotiate on economics until language is done. I hope we would see some progress on these language proposals I'm gonna look at numbers and take back, ID outstanding issues. But I'd encourage you and your side to quit game playing and get down to negotiating. You owe use a lot of things.
Pretty equal by our count.	

	We will respond to you but it will be good to clear up the contract P[roposals] and get down to economics ...I'd encourage you and your principals to come to table so we can reach agreement.
You came to table with a 14 point response. You asked for answer and we gave you one and now it's somehow not good enough. You're accusing us of leaking out this letter. I have a box with 200 copies for your members so I could think of 200 reasons why it might get out... You came in and said I wasn't bargaining in good faith. I take offense to that... 1 thing said by your side at forums here and away from table was we didn't want SB 1229 overridden because we want a strike. That's not true. You said our proposals were junk proposals. Never have I said your proposals are junk. You came in with sub-contracting proposals with a 10 page manifesto. Didn't criticize it. We gave proposal on Layoff in July and didn't get a response until the end of August. Almost 2 months went by. Talk about wasting time...	
	We brought in reasonable P and you did not. We are not able to separate you at table and away from the table. You are out there telling people we are not negotiating.
It took you several months to even get you P the delay. Is also waiting on you ...You know when you gave us proposals? March.	
	...I'm not sure there's any purpose served...
We spent time going over your proposal on ground rules.	
	Ground rules took a while
	...Message I'm conveying is your proposals were given to reporters last week. You've misrepresented our proposals.
You've done the same. You said the Governor wants to lock employees out.	

	But once he said it we said we're concerned about strikes. We've said a number of times we don't want to bargaining in the press. Check Anders quotes. Everything leaked was by your side. We don't use letter as constructive response. Is letter presented as part of bigger plan not to be presented to the public?
You're the only one anticipating it's gonna be leaked. I didn't write the letter	
	...What I'm asking you...
...I don't know what the intent was by your letter. Some of your letter was in the press so what about that?	
	Any elements you saw here are questions so I don't know how you can say you saw them in the press. These are information requests to you. I don't believe I said any but I did say to legislature you released information and we're trying to find out. Now I'm gonna ask again, is the letter part of bargaining process or for release to the public?
Explanation of his letter is in my letter. We came in with letter and proposal on wages and talks about health care... This is not time to gloat or say we got you. We thought it's time to say that it's not our intent to force contract on you. Someone ran out saying we want to lock out workers... We came in trying to clear up information in tolling agreement but I didn't expect this response.	
	I didn't expect a letter that appears to be intended to the press. If letter is not leaked, you can come in and gloat.
I want to get an agreement done	
	Well let's do it at this table.

September 9, 2015 – excerpt from Union's bargaining notes:

JT[erranova] – I appreciate the signed tolling agreement. Looking at your side letter. To what purpose on us signing a side letter that the Governor has committed. Governor made a reference to no lockout. Your side letter says negotiating in good faith. Says no lockout but nothing in letter that says no strike. It was a pledge by the Governor. This has no corresponding pledge by the Union.

Reference to 9/30 was confusing and we modified it.

RL[ynch] – We think the purpose is that the Governor gave to legislatures and legislatures distributed to our members. In order to demonstrate that a more meaningful commitment.

JT – The best guarantee is in the document that we just signed. That's the guarantee.

We need to focus on what's going on the table.

Example Layoff – we gave you proposal in February. Then we modified in June. Didn't get counter from you until last session and you held on all. Don't think fair to say we are setting up roadblocks

RL – You said process pain in the neck. We are trying to take it seriously and improve it. You have proposals still on the table to unilateral decrease benefits, suspend the contract, dues fair share.

My point is to unilaterally change benefits is an assault. We also have proposals like bereavement leave but not a big barrier. You have privatization that gives you in fettered right with no restrictions. That is what we are referring to in the letter.

JT – We are looking to make changes to change the way we operate. Increased flexibility, cost, those are the goals.

Initially proposed unlimited right to subcontracting, whatever we want. Then you gave us 4 page proposal and how that wouldn't work so we came back with Managed Competition.

If we accept your language it would be an Arbitrator's decision. Your proposal would put further roadblocks. We are willing to sit down with a committee on Management Competition.

You have a proposal in Pensions and Article 33 Meeting Illinois Revenue needs. What purpose does it have. Having this discussion will bring us closer.

RL – Many of our proposals you haven't responded to us on.

JT – Many of those in economics when you say we aren't going to talk about economics. We've now started putting economics on table to have that discussion.

RL – We could have it but don't think fruitful with those big roadblocks.

JT – If we still continue to discuss same thing and don't agree then when are we getting to the others.

November 18, 2015 – excerpt from State's bargaining notes

John Terranova	Mike Newman
	Couple of things, 1st there is no inability to get to a budget but there is one party waiting to destroy the C.B probably not to increase revenue and one party is to destroy workers[']rights.

	To your first P being severe, that is an understatement. Your P now would put employees at the bottom of nation. Illinois is not a poor state and no justification for Illinois employees being number 1 in highest paid Health Insurance. This is strictly a matter of Illinois poison but let employees choose their poison.
	All Proposals would extract save money
	Collective 40% of total [health insurance] cost and huge pay cut.
	We think it needs to be made clear that this is not a fair P.
	Even to agree to this it would not solve the budget issues.
	And even though the Governor wants to destroy labor Movement.
I didn't say anything about what party was doing what... I said factually the parties have not come to an agreement we have made a lot of P and demonstrated a willingness to come to an agreement around [SB] 1229 there was statements and movement by both sides.	
To say the Governor wants to destroy the Union. I will say WE ARE HERE TO NEGOTIATE AN AGREEMENT.	
We have given many P[roposals] to provide options we cannot sustain the status quo.	
1 more thing, we are not only seeking changes we have not inhibit Union's ability to make changes.	
Changes to the Labor Act to say one party is to destroy collective bargaining.	
We are here to negotiate a successor agreement what I say at this table is what the administration wants. I have requested to stop talking about outside media.	Then stop saying the budget and state is broke. His latest thought is Pension Bill and look.
	To say to get rid of tax increases then say we are broke isn't right.
I don't think that is true. You even recognize is there have been issue[s] for long time. The expiration of tax increase was not this Governor, but the House, Senate, and Prior Administration.	

If the House and Senate wanted the Tax increase, they can put one in the budget. How can he destroy Collective Bargaining[?] [W]e are here now and we would not come here if that was the case.	
We have made modifications to our P and trying to reach an agreement that helps fix the status quo. You have only offered the status quo.	We had a committee trying to understand the whole picture.
You said met many times but only twice.	Maybe committee can come with better ideas to save money. But the cost sharing[,] if you come with 7,8,10, options with 60/40 split... it is still a 60/40 split
We have tried to introduce new P[roposals] and we have not heard anything and you said today you are holding on 17% of the Premium.	24% of total Health Care. If we use 40% then we use 24%.
We P 40/60 or 65/35 and you want status quo	You gave us 2 P initially with 500% and the other ratio is the same in last few P's. We can talk around edges but we still look during pay increase, in some is laid in front of members $3100 equal to about 5% cut in pay.
I understand […]	

December 18, 2015 – excerpt from Union's bargaining notes

RL[ynch] – We will break for holidays. Just to note you still have a lot of troublesome proposals on the table. We hope you convey that to your principles.
This state has some huge problems. We are not going backward. Hope you convey we want to get contract done, settle contract where fair to taxpayers and fair to employees.
JT[erranova] – We value employees work, looking at efficiencies, areas we can improve on. Items still left on table important to both sides.
RL – You don't build up a state by knocking down people. We think you need to think about that.
JT – I will convey message to our principles. Never our intent to harm employees or knock them down.

January 6, 2015 – excerpt from State's bargaining notes

John Terranova	Roberta Lynch
	[discussion on State's merit pay proposal …]People should not be penalized for sick time
I will clarify we gave P and why we P you rejected and you said you will not agree to a P that only gets some people bonuses and we came back with language to address that. I am not	

going to listen to this and say we are against employees with illness.	
I agreed to negotiate in good faith and I am addressing your issues if you agree to help us get there instead of just saying no.	
	I said it's a bad idea and gave not one example. If I have cancer and need chemo …
You said you are not going to "fuck these victims" [W]e are not at all	
I am not backing away from P[roposal.] I am objecting that you are characterizing us this way. I give you the P and I'm objecting to this []	
	How are you not penalizing employees
We P it. Tell us you[] will not agree to this and move on if that is the case	
	I believe I did that already.

G. Away from the Table Conduct by the Employer During Negotiations

1. Executive Order Nos. 16-08 and 16-09

On January 12, 2016, newly-inaugurated Governor Rauner issued Executive Order No. 16-08, which was entitled "Executive Order to Address the State's Fiscal Crisis." Among other things, Executive Order No. 16-08 sought to restrict agency travel and required pre-approval of travel that would result in reimbursement of costs related to the travel. The following day, Governor Rauner signed Executive Order No. 16-09, entitled "Executive Order to Ensure Ethical and Responsive Government." Executive Order No. 16-09, among other things, enhanced restrictions set out in the State Officials and Employees Ethics Act, 5 ILCS 430/1-1 *et seq.*, regarding revolving door prohibitions and prohibition on seeking or receiving gifts from entities doing business with the State. Executive Order No. 16-09 also established additional economic disclosure requirements.

When past administrations had issued executive orders, the Union would receive prior notice. In January 2015, the Union learned of the issuance of the executive orders when they were released to the public. Also, the savings clauses of the executive orders often contained language indicating that the order was not intended to contravene existing collective bargaining agreements. Similar language was included in Executive Order No. 16-08 but not in Executive Order No. 16-09.

Because the Union had concerns about Executive Order Nos. 16-08 and 16-09 affecting their members, they made a request to bargain sometime between the orders being issued and the first bargaining session on February 9, 2015. According to the bargaining notes, after Newman's letter requesting to bargain, Newman and Terranova had discussed the Executive Orders and that Terranova needed the Union to show an impact in order for him to discuss it with his principals. As of February 9, 2015, the parties had not yet bargained over these issues; therefore, the Union raised them at the table. Newman testified that the main subject discussed at the February 9, 2015 bargaining session was the executive orders. The Union asked that the executive orders not be implemented as to bargaining unit members until the parties had bargained over any impact. Terranova indicated at the table that if the Union was able to show an impact, they would bargain over the issues.

The parties ultimately agreed to bargain over the executive orders away from the table. The State agreed to not implement the orders as to bargaining unit members until the parties reached agreement.

2. Actions Related to Fair Share Payments

On February 9, 2015, the first day the parties were meeting for negotiations, Governor Rauner issued Executive Order No. 16-13, entitled "Executive Order Respecting State Employees' Freedom of Speech," related to the issue of fair share payments. By Executive Order No. 16-13, Governor Rauner directed CMS to "immediately cease enforcement of the Fair Share Contract Provisions" and prohibited all other State agencies from enforcing such fair share contract provisions. The executive order further directed CMS and other State agencies to place all fair share deductions in an escrow account for "as long as any contracting union's collective bargaining agreement requires such deductions and to maintain an accounting of the amount deducted from each State Employee's wages for each contracting union, so that each such State Employee will receive the amount deducted from his or her wages upon the determination by any court of competent jurisdiction that the Fair Share Contract Provisions are unconstitutional."

Governor Rauner held a press conference on the same day. In that press conference and in the body of the executive order itself, Governor Rauner stated his belief that requiring non-union members to pay fair share fees was a violation of those employees' First Amendment freedoms. To further underscore this contention, Governor Rauner publicly announced that he

filed suit in federal court to seek a determination that the compulsory payment of fair share fees was unconstitutional.

The press conference was held while the parties were in caucus to review the Union's initial ground rules proposal and to gather answers to questions raised by the Union related to Executive Order Nos. 16-08 and 16-09. When the parties returned from caucus just before 5:00 p.m. on February 9, 2015, Lynch indicated that she wanted to make a couple comments then be done for the day to focus on the new executive order. Lynch commented that despite the State focusing its remarks on addressing the fiscal crisis, the Governor is focusing on breaking the Union and dismantling the labor movement in the state. In closing, Lynch said that the Union does not take Terranova's commitments seriously given the Governor's actions.

3. Public statements by the Governor or his administration[16]

Shortly after his inauguration, Governor Rauner made a number of speeches around the State where he discussed what he believed to be the State's structural challenges and his plan to address those challenges. That plan, the Turnaround Agenda, was divided into three packages – Economic Growth and Jobs Package, Student and Career Success Package, and Taxpayer Empowerment and Government Reform Package. Many of the provisions of the Turnaround Agenda related to organized labor, including, the following:

- Implement true competitive bidding in public works, limit prevailing wage requirements and eliminate project labor agreements.
- Create local employee empowerment zones. Let voters in a county, municipality or other local unit of government decide via referendum whether or not business employees should be forced to join a union or pay dues as a condition of employment.
- Reform teacher tenure and incentivize local school districts to reward high performing administrators and educators.
- Extend to municipalities bankruptcy protections to help turn around struggling communities.
- Protect historically accrued state pension benefits for retirees and current workers, while moving all current workers into a Tier 2 pension plan and or 401(k) for future work. Police and firefighters should receive special consideration.

[16] There were a number of Union exhibits, often newspaper articles, that were admitted for the purpose of showing any effect that media may have had on bargaining. They were not admitted for the truth of the statements contained in the articles; therefore, I do not include the alleged statements in my findings of fact.

- Pursue permanent pension relief through a constitutional amendment.
- Empower government employees to decide for themselves whether or not to join a union. Empower local voters to control collective bargaining issues in their local governments and take more direct responsibility for their employee's benefit.
- Extend the prohibition on political contributions for business with state contracts to all organizations with a state collective bargaining agreement and organizations funded by entities receiving state Medicaid funds.
- Reward state workers with performance pay and incentivize employee inspired cost saving measures.

On February 2, 2015, the Governor issued a memorandum to legislators including additional information from that which he presented in his speeches. That memorandum was published on the blog CapitolFax.com the same day. The additional information related to the collective bargaining rights for federal employees, a salary comparison between specific titles employed by the State and those employed in the private sector, and a salary comparison between specific titles employed by the State and the average salary in 5 neighboring states. On February 4, 2015, the Governor issued his first State of the State address, wherein he formally introduced the Turnaround Agenda to the legislature.

On February 22, 2015, the Rockford Register Star published an article that refers to the $700 million savings set out in the Governor's budget plan, and quoted Governor Rauner's budget address wherein he stated that by "bringing [State employee] health care benefits more in line with those received by the taxpayers who pay for them, we save an additional $700 million."

On March 5, 2015, Lance Trover, Director of Communications for the Office of the Governor issued a statement regarding the lawsuit filed by a number of labor organizations related to the Governor's Executive Order on fair share dues: "We always expected the government union bosses to fight to keep their stranglehold over Illinois taxpayers in place. These forced union dues are a critical cog in the corrupt bargain that is crushing taxpayers, and the government unions will do anything to keep the broken status quo."

4. Jason Barclay memo of July 29, 2015

On July 29, 2015, General Counsel Jason Barclay distributed a memorandum to Agency Directors and General Counsels regarding "Update on Labor Negotiations and New Tolling Agreement." In the memorandum, Barclay notified agency directors that contrary to information being publicly reported, the Governor would not lock employees out. The memorandum went on

to outline some of AFSCME's proposals, which Barclay described as "outrageously expensive and unacceptable to the Governor." Barclay went on to outline a number of provisions that various Teamsters bargaining units agreed to in their CBAs, and outlined a number of concessions made by the State in its negotiations with AFSCME. Barclay described the Teamsters agreement as the "type of balance we are looking for with all the state's labor unions" and that he was "hopeful for an outcome similar to the Teamsters," if AFSCME was "reasonable."

The memorandum was posted at CapitolFax.com on the same day it was issued. At the table and at the hearing, Terranova repeatedly said that the memo was leaked to the blog. The Union indicated at the table and at the hearing, that it found it unbelievable that the State could not contain communications to its directors.

5. Governor Rauner's letter to legislators on September 2, 2015[17]

On September 2, 2015, Governor Rauner authored a letter to State Representatives Davidsmeyer and Unes in the context of discussion whether to override the Governor's veto of SB 1229.[18] The Governor made it case that the bill was unnecessary. To that point, he wrote:

> Let me emphasize this point: SB1229 is as unaffordable as it is unnecessary because I am committed to negotiating. My strategy does not rely on the twin threats of strike or lockout. Indeed, I flatly reject that threatening a shutdown of our government and risking a suspension of critical services is what it takes to negotiate a fair deal. Of course, as you know, if we are forced into arbitration and the arbitrator imposes over $2 billion in additional cost, we would put in serious jeopardy our ability to provide the very same critical services. Thankfully, we can avoid this unpalpable scenario by negotiating a fair contract which is where we need to direct our energies. To that end, I offer the following written assurances to you and all citizens of Illinois: 1) I will continue negotiating in good faith. 2) I will not lock out the state employees.

The Governor also offered:

> I make the following written assurances to you and all citizens of Illinois:

[17] The Union did not allege in the Amended Complaint that this communication was evidence of direct dealing.

[18] Senate Bill 1299 (SB 1229) sought to amend the Act to provide interest arbitration as the means of resolving impasse for bargaining disputes between the State of Illinois and units of employees arising out of CBAs expiring on or after June 30, 2015, but on or before June 30, 2019. Therefore, the employer could not implement its last, best and final offer upon legitimate impasse. The bill also provided that the right to strike would be waived as of the time the arbitration hearing is convened. This AFSCME-backed bill passed both houses of the General Assembly, was vetoed, and the veto was not overridden.

1) I will continue negotiating in good faith.

2) I will not lock out state employees.

3) I will comply with all terms of the tolling agreement, an enforceable binding contract, that my administration has signed with AFSCME. The tolling agreement requires that even after September 30, 2015, the parties continue negotiating in good faith without threat of a strike until they reach a deal or impasse. Critically, under the terms of that agreement, impasse requires mutual agreement by both sides that further negotiations would not be fruitful. I am precluded from unilaterally imposing a new contract on state employees under those terms. In the event there is a dispute over whether impasse has been reached, the Labor Relations Board can require both sides to continue negotiating, and their decision is subject to judicial review in state court. Until that dispute is resolved, the tolling agreement continues to apply. And I will uphold the tolling agreement. In other words, if both sides negotiate in good faith, a fair and equitable agreement will be reached.

4) Because I keep hearing that the September 30, 2015 date, which was AFSCME's counter to our offer of a tolling agreement without a specified termination date, is leaving folks with the incorrect impression that I have the power to disregard the tolling agreement as soon as October 1, let me once more propose an open-ended tolling agreement. By this letter I am offering to AFSCME to extend our tolling agreement indefinitely, subject to each side's rights and obligations under the Illinois Public Labor Relations Act. If AFSCME is now concerned that the September 30, 2015 date gives me the power to act unilaterally on October 1 (this, as I've explained, is not true), we can put this issue to rest by agreeing to an indefinite tolling agreement.

(emphasis in original).

At bargaining the following week, the Union placed the numbered paragraphs into a side letter and asked first, that the Governor sign it, then that the State's representative sign it. Terranova indicated that the State would review it. The parties ultimately agreed to another Tolling Agreement in the same form as prior agreements, not in the Side Letter as proposed by the Union.

6. September 1, 2015 Crain's article

In a September 1, 2015 article authored by Greg Hinz for Crain's Chicago Business, Hinz wrote, "The administration also says it's willing to provide a merit-pay pool amounting to 2 percent of payroll each of the next four years." The State made its merit pay proposal to the Union at a bargaining session on September 8, 2015.

7. October 6, 2015 CapitolFax.com Posts

On October 6, 2015, the CapitolFax.com website posted a copy of an AFSCME Bargaining Bulletin. That bulletin contained various statements about the status of negotiations. The Rauner administration "clearly stated across the bargaining table that (the state's) demands include not just a step freeze, but **the abolition of the step plan in state government**." It went on to say that the State was "demanding a 'merit pay' scheme whereby only those employees who meet 'high performance' criteria would be eligible for any form of increase in their pay at all." The bulletin also listed proposals on which AFSCME claims the State made "virtually no change," including "[e]limination of any protections against privatization of state services."

The website posted a response attributed to the Governor's office:

> AFSCME members should ask their leaders to start telling them the truth because this bulletin is false and misleading.
>
> The Governor has never proposed eliminating step increases. In fact, he has proposed a temporary freeze until the budget is balanced and the State can once again afford to pay automatic increases.
>
> The Governor has never proposed eliminating protections against privatization. In fact, he has proposed expanding those protections by giving the union the right, it currently does not have, to be awarded a contract if it can meet or exceed the savings from private companies.
>
> The Governor has never proposed a compensation system based solely on merit. In fact, the Governor proposed a bonus system that would include an automatic immediate bonus to every AFSCME employee before January 1, 2016 and additional bonuses to those employees with exceptional performance based on objective performance standards.
>
> The Governor has also guaranteed that at least 25% of the State workforce will receive those performance bonuses every year of the contract. AFSCME has made clear that it does not want its exceptional employee paid more for their hard work and outstanding performance.

8. Communications regarding agreements reached with other labor organizations

On a number of occasions, the State made various communications related to agreements with other labor organizations. In many of these communications, the State contrasted the agreements with other labor organizations with the ongoing negotiations, or existing contract dispute, with AFSCME.

For example, on November 18, 2015, the Rauner Administration issued a press release announcing it had reached agreements with a number of other labor organizations. In the press

release, the Administration stated, "These developments stand in stark contrast to the ongoing negotiations with AFSCME Council 31. Despite being offered substantially the same material terms as the Teamsters and the Trades, AFSCME has to date rejected the Governor's chief proposals." The release also included the following:

> AFSCME is now on the opposite side of these negotiations from their own colleagues in organized labor. AFSCME continues to reject many of the same, reasonable proposals being ratified by wide margins by their fellow state employees:
>
> - AFSCME continues to reject the health insurance framework accepted by the trade unions. AFSCME's proposal is to continue the same unaffordable health insurance system that the credit rating agencies have noted in the recent downgrades.
> - AFSCME continues to reject a new performance incentive program accepted by trades and Teamsters. AFSCME's proposal is to continue to pay employees unaffordable automatic wage increases.
> - AFSCME continues to reject a new, collaborative managed competition program accepted by trades and Teamsters.
> - AFSCME continues to resist moving the overtime trigger to the common workplace benchmark of 40 hours.
> - AFSCME continues to reject a program to enable the State of Illinois to address minority underutilization in state government.
> - AFSCME continues to reject a four-year wage freeze. Teamsters, in contrast, not only agreed to freeze their wages but did so on top of the 75% in-hire rate.

Similar statements were raised in other communications. In a December 18, 2015, Employee Telegram, in discussing its desire to reach agreement with all remaining labor organizations, the State again pointed to the State's financial problems, saying "we've got to be tight with our money now to ensure that our pension funds are still there when current workers retire. In a letter to State employees on January 15, 2016, Governor Rauner also stated, "Tightening our belts now is also the responsible approach if we want to ensure the financial stability of our pension system – something both current employees and retirees are counting on."

9. December 11, 2015 Letter to Employees regarding healthcare

On December 11, 2015, CMS's Deputy Director of Benefits Pam Kogler sent a letter to employees regarding health insurance. Citing "considerable misinformation" in "recent weeks"

the letter announced that the existing plans, carriers and premiums would remain in place until the end of the FY 2016. Kogler recognized that state employees fell into one of three categories, non-union, union employees where contract negotiations had been concluded, and union employees where contract negotiations were ongoing. "**For all three groups, after July 1,2016, we fully expect that you will be able to remain on your existing state healthcare plan, if you so choose.**" The letter maintained that many of the State's plans were "so expensive that they will likely be subject to federal penalties on luxury plans in future years." It further informed employees that the premiums "are likely to double after July 1, 2016." It also stated that "recent misinformation" had omitted the "key fact" that under the completed CBAs and current proposals, the State would offer less expensive plans "with the same carriers and the same services for substantially the same premium costs" as currently offered.

The letter stated that due to cost-saving measures that had already been implemented the State "has proposed a cap on any increases to employee premiums in 2018 and 2019." "To be sure, for those who are affected by the ongoing labor negotiations, the final health insurance plans and related costs have yet to be determined because we are still negotiating in good faith. However, we are doing so "within the parameters outlined above." It further asserted that "[w]hile we would like to continue to offer luxury health plans at below-budget prices, we believe that approach is simply unsustainable under any scenario, especially one where we face such dire financial conditions for the foreseeable future." The letter concludes:

> Rest assured, however, that our intent is to reach agreement at the bargaining table, like we have with those unions that have successfully ratified new contracts, which will allow the State to continue to offer high quality, affordable health insurance to our employees. Simply put, under every proposal and final contract already signed, **the State will continue to pay for the majority of employee health insurance costs for active employees and 100% of the health insurance premiums for retirees**.

10. Statewide Employee Engagement Survey

On or about December 9, 2015, the State sent State employees a link to access an online document called a Statewide Employee Engagement Survey. The email transmitting the link bore the following message:[19]

> This email contains a link to the State's first-ever Statewide Employee Engagement Survey. Your job satisfaction, training opportunities, and work

[19] It appears that the survey was forwarded by the agency's director to agency staff. Union Exhibit 31 contains the survey transmittal email for the DOC.

> environment are tremendously important to the State's overall ability to serve taxpayers. It is our hope that this survey will help us to understand what we're doing well and where we need to improve.
>
> Please allow twenty minutes to complete this survey. This survey is required, but it is also anonymous because we want to encourage candid feedback. So please, be honest with us about both the good and the bad! Surveys must be completed by noon on December 17[], 2015.
>
> Please select or paste the link below to begin the survey. This link may also be accessed from your personal computers. Employees with State email addresses do not need to click on the link below; they will receive an email on December 10th with a link to the survey.

Newman testified that he learned of the survey on December 10, 2015, when several AFSCME members notified him they had received it. In response, Newman reached out to Terranova to indicate the Union's strong objection to the survey. Terranova and Newman also exchanged emails wherein Newman indicated that some employees had been informed the completion of the survey was mandatory, that the survey covered mandatory subjects of bargaining, and that the Union was informing its members that they were not required to fill it out and that they should not complete the survey. Terranova indicated his belief that the survey was not mandatory, was not being communicated as mandatory, and that the survey was nothing but "an attempt to gain employee involvement and i[n]put into bettering state government."

Newman testified that he believed many of the topics upon which employees were invited to respond dealt with mandatory subjects of bargaining. Among those topics Newman identified, employees were asked the extent to which they agreed with the following:

- whether their co-workers' workload is manageable;
- co-workers are adequately compensated for their work;
- training needs identified and communicated to them;
- co-workers are given sufficient training to excel at their job;
- work environment is inclusive and individual differences are respected;
- physical conditions are satisfactory;
- employees generally feel safe from health and safety risks in the workplace;
- supervisor sets clear expectations and goals in relation to my job function;
- supervisor provides specific, actionable feedback that allows me to improve over time;
- evaluations are done in a fair, objective manner;
- promotions and compensation are based on merit;
- supervisor adequately addresses poor performers who cannot or will not improve;

- agency rewards creativity and innovation;
- work unit rewards good performance in a meaningful way;
- employees feel personally empowered to improve work processes;
- my team has the right tools and technology to do an effective job;
- supervisors help me develop the skills to excel at my job; and
- co-workers respect our agency's senior leaders.

The survey also invited employees to answer the following questions in a narrative form:

- Is there a feasible, low-cost change your agency could implement to improve employee retention among your co-workers?
- Is there a feasible, low-cost change your agency could implement to improve job satisfaction among your co-workers?
- What training or development opportunities would most improve your co-workers' performance?
- Is there a feasible, low-cost change your agency could implement to improve your work environment?
- What could be done to make the evaluation process more fair for your co-workers?
- If you could provide one piece of advice to your agency's director, what would it be?
- The state's fiscal situation has limited its ability to issue raises for many employees. What non-monetary rewards could state agencies employ to improve employee compensation?

The survey, described as an anonymous survey, sought demographic type information that, among other things, asked recipients to identify whether there position is a union position, and their union status (member or fee payer). By the end of the day December 11, 2015, the Union had communicated with its members that the survey was not required and directed bargaining unit members not to complete the survey. On that same day, the Employer clarified that the survey was not required.

At hearing, the Union called three DOC employees, who testified that they had been told by supervisory personnel at the facilities at which they worked to complete the survey. Moreover, security personnel, many of whom do not have Illinois.gov email accounts, were being released from post to complete the survey on computer terminals made available to them for that purpose.

In its February 4, 2016, State Employee Telegram, an emailed newsletter, the State reported having received 19,386 employee responses to the Statewide Employee Engagement Survey. The Telegram article goes on to say that the State will "be reviewing those ideas and

implementing them where feasible. It is our hope that the results of this first survey will provide a baseline that we can improve upon in future years."

11. Jason Barclay memorandum of January 6, 2016

On January 6, 2016, General Counsel Barclay again authored a memorandum to Agency Directors, this time providing an update regarding the "Employee Pay Proposal Date: January 6, 2016." In the memorandum, Barclay noted that one of the Governor's priorities is to modernize the employee compensation system and identified five broad goals for doing so: 1) not reduce salary or wages; 2) "implement a meaningful bonus system that rewards and incentivizes exceptional performance that will be evaluated by fair and objective measures;" 3) financially reward employees if they "identify and help implement taxpayer savings ideas;" 4) stop treating merit employees as second-class citizens and compensate them in a way that encourages promotions and reflects management responsibilities; and 5) freeze automatic step increases until "the state's massive budget deficit and financial crisis are solved." Barclay then announced that the State was implementing this new program for merit employees and the 17 labor unions who signed CBAs in 2015.

Barclay also provided an update on the merit pay proposal to AFSCME. "We have proposed a bonus program to reward an incentivize high-performing individual employees, or an entire work group's or unit's performance. Payment will be based on the satisfaction of performance standards to be developed by the State in consultation with AFSCME or other union representatives." The memo went on to set out that for each year, FY 2017, FY 2018, and FY 2019, the State would set aside 2% of the base payroll and distribute bonuses as follows:

1) Every employee would be eligible to share equally in the one-quarter of the Bonus Pool if they accomplish these two basic requirements:
    a) Have missed no more than seven (7) of their assigned work days (or no more than 56 of their assigned work hours) in the fiscal year during which a bonus is distributed; and
    b) Have committed no work policy violations during the same fiscal year.
2) The remaining three-quarters of the Bonus Pool would be distributed to no fewer than 25% of the employees who satisfy performance standards developed by the Employer in consultation with the Union, as well as meeting the criterion set out in subsection (1)(a) above.

Barclay further informed agency directors that the State proposed "working with the Union to develop specific policies for the program," and that once developed, "the Union will be given the opportunity to review and comment on the policies prior to implementation."

Barclay also referenced the State's proposed gainsharing program that will allow employees that achieve savings for the State to share in those savings. Barclay also provided an update to agency directors on the State's previously proposed signing bonus, which would have provided each bargaining unit employee with a $1000 stipend if the contract was settled on or before January 1, 2016. Barclay informed directors that, though the January 1, 2016, deadline had passed, "today our negotiators modified this proposal one more time because we are still committed to finding ways to increase employees' wages in this fiscal year." Barclay then set out the State's proposal: "All bargaining unit employees who are in active employment status on June 30, 2016 and who have missed fewer than five (5) percent of their assigned work days between the effective date of this Agreement and June 30, 2016 shall receive a one (1) time, non-pensionable bonus of $1,000." Barclay clarified to agency directors that "these attendance policies will be implemented in a manner consistent with federal employment law so as not to detract from employees' rights to take FMLA leave or military leave." Finally, the memorandum set out incentives for non-bargaining unit employees.

The memorandum was posted on CapitolFax.com the following day. The Union raised concerns at the table on January 7, 2016, that the information in the Barclay memo, specifically that absences covered by FMLA would not count toward missed assigned work days, was contrary to the answer given by Terranova the previously day when introducing the proposal. Terranova had been asked on January 6, 2016, about whether absences involving sick time would count toward the missed assigned work days. On January 6, 2016, Terranova indicated that sick days would count as a missed assigned work day. On January 7, 2016, Terranova again indicated that under the proposal, absences using sick time would count as a missed assigned work day, but that days covered by FMLA would not. Terranova also invited AFSCME to work with the State to work out something like the State had with the Teamsters where absences covered by a doctor's note would not count as a missed assigned work day.

H. Away from the Table Conduct by the Union During Negotiations

AFSCME communicates with its members, among other ways, through bargaining bulletins. In September 2015, AFSCME issued a bargaining bulletin that was then published at

the website CapitolFax.com. In that bargaining bulletin, AFSCME stated that at the last bargaining session, the State had "for the first time" stated that its demands included "the abolition of the step plan in state government." AFSCME also told its members that the State was pushing "to eliminate all safeguards against irresponsible privatization."

1. Interest Arbitration Legislation

On May 28, 2015, Representative Mike Smiddy, a former AFSCME member, filed the AFSCME-backed bill amendment to SB 1229, which would allow State employees to use interest arbitration procedures to resolve an impasse. After the bill passed both houses of the General Assembly and was awaiting action by the Governor, AFSCME scheduled rally days to urge members to "Stand Together for a Fair Contract!" and raise public support for signing the bill. However, on July 29, 2015, Governor Rauner vetoed the bill. AFSCME again organized and encouraged its members to call their legislators to support the bill and override, even setting up a hotline members could call to be directly connected with their legislator. AFSCME also scheduled additional "solidarity rallies" in support of the veto override. On August 19, 2015, the Senate voted to override the veto, but the override vote failed in the House of Representatives on September 2, 2015.

On December 10, 2015, AFSCME sponsored rallies in various regions of the state to "Stand Up for Fairness!" AFSCME's flier about the Springfield event contains the following:

We're saying "NO!" to:

- Big hikes in our costs for health care
- A freeze on wages, including no step increases
- An end to protections against irresponsible privatization of public services
- Putting politics into our paychecks with so-called "merit pay" schemes

Newman testified that these rallies, like those in 2012, were organized to educate the public and to put pressure on the Governor to change his position at the bargaining table.

Communications regarding AFSCME's legislative efforts to pass SB 1229 included the rationale for its efforts to include "extreme and harmful demands at the bargaining table that [the Governor] knows state workers can't possibly agree to." One flier encouraging members to call State Rep. Avery Bourne also included the claim that Governor Rauner "wants to take away your right to have union representation." A Bargaining Bulletin to members after SB 1229 passed included AFSCME's belief that "there's every reason to believe that the governor remains

determined to try to impose his radical and harmful demands possibly by forcing a strike or lockout once [the Tolling Agreement] ends."

2. Other communications

Newman was interviewed for a September 1, 2015, article authored by Doug Hinz regarding the pending vote to override the Governor's veto of Senate Bill 1229. In that interview, Newman told Hinz, "The Governor has made clear his intent is to force a strike." Hinz included that in the article published at the Crain's Chicago Business website.

The Union also communicated by way of postings on its publicly-available website. Some of those communications include:

- "After months of bargaining for a new union contract, the Rauner administration is still holding to proposals for dozens of changes to key sections of the contract, aiming to undo decades of progress in shaping safe, fair and humane working conditions."
- "The current union contract is set to expire on June 30, and our union and the Rauner administration remain very far apart in an effort to reach a successor agreement."
- "One tool to help achieve a fair agreement and prevent any disruption of state services is Senate Bill 1229, legislation backed by AFSCME and other unions representing state workers that would allow the Parties to rely on an independent arbitrator as an affirmative means of resolving outstanding issues and contract negotiations. That bill is now on the Governor's desk."
- "State employees don't want to be forced out on strike, but we're determined not to let Governor Rauner undercut workers' rights, jeopardize workplace safety or threaten the economic security of working families."
- "The Governor's assault on the arbitration provisions of Senate Bill 1229 has now derailed the best hope of amicably settling Union contracts that are fair to all."
- "Since entering office, Rauner has used the State's fiscal woes as justification for his extreme agenda, which has focused on weakening union rights."

I. Away from the Table Conduct by the Employer Other than During Negotiations

At hearing and in post-hearing briefs, the Union points to comments made by then-private citizen Bruce Rauner to support its claim that the Rauner administration engaged in bad faith while negotiating a successor agreement after his January 2015 inauguration.

1. Comments by Governor prior to January 2015

On May 12, 2011, then-private citizen Bruce Rauner gave a talk at Dartmouth University as part of an economic summit. The talk was titled "Where does the U.S. Economy Go From

Here?" In that presentation, Rauner identified his belief that one challenge facing the economy was that in "some of our most important economic states we have massive resources diverted from productive use in the free economy and also resources that could be used to help the needy and the disadvantaged in our society … are being diverted for excessive compensation both current pay and retirement pay to – by – to government unions." He described this as a "financial tumor growing in the United States – created by the public sector unions."

On September 8, 2012, while speaking on a panel at the George W. Bush Institute titled "Tax Competition and 4% Growth: What the Midwest Can Show the Rest of the Country," private citizen Rauner noted that Illinois has a bigger role for government in a social safety net, but that "we will crush our economy if we try to spend money on both high-cost, inefficient, bureaucratic, heavily unionized government and a social safety net to help the disadvantaged, the weak and the poor, which many of us would like to be able to do." Rauner went on to describe a potential political "wedge issue" with Democratic legislators who would rather spend money on support for social services than to "AFSCAMMY" or the SEIU. Rauner pointed to public sector union employees' pensions, pay, "outrageous health care costs, work rules, and restrictions on who can work in government lead to a "structure of union control of our government [that] has gotta change."

On November 1, 2012, Rauner authored an op-ed for the Chicago Tribune entitled "Government Unions and the Downfall of Illinois." In that piece, Rauner, noting that government employee labor unions are the "most powerful political force in Illinois" described the interplay between the Union and government as "'pay-to-play' politics at its worst — a fundamental conflict of interest with the people of Illinois."

In March 2013, at a campaign stop in Tazewell County, newly-announced gubernatorial candidate Bruce Rauner expressed his determination to make changes that the Democratic legislature could not stop, such as spending less than appropriated. He also stated:

> [W]e may have to go through a little rough times. If we have to do what Ronald Reagan did with the Air Traffic Controllers, and we sorta have to do a do over and shut things down for a little while. That's what we're going to do. We're going to run the government to the benefit of all people, not the groups who are big donors to Quinn or Madigan and all those characters. It's gonna be rough. It's gonna be hardball, but I'm used to that.

Later that month in Cumberland County, Candidate Rauner stated, "I may have to take a strike and shut down the government for a few weeks and kind of redo everybody's contract. That's a

possibility. I don't know any politicians that would be willing to act, to do that. I won't be happy doing it, but I will do it proudly because it's the right thing to do."

At a campaign stop in October 2013 in Wauconda, Illinois, Candidate Rauner pointed to the upcoming contract negotiations as "a critical leverage point, and most people don't know this, and my fellow politicians never talk about it, the government union contracts expire six months after every statewide race. It's a big deal. It's a big deal. So we're gonna take it on."

In February 2014, while speaking in Quincy, Illinois, Candidate Rauner discussed the strength of the governorship in Illinois, and pointed to the Executive Order ability, line item and amendatory veto powers, appointment power, and "control of contract negotiations with government union bosses and the suppliers." He went on to say, "If you've got an agenda and a steel backbone and a vision, you can drive major change."

2. Comments by Governor following January 8, 2016

On January 21, 2016, in a press conference on pension reform, Governor Rauner noted that individuals are not guaranteed collective bargaining on anything, and that the State of Illinois and the City of Chicago have taken topics out of collective bargaining. He also noted that "we have the most unionized state government in America, and this is important for you guys to know, it's broken. It's corrupt."

3. Terranova Letter to Newman dated January 22, 2016

In response to Newman's January 14 and 21, 2016 letters, on January 22, 2016, Terranova authored a letter to Newman. In it, Terranova stated that the State declined scheduling further bargaining dates noting that the Board had the sole jurisdiction to decide the issue of whether the parties were at impasse. Terranova also indicated that there was nothing in the Union's proposals from the last bargaining session or in Newman's letter suggests that the Union had changed its position on core issues such as "wages, steps, merit pay, health insurance, and overtime over 37 1/2 hours." "Without a willingness by AFSCME to even consider the State's proposals on these core issues, these is no need to return to the bargaining table because, to do so, would be a futile exercise, which is precisely why, after nearly a year of negotiating, we believe we are at impasse." Finally, Terranova indicated that the State disagreed with Newman's assertion that there were "requests for outstanding information with which the State has yet to comply."

J. Away from the Table Conduct by the Union Other than During Negotiations

On January 14, 2016, Newman wrote a letter to Terranova identifying discrepancies between Terranova's comments at the bargaining table on January 8, 2016, and subsequent comments by the Governor in the days following. Newman testified that the Union did not believe the parties were at impasse and asked to schedule additional bargaining dates.

On January 21, 2016, Newman again wrote to Terranova to request additional bargaining dates. Newman noted that through the Tolling Agreement, the parties agreed to bargain in good faith and asserted the Union's position that the agreement to continue bargaining remained in effect while the Board was resolving the issue of impasse. Newman restated the Union's belief that the parties were not at impasse and asked the State to expend its energies in reaching an agreement at the bargaining table rather than "furthering its intent to unilaterally impose its proposals."

On February 9, 2016, the General Assembly again took up the AFSCME-backed measure to provide for interest arbitration for resolution of the current contract dispute.[20] Again, the measure passed both chambers of the General Assembly, was vetoed, and the subsequent override vote was unsuccessful.

On February 22, 2016, AFSCME filed a demand for compulsory interest arbitration for the RC-6 and CU-500 bargaining units. These units were included in the negotiations at issue in this case; however, they are also prohibited from striking. Because they are prohibited from striking, they have interest arbitration as an available impasse resolution procedure, pursuant to Section 14 of the Act.

K. Other CBAs successfully negotiated by the State

The State has successfully negotiated successor agreements with 19 other labor organizations serving as exclusive bargaining representatives for State employees. Specifically, the State has reached agreement with Teamsters Local 916; Teamsters Local 700; Teamsters Downstate; Local #330 General Chauffeurs, Sales Drivers and Helpers; Bricklayers and Allied Craftworkers; Illinois Federation of Teachers Local #919; International Union of United Food and Commercial Workers; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of USA and Canada; Carpenters and Joiners of America; Laborers'

[20] The legislature again attempted to pass AFSCME-backed interest arbitration legislation, this time in House Bill 580.

International Union of North America; International Brotherhood of Boilermakers – Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Union of Painters and Allied Trades; International Association of Sheet Metal, Air, Rail & Transportation Workers (SMART); International Association of Machinist and Aerospace Workers; Service Employees International Union Local 1; International Brotherhood of Electrical Workers; International Union of Operating Engineers; Teamsters Local 700 – ISP Master Sergeants; and Illinois Union of Bakery, Confectionary and Tobacco Workers. Terranova testified that each of these CBAs contains the following provisions: no step advancement for the life of the agreement; provisions on merit pay; for those receiving insurance under the State Employee Group Insurance Act, no insurance benefits different than those proposed to AFSCME; no language requiring that subcontracting be based on "greater efficiency, economy, or other related factors;" provisions on managed competition (with the exception of the contract with Illinois Federation of Teachers); no language providing for six steps of bumping, if they have bumping at all; and no provisions providing for overtime for hours less than 40 in a work week.

In its post-hearing brief, the Union points to differences between the Teamsters contracts and the State's last, best, and final offer in this case. The Teamster contracts contain a more generous stipend because it goes to all employees, instead of being conditioned on attendance. This "more generous" stipend was also offered to AFSCME on the condition that the CBA be ratified before January 1, 2016. The Teamster contracts contain a far more generous health care benefit. The State agreed to pay significantly more per Teamsters employee than it was proposing to pay for AFSCME employees; however, the administrative burden and risk would be borne by the Teamsters' Health and Welfare Fund. McDevitt testified that in costing out the Teamsters contract proposals, the State discovered that the Teamsters units had significantly more dependents and were more costly than an average group of State employees to the tune of more than $100 per month. "[T]he managed competition proposal made to AFSCME offers less protection because than the one in the Teamster contracts because the provision in the Teamster contracts requires the State to award the bid to the management-labor team if the bid is the lowest one and the provision in the 'final offer' to AFSCME does not[.]" While this provision is in the settled Teamsters contract, there is no evidence in the record of what the State's managed competition offers were. There is similarly no evidence supporting that AFSCME made a proposal for a similar protection that was rejected by the State. Under the Teamsters contracts,

most employees work 8-hour days and 40-hour weeks, and all employees are eligible for overtime for time worked outside their regular hours. Employees earn benefit time when a holiday occurs in their regular work schedule. If an employee is required to work on a holiday, in addition to the paid benefit time that can be used anytime within the following 12 months, they are compensated at two times their base rate of pay. The Teamsters contracts also contain no provisions on underutilization.

V. PRELIMINARY MATTERS

A. The Board has jurisdiction to decide S-CB-16-017.

The Complaint for Hearing in ILRB Case No. S-CB-16-017 alleges that by refusing to acknowledge that the parties are at impasse or failing to agree to submit the dispute as to the existence of an impasse to the Board, the Union bargained in bad faith in violation of Section 10(b)(4) and (1) of the Act. The Complaint for Hearing further alleges that the Union's conduct runs afoul of the parties' Tolling Agreement executed on September 9, 2015. That Agreement contains the following provision:

> The parties agree that this agreement will remain in effect until impasse is reached. The parties may either mutually agree that impasse exists or, if a dispute exists with respect to the existence of an impasse, the parties agree to submit the matter to the Illinois Labor Relations Board ("ILRB"). If the matter is submitted to the ILRB, this agreement will remain in effect until the ILRB resolves the issue.

In its Answer to the Complaint for Hearing, AFSCME raises a jurisdictional affirmative defense, arguing that the Board "lacks jurisdiction to enforce the Tolling Agreement, which is a collectively bargained agreement." The parties both point out that as a creature of statute, the Board only has the jurisdiction bestowed upon it by the Act. *See Business and Prof'l People for the Public Interest v. Ill. Comm. Comm'n*, 136 Ill. 2d 192, 243 (1989). Generally, the Board lacks jurisdiction to enforce negotiated agreements, including collective bargaining agreements, grievance settlements, and arbitration awards. *See Chicago Transit Authority*, 32 PERI ¶ 161 (IL LRB-LP 2016) *citing Vill. of Creve Coeur*, 3 PERI ¶ 2063 (IL SLRB 1988); *Chicago Transit Authority*, 4 PERI ¶ 3012 (IL LLRB 1988). However, it does have jurisdiction to adjudicate those breaches of contract involving conduct so sufficiently lacking in good faith that they amount to a repudiation of the collective bargaining process. *City of Loves Park v. Ill. Labor Rel. Bd. State Panel*, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003), *citing City of Collinsville*, 16 PERI ¶ 155 (IL SLRB 2000), *aff'd City of Collinsville v. Ill. State Labor Rel. Bd.*, 329 Ill. App. 3d 409,

767 N.E.2d 886 (5th Dist. 2002); *City of Kewanee*, 23 PERI ¶ 110 (IL SLRB 2007); *Cnty. of Cook (Office of the Public Defender)*, 13 PERI ¶ 3005 (IL LLRB 1997).

Given the Board's precedent on this point, I do not find that the parties created, or attempted to create, a new cause of action before the Board, nor would the creation of such a cause of action have been required to review the allegations in the State's charge against the Union. Instead, I find that the parties bargained over how they would conduct themselves during the course of the negotiations and the process by which they would continue to bargain. Refusal to abide by the bargained-for process would be a repudiation of the collective bargaining process. The Board has long held that when a party's conduct demonstrates a disregard for the bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working, that conduct represents a repudiation and violates the good faith bargaining obligation of the Act. *Ill. Sec'y of State*, 28 PERI ¶ 145 (IL LRB-SP 2012); *City of Loves Park v. Ill. Labor Relations Bd. State Panel*, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003).

To make this showing, a charging party must prove there was a substantial breach by the respondent made without rational justification or reasonable interpretation, such that it demonstrates bad faith. *City of Loves Park*, 343 Ill. App. 3d at 395; *Byron Fire Protection Dist.*, 31 PERI ¶ 134 (IL LRB-SP 2015) (setting forth two-step repudiation analysis). Such a repudiation is a violation of a party's obligation to bargain in good faith; when a union repudiates a collectively bargained agreement, that repudiation can support a violation of Section 10(b)(4) of the Act. *See Amalgamated Transit Union, Local 1028*, 32 PERI ¶ 71 (IL LRB-SP 2013)(analyzing whether union members' work stoppage constituted the union's unlawful repudiation of the parties' CBA in violation of Section 10(b)(4) of the Act).

Certainly, under existing law, the State had no obligation to delay implementation of its last, best and final offer once it determined the parties were at impasse. Labor law provides that upon a legitimate impasse, an employer is privileged to implement its last, best and final offer. *City of Peoria*, 11 PERI ¶ 2007 (IL SLRB 1994) *citing Ill. Dept. of Cent. Mgmt. Services and Dep't of Corr.*, 5 PERI ¶ 2001 (IL SLRB 1988) *aff'd* 190 Ill. App. 3d 259 (1st Dist. 1989). Through the unfair labor practice process, the Board regularly resolves questions as to the propriety of the parties conduct at impasse. *See City of Wheaton*, 31 PERI ¶ 131. However, in the Tolling Agreement, the State bargained a significant limitation on its authority to unilaterally

implement terms. In what I can only describe as good public policy,[21] the parties agreed that if they could not agree on the existence of a legitimate impasse, they would proceed through the unfair labor practice process to put the issue before the Board and that the State would delay implementation of any best, last and final offer until the Board ruled. This restriction on the State's authority is a significant provision of the Tolling Agreement, and a failure to abide by this process would be a substantial breach of the Tolling Agreement. Moreover, it is hard to imagine what rationale or interpretation of the Tolling Agreement could reasonably give rise to an unwillingness to put the issue before the Board, which expressly contemplates a dispute between the parties about the existence of an impasse. Therefore, such a failure would result in a repudiation of the collective bargaining process that gave rise to the Tolling Agreement. Accordingly, the Board has jurisdiction to hear the matter.

B. The Union did not initially agree to submit the impasse question to the Board but did not repudiate the Tolling Agreement.

It cannot be seriously disputed that the Union did not initially agree to submit the question regarding the existence of an impasse to the Board. No evidence was adduced at hearing or submitted in the voluminous record that would lead me to believe the Union agreed to pursue the resolution procedure set out in the Tolling Agreement by having the Board decide the question of impasse at any point between January 8, 2016, when it was first aware that there may be a dispute as to whether an impasse existed, and February 22, 2016, when it filed its own charge alleging that the parties were not at impasse despite the State's contention otherwise.

The State first stated that it believed the parties were at impasse on January 8, 2016. Lynch immediately voiced her disagreement with this position in the clearest terms. The next communication between the parties was Newman's letter of January 14, 2016, in which he again asserted the Union's position that the parties were not at impasse and should instead return to the table. As of January 14, 2016, Newman was seeking to clarify the administration's position given public statement by the Governor that contradicted those given at the table. While Newman invited the State to continue bargaining if it no longer believed the parties to be at

[21] My rationale for referring to this process as "good public policy" is rooted in the sheer magnitude, not only of the size and scope of the affected bargaining units, but the impact that unilateral changes could have. For example, historically, health insurance changes negotiated between these two parties is extended to all other State employees (well over 100,000 other public employees) as well as employees of the State university system. In my experience, there is no other set of negotiations that could have such a far-reaching impact.

impasse, he did not mention next steps if there existed a dispute over the existence of an impasse. Newman certainly did not indicate AFSCME's willingness to, at that time, put the question of the existence of an impasse before the Board. After the State filed its charge in Case No. S-CB-16-017, Newman again wrote to Terranova on January 21, 2016. In that letter, Newman again indicated the Union's belief that the parties are not at impasse. Noting that the dispute as to the existence of an impasse was not yet resolved by the Board, Newman invited the State to expend its energies by returning to the bargaining table instead of seeking to unilaterally impose its proposals (presumably through the Board proceedings). This is not the communication of a party that is agreeable to complying with the terms of the Tolling Agreement to submit the question of the existence of an impasse to the Board for resolution. On February 11, 2016, Newman again wrote to Terranova; the topic of the letter was outstanding information requests. In that letter, Newman does not acknowledge the State's contention that the parties are at impasse, the State's charge before the Board, or make any reference to a dispute as to the existence of an impasse.

Finally, on February 22, 2016, the Union filed its own charge, ILRB Case No. S-CA-16-087, wherein, as Newman pointed out under examination, the Union puts the impasse question before the Board. In its charge, the Union contends that the State bargained in bad faith with respect to the declaration of impasse, specifically pointing to the Union's bargaining moves during the final session, which it contends would have broken any impasse that could have existed prior to the start of the last session. Notably, the Union does not contend in its charge that the State violated its duty to bargain in good faith when it sought Board review of the dispute over the existence of an impasse, presumably because the language of the Tolling Agreement clearly sets out Board review as the negotiated procedure for resolution of such a dispute.

The Board has held that negotiating in good faith at a later point does not necessarily obviate or render moot bargaining in bad faith at an earlier point in time. *Wheaton Firefighters Union, Local 3706 v. Ill. Labor Relations Bd.*, 2016 IL App (2d) 160105; *Tri-State Prof'l Firefighters Union*, 31 PERI ¶ 78 (IL LRB-SP 2014) *citing Pake Structural and Rebar Co.*, 293 NRLB 649, 653 (1989) ("a party's voluntary termination of wrongful conduct will justify dismissal on the grounds of mootness only if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur"). However, I cannot

find that the Union repudiated the Tolling Agreement simply by "refusing to agree that the parties have reached an impasse in negotiations," as the Tolling Agreement specifically contemplates a disagreement between the parties on the very existence of an impasse.

With respect to the allegation that the Union repudiated the Tolling Agreement by "not agree[ing] to submit the dispute with respect to the existence of an impasse to the Board," the record supports that the Union did not agree to submit the dispute to the Board, at least until February 22, 2016. However, I cannot find that the Union's five week delay in putting the dispute before the Board is a repudiation of the Tolling Agreement, when the terms of the Tolling Agreement lack specificity as to how and when submission to the Board must occur. Therefore, the State's charge in Case No. S-CB-16-017 should be dismissed.[22]

C. Many of the Union's unfair labor practice claims are untimely.

In the Amended Complaint for Hearing in Case No. S-CA-16-087, the Union alleges a number of unfair labor practices, which it contends both shows that the parties are not at impasse and that the State is not privileged to implement its last, best, and final offer. In its Answer and Affirmative Defenses, the State contends that a number of these allegations are time-barred and therefore cannot support a finding of an unfair labor practice.

Section 11(a) of the Act states, in part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board." This provision is a limitation on the Board's jurisdiction to adjudicate alleged unfair labor practices. *See Peoria Housing Authority*, (IL LRB-SP 2002) ("Because the six-month period for filing an unfair labor practice charge under the Act is jurisdictional, once we determine that the charge is untimely, the Board lacks authority to determine whether the charge raises the requisite legal or factual issue necessary for the issuance of a Complaint.") *citing Village of Dolton*, 17 PERI ¶ 2017 (ILRB SP 2001); *Jones v. Ill. Educational Labor Relations*

[22] The dismissal of CB charge does not preclude my analysis of whether the parties have reached a legitimate impasse, as that issue is placed squarely before by the Union's charge. Should the Board disagree with the dismissal of the CB charge and remand the question back to me, I would adopt the analysis of the impasse question I discuss in the context of my analysis of S-CA-16-087. In the context of the State's charge in S-CB-16-017, the existence of a lawful, legitimate impasse goes to the remedy the Board could award. Even where a union is found to have engaged in bad faith bargaining, an employer is privileged to implement its last, best, and final offer only if the parties were, in fact, at a legitimate impasse.

Bd., 272 Ill. App. 3d 612 (1st Dist. 1995); *Charleston Comm. Unit Sch. Dist. No. 1 v. Ill. Educational Labor Relations Bd.*, 201 Ill. App. 3d 619 (4th Dist. 1990).

AFSCME filed its charge on February 22, 2016. Therefore, the Board only has jurisdiction over unfair labor practices committed on or after August 22, 2015. Certainly, a number of AFSCME's alleged unfair labor practices occurred before that date. For example, the Union alleges that when the State cancelled January negotiation sessions, it was engaging unlawful surface bargaining,[23] and that the State bargained in bad faith when it announced it would not comply with the fair share provisions of the 2012-2015 CBA. I find that these allegations cannot support a finding that the State engaged in an unfair labor practice related to the discrete action alleged. Other examples include AFSCME's allegations that the State engaged in direct dealing by virtue of the Governor's public communications or administration communications that became public, like the July 29, 2015, memorandum from General Counsel Jason Barclay to Agency Directors and General Counsels later published in the CapitolFax.com blog.

Because the Board lacks jurisdiction over these claims, I do not consider them as evidence of independent unfair labor practices. However, even when conduct occurred beyond the six-month limitations period, the Board has long held that earlier events may be utilized to "shed light on the true character of matters occurring within the actionable period." *See City of Mattoon*, 11 PERI ¶ 2016 (IL SLRB 1995); *Village of Elk Grove*, 6 PERI ¶ 2048 (IL SLRB 1990); *City of Burbank*, 4 PERI ¶ 2048 (IL SLRB 1988). Specifically, in the context of an alleged bad faith bargaining claim, the Board recently held that conduct outside the limitations period can be considered as part of the "entire context of the parties' bargaining history to determine whether, during the six-month period prior to the filing of the unfair labor practice, the Respondent was bargaining in good faith." *Tri-State Prof'l Firefighters Union*, 31 PERI ¶ 78 (IL LRB-SP 2014) *aff'd by unpublished order* 2015 IL App (1st) 143418 (assessing the propriety of considering conduct beyond the six-month limitations period in the context of a bad faith bargaining claim). Therefore, I will consider all the allegations in the Amended Complaint for Hearing as part of the context of the bargaining history and to shed light on the overarching

[23] Paragraph 131 of the Amended Complaint alleges that the State engaged in surface bargaining by, among other things, cancelling the January dates (paragraph 8 of the Amended Complaint) and its conduct with respect to fair share fees (paragraph 14 of the Amended Complaint).

question of whether the State was bargaining in good faith with a sincere intent to reach an agreement.

D. Other procedural matters

At the close of hearing, the parties sought leave to file closing briefs in excess of the 50-page limit for closing briefs. After discussion, I granted a page limit of 150 pages. I recognize that rule 1200.60 indicates that the "General Counsel may grant approval of exceptions and briefs containing more than 50 pages only in extraordinary circumstances (e.g., in cases involving extremely complex issues, in cases involving factual or legal issues of first impression, or in cases involving a lengthy factual record)." However, the rules do not bar ALJs from granting motions to file oversized briefs and instead confer upon the ALJ broad authority to rule on motions more generally, and also confer other authority related to the filing of post hearing briefs. 80 Ill. Admin. Code 1200.40(j) & (k). In light of these provisions and the fact that the case is pending before me, I adopt as my role the duty to consider the parties' request, which I find will assist the Board in its consideration of this matter. Moreover, this ruling is consistent with the extraordinary circumstances outlined in rule 1200.60; certainly, all of those circumstances are present in this case. On July 8, 2016, the Union filed an Unopposed Motion to Extend the Page Limit for the Post hearing Brief, seeking 225 pages instead of the 150-page limit established at the close of the hearing. On the same day, I granted the Motion. Concurrently with its filing of its post-hearing brief on July 13, 2016, counsel for AFSCME filed an Unopposed Motion for Leave to File 235-page Brief Instanter. As the motion is unopposed and I have previously noted that the Rule 1200.60 extraordinary circumstances factors are satisfied, I grant the Union's motion and will consider all 235 pages of the Union's post-hearing brief.

After timely filing their post-hearing briefs, counsel for each party sought to file a corrected copy of the brief which corrected typos and/or formatting, but did not make any substantive changes. These requests were unopposed, and I grant them. The corrected copies will replace the timely filings and be made part of the record.

Finally, in its post-hearing brief at pages 201-202, the State "incorporates its briefs in support of its appeal of the Executive Director's dismissal as if stated fully herein." The Board's rules do not contain any provisions about incorporating by reference. However, I am authorized to take administrative notice of the contents of the Board's files, and am inclined to do so for a more full development of the State's argument on this point. *See All Purpose Nursing Service v.*

Illinois Human Rights Comm'n, 205 Ill. App. 3d 816, 823, 563 N.E.2d 844,848 (1st Dist. 1990) ("administrative agency may take judicial notice 'of matters of which the circuit Courts of their State may take judicial notice'"). I have attached a copy of the State's June 17, 2016, appeal of the dismissal in ILRB Case No. S-CB-16-023, as well as exhibits 1, 2, and 3, to this decision as Appendix B. I include these documents for the sole purpose of more fully understanding the State's legal argument on this point. Therefore, I do not consider the affidavits attached to the charge, as they purport to relay facts that were not before me and were not tested by cross-examination.

VI. DISCUSSION AND ANALYSIS

It is important to note at the outset the purpose of this administrative proceeding. The Board is not, and I certainly am not, an interest arbitrator. Therefore, I do not concern myself with the reasonableness of the parties' positions or whether any position taken by a party is even a good idea. Instead, I focus on the Board's purpose of implementing the Act, which is intended to "prescribe the legitimate rights of both public employees and public employers" and "to provide peaceful and orderly procedures for protection of the rights of all." 5 ILCS 315/2. Both parties have rights and obligations under the Act, and that is my sole focus as I assess the issues raised in this case.

Under Section 7 of the Act, Parties are required to bargain collectively over employees' wages, hours and other conditions of employment— the "mandatory" subjects of bargaining, but "such obligation does not compel either party to agree to a proposal or require the making of a concession." 5 ILCS 315/7; *City of Decatur v. Am. Fed. of State Cnty. and Mun. Empl., Local 268*, 122 Ill. 2d 353, 362 (1988). Under existing law, when the parties have reached a legitimate impasse, an employer has the right to unilaterally implement changes in terms and conditions of employment consistent with its pre-impasse proposals." *City of Peoria*, 11 PERI ¶ 2007 (IL SLRB 1994) *citing Ill. Dept. of Cent. Mgmt. Services and Dep't of Corr.*, 5 PERI ¶ 2001 (IL SLRB 1988) *aff'd* 190 Ill. App. 3d 259 (1st Dist. 1989). Thereafter, employees have the right to strike in support of the union's bargaining demands. *Ill. Dept. of Cent. Mgmt. Services (Dep't of Corr.) v. Ill. Labor Relations Bd.*, 373 Ill. App. 3d 242, 253 (4th Dist. 2007) *citing Local Union No. 47 v. Nat'l Labor Relations Bd.*, 927 F.2d 635, 640 (D.C. Cir.1991); *Hydrologics, Inc.*, 293 NLRB 1060, 1062 n. 13. Providing each party with an economic weapon puts the parties on more equal footing. *Id. citing Local Union No. 47*, 927 F.2d at 643. Here, the parties negotiated

Tolling Agreements that limited each party's ability to use the economic weapons provided under existing law. The parties agreed to neither engage in a strike or lockout during the term of the Tolling Agreement. The State further agreed to limit its use of its available economic weapon of unilateral implementation by agreeing not to implement a final offer until the Board had ruled on any dispute as to the existence of an impasse. Because of this factual background, this case comes to the Board in an atypical way in that there has not yet been unilateral implementation of the State's terms.

Despite the large range of issues and questions presented in this case and discussed in the following pages, this case is, at its core, an impasse case. "Whether a bargaining impasse exists is a matter of judgment." *Taft Broadcasting Co.*, 163 NLRB 475 (1967) (the Board first incorporated the NLRB's reasoning in *Taft Broadcasting Co.* in *Ill. Dep'ts of Cent. Mgmt. Servs. and Corrections*, 5 PERI ¶ 2001 (IL SLRB 1988)). Earlier this year, the Board described impasse under the Act as follows: "Parties reach impasse when they have negotiated to the point where further bargaining over the subject would be futile." *City of Park* Ridge, 32 PERI ¶ 151 (IL LRB-SP 2016) *citing Ill. Dep'ts of Cent. Mgmt. and Corrections*, 5 PERI ¶ 2001 (IL SLRB 1988) *aff'd Am. Fed. of State, Cnty. And Mun. Empl., Council 31 v. State Labor Rel. Bd.*, 190 Ill. App. 3d 259 (1st Dist. 1989). As recently as last year, the Board recognized that the NLRB has long referred to impasse as where "one party is 'warranted in assuming ... that the [other party] had abandoned any desire for continued negotiations, or that further good-faith negotiations would have been futile.'" *Village of Steger*, 31 PERI ¶ 157 (IL LRB-SP 2015) *citing Cnty. of Jackson*, 9 PERI ¶ 2040; *Alsey Refractories Co.*, 215 NLRB 785 (1974). However, the Board has held that the duty to bargain does not require a party to "engage in fruitless marathon discussions, … as in instances where there are irreconcilable differences in the parties' positions after good-faith negotiations have exhausted the prospects of concluding an agreement." *Ill. Dept. of Cent. Mgmt. Services and Dep't of Corr.*, 5 PERI ¶ 2001 (IL SLRB 1988) *aff'd* 190 Ill. App. 3d 259 (1st Dist. 1989). In this case, there is no dispute that the Union has repeatedly communicated its desire to continue negotiating. The question of impasse involves two distinct issues: (1) whether further negotiations, if ordered by the Board, would be futile and (2) whether any other matters preclude a finding that the parties were at a *legitimate* impasse.

In determining whether parties have reached a legitimate impasse, the Board looks at the totality of the circumstances before it.[24] The Board specifically looks at a number of factors, including the parties' bargaining history, the good faith of the parties during negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, and the contemporaneous understanding of the parties regarding the state of the negotiations. *See City of East Moline*, Case No. S-CA-15-116 (IL LRB-SP June 22, 2016); *Ill. Dep't of Cent. Mgmt. Servs. (Corrections)*, 5 PERI ¶ 2001 (IL SLRB 1988), *aff'd* 190 Ill. App. 3d 259, 6 PERI ¶ 4004 (1989); *Cnty. of Jackson*, 9 PERI ¶ 2 2040 (IL SLRB 1993) *affd. by unpub. order*, No. 5-93-0685 (1994); *City of Peoria*, 11 PERI ¶ 2007 (IL SLRB 1994). I discuss each of these factors in turn below.

A. The parties' bargaining history weighs in favor of a finding of impasse.

One factor to consider is the parties' bargaining history. For example, if the parties have a new relationship, bargaining may take longer as they learn how to work together. If there is a particularly contentious relationship with a history of strikes and lockouts, that can provide valuable insight into the parties' ability to reach agreement.

Here, the parties have a long and largely uneventful bargaining history; since 1975, the parties have always successfully reached agreement on successor CBAs. There has never been a strike or lockout of State employees. That is not to say that bargaining has always been easy.

[24] It is worth noting that the Board has decided only a handful of cases wherein the primary issue is whether the parties are at a legitimate impasse; therefore, the parties rely on NLRB precedent more heavily than they likely would have in a different type of case. *Bd. of Educ. of City of Chicago v. Illinois Educ. Labor Relations Bd.*, 2013 IL App (1st) 122447, n. 2 (Rulings of the NLRB and federal courts construing labor relations acts are persuasive authority when analyzing similar provisions in Illinois acts); *Amer. Fed'n of State, Cnty. and Munic. Employees v. Ill. State Labor Relations Bd.*, 190 Ill. App. 3d 259, 264 (1st Dist. 1989) (same); *Chicago Newspaper Guild, Local 34071 (Caloca)*, 32 PERI ¶ 133 (IL LRB-SP 2016) (adopting NLRB's unilateral settlement procedures); *North Shore Sanitary Dist.*, 13 PERI ¶ 2006 (IL SLRB 1997) (applying NLRB case law to novel backpay issue in the compliance context); *Village of Hazel Crest*, 30 PERI ¶ 72 (IL LRB-SP 2013)(applying NLRB case law to consideration of employees' the right to display union stickers/insignia). There are limitations in relying on cases from the private sector, as the issues facing private employers when dealing with their employees is not both a labor relations issue but also a political issue. In *Harris v. Quinn*, 134 S. Ct. 2618, 2631-32 (2014), the Supreme Court noted that "'decisionmaking by a public employer is above all a political process' undertaken by people 'ultimately responsible to the electorate.' Thus, whether a public employer accedes to a union's demands, the Court wrote, 'will depend upon a blend of political ingredients,' thereby giving public employees 'more influence in the decisionmaking process that is possessed by employees similarly organized in the private sector.'" *Id. citing Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977).

On three occasions, the parties negotiated past the expiration of the existing contract – 1983, 2008, and 2012 – but were ultimately able to reach agreement. On each of these three negotiations, the parties were dealing with fiscal uncertainty or unfavorable fiscal conditions. In 2012, like in this round of negotiations, the State made many and sweeping proposals. In 2012, the Union had a rather contentious relationship with the sitting Governor, and the State was looking for significant concession due to economic difficulties. Nonetheless, the parties were able to reach an agreement.

Had the 2015 negotiations been undertaken in the typical fashion for these parties, I would likely have been persuaded that the parties' bargaining history weighed against finding impasse, instead finding that the parties would have been able to reach agreement. However, the Union approached bargaining in 2015 differently than in 2012 and prior negotiations. As early as February 26, 2015, Lynch stated as much at the table. When Terranova commented on the negotiations going differently that they traditionally did, Lynch responded that these are not negotiations in the tradition AFSCME was used to and reminded him that it was a different time than in the past.

This played out at the table, as well. AFSCME did not submit initial non-economic proposals in December, as had historically been done. In the context of the new administration, this aberration would not, in and of itself, even be noteworthy. However, on the first topic bargained, Ground Rules, AFSCME proposed a number of new rules placing limitations on the Employer that they had never before sought. The Union continued to insist on additional limitations in the bargaining on Ground Rules over the course of four days in the face of the State's contention that the Ground Rules used for decades had served the parties well. The parties only resolved the Ground Rules when the State indicated its intent to move forward without any Ground Rules if they could not reach agreement.

Once the parties moved past Ground Rules, the Union did not proceed with submission of its comprehensive non-economic proposals. Though historically given the month before bargaining begins, on February 26 and 27, 2015, Lynch indicated that the Union was still working on proposals. In light of this contention, the State made their non-economic proposals first in an effort to get negotiations going. At hearing, Newman contradicted what was said at the table regarding the status of the Union's initial proposals. Newman testified that the Union "certainly had proposals" but that there "wasn't any urgency for us to be the first ones to make

proposals" where it appeared that the State was going to be the more aggressive party to bargaining. Newman further explained this testimony to mean that the Union was not looking for wholesale changes to the mature agreement between the parties while the State was likely to be looking for more changes.

Newman also testified that AFSCME instead was trying to "work on the relationship" with the new administration before submitting its initial proposals. To that end, the Union contends that its subcontracting proposal of February 26, 2015, was a first proposal intended to "get bargaining off on a … better note," but this claim is hard to believe. First, the proposal was unlike previous proposals exchanged by the parties in that it did not identify an article of the contract that it would modify, supplement, or replace. At hearing, Newman described the Union's proposal as something that would be ordinary if the parties were using an alternate form of bargaining, but this was never described to the State at the table or at any time prior to hearing and was not something the parties had done before. Moreover, since the outset of bargaining, the State had stated that in light of the fiscal conditions and the administration's belief that the status quo was not working, it was looking for increased efficiency and flexibility. It is implausible that out of the gate the Union would, in an effort to start negotiations off on the right foot, abandon the parties' historical process and instead propose language that added new restrictions along with statements of principle that would further limit the State's flexibility or other efforts to increase efficiency through subcontracting.

Instead of setting the tone and context for bargaining, the Union, for the first time ever as far as I can tell from the record, took the back seat and let the State drive negotiations. While the parties' long, productive bargaining history would ordinarily weigh in favor of their continuing ability to reach an agreement, in this case, the Union's atypical approach in bargaining weighs in favor of a finding that the parties could be at impasse.

B. The length of the 2015-2016 negotiations weighs in favor of a finding of impasse.

Another factor considered is whether the parties invested sufficient time in the process to reach an agreement. For example, in *State of Ill., Dep't of Cent. Mgmt Servs. (Dep't of Corrections)*, 5 PERI ¶ 2001, the Board found that meeting only four times over a novel and complex issue (instituting a drug testing program at DOC) weighed in favor of finding that the parties were not at impasse. In *City of Peoria*, 11 PERI ¶ 2007 (IL SLRB 1994), the Board found that the same number of bargaining sessions, though each very short, was sufficient for

bargaining over the limited topic before the parties. The NLRB has held, "While it is true that the number of negotiating sessions is not controlling, generally, the more meetings, the better the chance of finding an impasse." *PRC Recording Co.*, 280 NLRB 615, 635 (1986).

Here, it is uncontested that the parties met on more days than in any other negotiation for a successor agreement – 67 separate days over 24 sessions, most with the aid of a federal mediator. In contrast, during the contentious 2012-2013 negotiations, where the parties also negotiated over numerous, far-reaching proposal, the parties successfully reached an agreement after 66 sessions. I find that the record, including statements made at the table by both the State and AFSCME's Chief Spokesperson, reflects that the responsibility for delays within bargaining sessions (starting late, extending caucus time, etc.) is borne by both parties. It is certainly true that the parties had many proposals to consider and that the parties elicited information and had productive discussions about a number of these proposals. It is also clear from the record that the State was facing financial distress that only continued to worsen as negotiations continued. However, the parties were able to make significant movement on many topics in 2015 and 2016 but remained very far apart on a host of significant issues, including wages health insurance, and subcontracting; I find that the length of negotiations weighs in favor of finding that the parties were at impasse in January 2016.

C. The importance of the issues as to which there is a dispute weighs in favor of a finding of impasse.

Where the issues upon which the parties are unable to reach agreement is of such importance that they make the overall negotiations more difficult, that can weigh in favor of a finding that the parties are at impasse. *See Calmat Co.*, 331 NLRB 1084, 1097 fn. 49 (2000) (when a single issue is "of such overriding importance" to the parties that the impasse on that issue frustrates the progress of further negotiations there may be overall impasse).

There can be no reasonable disagreement that the outstanding issues - including wages, health insurance, subcontracting, layoff – were of the utmost importance to the parties. The inherent nature of the topics still on the table, including health insurance benefits, is obviously important and go to the very heart of collective bargaining. In fact, the very first substantive issue raised by the Union after Ground Rules, even before submitting its initial non-economic proposals which were typically given in December of the year prior to bargaining, related to subcontracting. The Union's subcontracting proposals throughout bargaining were directly contradictory to the State's identified goal of increasing efficiency and flexibility. Over the

many months of bargaining, the State repeatedly indicated that it could not afford to pay step increases or across the board wage increases and was opposed to increases that were unrelated to performance. The Union consistently stated its disinterest in bonuses and that a pay plan that did not give every employee increases was insulting. The State consistently indicated its need to save hundreds of millions of dollars in health insurance costs and always discussed health insurance in the context of methods to reach a cost-sharing split of the net actuarial value of any plan wherein the employee bore 40% of the cost and the State paid the remaining 60%. The Union, on the other hand, had consistently indicated its unwillingness to reach an agreement that resulted in employee's paychecks being significantly smaller.

In short, many of the issues remaining unresolved between the parties were the most important facing the parties in this round of bargaining. Therefore, I find that this factor weighs in favor of a finding of impasse.

D. The parties' contemporaneous understanding as to the state of negotiations weighs against a finding of impasse.

In assessing whether the parties are at an impasse, the Board also considers what each party understood about the state of negotiations as of the time impasse was declared. If the parties had very different understandings about how things were proceeding or how close they were to reaching an agreement, this would weigh against finding that the parties were at impasse. *See e.g. Lou Stecher's Super Markets*, 275 NLRB 71 (1985) (where union recognized that the parties were "real[ly] far apart" and that there was "just no way that we can get together," the understanding of the parties supported a finding of impasse).

Much like their approaches to presenting their cases in this consolidated matter, the parties had very different approaches to bargaining for a successor agreement. After spending weeks and weeks hearing testimony of the parties on the status of negotiations and reviewing the record in this case, I am left with the firm impression that the State felt an urgency to reach a resolution while the Union was content to negotiate by infinitesimal increments. There is certainly evidence in the record to support that the Union did not believe it would reach agreement at the bargaining table. From the very early days of negotiations, the Union accused the State of seeking to destroy the Union, pointing, in part, to many proposals the State ultimately withdrew. Very shortly after the State submitted its initial economic proposal, SB1229, the Union-supported interest arbitration bill was filed. For more than six months, the Union took the position that interest arbitration would be the preferred method to resolve the

contract dispute. At hearing, Newman testified that the interest arbitration bill was intended to assist bargaining by making the parties present more reasonable proposals at the table. However, his statements and statements published on the AFSCME website belie that explanation. For example, AFSCME was encouraging its employees to help get the interest arbitration bill passed because Governor Rauner "wants to take away your right to have union representation" and is "determined to try to impose his radical and harmful demands possibly by forcing a strike or lockout once [the Tolling Agreement] ends." On September 1, 2015, Newman publicized his belief that the Governor intended to "force a strike" by virtue of the State's so-called draconian demands. Once the interest arbitration bill failed to be passed into law, AFSCME indicated, "The Governor's assault on the arbitration provisions of Senate Bill 1229 has now derailed the best hope of amicably settling Union contracts that are fair to all." That is certainly not a very optimistic view of negotiations more than three months before the State came to believe that future bargaining would be futile.

That being said, the record also reflects that as of January 8, 2016, the Union genuinely understood that the parties were moving, even if glacially. In contrast, the State viewed the plodding nature of the negotiations and modest moves the Union made, in the face of the large divide between the parties, as evidence that the parties would never reach agreement. The State's view is not unreasonable and is similar to the view AFSCME took after the Governor's veto of SB1229 was not overridden.

Looking to the final bargaining session, the Union believed that it had made significant progress. On the topic of wages, the Union had proposed turning the State's offered $1,000 signing bonus to a one-time 1.5% bonus (also approximately $1,000 per employee) for the first year of the contract and had lowered its second year increase proposal from 2.5% to 2.%, the same amount the Employer proposed designating for a merit incentive bonus pool. Newman testified that the parties were "close" on the terms for wages in the first two years of the contract. Of course, this sentiment stands in contrast to the State's enunciated purpose behind the proposals – getting a successor contract signed by January 1, 2016, and incentivizing high performance. Regardless of this movement, I find that neither party believed they were close to an overall deal.

Despite this mutual understanding, on the morning of January 8, 2016, the parties had very different views of what the future held and therefore what was the current state of

negotiations. Newman and Lynch both credibly testified that they were surprised when Terranova stated at the table on January 8, 2016 that he believed the parties were at impasse. Not only were they surprised, but Lynch immediately and vehemently disagreed. This disagreement is at least in part due to the State's failure to notify the Union as to its understanding as to the state of negotiations before announcing its belief the parties were at impasse. Despite its urgency to reach a settlement, at no point since February 26, 2015, when the parties were negotiating Ground Rules, had the State informed the Union that any of its positions were as far as it was willing to go or even that it was nearing that point. As recently as mid-December, the State had indicated encouragement at the Union's movement in the direction of what it characterized as a more workable subcontracting proposal that included managed competition concepts.[25]

The State argues that the Union's movement in the final week of bargaining was akin to improper dilatory tactics rather than a good faith attempt to reach agreement. In support of its argument, it notes that the Board had previously found, in *City of Peoria*, 11 PERI ¶ 2007, that AFSCME trains its negotiators to respond to a declaration of impasse by stating that they still had room to move. Even with the number of contract negotiations Newman has been involved in over his career, he testified that he has never agreed that the parties were at impasse; he indicated his belief that there was always a way to reach agreement. In *City of Peoria*, the Board found that the union representatives protestations were not sincere and were, instead, a "perfunctory response attempting to forestall the City from implementing its final offer rather than a sincere attempt to resolve the party's differences." *Id.* Unlike in the *City of Peoria* case, where the parties were still negotiating over a single issue relating to including a small number of employees into an existing bargaining unit, here, the parties were still negotiating over a wide range of topics. Moreover, I find the Union's assertion that it wants to continue bargaining to make additional counter proposals to be more than a "perfunctory response," especially in light of the fact that it had just received requested information (underutilization statistics) and was still

[25] Similarly, the State had never informed the Union that it believed it had no obligation to bargain over health insurance. When the parties were continuing to disagree about other proposals on which the State believed it had no obligation to bargain, namely Ground Rules and the Union's proposals on Parking and Records and Forms, Terranova explicitly said so at the table and indicated whether the State was willing to continue bargaining over the topics.

awaiting other information (health care savings by incremental increases and savings from vacation temporary assignment).

The State also argues that the Union's invocation of the interest arbitration process for the bargaining units that are prohibited from striking, as well as its legislative efforts to afford interest arbitration for all State employees under the jurisdiction of the Governor, reflects that the Union sincerely believes that further negotiations would not be fruitful. I disagree. The Union did not begin the interest arbitration process provided under Section 14 of the Act until after negotiations had stopped. Further, I see these efforts not as a recognition of the parties inability to reach an agreement at the table, but as attempts by the Union to get the best deal they can through whatever avenues are legally available to its members. Most importantly, even if the parties were found to be at impasse and the State was privileged to implement its last, best, and final offer, because these employees are prohibited from striking, the State is prohibited from unilateral implementation of changes to terms and conditions of employment for these employees. 5 ILCS 315/14(l).

Taken together, I find that the parties had a very different understanding of the posture of negotiations as of January 8, 2016. Therefore, this factor weighs against a finding of impasse.

E. Good faith of the parties - The Union has not proven that the State exhibited overall bad faith in that it engaged in surface bargaining or that its approach to bargaining was otherwise intended to undermine the Union and to avoid reaching an agreement.

Throughout this matter, the State has contended that despite the parties bargaining in good faith, they were unable to reach agreement, and, as of January 8, 2016, they were so far apart that the State was warranted in thinking that further negotiations would be futile. The Union, on the other hand, makes two separate, but intertwined, arguments as to the State's conduct in bargaining. First, it alleges an overall pattern of bad faith bargaining, surface bargaining, which had the purpose of derailing negotiations. AFSCME's argument on this first point is essentially that the State failed to engage in negotiations with "an open mind and sincere desire to reach agreement" and instead implemented a multi-pronged approach to undermine the Union. Because of the State's conduct, the Union contends that the parties were not at impasse. Second, the Union alleges a number of discrete unfair labor practices that it contends would also negate a finding of an otherwise legitimate impasse. I address this second claim in Sections G and H below.

In *Lake County Circuit Clerk*, 29 PERI ¶ 179 (IL lRB-SP 2013), the Board had occasion to address allegations of surface bargaining, a term used in labor law to refer to when a party "undertakes a calculated strategy of avoiding reaching an agreement, and does nothing more than 'go through the motions of bargaining.'" *Id. citing Service Employees Int'l Local Union No. 316*, 153 Ill. App. 3d 744, 751; *Chicago Typographical Union*, 15 PERI 3008 (IL LLRB 1999). The Board also noted the following companion tenet:

> An equally well-recognized and fundamental principle of collective bargaining is that, while the obligation to bargain in good faith requires both parties to negotiate with "a sincere purpose to find a basis of agreement," the Board "cannot force an employer to make a 'concession' on any specific issue or to adopt any particular position." *Laborers Local 996 and County of Woodford*, 8 PERI ¶ 2019 (IL SLRB 1992) (*quoting Atlanta Hilton & Tower*, 271 NLRB 1600 (1984)); *also see H.K. Porter Co. v. NLRB*, 397 US 99 (1970). This principle is expressly incorporated in Section 7 of the Act, which provides that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession." Therefore, as the Board noted in *Chicago Typographical Union*, "[a]n adamant insistence upon a bargaining position is not of itself a refusal to bargain in good faith" (*quoting Neon Sign Corp. v. NLRB*, 602 F.2d 1203 (5th Cir. 1979)).

Id.

With respect to this overarching argument that the State engaged in a course of bad faith bargaining conduct before, at the onset, and during the parties' negotiations, I will consider conduct that would otherwise be untimely for the purpose of context. *See Tri-State Prof'l Firefighters Union*, 31 PERI ¶ 78. In this context, I give no weight to Governor Rauner's statements made before he took office. The Act does not regulate conduct of a private citizen, and it is undisputed that Governor Rauner was neither a public employee or an agent of a public employer prior to his taking office in January 2016. It is a slippery slope indeed to hold private individuals accountable for things they may have said outside the context of any role in an employer-employee relationship and similarly when running for public office. Candidates often opine about things they will do once in office that later turn out to be impossible, unattainable, or otherwise ill-advised such that they are abandoned wholesale upon taking office and beginning the process of actually governing.

The Union argues in its post-hearing brief that the State's overall bad faith and subsequent surface bargaining is supported in three specific, yet distinct ways: the State's

hostility to collective bargaining, its refusal to budge from pre-determined positions, and its submission of proposals designed to frustrate the bargaining process. I take each of these in turn.

1. Hostility to collective bargaining

The Union argues that the Governor believes that public sector collective bargaining is a corrupt institution. Therefore, public comments and actions by the Governor and his agents should be used to establish discriminatory intent and a state of mind inconsistent with good faith bargaining. On this point, the Union writes in its post-hearing brief, "The State contends that the Governor had a right to make his opposition to public sector bargaining known. AFSCME agrees. Such opposition, though, cannot drive the bargaining process. Until the repeal of the [Act], the same constraints apply to an elected Governor as they do to all other public employers." I agree. However, I disagree with the Union that it has shown that any personal, anti-union feelings of Governor Rauner drove the bargaining process.

The Union cites a number of NLRB cases in support of its contention that because the Governor and his agents "interjected themselves" into the bargaining process by commenting publicly on the status of negotiations and particular proposals, the Governor's personal feelings were driving the bargaining process. *See e.g. NLRB v. General Electric Co.*, 418 F. 2d 736, 762 (2nd Cir. 1969); *NLRB v. Mar-Len Cabinets*, 659 F.2d 995 (9th Cir. 1981)(proper for NLRB to take into account employer's expressed desire to go non-union in determining that proposals were made in bad faith); *NLRB v. Fitzgerald Mills*, 313 F.2d 260 (2d Cir. 1963)(Intent of employer not to reach agreement shown by statement of chief negotiator encouraging the Union to strike); *NLRB v. Reed & Prince Co.*, 205 F.2d 131 (1953)(looking at employer's prior poor labor history). *NLRB v. Reed & Prince Co.*, 205 F.2d 131 (1953); *Sivalls, Inc.*, 307 NLRB 986 (1992); *Stevenson Brick*, 160 NLRB 198 (1966).

I am unpersuaded by this argument for two primary reasons. First, it fails to appreciate that the terms upon which the State settles with its employees is necessarily a political, public policy issue. *See Harris v. Quinn*, 134 S. Ct. 2618, 2631-32 (2014) *citing Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977) ("'decisionmaking by a public employer is above all a political process' undertaken by people 'ultimately responsible to the electorate.' Thus, whether a public employer accedes to a union's demands, the Court wrote, 'will depend upon a blend of political ingredients,' thereby giving public employees 'more influence in the decisionmaking process that is possessed by employees similarly organized in the private sector.'"). Political, public

policy topics are regularly discussed by elected officials in the course of their performing the jobs they were elected to do. Therefore, I find NLRB precedent on this point unhelpful.

Second, the Union's argument that the Governor's hostility to bargaining establishes that the State bargained in bad faith because "bargaining was being run from the Governor's office, not CMS" is similarly unpersuasive. Under existing law, the only prohibitions on who "runs bargaining" is that to engage in good faith bargaining, a party must send negotiators to bargaining who are authorized to reach agreement. Obviously, keeping principals informed and seeking guidance on proposals does not mean that the State's negotiators were not authorized to reach agreement. Notably, Terranova repeatedly separated what happened away from the table – the Governor's policy addresses, press reports, etc. – and what occurred at the table.

There is no evidence in the record from which I can conclude that any anti-union, personal feelings of Governor Rauner drove bargaining with bad faith or that the Employer had a "state of mind inconsistent with good faith bargaining," as the Union alleges. The closest the record comes to supporting a similar argument related to fair share. The Governor has stated his belief that fair share fees are unconstitutional, and actions negotiators took at the table were supported, at least in part, on that belief, in that the State initially proposed deleting the fair share provisions from the contract all together. However, through negotiations, the State agreed to reinsert all of the prior language and sought only to add a caveat that the Employer believed fair share to be unconstitutional and, if it was found to be so, the State would not continue to process fair share contributions. Even where the personal belief of the Governor could be linked to a proposal made at the table, the Employer bargained over the issue, made a number of proposals, and eventually agreed to include all of the prior language. I further find the fact that Terranova frequently indicated his need to check with his principals and get back to the Union is no different than the Union's description of how its negotiators could not take positions without first running it by the bargaining committee.

Looking more generally at the State's conduct at the table, the record reflects that the State had and expressed bargaining goals – increased flexibility, efficiency, and cost-savings – and submitted proposals consistent with those goals. The Union argues that the true purpose was to frustrate the collective bargaining process, merely undermine the Union, or to otherwise fail to reach an agreement. In support of that argument, it argues that the State's fiscal situation was self-inflicted; thus, it was essentially a pretext for proposals harmful to the Union. I am not

persuaded by this argument. There was some discussion during the hearing that the true cause of the crisis was the failure to renew the temporary tax surcharge, and that State cannot legitimately contend that the State is broke. This argument fails for a number of reasons. First, the temporary tax increase was passed in 2011 and included a sunset date of January 1, 2015. This occurred long before Governor Rauner was even a candidate for public office. Further, the Governor does not have unilateral discretion to raise additional revenues through taxes, a point which the Union recognizes in its brief. That the Governor and the General Assembly could agree to increase revenues does not make the fiscal crisis articulated during negotiations a fiction or other form of artifice. In fact, the record reflects that the State's fiscal condition continued to deteriorate during the course of bargaining precisely because the General Assembly and the Governor did not agree on a budget for FY 2016. No budget of any kind was signed into law until June 30, 2016, when the Governor signed what has been called a "stop-gap budget," funding some FY 2016 obligations and providing appropriation at least at some level for FY 2017 expenditures.

Moreover, I find several points in the record that disprove the notion that any hostility toward collective bargaining drove negotiations and that in proceeding in that manner, the State bargained in bad faith. First, the State hired a seasoned labor relations professional to bargain the contract. Terranova had experience working with AFSCME over many, many years, had successfully reached settlement on a number of contracts between the State and labor organizations, and had previously been part of Master Contract negotiations for several rounds. Second, the State agreed to Tolling Agreements, that kept the vast majority of the terms of the prior, voided contract[26] in place, and more importantly, included agreement to limit the parties' use of economic tools, such as lockout or unilateral implementation, while the Board determined any dispute as to the existence of impasse. Third, on September 8, 2015, the State proposed a $1,000 bonus for every bargaining unit member if the parties reached agreement and the contract was ratified by January 1, 2016. This conduct is inconsistent with a party uninterested in reaching an agreement, or, as Newman testified he believed, intent on forcing a strike. Finally, the State's negotiators consistently indicated their desire to reach agreement, on multiple occasions asking the Union to make counter proposals helping it reach its stated goals, and all

[26] By operation of law, the 2012-2015 CBA had been rendered null and void. 5 ILCS 315/21.5 (2014); *State of Ill. (Dep't of Cent. Mgmt. Servs.)*, 33 PERI ¶ 3 (IL LRB-SP 2016).

but begged the Union not to be distracted by outside influences or occurrences. While this would certainly have been a difficult thing for the Union to do, especially in the course of hard bargaining and a toxic political environment, I find the State's conduct at the table to be consistent with a respect for the process of good faith collective bargaining.

It is also worth noting in this section that many of the proposals of which the Union complained at the table and consistently rejected were made across the table with numerous other labor organizations. Terranova's uncontroverted testimony reflects that the State's approach in these other negotiations was the same as the approach it took with AFSCME.

For these reasons, I find that the Union has failed to show that the Governor's alleged hostility toward collective bargaining seeped into the bargaining process such that the State was bargaining in bad faith.

2. Refusal to budge from pre-determined positions

The Union also argues that the State bargained in bad faith because it did not bargain with a "sincere effort to reach common ground," and instead refused to budge from pre-determined positions. The Union complains that the State has come to the table with a "take-it-or-leave-it" approach indicative of a failure to bargain in good faith. In support of this argument, the Union points to the Governor's 2016 Budget Address and the State's proposals on merit pay, health insurance, and underutilization.

In the Governor's 2016 Budget Address, Governor Rauner said, "[W]e are negotiating a new labor contract that is fair to both state employee and taxpayer – to save hundreds of millions of dollars this year and $3 billion over the next three years." The Union argues that this statement cannot be squared with an attitude of give and take. The Union's use of a February 17, 2016 speech as support for finding that the State bargained in bath faith in 2015 through January 8, 2016, is baseless. The Budget Address was given more than five weeks after the State had indicated at the table its belief that the parties were at impasse and a month after the State brought the question of impasse before the Board. The speech must be viewed in the context of that timeframe and the State's belief of the facts. The State believed that the parties were at a lawful impasse and that after proving that to the Board, it would be privileged to implement its last, best, and final offer. Therefore, I do not find the comment inconsistent with good faith bargaining.

The Union next turns to the State's merit pay proposals and argues that the State did not move off the basic structure of its proposal in the many months after initially proposing it on September 8, 2015. The Union's argument on this point appears to be that the State could not hold to its desire to have a merit pay program. That is not the state of the law. The Board and the NLRB have long held that "[a]n adamant insistence upon a bargaining position is not of itself a refusal to bargain in good faith." *Chicago Typographical Union*, 15 PERI ¶ 3008 *quoting Neon Sign Corp. v. NLRB*, 602 F.2d 1203 (5th Cir. 1979). This is not a situation where a union is making proposals and countering the employer's position and the employer refuses to move from its original proposal. The Governor's Turnaround Agenda included "Reward state workers with performance pay and incentivize employee-inspired cost-saving measures." The Union points to this as evidence of pre-determination. However, the record reflects that in the course of bargaining over the issue of compensation, of which incentive bonuses were a part, the State made significant movement. The State started out proposing essentially a 4-year compensation freeze. Under the initial proposals, State employees would be making the same amount on July 1, 2019 as they were on July 1, 2015. Over time that position changed to, among other things, continue longevity increases, allow for a signing bonus, and allow compensation from two different types of incentive bonuses – merit pay and gainsharing. While the State held the size of the merit incentive bonus pool to 2% of AFSCME payroll from September through January, its position changed with respect to how employees would be eligible to receive different portions of that pool.

The Union argues that when the State made its last move on merit pay, it responded with "a counter proposal on wages that matched the size of the increase the State was proposing for the first two years of the Agreement." However, this counter was not a change from two of the Union's positions, on which it adamantly and consistently held – across the board increases for all unit members and that it had "no interest" in bonuses. I do not find that the State's holding to its position that a successor CBA should include compensation incentives based on merit to be indicative of bad faith.

Similarly, I do not find that the State's holding to its position to adjust cost-sharing for health insurance between employees and the employer be adjusted to be indicative of a bad faith refusal to budge from a pre-determined position. The Union correctly points out that the State held to a 60/40 aggregate cost-sharing since August 13, 2015. The Union recognizes that over

months, the State provided multiple options with varying levels of benefits and varying levels of premium contributions. The Union points to a December 2015 letter from the CMS Bureau of Benefits as evidence that the State's attitude is inconsistent with good faith, because, despite acknowledging that negotiations were ongoing, the State indicated that negotiations were taking place "within the parameters described" (that premiums were likely to double). In the overall context of bargaining, I find the Union's argument unconvincing. The Bureau of Benefits letter appears to be attempting to provide employees some clarity in an unclear situation. Further, as of December 2015, and in fact through January 2016, the negotiations *had* been taking place within the 60/40 parameter. This is what the State was proposing, and the Union was not making any counters that altered the cost shift. The State had been clear on its bargaining goal to save hundreds of millions of dollars on health insurance. In contrast, the Union's July proposal was for a more expensive plan (same premiums with additional benefits), and its next proposal submitted on December 2, 2015, essentially resulted in a cost-neutral plan when taking into account the modest premium increases and the additional benefits. It never made a proposal that represented a cost-shift. On January 8, 2016, it proposed increasing deductibles by $25, while retaining the additional benefits it had sought since its initial proposal. Against this factual background, I cannot find that the State failed to engage in give-and-take bargaining on the shift of health insurance cost-sharing.

Finally, on the issue of underutilization, the Union argues that holding to a proposal that the prior administration had abandoned during the last round of negotiations and failing to provide information is indicative of bargaining in bad faith. I address the question of the information requests in a separate section below. However, I find the remainder of the Union's argument unavailing. Terranova explained at the table that the State was seeking the flexibility to address underutilization if it were shown to exist in a specific position, based on title, region, and underutilization data at the time the position was being filled. He explained how the proposal would work at the table. There were definitely communication failures on the topic of underutilization data, but what is clear is that the State identified that the State wanted to be able to address situations if they arose. The Union argued consistently that it did not believe that there was a problem. While that might even be generally true, Terranova clarified the Employer's desire and implored the Union to make a counter that could help it address the issue. Throughout the numerous discussions on this point, the Union consistently indicated that it did

not see a reason to bypass seniority. At one point, Lynch made a spin on a Winston Churchill quote[27] to refer to seniority as the "worst system, except for all the others." If the Union had made proposals attempting to engage the State on this point, and the State refused to consider alternatives, then the Union's argument would have merit. That is not the case before me. As such, I do not find that the State's conduct with respect to its underutilization proposal indicative of an unwillingness to reach agreement or otherwise bad faith bargaining.

3. Submission of proposals designed to frustrate the bargaining process

The Union points to *Lake Cnty. Cir. Clerk*, 29 PERI ¶ 179, for the proposition that the State engaged in the type of conduct, specifically with respect to proposed changes to Fair Share and Dues Deduction language, which would be indicative of bad faith. In that case, the Board held that while these types of issues *could* reflect an overall bad faith by an employer, the totality of the circumstances reflected good faith bargaining with an unwillingness to make a concession on fair share. *Id.* Notably, that was an initial contract where there was no existing language. *Id.* Despite the decades of bargaining history between the parties in this case and the Union's argument that dues deduction and fair share language had been included in contacts with AFSCME for forty and thirty years, respectively, each round of bargaining is a chance for the parties to readjust. Therefore, I do not find it per se bad faith for the Employer to seek many and wide-ranging changes, including to provisions which it believe gives the Union an unfair advantage over other interests seeking expenditure of State dollars. The Union further argues that the State's approach to handling fair share fees lacked a legitimate basis. The parties had already agreed to a provision that defined their rights if any provision in the CBA was deemed to be illegal, and the Governor had been found to lack standing to challenge fair share in federal court. This argument overlooks the fact that, as the parties were negotiating, the United States Supreme Court was poised to hear a challenge to the constitutionality of fair share fees. The Supreme Court granted a petition for writ of certiorari on June 30, 2015. *Friedrichs v. Cal. Teachers Assoc.*, 135 S.Ct. 2933 (2015). The court affirmed the constitutionality by an evenly divided Court on March 29, 2016. *Friedrichs v. Cal. Teachers Assoc.*, 136 S.Ct. 2545 (2016). However, at the time the parties were negotiating fair share provisions, the highly publicized

[27] "Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time." WINSTON CHURCHILL, speech, House of Commons, November 11, 1947.—*Winston S. Churchill: His Complete Speeches, 1897–1963*, ed. Robert Rhodes James, vol. 7, p. 7566 (1974).

Friedrichs case was seen by many as a real threat to the future of fair share provisions. This was not some amorphous, unforeseen possibility of a provision being deemed illegal. It was a very real and imminent possibility that had nothing to do with a question of the Governor's standing to bring an action.

The Union also points to the State's packaging of proposals as evidence. Terranova testified that one of the purposes of packaging can be to put in two provisions one party wants to see if it would be willing to give up one to acquire the other. Terranova testified when questioned on cross-examination about packaging Checkoff/Fair Share with Subcontracting that the State was looking to see if its movement on Fair Share would solicit agreement on either topic. The State acceded to the Union's request to decouple the items, but recognizing the importance the Union had placed on subcontracting, placed it in a package with an item in which the State had interest, Integrity of the Bargaining Unit. There is no question that with this approach to bargaining, putting everything on the table and inviting the Union to make tradeoffs between two proposals it did not like, the State was engaging in hard bargaining. However, in light of the record as a whole, including the State's reinstatement of all of the prior fair share language and the State's withdrawal of its proposal on Integrity of the Bargaining Unit, I do not find that the State's packaging is reflective of bad faith.

Finally, the Union argues that the State failed to justify its subcontracting proposal by giving examples of how it had been hurt by the prior "efficiency and economy" standard. At the table, Terranova indicated that this language was what the Union used to grieve subcontracting decisions, that subcontracting bargaining unit work is the Employer's right, and that the State did not want its ability to subcontract limited by an arbitrator's review. The Union did not find the answer satisfying, but to say that the State never explained the rationale or justification for the proposal is untrue.

In short, viewing the record as a whole, I am unconvinced that the State failed to approach bargaining with an open mind and a sincere desire to reach an agreement. Therefore, I find that the Union failed to prove the State engaged in unlawful surface bargaining or otherwise engaged in overall bad faith bargaining.

F. Good faith of the parties – the Union's conduct calls into question its commitment to reaching an agreement through bargaining.

The Union seemed as interested in what was happening away from the table as it was what was occurring at the table. As early as February 25, 2016, Terranova indicated in response

to a hypothetical posed by Lynch at the table, that he did not believe the Governor speaking at a state worksite about healthcare premiums/healthcare being too expensive was making a proposal for the purpose of collective bargaining. Terranova argued that the discussion in Ground Rules regarding outside speech was getting the parties farther and farther from what they were there to do – bargain in good faith to reach an agreement. Multiple times at the table, when the Union raised away-from-the-table issues, Terranova implored them to disregard distractions and to focus on bargaining, which would only be done across the table. The Union, in its words and actions, reflected an inability or unwillingness to do so.

As set out herein, shortly after receiving the State's initial economic package, a former AFSCME member turned legislator filed legislation that would extend the right to binding interest arbitration to bargaining units in agencies directly responsible to the Governor. This extension would only be applicable for CBAs that expired between June 30, 2015, and June 30, 2019. Essentially, the bill sought to change the existing structure for contract negotiations only for negotiations between the Rauner administration, not any other constitutional offer, and not any later-elected governor. Neither the Board nor the NLRB has dealt with a situation where one party attempted to alter the existing statutory scheme for a single round of negotiations. However, this move seems inconsistent with a mindset of good faith bargaining. AFSCME's postings on its publicly-available website also made clear its position that interest arbitration, not bargaining at the table, was the best hope to reach an agreement. AFSCME stated the failure to override the veto of SB 1229, "has now derailed the best hope of amicably settling union contracts that are fair to all."

Newman also made public comments that cast the Governor in a negative light, claiming that "[t]he Governor has made clear his intent is to force a strike." This comment is inconsistent with what the State was saying at the table and inconsistent with the parties' efforts to continue to meet for the purpose of reaching a successor agreement. While the State does not allege that any of the Union's communications so adversely affected bargaining at the table as to be an unfair labor practice, in looking at the totality of the circumstances, I find the Union's actions, in many respects, to be similar to those of which they complain in their charge against the State.

The Union's January 7, 2016 proposal on mandatory overtime also reflects an inconsistency with good faith bargaining. The Union had held to its 3-hour window for mandation since July, and in response to its concerns, the State had shortened its window and

modified its proposal to provide additional methods to assess the State's justification for mandation. The Union's January 7 proposal was regressive in that it moved the parties farther apart. It held to its 3-hour window and added numerous additional administrative hurdles to the point that mandation would likely be impossible.

G. Good faith of the parties - The alleged unfair labor practices by the State

The Union urges the Board to find not only that the State engaged in overall bad faith in bargaining for a successor agreement, but also that the State's alleged unfair practices preclude a finding that the parties are at a legitimate impasse. In support, it cites cases in which the NLRB has held that an employer's unfair labor practices preclude a finding of a legitimate impasse. *See e.g. Southern Mail, Inc*., 345 NLRB 644 (2005) (employer's failure to provide union with all of information requested in connection with planned route changes deprived union of meaningful bargaining with respect to such changes); *Decker Coal Co.*, 301 NLRB 729, 740 (1991) ("A legally recognized impasse cannot exist where the employer has failed to satisfy its statutory obligation to provide information needed by the bargaining agent to engage in meaningful negotiations."). However, as the State points out, NLRB precedent clarifies that the existence of unfair labor practices during negotiations does not necessarily preclude impasse. *NLRB v. Cauthorne*, 691 F.2d 1023 (D.C. Cir 1982); *LaPorte v. NLRB,* 888 F.2d 1182, 1186 (7th Cir. 1989) (rejecting presumption that employer ULP precludes impasse); *Intermountain Rural Elec. Ass'n v. NLRB,* 984 F.2d 1562 (10th Cir. 1993) (same). Instead, the relevant inquiry is whether the unremedied unfair labor practices were causally connected to the alleged deadlock between the parties, or otherwise were sufficient to taint negotiations to a degree that calls into question the employer's good faith. *See Pleasantville Nursing Home v. NLRB*, 351 F.3d 747 (6th Cir. 2003); *Detroit Typographical Union v. NLRB*, 216 F.3d 109, 121 (D.C. Cir. 2000).

1. The State did not refuse to bargain over mandatory subjects of bargaining.

Employers are required to bargain in good faith over wages, hours, and other terms and conditions of employment, i.e. the mandatory subjects of bargaining. 5 ILCS 315/7, 10(a)(4). It is also well established that an employer will violate its duty to bargain in good faith if it fails to do so. *Id.* The Act's imposition of a bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." 5 ILCS 315/7. Matters that do not fall within the definition of mandatory subjects of bargaining are permissive subjects of bargaining. *Wheaton Fire Fighters Union, Local 3706 v. Ill. Labor Relations Bd.*, 2016 IL App

(2d) 160105, ¶17; *see also Board of Trustees of Univ. of Ill. v. Ill. Educ. Labor Relations Bd.*, 244 Ill. App. 3d 945, 949 (1993). Permissive subjects of bargaining include matters that a party has the right to insist on, such as the recognition of statutory rights. *Id.*[28]

In the context of the 2015-16 negotiations, AFSCME contends that the State refused to bargain over two specific proposals, which it contends are mandatory subjects of bargaining. The first is the Union's proposal to add parking as a mandatory topic for supplementary negotiations. The second is the Union's proposal on Records and Forms, which sought to limit the Employer's ability to exercise statutory discretion under Illinois' Freedom of Information Act, 5 ILCS 140/7 (2014) (FOIA). However, I find that not only were these proposals discussed on numerous occasions (8 separate days for the parking proposal and even more for the records proposal), but the State made substantive responses supporting is refusal to accept the Union's proposal.

With respect to the parking proposal, the State explained that it believed that the issue was not appropriately a topic for supplemental negotiations, because in many instances, the agencies negotiating the supplemental agreements did not control parking. Moreover, the parties had recently proceeded to arbitration over the issue of parking, and the State had prevailed. Finally, the State was unwilling to commit to continuing to provide parking as it currently did, because a number of unknown variables outside the State's control could cause the State to incur additional cost.

Similarly, with respect to the Records and Forms proposal, the parties negotiated at length about this topic. At one time or another, it was included in both the Management Rights and Check-Off/Fair Share Package and the DOC/DJJ Roll Call package. The Union recognized at the table and at the hearing that the proposal was looking to limit the State's discretion. FOIA identifies certain categories of public records that are exempt from disclosure. The exemptions do not, in most circumstances however, prohibit the dissemination of information; rather, they merely authorize the withholding of information. *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 186 (1st Dist. 1995), *appeal denied*, 166 Ill. 2d 554. During the negotiations, the State

[28] An employer may bargain to impasse over a mandatory subject of bargaining, then unilaterally implement a change consistent with its pre-impasse proposal. In contrast, an employer may not bargain to impasse over a permissive subject of bargaining, a subject which the Union may absolutely insist upon. The Union may choose to give up its right, and the parties may negotiate for that concession, but if the Union refuses to give in the employer may not make the concession a condition of any agreement. *Bd. of Trustees*, 244 Ill. App. 3d at 949-50.

continually indicated its unwillingness to restrict its discretion in light of its dual responsibility to both employee privacy and government transparency. Moreover, throughout the parties' discussion on this proposal, the State remained unconvinced that the Union's proposal would eliminate the isolated problems caused by human error that the Union cited as the basis for its proposal.

Because the record reflects that the State never refused to bargain over the issues, I do not need to address whether these proposals were, in fact, mandatory subjects of bargaining. Instead, I find that the Union has failed to prove that the State violated the Act by refusing to bargain over these topics.

2. The State did not engage in unlawful direct dealing with bargaining unit members.

The Board has long held that the Act does not, on a per se basis, preclude an employer from communicating, in non-coercive terms, with employees during bargaining negotiations. The fact that an employer chooses to inform employees of the status of negotiations, or of proposals previously made to the union, or of its version of a breakdown in negotiations will not alone establish a failure to bargain in good faith." *City of Chicago (Dep't of Health)*, 10 PERI ¶ 3031 (IL LLRB 1994). "In and of itself, direct communication by the employer with individual employees does not constitute bypassing of the union in the establishment of wages, hours and terms and conditions of wages employment." *Id. citing Procter & Gamble Mfg. Co.*, 160 NLRB 334 (1966). Earlier this year, in *Tri-State Prof'l Firefighters Union*, the Board had occasion to again consider allegations of direct dealing and reaffirmed its holding in *City of Chicago (Dep't of Health). Tri-State Prof'l Firefighters Union*, 31 PERI ¶ 78 ("in and of itself, direct communication by the employer with individual employees does not violate Section 10(a)(4) of the Act"). The *Tri-State Prof'l Firefighters Union* Board went on to recognize NLRB precedent that had been adopted by the Board, "[C]ommunication with employees is unlawful when the context of the conversation is not to inform employees but rather to have the effect of coercing the employees from exercising their right to bargain through the representative of their choosing." *Id. (internal citations omitted).* Examples of illegal, direct communication recognized by the Board include efforts at reaching a separate agreement with employees, enlisting support of employees through threats of reprisal or promises of benefit, and inducing employees to withdraw from the union. *Id.* Whether a communication contains a threat of reprisal or promise of benefit is assessed by the Board using a "reasonable employee" standard.

City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995) (communications are not unfair labor practices or evidence of an unfair labor practice unless a reasonable employee would view the communications as conveying a threat of reprisal or force or promise of benefit).

The Board's precedent also coalesces with Section 10(c) of the Act, which states, "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat or reprisal of force or promise of benefit." 5 ILCS 315/10(c). In this case, the State argues that the alleged direct dealing conduct falls within the safe harbor of 10(c) and does not otherwise run afoul of the Act because it did not seek to reach an agreement with employees individually, a reasonable employee would not view the communications as a threat of reprisal or promise of benefit, and did not induce employees to withdraw their support for the Union.

The Union's allegations of direct dealing fall into two categories. The first broad category of alleged direct dealing relates to away from the table communications by the Governor or his administration to the public, which necessarily includes bargaining unit members, or internal communications made public. The second allegation of direct dealing relates to the State's Employee Engagement Survey (Survey). The State denies that it directly dealt with employees through the administration's away from the table communications or through the Survey.

In support of its position, the Union cites liberally from NLRB case law, and both parties cite factors recognized by the NLRB in assessing direct dealing allegations. The NLRB has found that the criteria to be applied in determining whether an employer has engaged in direct dealing under Section 8(a)(5) of the NLRA, which mirrors 10(a)(4) of the Act, are (1) that the employer was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the Union's role in bargaining; and (3) such communication was made to the exclusion of the Union. *See El Paso Electric Co.*, 355 NLRB 544, 545 (2010). While the NLRB has applied these factors for many years, they have not been expressly incorporated by the Board. As they have not been adopted, unlike the Board, I am not free to adopt them here. Instead, I apply the Board's precedent most recently set out in *Tri-State Prof'l Firefighters Union*, 31 PERI ¶ 78, to the allegations presented here.

As an initial matter, the Union asserts a number of alleged instances of direct dealing that are outside the six-month limitations period, namely the publication of the Turnaround Agenda and accompanying speeches, executive action related to fair share provisions, press releases related to a union lawsuit to invalidate the fair share executive order, and Barclay's memorandum of July 29, 2015. These allegations are all untimely, and the Board lacks jurisdiction to determine whether the State committed an unfair labor practice with respect to these statements.

a. Away from the Table Communications Made Public

Before assessing the allegations of direct dealing within the limitations period, I am compelled to once again point out the differences between the public and private sectors. I would be remiss if I did not review the Union's NLRB precedent with a critical eye given that in this case, unlike in a labor dispute between a private company and its unionized workforce, the very issues being negotiated are matters of an inherently public and political nature.

It should be noted, one crucial element of AFSCME's claim that these away-from-the-table communications violate the Act is that by speaking to the public, the Governor and/or his administration was necessarily speaking to bargaining unit members. Of course, if that is true, then the Governor and/or his administration is also necessarily speaking to AFSCME, an entity every bit as cognizant of the government's statements as the average State employee. Therefore, if the Board chose to adopt the NLRB factors for proving direct dealing, AFSCME's claims as to the public statements would fail to satisfy the third prong as they cannot be said to have been made "to the exclusion of the Union," which is also part of the public at large at whom the communications were directed.

I address the communications within the limitations period in turn below.

i. Crain's article in September 2015

In his September 1, 2015 article for Crain's Chicago Business, columnist Doug Hinz wrote, "The administration also says its willing to provide a merit-pay pool amounting to 2 percent of payroll each of the next four years." The Union contends that by making a proposal away from the table, the State has engaged in direct dealing in violation of the Act. At the table, the State's representatives had numerous times attempted to assure the Union that all bargaining would be done at the table and not to be distracted by things outside the table. At the bargaining session immediately following the September 1, 2015, article, the State made its merit pay

proposal establishing a bonus pool equal to 2% of payroll for each of the four years of a successor contract.

This communication does not constitute unlawful direct dealing. The State did not attempt to reach an agreement directly with employees, and nothing about the administration's position, published without a quote and without reference to any particular official, conveys a threat of reprisal or promise of a benefit.

Last year, the Board had occasion to assess a similar allegation of direct dealing. In *County of Kankakee*, 31 PERI ¶ 160 (IL LRB- SP 2015), AFSCME alleged that the employer engaged in direct dealing by first conveying a wage increase proposal to an employee before it had made a similar proposal to the union in negotiations. Though that allegation was shown to be unsupported, the Board noted that even if the employer had received information related to proposals from a bargaining unit employee (and bargaining committee member), it did not engage in unlawful direct dealing when it brought those proposals to the union in bargaining. The Board further noted that the precedent in Illinois states that a direct dealing violation "lies in *bypassing* the representative." *Id. citing Bd. of Educ. of Sesser-Valier Cmty. School Dist. No. 196 v. Ill. Educ. Labor Relations Bd.*, 250 Ill. App. 3d 878, 883 (4th Dist. 1993) (Like the employer in *County of Kankakee*, the State did not bypass the Union with respect to its merit pay proposal or otherwise attempt to threaten or reach a deal directly with employees.

ii. State's Response on CapitolFax.com on October 6, 2015

On October 6, 2015, CapitolFax.com published one of the Union's bargaining bulletins, which among other things, referenced elimination of the step plan. The State provided a response, which was also published. The Union argues that the response given by the administration published on CaptiolFax.com on October 6, 2015, constituted unlawful direct dealing in that it was a coercive communication directed at employees intended to undermine support for the union. The State argues that it has a right under the Act to communicate its view of proposals and to correct what it believes are inaccurate statements by the Union, so long as a reasonable person would understand it does not contain a threat or promise. The Board has long recognized adoption of the NLRB analysis set out in *General Electric Co.*, 150 NLRB 192 (1969), that "[i]t is inconsistent with this [collective bargaining] obligation for an employer to engage in conduct which denigrates the [exclusive representative] in the eyes of its employee constituents, to seek to persuade the employees to exert pressure on the representative to submit

to the will of the employer, and to create the impression that the employer rather than the union is the true protector of the employees' interests." *See Clerk of the Circuit Court of Cook Cnty.*, 7 PERI ¶ 2019 (IL SLRB 1991); *Cnty. of Woodford*, 14 PERI ¶ 2017 (IL SLRB 1998). The Board has applied this standard to find unlawful an employer's communication stating that they did not need to ratify a collective bargaining agreement in order to receive a cost-of-living increase and that all county employees would receive the same increase and other fringe benefits provided by the county board. *Clerk of the Circuit Court of Cook Cnty.*, 7 PERI ¶ 2019. The Board found that the employer's communication was unlawful because it undermined the union's status as a collective bargaining representative by suggesting that wages and benefits were provided solely at the employer's discretion without any participation by the union, thus trivializing the union's efforts on behalf of the employees. In *Cnty. of Woodford*, 14 PERI ¶ 2017, the Board reversed an Executive Director dismissal and remanded for hearing, holding that a fact question existed regarding whether in the context of that case, a communication was merely informational or undermined the Union. There, the employer sent a letter to all employees identifying its "good faith doubt as to the union's status as a 'majority representative,'" questioned why the union filed an unfair labor practice charge after the employer refused to bargain further, stated that the union was claiming in its charge that any changes to wages "(for example, even wage *increases*)" would be unlawful, and indicated their hope that the charge would be dismissed so the County could act without threat of liability. Unlike these examples from the Board or those cases cited by the Union, I do not find that the State's response to the Bargaining Bulletin is unlawful.

First, the communication is not blatantly false as the Union alleges such that it could otherwise be evidence of bad faith conduct directed at bargaining unit members. The record reveals that at best, the Union misinterpreted comments at the table in September that contradicted all other comments at the table regarding step increases being frozen for the life of the contract. Terranova testified at hearing consistent with bargaining notes, that he had always discussed a step freeze and had been doing so for months before the September-October Bargaining Bulletin. The State was also responding to the assertion that the State was proposing elimination of "all protections" against subcontracting. The State took the position at the table, at the hearing, and in its statement published on CapitolFax.com, that its subcontracting proposal still provided protections while increasing flexibility. The Union certainly disagreed with that contention at the table and at hearing, but that does not mean the State publicizing its opinion as

to its proposals becomes unlawful direct dealing. Furthermore, the State's assertions about its merit pay proposal are accurate. As of September 8, 2015, the State had proposed a $1,000 bonus for every bargaining unit member for the first year of the contract, if the contract were settled by January 1, 2016. The State had also already proposed a merit bonus pool that would be given to no less than 25% of employees.

Second, I do not find that the State's response correcting what it believed were inaccuracies, so denigrates the Union in the eyes of its members as to be unlawful. While the State asserts that the information the Union is providing its members, and was later published to the public, is "false and misleading," I find that this was a statement of its true belief and not so denigrating to the Union so as to fall outside the safe harbor of Section 10(c). Further, the statement does not seek to persuade the employees to exert pressure on the representative to submit to the will of the employer or agree to the State's demands. It did not call for members to contact their Union in order to agree to any State proposal; rather, it was pointing out its belief that the Union's information was not accurate.

In short, the parties are playing semantics with their positions. While not a sparkling example of good faith bargaining, I do not find that this public comment, immediately on the heels of the virtual war of words being carried out by both sides during the hard fought SB 1229 battle, is evidence of bad faith direct dealing.

iii. *Communications regarding agreements with other unions*

The Union contends that the State also engaged in direct dealing through its public comments by casting AFSCME as unreasonable in its inability to reach agreement in light of the State's agreements with other unions and appointing the State as the true protector of bargaining unit members. I am not persuaded by this claim.

The communications of which the Union complains come at a time when State employees and the public generally heard from the Union, other labor leaders, legislators, and others claiming that the State was maintaining "extreme," "radical and harmful demands" and was really just seeking to weaken union rights. In this context, I do not find that the State communicating its successful negotiations with other labor organizations and its desire to similarly reach an amicable agreement with AFSCME, despite AFSCME's continued resistance, to be so detrimental to the Union's ability to function. Nor did the State's communications otherwise undermine the Union's role as exclusive representative as to run afoul of the Act. In

the same way as the Union took liberty to characterize the State and its proposals in the way it wanted, the Act allows the State to characterize the "status of negotiations, or of proposals previously made to the union, [and] its version of a breakdown in negotiations," which is what I find the State did here. Moreover, where, as here, bargaining unit members are hearing so very much about negotiations, the parties' positions, and questions of the real intent behind positions, I find that a reasonable employee would not view these communications as a threat of reprisal or a promise of benefit.

I also do not find that the State's references to financial difficulties and the need for fiscal discipline to ensure stability in pension funds is an unlawful attempt to cast the Employer, rather than the Union, as the protector of members. Instead, it is a recognition of the crushing financial burden under which the State is working. It cannot be contested that every dollar spent on employee pay and benefits is a dollar that cannot be spent elsewhere, either for public services or to pay down the pension deficit. Unlike the employer in *Clerk of the Circuit Court of Cook Cnty.*, 7 PERI ¶ 2019, who was essentially broadcasting to employees that they did not need the union to receive pay and benefits increases, here the State is identifying the overarching issues facing the State in its budgetary crisis and that this crisis informs its position at the bargaining table. I find that these communications fall within the safe harbor of Section 10(c) and are not violative of the Act.

iv. *December 11, 2015 letter regarding healthcare*

Similarly, I do not find that the State engaged in unlawful direct dealing when it sent State employees the December 11, 2015 letter regarding healthcare. The State has a right to communicate with its employees, and communications regarding healthcare benefits and plans it provides are certainly not per se prohibited by the Act. In its post-hearing brief, the Union does not argue that the December 11, 2015 letter was, in and of itself, direct dealing. Instead, it argues it is evidence of bad faith, in that the State pays only "lip service to the fact that negotiations had not been completed" and exhibits a "take-it-or-leave-it" attitude with respect to healthcare.

I find that the Union has failed to show that this communication is evidence of unlawful direct dealing. In it, the State is communicating to three discrete subsets of employees – non-bargaining unit employees, bargaining unit employees with complete CBAs, and bargaining unit employees whose unions continue to negotiate. I find that the State's communication is neither

coercive, nor threatening. It is an informational communication of which employees are likely accustomed to receiving when benefits choice periods approach or other changes to healthcare are set to occur.

v. *Barclay memorandum of January 6, 2016*

The Union alleges that in a memorandum to Agency Directors on January 6, 2016, Barclay made a more favorable proposal, or at least explained a proposal more favorably, than that which was given at the table. In its post-hearing brief, AFSCME points to this memorandum as evidence of bad faith, but does not specifically assert that in issuing the memorandum, which was later published on CapitolFax.com, the State was directly dealing with members. In the memorandum describing the State's current merit pay proposal, Barclay stated that absences covered by FMLA leave would not count as missing an assigned work day. The previous day, Lynch repeatedly stated that she believed the State's proposal was penalizing people with serious illnesses. Terranova strenuously disagreed that the State was penalizing sick people. Terranova indicated that, unlike preapproved vacation time, use of sick time would count as missing an assigned work day. In rejecting the State's proposal, the Union said that it felt the proposal was immoral, unethical and could be unlawful retaliation in violation of the FMLA. Terranova did not specifically address FMLA leave on January 6, 2016. The following day, Lynch specifically asked about missing 22 days on an FMLA leave, and, consistent with the Barclay memo published the same day, Terranova indicated that the FMLA-covered leave would not count as missing an assigned work day.

This memorandum does not constitute unlawful direct dealing. Terranova gave the same explanation to the Union at the table on the same day as Barclay's explanation was publicly available. Moreover, the bargaining notes reflect that the parties' questions and answers were contentious and not terribly precise. Even if Terranova had been wrong, mistaken, or otherwise clarified the effect of FMLA-leave the following day, that is not indicative of unlawfully bypassing the Union.

b. Employee Engagement Survey

The parties' arguments on the Employee Engagement Survey apply different frameworks for analyzing the issues raised. Neither party cites any Board precedent related to attitude surveys, nor have I uncovered any precedent on that point. Most of the Board's direct dealing communication cases deal with allegations arising from the employer's transmission of

information, not solicitation of information.[29] However, in *City of Chicago (Health Dep't)*, 10 PERI ¶ 3031, the case frequently cited as setting out the Board's test for direct dealing, the Board examined an employer's solicitation of information directly from employees. In that case, the employer held a meeting and solicited input and information directly from bargaining unit employees on proposed plans to move to 24-hour coverage, a change that would certainly affect terms and conditions of employment for existing employees. *Id.* The Board found this conduct to be lawful in that it was informational, was not coercive, and did not attempt to reach an agreement directly with employees.

The Union frames its argument around the NLRB's factors for direct dealing cases set out in *El Paso Electric Co.*, 355 NLRB 544, 545 (2010), as well as other NLRB precedent finding that an employer's solicitation of information directly from employees is unlawful direct dealing. In *El Paso Electric Co.*, the NLRB found that an employer agent's invitation of employee comments about what they wanted with respect to issues concerning certain terms and conditions of employment while employer and union were engaged in bargaining constituted unlawful direct dealing. *Id.; see also M.A. Harrison Mfg. Co.*, Inc., 253 NLRB No. 97 (1980) (employer engaged in unlawful direct dealing by surveying employees regarding a sickness and accident insurance program under consideration by the employer); *North Kingstown Nursing Care Center*, 244 NLRB 54, 65 (1979) (employer engaged in unlawful direct dealing where agent of employer asked employee what she thought a fair pay scale for employees would be); *Royal Motor Sales*, 329 NLRB 760, 761 (1999) (employer's discussing wages with employees while negotiations are occurring constitutes unlawful direct dealing as it "is inconsistent with the employer's statutory bargaining obligation, tends to undermine the status of the bargaining agent, and interferes with employees' Section 7 rights."); *Obie Pacific, Inc.*, 196 NLRB 458 (1972) (employer engaged in unlawful direct dealing by soliciting employee sentiment as to a provision in a collective bargaining agreement with the intention of using that information as a basis for attempting to persuade the union to modify that provision); *St. Joseph's Hospital*, 247 NLRB 869, 877 (1980) (employer-conducted employee survey regarding wages, hours and working conditions constitutes unlawful direct dealing).

[29] In *City of Chicago (Police Dep't)*, 26 PERI ¶ 115 (IL LRB-LP 2010) *aff'd* 2011 IL App (1st) 103215, the ALJ found that the employer's conduct in seeking input from bargaining unit members regarding its proposed changes to a field training officer program did not constitute unlawful direct dealing under *City of Chicago (Health Dep't)*, 10 PERI ¶ 3031, but the Union did not file exceptions to this finding. Therefore, neither the Local Panel nor the appellate court weighed in on this finding.

The Employer analyzes the survey under Board precedent, while also citing NLRB cases where the NLRB rejected allegations of direct dealing arising out of employer solicitation of information directly from employees. *See United Technologies Corp*., 274 NLRB 1069 (NLRB 1985) (rejected direct dealing allegations after concluding that – even though the employer did not seek union approval or input before issuing the survey – the disputed wage survey sought information concerning whether employees "felt they were properly compensated for the duties performed," asked "employees to rate from poor to excellent various nonbase wage rate benefits, and "solicited employee sentiment" on a host of topics, not information for use against the union during upcoming negotiations); *Logemann Bros. C*o., 298 NLRB 1018 (NLRB 1990) (rejecting direct dealing allegations and holding: "We conclude that such general and innocuous questions[30] on a survey with an open-ended solicitation for employees' suggestions on how to improve plant efficiency did not in these circumstances constitute an unlawful attempt to intrude upon the Union's representative role.").

As I noted above, the Board has not adopted this specific NLRB standard set forth in *El Paso Electric Co.*, and where Board and NLRB precedent conflict, I am bound to follow Board precedent.

It is uncontested that the State sent a link to an online survey to all State employees, including bargaining unit members, via the State's e-mail system on or about December 9, 2015. For employees that did not have regular access to email, such as correctional officers, management made computer terminals available for employees to access the survey. The Union learned about it from members on December 10, 2015. Though the parties disagree on the level of voluntariness or anonymity of the survey, neither of these facts affect my analysis. In fact, Newman testified that the Union objected to the survey regardless of whether it was required or voluntary. Newman and Terranova emailed back and forth about the survey and by Friday, the Union had notified its members not to complete the survey. Also on that Friday, the Employer had clarified that the survey was not required, but that it hoped employees would complete it. The Employer had not and has not asked the Union to compile similar information as was sought through the survey.

[30] Questions such as: "We are searching for ways for making better use of our people, better use of our machines, and better use of our equipment, our time and our materials. Do you think there are better ways to do the job? How about our equipment and machines? Can we do things "smarter?" Please let us have your suggestions."

Here, the record does not reflect that by soliciting information directly from its employees, including those who are bargaining unit members, the Employer was inducing employees to withdraw from the Union, or was trying to negotiate a separate agreement directly with employees. In fact, the Union does not even make this argument in its post-hearing brief. Moreover, I find the survey was not coercive. It was submitted anonymously, and within two business days, the Employer had clarified that completion was not required. The Union's witnesses on this point testified that they had been directed to complete the survey, but this alone does not make the content of the communication coercive, which is the focus of the Board's inquiry in direct dealing cases involving communications. I find that the questions were benign and did not contain coercive language derogatory to the Union. Mostly, the survey asked employees to gauge their agreement with a series of assertions, such as "supervisors help me develop the skills to excel at my job" or "co-workers respect our agency's senior leaders." Certainly, some questions related to topics upon which the parties would be obligated to bargain, such as wages (level to which employees agree that "co-workers are adequately compensated for their work"). However, the survey did not invite employees to consider specific changes to mandatory subjects of bargaining. Therefore, in the context of the overall tenor of the survey, I do not find that it would have the effect of coercing the employees from exercising their right to bargain through the representative of their choosing, which would have made it unlawful. No Union witness testified that he felt as though such efforts were an attempt at reaching a separate agreement with employees.

Finally, the survey did not enlist employee support of the State or its proposals through threats of reprisal or promises of benefit. The survey did not enlist employee support at all. An employee could choose not to respond to the survey, could choose to inform the State that it was doing absolutely everything wrong, or anything in between, all without any threat of repercussion or reward.

Under the Board's existing case law, this informational, non-coercive communication does not run afoul of the Act.[31]

---

[31] If the Board chose to adopt the *El Paso Electric Co.* factors, the survey would satisfy the NLRB factors and would be unlawful direct dealing. The survey was a direct communication with employees to the exclusion of the Union that, at least arguably was for the purpose of establishing or changing wages, hours, and terms and conditions of employment. In its February 4, 2016 State Employee Telegram, the State indicated it would "be reviewing those ideas and implementing them where feasible. It is our hope that the results of this first survey will provide a baseline that we can improve upon in future years."

3. The State failed to provide information to the Union that was relevant and necessary for the Union to respond and formulate proposals.

The Union alleges a number of information requests with which it contends the State failed to respond or responded in an untimely manner. *See* Union's table, incorporated in Section VI. D. above. AFSCME alleges that this failure constitutes bad faith and precludes a finding that the parties are at impasse. The State argues that it has fully complied with its obligation to provide relevant requested information, and that, in many respects, the requests for information were repetitive and calculated for purposes of delay.

In *State of Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Trans.)*, 29 PERI ¶ 124 (IL LRB-SP 2013), the Board discussed the obligation to provide information in the course of a bargaining relationship.

> Under Section 10(a)(4), it is an unfair labor practice for a public employer "to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative." Parties to a collective bargaining relationship have a duty to share information with one another when that information is important to the parties' abilities to fulfill their bargaining roles, including the processing of grievances. *City of Chicago (Chicago Fire Department)*, 12 PERI ¶ 3015 (IL LLRB 1996), *citing Chicago Transit Authority*, 4 PERI ¶ 3013 (IL LLRB 1988) and *State of Illinois (Department of Central Management Services)*, 9 PERI ¶ 2032 (IL SLRB 1993). The duty to bargain in good faith requires employers to provide information within their control to exclusive bargaining representatives where the information is relevant and necessary in order that the exclusive representative may properly discharge its statutory duty. *County of Champaign*, 19 PERI ¶ 73 (IL LRB-SP 2003); *Village of Franklin Park*, 8 PERI ¶ 2039 (IL SLRB 1993), *aff 'd sub nom Village of Franklin Park v. Illinois State Labor Relations Board*, 265 Ill. App. 3d 997 (1st Dist. 1994.)
>
> A violation of 10(a)(4) and (1) is found where (1) the employer has failed to act in good faith, or (2) the employer's failure to produce the requested information has meaningfully interfered with the union's ability to fulfill its role as a bargaining representative. *City of Bloomington*, 19 ¶ PERI 11 (IL LRB-SP 2003), *citing Chicago Transit Authority*, 4 PERI ¶ 3013. The requested information must be directly related to the union's function as a bargaining representative and reasonably necessary for the performance of that function. *Id.* Relevance is determined by a discovery standard, not a trial type standard and thus "a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process." *City of Chicago*, 23 PERI ¶ 120 (IL LRB-LP 2007), *citing Proctor & Gamble Manufacturing Co. v. NLRB*, 603 F.2d 1310, 1315 (8th Cir. 1979).

An employer's failure to provide the information necessary for meaningful bargaining deprives the labor organization of the reasonable opportunity to bargain. *Chicago Park Dist.*, 20 PERI ¶ 110 (IL LLRB 2003).

The Board, the NLRB, and the courts have also uniformly held that an employer has an obligation to respond only to those information requests that are made in good faith. *Chicago Transit Authority*, 4 PERI ¶ 3013 (ILRB 1988); *Verona Dyestuff Division, Mobay Chemical Corporation*, 233 NLRB 109 (1977); *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633 (2nd Cir. 1982); *Village of Bellwood*, 25 PERI ¶ 95 (IL LRB-SP 2009) (union did not act in good faith where certain of its requests concerned permissive subject matter, were repetitive and/or were issued for purposes of delay). Further, the demanded information must be relevant - that is, the information must be directly related to the union's function as a bargaining representative and reasonably necessary for the performance of that function. *Chicago Transit Authority*, 4 PERI ¶ 3013; *NLRB v. Pfizer*, 763 F.2d 887 (7th Cir. 1985). Moreover, "an employer does not violate the Act by failing or refusing to provide relevant information requested by a union, unless the employer has acted in bad faith or its conduct has had the actual effect of impeding the union's fulfillment of its representative's role." *City of Chicago*, 4 PERI ¶ 3025 (ILRB 1988); *Collinsville Community Unit School Dist. No. 10 and Collinsville Ed*., 20 PERI ¶ 57 (IELRB 2004) (employer did not violate its duty to furnish requested information before impasse because the requested budget calculations had not been performed at the time of the request); *Village of Bellwood and AFSCME*, 25 PERI ¶ 95 (employer did not violate its duty to furnish requested information because the union's requests concerned permissive subject matter, was repetitive, and/or was calculated for delay purposes).

The NLRB has held that a failure to provide information relevant to issues separating the parties in bargaining frustrates the bargaining process, prevents the parties from reaching a lawful impasse, and precludes a finding of impasse. *E.I. du Pont & Co.*, 346 NLRB 553, 558 (2006); *enfd*, 489 F.3d 1310 (D.C. Cir. 2007); *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006); *Orthodox Jewish Home for the Aged*, 314 NLRB 1006, 1008 (1994). "A legally recognized impasse cannot exist where the employer has failed to satisfy its statutory obligation to provide information needed by the bargaining agent to engage in meaningful negotiations." *Decker Coal Co.*, 301 NLRB 729, 740 (1991). Even where an employer has provided information responsive to a request, a genuine impasse cannot be declared "before the union had a reasonable

opportunity to review the relevant information provided to it ... and to analyze the impact such information would have on any counteroffers it might make." *Id.* at 740.

a. Information requests related to Wages and Steps package

In its post-hearing brief, the Union points to a number of types of information related to a wages and steps proposals that it alleges the State failed to provide or only provided after a significant delay. The Union argues that this information was necessary for it to engage in meaningful bargaining; thus, the State's failure to provide is an unfair labor practice and precludes a finding that the parties are at a legitimate impasse. Some instances alleged by the Union are without merit. For example, the Union contends that it sought and never received costing information for its proposal regarding the promotion of intermittent employees, a request it first made in May 2015. When discussed in May, the State proposed moving the proposal to economics. Lynch questioned that there was much economic impact and asked for a cost analysis. In a bargaining session in October 2015, the State further explained that the concern regarding the cost of the proposal on promotion and conversion of intermittents was not the cost but that by creating one full-time position where two intermittent employees worked more than 1500 hours in a year could leave the agency short-staffed during high volume time and over-staffed at other times. The Union never again mentioned its request for a costing of the proposal and in December again asked for the Employer's rationale for rejecting the proposal.

Other allegations do have merit. The record reveals that the Union requested examples of the high performance criteria for a couple more populous titles that could be used to assess merit incentive pay. Though the proposal indicates that the program would be developed with the Union and that each agency would develop criteria for positions within its agency, Terranova eventually agreed to provide examples to the Union. At one point, Terranova indicated that "his principals were working on a document that would be provided to the Union." Despite multiple promises to provide the Union with examples of the criteria that could be used to determine "high performer," the Union never received that information. The Union's argument that they needed this information to formulate proposals has merit. At the table, the Union time and again voiced its concern that the State would be unable to establish criteria that fairly distinguished between employees on the basis of their performance. Specifically, the Union challenged the State to show how 25% of Correctional Officers could perform so superiorly to the other 75% of

Correctional Officers to justify receiving additional compensation while the others did not receive any.

The State argues that, through statements at the table about the Union's general disinterest in the merit pay proposal, the Union made clear that it was disclaiming its desire for the information. I disagree. I am not convinced that even the most benign set of criteria establishing a clear distinction between high performers and lesser-performing employees would have persuaded AFSCME to agree to the State's proposal or even a relatively similar proposal. However, the information would certainly be relevant to the Union's formulation of counter proposals or further attempts to persuade the Employer to alter its proposal on merit pay. Therefore, I find that the State was required to provide what it indicated at the table it would provide. Further, even if the Union ultimately decided it would not agree to merit incentive pay and the parties ultimately reached an impasse on that issue, the information would have been relevant to the implementation of the program and to the Union's role in informing its members about the content of a successor agreement. Therefore, I find that it was a violation of the Act for the Employer to fail to provide that information, especially after promising to provide it on a number of occasions.

In his letter of February 11, 2015, Newman points to several information requests with respect to the State's merit pay and gainsharing proposals that he alleges remained unanswered, including criteria developed for merit pay for the Teamsters' bargaining units. The record reflects that the first time that the Union sought the merit incentive criteria developed with the Teamsters was February 11, 2015. However, the fact that the information was requested after the parties stopped bargaining for a successor agreement while the impasse question was litigated does not eliminate the State's obligation to provide relevant information to the Union. The parties maintain a collective bargaining relationship and part of that relationship is providing information "directly related to the union's function as a bargaining representative and reasonably necessary for the performance of that function." *Chicago Transit Authority*, 4 PERI ¶ 3013. Even where the State is seeking a finding from the Board that the parties are at a legitimate impasse and that it can, therefore, implement its last, best, and final offer, information about its merit pay program with another union could be relevant to the Union's role in informing its members about how elements of the State's proposals would work. More so, the Union sought more AFSCME-specific information from the State during negotiations and never

received a response. The Teamsters information was likely a reasonable glimpse into what kinds of merit pay criteria the State was providing, albeit for different titles than those represented by AFSCME.

For these reasons, I find that the State failed to bargain in good faith when it failed to provide the Union with information regarding the State's merit pay proposal and criteria developed with the Teamsters related to a similar proposal.

b. Information requests related to health insurance

The Union points to four particular pieces of information related to health insurance that it contends it either never received or received after such a significant delay as to be indicative of bad faith conduct frustrating the bargaining process.

i. Examples of "silver plans"

The Union contends that despite seeking examples of "silver" plan designs in September 2015, they never received this information. However, the record is clear that under the State's proposal, plan design would initially be developed by the Joint Labor Management Advisory Committee. Therefore, there was no silver plan design created by the State to be provided. Furthermore, Merrill testified that she was able to research silver plans, generally, by searching ACA exchanges. Therefore, I do not find that the State unlawfully failed to provide requested information or that the Union was impeded from fulfilling its statutory role of bargaining. At the table, the Union never indicated that it needed the State to come up with examples before it would bargain over the proposed additional plans to be developed by the Committee. In fact, the Union made two additional proposals after the September request on December 2, 2015, and January 6, 2016. The proposals provided modest increases only to premiums and deductibles, respectively, as set out in the current health insurance plan structure.

ii. Amount paid to Teamsters for health insurance

The Union also contends that it sought information regarding the amount the State agreed to pay under the settled Teamsters CBAs in late September and October 2015, but that this information was not provided until November 2, 2015. While the State certainly could have provided the information in a more timely fashion, I do not find that any delay in receiving this information impeded the Union's ability to formulate proposals. As mentioned, the Union continued to make proposals on healthcare. Newman also testified that he was aware that unlike

AFSCME members, Teamsters members had available the option to participate in the Teamsters' Health and Welfare fund.

iii. *List and cost of cost savings initiatives*

Next, the Union alleges that in the health insurance subcommittee, it sought information related to which cost-saving initiatives the State was interested in pursuing, from the plethora of possibilities identified by Deloitte and Touch, and the projected cost savings for each initiative. The State contends that it put such a list in its next proposal on health insurance, submitted on October 20, 2015. There is disagreement between the parties as to whether the Union requested cost savings information prior to January 8, 2016. The State contends that the evidence does not support that this request was made. One of the Union's representatives from the subcommittee, Kreisberg, testified that he made this request on September 29, 2015. The Union did not present any documentary evidence, emails or otherwise, reflecting that this request was made in writing. Terranova testified that none of his bargaining committee members nor anyone from the Union ever made him aware of this request. The State entered the notes of its subcommittee note taker, Amber Spainhour, to support its argument that this request was not made in subcommittee. Spainhour did not testify. McDevitt, who was also present at the committee meeting, testified that based on his review of the hand written notes prior to his testimony, they accurately reflect what occurred at the meeting, but confirmed that they were not a verbatim transcript. The notes contain the sentence, "Marcia [Armstrong], get us PP with other savings opt." McDevitt testified that he believed this sentence in the notes referred to the Deloitte and Touch slide with a circular graph setting out the menu of cost savings options that had already been provided. On cross-examination, McDevitt confirmed that the Deloitte and Touche PowerPoint document had additional slides from the circular menu of options that provided at least a little more detail on potential cost savings from various initiatives. McDevitt was asked, "Were there any document requests or information requests made by the Union that are not reflected in these notes?" McDevitt responded, "Not that I recall." The State's contention is also supported by Newman's letter related to outstanding information requests, dated February 11, 2016. In that letter, Newman only refers to the Deloitte and Touche "menu of options," which had already been provided.

The Union called Merrill to rebut the State's evidence. Merrill's testimony corroborated Kreisberg's testimony as to the request. Merrill testified specifically to the subcommittee

meeting on September 29, 2015, saying that the parties went through the Deloitte and Touche menu of options, "identifying a number of the ideas that were listed as things that we would be open to discussing; and we asked the State to come back to us with a list of proposals that . . . they wanted to pursue along with the identified savings that those initiatives would achieve." The State argues in its post-hearing brief that Merrill and Kreisberg's testimony is not reliable because it is not otherwise corroborated by documentary evidence that the request was made. However, the record is replete with examples of oral information requests that had been satisfied. The State also argues that this allegation is waived, as it is not contained in the Amended Complaint. This argument is without merit. In paragraph 54 of the Amended Complaint, the Union alleges, "In a joint health insurance subcommittee meeting held on or about September 29, 2015, Charging Party requested that Respondent provide details regarding a menu of health care cost savings recommended by Deloitte, a consulting firm that had been retained by the Respondent." This allegation encompasses the information at issue here.

In summary, the evidence in support of finding that this request was made is comprised of the consistent testimony of both of the Union's representatives at the healthcare subcommittee that they requested the proposed savings for each of the cost savings options the State wanted the Union to consider further. The evidence in support of finding that it was not made is Newman's letter, notes taken by a note taker who was not made available to testify about her notes, and McDevitt's testimony not recalling any other information requests. On this record, I find that the evidence supports that the Union sought information related to the savings of potential cost savings initiatives and that this information was not provided.

I also find that failing to provide this information violated the Act in that it impeded the Union's ability to bargain over these issues. In its post-hearing brief, the State argues that the Union had similar data provided during the 2012 negotiations; therefore, they were not completely in the dark. However, there is evidence in the record that healthcare costs are ever-increasing. Therefore, I find that upon request, the State was required to provide updated information for the Union's use in bargaining.

iv. *Savings for increases to out-of-pocket costs*

Finally, the Union contends that the State violated the Act by failing to provide costing information related to increasing out-of-pocket items in the existing health insurance plan. Here, the record is clear that Merrill requested the information on behalf of the Union on December 21,

2015, and when gathering the responsive information proved unwieldy, representatives of the parties met at a side bar to discuss. Specifically, on January 6, 2016, Merrill agreed to accept the increase information calculated in dollar amounts, for example in $25 increments, instead of by percentage, as her initial request had sought. It is uncontested the State did not provide this information. The State contends that the Union never specified how it would like the information and that it could have calculated it on its own based on the information it received in September 2015. I do not find the argument that the Union failed to clarify its request to be persuasive. The parties met for the explicit purpose of clarifying the Union's request. The record does not support that the parties failed in this endeavor. While the State did provide demographic information in September 2015 from which the Union could possibly extract the requested information, here, the State agreed to provide the specific information requested, and failed to do so. There is no argument to be made that the information was not relevant or that it would not be assistive to the Union in formulating proposals and bargaining over health insurance. Therefore, I find that the State violated the Act by failing to provide this information.

c. Information requests related to subcontracting

The Union's argument on this point is without merit. When asked about standards agencies would use to make subcontracting decisions, on May 26, 2015, Terranova indicated that agencies would comply with the Procurement Code and the Ethics Act. While I discern from its repeated inquiries on this point that the Union was not satisfied by this answer, that does not mean that the State failed to answer its question or provide the information it sought.

The Union also contends that in April 2015, it sought information regarding the cost of the prior subcontracting language over the State's proposed language. The State's response that it was seeking to increase its flexibility to pursue efficient operations makes it clear that the State was not proposing the language based on an increased cost it had experienced when proving it met the prior contract language's enumerated standards. Instead, the State complained that having to proceed through arbitration in order to litigate over subcontracting impeded their operational flexibility. Therefore, I do not find that this information was necessary for the Union to perform its statutory obligations. This finding is further supported by the fact that the Union, by its own argument, never again sought the information in the remaining nine months the parties were at the table, and did not "renew" this request in Newman's letter of February 11, 2016.

d. Information requests related to the Vacations, Holidays, and Leave of Absence package

At bargaining on January 6, 2016, the Union indicated that it believed that the counter to which it was willing to agree (subject to linkage to other proposals) would save the State money, perhaps even more than the State's initial offer. The State has not provided this information. Certainly, where the parties are haggling over various cost-saving provisions and moving toward each other incrementally, information about the net cost savings of proposals is relevant and necessary for the parties to formulate additional proposals and to negotiate intelligently about the remaining proposals. I find that in failing to provide the information before declaring impasse or any time after, the State has not met its obligation to bargain in good faith.

e. Information request related to temporary layoff

In August and September, the Union asked for clarification as to when a temporary layoff would occur. Terranova responded that he would get back to the Union on that issue. On September 23, 2015, Terranova gave the example of a lack of budget as being cause for a temporary layoff, but indicated that he would also get more examples. The record does not reflect that the State did so. However, also on September 23, 2015, the parties identified their contact person for a layoff subcommittee. That subcommittee met on four occasions to discuss the issues raised by the parties' proposals before the issue was returned to the main table on December 2, 2015. The record is devoid of any evidence as to what occurred in the layoff subcommittee. After the issue came back to the table, the Union did not again seek that information, nor did Newman identify this as a pending request in his February 11, 2015 letter. On this record, I cannot find that the Union has proven that the State failed to provide additional examples.

f. Information requests related to the Integrity of the Agreement proposal

The Union argues that the State violated the Act by failing to respond to a request for the State's rationale behind its proposal to change language related to erosion of the bargaining unit it made on two occasions in September 2015. The Union's argument ignores that the State withdrew the proposal for which the Union was seeking a rationale and that the parties reached agreement on the package in which the provision was located on November 2, 2015. In light of these facts, I do not find that the information was relevant any longer; therefore, this information request does not support a finding of a failure to bargain in good faith.

g. Information requests related to Health and Safety package

The Union contends that the State's failure to provide information related to the cost of providing lunch to employees traveling to facilities that serve lunch is a violation of the State's obligation to bargain in good faith. In July 2015, the Union requested a more specific breakdown of the cost to the State for paying per diem under the travel regulations and providing meals at a facility. On August 11, 2015, the State modified its proposal to delete that employees who are provided a meal at a facility would not be entitled to per diem; instead, the State proposed that meals would be provided in accordance with State travel guidelines. On August 12, 2015, the State withdrew its proposal all together (linked with the Union's acceptance of its proposal on hearing tests). The parties ultimately agreed to both the State's withdrawal of its meals proposal and the hearing test proposal.

In short, after the information request, the State held to its proposal for one round before abandoning its proposal to which the information request was directed. As of August 11, 2015, the information was no longer relevant. I do not find that in the context of these facts, that the State's failure to provide the requested information before abandoning the proposal is indicative of bad faith bargaining or otherwise violates the Act. Further, the Union was aware that in 2012, the State costed this proposal as saving $142,000 per year, so they were not completely in the dark as to the particular information sought.

h. Information requests related to Dues Checkoff and Fair Share

On April 4, 2015, the Union asked what the cost savings was with respect to having State employees perform the administrative function of deducting dues and fair share fees from employee paychecks. In further discussion April 27, 2015, the State acknowledged at the table that the cost was likely minimal but that the proposal was aimed at efficiency. Further, the State argued that tax payers should not have to pay for State employees to process dues deductions for the Union. The Union never made the request again, and the State later withdrew its proposals on dues deduction and to eliminate the collection of fair share fees. On these facts, I find that the State complied with its obligation to provide information to the Union. Namely, it provided its rationale for the proposals. Moreover, the State ultimately withdrew the proposal to which the information request was directed.

i. Information requests related to underutilization proposal

At first glance, the State's seeming unwillingness to provide the Union with timely responses to requests related to underutilization is baffling. However, the discussions at the table reflect that the parties were talking past each other for many months. In their discussions at the table, the parties framed the issues differently with Terranova focusing on what criteria and information IDHR had available and Lynch making requests that, in retrospect, seek the same information previously provided. Terranova indicated the State's desire for the flexibility to bypass seniority if in doing so the State could address underutilization by the filling of a specific position. As described by the State, this proposal was more conceptual than tailor-made to address specific titles in identified areas.

In the early discussions on underutilization, the Union framed the inquiry as looking for information proving that underutilization existed or the "definition of underutilization." The record reflects that the State responded to the Union's request, though often after a delay of several weeks, and at times months. In response, Terranova provided the IDHR definition of underutilization. On May 5, 2015, Terranova provided additional information from IDHR regarding underutilization. Lynch clarified that the Union was still looking for information demonstrating the problem within the bargaining unit and outside the bargaining unit, and was holding on its rejection because they had not received the data. This request was clarified in Lynch's May 11, 2015 letter to include a request for break down by title. In August and September, the Union included this information in its listing of pending information requests. The State contended that through the proposal, the State was seeking the flexibility to address underutilization in particular areas where it may exist. The Union rejected the proposal on the grounds that the State had failed to show that minorities are actually underutilized in bargaining unit titles or elsewhere.

In late September, the State provided demographic information for bargaining unit incumbents by agency and non-bargaining unit positions by agency and race. The following day, Lynch indicated that the information was insufficient to show that there was an underutilization problem. On October 6, 2015, the State provided additional IDHR information for underutilization by IDHR category and region, but not by title or bargaining unit, as this information is not retained by IDHR. Despite the State's response, the Union continued to ask for information to show in which titles the State contended an underutilization existed. It was

not until December 2, 2015 that Lynch identified that there was a specific set of data the Union had been provided in 2012 that it felt it should have received.

Once Lynch made clear what the Union was looking for and that it had been provided in the past, the State promptly provided the information. On December 18, 2015, an AFSCME representative forwarded a copy of the information the State had provided in 2012. At the next bargaining session, the State provided a similar, updated report. The record reflects no explanation for how the State failed to recognize the type and breadth of the information it had provided in the prior round of bargaining. Similarly, I can think of no reason why the Union would not have made this clear earlier in the process other than the fact that neither party was going out of their way to make anything easier on the other.

There is no question that there were delays in providing the full breadth of the information the Union requested regarding underutilization. A great deal of that delay is attributable to the parties communication breakdown on this issue. However, I cannot say that this failure to promptly provide the information the Union was seeking actually hindered the Union's ability to respond to what was described as a conceptual proposal. The record does not reflect that the Union was at all interested in negotiating over this issue with the State, despite Terranova's directed request for a counter that could help the State reach its goal of addressing underutilization if it were found to exist. It was in the context of this proposal where Lynch indicated her belief that seniority was the "worst system, except for all the others."

Nonetheless, "[a] legally recognized impasse cannot exist where the employer has failed to satisfy its statutory obligation to provide information needed by the bargaining agent to engage in meaningful negotiations." *Decker Coal Co.*, 301 NLRB at 740 (1991). Therefore, I find that that the State violated the Act when it declared impasse before the Union had the opportunity to review and respond to the last batch of information on underutilization.

j. Information requests related to Reasonable Suspicion Drug Testing

Here the Union does not contend that the State failed to provide information, but that it took unreasonably long to do so. Specifically, the Union contends that it requested information in May that was not provided until August and that this delay frustrated bargaining on this topic. The record does not support this contention. Newman testified that like other MOU proposals discussed on March 18, 2015, the Union sought the cost of the Reasonable Suspicion Drug Testing MOU. However, I do not credit his testimony on this point as it contradicts other

evidence in the record. Notably, neither party's notes reflect any request related to costs of the new MOU until August 26, 2015. The Employer's notes specifically reflect Lynch's question about the cost of a different MOU discussed immediately prior to this proposal, but with respect to the Reasonable Suspicion Drug Testing Proposal, the notes reflect that she only asked about what kind of procedure the State was proposing to use. The Union's notes from that day do not reflect any questions about the Reasonable Suspicion Drug Testing MOU at all. While the parties agreed at hearing and in their Ground Rules that bargaining notes were not intended to serve as verbatim transcripts of what occurred, both relied heavily on them to recount what occurred at bargaining and went to great lengths to distinguish times where the notes were inaccurate. During the vast majority of the weeks of testimony provided by Newman, Newman was relying heavily on the bargaining notes to recall and testify to the order and timing of events that occurred during bargaining. At the point of his testimony on May 4, 2016, when he was being asked about the MOUs discussed at the bargaining table on March 18, 2015, he was speaking in generalities about the MOUs. On occasion during his testimony, he indicated that he was testifying from his memory, and not from the notes, or that the notes were inaccurate in some way. He did not do so when discussing the events of March 18, 2015. On August 26, 2015, the Union asked about the process used at agencies that already have drug testing, including IDOT and ISP, as well as the number of tests performed and the cost of those programs. However, the record, including where Newman's testimony is corroborated by the parties' bargaining notes, reflects that the Union first requested cost information on August 26, 2015. In light of the lack of documentary corroboration and the context of the discussion of the topic on May 4, 2015, discussed more below, I am left with the firm conviction that Newman's testimony as to a request on March 18, 2015, was inaccurate and more likely he was recalling the discussion at the table from August. Therefore, I do not find that the State failed to timely provide cost information to the Union.

The discussion of the new MOU on May 4, 2015, focused on the State's rationale for making the proposal. The parties' bargaining notes, and testimony at hearing, reflect Lynch asking whether the Reasonable Suspicion Drug Testing MOU proposal was "based on major problems," "an ongoing problem," or "a widespread problem." Lynch then asked why the State is focusing on state employees, saying, "Where is the evidence for this proposal?" Terranova responded, questioning whether the Union agreed that employees using drugs or alcohol at work

is dangerous. Lynch agreed, but indicated her belief that a better solution would be to send an employee to counseling. As the parties continued to discuss the Reasonable Suspicion Drug Testing MOU proposal, the Union never again questioned whether there was a widespread problem of State employees appearing under the influence of drugs or alcohol at work. Instead, the conversation turned to the process. Specifically, on August 26, 2015, the Union asked about the number of tests done, cost, and process used at agencies that already have drug testing, including IDOT and ISP. The following day the Employer indicated that it was still gathering responsive information, but provided the number of tests conducted and the number of employees subject to the programs.

On September 10, 2015, the Union rejected the State's proposal, indicating that it was still researching the issue but did not think it was needed. Lynch asked how the program would work and for the protocols used elsewhere. On September 23, 2015, the State provided the protocols used at DOT and ISP. On November 4, 2015, the State supplemented its response by providing a checklist that supervisors would use to determine if an employee is under the influence. On November 18, 2015, the Union brought up the issue of U.S. Department of Transportation providing training to supervisors. Terranova indicated that supervisors would be trained on the checklist and indicated that the State could also look to see what training the federal government provides. The record does not support that the Union made a request for information related to training to which the Employer did not respond. While the record does not specifically reflect that the State provided cost information related to the program, the Union has failed to show that this failure impacted bargaining on the issue. The Union consistently was opposed to the proposal as being unsupported as a major problem or because it preferred treatment to discipline. Therefore, I do not find that the State failed to bargain in good faith over the Reasonable Suspicion Drug Testing proposal.

H. Good faith of the parties - The State insisted to impasse on some permissive subjects of bargaining, namely proposals that required waivers of statutory rights.

The Union also argues that the Board should not find a legitimate impasse exists, because the State unlawfully insisted to impasse on permissive subjects of bargaining. As stated above, the Act requires a public employer to bargain in good faith with a bargaining unit's exclusive representative over employees' wages, hours and other conditions of employment – the "mandatory" subjects of bargaining. *City of Decatur v. Am. Fed'n of State, Cnty. and Mun.*

Empl., Local 268, 122 Ill. 2d 353 (1988). As a general matter, a public employer breaches this duty if it insists to impasse on a permissive subject of bargaining. *City of Wheaton*, 31 PERI ¶ 131 (IL LRB-SP 2015); *Vill. of Midlothian*, 29 PERI ¶ 125 (IL LRB-SP 2013).

In Illinois, a proposal seeking the waiver of a statutory right is a permissive subject of bargaining. *Vill. of Midlothian*, 29 PERI ¶ 125; *Vill. of Wheeling*, 17 PERI ¶ 2018 (Il LRB-SP 2001). Statutory rights provided to public employees by the Illinois Public Labor Relations Act include "the right ... to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment...." 5 ILCS 315/6; *City of Rockford*, 14 PERI ¶ 2030 (IL SLRB 1998). The duty to bargain extends to issues that arise during the term of a collective bargaining agreement. *Mt. Vernon Educ. Ass'n, IEA-NEA v. Ill. Educ. Labor Rel. Bd.*, 278 Ill. App. 3d 814, 816 (4th Dist. 1996) (addressing IELRA which has no express reference to midterm bargaining); 5 ILCS 315/7 ("no party to a collective bargaining contract shall terminate or modify such contract unless the party desiring such termination or modification" satisfies the requirements of the Act.).

A union may waive the right to demand midterm bargaining, but the waiver of that right must be clear and unmistakable. *Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd.*, 190 Ill. App. 3d 259, 269 (1st Dist. 1989). For example, a broad zipper clause waives parties' right to midterm bargaining because it addresses matters covered by the statutory right to midterm bargaining and contains the type of explicit language required to waive such statutory rights. *Mt. Vernon Educ. Ass'n, IEA-NEA*, 278 Ill. App. 3d at 817. To illustrate, the right to midterm bargaining applies only to those subjects that are neither fully bargained nor the subject of a clause in a collective bargaining agreement, and any waiver of that right must be clear and unmistakable. *Id.* ("the right to midterm bargaining is not absolute"); *Ill. Dep't of Military Affairs*, 16 PERI ¶ 2014 (IL SLRB 2000)(same); *Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd.*, 190 Ill. App. 3d 259, 269 (1st Dist. 1989)(addressing standard for finding waiver). Broad zipper clauses address midterm matters, in the explicit form required of an effective waiver, because they expressly waive bargaining over matters unforeseen or unknown by either party at the time of the contract's ratification. *Mt. Vernon Educ. Ass'n, IEA-NEA*, 278 Ill. App. 3d at 817. "Narrow" zipper clauses, which waive bargaining during the term of a contract on all matters negotiated by the parties before ratification of the contract, whether or not contained in contract, are mandatory subjects of bargaining. *Id.* at 816-17. "Broad" zipper

clauses, with broad language expressly waiving bargaining on "*new* matters which were not and could not have been bargained before the contract was completed," are permissive subjects of bargaining. *Id.* at 821 (emphasis included).

Here, the Union argues that the State's health insurance, merit pay, and gainsharing proposals contain such broad waivers of midterm bargaining as to render them permissive and require employees to waive their statutory right to negotiate collectively through their exclusive representative. The Union also contends that one option (Option 4) of the State's health insurance proposal requires a waiver of the statutory right to subsidized healthcare in retirement and that such a right is also protected by the Pension Protection Clause of the Illinois Constitution. AFSCME also contends that the State's merit pay and gainsharing proposals require a statutory waiver of employees' right to pensions based on "whole compensation."

As an initial matter, the State argues in defense to the Union's claims of unfair labor practices arising out of bargaining related to health insurance that it has no duty to bargain health insurance. Specifically, it argues that in 2004, the General Assembly amended the Act, the State Group Insurance Act, and the Procurement Code (2004 Amendments) with Public Act 93-839, effective July 30, 2004, and that these amendments eradicated its obligation to bargain over health insurance. Even if it has an obligation to bargain health insurance, the State contends that its proposal contains sufficient limitations to avoid being deemed a permissive subject of bargaining. The State further argues that its merit pay, gainsharing, and health insurance proposals do not require a waiver of a statutory right, as they are a lawful bargained-for exchange and do not require employees to waive their right to negotiate collectively through their exclusive representative.

1. The State has not proven that it has no duty to bargain health insurance.

The State argues that it cannot have engaged in an unfair labor practice regarding health insurance, because the State was not obligated to bargain over health insurance. In support, the State points to the 2004 Amendments. While the Board has held that, generally, health insurance is a mandatory subject of bargaining, *International Union of Operating Engineers, Local 399*, 9 PERI ¶ 2034 (IL SLRB 1993), the Board has never squarely addressed what, if any, impact the 2004 Amendments have on the State of Illinois's obligation to bargain health insurance.[32]

[32] In ILRB Case No. S-CB-16-023 involving the State of Illinois and the Troopers Lodge #41, Fraternal Order of Police, the Board's Executive Director noted that this question had never been squarely

Among other things, the 2004 Amendments amended Section 15 of the Act, entitled "Act Takes Precedence," as follows, with additions underlined:

> In case of any conflict between the provisions of this Act and any other law (other than Section 5 of the State Employees Group Insurance Act of 1971), executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control. … The provisions of this Act are subject to Section 5 of the State Employees Group Insurance Act of 1971.

The amendment to Section 5 of the State Employee Group Insurance Act, 5 ILCS 375/5, is reflected below, with new language underlined:

> § 5. Employee benefits; declaration of State policy. The General Assembly declares that it is the policy of the State and in the best interest of the State to assure quality benefits to members and their dependents under this Act. The implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs for members and their dependents. Specifically, but without limitation, members should have continued access, on substantially similar terms and conditions, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, the Director must administer this Act consistent with that State policy, but may consider affordability, cost of coverage and care, and competition among health insurers and providers. All contracts for provision of employee benefits, including those portions of any proposed collective bargaining agreement that would require implementation through contracts entered into under this Act, are subject to the following requirements:
>
> (i) By April 1 of each year, the Director must report and provide information to the Commission concerning the status of the employee benefits program to be offered for the next fiscal year. Information includes, but is not limited to, documents, reports of negotiations, bid invitations, requests for proposals, specifications, copies of proposed and final contracts or agreements, and any other materials concerning contracts or agreements for the employee benefits program. By the first of each month thereafter, the Director must provide updated, and any new, information to the Commission until the employee benefits program for the next fiscal year is determined. In addition to these monthly reporting requirements, at any time the Commission makes a written request, the Director must promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission any additional requested information in the possession of the Director concerning employee benefits programs. The

---

addressed by the Board. The Executive Director dismissed the case finding that even if the health insurance proposal was permissive, the parties had both bargained over it and the mere submission of the proposal to the interest arbitrator was not an unfair labor practice. However, the Board reversed the dismissal and remanded for a Complaint for Hearing so that the issue could be fully vetted at hearing.

Commission may waive any of the reporting requirements of this item (i) upon the written request by the Director. Any waiver granted under this item (i) must be in writing. Nothing in this item is intended to abrogate any attorney-client privilege.

(ii) Within 30 days after notice of the awarding or letting of a contract has appeared in the Illinois Procurement Bulletin in accordance with subsection (b) of Section 15-25 of the Illinois Procurement Code, the Commission may request in writing from the Director and the Director shall promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission information in the possession of the Director concerning the proposed contract. Nothing in this item is intended to waive or abrogate any privilege or right of confidentiality authorized by law.

(iii) Except as otherwise provided in this item (iii), no contract subject to this Section may be entered into until the 30-day period described in item (ii) has expired, unless the Director requests in writing that the Commission waive the period and the Commission grants the waiver in writing. This item (iii) does not apply to any contract entered into after the effective date of this amendatory Act of the 98th General Assembly and through January 1, 2014 to provide a program of group health benefits for Medicare-primary members and their Medicare-primary dependents that is comparable in stability and continuity of coverage, care, and services to the program of health benefits offered to other members and their dependents under this Act.

(iv) If the Director seeks to make any substantive modification to any provision of a proposed contract after it is submitted to the Commission in accordance with item (ii), the modified contract shall be subject to the requirements of items (ii) and (iii) unless the Commission agrees, in writing, to a waiver of those requirements with respect to the modified contract.

(v) By the date of the beginning of the annual benefit choice period, the Director must transmit to the Commission a copy of each final contract or agreement for the employee benefits program to be offered for the next fiscal year. The annual benefit choice period for an employee benefits program must begin on May 1 of the fiscal year preceding the year for which the program is to be offered. If, however, in any such preceding fiscal year collective bargaining over employee benefit programs for the next fiscal year remains pending on April 15, the beginning date of the annual benefit choice period shall be not later than 15 days after ratification of the collective bargaining agreement.

(vi) The Director must provide the reports, information, and contracts required under items (i), (ii), (iv), and (v) by electronic or other means satisfactory to the Commission. Reports, information, and contracts in the possession of the Commission pursuant to items (i), (ii), (iv), and (v) are exempt from disclosure by the Commission and its members and employees under the Freedom of Information Act. Reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) must be kept confidential by and may not be disclosed or used by the Commission or its members or employees if such

disclosure or use could compromise the fairness or integrity of the procurement, bidding, or contract process. Commission meetings, or portions of Commission meetings, in which reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) are discussed must be closed if disclosure or use of the report or information could compromise the fairness or integrity of the procurement, bidding, or contract process.

All contracts entered into under this Section are subject to appropriation and shall comply with Section 20-60(b) of the Illinois Procurement Code (30 ILCS 500/20-60(b)).

The Director shall contract or otherwise make available group life insurance, health benefits and other employee benefits to eligible members and, where elected, their eligible dependents. Any contract or, if applicable, contracts or other arrangement for provision of benefits shall be on terms consistent with State policy and based on, but not limited to, such criteria as administrative cost, service capabilities of the carrier or other contractor and premiums, fees or charges as related to benefits.

Notwithstanding any other provisions of this Act, by January 1, 2014, the Department of Central Management Services, in consultation with and subject to the approval of the Chief Procurement Officer, shall contract or make otherwise available a program of group health benefits for Medicare-primary members and their Medicare-primary dependents. The Director may procure a single contract or multiple contracts that provide a program of group health benefits that is comparable in stability and continuity of coverage, care, and services to the program of health benefits offered to other members and their dependents under this Act. The initial procurement of a contract or contracts under this paragraph is not subject to the provisions of the Illinois Procurement Code, except for Sections 20-60, 20-65, 20-70, and 20-160 and Article 50 of that Code, provided that the Chief Procurement Officer may, in writing with justification, waive any certification required under Article 50.

The Director may prepare and issue specifications for group life insurance, health benefits, other employee benefits and administrative services for the purpose of receiving proposals from interested parties.

The Director is authorized to execute a contract, or contracts, for the programs of group life insurance, health benefits, other employee benefits and administrative services authorized by this Act (including, without limitation, prescription drug benefits). All of the benefits provided under this Act may be included in one or more contracts, or the benefits may be classified into different types with each type included under one or more similar contracts with the same or different companies.

The term of any contract may not extend beyond 5 fiscal years. Upon recommendation of the Commission, the Director may exercise renewal options of the same contract for up to a period of 5 years. Any increases in premiums, fees or charges requested by a contractor whose contract may be renewed pursuant to a renewal option contained therein, must be justified on the basis of (1) audited

> experience data, (2) increases in the costs of health care services provided under the contract, (3) contractor performance, (4) increases in contractor responsibilities, or (5) any combination thereof.
>
> Any contractor shall agree to abide by all requirements of this Act and Rules and Regulations promulgated and adopted thereto; to submit such information and data as may from time to time be deemed necessary by the Director for effective administration of the provisions of this Act and the programs established hereunder, and to fully cooperate in any audit.

The 2004 Amendments did not make a change to Section 7.1 of the State Employees Group Insurance Act, entitled "Benefit pursuant to collective bargaining; extension," which since 1987 has provided as follows:

> §7.1 Any benefit received by an employee under this Act pursuant to a collective bargaining agreement may be extended by the Director to employees whose wages, hours and other conditions of employment with the State are not subject to a collective bargaining agreement. In addition, if any benefit is offered by the Department of Central Management Services to employees who are not members of a recognized bargaining unit, then that benefit shall also be offered to all bargaining unit members through their certified exclusive representative.

5 ILCS 375/7.1 (2014).

The State has raised the question of whether health insurance is a mandatory subject of bargaining and specifically whether the 2004 Amendments eradicated its duty to bargain over health insurance on two occasions in the context of two declaratory ruling actions in ILRB Case Nos. S-DR-14-004 and S-DR-16-003. *State of Ill., Dep't of Cent. Mgmt. Servs. (Ill. State Police)*, 31 PERI ¶ 176 (IL LRB-SP G.C. 2014); *State of Ill., Dep't of Cent. Mgmt. Servs. (Ill. State Police)*, 32 PERI ¶ 162 (IL LRB-SP G.C. 2016). Both of these cases involved interest arbitration proceedings between the State and the Troopers Lodge #41, Fraternal Order of Police representing employees of the Illinois State Police. While declaratory rulings are not precedential, I am informed by the analysis applied by both the current and immediately previous General Counsel for the Board. In both of those instances, the General Counsel found that the 2004 Amendments did not obviate the State's obligation to bargain over health insurance. I agree.

As stated at the outset of the discussion and analysis section, Section 7 of the Act requires parties to bargain over mandatory subjects of bargaining, but does not require either party to "agree to a proposal or require making a concession." 5 ILCS 315/7 (2014). The Act also provides that employers "shall not be required to bargain over matters of inherent managerial

authority." 5 ILCS 315/4 (2014). The Illinois Supreme Court has set out a framework for resolving the tension between these two sections of the Act. In *Central City Educ. Ass'n v. Ill. Educ. Labor Relations Bd.*, 149 Ill. 2d 496, 523 (1992), the Supreme Court set out a three-part test to determine whether a topic is a mandatory subject of bargaining. If the issue relates both to (1) wages, hours and terms and conditions of employment and is (2) a matter of inherent managerial authority, then (3) the Board must "balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer's authority." *Id.* As a threshold matter, the State argues in ILRB Case No. S-CB-16-023, and incorporated here, that *Central City* does not apply to determinations over issues like health insurance where the underlying statutory framework, the State Employees Group Insurance Act, has been specifically exempted from the Act's supremacy clause, Section 15. I find that argument unavailing.

First, long before the 2004 Amendments, the Act set out that matters of inherent managerial authority were exempt from Act's general duty to bargain. In contrast, the 2004 Amendments make no mention of the State's obligation to bargain over healthcare in Section 7, where the duty to bargain arises. Moreover, the amendments to the Insurance Act specifically reference that "any portion of a collective bargaining agreement that would require implementation through contracts entered into under this Act" are similarly subject to the requirements the CMS Director must follow with respect to other "contracts for provision of employee benefits." In complying with the benefits choice periods required under the Act, CMS must also ensure that "in any such preceding fiscal year collective bargaining over employee benefit programs for the next fiscal year remains pending on April 15, the beginning date of the annual benefit choice period shall be not later than 15 days after ratification of the collective bargaining agreement." These additional provisions of the Insurance Act certainly seem to reference that CMS has bargained and will continue to bargain over health insurance.

Instead, the changes to the Act from the 2004 Amendments appear in Section 15, which establishes a hierarchy of statutory precedent. The amendment to Section 15 resolves conflicts between CBAs and Section 5 of the Insurance Act in favor of the Insurance Act and makes the Act "subject to" the Insurance Act. This second provision, the State argues, negates the State's obligation to bargain over health insurance. However, an amendment to the Insurance Act that requires that the State, in complying with the provisions of the Act, must also comport with the

obligations of the Insurance Act does not exempt health insurance from the duty to bargain. Despite making substantial amendment to the Insurance Act, the legislature retained reference to benefits being received "pursuant to a collective bargaining agreement" and that where non-bargaining unit employees are offered a benefit, "that benefit shall also be offered to all bargaining unit members *through their certified exclusive representative*." 5 ILCS 375/7.1 (2014) (emphasis added). Moreover, the Supreme Court established the *Central City* test to assess when a topic that is explicitly exempt from the duty to bargain (issues of inherent managerial authority). The State has presented no compelling reason why the same test should not apply to determine whether health insurance is a topic that must be bargained.

Turning to the *Central City* test, there is no question that health insurance affects hours, wages, and terms and conditions of employment thereby satisfying the first prong. The Board has held that the amount employees are required to pay for health insurance affects their terms and conditions of employment because it directly relates to the employees' overall compensation. *City of Blue Island*, 7 PERI ¶ 2038 (IL SLRB 1991) (finding that the term wages is given a broad construction which is read to include insurance); *Fraternal Order of Police*, 20 PERI ¶ 183 (IL LRB GC 2004); cf. *Kanerva v. Weems*, 2014 IL 115811, ¶49 (health insurance subsidies protected by constitutional provision protecting retirement benefits).

In the accompanying materials filed with its charge in Case No. S-CB-16-023, the State appears to argue, without explicitly saying so, that under the Insurance Act, establishing a health insurance program is a matter within its inherent managerial authority. I infer this because the State argues in the alternative, that the benefits of bargaining are "far outweighed by the burdens of doing so." While Section 4 of the Act relieves employers of the duty to bargain matters of inherent managerial policy, e.g. overall budget or organizational structure, it still requires employers to bargain over "policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives." 5 ILCS 315/4. As the Supreme Court held in *Central City*, determining which issues are mandatory subjects under that test, "will be very fact-specific questions which the [Board] is eminently qualified to resolve." *Central City*, 149 Ill. 2d at 523.

Whether health insurance is a mandatory subject of bargaining under the *Central City* test is a factually intensive one. I find that in the context of this case, the question of inherent managerial authority and burdens of bargaining were not adequately explored for me to find that

the State has no duty to bargain health insurance. For example, the record contains no evidence regarding what, if any, burden would be on the Employer to bargain health insurance with the numerous labor organizations representing State employees in dozens of bargaining units. Moreover, the Union's post-hearing brief does not even mention the 2004 Amendments, or otherwise explore the State's authority under the Insurance Act. While I find that evidence of the Employer's authority regarding health insurance and alleged burden of bargaining is not adequately before me, these issues are expected to be litigated in the course of S-CB-16-023.[33] Accordingly, I find that on this record, the Employer has failed to prove that it had no duty to bargain over health insurance. Therefore, as I assess the other legal contentions regarding the State's health insurance proposals, I will treat it as an otherwise mandatory subject of bargaining.

2. The State's last proposal on health insurance does not insist on such a broad waiver of the statutory right to midterm bargaining as to be permissive.

AFSCME contends that the State's health insurance proposal insists on such a broad waiver of the statutory right to midterm bargaining to render the proposal a permissive subject of bargaining, one on which the State cannot insist to impasse and cannot implement upon a finding of impasse. The State points to various ways that its discretion is limited and argues that a reservation of limited discretion like that in the proposal does not render the proposal permissive. The State also contends that the same arguments have been rejected by the Board's General Counsel in the context of a declaratory ruling involving a similar health insurance proposal made to the Trooper's Lodge #41, FOP representing State employees at the Illinois State Police. *Ill. Dep't of Cent. Mgmt. Servs. (Ill. State Police)*, 32 PERI ¶ 162 (IL LRB-SP G.C. 2016). The Union argues that any reliance on this declaratory ruling is misplaced as its conclusion contradicts existing Board precedent in *City of Wheaton*, 31 PERI ¶ 131 (IL LRB-SP 2015) *aff'd by Wheaton Firefighters Union, Local 3706 v. Ill. Labor Relations Bd., State Panel*, 2016 IL App (2d) 160105.

The Union's reliance on *City of Wheaton* is misplaced. While AFSCME correctly notes that the proposal at issue in *City of Wheaton*, included a limitation on future contribution increases of no more than 15% per year, the basis upon which the increase would be built was

[33] On August 9, 2016, the Board reversed the Executive Director's dismissal and remanded the case for issuance of a Complaint for Hearing. The Complaint for Hearing, issued on August 11, 2016, was assigned to another of the Board's administrative law judges for hearing.

the external indicia of the benefits available to non-bargaining unit members. In that case the Board found that it was this link to non-union members' health benefits, to which "the Union is blind" and could be subject to manipulation by the employer, was the reason it found the proposal was a broad waiver of the right to midterm bargaining over unforeseen changes in health benefits. *Id.* That finding is consistent with findings of the Board's former general counsel when addressing similar questions.[34] In *City of Danville*, 25 PERI ¶ 32 (IL LRB-SP G.C. 2010) (*City of Danville I*), the general counsel addressed an employer's proposal allowing broad discretion to change health insurance benefits so long as they were "similar to the coverage and benefits that are provided to the City's other full-time employees (who are not members of the bargaining units represented by the Union)." The then-general counsel found the proposal permissive in that:

> [T]he proposal grants the Employer an extremely broad range of flexibility to make midterm changes to the bargaining unit's health insurance benefits. The Union does not and cannot know what changes could occur to its bargaining unit employees' health insurance benefits during the term of the contract. No sooner than the contract is signed, the Employer could drastically increase deductibles for its non-union employees (or, as the Union suggested, bargain with another unit for higher wages and commensurately higher deductibles) and apply those changes to the bargaining unit employees. This broad authority granted to the Employer under the proposal results in the Union's abdication of its right to bargain over a mandatory subject.

Id.

In 2013, the general counsel again had an opportunity to weigh in on health insurance proposals in Danville. *City of Danville*, 31 PERI ¶ 165 (IL LRB-SP G.C. 2013) (*City of Danville II*). The employer had modified its proposal. It still included the language that the employer "shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed care plan or changing policies." *Id.* However, in this modified proposal, the employer indicated in making any midterm changes, "the level of benefits *as provided herein* shall remain substantially similar." *Id.* (emphasis added). The general counsel found that the "notify and consult" provision coupled with the limitation of changes to be

[34] I recognize that declaratory rulings by the Board's general counsel are not precedential and therefore do not provide binding precedent that I am obliged to follow. However, the question of whether a specific proposal is a mandatory subject of bargaining often arises in the context of declaratory rulings, and I find the analysis instructive. The Board, of course, is free to deviate from even its own precedent and need not feel compelled to follow the analysis of the general counsels any more than it may be compelled to follow the analysis otherwise set out in this recommended decision and order.

"substantially similar" created a sufficiently narrow waiver as to render the proposal mandatory. *Id.* This finding was in spite of the fact that the proposal also reserved the employer's right to offer additional plans for which an employee selecting those plans would be responsible for paying "part of the premium cost that exceeds the Employer's then budgeted per employee escrow cost under its self-insured insurance program." *Id.* This finding is consistent with another health insurance proposal found to be mandatory.

In *City of Taylorville*, 31 PERI ¶ 162 (IL LRB-SP G.C. 2012), the employer proposal include reserving the right "to make plan benefit changes *within reason* at any time. In the event the City considers changes to carriers, providers and/or plan benefits, the city will make an effort to seek the Union representatives['] input about such a change." (emphasis added). The proposal also set contributions at 20% of the total premium for each year of the contract. Taylorville successfully argued that its proposal was distinguishable from the *City of Danville I* ruling, in that the term "'within reason' in its proposal sufficiently establishes ascertainable standards limiting its freedom to make unilateral changes to the bargaining unit's health benefits, and thus providing the Labor Organization with sufficient certainty in future benefit levels over the life of the contract." The general counsel agreed.

> The danger of manipulation of the standard by the Employer is absent in the present situation, and while the standard of reasonableness could be more precise, it is common enough in collective bargaining agreements. I agree with the Employer that it does provide a limit on the Employer's discretion and consequently does not approach the type of broad waiver of bargaining rights found to be permissive subjects of bargaining in the context of collective bargaining zipper clauses.

Id. citing Mt. Vernon Educ. Ass'n, 278 Ill. App. 3d at 816-17.

Like the proposals in *City of Taylorville* and *City of Danville II*, I find that the State's proposal contains sufficient limitations on its midterm discretion such that it is a narrow zipper clause, which under Illinois law, is a mandatory subject of bargaining. In this respect, these decisions are also consistent with NLRB precedent that a "narrow, specific clause that, by its terms, sets limits on the Respondent's discretion to act with respect to healthcare" was fundamentally different from a provision reserving for the employer the ability to "unilaterally exert unlimited managerial discretion." *E.I. Du Pont De Nemours & Co*., 489 F.3d 1310 (D.C. Cir. 2007) (company's plan that "cabins its discretion over healthcare costs by requiring a fixed cost-sharing ration for all future increases" could be implemented at impasse unlike *McClatchy*

Newspapers merit pay plan). Examining the State's last, best, and final offer on health insurance against that rubric, I find that while the State's health insurance proposals certainly reserve discretion over changes to health insurance, the proposal, by its terms, sets limits on the exercise of that discretion. As such, it is not permissive.

For the first year of the Agreement, the current level of benefits and contributions remain in effect. In subsequent years, the Employer's discretion for each health insurance option is limited in various ways. For Option 1, the premium amounts and benefit levels are set out in Sections 2 and 3 of Appendix A, respectively. Increases or decreases in the amount of premium contributions are limited to no greater than 10% and the State's discretion is further limited in that changes to premium contributions is linked to net insurance liability changes, not some indicia which the Employer could manipulate (like in *City of Danville I* or *City of Wheaton)*. The additional contribution level tiers for employees making greater than $100,000 are similarly limited to an increase of no more than 10% greater than the highest tier set out in the contract.

For Option 2 (the same-premium-silver-benefits plan), the premium contributions are those in place as of June 30, 2015, and calculation for the additional contribution level tiers for employees making greater than $100,000 is set out in the terms of the proposal. Though the specific benefits for this plan are not set out in the proposal, the parameters for this plan are. Thus, the accompanying limits on the Employer's discretion in establishing such a plan are in the terms of the plan itself, namely the plan designed will result in a 60/40 aggregate net actuarial value, which the parties understand would require benefits in the range of a silver plan under the ACA.

For Option 3 (the in-between-platinum-plus-and-silver plan), the proposal, by its terms, sets out that this option would provide plan design that is richer than Option 2 (silver) and less rich than Option 1 (platinum plus). Moreover, the proposal indicates that the "plan will, on average, split employee costs between premium contributions and other charges incurred at the time of treatment, such as co-pays and deductibles." Like Option 2, the plan created under Option 3 would result 60/40 aggregate net actuarial value, which the parties understand would require benefits in the range of a gold plan under the ACA.

Option 4 (the same-premium-same-benefits-with-retiree-opt-out plan) provides for no changes in the out years of the CBA. Therefore, there would be nothing over which to bargain midterm.

Finally, with respect to Option 5 (the private exchange), the proposal requires that the plans offered on the exchange would have benefits that would qualify as platinum, gold, and silver plans, comparable to Options 1, 2, and 3. For the premiums for each of these plans, the proposal states that the platinum plans would have "premium amounts, on average, equal to those in Section 2" of Appendix A (Option 1), and silver plans would have "premiums, on average [] equal to employee premiums as of June 30, 2015." The State's contribution amounts intended for employees to use toward plans on the private exchange would be adjusted "to reflect any projected increases or decreases in total liability while maintaining the same ratio of cost sharing between the State and employees."

While the specific plan design, for example whether a vision plan would cover new glasses once every year or every other year, is not set out in the proposal, the framework for the plans, by reference to ACA levels, is. Further, while a precise dollar amount is not set out for each year, the expected range of costs for employees selecting each option is set out by the terms of the proposal.

In addition to arguing that *City of Wheaton* supports a finding that the options in the State's proposal render the proposal permissive, which it does not, the Union also argues that the function of the Joint Labor Management Advisory Committee is an illusory limitation on the Employer's discretion for several reasons. First, the date by which the Committee was to make its recommendations as to premium contribution tiers and plan designs, July 1, 2016, has passed, and two, the State could always just wait out whatever arbitrary date is set and unilaterally implement plan designs. However, like the proposals discussed above where the union would be notified and given the opportunity to have only input but the employer's discretion is otherwise sufficiently limited, I find that whether the union has input (but not bargain) over changes does not impact the determination of whether the proposal is mandatory or permissive.

As noted above, the present situation is atypical in that the Board's review is not following unilateral implementation by the State upon its declaration of impasse. I have noted that I find the parties' approach as set out in the Tolling Agreement to be good public policy. I am not troubled by the existence of the July 1, 2016, date. Presumably, the State would want the paradigm it has created through these proposals to work. As of its January 2016 proposal, that paradigm still included more than five months before the target implementation for formulation and consideration of plans recommended by the Committee. Implementing a plan that included

a similarly sufficient amount of time for the Joint Labor Management Advisory Committee to formulate plans would be consistent with its last, best, and final offer, despite it occurring after July 1, 2016.

3. The State's merit pay and gainsharing proposals do not insist on such a broad waiver of the statutory right to midterm bargaining as to be permissive.

The Union alleges that the State's merit pay and gainsharing proposals are a permissive subject of bargaining because they require a broad waiver of the statutory right to midterm bargaining. The State contends that while the Employer retains some discretion under both the merit pay proposal and gainsharing proposal, the proposals are sufficiently limited by their terms to be a mandatory subject of bargaining. Specifically, the merit pay proposal sets out the dollar amount for the bonus pool that will be paid out each year (2% of the budgeted base payroll costs for bargaining unit employees) and dictates how that pool will be divided. The proposal indicates that one quarter of the bonus pool (0.5% of payroll for bargaining unit members) will be paid to all bargaining unit employees who miss no more than seven assigned workdays and have committed no work place policy violations, with the remaining three-quarters of the bonus pool (1.5% of payroll for bargaining unit members) of the bonus pool being paid out to no fewer than 25% of the bargaining unit employees who also satisfy the performance standards of the program. Further, these performance standards as well as the standards for the gainsharing program will be developed by the State in "consultation with the Union," and the proposal expressly prohibits "payouts that are influenced by favoritism, politics, or other purely subjective criteria." If the State failed to consult with the Union about the standards, failed to adopt objective standards, or adopted standards that allowed favoritism, politics or purely subjective criteria, the Union would have the right to challenge the standards pursuant to the grievance and arbitration procedure. Based on these limitations, the State argues that its merit incentive pay proposal is a "narrow" zipper clause and a mandatory subject of bargaining that it should be privileged to implement at impasse.

It is necessary for me to examine of the Union's argument that these proposals are permissive subjects of bargaining. The Union argues that the State's gainsharing proposal provides no limitations whatsoever on the State's exercise of discretion, as the program policies have not yet been developed. Under its terms, the Union is still left to guess whether there is a baseline for savings before an employee would share in the savings, how would savings be

calculated, what percentage of the savings would be distributed, would gainsharing compensation only be awarded the first year of such savings, how would savings be shared with employees, and how savings would be distributed among employees in a group.

With respect to merit pay, the Union points to three primary factors it contends supports a conclusion that it is a permissive subject of bargaining: (1) the term "miss no more than seven (7) assigned work days" is so vague that the Union cannot predict under what standard any employee could receive a merit incentive; (2) the term "committed no work policy violation" similarly makes it impossible to know what standard the Employer will apply; and (3) because the performance standards and standard by which gainsharing compensation could be awarded have not yet been created, no one can foresee what the criteria might be. I find the Union's first two points to be unpersuasive and can be dispatched of rather easily. First, at the bargaining table, Terranova explained, then clarified, that preapproved vacation and absences covered by FMLA would not count as missed assigned work days, but that regular sick days would count as a missed day. Second, "work policy violation" may not have been previously used between the parties, but I find it to be sufficiently clear to give the Union an understanding of what would preclude an employee from receiving the incentive. As with other contract language, the Union would have the right to challenge the application of the standard through the grievance and arbitration procedure if it disagreed with the State's interpretation of the language. The Union's third factor requires a more detailed analysis and is similar to the analysis of concerns raised about the State's gainsharing proposal. I discuss both this third factor and the Union's concern regarding gainsharing below.

The State's merit pay and gainsharing proposals raise the question of whether the proposals contain sufficiently limited discretion to be characterized as a narrow zipper clause.[35] In S-DR-16-003, the Board's General Counsel examined similar proposals in the context of negotiations between the State and FOP. *State of Ill., Dep't of Cent. Mgmt. Servs. (Ill. State Police)*, 32 PERI ¶ 138 (IL LRB-SP G.C. 2016). She concluded those proposals were mandatory subjects of bargaining in light of two significant limitations on the Employer's discretion over midterm changes to compensation. *Id.* First, the State was obligated to provide

[35] The parties frame the question differently in the context of federal precedent, which I discuss later in this section.

the benefit to "no less than 25% of members." *Id.* The General Counsel explains the second limitation as follows:

> Second, the proposal effectively limits the criteria that the Employer may use in deciding who will receive the merit increase and how much of an increase they will receive by including a statement of intent whose interpretation is subject to the grievance procedure. Specifically, the proposal provides that the Department intends to "develop policies that will reward employees...based on specific achievements and to prevent payouts that are influenced by favoritism, politics, or other purely subjective criteria." Although the Union's participation in formulating those policies is limited to "consultation," "review," and "comment," the Union may file a grievance if the Employer's policies do not conform to the Employer's contractually-specified intent. Moreover, the Employer's own interpretation of its proposal supports a finding that the proposal limits the Employer's discretion because the Employer concedes "the Union would have the right to challenge the [policy's] standards pursuant to the grievance arbitration procedure."

Id. She also noted that in its argument in support of its petition, the State contended that the express terms of the proposal allowed the FOP to grieve over the standards developed for the programs not just the implementation of the policies. *Id.*, n. 9.

The State's discretion reserved in its incentive bonus proposal is certainly not unfettered. As I stated above, the distribution of the .5% of the merit pool based on attendance and compliance with work policies leaves very little discretion to the Employer, and is certainly a mandatory subject of bargaining in the nature of a narrow zipper clause. The answer to the mandatory/permissive question as it relates to the high performing employees receiving the remaining 1.5% of the bonus pool and gainsharing is a closer call. As the General Counsel noted in her declaratory ruling, wherein she examined the State's proposal that contained the same factors for distribution of a bonus pool[36] to high performers, the State's discretion is limited both in the minimum portion of the bargaining unit that will be offered an award from the bonus pool and the amount of money it has agreed to offer. Moreover, the State's proposal contains an intent statement that provides sufficient room for arbitration of the standards ultimately developed and the implementation of those standards. The Union cites *Anderson Enterprises*, 329 NLRB 370, 380 (1999), for its contention that despite the standards being subject to the

[36] The State's merit pay proposal to the FOP does not appear to contain the provision that a portion of the pool would be awarded to individuals who met attendance standards and did not commit any work policy violations. Therefore, under the FOP proposal, the State reserved even less discretion than it does in its proposal to AFSCME.

grievance process, this is not a true limitation on the State's discretion because there would be no objective criteria on which an arbitrator could review the standards or policies. Unlike in *Anderson Enterprises*, where the proposed standards were all subjective, e.g. "experience, ability, and knowledge," here, the proposal would allow for arbitration over whether the State was impermissibly using subjective criteria. An arbitrator could certainly determine whether the high performance standards and gainsharing policies result in rewards "based on specific achievements" and whether the implementation of the standards "prevent[s] payout that are influenced by favoritism, politics, or other purely subjective criteria."

The Union frames the question about the merit pay and gainsharing provisions as whether there are aspects of the proposals on which how the provisions would be implemented is unknown to the Union. The Union raises legitimate questions about the manner in which the State would exercise its reserved discretion. However, these issues are not "unforeseen," "unknown" or otherwise "unanticipated," as is the focus of broad zipper clauses. In *Mt. Vernon Educ. Ass'n, IEA-NEA*, 278 Ill. App. 3d 814, 819, the seminal appellate court case on zipper clauses in Illinois, the court affirmed the Educational Labor Relations Board's distinction between narrow and broad zipper clauses. "[Z]ipper clauses with broad language expressly waiving bargaining on matters unforeseen or unknown by either party at the time of the contract" were appropriately permissive subjects of bargaining. *Id.* In its analysis, the *Mt. Vernon Educ. Ass'n, IEA-NEA* court discusses the right to midterm bargaining over "*unanticipated* matters" and further reflected that provisions that "specifically foreclosed bargaining about *new* matters which were not and could not have been bargained before the contract was completed" were permissive subjects of bargaining. *Id.* at 820 (emphasis included). The matter of development and implementation of high performance standards and gainsharing policies is expressly contemplated by the text of the proposals. It is certainly not a new matter or an otherwise unanticipated matter.

I have not found, nor has either party cited to me, a precedential Board decision, or even a non-precedential declaratory ruling by the Board's General Counsel, that has addressed a situation regarding the reservation of discretion in the context of merit incentives or wages. While I find this to be a close call, one which could have been made much less close had the State provided the Union examples of high performance standards to use as a guide in developing additional standards, I find that the State's reservation of discretion is sufficiently

limited to be more akin to a narrow zipper clause. The State's discretion does not result in a change in circumstances to which the Union is "blind," like in *City of Wheaton*, 31 PERI ¶131 and does not allow for changes that the Union cannot not challenge. Thus, I find that it is a mandatory subject of bargaining in that it does not unlawfully waive the right to midterm bargaining as to new, unanticipated matters. Accordingly, I find that the State did not unlawfully insist to impasse on a permissive subject of bargaining.

As I referenced above, on this point, both sides point to NLRB precedent to support their respective arguments. However, the Board has recently rejected this approach in *City of Wheaton*, 31 PERI ¶ 131.

> [I]t is inappropriate to find this proposal a mandatory subject of bargaining based on federal precedent because the private sector applies a different approach than Illinois to proposals that affect the midterm right to bargain. In the private sector, a proposal that seeks the waiver of a union's statutory right to midterm bargaining is a mandatory subject of bargaining; in Illinois, it is not. *Mt. Vernon Educ. Ass'n, IEA-NEA*, 278 Ill. App. 3d at 821. Accordingly, federal precedent is inapplicable here because it conflicts with well-established Illinois Appellate Court case law. *Id.* (noting that some jurisdictions find all zipper clauses to be mandatory subjects of bargaining, but finding broad zipper clauses permissive subjects of bargaining in Illinois) (*citing National Labor Relations Board v. Tomco Communications, Inc.*, 567 F.2d 871, 879 (9th Cir. 1978)); *but see KSM Industries*, 336 NLRB 133 (2001)(Respondent was entitled to bargain to impasse on its proposal that reserved to it sole discretion during the term of the contract to unilaterally change employees' health insurance benefits, so long as the change was companywide); *McClatchy Newspapers*, 321 NLRB 1386, 1387 (1996)(employer was entitled to bargain to impasse on its proposal to institute a wholly discretionary merit pay plan).

In case the Board seeks to reexamine its position on this point, I discuss the authority cited by the parties here. In *McClatchy Newspapers, Inc.*, 321 NLRB 1386 (1996), and its progeny, NLRB has held that "if the [employer] was granted carte blanche authority over wage increases (without limitation as to time, standards, criteria, or the [union's] agreement), it would be so *inherently* destructive of the fundamental principles of collective bargaining that it could not be sanctioned as part of a doctrine created to break impasse and restore active collective bargaining." (footnote omitted, emphasis in original)). Therefore, despite its holdings that all zipper clauses are mandatory subjects of bargaining, the NLRB did not allow the employer to implement its final proposal. To allow unilateral implementation of the proposal and "thereafter expect the parties to resume negotiations for a new collective bargaining agreement, it is apparent that during the subsequent negotiations the [union] would be unable to bargain

knowledgably and thus have any impact on the present determinations of unit employee wage rates." *Id.* The proposal at issue in that case offered only that merit increases would be awarded; that not all employees would receive merit increases; that the employer would consider the union's comments, suggestions and recommendations about the merit evaluation process; and that while an employee could appeal his merit increases, he could not grieve it. *Id.* In *Woodland Clinic*, 331 NLRB 735, 740 (2000), the NLRB summarized the concerns giving rise to the *McClatchy* line of cases:

> The Board has explained that such unlimited managerial discretion over future pay increases, without explicit standards or criteria, would leave the union unable to bargain knowledgeably on the determination of employee wage rates and unable to explain to unit employees how such rates were formulated. Because such a circumstance would serve to destroy rather than further the bargaining process, an employer is obligated, prior to the actual implementation of such merit wage increases, to negotiate to agreement or to impasse "definable objective procedures and criteria" governing raises under a merit pay proposal.

In contrast, in *Detroit Typographical Union No. 18 v. N.L.R.B.*, 216 F.3d 109 at 118 (D.C. Cir. 2000), cited by the State, the court reversed the NLRB, finding that unlike in *McClatchy Newspapers*, the employer's proposal stated that merit raises would average four percent in the first year of the contract, and three percent in the second and third years; would be based on the annual employee evaluation process, of which the Union was knowledgeable; would be effective on fixed dates; and would be subject to the grievance procedure. In so holding, the Court noted that, "To be sure, the employer's proposal carried a good deal of discretion. It did not foreclose the possibility that an employee would get a merit pay increase without achieving the top performance rating. But any merit pay system inherently carries much employer discretion which, of course, is why unions resist them." *Id.* at 188. Similarly, in *E.I. Du Pont De Nemours & Co*., 489 F.3d 1310, the court affirmed the NRLB's finding that the employer's proposal contained sufficiently limited discretion to fall on the *Detroit Typographical Union* side of the line of allowable proposals. In that case, the at-issue proposal dealt with health insurance and whether the company's reservation of discretion in determining how increased costs would be allocated was proper. *Id.*

Even under federal precedent, I find this to be a close call. The State's proposal is more defined than that proposed in *McClatchy*, yet less defined than that set forth in *Detroit Typographical Union*. I recommend that if the Board adopt the NLRB precedent on this point, it find that the State's proposal would fall on the *Detroit Typographical Union* side of the

continuum. It does not provide such "carte blanche authority" over wages completely removed from Union involvement or otherwise unreviewable as to be destructive of the collective bargaining process and was sufficiently limited in the type of standards it could establish and such standards, as well as implementation, were subject to the grievance procedure.

4. Provisions of the State's merit pay and gainsharing proposals require a waiver of the statutory rights to a pension calculated on whole "compensation."

Under the State's merit pay and gainsharing proposals, an employee who accepts merit pay compensation or gainsharing "does so voluntarily and with the knowledge and on the express condition that the merit pay [and gainsharing] compensation will not be included in any pension calculations."[37] The Union contends that this provision requires a waiver of employees' statutory right to have their pension calculated on the whole of their compensation, as that term is defined in the Pension Code. 40 ILCS 5/14-103.10. In its post-hearing brief, the State generally asserts that its merit pay and gainsharing proposals "do not impose a waiver of the union's right to bargain or constitute a permissive subject of bargaining and do not violate the Illinois Constitution." In support of this argument, the State cites cases for the proposition that employee may engage in a bargained-for exchange to modify pension benefits but does not address the underlying allegation that the proposals by their terms require a waiver of a statutory right. I agree with the Union that the provisions insist on a waiver of a statutory right and is therefore a permissive subject of bargaining.

The Union's members covered by these negotiations are members of the State Employees Retirement System (SERS) under Article 14 of the Illinois Pension Code. 40 ILCS 5/14-101, *et seq.* Employee members of SERS have a statutory right to pensions based on a calculation of "final average compensation." 40 ILCS 5/14-103, 14-108(a). Section 14-103.10 of the Pension Code defines "compensation" as follows:[38]

> (b) For periods of service on and after January 1, 1978, all remuneration for personal services performed defined as "wages" under the Social Security Enabling Act, including that part of such remuneration which is in excess of any maximum limitation provided in such Act, and including any benefits received by an employee under a sick pay plan in effect before January 1, 1981, but excluding lump sum salary payments:

[37] Identical language is used in the merit pay and gainsharing provisions.
[38] Subsection (a) is not included here as it relates to periods of service prior to January 1, 1978.

(1) for vacation,

(2) for accumulated unused sick leave,

(3) upon discharge or dismissal,

(4) for approved holidays.

(c) For periods of service on or after December 16, 1978, compensation also includes any benefits, other than lump sum salary payments made at termination of employment, which an employee receives or is eligible to receive under a sick pay plan authorized by law.

(d) For periods of service after September 30, 1985, compensation also includes any remuneration for personal services not included as "wages" under the Social Security Enabling Act, which is deducted for purposes of participation in a program established pursuant to Section 125 of the Internal Revenue Code[, 26 U.S.C.A. § 125,] or its successor laws.

(e) For members for which Section 1-160 applies for periods of service on and after January 1, 2011, all remuneration for personal services performed defined as "wages" under the Social Security Enabling Act, excluding remuneration that is in excess of the annual earnings, salary, or wages of a member or participant, as provided in subsection (b-5) of Section 1-160, but including any benefits received by an employee under a sick pay plan in effect before January 1, 1981. Compensation shall exclude lump sum salary payments:

(1) for vacation;

(2) for accumulated unused sick leave;

(3) upon discharge or dismissal; and

(4) for approved holidays.

(f) Notwithstanding the other provisions of this Section, for service on or after July 1, 2013, "compensation" does not include any stipend payable to an employee for service on a board or commission.

(g) Notwithstanding any other provision of this Section, for an employee who first becomes a participant on or after the effective date of this amendatory Act of the 98th General Assembly, "compensation" does not include any payments or reimbursements for travel vouchers submitted more than 30 days after the last day of travel for which the voucher is submitted.

(h) Notwithstanding any other provision of this Code, the annual compensation of a Tier 1 member for the purposes of this Code shall not exceed, for periods of service on or after the effective date of this amendatory Act of the 98th General Assembly, the greater of (i) the annual limitation determined from time to time under subsection (b-5) of Section 1-160 of this Code, (ii) the annualized compensation of the Tier 1 member as of that effective date, or (iii) the annualized compensation of the Tier 1 member immediately preceding the expiration, renewal, or amendment of an employment contract or collective bargaining agreement in effect on that effective date.

The Social Security Enabling Act, 40 ILCS 5/21-102.7 (2014), defines wages as follows:

> "Wages" means remuneration for employment, including the cash value of remuneration paid in any medium other than cash, but not including that part of such remuneration which would not constitute "wages"' within the meaning of the Social Security Act[, 42 U.S.C. § 301 *et seq.*] for wages paid prior to January 1, 1987, or the Federal Insurance Contributions Act[, 26 U.S.C. § 3101 *et seq.*] for wages paid after December 31, 1986.

Accordingly, payments under the State's merit pay and gainsharing proposals fall within the Pension Code's definition of "compensation" if they would be "wages" subject to withholding of FICA taxes. FICA's very broad definition of "wages means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash." 26 U.S.C. §3121(a). That section goes on to specifically exempt 23 types of remuneration from which FICA is not withheld. *Id.* Neither merit pay nor payment for identifying operational efficiencies is among the 23 exempted categories of remuneration, nor does the State point to any exempt category into which it believes these payments would fall. The Code of Federal Regulations provides the following additional clarity, "The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages if paid as compensation for employment." 26 C.F.R. § 31.3121(c).

Applying these definitions, I find that bonuses paid under the merit pay and gainsharing proposal would be wages subject to FICA, in that they are compensation for employment, and that payments under these proposals would appropriately be included as compensation in any pension calculation under the Pension Code.

In *Heaton v. Quinn (In re Pension Reform Litig.)*, 2015 IL 118585, ¶ 46 *citing Felt v. Bd. of Trs. of the Judges Ret. Sys.*, 107 Ill. 2d 158 (1985), the Illinois Supreme Court held that under article XIII, section 5 [of the Illinois Constitution],[39] members of pension plans subject to its provisions have a legally enforceable right to receive the benefits they have been promised, including changes to the Pension Code adversely affecting base salary used to compute pension annuity. The State cites a number of cases for the proposition that employees' benefits protected

[39] Ill. Const. (1970), art. XIII, § 5 provides, "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." This section is often referred to as the "Pension Protection Clause."

by the Pension Protection Clause can be modified as part of a "bargained-for exchange." Earlier this year in *Jones v. Municipal Employees Annuity and Benefit Fund*, 2016 IL 119618 at ¶ 53, the Supreme Court decided whether certain City of Chicago employees "had bargained away their constitutional rights" in the context of their exclusive bargaining representatives engaging in discussions with the employer leading to legislation that affected pension benefits. The Court held, "To be sure, ordinary contract principles allow for the modification of pension benefits in a bargained-for exchange for consideration." *Id. citing Buddell v. Bd. of Trustees, State Univ. Retirement System*, 118 Ill. 2d 99, 104-05 (1987) (pension rights can be modified "in accordance with usual contract principles"). Moreover, "nothing prohibits an employee from knowingly and voluntarily agreeing to modify pension benefits from an employer in exchange for valid consideration from the employer." *Id.*, at 2016 IL 119618 ¶ 53 *citing Kraus v. Board of Trustees of the Police Pension Fund*, 72 Ill. App. 3d 833, 849 (1979); *see also York v. Central Illinois Mutual Relief Ass'n*, 340 Ill. 595, 602 (1930) ("one party to a contract cannot by his own acts release or alter its obligations. The intention must be mutual."). Ultimately, the Court rejected the defendants claims that the pension benefits changes were proper, because the legislation was the codification of a collectively bargained agreement. In rejecting this argument, the Court held that "it was undisputed that the unions were not acting as authorized agents within a collective bargaining process" and that the "negotiations were no different than legislative advocacy on behalf of any interest group supporting collective interests to a lawmaking body." *Id.* at ¶ 55 (internal quotations omitted).

While I agree with the State that employees, through their designated exclusive bargaining representative could negotiate modifications to pension benefits, generally, I recognize two problems with this proposition as it relates to the State's merit pay and gainsharing proposals. First, insomuch as SERS calculates pensions based on "compensation" as defined in the Pension Code, the State has provided no evidence, authority, or argument that by negotiating terms of a CBA providing for "non-pensionable" payments, SERS would withhold certain types of payments from its pension calculations set out in the Pension Code. The Union argues that because SERS would act according to the Pension Code and not according to the CBA reflects that the parties cannot bargain over these statutory rights. While I disagree with the Union's contention that the parties cannot bargain over these rights, I do see this issue as a significant flaw in the State's proposal. However, my role is not to decide whether the State's

proposals are reasonable, a good idea, or effective, and I need not resolve this problem to carry out my mandate of determining whether the State's proposal is a mandatory subject of bargaining that can be implemented at impasse.

The second problem I see is one that I find to be dispositive of the issue before me on the State's merit pay and gainsharing proposals. The Supreme Court has rejected numerous legislative modifications to pension benefits, but has asserted that pension benefits can be modified through a bargained-for exchange for consideration through collective bargaining with employees' exclusive representative. Put another way, the Supreme Court appears to agree that the Union could *agree* to pension benefit modifications on behalf of its members. However, absent such an agreement, unilateral implementation of proposals tailored to modify pension benefits could not represent a sufficient bargained-for exchange to satisfy existing law. Therefore, I find that the proposals cannot be implemented as written as they would result in a waiver of the statutory right to have pensions calculated on whole "compensation," and that in incorporating these proposals into its last, best, and final offer, the State has insisted to impasse on a permissive subject of bargaining.

5. The retiree opt-out provision of Option 4 of the State's proposal requires a waiver of statutory rights to subsidized retiree healthcare.

If an employee selected Option 4 of the State's health insurance proposal, he would retain the same level of benefits at the same premium cost in exchange for being responsible for the cost of healthcare in retirement. The Union contends that this provision requires a waiver of the statutory right to subsidized retiree healthcare. I agree.

The Pension Code provides the conditions and manner in which the State will contribute toward employees' health benefits once they retire from State service. [40] As explained above, I

[40] By P.A. 97-695, the legislature amended Section 10 of the Illinois Group Health Insurance Act of 1971 to remove the statutory language providing that the State's contribution toward the expense of health benefits is based on the length of service: "[T]he State shall contribute toward the cost of the annuitant's coverage under the basic program of group health benefits an amount equal to 5% of that cost for each year of creditable service upon which the annuitant's retirement annuity is based, up to a maximum of 100% for an annuitant with 20 or more years of creditable service." 5 ILCS 375/10(a–1) to (a–7) (West 1998). In *Kanerva v. Weems*, 2014 IL 115811, the Supreme Court reversed a trial court order dismissing plaintiff/employees' claims that the change amounted to a diminishment of their pension benefits in violation of the Pension Protection Clause of the Illinois Constitution. The Supreme Court held that health benefits were protected pension benefits as contemplated by the Pension Protection Clause; therefore, any reduction of those benefits would be unconstitutional. Because of the procedural posture of that case, the Supreme Court allowed the plaintiffs to proceed with their action in the circuit court.

find that an exclusive bargaining representative can agree to limit pension-protected benefits as part of a bargained-for exchange for consideration. However, if the Union does not agree, the State cannot insist to impasse or otherwise unilaterally implement such a provision. To do so would not result in a knowing and voluntary agreement to modify benefits. Therefore, like with the merit pay and gainsharing proposals, I find that Option 4 of the State's health insurance proposal cannot be implemented, and that in incorporating these proposals into its last, best, and final offer, the State has insisted to impasse on a permissive subject of bargaining.

6. The State's retiree health insurance proposal requires a waiver of statutory rights to subsidized healthcare.

The same analysis applies to the State's proposal that bargaining unit members hired after ratification would be subject to the same benefits as active employees, regardless of the date of retirement, except that employees would be responsible for 100% of the cost of dependent coverage in retirement. In its decision in *Kanerva*, the Illinois Supreme Court noted that health insurance benefits are afforded to active employees, retired employees, and their dependents, and that these benefits, as defined at the date of entry into the retirement system, are protected from diminishment by the Pension Protection Clause of the Illinois Constitution. *Kanerva*, 2014 IL 115811. For the same reasons discussed with respect to the retiree opt-out provision in the health insurance package and the non-pensionable bonus in the merit pay and gainsharing provisions in the wages and steps package, I find that the State cannot insist to impasse or otherwise unilaterally implement such this provision as it would require a waiver of the statutory to subsidized health insurance and optional coverage for dependents in retirement. While I find that parties could negotiate and reach agreement on this issue, the State's unilateral implementation of a provision on which they have not reached agreement would not result in the knowing and voluntary agreement needed to modify pension-protected benefits.

7. The State's merit pay, gainsharing, and health insurance proposals do not contain an unlawful waiver of employees' statutory right to negotiate collectively through their exclusive representative.

The Union argues that these proposals allow for individual negotiation between the Employer and members; therefore, they require a waiver of the employees' right to negotiate collectively through their exclusive representative. I disagree.

Courts addressing issues raised under the NLRA have held that where an employer negotiates directly with employees without first bargaining with the union, the employer violates

the duty to bargain in good faith. *See Toledo Typographical Union No. 63 v. N.L.R.B*, 907 F.2d 1220, 1222 (D.C. Cir. 1990) *citing Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 684 (1944). The record is replete with evidence that the State has been negotiating with bargaining unit members' exclusive representative over these issues. A collectively-bargained CBA that affords employees the option of selecting among options, including some with conditions, is not evidence of direct dealing. These are not "individual agreements with employees" as AFSCME argues; instead, it is merely the administration of an employee's selection from a menu of bargained-for options. More specifically, the proposals establish programs whereby the offer the employer can make – merit incentive bonuses or payments resulting from savings achieved – are set out in the proposal, as are the attendant conditions for acceptance of that offer, namely that the employee agree that the payment would not count toward his pension.

The Union cites two cases arising out of the NLRB in support of its proposition that these proposals unlawfully amount to direct dealing with employees and thereby require a waiver of the right to negotiate collectively through the Union. In *Toledo Typographical Union No. 63*, 907 F.2d 1220, the proposal specifically allowed for the employer to negotiate retirement and/or separation terms with individual employees with the employer retaining "sole discretion" to determine amounts, terms and conditions, and periods of time. It also required the Union's waiver of the right to dispute or arbitrate the terms negotiated between the employer and employee. *Id.* Similarly, in *Retlaw Broadcasting Co., a Subsidiary of Retlaw Enterprises, Inc. v. N.L.R.B.*, 172 F.3d 660 (9th Cir. 1999), the employer's proposal was that the CBA would include the minimum terms of employment but reserved the right to enter into agreements directly with employees with more favorable terms than the CBA. The proposal further included, "[N]othing in this Agreement will prevent the Company from agreeing with an Artist on higher compensation or other benefits for either services covered by this Agreement or additional services." *Id.* Unlike the cases cited by the Union in support of its proposition, the State's proposals leave no room for negotiation with employees beyond the terms of the CBA.

Moreover, I do not find the proposed selection among options to be any different from what the prior contract provided in the context of health insurance. In the 2012-2015 CBA, and many before it, the CBA provided multiple options for health insurance, from which each individual employee selected. There is no persuasive argument to be made that when a bargaining unit member considered the negotiated options and made a selection based on what is

best for his or her family, he was making an individual agreement with the State while bypassing the Union. The Union has submitted no evidence that the Union has played any role in the individual selections made by bargaining members in the past or how it contends the Union should be involved in these individual choices.

As such, I do not find that the State's merit pay, gainsharing, or health insurance proposals require a waiver of employees' statutory right to negotiate collectively through their exclusive representative.

J. Applying the Impasse Factors to Bargaining on the Packages in the State's Last, Best, and Final Offer

Having addressed each of the five factors the Board considers when faced with a question of impasse in a general fashion, as well as the numerous legal issues the Union argues are impediments to a finding of impasse, I turn now to application of these factors to each of the packages included in the last, best, and final offer. As evidenced by the analysis sections above, the question of impasse is multi-faceted and the issues raised in this case are varied and numerous. In this case, the parties bargained over proposals as packages, and as Newman explained, by virtue of being packaged together, each item in the package was contingent on the other items. Terranova testified similarly. When the parties reached agreement on every item in the package, the entire package was resolved and the parties treated the package as having been the subject of a tentative agreement. Given the parties use of packages, and the Board's general precedent regarding implementation *consistent* with its last, best, and final offer, I recommend that the Board apply the factors and make an impasse determination on a package-by-package basis. In fact, both parties organized arguments in their post-hearing brief on a package-by-package basis – the State arguing that each package was an important issue and the Union arguing that the parties were not at impasse on each, individual package.

This approach is novel, but that is not to say that this approach is inconsistent with Board precedent. Board case law contemplates implementation *consistent with* an employer's last, best, and final offer, but the Board has never addressed the question of impasse in the face of numerous outstanding packages. *See City of Peoria*, 11 PERI ¶ 2007 (IL SLRB 1994) *citing Ill. Dept. of Cent. Mgmt. Services and Dep't of Corr.*, 5 PERI ¶ 2001 (IL SLRB 1988) *aff'd* 190 Ill. App. 3d 259 (1st Dist. 1989) ("when the parties have reached a legitimate impasse, an employer has the right to unilaterally implement changes in terms and conditions of employment consistent

with its pre-impasse proposals").[41] This approach is also consistent with NLRB precedent setting out factors for finding an overall impasse when the parties are at impasse on a single, critical issue. *See e.g. Calmat Co.*, 331 NLRB 1084 (2000). I discuss this issue further in Section VI. K. 2. below. Consistent with my recommended approach, I turn to each of the twelve pending packages.

"Whether a bargaining impasse exists is a matter of judgment." *Taft Broadcasting Co.*, 163 NLRB 475 (1967). For each of the twelve packages on which the parties have failed to reach agreement, I apply my judgment to assess whether the parties were at impasse on the issues contained therein, such that further bargaining on the package would be futile. *City of Park Ridge*, 32 PERI ¶ 151; *Village of Steger*, 31 PERI ¶ 157 (IL LRB-SP 2015) (impasse as where "one party is 'warranted in assuming ... that the [other party] had abandoned any desire for continued negotiations, or that further good-faith negotiations would have been futile.'") (internal citation omitted). Moreover, I also assess whether there are legal issues that would make impasse otherwise illegitimate so that the State is not privileged to implement a package in its last, best, and final offer. *See City of Peoria*, 11 PERI ¶ 2007 (upon a *legitimate* impasse, an employer is privileged to implement its last, best, and final offer). (Emphasis added). Of course, the State would not be privileged to implement its last, best, and final offer with respect to bargaining unit members who are prohibited from striking and are presently engaged in interest arbitration. 5 ILCS 315/14(l).

1. Wages and Steps

The Union argues that the parties were not at impasse on the issue of wages, because both parties had made movement over the last bargaining session. However, the record reflects that this movement did not actually move the parties closer to an agreement on this issue. Since September 8, 2016, the State had proposed a $1,000 bonus on the condition that the CBA was ratified by January 1, 2016. Later in September, the Union had modified its across-the-board pay increase for the first year of the contract to match the amount of money the State indicated its willingness to spend, but without any condition. By the terms of the State's $1,000 bonus

[41] In proceedings before the New Jersey Public Employment Relations Commission (PERC), a hearing examiner (similar to an ALJ) found that an employer was "not required to implement every particular element of its last best offer … unless its last best offer was clearly made as a package proposal, or the employer was simply excluding specific elements of its offer where it had actually offered to add or increase a benefit." *Fredon Township Bd. of Ed.*, 21 NJPER ¶ 26058 (H.E. 1995).

proposal, when the parties met for the January 6-8, 2016 session, that proposal had expired. In an effort to elicit movement by the Union, on January 6, 2016, the State proposed a new $1,000 bonus with a new condition linked to attendance and modified its merit pay proposal to allow for more employees to be eligible for a portion of the merit pool.

The Union's January 6, 2016 proposal made no movement on wages or merit pay. The Union made another proposal on January 8, 2016, which still included an across-the-board increase, but instead of a 1.5% increase from September that would be built on for each additional year of the contract, it provided for a $1,000 across-the-board stipend, with no condition. It also took the 2% of payroll the State's merit bonus pool contemplated, and used it as another across-the-board increase for the second year of the contract. It held to its 3% across-the-board increases for years three and four. At no point did the State ever waver from its position against across-the-board wage increases and that any increase be subject to a condition of one sort or another. The State made numerous proposals addressing concerns raised by the Union. Yet, at no point in the 2015-2016 negotiations did the Union ever waver from its position that every bargaining unit member receive an increase. Its proposals on January 6 and 8, 2016, did not alter this deadlock. Therefore, I find that the parties were at impasse on the wages and steps package as of January 8, 2016.

However, as set out above, I find that there are issues with this package that would preclude its implementation. First, the State cannot unilaterally impose a waiver of the right to pension calculation based on whole compensation; therefore, it could not implement such a provision without the Union's agreement. Second, I find that the State failed to satisfy its obligation to provide information the Union sought and that it promised to provide. Thus, I find that the State would not be able to implement the non-pension waiver provisions of the wages and steps package in its last, best, and final offer until it had provided that information and given the Union an opportunity to respond.

2. Appendix A – Health Insurance

The Union frames it argument on health insurance, and other packages, as posing the question of whether each side had more room to move. However, the Board has held that the duty to bargain does not require a party to "engage in fruitless marathon discussions, … as in instances where there are irreconcilable differences in the parties' positions after good-faith negotiations have exhausted the prospects of concluding an agreement." *Ill. Dept. of Cent.*

Mgmt. Services and Dep't of Corr., 5 PERI ¶ 2001. On this topic, each of the State's proposals after its initial economic proposal included both (1) shifting cost-sharing so that, in the aggregate, 60% of the net actuarial value of the health insurance plan would be borne by the State, with the employee responsible for the remaining 40% and (2) additional cost savings from other initiatives. The Union never made proposals aimed at shifting cost-sharing. In the Health insurance subcommittee, Union representatives voiced their interest in learning more about cost sharing initiatives. But, neither at the table nor in the subcommittee did the Union make any indication that it was willing to alter the cost split between employees and the employer. Lynch consistently indicated that the Union was unwilling to see employee paychecks decrease in any substantial way.

The Union indicated a willingness to consider additional cost savings initiatives, sought information on this topic, was promised the information, yet never received it. This information would have been helpful in formulating proposals addressing the second (and separate) component of the State's package; however, without making movement on cost-sharing, the parties would continue to be deadlocked.

The Union also argues that the uncertainty over the savings target, from $700 million per year to at one point $500 million per year, precludes a finding that the parties had reached impasse on this issue. However, it is uncontested that the State was looking to save hundreds of millions of dollars per year on health insurance, and the Union had, over two proposals, offered savings that essentially had a net savings of zero dollars due to the increased benefits it still sought. Even if the Union had withdrawn the additional benefits it was seeking, McDevitt testified that the net savings would have been "insignificant," in the range of $10 million.

Given that the record reflects entrenched positions of both parties on the issue of shifting cost sharing, I find that the parties were at impasse on this package. However, like the wages and steps package, there are impediments to any implementation of this package. First, the State cannot unilaterally impose a waiver of statutory right to subsidized health insurance in retirement; therefore, it could not implement such a provision without the Union's agreement. Second, the State failed to provide the Union information it agreed to provide regarding the target savings for various cost savings initiatives and the savings that could be generated by various increases in out-of-pocket costs. Because this information could be used to inform the Union's formulation of proposals and limit the amount of savings the State may need from

employee cost shifting, I find that the State would not be privileged to implement the provisions of this package until it has provided that information and given the Union an opportunity to respond.[42]

3. Subcontracting

This package was of utmost importance to the parties. The Union made it the first substantive change discussed, and the parties exchanged 16 proposals on the subject garnering discussion on 21 days of bargaining. During the course of bargaining, the State had held to its position on the deletion of the Personal Service and Vendor Contract MOU and Governor's Volunteer Initiative, and the Union had held to retaining the prior CBA's language. Where the State initially proposed deleting the Personal Service Contract MOU, it later withdrew this proposal in favor of the prior language. The Union held to its proposals to lengthen the notice period for personal service contracts from 10 days to 30 days and to limit the overall length of personal service contracts to 12 months since its initial proposals in March. On these issues there had been exactly zero movement.

On the issue of subcontracting generally, the State had maintained its position that the contract not include specific standards by which an arbitrator could call into question the State's decision to subcontract. The Union had held to its position that the contract must include enumerated standards, and continued to propose the standards that had been in prior CBAs, namely "efficiency, economy, or other related factors." The Union also proposed and held to numerous additional restrictions on the State's ability to subcontract. It did withdraw references to "profiteering" and "excessive" profits, but from February 2015 through January 2016, the Union held to its additional restrictions.

In response to the Union's concerns regarding "unfettered" subcontracting, on June 17, 2015, the State proposed managed competition that would allow the Union to compete for the work that the State has contemplated subcontracting. The Union rejected the State's proposal, but modified its own proposal to include the creation of a committee to discuss alternatives to subcontracting. On November 19, 2015, the State modified its proposal on managed competition to more closely align with that proposed by the Union. That modification included language that the State would review the Union team's submission to determine "whether that proposal more effectively meets the Employer's needs" than the external bids. Despite this move, the Union

[42] However, the State would still not be privileged to implement the retiree opt-out provision in Option 4.

did not respond on the managed competition component of the package until January 8, 2016. In its counter, it rejected the State's proposed "more effectively meets" standard and inserted the prior language "efficiency, economy, or related factors" into the managed competition section as well as retaining it in the general subcontracting provision. Lynch commented at the table that the intent of its January 8, 2016 proposal was to bring the parties closer together.

While I believe that the parties could get closer to agreement on managed competition provision, I find that the State was warranted in assuming that further bargaining would be futile. The State had consistently indicated its unwillingness to agree to language limiting its subcontracting decisions based on "efficiency, economy, or related factors." The Union had continued to assert its unwillingness to remove that language, and on the last day the parties met, doubled down on that language by including it in the provision related to the assessment of the Union's managed competition proposal. This essentially stopped any conciliatory movement. That, coupled with the parties insistence on their respective positions on the MOUs, leads me to find that, in my judgment, the parties are at impasse on this issue and that the State would be privileged to implement its last, best, and final offer on this package.

4. Layoff

Throughout bargaining on this issue, the State indicated its desire to streamline the layoff process. To that end, the State proposed, among other things, deleting various steps of the bumping process and adding to the Closure of Facility MOU the more general terms the parties usually include in agreements reached after bargaining over the impact of a facility closure. This was an attempt to the streamline the bargaining process over layoffs that occur in the event of a facility closure. The Union's counter on the Closure of Facility MOU had the potential of making the existing process more cumbersome; therefore, the State withdrew its proposed additions.

In the course of its proposals on this package, the Union made only one proposal that would streamline the layoff process when, on December 17, 2015, it proposed limiting an employee's ability to exercise step 6 of the bumping priorities. The Union commented at the table that this would decrease the State's ripple of notifying affected employees. The State rejected this move and held to its proposal limiting bumping to only the first two steps (at work location and within agency and county), which it had included in the package since July 17, 2015.

On the main topic in this proposal, bumping rights, the State had gone from zero bumping priorities to two, and the Union had gone from maintaining all six bumping priorities from the prior CBA to limiting the number of employees that can exercise step 6. Though the movement was not necessarily large or quick, it was movement in the direction of an agreement. Therefore, I find that the parties were not at impasse on this package.

5. Outstanding Economics

Outstanding Economics was a later-created package, into which provisions with economic impact from other packages were placed. The State first created this package on October 7, 2015; it made four written proposals on this package. The Union made one written proposal, verbally held on another occasion, and on a third occasion agreed to a single provision while holding to the rest. The remaining issues as of January 8, 2016 were Cash Payment for Holidays, various overtime provisions, and limitations on retiree health care for employees who join State service after ratification of the CBA.

There had been little discussion and almost no movement on the provisions in this package since it was put together in October. There is no question that the parties were deadlocked on the issue of Cash Payment. The Union stated clearly at the table that the Union would not agree to reduce employees' holiday pay. Similarly, throughout bargaining on the issue of overtime, the State had never indicated its willingness to continue providing overtime after 37.5 hours per week and the Union never took any action that would indicate its willingness to move on that point. In its brief, the Union argues that, because other bargaining units had successfully bargained for less restrictive overtime than the State was holding to here, that it was reasonable for the Union to believe the State was willing to continue bargaining despite the consistent holds and rejections.

In contrast, there had been little discussion over the State's proposal that for all bargaining unit members hired after ratification, they would receive the same health insurance as active employees and bear 100% of the cost of dependent coverage in retirement. In the limited discussion of this issue, the Union balked at the idea of giving up what amounted to $1,700 per month in deferred compensation to bargaining unit employees. The State made movement in late October by deleting one of the two provisions on retiree health insurance and held to that position in its December 1, 2015 proposal. Other than a brief discussion on November 2, 2015, wherein the Union questioned whether the State's proposal conflicted with the Illinois Supreme

Court's decision in *Kanerva v. Weems*, there was no other discussion on this issue. Because of the importance of this issue and the limited discussion on this topic, I do not find that the parties are at impasse on this package. Even if the Board were to disagree with me on that point, I find that the State would not be privileged to implement its last, best, and final offer as it relates to retiree health insurance, because to do so would result in an unlawful unilateral implementation of a waiver of the statutory right to retiree health insurance.

6. Vacation, Holiday Scheduling, and Leaves of Absence

The Union raises two contentions in support of its argument that the parties are not at impasse on this package: (1) the main obstacle to agreement on this package was the State's proposal to reduce payment for holidays and super holidays and (2) that the Union had requested information on a prior concession that it had yet to receive. On this first point, the Union argues that it was aware that the State had withdrawn similar holiday proposals in negotiations with other bargaining units; therefore, it had no reason to think that the State would declare impasse over that issue. Essentially, the Union is arguing that the parties were not at impasse because it was waiting for the State to withdraw its proposal. Next, the Union points to information it sought, but had not received. However, the Union does not argue that it needed the information to formulate new proposals or to assess a proposal of the State. Instead, it argues that it wanted the information to justify *not changing its position*.

It is settled that no party can be required to make a concession. 5 ILCS 315/7. The Union's argument makes clear that it was biding its time until the State made a concession. By its declaration of impasse, the State has indicated, consistent with its conduct at the bargaining table, that it was unwilling to make the concession the Union sought. Moreover, on January 7, 2016, the Union stated clearly at the table that it would not agree to reduce employees' holiday pay. With that record, I find that the State was warranted in assuming that future bargaining would be futile and that the parties are at impasse on this package and that the State would be privileged to implement its last, best, and final offer on this package.

7. DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX & XX)

The issues in this package are not proposals as high stakes as wages, health insurance or subcontracting, and yet, the parties could not find a way to reach agreement. The bargaining on this package is illustrative of the overall pattern between the parties in this round of bargaining. The State made a number of proposals. It withdrew a number of them and modified others to

address the Union's concerns raised at the table. For example, it withdrew its proposal to have DOC and DJJ treated as separate agencies, but sought to address issues through creation of a separate grievance committee for DJJ and to treat DOC and DJJ employees the same as bargaining unit members of other agencies when it came to bumping rights. These changes were rejected. The State also tried to link a number of proposals together with each side agreeing to withdraw proposals. The Union rejected the linkage and withdrew a single proposal. In its final move on this package, the Union continued to reject the State's proposals, held to its proposals, and added its Reducing Inmate Recidivism Through Increased Rehabilitation Opportunities MOU to the package.

Newman testified that the Union had never indicated its willingness to "fall on its sword" over the DJJ grievance committee or the Records and Forms proposal. However, the Union's conduct through its final proposal reflects an unwillingness to move on several issues that the parties had discussed *ad nauseum* and willingness to delay resolution on this package by adding an MOU which the State had indicated for months it (1) believed to be a permissive subject of bargaining and (2) that while a good idea, was not something it was willing to bargain over due to the budget crisis. In my judgment, it was not unwarranted for the State to assume that further bargaining on this package would have been futile. The parties were no longer moving closer to an agreement. Therefore, I find that the parties were at impasse on this package and the State would be privileged to implement is last, best, and final offer on this package.

8. Health and Safety Outstanding Issues

The issues in this package were subject to more proposals than any other package over which the parties bargained. The parties successfully reached agreement on numerous issues. The parties bargained Parking until they were blue in the face, and this issue was not included in the last, best, and final offer. On the issue of Parole Agent Safety and Equipment MOU, the parties reached agreement on one of the three issues on December 1, 2015, and disagreed on the remaining two, not in principle but on how best to address the issues. However, on the issue of Reasonable Suspicion Drug and Alcohol Testing/Reasonable Suspicion of Impairment, with the Union's January 7, 2016 proposal, the parties were still moving toward one another. While the Union's proposal did not include testing, it did include that employees "found to be impaired could be subject to discipline." It also incorporated the State's enumerated basis on which

reasonable suspicion could be based. Further, it provided a definition of "qualified supervisor," which was a topic of conversation between the parties when bargaining over this issue.

Because the parties were still moving toward one another, I find that the parties were not at impasse on this package.

9. Mandatory Overtime

The parties are not unaccustomed to bargaining over mandatory overtime. In this round of negotiations, they exchanged many proposals and had substantive discussions in subcommittee on this package. The State would not be unwarranted in assuming that the Union was at the end of its rope. The Union had not moved on its limitation of unexpected absences being only those that were discovered within 3-hours of the start of a shift since July, even after the subcommittee meetings. The State modified its proposal to provide the Union information to verify the need for mandation, and the State modified its proposed window twice. In its last proposal on this package, the Union continued to hold to its three-hour window for unexpected absences resulting of mandatory overtime and incorporated/modified the State's language regarding efforts to find volunteers to alleviate the need for mandation (though making each and every item mandatory). The Union's proposal made the Employer's efforts to find a volunteer mandatory and a basis for refusal of a mandation, specified documents that must be maintained and made available to the Union upon request, required creation of additional paperwork to document each and every step taken for each and every mandation, created of a packet of documents to be provided to the local union for each shift where mandation occurs, added a bargaining obligation if a conflict exists between supplemental agreements and the Master Agreement, added meetings to be held at each 24/7 facility to discuss staffing issues targeted at reducing mandatory overtime, required assignment of a manager on each shift to monitor mandatory overtime assignments at facilities with more than 100 employees, and required the State to create and fill a vacancy if an employee is on an extended leave of absence.

The Union argues that there was no substantive discussion on this proposal before the State declared impasse. However, I find that the State was warranted in its assumption that with the Union making such a flagrantly regressive proposal, future bargaining on this issue would be futile. As such, I find that the parties are at impasse on this package and that the State would be privileged to implement its last, best, and final offer on this package.

10. Non-Discrimination, Upward Mobility Program (UMP), and Filling of Vacancies

This package has multiple components. In the last package submitted, the parties reached agreement through either a State withdrawal or agreement to the Union's proposal on seven separate provisions of this package. There were essentially three remaining issues: (1) the Union's proposals to add additional non-discrimination language; (2) funding for the UMP; and (3) the State's underutilization language. The first issue was rarely discussed and was not discussed after the last (November 18, 2015) proposal exchanged. On the issue of the UMP, the State had restored all the prior language and had agreed that if the set amount ($5 million) was sufficiently funded, the State would spend it on the program. However, the State was unwilling to continue to fund the program out of the general operating budget of State agencies. The Union resisted any requirement that the UMP be a specific line item in the State budget. Despite its desire that the State seek funding for the program, it never made another proposal. On December 1, 2015, Terranova tried to provide further clarity – if UMP specific money is budgeted, then the State would spend it on the UMP.

The parties had numerous and lengthy discussions on the State's underutilization proposal. The Union was very critical of the proposal, was not inclined to bargain over the topic, and made continuing and numerous requests for additional and different information to prove that there was an existing problem. The State further explained how the process would work and its intent in proposing it on December 2, 2015. Terranova explained that the State would examine whether an underutilization existed at the time it was seeking to fill a vacancy and that the proposal was intended to be a progressive change whereby the State could address a diversity problem if and when it may exist. Terranova indicated that the State "welcomed a counter to get to [this] goal." Despite this clarification and specific invitation for a counter, the Union never made another proposal. In fact, it had never made a proposal that in anyway responded to the issue of underutilization in any way other than a rejection.

In my judgment, the parties are deadlocked on this package. By evidence of their conduct at the table, neither side was inclined to bargain further on these issues. Despite additional discussions after the State's November 17, 2015 proposal, there had been no Union response and no Union proposal on this package at all since October 6, 2015. Therefore, I find that the parties are at impasse on this issue.

Despite finding that the parties would likely otherwise been at impasse on this package, I find that the State was required to provide the Union the opportunity to respond to the State's underutilization proposal after having received the requested underutilization information on January 7, 2016. Therefore, I find that the parties were not at a legitimate impasse on this package.

11. Management Rights and Check-off/Fair Share

With respect to the provisions in this package, the State initially sought to increase its reservation of rights in a number of ways, to eliminate the obligation to collect dues and political action fund (P.E.O.P.L.E.) contributions for the Union, and to delete all references to fair share. The State made numerous concessions, including continuing to collect dues and P.E.O.P.L.E. contributions, restoring all fair share language from the prior CBA, withdrawing its proposal to limit the exercise of its right to *an express provision* of the CBA. There are only two remaining issues: (1) the State's proposal that when exercising its statutory rights, the State is limited only by the *express provisions* of the CBA and (2) the State's proposal to add language to the fair share provision indicating that it believed it to be unconstitutional and, if the Supreme Court so found, it would stop processing those payments.

These two provisions and subsequent rejections have been part of this package since July. The Union never indicated any willingness to consider limiting the parties' rights to the express provisions of the CBA. A similar proposal garnered much discussion in the context of limiting grievances to the express terms of the CBA. In fact, on that package, the parties were only able to reach agreement when the State withdrew that change. By including this provision in its last, best, and final offer, the State appears to indicate its unwillingness to make a similar concession when it comes to its exercise of its statutory rights.

The fair share language is important to the State, because the Rauner administration has taken the policy stance that fair share fees are unconstitutional. According to the Union's comments at the table, the proposed language has no practical effect to the fair share process set out in the CBA or how bargaining unit members can exercise their rights. Even so, the Union has continued to reject the inclusion. The parties also unsuccessfully attempted to resolve the language through their lawyers away from the table.

I find that the parties were at impasse and that the State would be privileged to implement its last, best, and final offer on this package.

12. Semi-Automatic/Classification In-Series Advancement

This package dealt with what bargaining unit position could be subject to semi-automatic, in-series advancement (e.g., a Corrections Food Service Supervisor I who successfully completes a certain amount of time in the title is promoted to and paid as a Corrections Food Service Supervisor II without need to bid on the job). Primarily because of the cost of these advancements, the State initially proposed deleting all but four of them. The Union proposed keeping all existing titles and adding additional title subject to semi-automatic, in-series advancement. The Union also proposed certain titles receive salary grade upgrades, and sought to provide certain titles with additional bidding rights. The parties each made numerous moves, with the State modifying to allow all existing semi-automatic, in-series advancement title to remain in a CBA and agreeing to reclassify certain titles rather than give them a salary upgrade. The Union slowly modified its proposed additional titles and upgrades. The State continued to reject the Union's proposed additions due to the cost associated with the proposals.

A second pending issue related to how the parties dealt with titles where some are covered by the CBA and others are excluded from the bargaining unit. On January 7, 2016, the Union countered both of the State's proposals on this issue that had been on the table since August. First, where the State had withdrawn its deletion of an MOU in favor of keeping the language from the prior CBA, the Union proposed adding language that would limit treatment of split titles to those in a specific list. Second, where the State had proposed deleting language reflecting the parties agreement to take certain action in 2004 to clear up bargaining unit representation issues, the Union countered to modify the language to clarify that it was historical language rather than deleting it.

Finally, the State had proposed to add to the titles for which it could require applicants to havespecialized skills. During bargaining, the State had withdrawn all but one of its proposed additional titles. The Union continued to reject any addition to the list of titles with specialized skills.

As Lynch noted on January 7, 2016, the Union had modified this package more than any other and was attempting to address the State's concerns (at least with respect to Forensic Scientists and the 2004 language in the Split Classification MOU). While I certainly understand why the State was frustrated with the Union's glacial movement on this package, had the State made the Union aware that it was at the end of its rope (or was nearing there) and the Union

continued to make little or no movement, perhaps my assessment would be different. However, based on the record before, I do not find that the parties are at impasse on this package.

K. Other Issues Arising out of the Amended Complaint

While the analysis section has focused on the question of impasse, which addresses the Union's allegation that the State violated the Act by declaring impasse when there was, in fact, not an impasse, the Union's Amended Complaint raises other stand-alone unfair labor practices, specifically violations of the duty to bargain in good faith. As detailed below, a number of these allegations have already been addressed in the analysis of the impasse question above. I summarize those here and address those that have not been already addressed.

The Union alleges that with respect to merit pay and health insurance, the State's proposals unilaterally imposes a waiver of the right to bargain over wages and the nature and cost of health insurance, such that it is a permissive subject of bargaining, as well as the waiver of the right to bargain collectively through the exclusive bargaining representative. (Am. Compl. ¶¶ 107, 110, and 113). I have analyzed and rejected these arguments above. The Union also alleges that the imposition of such a waiver upon impasse violates the Act and compels the Union to make a concession. (Am. Compl. ¶¶ 109, 112, and 115). I have similarly rejected these arguments. To the extent that the law allows an employer to unilaterally implement its last, best, and final offer when the parties have reached a legitimate impasse, the Union's argument that such implementation unlawfully "compels a concession" is meritless. Certainly, any unilateral implementation is most likely imposing a concession of some sort on a union. If it were not a concession, the parties may have already reached agreement.

The Union also alleges that the State engaged in direct dealing with it issued the Employee Engagement Survey and made various comments away from the table. (Am. Compl. ¶¶ 116 and 128). As noted above, I find that a number of these allegations are untimely, and I rejected the rest.

The Amended Complaint alleges that that the State largely failed to explain its positions at the bargaining table. (Am. Compl. ¶124). However, the record does not support this allegation. While Terranova certainly, on occasion, indicated that he would follow up and get back to the Union, that is not indicative of bad faith. The record reveals that the State provided substantive responses to the rationale and effect of its proposals. And though the Union did not often like the answers it received, the State answered the questions posed to it.

Further, the Union alleges that the State's away-from-the-table statements "inhibited the [parties] from having meaningful discussions and the free exchange of proposals during bargaining." (Am. Compl. ¶¶126 and 127). This allegation is addressed and rejected above. Similarly, I have addressed and rejected the Union's allegation that the State refused to bargain over Parking and Records and Forms proposals. (Am. Compl. ¶ 129).

The Union also argues that the State violated the Act by failing to meet with it for the purposes of continuing bargaining after January 8, 2016. (Am. Compl. ¶ 133). On this point, Newman testified that he anticipated the parties would continue to bargain while the process before the Board was complete. He referenced that when AFSCME bargaining unit members in Will County, Illinois, went on strike, AFSCME and the Employer continued to bargain. While an employer facing a strike may feel a strong compulsion to continue bargaining, an impasse declaration indicates that an employer feels that further bargaining would be futile. The NLRB has long held that "'[A] good-faith impasse in negotiations temporarily suspends the duty to bargain." *Erie Brush & Mfg. Corp. v. N.L.R.B.*, 700 F.3d 17, 24 (D.C. Cir. 2012) *citing Serramonte Oldsmobile, Inc. v. N.L.R.B.*, 86 F.3d 227 (D.C. Cir. 1996). There exists no legal obligation to continue bargaining when the parties are at impasse. The Tolling Agreement does not change that. At the point where a question exists as to the issue of impasse, the parties agreed to go through the Board's procedures. By evidence of Terranova's January 22, 2016 letter to Newman, the State had a very different idea of what effect the Tolling Agreement had on the parties' obligation to continue to bargain during any Board proceedings. While Newman's testimony reflects that the Union envisioned it working differently, there is insufficient evidence of a meeting of the minds on that point.

In paragraph 130 of the Amended Complaint, the Union alleges that the non-pensionable bonus provision of the State's merit pay proposal and the retiree opt-out provision of the State's health insurance proposal were illegal proposals under the Illinois Constitution. I addressed these proposals above. I found that the proposals were not illegal, because the Supreme Court has held that pension benefits can be modified through a bargained-for exchange. Similarly, in the following paragraph, the Union alleges that the State engaged in unlawful surface bargaining. This allegation is addressed and rejected in the discussion of the Union's allegation that the State engaged in a pattern of overall bad faith above.

The Union also alleges that the State failed in its duty to bargain in good faith when it failed to provide multiple pieces of information. The duty to bargain in good faith includes an obligation to provide requested information to an exclusive representative where such information is potentially relevant and reasonably necessary for the proper performance of the union's statutory duties. *Cnty. Of Champaign*, 19 PERI ¶ 73 (IL LRB- SP 2003). Failure to do so is a violation of Section 10(a)(4) and (1) of the Act. *Id.* I address all but two of these allegations above. In addressing the information requests above, I held that the State failed to provide the following: examples of criteria for high performers for the merit pay program, (Am. Compl. ¶ 51); projected savings for various cost savings initiatives related to health insurance, (Am. Compl. ¶ 54); savings from different levels of out-of-pocket increases, (Am. Compl. ¶¶63, 76-77); and costing of savings from Union's concession on vacations (Am. Compl. ¶79). I reject the remaining allegations.[43]

Two requests for information were made after the parties ceased bargaining, so they were not specifically addressed above. On February 10, 2016, Ron Hudson sent Terranova a letter[44] on the Union's behalf asking for additional data on State employees, including lists of employees and their demographic information for January 2015 and current, list of new hires since July 1, 2012, and list of promotions since July 1, 2012. It is uncontested that the State did not comply with this request. That failure is a violation of the State's duty to bargain in good faith, regardless of whether the Board finds the parties to be at a legitimate impasse and the State, therefore, privileged to implement its last, best, and final offer. The information is relevant and necessary to the Union's performing its statutory duties.

The last information request of which the Union complains the State failed to comply is found in Newman's February 11, 2016 letter. In this letter Newman largely restates prior information requests, which I have already addressed. However, there were several requests for information that had not been made before. It is uncontested that the State did not respond to

[43] With respect to information requests on underutilization, I do not find that the Union has shown that the State failed to produce or that the production was so untimely as to support an independent violation of Sections 10(a)(4) and (1) the Act. However, because the State declared impasse prior to the Union having had the opportunity to review the final submission of documents and respond, I found that the timing of the disclosure precluded a finding of impasse on that package.

[44] The Amended Complaint refers to this information as having been requested as part of Newman's February 11, 2016 letter; however, the record reflects it was first requested by Ron Hudson on February 10, 2016.

Newman's letter. The record reflects that the State has not provided responses to information requests related to distribution of merit pool bonuses, (Feb. 11 letter #4); more specific information regarding bargaining unit titles and IDHR categories, (Feb. 11 letter #9); the basis on which the State believed the Union's Parking proposal to be a permissive subject of bargaining, (Feb. 11 letter #12); whether the State still justified its proposal to limit overtime for only after 40 hours of work given the settlement of the Teamsters contracts, (Feb. 11 letter #14); and whether the State still justified its position on daily overtime given the settlement of the prevailing wage contracts, (Feb. 11 letter #15).

A remedy ordering the State to promptly turn over the responsive information; and where that information is related to a package on which the parties continue to bargain, allow the Union sufficient opportunity to respond to the State's proposals after review of the information; and to post a notice is appropriate to remedy these unfair labor practices.

The remaining allegation for which the question of remedy must be addressed is the Union's allegation that the State prematurely declared impasse, namely when the parties were not at a legitimate impasse. As the question requires a more detailed analysis, I address this question in the section below.

L. Crafting an Appropriate Remedy on the Declaration of Impasse

The Union's final allegation in its Amended Complaint is that on January 8, 2016, the parties were not at impasse; therefore, the State violated the Act by prematurely declaring impasse. The Union argues that the parties were not, in fact, at impasse on any package and that the State's unfair labor practices preclude a finding of impasse. As set out in the previous two sections, I rule in favor of the union on some, but not all, of these allegations, which leads to the question of fashioning an appropriate remedy.

To summarize, I find the record supports the Union's contention that the parties were not at impasse with respect to the following four packages: Layoff, Outstanding Economics, Health and Safety Outstanding Issues, and Semi-Automatic/Classification In-Series Advancement packages. In contrast, I find that the record reflects that the parties were at a legitimate impasse on the following five packages: Subcontracting; Vacation, Holiday Scheduling, and Leaves of Absence; DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX & XX); Mandatory Overtime; and Management Rights and Check-off/Fair Share packages.

Further, there are two packages that the Union successfully proved that the State's unlawful failure to provide information precludes a finding of impasse on two package: Wages and Steps and Appendix A – Health Insurance. While the State's failure to provide the Union an opportunity to respond after having provided the information precluded impasse on a third package - Non-Discrimination, Upward Mobility Program (UMP) and Filling of Vacancies.

I have also found that the State's last, best, and final offer on its Wages and Steps, Appendix A – Health Insurance, and Outstanding Economics packages each includes a provision that, if implemented, would result in an unlawful unilateral implementation of a statutory waiver.

My findings that (1) some provisions included in the State's package proposals require the waiver of a statutory right and (2) the parties were not, in fact, at a legitimate impasse on a number of packages, raise the question of the appropriate remedy. The parties present two very different avenues for a remedy in light of my findings. I address each one in turn and ultimately recommend a third option for the Board's consideration.

1. Standard Remedy

The Employer points out in its brief that an employer's right to unilaterally implement its last, best, and final offer following impasse is not an extreme occurrence or destructive of the bargaining process. *See Charles D. Bonanno Linen Service, Inc.* 243 NLRB 1093 (1979), *enforcement granted* 630 F.2d 25 (1st Cir. 1980), *aff'd* 454 U.S. 404, 412 (1982); *City of Peoria*, 11 PERI ¶ 2007. While this is true, labor law has developed in such a way that labor organizations have multiple mechanisms to challenge a finding of impasse and any unilateral implementation. Here, the Union argues for a strict application of the impasse factors. Essentially, the Union argues, and cites NLRB authority for the proposition, that any unremedied unfair labor practice and the existence of a single issue on which the parties are willing to move preclude a finding of impasse as to the whole negotiations and requires that the Board order the parties back to the bargaining table as if it were January 9, 2016.

The Board would certainly be justified if it followed the approach set out by the Union. However, the standard remedy of an affirmative bargaining order on the entire CBA would likely do little to assist the parties in reaching agreement, which would only further deteriorate what labor harmony exists between these parties.

2. Single Issue Impasse

The State provides an alternative to the standard application and remedy. It cites NLRB precedent for the proposition that "impasse may be reached where there is inability to achieve agreement over only a single issue, where the single issue is 'of such overriding importance' to the parties that the impasse on that issue frustrates the progress of further negotiations." *CalMat Co.*, 331 NLRB 1084, 1097 (2000) (impasse reached due to disagreement over pension plan). The parties agree that the NLRB applies a three-factor test to determine whether impasse exists as a result of non-agreement on a single, critical issue: (1) the actual existence of a good-faith bargaining impasse; (2) the issue as to which the parties are at impasse is a critical issue; (3) the impasse on this critical issue led to a breakdown in the overall negotiations. *Id.* In *CalMat*, even when the union conceded "comparatively minor" benefits such as holidays and vacations, the NLRB concluded that over a seven-month negotiation period, the parties did not "modify their positions on the critical issue." *Id*. at 1100. As a result, the NLRB concluded that an impasse existed based on the stalemate regarding the critical issue, in that case the pension plan. *Id*. at 1101.

The Union cites two recent NLRB decisions to support its contention that the bar for showing impasse resulting from impasse on a single, critical issue is very high and that the prescribed standards are "demanding." In *Prime Healthcare Centinela, LLC*, 363 NLRB No. 44 (2015), slip op. at 12, the NLRB declined to find a single issue impasse as to healthcare where the evidence was not sufficient to show that any impasse over healthcare led to a breakdown in overall bargaining. The NLRB also pointed to the employer's "eleventh-hour changes" to its bargaining proposals, including its proposal on the critical issue of healthcare, required a finding that the parties were not at impasse. *Id.* slip op. at 10. Similarly, in *Atlantic Queens Bus Corp*., 363 NLRB No.65 (2015), slip op. at 6, the NLRB rejected the employer's contention that the parties had reached impasse on a single, critical issue. In so finding, the NLRB held that movement by both parties on another topic of negotiations (wages) on the day the employer declared impasse showed that the parties were not unable to make progress on other aspects of negotiations until they resolved the critical issue on which the employer claimed to be at impasse. *Id.*, slip op. at 12-14.

I can find no precedent wherein the Board has addressed the question of whether a party can establish a bargaining impasse by showing a sufficient deadlock on a single, critical issue.

Therefore, the policy question of whether to adopt this alternative method of determining impasse is a matter of first impression for the Board. I analyze the issue below and ultimately recommend that even if the Board is inclined to allow a party to prove impasse based on impasse over a single, critical issue, it not apply it in this case.

a. Actual existence of a good-faith bargaining impasse

With respect to the first factor, actual existence of a good-faith bargaining impasse, I have found that the parties generally bargained in good faith. Specifically, I reject the Union's arguments that the State engaged in a pattern of conduct indicative of bad faith bargaining and that the State was engaged in unlawful surface bargaining. While I did find that the State had promised information and failed to provide it or provided it without sufficient opportunity for the Union to respond, the record does not support that the requested information was likely to alter the position the Union had taken that led to the deadlock.

Further, though I find that the State's last, best, and final offer contained three provisions that required a waiver of a statutory right, I do not find that they unlawfully insisted to impasse on a permissive subject of bargaining. *City of Wheaton*, 31 PERI ¶ 131; *Vill. of Midlothian*, 29 PERI ¶ 125 (IL LRB-SP 2013). Specifically, I find that the record does not support a finding that any of the permissive subjects were the basis for the State's declaration of impasse. For example, I cannot find on this record that had the Union agreed to the State's health insurance proposals, with the exception of the retiree opt-out provision, the State would have still considered the parties to have been at impasse on that issue. While I considered the impact that the statutory waiver provisions had on the State's ability to unilaterally implement its last, best, and final offer, that consideration does not support a finding that the State committed an unfair labor practice by insisting to impasse on a permissive subject such that the State violated its duty to bargain in good faith. Therefore, I find that this first factor is satisfied.

b. The issue as to which the parties are at impasse is a critical issue

Though the State provides legal support for the Board to extend its analysis of impasse cases to include finding an impasse created by the inability to achieve agreement over a single, critical issue, it does not identify what issue(s) it contends are critical. Based on the record, it is reasonable to assume that Wages and Steps, Health Insurance, and Subcontracting were all three issues of such overriding importance to the parties that impasse on any one of those issues could

frustrate the progress of further negotiations. Thus, each of these issues could satisfy the second prong of the NLRB's single issue impasse test.

As discussed in the previous section, the parties were at an actual impasse, because they both had held fast to their core positions on the primary proposals in the package, on each of these three packages. While there are some impediments to implementation on the Wages and Steps and Health Insurance packages, no such impediment exists with respect to the Subcontracting package. Therefore, I find that this factor is satisfied.

c. Impasse on the critical issue led to a breakdown in the negotiations

Finally, the NLRB looks at whether the impasse on the critical issue led to a breakdown in the overall negotiations. The Union argues that the State cannot prove that an impasse on any single issue precluded movement or even agreement on other pending issues. However, the NLRB has rejected this argument in other single-issue impasse cases.

In *Erie Brush & Mfg. Corp. v. N.L.R.B.*, 700 F.3d 17 (D.C. Cir. 2012), the court reversed the NLRB's decision that a single issue impasse did not exist. On this third factor, the NLRB held that the employer had failed to show that the good faith impasse on two particular issues had led to a breakdown in negotiations before the parties had even begun to bargain over economics. The court reversed, holding, "Because 'the parties' failure to agree on this issue destroyed any opportunity for reaching a ... collective-bargaining agreement," the impasse on [even one of the outstanding issues] led to a breakdown in overall negotiations." *Id.* at 23 *citing CalMat*, 331 NLRB at 1098. The court held that where the record reflected that the parties "diametrically opposed positions on [the critical issue] 'presented … an insurmountable obstacle to an agreement,'" the third factor is satisfied. *Id.* at 23 *citing Richmond Electrical Services, Inc.*, 348 NLRB 1001, 1003 (2006); *see also Richmond Elec. Servs., Inc.*, 348 NLRB 1001 (2006) (inability of the parties to reach agreement on the wage rate that would be paid during the first year of the contract created impasse even though the parties had not fully discussed what the wage rate would be for the final two years of the agreement).

Similarly, here, I find that the record reflects that as of January 8, 2016, the parties had diametrically opposed positions on wages, health insurance, and subcontracting. The States failure to provide information precludes me from finding a legitimate impasse on the Wages and Steps and Appendix A – Health Insurance packages. This is not the case for subcontracting, as I find that the parties did reach a legitimate impasse on this issue. The record reveals that the

impasse on this critical issue was an insurmountable obstacle to an agreement. Therefore, I find that the third factor is satisfied.

Though the Board could find that there was impasse on one of the three critical issues, and that under the NLRB precedent, this would presumably allow the State to implement its entire last, best, and final offer, I find that this remedy is, like the standard remedy urged by the Union, extreme when applied to this case. The parties were at impasse on a large number of packages, but they were not at impasse on several others. If the State were able to implement its entire last, best, and final offer, the implications and impact would be so enormous that, when applied to this case, it would be destructive of the collective bargaining process and not serve the statutory mission of the Board. Therefore, I recommend that the Board not adopt the single issue impasse standard, or at least refuse to apply it to this case.

3. An Alternative, Limited Remedy Better Serves the Purpose of the Act.

For more nearly 50 years, the NLRB has looked as impasse as a question of judgment. *Taft Broadcasting Co.*, 163 NLRB 475. After spending extensive time with the factual and legal matters raised in this case, I am left with the firm conviction that both parties entered negotiations with the intent to bargain and bargain *hard*. I do not imagine that an objective reviewer of this record will come away with a belief that either side acted as in a completely virtuous manner. However, like all things, good faith bargaining is a sliding scale with some lawful conduct looking less like good faith but not necessarily falling so deficient as to be unlawful bad faith bargaining. Certainly, neither party went out of their way to make negotiations easier on the other or to be overly accommodating, nor is this required of the parties under the law.

Instead, these negotiations reflected a battle mindset on both sides of the table, with each willing to do what it takes to achieve its bargaining goals. However, this mindset does not mean that either side was not sincerely seeking to reach agreement. The Union clearly did not share the State's interest in having the contract settled expeditiously. The Union contends that the State was unlawfully intransigent on its bargaining goals; accordingly, the Union looks with indifference at the number of proposals the State withdrew and the number of proposals on which the parties reached agreement. The State urges that it came in to bargaining looking for a negotiated agreement, but the Union largely failed to respond to proposals in a way that would actually bring the parties closer together. Despite their many differences in philosophy and

approach, I find that record before me, taken as a whole, reflects that each side sincerely hoped to reach agreement, though they had vastly different views of what that agreement should look like and had varying levels of optimism about whether they would actually be successful.

Therefore, I am resistant to accept either of the parties' lawful, yet extreme, positions on remedy. Instead, I recommend that the Board adopt an alternate approach. I recognize that a decision on whether to adopt an alternative remedy is a policy decision that is within the exclusive province of the Board. Some support exists for an alternative remedy in the Board's precedent, specifically in cases where, as here, that alternative remedy accomplishes the Board's statutory mission to promote labor harmony and "to provide peaceful and orderly procedures for protection of the rights of all." 5 ILCS 315/2. Recently, in *Village of Glenwood*, 32 PERI ¶ 159 (IL LRB-SP 2016), the Board held:

> [W]hen crafting an unfair labor practice remedy, we have typically ordered the parties to return to the status quo ante and make whole any affected employees. However, we have on occasion limited or altered our remedy when the facts of a case have warranted such action. *See State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Agriculture)*, 13 PERI ¶ 2014 (IL SLRB 1997); *State of Ill., Dep't of Cent. Mgmt. Servs. and Corrections*, 5 PERI ¶ 2001 (IL SLRB 1988), *aff'd Am. Fed'n of State, Cty. & Mun. Employees, AFL-CIO v. Ill. State Labor Relations Bd.*, 190 Ill. App. 3d 259 (1st Dist. 1989). Both the National Labor Relations Board (NLRB) and the Illinois Educational Labor Relations Board (IELRB) have issued limited remedies in cases where an employer has unlawfully refused to bargain. *See Transmarine Navigation Corp. (Transmarine)*, 170 NLRB 389 (1968); *East St. Louis Sch. Dist. No. 189*, 16 PERI ¶ 2029 (IELRB 2000); *Lombard Sch. Dist. No. 44*, 5 PERI ¶ 1038 (IELRB 1989). After reviewing the facts of the instant case, we believe a more limited remedy is warranted and would better effectuate the purposes of the Act. 5 ILCS 315/11(c).

Moreover, in *City of Park Ridge*, 32 PERI ¶ 151 (IL LRB-SP 2016), the Board found the parties' conduct was "so factually and substantively anomalous" that it required an alternative remedy.

This is not a new phenomenon. Shortly after the Board was established, in the context of the Board's resolution of a unilateral implementation following declaration of impasse in *Ill. Dept. of Cent. Mgmt. Services and Dep't of Corr.*, 5 PERI ¶ 2001 (IL SLRB 1988), the Board also had occasion to fashion a partial remedy. There, these same parties were bargaining over an employee drug testing policy at DOC. The parties had reached agreement on a large number of issues, but were unable to reach agreement on a disciplinary scheme for the new policy. The Board found that the parties had not reached impasse on the issue of discipline. Despite finding that they had not reached impasse on that issue, the Board reversed the administrative law

judge's recommended order that the Department rescind the policy until bargaining was included. Instead, the Board allowed implementation while bargaining continued.[45]

Similarly, here, I recommend the Board adopt a modified remedy, namely partial implementation. Specifically, I recommend that the Board allow the State to implement the packages on which the parties have reached impasse and for which there exists no other impediment to implementation: Subcontracting; Vacation, Holiday Scheduling, and Leaves of Absence; DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX & XX); Mandatory Overtime; and Management Rights and Check-off/Fair Share packages. Of course, nothing would prevent the State from continuing to bargain over these issues if it so chose.

On packages on which the parties are not at impasse or that the State either failed to provide information or provide the Union sufficient time to respond once receiving the information, I recommend the Board order the State to provide the requested information and send the parties back to the table for further bargaining and resolution of issues precluding implementation. Those packages include the following: Wages and Steps, Appendix A – Health Insurance, Layoff, Outstanding Economics, Health and Safety Outstanding Issues, and Semi-Automatic/Classification In-Series Advancement.

Throughout this recommended decision and order, I have commented that I am in largely unchartered waters in that the Board has rarely decided questions of impasse and never in a case coming even close to the breadth of issues and enormity of impact as this one. This case raises a number of significant anomalies - the size of the bargaining unit, the wide ranging issues on which the parties had not reached agreement, the magnitude of the impact of the proposed changes. I find that this proposed remedy most comprehensively protects the rights of both parties preserved by the Act, promotes labor harmony by assisting in the efficient resolution of the remaining issues, and is an appropriate use of the Board's broad discretion in crafting remedies.

[45] Even more anomalous from the standard remedy was the Board's final decree, "Finally, we request that the Board's Compliance Officer be in contact with the parties to ensure that bargaining over the subject of discipline, as set forth in this decision, commences immediately pursuant to this order. Should we find that either party is not complying with this order, we shall thereafter consider alternative methods to see that the parties' statutory bargaining obligations are met."

VII. CONCLUSIONS OF LAW

1. The Union did not violate Sections 10(b)(4) and (1) of the Act by repudiating the parties' Tolling Agreement by not agreeing to submit the question of the existence of an impasse to the Board.

2. The State, by virtue of its merit pay proposal, did not violate Sections 10(a)(4) and (1) of the Act by imposing a waiver of the right to bargain with respect to wages.

3. The State, by virtue of its health insurance proposal, did not violate Sections 10(a)(4) and (1) of the Act by imposing a waiver of the right to bargain of the nature and cost of health insurance benefits.

4. The State, by virtue of its wages and health insurance proposals, did not violate Section 10(a)(4) and (1) by imposing a waiver of the right to be the exclusive representative of employees with respect to wages and benefits.

5. The State violated Sections 10(a)(4) and (1) by failing to provide the Union with the following requested information:

a. Examples of criteria to determine high performing employees under the State's merit pay proposal;

b. The projected savings for each of the healthcare cost savings initiative the State wanted the Union consider;

c. A costing of savings generated by various levels of increases in deductibles and other out-of-pocket health insurance costs;

d. A costing of the Union's concession on vacations as it related to the State's initial proposal;

e. The information requested in Ron Hudson's letter of February 10, 2016:

i. Current list of all state employees under the Governor's jurisdiction which includes employee name, classification title, agency, race, gender, hire date, work county, bargaining unit, pay grade and salary;

ii. A list with the same information above on January 12, 2015;

iii. A complete list of all new hires under the jurisdiction of the Governor since July 1, 2012, which includes employee name, classification title, agency, race, gender, hire date, work county, bargaining unit, pay grade and salary; and

iv. A list of all promotions under the jurisdiction of the Governor since July 1, 2012, which includes employee name, classification title (prior title and the employee was promoted to), agency, race,

gender, hire date, promotion date, work county bargaining unit, pay grade and salary;

f. The following information requested in Mike Newman's letter of February 11, 2016:

i. Information related to distribution of merit pool bonuses;

ii. More specific information regarding bargaining unit titles and IDHR categories;

iii. The basis on which the State believed the Union's Parking proposal to be a permissive subject of bargaining;

iv. Whether the State still justified its proposal to limit overtime for only after 40 hours of work given the settlement of the Teamsters contracts; and

v. Whether the State still justified its position on daily overtime given the settlement of the prevailing wage contracts;

6. The State did not violate Sections 10(a)(4) and (1) by largely failing to explain its proposals.

7. The State did not violate Sections 10(a)(4) and (1) by its away-from-the-table statements.

8. The State did not violate Sections 10(a)(4) and (1) by Governor Rauner's letter to legislators on September 2, 2015.

9. The State did not violate Sections 10(a)(4) and (1) by engaging in direct dealing with bargaining unit members.

10. The State did not violate Sections 10(a)(4) and (1) by refusing to bargain over the Union's Parking and Records and Forms proposals.

11. The State did not violate Sections 10(a)(4) and (1) by making illegal proposals in bargaining.

12. The State did not violate Sections 10(a)(4) and (1) by engaging in surface bargaining.

13. The State did not violate Sections 10(a)(4) and (1) by failing or refusing to meet with the Union for the purpose of bargaining during the time the Board was determining the question of the existence of an impasse.

14. The State violated Sections 10(a)(4) and (1) by declaring impasse on the Layoff, Outstanding Economics, Health and Safety Outstanding Issues, and Semi-

Automatic/Classification In-Series Advancement packages, where the parties were not at impasse.

15. The State did not violate Sections 10(a)(4) and (1) by declaring impasse with respect to the Subcontracting; Vacation, Holiday Scheduling, and Leaves of Absence; DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX & XX); Mandatory Overtime; and Management Rights and Check-off/Fair Share packages, as the parties were at a legitimate impasse on these packages.

16. The State violated Sections 10(a)(4) and (1) by declaring impasse on its Wages and Steps; Appendix A – Health Insurance; and Non-Discrimination, Upward Mobility (UMP), and Filling of Vacancies packages without having provided requested information or having not provided the Union sufficient opportunity to review and respond to the State's proposal.

VIII. RECOMMENDED ORDER

The Complaint for Hearing against the Union in ILRB Case No. S-CB-16-017 is dismissed.

The Amended Complaint for Hearing against the State of Illinois, Department of Central Management Services is dismissed as to the allegations that the State violated Sections 10(a)(4) and (1) by the following conduct: imposing a waiver of the right to bargain with respect to wages; imposing a waiver of the right to bargain of the nature and cost of health insurance benefits; imposing a waiver of the right to be the exclusive representative of employees with respect to wages and benefits; largely failing to explain its proposals; making away-from-the-table statements that inhibited the parties ability to reach an agreement; making statements to legislators more favorable than those made at the bargaining table; engaging in direct dealing with bargaining unit members; refusing to bargain over the Union's Parking and Records and Forms proposals; making illegal proposals in bargaining; engaging in surface bargaining, failing or refusing to meet with the Union for the purpose of bargaining during the time the Board was determining the question of the existence of an impasse; and declaring impasse with respect to the Subcontracting; Vacation, Holiday Scheduling, and Leaves of Absence; DOC/DJJ Roll Call (Definition of Terms, Articles V, XII, XVII, XIX & XX); Mandatory Overtime; and Management Rights and Check-off/Fair Share packages, as the parties were at a legitimate impasse on these packages.

It is hereby ordered that the State of Illinois Department of Central Management Services, its officers and agents shall:

A. Cease and desist from:

1. Failing to bargain collectively in good faith with the American Federation of State, County and Municipal Employees (Union) by failing to provide requested information;

2. Failing to bargain collectively in good faith with the Union by declaring impasse on packages where the parties are not at impasse;

3. Failing to bargain collectively in good faith with the Union by declaring impasse on packages when the State has failed to provide requested information or failed to provide the Union with a sufficient opportunity to review and respond to the information; and

4. Failing and refusing to bargain collectively in good faith with the Union, in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;

B. Take the following affirmative actions designed to effectuate the policies of the Act:

1. As soon as practicable, provide the Union with the following information:

a. Examples of criteria to determine high performing employees under the State's merit pay proposal;

b. The projected savings for each of the healthcare cost savings initiative the State wanted the Union consider;

c. A costing of savings generated by various levels of increases in deductibles and other out-of-pocket health insurance costs;

d. A costing of the Union's concession on vacations as it related to the State's initial proposal;

e. The information requested in Ron Hudson's letter of February 10, 2016:

i. Current list of all state employees under the Governor's jurisdiction which includes employee name, classification title, agency, race, gender, hire date, work county, bargaining unit, pay grade and salary;

ii. A list with the same information above on January 12, 2015;

iii. A complete list of all new hires under the jurisdiction of the Governor since July 1, 2012, which includes employee name,

classification title, agency, race, gender, hire date, work county, bargaining unit, pay grade and salary; and

iv. A list of all promotions under the jurisdiction of the Governor since July 1, 2012, which includes employee name, classification title (prior title and the employee was promoted to), agency, race, gender, hire date, promotion date, work county bargaining unit, pay grade and salary; and

f. The following information requested in Mike Newman's letter of February 11, 2016:

i. Information related to distribution of merit pool bonuses;

ii. More specific information regarding bargaining unit titles and IDHR categories;

iii. The basis on which the State believed the Union's Parking proposal to be a permissive subject of bargaining;

iv. Whether the State still justified its proposal to limit overtime for only after 40 hours of work given the settlement of the Teamsters contracts; and

v. Whether the State still justified its position on daily overtime given the settlement of the prevailing wage contracts;

2. Upon request, bargain collectively in good faith with the Union over the terms of provisions of a successor agreement, specifically, the following packages: Wages and Steps; Appendix A – Health Insurance; Non-Discrimination, Upward Mobility (UMP), and Filling of Vacancies; Layoff; Outstanding Economics; Health and Safety Outstanding Issues; and Semi-Automatic/Classification In-Series Advancement packages;

3. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum C." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places and shall be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that these notices are not altered, defaced, or covered by any other material; and

4. Notify the Board in writing, within 20 days from the date of this decision, of the steps the State of Illinois has taken to comply herewith.

IX. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven (7) days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, either to the Board's Chicago office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filings must be served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this _2_nd day of September, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/s/ Sarah R. Kerley

Sarah R. Kerley
Administrative Law Judge

Appendix A

Management Last, Best and Final Offer
January 8, 2016

1341

Wages and Steps: Employer's last offer as proposed on 1/6/16

Health Insurance Appendix A: Employer's last offer as proposed on 12/17/15

Outstanding Economic Issues (includes proposals on Overtime after 40 hours worked and Holiday Cash Payment): Employer's last offer as proposed on 12/1/15

Subcontracting: Employer's last offer as proposed on 11/19/15

Management Rights and Check-Off/Fair Share: Employer's last offer as proposed on 9/10/15

Vacation/Holiday/LOA including pension: Employer's last offer as proposed on 1/6/16

Layoff: Employer's last offer as proposed on 12/18/15

Semi-Automatic/Classification: Employer's last offer as proposed on 1/6/16

DOC/DJJ Roll Call: Employer's last offer as proposed on 12/18/15

Mandatory Overtime: Employer's last offer as proposed on 12/18/15

Non-Discrimination/UMP/Filling of Vacancies: Employer's last offer as proposed on 11/17/15

Health and Safety Outstanding Issues: Employer's last offer as proposed on 12/1/15

601 2:41 P.M.

WAGES and STEPS

ARTICLE XII – Hours of Work and Overtime
UNION PROPOSAL – Union Counter, Management Rejects
Section ~~14~~15. Intermittent Schedules

Intermittent classifications shall be utilized only for job assignments that are characterized by periodic, irregular or seasonal scheduling. Where the Parties have mutually agreed that the use of intermittent employees is appropriate, no more than ~~five (5)~~**ten (10)** percent of employees in the classification shall be Intermittent employees.

ARTICLE XIX – Filling of Vacancies
UNION PROPOSAL – Management Rejects
Section 8. Promotion and Conversion of Intermittents

Where a vacancy arises in a work location in a classification for which there exists a parallel intermittent classification, intermittents who bid shall be grouped with bidders from the next lower-rated classification. Intermittent Program Representatives and Intermittent Service Representatives, shall be considered equal in status for filling vacancies for full time Program Representative and Service Representative Positions. In the event that an intermittent is awarded the position, he/she shall be considered converted in status. In the event that two (2) IDES Intermittent ~~Program Representatives~~ employees in the same job classification at the work location have been utilized for 1500 hours or more for three consecutive federal fiscal years, a full time ~~Program Representative~~ position for the affected classification shall be posted and filled at that work location. Intermittent laborers who are not certified shall be allowed to bid and will be interviewed for positions prior to hiring from the outside for full-time vacancies.

ARTICLE XXXII - Wages and Other Pay Provisions
MANAGEMENT PROPOSAL – Management Withdraws
Section 1. Wage Schedule

The negotiated pay rates for position classifications covered by this Agreement are set forth in Schedule A and shall become the rates of pay applicable to such position classifications. ~~The Governor shall request from the Illinois Legislature all of the monies necessary to fund all of the needs of the appropriate line accounts within the annual budget that are affected by this Agreement to meet the State's obligations as provided herein. All economic terms in this Agreement are subject to and contingent upon the legislature specifically appropriating funds in the appropriate line items to fund such terms. Failure to appropriate the necessary funds shall cause all economic terms to be held at their current levels until such time the parties can negotiate a supplemental Agreement.~~

MANAGEMENT PROPOSAL – Management Holds
Section 2. Promotions/Voluntary Reductions

When an employee is promoted, he/she shall be paid at the lowest step rate in the new position classification which represents at least a full step increase in his/her former classification. For those employees currently receiving longevity pay, as provided in Article XXXII, Section 6(c), shall be included in an employee's rate of pay when determining whether a step represents a full step increase. ~~If a promoted employee's creditable service date is within 90 days of the effective date of the promotion, the Employer shall also include the projected service increase in the computation of the promotional salary increase.~~

The salary of an employee who voluntarily requests a reduction during a probationary period following a promotion will be reduced to the same salary step in the lower salary range from which the employee was promoted and the employee's previous creditable service date will be restored.

~~An employee who takes a position in a trainee classification which represents a reduction shall have his/her salary red-circled at the rate of the former classification.~~

MANAGEMENT PROPOSAL – Management Holds

Section 4. Steps

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

~~Employees shall receive a step increase to the next step upon satisfactory completion of twelve months creditable service.~~

~~Intermittent employees shall receive a step increase to the next step, upon satisfactory completion of the applicable number of hours in the standard work year of creditable service.~~

Effective July 1, 2015 Educators will remain in their current lane for the duration of the agreement ~~who submit the appropriate documentation to the Employer which validates that the employee has attained the necessary requirements for a change in lanes shall be placed in the new lane in the next pay period during which the employee works.~~

~~Effective upon the date of signature of the Agreement,~~ **Step 1a, 1b, and 1c shall be implemented for all employees hired on or after September 8, 2013, ~~the date of signature of the Agreement~~ with a 3% step differential.**

UNION PROPOSAL – Union Counter, Management Rejects

Section 4. Steps

The Employer and the Union agree that a pay schedule that include periodic increases, such as step increases, that recognizes the value of employees' accumulated skills and experience is an important element of the state's ability to recruit and retain qualified and motivated employees.

Employees shall receive a step increase to the next step upon satisfactory completion of twelve months creditable service.

Intermittent employees shall receive a step increase to the next step, upon satisfactory completion of the applicable number of hours in the standard work year of creditable service.

Educators who submit the appropriate documentation to the Employer which validates that the employee has attained the necessary requirements for a change in lanes shall be placed in the new lane in the next pay period during which the employee works.

Effective upon the date of signature of the Agreement, Step 1a, 1b, and 1c shall be implemented for all employees hired on or after the date of signature of the Agreement with a 3% step differential.

UNION PROPOSAL – Management Accepts - TA

Section 5. Severance Pay

RC-6, 9, 10, 14, 28, 42, 62, ~~and~~ 63 and CU-500

MANAGEMENT PROPOSAL – Management Holds

Section 6. ~~General Increases~~ Wage Modifications

~~a) Effective July 1, 2013, the pay rates for all bargaining unit classifications and steps shall be increased by 2.00%, which rates are set out in Schedule A.~~

b) Effective July 1, 2014, the pay rates for all bargaining unit classifications and steps shall be increased by 2.00%, which rates are set out in Schedule A.

c)Effective January 1, 2002, the Step 8 rate shall be increased by $25.00 per month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 7 in the same or higher pay grade on or before January 1, 2002. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 7 in the same or higher pay grade on or before January 1, 2002, the Step 8 rate shall be increased by $50.00 per month.

For employees not eligible for longevity pay on or before January 1, 2002, the Step 8 rate shall be increased by $25.00 per month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade, the Step 8 rate shall be increased by $50.00 per month.

Effective July 1, 2010, the Step 8 rate shall be increased by $50.00 per month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2010, the Step 8 rate shall be increased by $75.00 per month.

Effective July 1, 2013, the Step 8 rate shall be increased by $25.00 per month to $75.00 a month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2013. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 2013, the Step 8 rate shall be increased by $25.00 per month to $100.00 a month.

~~d) Employees whose salaries are above the maximum Step rate will continue to receive all applicable general increases and any other adjustments (except [c], above) as provided for in this Agreement. For these employees, the increase provided for in (c) above shall be limited to the amount that would increase the employee's salary to the amount that is equal to that of an employee on the maximum Step rate with the same number of years of continuous and creditable service.~~

e) Notwithstanding anything above, employees receiving longevity pay shall continue to receive such pay as long as they remain in the same or successor classification as a result of a reclassification or reevaluation.

UNION PROPOSAL – Union Counter, Management Rejects

Section 6. General Increases

a) Effective July 1, 2015, the pay rates for all bargaining unit classifications and steps shall be increased by ~~2.00~~ **1.5**%, which rates are set out in Schedule A.

b) Effective July 1, 2016, the pay rates for all bargaining unit classifications and steps shall be increased by ~~3.00~~ **2.5**%, which rates are set out in Schedule A.

c) Effective July 1, 2017, the pay rates for all bargaining unit classifications and steps shall be increased by 3.00%, which rates are set out in Schedule A.

d) Effective July 1, 2018, the pay rates for all bargaining unit classifications and steps shall be increased by 3.00%, which rates are set out in Schedule A.

e) Effective January 1, 2016, should the Bureau of Labor Statistics National CPI-U exceed 3% (January to January) , the pay rates for all bargaining unit classifications and steps shall be increased by the CPI-U in the subsequent year.

~~e~~f) ...Effective July 1, 201~~3~~5, the Step 8 rate shall be increased by $25.00 per month to ~~$75.00~~ $100.00 a month for those employees who attain ten (10) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher pay grade on or before July 1, 201~~3~~5. For those employees who attain fifteen (15) years of continuous service and have three (3) or more years of creditable service on Step 8 in the same or higher paygrade on or before July 1, 201~~3~~5, the Step 8 rate shall be increased by $25.00 per month to ~~$ 100.00~~$125.00 a month.

~~e~~h) Notwithstanding anything above, employees receiving longevity pay shall continue to receive such pay as long as they remain in the same or successor classification as a result of a reclassification or reevaluation and when promoted.

MANAGEMENT PROPOSAL – Management Holds

Section 7. Step 8

a) Effective January 1, 2002, a Step 8 shall be established for each pay grade at a pay rate 1% higher than the Step 7 rate in each pay grade.

b) Effective January 1, 2003, the Step 8 rate for each pay grade shall be increased to a pay rate 2% higher than the Step 7 rate in each pay grade.

c) Effective January 1, 2004, the Step 8 rate shall be increased to a pay rate 3% higher than the Step 7 rate in each pay grade.

d) Effective July 1, 2007, the Step 8 rate shall be increased to a pay rate 4% higher than the Step 7 rate in each pay grade.

e) Effective January 1, 2002, employees with twelve (12) months or more of creditable service on Step 7 on or before that date shall be placed on Step 8.

f) Employees who are eligible for longevity pay prior to the term of this Agreement pursuant to Section 6 (c) of this Article ~~on or before January 1, 2002~~, shall continue to receive longevity pay after being placed on Step 8 while they remain in the same or lower pay grade.

~~g)Employees not eligible for longevity pay pursuant to Section 6 (c) of this Article on or before the date they are placed on Step 8 shall begin to receive longevity pay after three (3) years or more of creditable service on Step 8.~~

MANAGEMENT PROPOSAL – Management Withdraws - TA

Section 8. Classifications/Upgrades

In the event the parties negotiate salary upgrades, placement shall be handled as follows:

Incumbent employees shall be placed on the step nearest to but greater than their current step upon the effective date as set forth above.

If such adjustment results in less than a full-step increase, the incumbent employees shall have no change in their creditable service date.

If such adjustment results in more than a full-step increase, the incumbent employee shall have a new creditable service date of July 1 in the year in which the upgrades are effective.
All upgrades under this section are reflected in the salary ranges set forth in Schedule A.

MANAGEMENT PROPOSAL – Management Withdraws - TA
Section 11. Court Reporters
MANAGEMENT PROPOSAL - - Management Withdraws - TA
Section 12. Department of Human Services and Department of Veterans' Affairs
MANAGEMENT PROPOSAL –Management Withdraws - TA
Section 13. Maximum Security

MANAGEMENT PROPOSAL – Management Holds
Section 14. Academic Year Educators

Beginning with the ~~2013-2014~~ 2015 school year, steps and pay rates for Academic Year Educators at the Illinois School for the Visually Impaired and Illinois Center for Rehabilitation and Education Roosevelt shall be ~~increased~~ in accordance with Schedule A.

MANGAMENT PROPOSAL – Management counter
Section 16. Incentive Bonuses for Bargaining Unit Employees

~~In the event a successor agreement is ratified prior to January 1, 2016, all bargaining unit employees who are in active employment status on that date, shall receive a one (1) time, non-pensionable bonus of $1,000.~~

All bargaining unit employees who are in active employment status on June 30, 2016 and who have missed fewer than five (5) percent of their assigned work days between the effective date of this Agreement and June 30, 2016 shall receive a one (1) time, non-pensionable bonus of $1,000.

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 Employer ~~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 Employer 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 Employer with its employees, the Employer ~~may~~ **shall** develop gain sharing programs. Under such programs, employees or ~~departments~~ **agencies** that achieve savings for the State will share in such savings. ~~may propose initiatives that would achieve substantial savings for the State. Upon realization of such savings, the Employer may elect to return a portion of this savings to the employees who participated in the identified initiative.~~ **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~~/unit~~ or an individual shall be considered a one-time bonus and will be

offered only as a non-pensionable incentive.~~, and that~~ ~~a~~Any employee who accepts ~~merit pay~~ **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, **and subject to annual approval as part of the State's overall budget, the Employer shall set aside for payments pursuant to this Section two (2) percent of the budgeted base payroll costs for a bargaining unit employees ("Bonus Pool"), Employee bonuses will then be distributed as follows:** ~~no less than twenty-five (25) percent 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.~~

1) **One-half (.5) percent of the Bonus Pool will be distributed among all bargaining unit employees subject to this Agreement and who meet the conditions stated in subsections (a) and (b) of this Section in proportion to each employee's base salary. To be eligible to receive the first one-half (.5) percent of the bonus pool, an employee**

    a) **Must have missed no more than seven (7) of their assigned work days (or no more than 56 of their assigned work hours) in the fiscal year during which a bonus is distributed , and**
    b) **Must have committed no work policy violations during the same fiscal year.**

2) **The remaining one and one-half (1.5) percent of the Bonus Pool will be distributed to no fewer than 25% of employees based on the satisfaction of performance standards to be developed by the Employer in consultation with the Union as part of a merit incentive program described in Section 16 of this Article, as well as meeting the criterion set out in subsection (1)(a) above.**

The Employer**, 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 Employer's intent is to develop policies that will reward employees or ~~units~~ **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 Employer 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 employing Agency's operating funds. The Employer shall forward all requests for payment to the Comptroller, and payments shall be issued as required by the obligations of this Agreement.**

UNION PROPOSAL – Union Counter, Management Rejects

ARTICLE XXXIII - MEETING ILLINOIS' REVENUE NEEDS

The Union and the Employer agree that our state budget cannot be balanced with existing revenue. The parties recognize that proposed cuts in state government, which operates at one of the lowest per capita staffing levels in the nation, will impact the delivery of vital services. Illinois, however, can meet its revenue challenge with measures that address the state's long-term structural deficit and ensure corporations pay their fair share. Before any layoffs or

service cuts are considered, the parties agree to work jointly to modernize Illinois' tax system and rein in financial fees based on the following principles:

- A fair tax system in Illinois will benefit the state economy, working families and communities
- Illinois can no longer afford to pay arbitrary and unreasonable fees to Wall Street financial institutions
- Financial institutions must be held accountable for unethical and questionable practices that have impacted Illinois' state resources and communities
- Frontline state employees can play an important role in building support for reforms throughout Illinois because they are active in their communities and can persuasively communicate the importance of public services
- Cooperation between the Union and Management can be the critical factor in overcoming decades of inaction in order to modernize the tax system

~~The State will cooperate with the Union to advance revenue generating measures, including:~~

- ~~Identifying reforms to corporate tax loopholes, with a priority on those that research has shown to be ineffective, outdated and/or that unfairly favor one business or industry over another~~
- ~~Expanding the base of the state sales tax to include consumer services to stabilize revenue generation and put sales tax policy more in line with the modern economy~~
- ~~Supporting a Fair Tax constitutional amendment allowing an income tax that is adjusted in accordance with ability to pay, so that a greater tax burden is on the affluent rather than on middle income families~~
- ~~Initiating fee transparency controls and negotiate a 20 percent reduction on all financial fees with Wall Street firms~~
- ~~Negotiating and terminating the State's interest rate swap agreements with banks~~
- ~~Requiring transparency in all financial contracts with institutions that do business with the State~~
- ~~Ensuring everyone is paying their fair share by hiring additional revenue auditors, who collect $8 in taxes for every $1 they earn~~

MOUS

MANAGEMENT PROPOSAL – Management Withdraws - TA

Memorandum of Understanding Between AFSCME Council 31 & Illinois Dept. of Revenue

Out of State Revenue Auditors and Revenue Auditor Supervisors

This agreement supersedes any prior MOU on Out of State - Revenue Auditor Trainee RC-062-15, Revenue Auditor I RC-062-21, Revenue Auditor II RC-062-24, Revenue Auditor III RC-062-26, Revenue Computer Audit Specialist RC-062-27, and Revenue Audit Supervisor RC-062-29 (collectively hereinafter "Out Of State Auditors") rate of pay....

MANAGEMENT PROPOSAL – Management Withdraws - TA

OUT OF STATE REVENUE AUDITORS AND REVENUE AUDITOR SUPERVISORS

Effective July 1, 2009, the higher rate allotted to those employees living in California or New Jersey shall be allotted to those employees living or working in California or New Jersey...

MANAGEMENT PROPOSAL – Management Withdraws, Return to Status Quo

Part-time Site Technicians I and II, Natural Resources Technician I and II and Clerical Employees at the Department of Natural Resources

Side Letter

Site Technician I and II positions where the employees work more than 50% shall be converted to full-time positions.

Effective July 1, 2009, Natural Resources Technician I and II positions where the employees work more than 50% shall be converted to full-time positions.

All clerical staff (RC-14) employed by the Department of Natural Resources where the employees work more than 50% shall be converted to full-time positions, unless the employee chooses otherwise.

Cd given 5:15p.m

Appendix A. Effective July 1, 2015

~~All benefits in this Appendix are effective January 1, 2016, unless otherwise noted. Prior Appendix A benefit levels apply to all services received through December 31, 2015.~~ **All benefits in this Appendix are effective July 1, 2016, unless otherwise noted. Prior Appendix A benefit levels 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 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 wage report available or the cost of living adjustments effective on July 1 to wages included in this Agreement.~~ 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. ~~The mid-point for each salary band on May 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 ~~$93.00~~ $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 ~~$111.00~~ $225.00 per month for coverage. Employees with salaries of $45,601 but not more than $60,700 shall pay ~~$127.00~~ $257.00 per month for coverage. Employees with salaries of $60,701 but not more than $75,900 shall pay ~~$144.00~~ $291.00 per month for coverage. Employees with salaries of $75,901 but not more than $100,000 shall pay ~~$162.00~~ $328.00 per month for coverage. Employees with salaries of $100,001 or more shall pay ~~$211.00~~ $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 ~~create~~ such new salary tiers by July 1, 2016, the State may determine the new salary tiers.

2) Member contributions for dependent coverage shall be ~~$249.00~~ $504.00 per month for one non-Medicare dependent, ~~$287.00~~ $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 ~~$68.00~~ $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 ~~$86.00~~ $174.00 per month for coverage. Employees with salaries of $45,601 but not more than $60,700 shall pay ~~$103.00~~ 208.00 per month for coverage. Employees with salaries of $60,701 but not more than $75,900 shall pay ~~$119.00~~ $241.00 per month for coverage. Employees with salaries of $75,901 but not more than $100,000 shall pay ~~$137.00~~ $277.00 per month for coverage. Employees with salaries of $100,001 or more shall pay ~~$186.00~~ $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 ~~create~~ 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 ~~$113.00~~ $229.00 per month for one non-Medicare dependent~~, $159.00~~ $322.00 per month for two or more non-Medicare dependents, the weighted average of ~~$89.91~~ $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 ~~$11.00~~ $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 ~~$6.00~~ 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 ~~8.50~~ 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.

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
   ~~b. Effective July 1, 2014, this amount shall increase by $25.00 for a total plan year deductible of $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.
      ~~ii. Effective July 1, 2014, this amount shall increase by $25.00 for a total emergency room deductible of $450.00.~~
   b. QCHP Network Inpatient Hospital Admission Deductible
      i. The deductible shall be $100.00 for each admission to a hospital within the QCHP Network.
      ~~ii. Effective July 1, 2014, this amount shall increase by $25.00 for a total deductible of $100.00.~~
   c. Non-QCHP Provider Inpatient Hospital Admission Deductible
      i. The deductible shall be $500.00 per admission to a non-QCHP hospital.
      ~~ii. Effective July 1, 2014, this amount shall increase by $100.00 for a total~~ deductible of $500.00.
   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.

~~i. Effective July 1, 2014, the payment percentage shall reduce to 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.

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;
   ~~iii. Effective July 1, 2014, the prescription drug deductible per member or dependent shall increase by $25.00, resulting in a total prescription deductible per member or dependent of $125.00.~~
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.
b. ~~Effective July 1, 2014, this amount shall increase by $2.00 for a total PCP office visit co-payment of $20.00.~~

2) Specialist Office Visit
a. The co-payment shall be $30.00 per specialist office visit.
~~b. Effective July 1, 2014, this amount shall increase by $5.00 for a total specialist office visit co-payment of $30.00.~~

3) Home Health Care Visit
a. The co-payment shall be $30.00 per home health care visit.
~~b. Effective July 1, 2014, this amount shall increase by $5.00 for a total home health care visit co-payment of $30.00.~~

4) Inpatient Admission
a. The co-payment shall be $350.00 per admission to a hospital, hospice, or extended care facility.
~~b. Effective July 1, 2014, this amount shall increase by $25.00 for a total co-payment of $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.
~~b. Effective July 1, 2014, this amount shall increase by $25.00 for a total co-payment of $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. Effective July 1, 2014, this amount shall increase by $25.00, for a total co-payment of $250.00 per emergency room.~~

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. Effective July 1, 2014, the prescription drug deductible per member or dependent shall increase by $25.00, resulting in a total prescription deductible per member or dependent of $100.00.~~
   c. 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.
~~2) Effective July 1, 2014, this amount shall increase by $25.00, resulting in a total plan year dental deductible per member or dependent of $175.00.~~

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

Vision services shall be made available as follows:

1) Well-care eye examination and, ~~effective July 1, 2014,~~ replacement of lenses, once every plan year;
2) Materials benefit once every two plan years. ~~Effective July 1, 2014,~~ 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) ~~Effective July 1, 2014,~~ The amount of each co-payment for services shall ~~increase by $5.00 to a co-payment of~~ 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.

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 A. The Joint Labor/Management Advisory 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.**~~of value based benefit design changes for all health plans, with the goal of improving the health of the covered population.~~

~~The State agrees to provide a funded position(s) and to budget appropriately to carry out the initiatives of the Committee.~~

The Committee will be composed of an even number of members, half selected by the State and half selected by AFSCME. **Representatives from other unions may also participate, if such participation is required by the agreement between the State and such unions.**

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 ~~beginning in May 2013 October 2015~~ 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 ~~January 31, 2014~~ in order to provide for review and implementation for ~~the following fiscal year.~~ 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 Advisory 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. ~~Such increases or decreases in employee contributions shall be no greater than ten percent in comparison employee's contributions from the preceding year of this agreement.~~

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. ~~Such increases or decreases in employee contributions shall be no greater than ten percent in comparison employee's contributions from the preceding year of this agreement.~~

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 Advisory 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) ~~Effective July 1, 2014,~~ 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 employer will implement value-based benefit design innovations in all health plans effective no later than July 1, 2014, 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.~~
5) 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.

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. COMMUNICABLE DISEASES

Department of Children and Family Services (DCFS) 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 DCFS.

Section 11. LAID OFF AND FURLOUGHED EMPLOYEES

1) 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.
2) Employees in furlough status at the Illinois School for the Deaf and Illinois School for the Visually Impaired shall retain health, dental, and vision coverage during scheduled summer breaks with the Employer paying the full premium, single or family plan as appropriate.

Section 12. 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 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.

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.

Given 4:26 p.m

ARTICLE XI HOLIDAYS
MANAGEMENT PROPOSAL – Management Holds
Section 3. Cash Payment
In lieu of equivalent time off as provided for in Section 2 above, an employee who works either the actual holiday or the observed holiday may choose to receive ~~double~~ time ***and one-half*** cash payment, **except an employee who works on only Labor Day, Thanksgiving Day or Christmas Day may choose to receive double time** ~~and one-half~~ **cash payment in lieu of time off.** When an employee works (excluding roll-call) on a day on which a holiday falls, either the actual holiday or the observed holiday, he/she shall…

ARTICLE XII, Hours of Work and Overtime
MANAGEMENT PROPOSAL – w/d bypass remedy –TA, w/d lunch period proposal – TA, Holding to rest
Section 1. General Provisions RC-6

a) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked over forty (40) hours in a work week. ~~outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time. An employee mistakenly by-passed for overtime shall be offered the next overtime opportunity.~~

e) "Lunch Period" Employees who receive an unpaid lunch period and are required to work at their work assignments during such period and who are not relieved, shall have such time counted as hours worked for the purposes of Sections l(b) and l(c) above and shall be compensated at the appropriate compensatory straight **or over**time rate**, whichever may be applicable.**

MANAGEMENT PROPOSAL – withdraw bypass remedy - TA, modify lunch period – TA, holding to rest
Section 2. General Provisions RC-9

c) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked over forty (40) hours in a work week. ~~outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time. An employee mistakenly by-passed for overtime shall be offered the next overtime opportunity.~~

f) "Lunch Period" Employees who receive an unpaid lunch period and are required to work at their work assignments and who are not relieved shall have such time treated as hours worked for the purpose of computing overtime and shall be paid at the appropriate straight or **overtime** rate~~.~~, whichever may be applicable.

MANAGEMENT PROPOSAL – Management Holds
Section 3. General Provisions RC-14

d) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked over forty (40) hours in a work week. ~~outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.~~

Appendix A-3

MANAGEMENT PROPOSAL – Management Holds
Section 4. General Provisions RC-28 (except Site Technicians I and II)

d) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked over forty (40) hours in a work week.~~outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.~~ Compensation shall be in cash at the appropriate rate unless mutually agreed otherwise.

MANAGEMENT PROPOSAL – Management Holds
Section 5. General Provisions RC-42 and Site Technicians I and II

"Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked over forty (40) hours in a work week.~~outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.~~ Compensation shall be in cash at the appropriate rate unless mutually agreed otherwise.

MANAGEMENT PROPOSAL – Management Holds
Section 6. General Provisions RC-10, RC-62 and RC-63

d) "Overtime Payment"

(iii)Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked over forty (40) hours in a work week. ~~outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period, employees shall be paid double time.~~

UNION PROPOSAL – Section 6. General Provisions RC-10, RC-62 and RC-63 – Mgt rejects
~~***RC-10 only***~~

~~*(1) Employees who are authorized and do work in excess of their normal work week in any one scheduled period as defined herein, shall receive credit for such hours as enumerated in this Section.*~~

~~*(2)(i) Hours after from thirty-seven and one-half (37.5) to forty (40) in the work week:*~~

~~*The employee and his/her immediate supervisor shall make every reasonable effort to avoid having the employee's weekly hours exceed thirty-seven and one-half (37 1/2) hours in the work week by adjusting hours within the work week at the discretion of the immediate supervisor, provided however, the employee's choice of taking the time off shall be considered by the immediate supervisor and shall not be unreasonably denied. In the event the employee's schedule cannot be altered to avoid working hours in excess of thirty-seven and one-half (37 1/2) but not more than forty (40) in the work week, payment for overtime hours worked between thirty-seven and one-half (37 1/2) but not more than forty (40) shall be in compensatory time. Compensatory time off shall be scheduled by the Employer with due consideration given to the requests of the employee and the operating needs of the Agency. However, accrued compensatory time not scheduled or taken by the end of the fiscal year shall be liquidated and paid in cash at the rate it was earned. Notwithstanding the above, employees who schedule compensatory time off by June 1st of the fiscal year shall be allowed to use such time through August 1st of the following fiscal year.*~~

~~*(ii) Hours worked in excess of forty (40) in the work week:*~~

~~*The payment of overtime hours worked in excess of forty (40) hours in the work week shall be in cash or compensatory time at the Employer's discretion. Compensatory time off shall be scheduled with due consideration given to the requests of the employee. However, accrued compensatory time not scheduled or taken by the end of the fiscal year shall be liquidated and paid in cash at the rate it was earned. Employees who earn compensatory time after June 1st shall be allowed to use such compensatory time through August 15th of the subsequent fiscal year.*~~

~~*Overtime in excess of forty (40) hours in the work week shall be earned at the employee's straight time rate. Overtime as authorized by the Employer in excess of thirty-seven and one-half (37 1/2) hours in the work week and assigned on Saturday or Sunday shall be earned at the rate of one and one-half (1 1/2) times the employee's straight time hourly rate.*~~

MANAGEMENT PROPOSAL – Management Holds

~~Section 9. Overtime Payments (All Units except RC-10)~~

~~Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a day. For hours worked in excess of sixteen (16) in a day, employees shall be paid double time. However, a full-time employee will not be eligible for pay at the applicable overtime rate for all time worked outside of the employee's normal work hours and/or work days, pursuant to this Article, only under the following circumstances:~~

~~a. If a full-time employee is charged with a UA (unexcused absence) or XA (unexcused-unreported absence), on a normal workday and the employee works on his/her day off during that same work week – the employee will receive overtime at the straight time hourly rate for time worked on his/her day off until the employee has worked in excess of thirty-seven and one-half hours in RC-14, RC-28, RC-42; and in excess of the employee's normal work week for RC-6, RC-9 and RC-62/63.~~

~~b. If a full-time employee takes a day off without pay, except RC-09 residential schools furlough days during the academic year, for which he/she is not eligible for a Leave under Article VI, Section 3 or Article XXIII of the Master Contract, for a normal workday and the employee works on his/her day off during that same work week – the employee will receive overtime at the straight time hourly rate for time worked on his/her day off until the employee has worked in excess of thirty-seven and one-half hours in RC-14, RC-28, RC-42; and in excess of the employee's normal work week for RC-6, RC-9 and RC-62/63.~~

~~c. If a full-time employee was suspended without pay on a normal workday and the employee works on his/her day off during that same work week – the employee will receive overtime at the straight time hourly rate for time worked on his/her day off until the employee has worked in excess of thirty-seven and one-half hours in RC-14, RC-28, RC-42; and in excess of the employee's normal work week for RC-6, RC-9 and RC-62/63.~~

~~d. Suspension time will not be imposed in such a manner so as to avoid the payment of overtime pursuant to this Article.~~

~~e. Overtime rotation procedures shall not be affected by these procedures. The normal overtime rotation will not be changed or altered among eligible employees in order to assign overtime hours to employees who would not be eligible for overtime pursuant to Paragraph 2 of this Section.~~

MANAGEMENT PROPOSAL – Management Holds

Section ~~16~~15. Time Off

Time off for any ~~holidays or~~ accumulated benefit time ~~holidays~~ shall not be counted as time worked for overtime computation.

ARTICLE XIII, Insurance, Pension, Employee Assistance and Indemnification
Section 3. Pensions - Management w/d Voluntary Tier 2 on 7/28/15, holding on rest

~~Effective July 1, 2015, all employees subject to this agreement voluntarily agree to transfer to the Tier II pension program; however, all pension benefits earned before July 1, 2015 are frozen at the previously earned benefit level without diminishment or impairment.~~

~~During the term of this Agreement, the Employer shall continue in effect, and the employees shall enjoy the benefits, rights and obligations of the retirement program provided in the Illinois Pension Code, Illinois Compiled Statutes, Chapter 40 and as amended or superseded.~~

~~Effective January 1, 1992, the Employer shall make the employee contribution to the appropriate Retirement System for all employees in an amount equal to the coordinated rate (4% for covered employees; 5.5% for covered employees in the alternative formula), as an offset to a salary increase.~~

~~The employee contributions shall be treated for all purposes in the same manner and to the same extent as employee contributions made prior to January 1, 1992, consistent with Article 14 of the Illinois Pension Code.~~

~~Effective with retirements on or after January 1, 1998, all bargaining unit members covered by the State Employees Retirement System (SERS) will receive the following pension benefits:~~
~~1. For coordinated SERS employees on the standard formula, a flat formula of 1.67% of Final Average Salary (FAS) per year of service.~~
~~2. For non-coordinated SERS employees on the standard formula, a flat formula of 2.2% of Final Average Salary (FAS) per year of service. Effective July 1, 2000, for those employees enrolled in the SERS, with past service under the TRS as State Educators, the State will pay the cost of upgrading their past TRS service to the 2.2% TRS formula.~~
~~3. For employees eligible to receive a pension under the SERS Alternative Formula, a pension based on the higher of the Final Average Salary (FAS), or the rate of pay on the final day of employment.~~

~~Effective with retirements on or after January 1, 2001, all bargaining unit members covered by the SERS or TRS will receive the following pension benefits:~~
~~1. Employees on the SERS or TRS standard formula can retire based upon their actual years of service, without penalty for retiring under age 60, when their age and years of service add up to 85 (in increments of not less than one month). Employees eligible to retire under this "Rule of 85" will be entitled to the same annual adjustment provisions as those employees currently eligible to retire below age 60 with 35 or more years of service.~~
2. ~~For coordinated SERS employees on the alternative formula, a flat formula of 2.5% per year of service, based on the higher of the Final Average Salary, or the rate of pay on the final day of employment, up to a maximum of 80% of FAS.~~
3. ~~For non-coordinated SERS employees on the alternative formula, a flat formula of 3.0% per year of service, based on the higher of the Final Average Salary (FAS), or the rate of pay on the final day of employment, up to a maximum of 80% of FAS.~~

4. ~~Coordinated and non-coordinated SERS employees on the alternative formula will make the following additional contributions to the pension system: 1% of compensation effective January 1, 2002; 2% of compensation effective January 1, 2003; and 3% of compensation effective January 1, 2004.~~
5. ~~SERS Educators and other employees who work an academic year and are paid only during the academic year, and not paid on a 12-month basis, shall be credited for such past and/or future service with a full year of SERS service for each academic year.~~

~~Effective January 1, 2005, employees shall make half the employee contribution to the appropriate Retirement System in an amount equal to the coordinated rate (2% for covered employees; 2.75% for covered employees in the alternative formula).~~

~~Effective January 1, 2006, employees shall make the employee contribution to the appropriate Retirement System in an amount equal to the coordinated rate (4% for covered employees; 5.5% for covered employees in the alternative formula).~~

~~Laid off employees, employees on leave for Union office pursuant to Article XXIII, Section 10, or employees who take time off for Union activities pursuant to Article VI, Section 3, shall be allowed to purchase pension credit for the period of such layoff, Union leave or time off for Union business pursuant to the guidelines set forth in the side letter on pension credits.~~

Union PROPOSAL: Union Withdraws – TA
Section 3. Pensions

~~By December 1, 2015, in consultation with the Union, the Employer shall retain an independent expert to conduct a forensic audit of the state employee pension fund to investigate fees and bonuses paid to private investment companies and assess whether investment returns warrant such fees. Further, the parties agree to jointly advocate for amending the pension code to (1) eliminate the exemption of hedge funds from certain disclosure and conflict of interest standards, (2) model the Illinois State Board of Investment after the Illinois Municipal Retirement Fund, which has board members elected by participants in the pension system rather than appointed by state officials, and (3) establish a mechanism by which the pension fund board can compel payment of authorized pension contributions.~~

MANAGEMENT PROPOSAL – Management Holds
Section 4. Retiree Health Insurance
~~Effective July 1, 2015, all employees subject to this agreement who retire after July 1, 2018 voluntarily agree to receive the same health care benefits as provided for active employees as set forth in Appendix A of this agreement. Those employees who retire after July 1, 2018 further voluntarily agree to be responsible for 100% of the cost of health care coverage for any dependents after the date of such employees' retirement.~~

For employees who enter state service after ~~July 1, 2015~~the **ratification of this Agreement,** retiree health care benefits will be the same as the health care benefits provided for active employees as set forth in Appendix A of this agreement, regardless of date of retirement. However, those employees who enter state service after ~~July 1, 2015~~ **ratification of this Agreement** will be responsible for 100% of the cost of health care coverage for any dependents after the date of such employees' retirement.

~~Retiree health care benefits shall be as set forth in Appendix B of this Agreement.~~

Section 5. Employee Assistance Program – Moved to Vacation/Holiday/LOA Pkg

~~The Union shall administer an Employee Assistance Program (EAP) for all AFSCME represented employees. Management shall refer bargaining unit employees to the PSP program administered by AFSCME. Employees may contact the PSP program at (800) 647-8776.~~

ARTICLE XX, Layoff

UNION PROPOSAL - Union Withdraws – TA

Section 5. Non-Scheduling of Intermittents

D) Group Insurance

Returning intermittent employees will be eligible for group insurance with a premium contribution not to exceed the rate that was effective at the date of non-scheduling.

ARTICLE XXXV, Termination

MANAGEMENT/Union PROPOSAL – Joint Hold

This Agreement shall be effective ~~July 1, 2012~~, and shall continue in full force and effect until midnight ~~June 30, 2015~~, and thereafter from year to year, unless not more than 180 days, but not less than 60 days prior to ~~June 30, 2015~~, or any subsequent June 30, either party gives written notice to the , other of its intention to amend or terminate this Agreement.

MANAGEMENT PROPOSAL – AFFIRMATIVE ATTENDANCE POLICY – Moved to Vacation/Holiday/LOA Pkg

w/d non-Econ 6/16, Management Holds to Deletion of PSP Program

1. The Employer recognizes that personal problems may affect employee attendance and encourages utilization of the ~~Personal Support~~ Employee Assistance Program.

11. ...The purpose of such consultations will be to provide guidance and counseling to the employee as to the need for their services, the consequences of continued unauthorized absences, the ability of services for problems, specifically including ~~PSP~~ EAP, which may be identified and the ability to request a leave of absence.

MANAGEMENT PROPOSAL – Moved to Vacation/Holiday/LOA Package

~~**Memorandum of Understanding AFSCME Benefits Trust**~~

~~The Employer shall make payable to the AFSCME Benefits Trust an amount equal to $35.00 per employee each fiscal year for purposed of administering an EAP program for employees the Union represents.~~

~~Such payments to the AFSCME Benefits Trust shall be made based upon the number of employees represented by AFSCME on the payroll as of May 30 of the prior fiscal year and shall be released pursuant to the terms of the vendor contract signed by AFSCME Benefits Trust and the Department of Central Management Services.~~

~~The AFSCME Benefits Trust shall certify that state funds are not being used to subsidize benefits for employees of any other employer.~~

MANAGEMENT PROPOSAL – Defer to Layoff Committee - TA

~~**BUMPING OF A TRAINEE EMPLOYEE**~~

~~The parties agree that during the implementation of Article XX, Section 3 (c) through (h) (bumping), an employee in a trainee position classification within the classification series or an employee in a trainee position classification who has a targeted title to a position within a classification series of an employee subject to layoff shall be included in the bumping process.~~

MANAGEMENT PROPOSAL – Move to Vacation/Holiday/LOA Package
CDL DRUG AND ALCOHOL TESTING

Employee Assistance Programs: The Employer and the Union fully support the employee assistance programs and encourage employees to seek the confidential services of ~~AFSCME's PSP~~ the EAP …

MANAGEMENT PROPOSAL – Union Counter, Management Accepts – TA
PENSION CREDITS

~~An individual who represents or is employed as an officer or employee of a statewide labor organization that represents members of the State Employees Retirement System may participate in the State Employees Retirement System and shall be deemed an employee, provided that (1) the individual has previously earned creditable service under Article 14 of the Pension Code, (2) the individual files with the State Employees Retirement System an irrevocable election to become a participant, and (3) the individual does not receive credit for that employment under any other section of the Pension Code. Such employee is responsible for paying to the State Employees Retirement System both (i) employee contributions based on the actual compensation received for service with the labor organization and (ii) employer contributions based on the percentage of payroll certified by the Board; all or any part of these contributions may be paid on the employee's behalf or picked up for tax purposes (if authorized under federal law) by the labor organization. A person who is an employee as described in this side letter may establish service credit for similar employment prior to becoming an employee as described herein by paying to the State Employees Retirement System for that employment the contributions specified in this side letter, plus interest at the effective rate from the date of service to the date of payment. However, credit shall not be granted pursuant to this side letter for any such prior employment for which the applicant received credit under any other provision of the Pension Code, or during which the applicant was on a leave of absence.~~

By paying the required contributions, plus an amount determined by the Board to be equal to the Employer's normal cost of the benefit plus interest, an employee who was laid off but returned to State employment under circumstances in which the employee is considered to have been in continuous service for purposes of determining seniority may establish creditable service for the period of the layoff, provided that (1) the applicant does not receive credit for that period under any other provision of the Pension Code, (2) at the time of the layoff, the applicant had attained certified status under the rules of the Department of Central Management Services, and (3) the total amount of creditable service established by the applicant under this paragraph does not exceed three (3) years. For service established as provided herein, the required employee contribution shall be based on the rate of compensation earned by the employee on the date of returning to employment after the layoff and the contribution rate then in effect, and the required interest shall be calculated from the date of returning to employment after the layoff to the date of payment.

MANAGEMENT PROPOSAL – Union Counter, Management Accepts – TA
POSITION CLASSIFICATION - PROMOTIONS

1. **LPN I's satisfactorily completing one (1) year as such and qualified to perform the work of the LPN II position shall be promoted thereto.** ~~, except those employees hired and working as LPN I's prior to or about August 1, 1976 shall be required to work only six (6) months to be eligible for promotion~~.

MANAGEMENT PROPOSAL – Union Accepts - TA

TRAINEE TITLES

The Employer recognizes AFSCME Council 31 as the exclusive bargaining representative for the employees in the attached list of classifications and who are targeted for or to be promoted to bargaining unit positions. Employees in these titles shall be subject to the provisions of the master collective bargaining agreement except as amended in this supplemental.
During this period these employees shall have no right to:…
*(*) See Title Specific Memorandum of Understanding*

Number	Class Title	Max Prog Length	Barg Unit
23	Gaming Special Agent Trainee	12 Mos.	RC-62

UNION PROPOSAL – Union Counter, Management Rejects

MOU- REDUCING INMATE RECIDIVISM THROUGH INCREASED REHABILITATION OPPORTUNITIES

The Union and Employer recognize that Illinois' prison population has increased, yet the state has failed to expand capacity, staffing or budget appropriations accordingly, while steadily reducing opportunities for inmate rehabilitation through education, training, and transitional assistance programs. The parties hold that targeted investment in such DOC programs and policies can decrease corrections spending, reduce recidivism, and improve public safety. The net benefit of educating the prison population far exceeds its cost and is a DOC program with one of the greatest impacts on reducing recidivism.

~~The State agrees to take the following steps~~ **The Union and the Employer shall form a joint committee to develop a plan** to significantly improve education, vocational training, and transitional assistance for offenders in DOC facilities **including consideration of the following:**

1) ~~By January 1, 2017, p~~Provide access to ABE, pre-GED and GED programs to the more than 3,000 inmates on the waiting list for such educational opportunities;
2) Hire a sufficient number of educators to ensure that the department can continue to meet inmate educational needs on an ongoing basis;
3) Ensure that each correctional facility has adequate technology, educational materials and classroom space to allow for an appropriate learning environment;
4) Expand opportunities for vocational education;
5) Provide for appropriate mental health treatment programs consistent with the Rasho settlement; and
6) Re-open and expand the number of Adult Transition Centers to aid inmates who have completed their sentences in finding employment and reintegrating in the community.

UNION PROPOSAL - MOU- PAROLE AGENT SAFETY AND EQUIPMENT – Moved to Health and Safety Package

Col given at 11:25 am

SUBCONTRACTING PACKAGE

Management Proposal: Management Modifies and Rejects Union's

Section 1. Policy

A. ~~The Employer reserves the right to subcontract bargaining unit work. The decision to subcontract, including the Employer's reasons for subcontracting, is an inherent management right, unconstrained and unlimited by any provision of this Contract. Grievances regarding subcontracting are limited to procedural issues arising under this Article. Whenever the Employer's decision to subcontract services will have an effect on bargaining unit employees, the managed competition procedures within this article shall apply. RC 6, 9, 10, 14, 28, 42, 62 and 63.~~

It is the ~~*general*~~ policy of the Employer to ~~*continue*~~ make every reasonable effort to utilize its employees to perform work they are qualified to do, and to that end, the Employer will avoid, insofar as is practicable, the subcontracting of work performed by employees in the bargaining unit. However, the Employer reserves the right to contract out any work it deems necessary ~~or desirable because of greater efficiency, economy, or other related factors. Grievances regarding subcontracting are limited to procedural issues arising under this Article. Whenever the Employer's decision to subcontract services will have an effect on bargaining unit employees, the managed competition procedures within this article shall apply.~~ The Employer may not use individual personal service contracts deemed illegal by the Civil Service Commission.

Section 2. ~~Application~~ Managed Competition.

The Employer agrees that upon formal consideration to subcontract any work performed by bargaining unit employees which would result in the layoff of bargaining unit employees, it shall:

a) ~~The Parties agree that a fair and open competition between potential vendors is an effective method for contracting out services performed by public employees. The Parties further agree that groups of incumbent employees, including bargaining unit employees, competing against private vendors may improve the quality of bids and proposals from private vendors and improve the efficiency, productivity, and sense of ownership public employees have in the work they perform for the citizens of Illinois regardless of decisions to subcontract.~~

Striking this new prop.

Provide reasonable advance notice~~, which shall not be less than forty-five (45) days, except in emergency situations, prior to the issuance of a request for services~~, in writing, to the Union. Such notices shall not be required for renewal of sub-contracts, if the Union has been notified of a previous contract for such work, unless there is a substantial modification to the scope of work or cost in the renewal of the sub-contract.

b) ~~Whenever the Employer's decision to subcontract will have an effect on bargaining unit employees, the Employer will forward all public notices regarding the request for services (bids and proposals) to the Union. The Union will be afforded at least 30 calendar days to study the parameters of the intended contract and to draft its counter bid or counter proposal. However, the Union will not be allowed more than the total number of days between the public notice and the close of the bidding period. The Employer will consider the Union's bid alongside all private bids and proposals before awarding a contract or electing to use the labor of public employees to perform the services.~~

Striking this prev. prop.

Meet with the Union prior to making a decision to contract out bargaining unit work for the purpose of discussing the reasons for considering such a contract ~~its proposal~~. During this discussion, the Union will be provided all reasonably available and substantially pertinent information in conformance with all applicable laws and be granted a reasonable ~~requested~~ opportunity ~~opportunities~~ to meet with the Agency for the purpose of reviewing the Employer's contemplated action and proposing alternatives to the contemplated sub-contract. In the event the Union does not seek to schedule a meeting or does not respond within ~~thirty (30)~~ ten (10) days, the Employer's obligations under this ~~paragraph~~ Article shall be considered met.

Adding this w/ modification

c) If the Employer decides to contract out work, the Employer may offer the Union the opportunity to designate up to four (4) employees to form a labor-management team with the same number of managers and/or supervisors. The labor-management team can review the Employer's reasons for considering contracting out, prepare a proposal, and, before the designated bidding deadline, submit

Appendix A-4

the labor-management team's proposal to be considered by the Employer. Prior to submission to the Employer, the proposal must be approved by the Union. The Employer will review the labor-management team's proposal and determine whether that proposal more effectively meets the Employer's needs than bids or proposals from external vendors. This approval will be at the discretion of the Employer based on operational need. If the Employer accepts the labor-management team's proposal and does not contract out the services, to the extent that any terms of the Union-approved, labor-management team's proposal conflict with the terms of this Agreement, the proposal will be memorialized as a Memorandum of Agreement between the Employer and the Union. The four (4) employees designated to the labor-management team to draft the proposal will qualify for paid administrative leave for the time spent preparing the proposal. Time spent working on the Union bid or proposal is subject to prior supervisory approval. Employees will be paid at their regular rate for such work during their normal work hours but prior supervisory approval must be obtained for any hours spent working on the bid or proposal outside of their normal work hours.

~~Union Bid & Proposal Team and Management Cooperation.~~

~~(1) The Union will designate a Union Bid & Proposal Team (UBPT) comprised of up to four (4) bargaining unit employees. Bargaining unit employee participation in the UBPT is subject to supervisory approval based on the operational needs of the Agency. The Union may not change the designated members of the UBPT except with the Employer's approval and with good cause shown.~~

Striking all of this

~~(2) The employee members of the UBPT shall be granted administrative leave for the period of time in which they are preparing the Union bid or proposal. They will be paid at their regular rate during this period, but any hours spent working on the bid or proposal will not count as hours of work for the purpose of calculating overtime.~~

~~(3) The Union may supplement the membership of the UBPT with others, including Union employees and non-public employees with the following limitations: (a) no one may assist the UBPT if they are involved in any other part of the bidding and source selection process, including the creation of bids for private vendors who are bidding on the request for services or any member or individual assisting members of the services evaluation team; (b) no individual will be paid by the employer for work on the Union bid or proposal except for the four bargaining unit employees officially designated by the Union as members of the UBPT.~~

~~(4) Management shall designate up to four (4) individual managers and supervisors who will work with the UBPT to assist in creating the Union's bid or proposal. Designated bargaining unit employee members of the UBPT will continue to have access to employer facilities as if they were not on administrative leave, including access to employer information systems, such as computer and electronic mail resources to prepare the Union's bid or proposal (but not access to any confidential information in violation of the Procurement Code). However, in an effort to maintain an objective and fair bidding process, no employee, including managers, can assist the UBPT if the employee is also involved in the contractor selection process, including those who would be prohibited bidders under Section 50-10.5 of the Procurement Code. Similarly, the UBPT is prohibited from accessing confidential information not readily available to the public.~~

~~(5) The Employer and the Union understand that any interaction between the UBPT and any individual that would have been prohibited under the Procurement Code for private bidders or private entities making proposals will disqualify the Union from submitting a bid or proposal to the Employer under this Article.~~

~~The Employer shall provide a cost comparison of the expenses the Employer projects it will incur over the term of the contract if the Employer continued to perform such services using bargaining unit employees compared~~

~~to the expenses the Employer projects if a third party performed such services. Such comparison shall include cost projections for 3 years, or the length of the contract, whichever is less.~~

d) ~~Final Award, Meet and Beat, Appropriate Arrangements for Affected Employees, and Incorporation of Union Bid or Proposal as Part of this Agreement.~~

~~(1) The Union bid is due no later than the close of the public bidding or proposal process. Upon timely submission, the Employer agrees to consider the Union bid or proposal alongside the bids and proposals submitted by private vendors. The decision to select a private vendor's bid or proposal or the Union bid or proposal is a matter of inherent managerial discretion.~~

~~(2) When a Union Bid meets the technical requirements of the solicitation, objectives and goals of the public notice requesting services and provides lowest cost to the Employer, or the Union Proposal results in the highest points awarded under the Procurement Code, the employer will endeavor to forgo contracting out and instead comply with part four (4) of this subsection (d) of this Section so that the services will continue to be provided by public employees.~~

Strike this

~~(3) When the Employer decides to accept a bid or proposal from a private vendor, the Employer will inform the Union by forwarding the public notice of award to the Union and to the members of the UBPT.~~ **If the Employer decides to enter into the sub-contract, it will inform the Union of its decision.** Such notification is not necessary for renewal of contracts, if the Union has been notified of a previous contract for such work, unless there is a substantial modification to the scope of work or cost in the renewal of the subcontract.

~~(4) When the employer decides to accept the Union Bid or Proposal as prepared by the UBPT, the Union Bid or Proposal shall be incorporated as an amendment to this Collective Bargaining Agreement, and fully binding upon the Parties as a part of this Agreement.~~

~~(5) The employer may also decide, within its complete discretion, to adopt the managed competition procedures whenever the Employer decides to subcontract out work, even when the decision to subcontract will not affect bargaining unit employees.~~

e) **When contemplated sub-contracting of bargaining unit work would subject an employee to layoff, the Employer shall provide the opportunity to the affected employees to fill existing equal rated permanent vacancies at the work location, other work locations of the agency, or other agencies, in that order** for~~. If the above placement in the employee's agency cannot be accomplished without training, the Agency will provide an opportunity for in-service training to~~ **employees who possess the qualifications and ability** to perform the work required **for the vacancies.**~~ except for that which they might lack and might be provided by in-service training. Such training shall be consistent with the agency's budget, program goals, statutory directives and related factors. The parties agree to meet prior to the sub-contracting for the purpose of attempting to reach agreement over any necessary changes in the Filling of Vacancies procedure of the Agreement in an effort to help facilitate this provision.~~ In the event, an employee subject to layoff cannot be placed in a vacancy as set forth above, then the layoff provisions of Article XX will apply.

Return this

Management Proposal: Management Withdraws – Returns to Status Quo, Rejecting Union Proposal

PERSONAL SERVICE CONTRACTS

1. **The Employer shall not employ, or cause to be employed through a firm or agency as a subterfuge to this agreement, individuals through the use of personal service contracts when the services performed under such contracts are within the scope of bargaining unit work. The Employer maintains the right to subcontract (which shall include subcontracts with employment services vendors) pursuant to Article XXIX of the Master Collective Bargaining Agreement.**
2. **Notwithstanding the above, the Employer may contract for personal services for a position with an individual or an agency (1) for a non-renewable period not to exceed 60 days to meet the emergency situations consistent with the conditions of section 8b.8 of the Personnel Code, or (2) for a period not to exceed 6**

months out of any 12 month period which is determined to be temporary or seasonal consistent with the conditions of section 8b.9 of the Personnel Code, or (3) for a period not to exceed 6 months out of any 12 month period where there is no appropriate eligible list available consistent with the conditions of section 8b.10 of the Personnel Code.

3. The Union shall be provided with notice within ten (10) business days of entering into of all such contracts and on a monthly basis. Such notice shall include, at a minimum, the following information: the name of the individual; position classification he/she shall be occupying; the rate of pay; the dates of the contract; the employing department; a description of the work to be performed; and the location of the work.
4. Any contract entered into by the Employer on or after June 30, 1993 inconsistent with this Agreement shall be terminated within 45 days.
5. Notwithstanding paragraph 2 above, if the Employer desires to extend the time period for any contract, it shall notify the Union in writing, at least 14 calendar days before its termination of its desire and the reasons therefore. In addition to the original term, with the Union's concurrence, such contracts may be renewed for a period not to exceed 90 days to meet emergency situations consistent with section 8b.8 of the Personnel Code, for a period not to exceed 6 months out of any 12 month period which is determined to be temporary or seasonal consistent with section 8b.9 of the Personnel Code and for a period not to exceed 6 months out of any 12 month period when there is no appropriate eligible list available consistent with section 8b.10 of the Personnel Code.
6. The Employer may not utilize consecutive contracts for the same position except as provided above.
7. Nothing in this Memorandum prohibits the Employer from entering into personal service contracts for specialized professional or technical services which otherwise could not reasonably be provided by employees.
8. Nothing in this Memorandum of Agreement prohibits the Employer from entering into personal services contracts for time limited projects for up to 12 months, renewable for an additional 12 months, to meet certain agency mandates for which specific funds are dedicated.
9. The Union shall receive notice of any time limited projects set forth in paragraph 8 and their duration. Additionally, the Union shall be notified of any personal service contracts entered into as a result of paragraphs 7 and 8 above prior to their execution.

Management Proposal: Management Holds, Rejects Union's

~~**PERSONAL SERVICE AND VENDOR CONTRACTS**~~

~~In order to establish an understanding between the parties with respect to continued implementation of the Personal Service Contract Memorandum of Understanding (PSC MOU) and provide a framework for the resolution of current and future issues and disputes between the parties regarding the PSC MOU in light of the decision of Arbitrator Terry Bethel on certain aspects of the PSC MOU, the parties have entered into this Side Letter. In so doing, the Union recognizes the Employer's continued right to utilize Personal Service Contracts pursuant to and in accordance with the Personal Service Contracts Memorandum of Understanding and the Employer's continued right to subcontract under Article XXIX of the Master Collective Bargaining Agreement. Similarly, the Employer recognizes the Union's continued interest in preserving and protecting the scope and work of its bargaining units. In recognition of the parties' interests set forth above, the parties agree as follows:~~

~~1. The Employer shall, no later than December 31, 2004, prepare and present to the Union, a strategic plan and schedule for all agencies under the Governor's Office to address the use of personal service contracts (or vendor contracts that would be prohibited if performed by employees under personal service contracts) that are, arguably, pursuant to the Bethel award, in violation of the PSC MOU and/or the Master Collective Bargaining Agreement.~~

~~2. Where the parties agree that there is a violation to be remedied, or otherwise mutually agree in the absence of acknowledgement of a violation, that a mutually acceptable resolution is desirable, the parties shall work together achieve a remedy, resolution and/or settlement, including but not limited to phasing in remedial measures over time, establishing new positions and/or other approaches. The Employer agrees to make reasonable efforts to terminate such personal service and vendor contracts that are in violation of the PSC MOU or the Master Agreement as soon as feasible, but no later than~~

~~December 31, 2005. Should the Employer determine that the work previously performed by said contractual employees should continue to be performed, the Employer shall either assign the work to bargaining unit employees, or if the Employer determines that the additional headcount is necessary, increase the bargaining unit headcount.~~

~~3. Nothing herein shall prevent the Union from asserting its rights to enforce the PSC MOU and Master Agreement, including the right to seek appropriate remedies.~~

MOU's

MANAGEMENT PROPOSAL – Management Holds

~~**GOVERNOR'S VOLUNTEER INITIATIVE**~~

~~Programs under the Governor's Volunteer Initiative will be viewed as supplemental to, not a replacement for, bargaining unit work. Specifically, programs will not be directed to displacing currently employed staff, reducing hours, reducing the level of funding for personal services that would otherwise be made available for non-volunteer work or reduction in the customary level of services provided by employees.~~

~~Such programs may be maintained in which volunteers are doing bargaining unit work except when:~~

~~a. a bargaining unit position normally performing such tasks is vacant within the appropriate organizational unit and there are sufficient unreserved funds in personal services available, or the Agency has legally determined that other funds are available that can be utilized to pay employee(s) in a vacant position.~~

~~b. a bargaining unit employee qualified to perform such tasks is on layoff within the organizational unit and there are sufficient unreserved personal services funds available or the Agency has legally determined that other funds are available that can be utilized within such unit to pay employee(s).~~

~~If funds are not available and volunteers are utilized, in the following fiscal year the Agency shall make every effort to secure funds to fill the vacant position(s) and/or recall the laid off employees if it wishes to continue the utilization of said volunteers. The Agency will keep the Union informed of the efforts being made to secure funds to fill the vacant position(s) and/or recall the laid off employees.~~

~~Notice of each volunteer program under the Initiative will be made to AFSCME Council 31, identifying the work locations and summarizing the type of tasks to be performed.~~

John Stanley 12-2-15 Still Holding 2:20 p.m. Col Given 12:05 p.m.

MANAGEMENT RIGHTS and CHECK-OFF/FAIR SHARE PACKAGE

ARTICLE II – Management Rights

MANAGEMENT PROPOSAL – Management Withdraws

Section 1. Rights Residing in Management

Except as amended, changed or modified by ~~an express provision of~~ **this Agreement,** ~~T~~the Employer retains the exclusive right to manage its operations, determine its policies, budget and operations, the manner of exercise of its statutory functions and the direction of its working forces, including, but not limited to: The right to hire, promote, demote, transfer, evaluate, allocate and assign employees; to discipline, suspend and discharge for just cause; to relieve employees from duty because of lack of work or other legitimate reasons; to determine the size and composition of the work force, to make and enforce reasonable rules of conduct and regulations; to determine the departments, divisions and sections and work to be performed therein; to determine the number of hours of work and shifts per workweek; to establish and change work schedules and assignments; to introduce new methods of operation; to eliminate, contract, and relocate or transfer work and maintain efficiency.

UNION PROPOSAL – Union Withdraws

Section 1. Rights Residing in Management

~~Except as amended, changed or modified by this Agreement, the Employer retains the exclusive right to manage its operations, determine its policies, budget and operations, the manner of exercise of its statutory functions and the direction of its working forces, including, but not limited to: The right to hire, promote, demote, transfer, evaluate, allocate and assign employees; to discipline, suspend and discharge for just cause; to relieve employees from duty because of lack of work or other legitimate reasons; to determine the size and composition of the work force, to make and enforce reasonable rules of conduct and regulations; to determine the departments, divisions and sections and work to be performed therein; to determine the number of hours of work and shifts per workweek; to establish and change work schedules and assignments; to introduce new methods of operation; to eliminate, contract, and relocate or transfer work and maintain efficiency.~~

MANAGEMENT PROPOSAL – Management Holds

Section 2. Statutory Obligations

Nothing in this Agreement shall be construed to modify, eliminate or detract from the statutory responsibilities and obligations of the Employer~~.~~ **except that the exercise of its rights in the furtherance of such statutory obligations shall not be in conflict with the** express **provisions of this Agreement.**

ARTICLE IV Checkoff/Fair Share

Management Proposal: Management Holds

Section 1. Deductions

The Employer agrees to deduct from the pay of those employees who individually request it any or all of the following:

a) Union membership dues, assessments, or fees;
b) Union sponsored credit union contributions;
c) P.E.O.P.L.E. contributions.

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.

Appendix A-5

An employee who has previously authorized payroll deductions pursuant to this Section shall continue to have such deductions made and shall not be required to reauthorize such deductions unless the employee has specifically authorized revocation of deductions pursuant to Section 2 of this Article or has to re-sign other payroll deduction authorizations.

Upon receipt of an appropriate written authorization from an employee, such authorized deductions shall be made in accordance with law and the procedures of the Comptroller and shall be remitted semi-monthly to the Union in accordance with the current procedures, and at the address designated in writing to the Comptroller by the Union. The Local, State or International Union shall advise the Employer of any increase in dues or other approved deductions in writing at least fifteen (15) days prior to its effective date.

No later than July 1, 2005, when an employee has authorized payroll deductions for Union membership, the wage stub will state "Union dues" and the amount of deduction. **If the employee has not authorized payroll deductions for Union membership, the wage stub will state "non mbr fees" and the amount of deduction.**

Any time an authorized deduction would otherwise be discontinued without the employee's specific authorization, the Employer shall notify the employee and shall provide the employee with the necessary cards and/or forms needed to continue said deduction.

Section 2. Revocation

All employees covered by this Agreement who have signed Union dues checkoff cards for AFSCME 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.

Section 3. Fair Share

Pursuant to Section 3(g) of the Illinois Public Labor Relations Act effective July 1, 1984, the parties agree that the Union 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 the parties' fair share agreement. The amount so deducted shall be remitted semi-monthly to the Union.

Such fair share provision shall remain in effect for the duration of the labor agreement or until it can be demonstrated that fewer than a majority of employees are union members or either the Illinois Supreme Court or the United States Supreme Court declares that the fair share fees are unconstitutional.

The Employer asserts that compulsory fair share fees of non-union members are unconstitutional. The Union disagrees. The parties agree, however, that by agreeing to this provision, the Employer does not waive the right to continue to challenge the enforceability or constitutionality of this provision or provisions like it.

Section 4~~3~~. Indemnification

The Union shall indemnify, defend and hold the Employer harmless against any claim, demand, suit or liability arising from any action taken by the Employer in complying with this Article.

Section 5. Availability of Cards

If the facility or work location supplies revocation cards, it shall also make available Union deduction cards. Such cards shall be supplied by the Union and shall be made available only upon request of the employee.

MOU

Management Proposal: Management Holds

FAIR SHARE - ALL UNITS - Supplemental Agreement Between the State of Illinois and the American Federation of State, County and Municipal Employees, AFL-CIO

Pursuant to Section 3(g) of the Illinois Public Labor Relations Act effective July l, l984, the parties agree that if AFSCME has or attains majority Union membership of those employees covered by the Master Agreement, or receives a majority decision by referendum as set forth below, subsequent to July l, l984, the following shall be applicable: Employees covered by this agreement who are not members of the union 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 Union 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 employees and shall be remitted semi-monthly to the Union. Majority status shall be verified by the Comptroller's Office or mutually agreeable means through the calculation of employees making dues deductions as of July l, l984, or any time thereafter. If such certification by the Comptroller's Office shows a majority status of bargaining unit employees being Union members, the proportionate share provision shall be implemented during the pay period following such certification.

Should any employee be unable to pay their contribution to the Union based upon bona fide religious tenets or teachings of a church or religious body of which such employee is a member, such amount equal to their fair share shall be paid to a non-religious charitable organization mutually agreed upon by the employee affected and the Union. If the Union and employee 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 employee shall, on a monthly basis, furnish a written receipt to the Union that such payment has been made.

If majority of employees covered by the Master Agreement are not Union members, the exclusive bargaining agent may request a referendum of bargaining unit employees to determine whether or not the proportionate share provision shall apply to non-Union members. The referendum will be conducted within sixty (60) days of the Union'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 exclusive bargaining agent. If it is determined by the normal and standardized ballot and election procedures established by 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 provision shall not be implemented and the exclusive bargaining agent is precluded from requesting another election within one year of the certification of election results. The question on the ballot shall be "Shall the employees in this bargaining unit who are not members of the exclusive bargaining agent, AFSCME, pay a proportionate share of the cost of the collective bargaining process, contract administration, and pursuing matters affecting wages, hours and conditions of employment?" Such fair share provision shall remain in effect for the duration of the labor agreement or until it can be demonstrated that fewer than a majority of employees are union members or either the Illinois Supreme Court or the United States Supreme Court declares that the fair share fees are unconstitutional.

The Employer asserts that compulsory fair share fees of non-union members are unconstitutional. The Union disagrees. The parties agree, however, that by agreeing to this provision, the Employer does not waive the right to continue to challenge the enforceability or constitutionality of this provision or provisions like it.

For purposes of determining majority membership, or eligibility to vote in an election, the count or voter list will be based on those employees on the payroll in the most recent pay period.
The parties shall request the Comptroller to provide to the Union a monthly computer tape for all bargaining units listing each employee and the amount deducted for dues or fair share fees.
Union Orientation (Bargaining Units Without Fair Share Only)

a) By mutual arrangement regarding time and place with the Employer, the Union shall be allowed to orient, educate and update each employee for up to one (1) hour during the term of the contract for the purpose of informing employees of their rights and obligations under this collective bargaining agreement, and without loss of pay for the employees involved. Such attendance by employees shall be on a voluntary basis. New hires shall be included in such orientation during the first week of their orientation or training.

b) The Employer shall inform the Union of all such hirings and the Union shall inform the Employer of the Union representative who will carry out the Union orientation.

ARTICLE XVII - Records and Forms

UNION PROPOSAL – Management Keeps in Package and Rejects
Section 2. Records
All public records of the Employer shall be available for inspection upon written request by the Union.

The Employer shall not provide information that is exempt from disclosure under the Freedom of Information Act (5 ILCS 140/7)and pertains to bargaining unit employees, to the Union, or to matters related to collective bargaining, to an entity that is not a party to this agreement.

MANAGEMENT MOVES AUTHORITY of CONTRACT to NEW PACKAGE

2:34pm

Vacation/Holiday Scheduling and Leave of Absences

Article X - Vacations

MANAGEMENT PROPOSAL – Management Holds

Section 7. Payment in Lieu of Vacation

a) If because of operating needs the Employer cannot grant and employee's request for vacation time within the twenty-four (24) month period after the expiration of the calendar year such time was earned, such vacation time shall be liquidated in cash at straight time provided the employee has made at least three (3) requests, each for different time periods, for such time within the calendar year preceding liquidation, or ~~**for employees hired prior to January 1, 2016**~~ it may be accumulated indefinitely subject to the provisions of this Article.

b)No salary payment shall be made in lieu of vacation earned but not taken except as in (a) above and on termination of employment for eligible employees with at least six (6) months of continuous service in which case the effective date of termination shall not be extended by the number of days represented by said salary payment. Effective January 1, ~~2017~~**2018**, payment ~~***for employees hired on or after January 1, 2016***~~ shall be limited in all cases to no more than ~~40 ***forty-five (45)***~~**50 (fifty)** days of accrued vacation time as well as any ~~vacation days earned during the current calendar year and~~ all vacation days accumulated pursuant to 7a) above ~~because of denial of employee requests, provided the employee has made at least three (3) requests, each for different time periods, for such time within the calendar year preceding liquidation.~~

MANAGEMENT PROPOSAL –Management Withdraws

Section 8. Payment on Death of Employee

Upon the death of the State employee, the person or persons specified in Section 14a of "an Act in relation to State Finance," approved June 10, 1919, as amended, shall be entitled to receive from the appropriation for personal services theretofore available for payment of the employee's compensation such sum for any accrued vacation period to which the employee was entitled at the time of death~~, up to 40 ***forty-five (45)*** days ***for employees hired on or after January 1, 2016***~~. Such shall be computed by multiplying the employee's daily rate by the number of days accrued vacation due~~, up to 40 ***forty-five (45)*** days ***for employees hired on or after January 1, 2016***. Payment ***for employees hired on or after January 1, 2016*** shall be limited in all cases to no more than 40 ***forty-five (45)***50 (fifty) days of accrued vacation time as well as any vacation days earned during the current calendar year and all vacations days accumulated because of denial of employee requests., provided the employee has made at least three (3) requests, each for different time periods, for such time within the calendar year preceding liquidation.~~

ARTICLE XI – Holidays - Section 3. Cash Payment – Management removed from this package 10/21/15

ARTICLE XIII – Insurance, Pension, Employee Assistance and Indemnification, removed from Outstanding Economic Issues Package 12/1/15

MANAGEMENT PROPOSAL **– Mgt w/d Voluntary Tier 2 on 7/28/15,** ***mgt holds to w/d Section 3 and 5 return to status, linked to Un Acceptance of Mgt counter in Art X Sect 7 and the Withdraw of Un Proposal in Art XXIII Sects 19 and 27***

Section 3. Pensions

~~Effective July 1, 2015, all employees subject to this agreement voluntarily agree to transfer to the Tier II pension program; however, all pension benefits earned before July 1, 2015 are frozen at the previously earned benefit level without diminishment or impairment.~~

During the term of this Agreement, the Employer shall continue in effect, and the employees shall enjoy the benefits, rights and obligations of the retirement program provided in the Illinois Pension Code, Illinois Compiled Statutes, Chapter 40 and as amended or superseded.

Effective January 1, 1992, the Employer shall make the employee contribution to the appropriate Retirement System for all employees in an amount equal to the coordinated rate (4% for covered employees; 5.5% for covered employees in the alternative formula), as an offset to a salary increase.

The employee contributions shall be treated for all purposes in the same manner and to the same extent as employee contributions made prior to January 1, 1992, consistent with Article 14 of the Illinois Pension Code.

Effective with retirements on or after January 1, 1998, all bargaining unit members covered by the State Employees Retirement System (SERS) will receive the following pension benefits:

1. For coordinated SERS employees on the standard formula, a flat formula of 1.67% of Final Average Salary (FAS) per year of service.
2. For non-coordinated SERS employees on the standard formula, a flat formula of 2.2% of Final Average Salary (FAS) per year of service. Effective July 1, 2000, for those employees enrolled in the SERS, with past service under the TRS as State Educators, the State will pay the cost of upgrading their past TRS service to the 2.2% TRS formula.
3. For employees eligible to receive a pension under the SERS Alternative Formula, a pension based on the higher of the Final Average Salary (FAS), or the rate of pay on the final day of employment.

Effective with retirements on or after January 1, 2001, all bargaining unit members covered by the SERS or TRS will receive the following pension benefits:

1. Employees on the SERS or TRS standard formula can retire based upon their actual years of service, without penalty for retiring under age 60, when their age and years of service add up to 85 (in increments of not less than one month). Employees eligible to retire under this "Rule of 85" will be entitled to the same annual adjustment provisions as those employees currently eligible to retire below age 60 with 35 or more years of service.
2. For coordinated SERS employees on the alternative formula, a flat formula of 2.5% per year of service, based on the higher of the Final Average Salary, or the rate of pay on the final day of employment, up to a maximum of 80% of FAS.
3. For non-coordinated SERS employees on the alternative formula, a flat formula of 3.0% per year of service, based on the higher of the Final Average Salary (FAS), or the rate of pay on the final day of employment, up to a maximum of 80% of FAS.
4. Coordinated and non-coordinated SERS employees on the alternative formula will make the following additional contributions to the pension system: 1% of compensation effective January 1, 2002; 2% of compensation effective January 1, 2003; and 3% of compensation effective January 1, 2004.
5. SERS Educators and other employees who work an academic year and are paid only during the academic year, and not paid on a 12-month basis, shall be credited for such past and/or future service with a full year of SERS service for each academic year.

Effective January 1, 2005, employees shall make half the employee contribution to the appropriate Retirement System in an amount equal to the coordinated rate (2% for covered employees; 2.75% for covered employees in the alternative formula).

Effective January 1, 2006, employees shall make the employee contribution to the appropriate Retirement System in an amount equal to the coordinated rate (4% for covered employees; 5.5% for covered employees in the alternative formula).

Laid off employees, employees on leave for Union office pursuant to Article XXIII, Section 10, or employees who take time off for Union activities pursuant to Article VI, Section 3, shall be allowed to purchase pension credit for the period of such layoff, Union leave or time off for Union business pursuant to the guidelines set forth in the side letter on pension credits.

Section 5. Employee Assistance Program

The Union shall administer an Employee Assistance Program (EAP) for all AFSCME represented employees. Management shall refer bargaining unit employees to the PSP program administered by AFSCME. Employees may contact the PSP program at (800) 647-8776.

ARTICLE XXIII - Leaves of Absence

Union Proposal: Management Accepts - TA

Section 5. Military Reserve Training and Emergency Call-up

a) Any full-time employee who is a member of a reserve component of the Armed Services **of the United States, including the reserve components of the Armed Services of any state**, the Illinois National Guard, or the Illinois Naval Militia, or who is a member of **the** National Guard of any other state shall be allowed annual leave with pay in accordance with the provisions of 5 ILCS 325 et seq. to fulfill the military reserve obligation. Such leaves will be granted without loss of seniority or other accrued benefits.

Union Proposal: Management Accepts Union Withdrawal - TA

Section 8. Child Care Leave

Employees shall be granted ...~~to avoid unusual disturbances in the child's life~~. ...

UNION PROPOSAL – Mgt accepts uns counter, linked to Un Acceptance of Mgt counter in Art. X Sect. 7 and the Withdraw of Un Proposals in Art XXIII Sects 19 and 27

Section 15. Bereavement Leave

~~Employees will be granted 3 days bereavement leave with pay in addition to any other leave to which the employee is entitled in cases of the death of a member of the immediate family as defined in Article XXIII Section 16.~~

In cases of the death of a son, daughter, step son, step daughter , employees will receive ~~2 1 weeks~~ **three (3) days** bereavement leave with pay in addition to any other leave to which the employee is entitled. **To use Bereavement Leave, employees ~~must complete the Employer's Bereavement Leave Request form and~~ must provide written documentation (such as obituary or funeral home notice) ~~of attendance~~ no later than three (3) days following the employees' return to work. Failure to provide the required ~~form and~~ documentation ~~of attendance~~ will result in a denial of the requested leave.**

UNION PROPOSAL – Union Counter, Management Rejects – linked as noted above

Section 19. Service Connected Injury and Illness

An employee who suffers an on-the-job injury or who contracts a service-connected disease, shall be allowed full pay during the first calendar week without utilization of any accumulated sick leave or other benefits, provided the need for the absence is supported by medical documentation. ~~An injury occurring as a result of a vehicular accident returning from work after a workday of 15 hours or more will be considered a service connected injury.~~ This allowance with full pay for up to one calendar week shall be made in advance of the determination as to whether the injury or illness is service connected. If, within 30 days of the date of the allowance of full pay under this section, the employee has failed to complete the required paperwork and submit documentation to reach a decision regarding the service connected nature of the injury or illness, the time granted may be rescinded and the days will be charged against the employee's accumulated benefit time. Thereafter, the employee shall be permitted to utilize accumulated sick leave. In the event such service-connected injury or illness becomes the subject of an award by the Workers' Compensation Commission, the employee shall restore to the State the dollar equivalent which duplicates payment received as sick leave days, and the employee's sick leave account shall be credited with the number of sick leave days used. An employee who suffers an on-the-job injury or who contracts a service-connected disease shall not be required to utilize any accumulated sick days prior to being granted an illness or injury leave under Section ~~21~~ 22, below. Any absence from work due to a service connected injury of illness shall not be counted as time used under the FMLA.

UNION PROPOSAL – Union Withdraws, Return to Status Quo - TA

Section 26. Maternity/Paternity Leave

All employees ...be eligible for ~~46~~ weeks (**20~~30~~** work days) of paid maternity/paternity leave for each pregnancy resulting in birth or multiple births. Should both parents be employees they shall ~~each be eligible for 6 weeks of paid maternity/paternity leave~~ ...**still born** ~~stillborn~~ child.

All bargaining unit members are eligible for **four** ~~six~~(~~46~~) weeks (**20~~30~~** days) of paid leave with a new ...

Union Proposal: Management Rejects – linked as noted above

Section 27. Family Medical Leave Act

Employees who qualify for intermittent leave pursuant to the Family Medical Leave Act shall be granted such intermittent leave. Employees may use accumulated benefit time prior to or during any Family and Medical Leave, but shall not be required to use any accumulated benefit time prior to or during any Family and Medical Leave.

MOUs

AFFIRMATIVE ATTENDANCE POLICY

MANAGEMENT PROPOSAL – Mgt Withdraws - linked to Un Acceptance of Mgt counter in Art. X Sect 7 and the Withdraw of Union Proposals in Art XXIII Sects 19 and 27

1. The Employer recognizes that personal problems may affect employee attendance and encourages utilization of the **Personal Support** ~~Employee Assistance~~ Program.

11. ...The purpose of such consultations will be to provide guidance and counseling to the employee as to the need for their services, the consequences of continued unauthorized absences, the ability of services for problems, specifically including **PSP** ~~EAP~~, which may be identified and the ability to request a leave of absence.

MANAGEMENT PROPOSAL – Mgt Accepts Un Counter, linked to Un Acceptance of Mgt counter in Art X Sect 7 and the Withdraw of Un Proposals in Art XXIII Sects 19 and 27

Memorandum of Understanding AFSCME Benefits Trust

The Employer shall make payable to the AFSCME Benefits Trust an amount equal to ~~$35.00~~ $25.00 per employee each fiscal year for purposed of administering an EAP program for employees the Union represents.

Such payments to the AFSCME Benefits Trust shall be made based upon the number of employees represented by AFSCME on the payroll as of May 30 of the prior fiscal year and shall be released pursuant to the terms of the vendor contract signed by AFSCME Benefits Trust and the Department of Central Management Services.

The AFSCME Benefits Trust shall certify that state funds are not being used to subsidize benefits for employees of any other employer.

MANAGEMENT PROPOSAL – Mgt W/ds - linked to Un Acceptance of Mgt counter in Art X Sect 7 and the Withdraw of Un Proposals in Art XXIII Sects 19 and 27

CDL DRUG AND ALCOHOL TESTING

Employee Assistance Programs: The Employer and the Union fully support the employee assistance programs and encourage employees to seek the confidential services of **AFSCME's PSP** ~~the EAP~~ ...

LAYOFF PACKAGE (1302) Management 2nd Package Prop on Layoff return from subcommittee
December 18, 2015

Definitions

MANAGEMENT PROPOSAL – Management w/d at subcom. – Un accepted - TA

e) For RC-6, RC-9, RC-10, RC-14, RC-28, RC-42, RC-62 and RC-63, "Employee" refers only to a bargaining unit employee in a classification covered by this contract whether in a certified or probationary status, except that a probationary employee, an employee during an original six (6) month probationary period, has no right to use the grievance procedure in the event of discharge or demotion ~~and does not have a right transfer pursuant to Article XX, Section 3 or recall pursuant to Article XX, Section 4.~~.

ARTICLE XX Layoff

MANAGEMENT PROPOSAL – TA

Section 1. Application

Layoff shall be in accordance with the procedures set forth in this Article with the exception that they shall not apply to:
a)Emergency shutdown of five (5) days or less where all employees are to be recalled. Time in non-work status as a result of emergency shut down pursuant to 80 Ill. Admin. Code § 303.310~~.~~ **shall be with pay.** ~~The parties agree to establish a committee that will be charged with discussing which employee's duties are critical to the continuity of essential state services. Such committee shall meet no later than November 1, 2013 unless mutually agreed otherwise.~~

MANAGEMENT PROPOSAL – Management Holds

Section 1. Application

d) Temporary layoff of five (5) days or less shall be in accordance with Personnel Rule 302.510 and seniority as defined in Article XVIII. Employees affected by temporary layoff shall not suffer any reduction in fringe benefits for the term of the temporary layoff and employees shall be laid off in ~~accordance with Section 2(a), (c), (d), (e) and shall receive notice in accordance with Section 3(l).~~ inverse, seniority order within classification and appropriate organizational unit.

~~Temporary layoff provisions contained herein shall not be used for implementing a statewide furlough program which would affect all State agencies without the Employer first notifying and negotiating with the Union over such intent.~~

MANAGEMENT PROPOSAL – Management Withdraws - TA

Section 2. General Procedures

a) Layoff shall be by official organizational unit as recorded by official position description coding methods. The bargaining units are regarded as distinct and separate units for purposes of layoff unless specific provisions of this master contract and/or this Article allow for specific exceptions **such as bumping between related classifications in different bargaining units.** The organization units for RC-6 and 9 shall be defined as the facility.

UNION PROPOSAL – Management countered at sub com and un accepted - TA

Section 2. General Procedures

a)Layoff shall be by official organizational unit as recorded by official position description coding methods. The bargaining units are regarded as distinct and separate units for purposes of layoff unless specific provisions of this master contract and/or this Article allow for specific exceptions such as bumping between related classifications in different bargaining units. The organization units for RC-6, ~~and~~ 9 and CU-500, ~~except for PSA Option 7 Parole Supervisor,~~ shall be defined as the facility. For PSA Option 7 Parole Supervisors, the organizational unit shall be defined in the local supplemental.

MANAGEMENT PROPOSAL – Management Holds

Section 2. General Procedures

e) No certified or probationary employee within a position classification within an appropriate organizational unit ~~and work location~~ shall be laid off until any temporary, provisional or emergency employee, ~~and the Personal Service and Vendor Contract worker who performs substantially similar duties to the position classification of the employee who otherwise would be laid off~~ are terminated noncertified. No certified or probationary employee within a position classification within an appropriate organizational unit shall be laid off until an employee in a trainee position

classification within the classification series or an employee in a trainee position classification who has a targeted title to a position within the classification series within either the appropriate organizational unit or worksite is first terminated noncertified. No certified employee within a position classification within an appropriate organizational unit shall be laid off until all original appointment, probationary employees within the same position classification within the appropriate organizational unit are first laid off. ~~Notwithstanding the above, if there is no employee subject to layoff who is qualified and wishes to perform the work of a Personal Service and Vendor Contract worker who performs substantially similar duties to the position classification, such Personal Service and Vendor Contract worker need not be terminated.~~

UNION PROPOSAL – Un w/d management accepts - TA

Section 2. General Procedures

e)No certified or probationary employee within a position classification within an appropriate organizational unit and work location shall be laid off until any temporary, provisional ~~or~~ emergency employee, ~~or any other individual other than a bargaining unit employee~~ and the Personal Service and Vendor Contract worker who performs substantially ...

MANAGEMENT PROPOSAL – - TA

Section 2. General Procedures

f) (RC-10, 62, 63 only) In the application of the layoff and recall procedure, the Employer reserves the right to establish bona fide requirements of specialized skills, training, experience and other necessary qualifications that have been set forth in the official position description (CMS-104) or listed as official options in the job specification at the time of the layoff proposal. The Employer agrees to notify the Union of specialized requirements of positions involved in the application of the layoff procedure at the time of submitting the agency's layoff proposal to the Director of Central Management Services for informational purposes only.

Such requirements on the CMS-104 shall relate to permanent job functions of such a nature that could not be learned during the normal orientation period associated with the filling of a vacant position in that position classification.

The parties agree that positions in all RC-10 and RC-63 classifications and in certain classifications in RC-62 may be subject to the provisions of this Section. RC-62 classifications which the parties contemplate may include positions subject to these provisions are identified by a footnote in Schedule A.

The Employer shall notify the Union of any additional classification(s) it believes may include positions which should be subject to this Section~~.~~**, and will negotiate over the necessity for such additional classification(s). Should the parties fail to agree, and the Employer implements the specialized requirements, the Union may grieve the dispute directly to Step 4.**

MANAGEMENT PROPOSAL – Management Modified as highlighted at the committee holds on rest

Section 3. Bumping and Transfer in Lieu of Layoff

The parties agree that the Bumping and Transfer rights outlined below shall be utilized in the event of a Layoff, except those enumerated in Section 1, regardless of any agency past practices. Agency supplemental agreements shall not conflict with the Bumping and Transfer Procedures as outlined below.

a) An employee who is subject to layoff is defined as that employee who is scheduled to be laid off by the employing Agency or removed from their position, even though they still may be on the Agency's payroll.

b) No less than five (5) calendar days prior to the layoff meeting, the Employer will provide a written packet of information informing an employee(s) subject to layoff and employee(s) potentially affected by layoff of his/her highest level rights under each step (c) through (jd). Such packet shall include: the agency seniority roster (including shift, days off, work location, work site and specialized skills) of employee(s) subject to layoff and employee(s) potentially affected by layoff; the agency vacancy list (including shift, days off, work location, work site and specialized skills), if applicable; potential bumping options, if applicable; and such information as is needed in order for the employee(s) to exercise his/her rights under this Article.

Starting with the highest bargaining unit and pay grade, employee(s) may choose to exercise or waive his/her available bump option in (c) through (d), if applicable. The employee(s) must make his/her selection known to the Employer at the time of his/her bump meeting and such selection shall be final. An employee may still opt to be laid off at any time prior to the implementation of the bump, however the Employer shall not be required to modify the layoff plan.

Agency vacancies shall be offered, if applicable and seniority permitting, upon completion of the bumping process, (c) through (id). An employee(s) who chooses to waive his/her available bump option, or if no bump option was available, may choose to exercise his/her right to a Transfer or Voluntary Reduction in Lieu of Layoff (ie), if applicable and seniority permitting. The employee must make his/her selection known to the Employer at the time he/she is offered a vacancy and such selection shall be final. An employee may still opt to be laid off at any time prior to being placed into the vacancy, however the Employer shall not be required to modify the layoff plan.

c) Bumping Priority - First Step - Work location for bumping purposes is defined as the identified agency's facility, local office area or building or as defined by supplemental agreement approved by DCMS and AFSCME in which the organizational unit of layoff is located except as provided for in RC-6, ~~and~~ RC-9 ***and CU-500*** in Section 2(a) of this Article. An employee subject to layoff shall bump the least senior employee in the same position classification and work location, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform. ~~In the event that more than one employee in the same position classification and work location are subject to layoff, an equal number of least senior employees at the work location (a number equal to the number of employees electing to bump) shall be identified and in seniority order, the employees subject to layoff shall be allowed their choice in bumping the identified least senior employees.~~ Since the work location is facility wide, RC-6 ~~and~~ RC-9, ***and CU 500*** employees are not subject to this lateral bumping provision. Management reserves the right to resolve staffing deficiencies resulting from an RC-9 layoff per Article XIX, Section 3(A)3 or 3(A)l as agreed by the parties. In the event that an employee waives or refuses to accept an available bump under this provision the employee shall be laid-off.

d) Bumping Priority - Second Step - If the employee is unable to bump at the immediate work location as defined in (c) above, the employee shall bump the least senior employee in the same position classification, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, and agency in the county where the position is located unless otherwise agreed by the parties in supplemental agreements approved by DCMS and AFSCME. ~~In the event that more than one employee in the same position classification and work location are unable to bump under (c) above, an equal number of least senior employees in the county (a number equal to the number electing to bump) shall be identified and in seniority order, the employees subject to layoff shall be allowed their choice in bumping the identified least senior employees.~~ RC-6, ~~and~~ RC-9 ***and CU-500*** employees are not subject to this lateral bumping provision. In the event that an employee waives or refuses to accept an available bump under this provision, the employee shall be laid off.

~~e) Bumping Priority – Third Step - Lower level in same position classification series, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, by work location (similar to (c) above) but includes RC-6 and RC-9 employees.~~

~~f) Bumping Priority - Fourth Step - Lower level in same position classification series, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, by county (similar to (de) above) but excludes RC-6 and RC-9 employees.~~

~~g) Bumping Priority - Fifth Step - Employees covered by the Collective Bargaining Agreement shall be allowed to bump into a previously certified position classification or the successor title to a previously certified classification, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in any AFSCME bargaining unit, or lower level position classification in the same classification series except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in another AFSCME bargaining unit by work location (similar to (c) above) but includes RC-6 and RC-9 employees.~~

~~h) Bumping Priority - Sixth Step - Employees covered by this Collective Bargaining Agreement shall be allowed to bump into a previously certified position classification, or successor title to a previously certified position classification,~~

~~except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in any AFSCME bargaining unit or lower level position classification in the same classification series, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in another AFSCME bargaining unit by county (similar to (d) above) but excludes RC-6 and RC-9 employees.~~

~~i) Notwithstanding the above, an employee subject to layoff shall be permitted to exercise bumping options at his/her worksite and/or work location, seniority permitting, before bumping to another worksite or work location.~~

~~j~~be) Transfer or Voluntary Reduction in Lieu of Layoff - An employee subject to layoff as defined above shall be offered a transfer or voluntary reduction within the agency's available bargaining unit vacancies in lieu of layoff, and provided the employee is qualified for such vacancy. Offers of transfers or voluntary reduction shall be by seniority. The employing agency's vacancies as defined under Article XIX shall be offered on a statewide basis regardless of the work location or bargaining unit of the vacancy.

The employee must make his/her selection known to the Employer at the time he/she is offered a vacancy and such selection shall be final. An employee may still opt to be laid off at any time prior to being placed into the vacancy, however the Employer shall not be required to modify the layoff plan.

~~k~~cf) Inter-agency Transfer on Layoff - An employee(s) unable to exercise his/her **bumping and**-seniority rights under the above Section~~s~~, or for whom the exercise of such rights would result in a ~~two (2)~~ three (3) or more paygrade reduction, or would require the employee(s) to travel in excess of thirty-five (35) miles (or twenty (20) miles within Cook County) from his/her current work location, shall have the right to transfer to a permanent vacancy in any AFSCME bargaining unit in the same position classification or other position classification for which he/she is qualified in another agency. The employee must make his/her selection known to the Employer at the time he/she is offered a vacancy and such selection shall be final. An employee may still opt to be laid off at any time prior to being placed into the vacancy, however the Employer shall not be required to modify the layoff plan

~~m~~g) Employees reduced in pay grade by virtue of **bumping or** voluntary reduction to avoid layoff shall retain recall rights to his/her former position classification.

~~o) An employee in a position classification in a semi-automatic series who exercises a bumping right under this Section to the lower level title in the semi-automatic series shall retain his/her current classification.~~

~~p) All bumping rights and rights to vacancies shall extend to previously certified classifications for which he/she is qualified, including classifications which are successor titles and those in the same series but lower than the previously held title, regardless of bargaining unit.~~

~~q~~h) **All bumping rights under this Section shall not be exercised between agencies.** The Departments of Corrections and Juvenile Justice shall be treated as separate Agencies for the provision of this section.

UNION PROPOSAL – un counter – management rejects

Section 3. Bumping and Transfer in Lieu of Layoff

h) Bumping Priority - Sixth Step -Employees covered by this Collective Bargaining Agreement shall be allowed to bump into a previously certified position classification, or successor title to a previously certified position classification, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in any AFSCME bargaining unit or lower level position classification in the same classification series, except in position classifications with options, the employee shall bump the least senior employee in an option which the employee who is bumping is qualified to perform, in another AFSCME bargaining unit by county (similar to (d) above) but excludes RC-6 and RC-9 employees. Employees may not exercise this Bumping Priority Step if exercising such would result in a reduction of 4 paygrades or greater.

MANAGEMENT PROPOSAL – status quo - TA

Section 4. Recall

(4) A full-time employee subject to layoff or on layoff who exercises his/her right to **bump into or** take a vacancy in a ...

MANAGEMENT PROPOSAL – TA

Section 4. Recall

b) Permanent vacancies not filled by recall or bid shall be offered to employees on higher level position classification recall lists provided such employees have not previously declined similar vacancies. ...

MANAGEMENT PROPOSAL – TA

Section 4. Recall

c)An employee laid off shall retain and accumulate seniority and continuous service during such layoff not to exceed four (4) years. Nothing herein shall prohibit the parties from extending such period upon mutual agreement.

MANAGEMENT PROPOSAL – Management w/d at subcom – un acpt - TA

Section 4. Recall

i) If a probationary employee is recalled, he/she shall serve the remainder of his/her probationary period or no less than two (2) months, whichever is greater.

MOU's

MANAGEMENT PROPOSAL – Management countered at subcom

BUMPING OF A TRAINEE EMPLOYEE

The parties agree that during the implementation of Article XX, Section 3 (c) through (~~h~~d) (bumping), an employee in a trainee position classification within the classification series or an employee in a trainee position classification who has a targeted title to a position within a classification series of an employee subject to layoff shall be included in the bumping process.

MANAGEMENT PROPOSAL – Management w/d at subcom. Un accepts - TA

CLOSURE OF A FACILITY

It is understood by the parties that within sixty (60) days of the Employer's announcement of the closure or conversion of a facility (facility as defined in Definition of Terms d)2)), the parties agree to negotiate over such matters that may impact upon employees covered by this agreement on questions of wages, hours and other conditions of employment.

~~This Memorandum of Understanding (MOU) shall set forth certain rights that may be exercised by AFSCME bargaining unit employees, who are at a Department/Agency specific facility (facility as defined in Definition of Terms, d)2)) due to closure.~~

1. ~~This MOU shall apply for the closure process.~~
2. ~~All AFSCME bargaining unit employees at the facility shall be considered as subject to layoff upon formal notification.~~
3. ~~Except as specifically modified by this agreement, all provisions of the Master Collective Bargaining Agreement with respect to the facility employees shall apply.~~
4. ~~In the event one or more bargaining unit employees are retained at the facility after the projected closure date, these opportunities shall be offered on the basis of seniority, by position classification.~~
5. ~~Grievances regarding the application and interpretation of this MOU shall be processed in accordance with the Memorandum of Understanding on Special Grievances.~~
6. ~~Employees who accept a vacancy at another worksite of the Department/Agency shall be allowed up to one (1) workday, without loss of pay, to visit the location.~~
7. ~~The Department/Agency will endeavor to provide the following services to employees at the facility:~~
   - ~~a. Assistance regarding unemployment compensation from the Department of Employment Security;~~
   - ~~b. Information concerning life, medical, vision and dental insurance benefits;~~
   - ~~c. Deferred Compensation and financial counseling;~~
   - ~~d. Seminars and information from the State Employees' Retirement System, if available;~~

   ~~Employees who attend all such on-site services shall do so without loss of pay.~~

8. ~~The Department will not contest the unemployment insurance claims unless the employee's termination was the result of discharge for cause. However, the beginning date for unemployment compensation will be subject to the rules and regulations of the Department of Employment Security.~~
9. ~~In the event that the facility re-opens or otherwise becomes operable in the same capacity, all non-retired employees covered by this MOU will be offered the opportunity to return to their previously held position, if such exists at the facility, based upon seniority. Any employee subject to this MOU will not be required to have any additional qualification(s) than were required at the time of the closure.~~

   ~~All transfers covered by this MOU shall be considered as "other means" under the RC-6 and 9 Transfer Agreements and will not count towards any facility's annual limit for transfers.~~
10. ~~The impacted employees accepting positions at other work locations will be required to attend and complete a facility specific orientation program, not to exceed two (2) weeks. Upon completion, employees will be placed in the overtime rotation.~~
11. ~~The impacted employees' approved first priority vacation requests will not be forfeited by moving to a new location, unless emergency operating needs dictate otherwise.~~
12. ~~Any impacted employee accepting a position through Article XX of the Master Collective Bargaining Agreement at another facility shall not have shift preference or job assignment rights until three (3) months after they officially assume the position.~~

MANAGEMENT PROPOSAL – Management holds

COMMERCIAL DRIVER'S LICENSE

Employees who are not permitted by law to operate their assigned vehicle because of their failure to pass the commercial driver's exam shall be considered as subject to layoff for the purposes of exercising transfer or voluntary reduction rights pursuant to Article XX, Section 3~~j~~ ~~be~~ or 3~~k~~~~c~~~~f~~ of the Master Agreement, ~~but shall not be entitled to rights pursuant to Article XX, Section 3a through 3i~~.

Employees who are unable to exercise rights under Article XX, Section 3~~j~~~~be~~ or 3 ~~k~~~~c~~~~f~~ of the Master Agreement shall be terminated and entitled to recall, only if they possess the necessary driver's license, or to a position in which previously certified, for a period not to exceed two years.

MANAGEMENT PROPOSAL – Management w/d at subcom, Un acpt - TA

LAYOFF TEMPORARY, PROVISIONAL, EMERGENCY EMPLOYEE- ARTICLE XX, SECTION 2 (e)

The parties agree that the intent of Article XX, Section 2 (e), Layoff - General Procedures, is that temporary, ...Upon completion of that time frame, such ~~certified~~ employee may be considered laid off and shall have recall rights as set forth in Article XX, Section 4, Recall.

This procedure, if applicable, shall take place upon completion of the process set forth in Article XX, Section 3, **Bumping and** Transfer in Lieu of Layoff and shall not be applicable to employee(s) who have exercised his/her rights under Article XX, Section 3, **Bumping and** Transfer in Lieu of Layoff (i.e. employees who **bump or** select a vacancy).

MANAGEMENT PROPOSAL – Management holds

NON-CODE EMPLOYEES

However for Layoff purposes only~~, a non-code employee shall be allowed to bump into a previously certified code position or a code position in a lower title in a previous certified series~~. ~~A~~ a non-code employee shall be offered a vacant code position for which he/she is qualified and eligible to avoid layoff in his/her employing agency pursuant to Article XX, Section 3 (~~j~~~~be~~) or any other agency pursuant to Article XX, Section 3 (~~k~~~~c~~~~f~~). Such employee must meet the minimum qualifications for the vacancy as determined by the Department of Central Management Services. For the period a non-code employee is in laid off status and on a recall list, a non-code employee shall request to the Department of Central Management Services that he/she have rights to bid on code positions pursuant to the Intra-Agency Transfer on Recall as set forth in Article XIX provided the employee receives an "A or B" open competitive grade for the classification for which the vacancy exists as determined by the Department of Central Management Services. Such requests shall not be unreasonably denied. The non-code employee shall serve the appropriate probationary period or established trainee program period pursuant to the appropriate trainee agreement.

MANAGEMENT PROPOSAL – Management Holds

PART-TIME EMPLOYEES

~~A. Except as set forth below there shall be separate lines of bumping for full-time and part-time employees.~~

~~Full-time employees may bump part-time employees, seniority permitting, pursuant to Article XX of the Master Contract. Part-time may not bump full-time employees to avoid layoff. Full-time employees may not bump part-time employees and part-time employees may not bump full-time employees to change shifts, or for any other purpose that bumping is permitted under the master or supplemental agreements.~~

It is understood that the practice of grouping employees by classification for purposes of layoff (irrespective of part-time or full-time status) shall continue.

A full-time employee recalled to a part-time position may...

~~B. Notwithstanding any other provision of the Master Agreement, part-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked in excess of the normal work day or work week for like full-time employees.~~

~~Such payment shall be cash or compensatory time in accordance with the provisions of the Master Agreement.~~

MANAGEMENT PROPOSAL – Management holding

ARTICLE XX, SECTION 3(~~k~~f) PROCESS MEMORANDUM OF UNDERSTANDING

1. Effective July 1, 2010, State agencies providing notice to employees pursuant to Article XX, **Section 3(b)** of their rights under Article XX, Section 3(~~c~~b)~~-(j~~e~~)~~, shall also provide notice of an employee's right to recall or transfer on layoff provided in Article XIX, Section 2, A(b), Section 2, B(b) and Section 2, C(b) and Article XX, Section 3(~~k~~f) to impacted employees. Prior to July 1, 2010, the Union may raise the issue of notice in impact bargaining.
2. As soon as practicable after an agency notifies CMS it has completed its employee layoff meetings and CMS has had an opportunity to review and approve the agency's layoff plan and to verify that there are employees eligible for an Inter-agency Transfer on Layoff pursuant to Article XX, Section 3(~~k~~f), ~~but in no event later than 30 days prior to the effective date of the layoff, except in emergency situations as referenced in Article XX, Section 3(l),~~ CMS shall instruct all agencies to submit a list of available, funded vacancies that the agencies intend to fill. The parties agree that if it is more than ~~30~~ 15 days prior to the effective date of the layoff, it may not be practicable for CMS to instruct all agencies to submit a list of available, funded vacancies until all agencies processing a layoff have completed their layoff meetings and have had their layoffs reviewed and approved by CMS.

1748

SEMI AUTOMATIC/CLASSIFICATION PACKAGE
ARTICLE XIX

MANAGEMENT PROPSOAL – Management w/d Prop return to Status Quo, contingent upon Union acceptance of management counter of Union proposal in Section 9 and management proposal in the Specialized Skills Side Letter
Section 9. Semi-Automatic In-Series Advancement
Employer reserves the right to propose modifications in economics
For the purposes of this Article, jobs currently being filled through semi-automatic ....
With respect to the Mental Health Generalist series, it is understood that the Department of Mental Health and Developmental Disabilities will continue its past practice of not promoting the selected bidder until the successful completion of training**, and its practice regarding promotion of Technicians I to Technicians II under the Memorandum of Understanding**.
Semi-automatic titles include, but are not limited to the following:

Agricultural Land and Water Resources Specialist I to II, II to III
Bank Examiner I to II, II to III
Chemist I to II
Child Protection Associate Specialist to Child Protection Specialist
Child Protection Specialist to Child Protection Advanced Specialist
Child Welfare Associate Specialist to Child Welfare Specialist
Child Welfare Specialist to Child Welfare Advanced Specialist
Correctional Counselor I to II
Corrections Food Service Supervisor I to II
Corrections Leisure Activities Specialist I to II
Corrections Parole Agent to Corrections Senior Parole Agent
Corrections Supply Supervisor I to II
Criminal Intelligence Analyst I to II
Day Care Licensing Representative I to II
Environmental Health Specialist I to II
Environmental Protection Engineer I to II, II to III
Environmental Protection Geologist I to II, II to III
Environmental Protection Specialist I to II, II to III
Financial Institutions Examiner I to II, II to III
Forensic Scientist I to II, II to III
Gaming Special Agent Trainee to Gaming Special Agent
Gaming Special Agent to Gaming Senior Special Agent
Geographic Information Specialist I to II
Information Service Specialist I to II
Human Services Grant Coordinator I to II
Licensed Practical Nurse I to II
Manpower Planner I to II
Office Aide to Office Clerk
Rehabilitation Counselor Trainee to Rehabilitation Counselor **to Rehabilitation Counselor Senior**
Rehabilitation Case Coordinator I to II
Revenue Auditor I to Revenue Auditor II
Revenue Auditor II to Revenue Auditor III
Revenue Collection Officer Trainee to Revenue Collection Officer I, **I to II, II to III**
Revenue Special Agent Trainee to Revenue Special Agent
Revenue Special Agent to Revenue Senior Special Agent
Revenue Tax Specialist I to II
Site Technician I to Site Technician II

Social Service Program Planner I to II, II to III
Technical Advisor I to II (with law license)
Terrorism Research Specialist I to II
Weatherization Specialist I to II

UNION PROPSOAL – Union Counter, Management Counter – linked as noted above

1. ~~Technical Advisor II to III Semi-Automatic~~
2. ~~Environmental Protection Engineer III – one pay grade increase RC-62 (18) to (19)~~
3. ~~Environmental Protection Specialist III – one pay grade increase RC-63 (19) to (20)~~
4. ~~Department of Corrections Library Associate upgrade to Librarian I~~
5. Department of Juvenile Justice Office Administrator 3 ~~upgrade~~ reclassified to Executive 2 (6 positions)
6. ~~Administrative Assistant I and II shall have the same bidding rights as RC-62 employees when bidding on an Executive I vacancy~~
7. ~~Lottery Telemarketing Representative will be placed into the Lottery Sales Representative series~~
8. ~~Evidence Tech I and II will be placed into the Forensic Scientist series~~
   ~~Forensic Scientist Trainee will be added to the Upward Mobility Program as a Certificate Title~~
9. ~~Natural Resources Tech will be placed into the Site Assistant Superintendent series~~
10. ~~Information Services and Systems Analyst Subcommittee at State Retirement Systems. Committee to address grading exams and ISS to ISA career path.~~

MOU's

Management Proposal – Management Holds

Side Letter Bargaining Unit Exclusion Procedure

The Process enumerated herein exists to allow the Employer and the Union to come to an agreement on changes in the excluded or included status of existing permanent positions, either filled or vacant, within titles covered by the bargaining unit. The parties intend to use this process to avoid litigation before the Illinois Labor Relations Board (ILRB) regarding changes in status of certain positions and regarding status of vacant positions the State is contemplating filling.

1. **If the employer intends to exclude a vacant position from the Bargaining Unit, or the Union intends to include a previously excluded position in the Bargaining Unit, the moving party will notify the other party via fax or phone of its intent. The Employer/Union will provide information to the other party, such as the reason for the inclusion/exclusion, the affected Agency involved, the position number, the incumbent (if applicable), the job description, or any other documentation deemed relevant by the parties. The Employer/Union will respond, in writing, as to its position regarding the information within ten (10) working days.**
2. **If the parties reach an agreement regarding the inclusion or exclusion of a position, a joint unit clarification petition on that position will be filed with the ILRB. The parties shall operate as if the petition has been granted pending certification of the petition.**
3. **If the parties do not reach agreement and the issue is scheduled for hearing, the parties' representatives shall have further discussions to attempt to reach an agreement. If no agreement can be reached, the hearing will proceed as scheduled.**
4. ~~For "split titles" that exist as of the date of this Side Letter, the parties agree to file joint petitions within 90 days of the date of this Side Letter to amend the ILRB certifications so that all positions within said titles are included within the AFSCME bargaining units, with the exception of those positions specifically identified as excluded.~~
5. **4. The Parties agree that those individual positions currently excluded from AFSCME bargaining units by existing labor board certifications shall continue to be excluded ~~in the petitions referenced in paragraph four above~~. Both Parties reserve the right to seek labor board determination to resolve any remaining dispute over positions that are inappropriate for inclusion or exclusion.**

Management Proposal – Management Holds

NEW POSITIONS WITHIN A SPLIT CLASSIFICATION

On those instances where a new position is created and it is within a classification title that is part of a split classification, i.e., some employees are determined to be included and others excluded, the following procedure will be implemented:

- **The Employer shall promptly notify the Union when it intends to create a new position within a split classification.**
- **The parties will meet as soon as possible after the position has been established to determine if the position should be included or excluded from the bargaining unit and to jointly stipulate that agreement to the State Labor Relations Board.**
- **If included, the new position shall be posted pursuant to Article XIX of the Master Agreement.**
- **If the Employer and the Union are not able to agree on the inclusion of a new position within a split classification, the Union may file a representation petition pursuant to the Illinois Public Labor Relations Act.**
- **In the event the parties were unable to agree on the inclusion of a new position within a split classification and if the State Labor Relations Board subsequently determines that the position should be included in the bargaining unit, such position shall be subject to the provisions of the Contract at the time it is determined, by the State Labor Relations Board to be included in the bargaining unit.**

MANAGEMENT PROPOSAL – Management Holds, linked as noted above

SIDE LETTER

The parties agree that below listed classifications shall be subject to specialized skills in accordance with Article XVIII, Section 2 and Article XIX, Section 2, and will be so designated in Schedule A.

Accountant Supervisor
Human Resources Specialist
Technical Specialist (CDB)
Chief Steward (Racing Board)
Steward (Racing Board)
Alternate Steward (Racing Board)
~~Bank Examiner I, II & III~~
~~Child Support Specialist I & II (HFS)~~
Human Resources Representative
~~IT CSS I & II (CMS)~~
~~Site Assistant Superintendent I & II~~
~~State Mine Inspector~~
~~State Mine Inspector at Large~~

DEFINITION OF TERMS

MANAGEMENT PROPOSAL – Management Withdraws status quo- TA

b) "Employer" refers to ... ~~The Departments of Corrections and Juvenile Justice shall be considered separate agencies.~~

ARTICLE V- Grievance Procedure

MANAGEMENT PROPOSAL- Management Holds

Section 2. Grievance Steps

Step 3: Agency Head

For the Departments of Children and Family Services ~~and Juvenile Justice~~ the Union shall be represented by a committee in each agency, made up of Union staff and four (4) bargaining unit members. For the Department of Human Services, the Union shall be represented by a committee made up of Union staff and seven (7) bargaining unit members. For the Department of Corrections~~/ Juvenile Justice~~, the Union shall be represented by a committee made up of Union staff and five (5) bargaining unit members. For the Department of Juvenile Justice, the Union shall be represented by a committee made up of Union staff and three (3) bargaining unit members. For all other Departments, they will be divided into two Multi-Agency Committees for which the Union shall be represented by Union staff and a total of five (5) ... The agencies will initially be divided into the following committees: Committee I shall consist of DVA, ~~DJJ,~~ ISP, HFS...

ARTICLE VI - Union Rights

Management Proposal – Mgt W/d, Return to Status Quo, linked to w/d of Un Prop in Art XVII Sect 2 and Art XIX Sect 2

Section 2. Access to State Premises by Union Representatives

b) Upon request, the Union shall be allowed the use of electronic mail on a semi-annual basis to solicit personal e-mail addresses of all AFSCME represented employees (excluding Department of Military Affairs). The parties shall meet to discuss the method and content of the solicitation.

Union Proposal – Union Withdraws, Return to Status Quo

Section 2. Access to State Premises by Union Representatives

~~b) The Union may use the state email system for the purpose of communicating with AFSCME represented employees.~~

ARTCILE XII- Hours of Work

MANAGEMENT PROPOSAL – Management W/d linked to w/d of Un Proposals in Art XVII Sect 2 and Art XIX Sect 2

Section 1. General Provisions RC-6

d) "Work Day and Work Week"

(i) Correctional Officers - **38 3/4** ~~37 ½~~ hours consisting of five (5) consecutive days of **8 1/4** consecutive hours, including an unpaid lunch period of thirty (30) minutes per day~~,~~ **and** ~~If at the discretion of the Employer,~~ a roll-call period of fifteen (15) minutes **per** ~~on a given work~~ day~~, is required, it~~ **which** shall be paid for in accordance with Section 20 of this Article.

UNION PROPOSAL – Mng Counter, Mngt W/d, linked to w/d of Un Prop in Art XVII Sect 2 and Art XIX Sect 2

Section 8. General Provisions CU-500

b) "Work Day and Work Week"

1. Employees shall work **38 3/4** ~~37 ½~~ hours consisting of five (5) consecutive days of **8 1/4** consecutive hours, including an unpaid lunch period of thirty (30) minutes per day~~,~~ **and** ~~If at the discretion of the Employer,~~ a roll call period of fifteen (15) minutes ~~per on a given work,~~ day~~, is required, it~~ **which** shall be compensated **at time and one-half (1 1/2)**in accordance with Section 2~~0~~ of this Article. Employees who do not stand roll call because of their classification shall not receive compensation for a roll call period.

Union Proposal – Union Withdraw - TA

Section 8. General Provisions CU-500

c)"Lunch Period" Employees who receive an unpaid lunch period and are required to work at their work assignments during such period and who are not relieved, shall have such time counted as hours worked for the purposes of Section 2

below and shall be compensated at the appropriate compensatory straight or overtime rate, whichever may be applicable. ~~In the event that only one (1) Lieutenant is scheduled to work a particular shift a paid lunch shall be granted. Where it is currently the practice, whenever only one Lieutenant is scheduled to work a particular shift, a paid lunch shall be granted.~~

Union Proposal – Defer Timeframe for Lunch Period to Supplemental Negotiations - TA

Section 8. General Provisions CU-500

c)"Lunch Period" Employees who receive an unpaid ...applicable. An employee shall not be relieved for lunch period prior to two (2) hours from the beginning of his/her shift nor shall an employee be relieved one and one-half (1 ½) hours prior to the end of his/her shift.

MANAGEMENT PROPOSAL – Management W/ds linked to w/d of Un Proposals in Art XVII Sect 2 and Art XIX Sect 2

Section ~~20~~19. Roll-Call Pay

Correctional Officers and other employees required both to stand roll-call and remain at the facility beyond eight (8) hours per day for such roll-call shall be paid for all such time over and above their regular salary at their straight time rate. Effective July 1, 2010, Correctional Officers and other employees required~~, at the discretion of the Employer,~~ both to stand roll-call and remain at the facility beyond eight (8) hours per day for such roll-call shall be paid for all such time over and above their regular salary at the applicable overtime rate~~.~~ An employee required to stand roll-call shall declare that he/she receive all roll-call compensation as compensatory time or cash. Such declaration will remain in effect unless changed by the employee prior to July 1st of each subsequent fiscal year.

ARTICLE XVII - Records and Forms

Union Proposal – Union Counter, Management counter un w/d linked to email and rollcall

Section 2. Records

All public records of the Employer shall be available for inspection upon written request by the Union.

In order to safeguard the privacy and safety of employees, ~~T~~the Employer shall not provide **to any third party** information ~~that is exempt from disclosure under the Freedom of Information Act (5 ILCS 140/7) and~~ pertaining to bargaining unit employees, to the Union, or to matters related to collective bargaining, ~~to an entity that is not a part to this agreement~~. **If such information is exempt from disclosure under the Freedom of Information Act (5 ILCS 140/7) unless directed to do so by the Attorney General.**

ARTICLE XIX Filling of Vacancies

Union Proposal – Union Counter, Mgt counter union w/d linked to email and rollcall

Section 2. Posting F. Acceptance of Position

Any bidder who has been selected for a vacancy must make known his/her acceptance within two (2) working days ~~(three (3) working days for CU-500)~~ of receiving notice of his/her selection. **Once the employee has accepted the position, the offer cannot be withdrawn unless an employee is unable to pass a background check,** and **the employee** shall be placed in the position **as soon as practicable**. ~~within forty-five (45) days.~~ Failure to accept the position within said time limit shall constitute a waiver of the position.

ARTCILE XX- Layoff

MANAGEMENT PROPOSAL – Management Holds

Section 3. Bumping and Transfer in Lieu of Layoff

~~g~~h) **All bumping rights under this Section shall not be exercised between agencies.** The Departments of Corrections and Juvenile Justice shall be treated as separate Agencies for the provision of this section.

Management Proposal – Mgt W/d, linked to w/d of Un Prop in Art XVII Sect 2 and Art XIX Sect 2

~~Side Letter DOC Roll Call~~

~~The Parties agree that during the terms of this Agreement, if it desires the Employer may implement an alternative to the existing roll call system. Before such implementation the Employer agrees to meet and negotiate the impact of such decision with the Union including changes to Article 12, Section 1(d)(i) Work Day and Work Week, Correctional Officers, Section 8 b) Work Day and Work Week, CU-500 and Section 20 Roll-Call Pay of the Agreement.~~

Cd - given 12:53 p.m.

MANDATORY OVERTIME PACKAGE

ARTICLE XII – Hours of Work

Union Proposal – Management Rejects

Section 1. General Provisions RC-6

"Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to ~~sixteen (16)~~ **fifteen (15)** hours in a twenty-four (24) hour period. For hours worked in excess of ~~sixteen (16)~~ **fifteen (15)** in a twenty-four (24) hour period **or more than twenty-two-and-one-half (22.5) in a forty-eight hour period**, employees shall be paid double time.

Union Proposal – Management Rejects

Section 2. General Provisions RC-9

c)"Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to sixteen (16) hours in a twenty-four (24) hour period. For hours worked in excess of sixteen (16) in a twenty-four (24) hour period **or more than twenty-four (24) in a forty-eight hour period**, employees shall be paid double time.

Union Proposal – Management Rejects

Section 3. General Provisions RC-14

d) "Overtime Payment" Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to ~~sixteen (16)~~ **fifteen (15)** hours in a twenty-four (24) hour period. For hours worked in excess of ~~sixteen (16)~~ **fifteen (15)** in a twenty-four (24) hour period **or more than twenty-two-and-one-half (22.5) in a forty-eight hour period**, employees shall be paid double time.

Union Proposal – Management Rejects

Section 6. General Provisions RC-10, RC-62 and RC-63

(iii) Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to ~~sixteen (16)~~ **fifteen (15)** hours in a twenty-four (24) hour period. For hours worked in excess of ~~sixteen (16)~~ **fifteen (15)** in a twenty-four (24) hour period, **or more than twenty-two-and-one-half (22.5) in a forty-eight hour period** employees shall be paid double time.

Union Proposal – Management Rejects

Section ~~9~~10. Overtime Payments (All Units except RC-10)

Full-time employees shall be paid at the rate of one and one-half times the employee's straight time hourly rate for all time worked outside of their normal work hours and/or work days up to ~~sixteen (16)~~ **fifteen (15) (16 hours-RC-9)** hours in a day. For hours worked in excess of ~~sixteen (16)~~ **fifteen (15) (16 hours-RC-9)** in **a twenty-four (24) hour period** ~~a day~~, **or more than twenty-two-and-one-half (22.5) (24 hours RC-9) in a forty-eight hour period** employees shall be paid double time. However, a full-time employee will not be eligible for pay at the applicable overtime rate for all time worked outside of the employee's normal work hours and/or work days, pursuant to this Article, only under the following circumstances:

~~However,~~ A ~~a~~ full-time employee will not be eligible for pay at the applicable overtime rate for all time worked outside of the employee's normal work hours and/or work days, pursuant to this Article, only under the following circumstances:

(All Units except RC-6 and CU-500) When an employee has worked at least three (3) voluntary assignments covering overtime in a calendar quarter, and have been mandated on three (3) occasions to cover overtime in

that quarter, each subsequent occasion of mandated overtime in that calendar quarter will be compensated at double time.

Management Proposal – Management Modifies

Section ~~17~~16. Overtime Scheduling (RC-6 and 9)

g)"Mandatory Overtime" The parties agree that mandatory overtime should be the exception and not the norm of the State operations and employees shall not be disciplined for refusing a mandation to work overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences ~~discovered at~~ ***~~within forty-eight (48) hours of~~*** ~~the commencement of a shift as provided in the Mandatory Overtime MOU.~~ ***caused by call offs received during the two (2) preceding shifts. Prior to mandating for overtime, where there is not an agreement in place at the facility, the employer shall exhaust all efforts to seek volunteers to work the overtime, which may include:***

- ***Providing a volunteer sign-up sheet for mandating purposes at the employees' respective facility for future dates;***
- ***Exhausting all volunteer lists within the Facility including, but not limited to : Full Shift Voluntary Lists; Half Shift Voluntary Lists, Mandate Relief Voluntary Lists.***
- ***The Employer may seek volunteers who have not signed up for a voluntary overtime list***
- ***The Employer shall solicit for voluntary overtime in accordance with the voluntary overtime distribution provisions in Article XII, Section 17.***
- ***The Employer shall retain available records related to the use of mandatory overtime and provide such records to the local Union upon request.***

If all employees refuse a voluntary overtime assignment, mandatory overtime shall be assigned in reverse seniority order, on an assignment, not on number of hours, basis. The least senior employee shall not be assigned the overtime each time all refuse. The first total refusal of overtime will be assigned to the least senior employee, the second refusal to the next least senior employee and so on through the list, up through the fifteenth least senior employee, or fifty (50) percent of those in the equalizing group, whichever is less, at which time the Employer would revert back to the least senior employee again.

The above restrictions shall not be applicable, however, and mandatory overtime may be assigned on a rotating basis up the seniority list in an equalizing group if following such restrictions would cause an employee to be forced to work overtime more than once in a 30-day period.

Once an employee has been mandated to work overtime, efforts shall be made to relieve said employee as soon as operationally possible. ~~if requested.~~

It is agreed that in the event of disciplinary action due to refusal of a ~~mandation~~ mandate, all suspensions shall be paper, with the exception of the last suspension prior to discharge.

~~Discipline for refusal shall be as follows:~~
~~1st Offense – 1 day paper suspension~~
~~2nd offense – 5 day paper suspension~~
~~3rd offense – 10 day paper suspension~~
~~4th offense – 15 days paper and 5 actual suspension~~
~~5th offense – Discharge.~~

Union Proposal – Management Rejects, Union Should Withdraw

Section ~~17~~18. Overtime Scheduling (RC-6 and 9)

g)"Mandatory Overtime" The parties agree that ~~there shall be no overtime mandation and~~ **mandatory overtime should be the exception and not the norm of the State operations**.-and employees shall not be disciplined for refusing a mandation to work overtime hours. ~~Such prohibition of mandatory overtime shall not compromise security in youth center and prisons, or resident/veteran to staff ratios in DHS or DVA facilities. Accordingly, no mandatory posts in DOC or DJJ shall be eliminated (including conversions from mandatory to "mandatory as needed") nor shall any staff ratios (other than a reduction based upon resident/veteran's acuity needs) in DHS or DVA facilities be reduced. unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences discovered at the commencement of a shift as provided in the Mandatory Overtime MOU.~~ **The Employer shall not mandate ovetime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences discovered ~~at~~ *less than 3 hours prior to* the commencement of a shift as provided in the Mandatory Overtime MOU. An employee shall not be disciplined for refusing a mandation to work overtime hours unless the mandation is due to such unforeseen or unusual circumstances.** ***Prior to mandating overtime, the employer shall exhaust all efforts to seek volunteers to work overtime, which shall include:***

Providing a volunteer sign-up sheet(s) for mandating purposes at the employees' respective facility for future dates;

Exhausting all volunteer lists within the facility including, but not limited to: Full Shift Voluntary Lists; Half Shift and/or Split Shift Voluntary Lists, Mandate Relief Voluntary Lists.

The Employer shall seek volunteers who have not signed up for a voluntary overtime list.

The Employer shall solicit for voluntary overtime in accordance with the voluntary overtime distribution provisions in Article XII Section 17

Once the Employer has exhausted all other attempts to relieve the mandate, nothing shall prevent the mandated employee from seeking a volunteer to relieve his/her mandate

Where conflicts exist between current supplemental agreements on mandatory overtime relief and these provisions, the parties shall meet and negotiate to resolve and such conflicts with the supplemental agreements

If all employees refuse a voluntary overtime assignment, mandatory overtime shall be assigned in reverse seniority order, on an assignment, not on number of hours, basis. The least senior employee shall not be assigned the overtime each time all refuse. The first total refusal of overtime will be assigned to the least senior employee, the second refusal to the next least senior employee and so on through the list, up through the fifteenth least senior employee, or fifty (50) percent of those in the equalizing group, whichever is less, at which time the Employer would revert back to the least senior employee again. The above restrictions shall not be applicable, however, and mandatory overtime may be assigned on a rotating basis up the seniority list in an equalizing group if following such restrictions would cause an employee to be forced to work overtime more than once in a 30-day period.

Once an employee has been mandated to work overtime, efforts shall be made to relieve said employee as soon as operationally possible, if requested by the employee.

As a means to limit the utilization of mandatory overtime the determination of all mandatory and/or essential positions will be by mutual agreement of the Union and Employer.

Union Proposal – Management Rejects

Section ~~19~~20. Supplementary Agreements

CU-500

Employees shall not be required to work **more than two (2)** consecutive shifts **except in very extreme** emergencies and then only after a minimum period of eight (8) hours of paid time for sleep and rest.

The parties shall reduce to writing what current scheduling practices prevail with respect to the length of the normal work week, starting and quitting times, days off, shifts or the rotation thereof....
~~"Mandatory Overtime" The Parties agree that there shall be no overtime mandation and employees shall not be disciplined for refusing a mandation to work overtime hours. Such prohibition of mandatory overtime shall not compromise security in youth center and prisons. Accordingly, no mandatory posts in DOC or DJJ shall be eliminated (including conversions from mandatory to "mandatory as needed")~~

"Mandatory Overtime" The parties agree that mandatory overtime should be the exception and not the norm of the State operations. The Employer shall not mandate overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences discovered *less than 3 hours prior to* ~~at~~ the commencement of a shift as provided in the Mandatory Overtime MOU. An employee shall not be disciplined for refusing a mandation to work overtime hours unless the mandation is due to such unforeseen or unusual circumstances.

As a means to limit the utilization of mandatory overtime the determination of all mandatory and/or essential positions will be by mutual agreement of the Union and Employer.

MOU's

Management Proposal: Management Holds and Rejects Union Counter
Mandatory Overtime Memorandum of Understanding
DOC, DJJ, DHS and DVA Facilities
The parties agree that mandatory overtime should be the exception and not the norm of State operations and that employees shall not be disciplined for refusing a mandation to work overtime hours unless such mandation occurs in unforeseen or unusual circumstances beyond the control of the Employer, including unexpected absences ~~discovered at~~ *~~within forty-eight (48) hours of~~* ~~the commencement of a shift as provided in the Mandatory Overtime MOU.~~ *caused by call offs received during the two (2) preceding shifts.* . The elimination of mandatory overtime as a norm in state facility operations shall not compromise security in youth centers and prisons, or resident/veteran to staff ratios in DHS or DVA facilities.

Accordingly, no mandatory posts in DOC or DJJ shall be eliminated (including conversions from mandatory to "mandatory as needed") nor shall any staff ratios (other than a reduction based upon resident/veteran's acuity needs) in DHS or DVA facilities be reduced prior to notification and, upon request by the Union, a meeting between the parties concerning the reasons for the proposed changes.

Pursuant to paragraph one above, this MOU shall not otherwise alter overtime procedures, nor shall there be a diminution of the number of employees permitted to take days off on any shift at any facility.

In the event there is a material expansion of beds operated by a Department, the parties shall meet to discuss its impact on this Agreement and determine whether additional staff is needed.
The Employer shall provide to the Union the following most recent available information for each facility in DOC, DHS, DJJ, and DVA, on the 15th of each month:

1. **number of inmates/juveniles**
2. **number of residents**
3. **number of frontline staff**
4. **number of overtime hours worked, including number of overtime hours worked by each individual working overtime**
5. **number of mandatory overtime hours worked**

Non-Discrimination, UMP and Filling of Vacancies

ARTICLE III - Non-Discrimination

UNION PROPOSAL – Management Rejects – mgt holds

Section 1. Prohibition Against Discrimination

Both the Employer and the Union agree not to discriminate against any employee on the basis of race, sex, sexual orientation, creed, religion, color, marital or parental status, age, national origin, political affiliation and/or beliefs, nor shall the parties discriminate against any employee with a disability, or for other non-merit factors. Nor shall the Employer engage in any form of political favoritism, including but not limited to personnel transactions such as hiring, promotion, job assignment, transfer, scheduling, temporary assignment, layoff, and other actions including but not limited to sub-contracting, vendor and personal service contracts.

UNION PROPOSAL – Management Counter, Union Accepts - TA

Section 2. Fostering Diversity and Equal Opportunity

A. The parties agree that the full integration of women and minorities in the state workforce requires opportunities for training and development and therefore agree to to ***utilize*** the Upward Mobility Program ***to assist in the*** advancement ***of*** women and minorities.

UNION PROPOSAL – Management Rejects – mgt holds to rejection

Section 2. Fostering Diversity and Equal Opportunity

B. The Employer shall not discriminate in hiring based on race, sex, sexual orientation, creed, religion, color, marital or parental status, age, national origin, political affiliation and/or beliefs, or based on disability.

MANAGEMENT PROPOSAL – Management Withdraws - TA

Section 3. Membership Solicitation

Neither the Union nor its members shall solicit membership during an employee's work time. ~~Neither the Union nor its members shall solicit members or potential members for political purposes on state owned or leased property or by using state equipment~~

ARTICLE XV - Upward Mobility Program

MANAGEMENT PROPOSAL – Management Counter

Section 1. Goals and Priorities

The State of Illinois and AFSCME are committed to improving career advancement opportunities for employees in classifications listed in Schedule A. It is the goal of the State to provide employees with training and promotional opportunities through the Upward Mobility Program.

In the interest of enhancing the ability of employees to qualify for positions targeted in the Upward Mobility Program, the State and AFSCME will: (a) initiate and/or identify training programs to allow career paths; (b) contract for or provide course offerings that satisfy the requirements necessary for career movement; (c) offer prior learning assessment services to assure proper credit to employees for the skills and knowledge they have attained; and (d) publicize, counsel and otherwise encourage employees to pursue career opportunities within the program. Further, the parties agree to seek college credit or continuing education units for courses offered through the Upward Mobility Program.

In order to assist the State in achieving the goals set forth above, an Advisory Committee comprised of an equal number of representatives from the Union and the Employer shall oversee the Program. The Committee's mission shall be to develop recommendations regarding which position classifications are appropriate for training programs contemplated in paragraph 2, to identify the publicity and counseling efforts necessary for implementation, and to identify the providers of services in (a), (b), (c) and (d) above. Targeted position classifications may be within any existing AFSCME bargaining unit or may be classifications which represent a bridge to career advancement outside any AFSCME bargaining unit for AFSCME bargaining unit employees.

Section 2. Financing

~~For FY 2014, the allocation shall be 5 million. For FY 2015, the allocation shall be 5 million~~. For ~~FY 2016 and subsequent~~ each fiscal years covered by this agreement, the annual allocation shall be 5 million dollars, subject to sufficient appropriations. ~~limited to those funds specifically appropriated by the legislature to fund the Upward Mobility Program up to 5 million annually.~~

The Upward Mobility Program funds shall be disbursed for the purpose of establishing and implementing training initiatives as outlined in Section 1. It is understood by both the State and Union that the Upward Mobility Program is designed to supplement existing agency training and development programs.

Section 3. Courses of Instruction

A. Employees who have completed a counseling program and filed an individual career development plan for a targeted classification shall be entitled to pre-paid tuition (subject to Paragraph B, below) for any approved courses provided at the local educational institutions.

B. Courses and training programs offered under the auspices of the Upward Mobility Program shall be available at no charge to employees participating in the program subject to sufficient appropriations. ~~the availability of funds, subject to and contingent upon the legislature specifically appropriating funds in the appropriate line items to fund the Upward Mobility Program~~ and the policy guidelines established by the Committee.

C. Certified employees who apply to the Upward Mobility Program and are not accepted due to availability of funds shall be placed on a waiting list. Upon application, the employees on the waiting list shall be permitted to take a test for an Upward Mobility Program targeted title pursuant to guidelines established by the Advisory Committee. Employees successfully completing the test shall be granted certificates and placed on the appropriate eligibility list. Employees not passing the test shall remain on the waiting list for entrance into the program.

Section 4. Certificates

Once a certificate of completion is issued for skills associated with targeted positions under this program, employees shall be placed on a central list from which selection shall take place. Subject to Article XVIII, Section 2 and Article XIX, Section 5 work location priorities, the most senior employee appearing on the list from the agency in which the vacancy occurs shall be selected for the position. If no employee from the agency appears on the list, the most senior employee from all other agencies shall be selected for the position. The Director of Central Management Services, with the advice and consent of the Advisory Committee, shall designate the classifications for which a certificate and/or a credential shall be issued. The Advisory Committee shall review the requirements (credit-hours, proficiency tests, and electives) for such certificates. The certification programs must meet necessary educational standards for accreditation.

Section 5. Availability of Training

Subject to guidelines adopted by the Director of Central Management Services, with the advice and consultation of the Advisory Committee, participation in training programs will be available on a first come first served basis. Policies granting time off for courses shall be similarly established, to supplement existing agency policies.

The Advisory Committee will seek to increase accessibility by obtaining providers in various areas of the State.

Section 6. Impact on Bargaining Units

It is expressly understood that for the purposes of this program, including the selection of employees for certificated positions, the limits and distinctions between AFSCME bargaining units are hereby waived.

Section 7. Job Opportunity Information

In order to maximize employee awareness of all job opportunities, the Department of Central Management Services shall maintain a computerized central listing of all available job openings referenced in Section 1 of this Article in agencies subject to the Personnel Code and shall seek to ensure ready access to such information for all employees.

Section 8. Filling of Vacancies

1) All permanent vacancies of titles included in the Upward Mobility Program subject to the AFSCME Collective Bargaining Agreement shall be posted pursuant to the contractual procedures as delineated in Article XIX, Sections 1 and 2. Such postings shall indicate that the title is an UMP target title.
2) Employees interested in a position within their own agency must bid in accordance with agency work location designations as delineated in Article XIX, Section 5 and specific agency Supplemental Agreements.
3) Employees will be placed on eligibility lists for their targeted title in designated counties as follows:
   a) Employees shall be allowed to select in writing up to three counties of preference for each job title in which they earn a certificate or credential.
   b) An employee who has earned a certificate and/or credential will automatically be placed on the Upward Mobility Program eligibility list for that job title at the time he or she indicates the initial county preferences pursuant to Section 3(a) of this Section.
   c) Employees may change county preferences during the life of this Agreement by contacting the Department of Central Management Services, Division of Examining and Counseling in writing to indicate which county(s) they desire to have added or deleted.
   d) An employee may, on his or her own initiative, contact an agency to indicate, in writing, a preference beyond the three counties. This written request must be made for a specific position during the posting period and the individual will be treated as though they were on the eligibility list for that position.
4) Vacancies for promotion to certificate titles will be filled in accordance with Article XV, Section 4. Such selection shall be in the following order of priority:
   a) Agency bidders within the work location or facility, whichever is applicable. Employees with a certificate shall be considered and selected on the same basis as other qualified and eligible bidders (pursuant to Article XIX) in the next lower position classification within the position classification series from the bargaining unit in which the vacancy occurs.
   b) Agency bidders within the same county as the work location or facility with a certificate unless the supplemental agreement provides otherwise.
   c) Agency employees on the Upward Mobility Program eligibility list with a certificate not eligible to bid under Sections 4a and 4b.
   d) Employees with a certificate from other agencies on the Upward Mobility Program eligibility list pursuant to Section 3.
   e) If no employees are on an Upward Mobility Program eligibility list, such vacancies shall be filled in accordance with Article XIX.
   Selection among eligible employees shall be in accordance with Article XVIII, Section 2. Seniority for targeted positions in bargaining units covered by this agreement shall be determined based upon the definition of seniority for the bargaining unit of the targeted

title for agency employees. Seniority for employees of other agencies shall be their continuous service date. Selection among candidates for positions outside a bargaining unit covered by this agreement shall be in accordance with Article XVIII, Section 2(b).

5) Filling of vacancies for non-bargaining unit titles shall be filled from the Upward Mobility Program eligibility list first from the agency and then from other agencies in accordance with seniority as applied in Article XVIII, Section 2(b).

6) Filling of vacancies of credential titles will be filled in accordance with Article XV, Section 4. Such selection shall be in the following order of priority:

a) Credentialed employees bidding on a position, or who are on an appropriate Upward Mobility Program eligibility list within their current bargaining unit, or who are bidding on a position to which they have contractual rights shall be considered and selected on the same basis as other qualified and eligible bidders who are not credentialed employees.

b) Credentialed employees bidding, or who are on an appropriate Upward Mobility Program eligibility list for a position to which they otherwise have no contractual rights, shall be selected before the Employer selects any other applicant who has no contractual rights. Selection among eligible employees shall be in accordance with Article XVIII, Section 2. Seniority for targeted positions in bargaining units covered by this agreement shall be determined based upon the definition of seniority for the bargaining unit of the targeted title. Selection among candidates for positions outside a bargaining unit covered by this agreement shall be in accordance with Article XVIII, Section 2(b).

For the purpose of this Section only, trainee positions which are credential titles shall be considered as part of the same bargaining unit and classification series as the target position for which the trainee title was established.

7) The employing agency will be responsible for handling waivers of offers of vacancies by eligible employees. A written waiver is required unless the employee refuses to submit such a waiver. In such cases, evidence that the offer was made and refused, i.e., a certified letter, shall suffice.

An employee may waive his/her right to be considered for positions in an agency(ies); on a shift; in a particular work location(s) or to a particular position.

Section 9. Upward Mobility Program Policies

Policies of the Upward Mobility Program may be developed, implemented, changed and/or terminated by mutual agreement of the parties subject to Article XXXIV of this Agreement. All policies shall be consistent with this Article XV. UMP Policy Guidelines shall be posted on the UMP Link of the CMS Website.

Section 10. Work Commitment

All employees who target a credential title after July 1, 1994, ~~and before July 1, 2015,~~ and received tuition toward a credential title must fulfill a work commitment of two (2) years in State service from the completion of the most recent course taken as part of a degree program. Any such employees who voluntarily leave State employment prior to fulfilling this commitment, will be responsible at the time of State separation to reimburse the State for tuition and fees paid toward the credential title.

For employees who targeted a credential title prior to July 1, 1994, and are currently working toward that title, the Upward Mobility Program may, upon appeal within each fiscal year and contingent upon available funding, pay full-time tuition and approved fees if the employees agree in writing to work two (2) years for the State of Illinois following the completion of their degrees or the most recent course taken as part of their degree programs. Any such employees who voluntarily leave State employment prior to fulfilling this commitment, will be responsible at the time of State separation for repaying the program any amounts paid above normal program benefits.

The amount of reimbursement will be prorated on a monthly basis relative to the extent the work commitment is fulfilled. An annual interest rate of 7% will be charged to the amount owed to the State of

Illinois beginning 30 days after notification of repayment. The State of Illinois can withhold funds, including, but not limited to, retirement distribution and tax refunds, if payment is not made and will refer seriously past due accounts to a private collection agency.

The Upward Mobility Advisory Committee will determine if payback is required for employees who separate for such reasons as health, layoff, discharge and resignation no reinstatement rights.

Section 11. Retraining

Employees on layoff status can continue or begin participation in the Upward Mobility Program including being granted an appropriate certificate or credential; being placed on appropriate Upward Mobility Program eligibility list(s); and filling the relevant vacancy if they would otherwise be considered qualified and eligible.

Any eligible employee who does not respond to or accept a written notice to be recalled to the same or equal position classification he/she was laid off from, in a county he/she designated, shall not be allowed to continue participation in the Upward Mobility Program beyond the courses enrolled in at the time the recall notice is issued.

ARTICLE XVIII – Seniority

MANAGEMENT PROPOSAL – Management Modifies - Management Holds

Section 2. Application

a) For employees in the RC-6, 9 and 10 bargaining units, in all applications for seniority under this Agreement the ability of the employee shall mean the qualifications and ability (including physical fitness) of an employee to perform the required work. Where ability and qualifications to perform the required work are, among the employees concerned, relatively equal, seniority as defined in Section 1 above shall govern. 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 Agency, ***after utilizing the Upward Mobility Program where applicable,*** may in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.

b) For employees in the RC-14, 28(except for Site Technicians I and II), 62, and 63 bargaining units in cases of promotion, layoffs, transfers, shift and job assignments, seniority shall prevail unless a less senior employee has demonstrably superior skill and ability to perform the work required in the position classification. Non-merit factors unrelated to work performance shall not be considered. 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 Agency, ***after utilizing the Upward Mobility Program where applicable,*** may in accordance with applicable law, bypass the most senior employee. in order to reduce the underutilization.

c) For employees in the RC-42 bargaining unit and Site Technicians I and II, in cases of promotions, layoffs, transfers, ...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 Agency, ***after utilizing the Upward Mobility Program where applicable,*** may, in accordance with applicable law, bypass the most senior employee in order to reduce the underutilization.

ARTICLE XIX - Filling of Vacancies

MANAGEMENT PROPOSAL – Management Modifies – Management Hold

Section 1. Definition of a Permanent Vacancy

For the purposes of this Article a permanent vacancy is created:

~~e) When two (2) out of three (3) vacancies are filled by internal moves pursuant to Sections 3, 5, and 7, or there is an underutilization of a minority class the next vacancies may be filled at the Employer's discretion, in accordance with applicable law.~~

f) Where there exists an underutilization of a minority class in a given geographical region and/or job category, the Agency, ***after utilizing the Upward Mobility Program where applicable,*** may in accordance with applicable law, fill the position at its discretion to address the underutilization.

MANAGEMENT PROPOSAL – Management Withdraws - TA
Section 2. Posting A. RC-6, 9, 14, and 28 (except Site Technicians I and II)
The Employer will also maintain all job openings in classifications which are listed in Schedule A, in the central list provided for under Article XV, Section 7.

MANAGEMENT PROPOSAL – Management Withdraws - TA
Section 2. Posting B. RC-10, 62 and 63
The Employer will also maintain all job openings in classifications which are listed in Schedule A, in the central list provided for under Article XV, Section 7.

MANAGEMENT PROPOSAL – Management Withdraws - TA
Section 2. Posting C. RC-42 and Site Technicians I and II
The Employer will also maintain all job openings in classifications which are listed in Schedule A, in the central list provided for under Article XV, Section 7.

MANAGEMENT PROPOSAL – Management Withdraws - TA
Section 5. Promotion, Voluntary Reduction and Parallel Pay Grade Movement
A. RC-6, 9, 10, 14, 28, 62, and 63
4) Order of Selection.
b) RC-10, 14, 28, 62 and 63
(iii)All other qualified and eligible bidders (including parallel pay grade bidders).

UNION PROPOSAL – Management Rejects – Union should withdraw with Management Article XV Counter
Section 5. Promotion, Voluntary Reduction and Parallel Pay Grade Movement

A. RC-6, 9, 10, 14, 28, 62, ~~and~~ 63, and CU-500
4)Order of Selection. Selection for promotion and/or voluntary reduction shall be in the following order of priority ~~from among employees certified in their current position classification, for each respective bargaining unit listed in Schedule A.~~
a) RC-6, ~~and~~ 9 and CU-500
(i)The employee with the most seniority in the next lower rated position classification within the position classification series in which the vacancy occurs.
(ii)The employee with the most seniority in a higher position classification in the position classification series.
(iii)The employee with the most seniority in a lower position classification (in the same classification series) other than the next lowest in the position series.
(iv) The employee with the most seniority in an equal to, lower, or higher position classification not in the same position classification series.
(v) All other qualified bidders regardless of bargaining unit.

b) RC-10, 14, 28, 62 and 63
(i) Employees in the next lower classification within the classification series, and employees bidding for voluntary reduction,*(RC-10 only and full-time employees in the same classifications bidding on an intermittent position)* who have completed their promotional probationary period.
(ii) Employees in the next succeeding lower classification within the classification series.

(iii)~~All~~ ~~o~~Other qualified and eligible bidders (including parallel pay grade bidders).
(iv) All other qualified bidders regardless of bargaining unit.

Work location priorities for the above are as follows:
(i) Employees at the work location where the vacancy occurs;
(ii) Other work locations of the agency within the county unless mutually agreed otherwise on an agency basis.
(iii)Other work locations of agency and all other agencies.
(~~ii~~ In the Department of Natural Resources it shall be within region for those Site Technician II's assigned to the Regional Hot Shot Crews.

MANAGEMENT PROPOSAL – Management Withdraws - TA
Section 5. Promotion, Voluntary Reduction and Parallel Pay Grade Movement B. RC-42 Only
3) Order of Selection. Selection for promotion shall be in the following order of priority from among employees certified in the position classification series listed in Schedule A.
c)All other qualified and eligible bidders.

UNION PROPOSAL – Management Rejects - Union should withdraw with Management Article XV Counter
Section 5. Promotion, Voluntary Reduction and Parallel Pay Grade Movement
B. RC-42 Only
3) Order of Selection. Selection for promotion shall be in the following order of priority from among employees certified in the position classification series listed in Schedule A.
d) All other qualified bidders regardless of bargaining unit.
Work location priorities for the above are as follows:
(i)Employees at the work site,
(ii)Other work locations of the agency within the county.
(iii) Other work locations of agency and all other agencies.

MOU's
MANAGEMENT PROPOSAL – Management withdraws - TA
MEMORANDUM OF UNDERSTANDING REVENUE TAX SPECIALIST SERIES
11. Upward Mobility Program:

MANAGEMENT PROPOSAL – Management withdraws - TA
SOCIAL SERVICE CAREER TRAINEE, OPTION 2
This agreement does not preclude the trainee from taking course work to achieve the referenced master's degree through **either the Upward Mobility Program or** the Department of Human Services Tuition Reimbursement Program.

MANAGEMENT PROPOSAL – Management Modifies, Union Accepts - TA
SPECIAL GRIEVANCES
The agency head or his/her designee shall respond in writing within ~~ten (10)~~ fifteen (15) working days following such meeting, or within ~~ten (10)~~ fifteen (15) working days from receipt of the grievance if no meeting is held....
5) Upward Mobility
The parties agree that grievances filed pertaining to Article XV, Section 8 shall be filed directly to the 3rd level with the agency that posted the vacancy.

Given 4:22

Health and Safety Outstanding Issues Management 2nd Counterproposal
12/1/15

ARTICLE XXV – Workplace Health & Safety

Management Proposal – Management Withdraws Linked to Acceptance of Hearing Tests Counter - TA

Section 4. Meals

Management Proposal – TA

Section 12. Hearing Tests for Telecommunicators~~/Call Takers~~ Specialists, Lead Specialists and Supervisors

Effective July 1, 1997, the State will provide a hearing test on site, once **per** year, for all Telecommunicators Specialists, Lead Specialists and Supervisors ~~Call Takers~~, at no cost to the employee.

Upon the Union's request, the State will provide reports with aggregate data related to the results of the tests provided above, to the extent such reports are provided to the Employer.

ARTICLE XXXI – Miscellaneous Provisions

Union Proposal – Management Counters - TA

Section 18. Travel Reimbursement

Travel vouchers shall be submitted ***by the employer*** to the Comptroller **consistent with *the provisions of* Illinois Prompt Payment Act.**

Management Proposal – Management Accepts Union Counter in Employee Assistance Programs, Holds to rest

Reasonable Suspicion Drug and Alcohol Testing

The parties agree in order to protect the safety of employees and the public, the workplace should be free from the risk posed by employees impaired by the abuse of alcohol and controlled substances. While the parties recognize that abuse of alcohol and controlled substances is a treatable illness, employees found to be impaired while on duty shall be subject to discipline. Employees, not covered under an existing drug and/or alcohol testing policy, shall be subject to reasonable suspicion drug and alcohol testing. ~~Employees who test positive shall be discharged.~~

The Employer may require drug and/or alcohol testing under the following conditions:

A. a test may be administered in the event that a supervisor has reasonable ***suspicion*** ~~cause~~ to believe that an employee has reported to work under the influence of drugs or alcohol, *which is confirmed with another supervisor*; ***Reasonable suspicion exists if specific objective facts and circumstances warrant rational inferences that a person may be under the influence of alcohol or a banned substance. Reasonable suspicion may be based on upon among other matters:***
   1. ***Observable phenomena such as direct observation of use or the physical symptoms of using or being under the influence of controlled substances such as, but not limited to: slurred speech, direct involvement in a serious accident, or disorientation.***
   2. ***A pattern of abnormal conduct or erratic behavior.***
   3. ***Information provided either by reliable and credible sources or which is independently corroborated.***

B. ~~a test may be required as part of a follow-up to counseling or rehabilitation for substance abuse for up to a one (1) year period.~~ Procedures for testing shall be negotiated into agency supplementals.

Initial and confirmatory test results which meet or exceed the cutoff levels for drugs set forth in the Department of Health and Human Services' guidelines (and as they may be amended) shall be regarded as "positive", and shall presumptively establish that the tested employee was under the influence of drugs.
Initial and confirmatory (or breathalyzer) test results which meet or exceed the level of blood alcohol of 0.04 shall presumptively establish that the tested employee was under the influence of alcohol.

Employees who test positive for alcohol shall be subject to the following discipline:

A. First offense: The employee shall serve a thirty (30) day suspension and be subject to random testing for one (1) year following a positive test and mandatory enrollment in EAP.
B. Second offense: The employee shall be discharged
C. In the event it is found that an employee has operated a vehicle, or other equipment, on official state business while under the influence of alcohol the employee shall be discharged

Employees who test positive for drugs shall be discharged.

Employees who refuse to submit to a test, attempt to tamper or adulterate the test, or positive results which cannot be justified will be considered a positive finding.

Confidentiality of Records: Records concerning testing of employees will be maintained confidentially.

Employee Assistance Program: The Employer and the Union fully support the **utilization of** ***employee assistance programs and encourage employees to seek the confidential services of the ~~Employee Assistance Program~~*** **Personal Support Program or other such programs.** ***~~This~~*** **These** ***programs plays an important role by providing employees an opportunity to eliminate illegal drug use. Referral can be made to appropriate treatment and rehabilitative facilities who follow-up with individuals during their rehabilitation period to track their progress and encourage successful completion of the program.***

Union Proposal – Management Rejects
SUPPLEMENTARY AGREEMENTS
All supplementary agreements...

Permissive
Put the right way in

Subject to the provisions of the Agreement...:
Facility negotiations .... shall include:

(q) Parking **in all instances in which the Employer directly or indirectly controls access to parking spaces. Where the issue of parking involves more than one agency and/or is directly or indirectly controlled by Central Management Services, the supplemental agreement shall be negotiated between Central Management Services and AFSCME Council 31.**

UNION PROPOSAL – Management Accepts Union proposal to Defer #3 to DOC Parole Advisory Board, Holds on deferring remaining items to DOC Health and Safety Committee

MOU- PAROLE AGENT SAFETY AND EQUIPMENT

The parties agree that in order to protect the safety of employees and the public, Parole Agents shall be properly equipped and trained to provide the vital public safety function they perform. In order to achieve this goal, the parties agree as follows;

1. Parole Agents shall be issued properly equipped vehicles (including but not limited to: fully functioning radio/communication equipment, handheld emergency radios connected to local law enforcement network, parolee restraint cages with bodily fluid barriers, fixed hand controlled spotlights and bacteria resistant/non-porous back seats/floor boards), which will be replaced at the 80,000 mile threshold or when they are determined to no longer be practically functional, become a financial burden due to increased maintenance, or are unsalvageable. The parties shall jointly seek funding for such vehicle replacement program in a manner similar to PA 95-1009, December 15, 2008.
2. Parole Agents shall be issued custom fitted body armor vests. Body armor vests shall be replaced in accordance with suggested manufacturer guidelines regarding vest lifecycle or when normal wear and/or damage would require such.
3. The Employer shall develop an Officer Involved Shooting Response Protocol substantially similar to those suggested by the International Chiefs of Police, including a post incident mental health professional intervention; in order to reduce the long-lasting psychological and emotional problems resulting from an officer involved shooting incident.

Appendix B

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (State Police),	)	
Charging Party,	)	
and,	)	Case No. S-CA-16-006
Troopers Lodge #41, Fraternal Order of Police,	)	
Respondent.	)	

APPEAL FROM EXECUTIVE DIRECTOR'S JUNE 6, 2016 DISMISSAL OF CHARGE WHICH RAISES A DISPOSITIVE ISSUE OF LAW

I. INTRODUCTION

The underlying issue in this case is whether the State's charge, which raises what the State contends (and the Executive Director does not dispute) is "a matter of first impression before the Board" – namely, whether under the 2004 amendments to the Illinois Public Labor Relations Act (hereinafter, the "2004 Amendments") the State is required to bargain over health insurance, raises an issue of law and/or fact for hearing under section 11(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/11(a) (hereinafter, generally the "Labor Act"), and the Labor Board's rules, including 80 ILCS 1220.40(a).

The Executive Director, in a June 6, 2016 order, ruled that the impact of the 2004 Amendments to the Labor Act on the State's obligation to bargain over health insurance did not raise a question of law or fact sufficient for hearing, notwithstanding the fact that: (1) the Labor Board has never before ruled on the impact of the 2004 Amendments; (2) the Labor Board's General Counsel had issued a March 1, 2016 Declaratory Ruling expressly inviting either party to file an unfair labor practice charge to "develop a full factual record or advocate for a change in established case law" concerning the State's obligation to bargain over health insurance; (3) the

State, within ten (10) days after the General Counsel's Declaratory Ruling, had filed an unfair labor practice charge that argued, among other things, under the 2004 Amendments to the Labor Act the State had no obligation to bargain over health insurance; (4) the State had submitted affidavit testimony in support of its charge establishing that the State was incurring $35 million dollars per month in additional health insurance expenditures as a result of the unresolved nature of the issue; and (5) the State subsequently filed a motion to bifurcate the question of the impact of the 2004 Amendments to the Labor Act and *Central City* question to expedite ruling on the impact of the 2004 Amendments and potentially avoid the $35 million per month in additional/unnecessary health insurance expenditures. Nevertheless, the Executive Director dismissed a charge filed by the State which, among other things, alleged that the Respondent had engaged in an unfair labor practice under Section 10(b)(4) of the Labor Act, 5 ILCS 315/10(b)(4), by requiring the State to bargain to impasse over health insurance, when the State had no obligation to do so under 2004 Amendments to the Labor Act and/or under a *Central City* analysis (the "June 6, 2016 Dismissal") (attached as Exh. 1)

The State now appeals the Executive Director's June 6, 2016 Dismissal, because the express language of the Labor Act requires the Labor Board to issue a complaint and a notice of hearing whenever the Labor Board determines a charge involves a "dispositive issue of law." Specifically, Section 11(a) of the Labor Act states in pertinent part:

> Whenever it is charged that any person has engaged in or is engaging in any unfair labor practice, the Board or any agent designated by the Board for such purposes shall conduct an investigation of the charge. ***If after such investigation the Board finds that the charge involves a dispositive issue of law or fact the Board shall issue a complaint and cause to be served upon the person a complaint stating the charges, accompanied by a notice of hearing before the Board or a member thereof designated by the Board, or by a qualified hearing officer designated by the Board*** . . . .

5 ILCS 3156/11(a).

With all due respect, the issue of the impact of the 2004 Amendments on the obligation of the State to bargain health insurance is: (1) an issue of pure law, requiring the Labor Board to determine whether the 2004 Amendments to the Labor Act require the State to bargain over health insurance; and (2) dispositive, because if the Labor Board determines (as the State believes it must) that under the 2004 Amendments to the Labor Act, the State is not required to bargain with the FOP over health insurance, then, under Section 14 of the Labor Act, health insurance cannot be a proper subject of an interest arbitration award.

Further, because the State's argument concerning the applicability of the 2004 Amendments raises a question of pure law, and in light of the State's estimation that each month this matter remains unresolved causes the State to incur $35 million dollars in health insurance expenses that it otherwise would not be required to incur, the State urges the Labor Board to decide the pure legal issue itself on an expedited basis and rule: (1) under the 2004 Amendments to the Labor Act, the State has no obligation to bargain over health insurance; (2) consequently, health insurance is not a proper subject for resolution in interest arbitration; and (3) the Union's insistence that the interest arbitration decide this nonmandatory subject to resolve the parties' impasse is an unfair labor practice.

The State further contends that – in the event that the Labor Board determines that the *Central City* test does apply – a full-evidentiary hearing is required to determine whether the benefits of bargaining over health insurance is significantly outweighed by the burden of having the State bargain over what would result in inconsistent insurance plans negotiated with 34 labor unions.

Accordingly, for the reasons set forth below, the State respectfully requests that the Labor Board overturn the Executive Director's dismissal of the State's charge. If, however, the Labor Board declines to find that the FOP committed an unfair labor practice in this case, the State, in

the alternative, submits that the substantive issue presented to the Labor Board would not be rendered moot and a determination on the foregoing subjects should be issued based on the public interest exception recognized by the Illinois Supreme Court and this Labor Board as described more fully below.

II. FACTS

This case arises from an interest arbitration between the State and the Respondent, Troopers Lodge #41, Fraternal Order of Police (State and Respondent collectively, the "Parties"). In sum, the 2012-15 collective bargaining agreement between the Parties expired, the parties were unable to agree on a successor agreement, and from December 23, 2015 through April 8, 2016, the Parties engaged in an interest arbitration under Section 14 of the Labor Act before neutral arbitrator Daniel Nielsen. On January 13, 2016, the State filed a Petition for Declaratory Ruling with the Labor Board's General Counsel on the issue of whether the State's proposal for health insurance was a mandatory or permissive subject of bargaining. In its Petition, the State asserted, among other things, that it was not required to bargain over health insurance. In her Declaratory Ruling, the General Counsel noted that the State "raises some salient considerations with respect to its managerial authority to provide a plan to employees and burdens of bargaining over health care plans it designs" and noted that while she was "precluded from resolving factual disputes raised by the parties," was "guided by the Board's prior case law," and was "informed by prior Declaratory Rulings," the "Board is at liberty to reexamine its case law and interpretations of the [Labor Act]."[1] The General Counsel then expressly invited the parties to file the very unfair labor practice charge that the State filed, and which the Executive Director subsequently dismissed:

[1] Citing *Troopers Lodge #41, Fraternal Order of Police and Illinois State Police*, 32 PERI ¶ 162 (IL LRB-SP G.C. 2016).

> Accordingly, if either party wishes to develop a full factual record or advocate for a change in established case law, they should employ the unfair labor practice procedures set forth in the [Labor Act] and the Board Rules.

Id.

On March 11, 2016 the State filed its unfair labor practice charge, alleging, in sum, as follows:

> Troopers Lodge #41, Fraternal Order of Police ("FOP") has committed an unfair labor practice in violation of sections 10(b)(4) and (1) of the Illinois Public Labor Relations Act (the "Labor Act"), 5 ILCS 315/10(b)(4) and (1), by demanding that the State of Illinois and Illinois State Police ("ISP") bargain over health insurance, because: (1) ***under a 2004 law, PA 93-836, that amended the Labor Act, the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 et seq. (the "Group Insurance Act"), and the Illinois Procurement Code, 30 ILCS 500/20-1 et seq. (the "Procurement Code") (collectively referred to as the "2004 Amendments"), the Director of Central Management Services ("CMS") is authorized to enter into health insurance contracts and provide health benefit plans to employees and their dependents, subject only to certain statutory limitations that do not require collective bargaining,*** and certain reporting oversight obligations to the Commission on Government Forecasting and Accountability ("COGFA") and the State Procurement Policy Board, which do not require the Director to collectively bargain over such contracts and plans; and (2) under the balancing test set forth by the Supreme Court in *Central City Education Ass'n, IEA/NEA v. Illinois Educational Labor Relations Board*, 149 Ill.2d 496, 523 (1992), any benefits that might be realized from such bargaining are far outweighed by the substantial burdens that are imposed by doing so, and, as recommended by the Board's General Counsel in the attached March 1, 2016 Declaratory Ruling, the Board should grant the State an evidentiary hearing to establish the *Central City* factors

March 11, 2016 Charge (emphasis supplied), attached as Exh. 2.

III. ARGUMENT

The State hereby incorporates by reference the arguments that it made in the March 11, 2016 Charge (*see* Exh. 2; *see also* Sub-section A of Section III, herein) and urges the Labor Board to rule not only that the Executive Director's dismissal of the March 11, 2016 Charge without a hearing violated Section 11(a) of the Labor Act and the Labor Board's rules, including

80 ILCS 1220.40(a), but also to rule on the purely legal issue raised by the charge (an issue of first impression), and rule that the State does not have to bargain over health insurance and, consequently, it is not a proper subject for determination in interest arbitration.

A. Summary Of The State's Argument As To Why It Does Not Have To Bargain Over Health Insurance Under The 2004 Amendments To The Labor Act.

As established in Attachment A to the State's charge, under the 2004 Amendments, the State has no obligation to collectively bargain over health insurance. In summary fashion, the State's position is based upon the fact that PA-93-839 amended Section 15(a) of the Labor Act and Section 5 of the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et seq.* (hereafter, "Group Insurance Act"), to expressly exempt Section 5 of the Group Insurance Act from the supremacy clause of the Labor Act (entitled "This Act Takes Precedence"), so that neither the Labor Act nor any collective bargaining agreement negotiated under it takes precedence over Section 5 of the Group Insurance Act. Specifically, Section 5 was amended to say the provisions of the Labor Act shall prevail over any other law "*other than*" Section 5 of the Group Insurance Act, and PA 93-839 further amended Section 15(a) to make the provisions of the Labor Act "*subject to*" Section 5 of the Group Insurance Act.

Section 5 of the Group Insurance Act grants the Director of CMS (*see* 5 ILCS 375/3(i) (definition of "Director" under Group Insurance Act) wide-ranging power to implement health insurance plans for employees and their dependents. The 2004 Amendments to Section 5 of the Group Insurance Act implemented new and different checks and balances on the power of the Director to provide health insurance through: (1) articulation of a new policy that the Director of CMS must follow in providing health insurance; (2) new reporting oversight to COGFA of the Director's exercise of his power to provide health insurance; and (3) new reporting oversight to the Illinois Procurement Board and compliance with the substantive restrictions imposed by the

Illinois Procurement Code. Nothing in the 2004 Amendments to either Section 15(a) of the Labor Act or Section 5 of the Group Insurance Act limits the Director's autonomy to implement insurance due to collective bargaining obligations.

Because, under the 2004 Amendments, the State's collective bargaining obligations under the Labor Act were made subject to Section 5 of the Group Insurance Act, which grants the director of CMS wide-ranging power to implement health insurance plans, and the Group Insurance Act was expressly exempted from the supremacy clause of the Labor Act, the State no longer has any obligation to collectively bargain health insurance under the 2004 Amendments as a matter of law. As part of the relief that the State seeks, the State respectfully requests that the Labor Board rule on this legal issue and hold that the State has no obligation to bargain over health insurance, and that it is an unfair labor practice for FOP to insist that this issue be decided in the interest arbitration.

For a more detailed legal analysis as to the impact of the 2004 Amendments, the State respectfully refers the Labor Board to Attachment A of its unfair labor practice charge.[2]

B. A Party Is Not Bound To Forever Negotiate Over Permissive Subject Matter.

The Executive Director's dismissal is based on the legally erroneous notion that even if the State is correct that it has no obligation to bargain with FOP over health insurance, the fact that it voluntarily bargained with the FOP over a permissive subject empowers the interest arbitrator to make a determination on this non-mandatory subject and, further, that it is not a ULP for the Union to insist that he do so:

> [E]ven if the employer is correct (under either one or both of its theories) that it has no obligation to bargain over health insurance, the undisputed

[2] Attachment A also contains a historical overview of the *Central City* test, establishes that the application of the *Central City* test upon the impact of the 2004 Amendments is an issue of first impression, and contains a factual, detailed analysis – supported by affidavits – as to why any benefits of bargaining over health insurance are far outweighed by the burdens of doing so.

> available evidence indicates that it willingly engaged in such bargaining with the FOP. As noted above, both parties exchanged proposals on health insurance and both parties submitted health insurance proposals to the interest arbitrator. Under the facts presented in this case, I cannot find that the Union engaged in any conduct that would raise a question for hearing under the Labor Act.

See June 6, 2016 Dismissal, p. 7.

With all due respect to the Executive Director, it is well settled that: (i) a party can withdraw its agreement to bargain over permissive subjects during those same bargaining sessions; (ii) past agreements concerning nonmandatory subjects do not convert such non-mandatory subjects into mandatory subjects in the future; and (iii) a party can withdraw its agreement to bargain over permissive subjects at any time. Indeed, as recognized in *General Service Employees Union, Local 73*, there is a strong policy reason for permitting a party the right not to bargain at any time – namely, if it did not have such right, employers would never consider discussing non-mandatory subjects with unions:

> By engaging in bargaining about a permissive subject, a party does not thereby waive its right to refuse to bargain about the subject later, *during the same negotiations*. To rule otherwise would hinder the serious exploration during bargaining of issues that one side or the other considers significant. ***Parties might feel compelled to reject non-mandatory proposals out of hand to avoid risking waiver of the right to reject. . .*** [Further,] [t]here is nothing in the law that says a party needs to chant the magic words that a specific subject is a permissive subject of bargaining to preserve its right, after having bargained about a nonmandatory subject, to take the position that the nonmandatory proposal shall not be included in the contract.

General Service Employees Union, Local 73, 8 PERI ¶ 1014 (IELRB 1991) (emphasis supplied) (citing *NLRB v. Davison*, 318 F.2d 550, 558 (4th Cir. 1963)).

Indeed, this right not to bargain or to cease bargaining is preserved even where the parties' prior contract included a provision governing the same permissive subject matter:

> Although that prior agreement was evidence that the Union might again consent to a nonmandatory contract provision, that prior consent did not convert the permissive subject into a mandatory one. By once bargaining

> and agreeing on a permissive subject, the parties, naturally, do not make the subject a mandatory topic of future bargaining. Even though the provision to exclude discharge grievances from arbitration was contained in the previous collective bargaining agreement, it nevertheless remained a permissive subject of negotiations.

Id. (citing *Chemical & Alkali Workers v. Pittsburg Plate Glass Co.*, 404 U.S. 157 (1971)); *see also County of Cook*, 3 PERI ¶ 3013 (ILRB 1987) ("By once bargaining and agreeing on a permissive subject, the parties, naturally, do not make the subject a mandatory topic of future bargaining.").

The NLRB has likewise held that an employer has no obligation to bargain over non-mandatory subjects, even where, as the Executive Director noted, "the undisputed available evidence indicates it willingly engaged in such bargaining." (June 6, 2016 Dismissal, p. 7):

> [There is a] statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining. *Cowles Communications*, 172 NLRB 1909, (1968). Parties do not have the power to alter this result merely by reaching agreement on the terms of a nonmandatory subject. To permit them to do so would be to allow them to, in effect, rewrite Section 8(d) of the Act to expand its definition of the subjects that Congress made mandatory. . . By once bargaining and agreeing to a permissive subject, the parties, naturally, do not make the subject a mandatory topic of future bargaining. *Allied Chemical Workers Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 187 (1971). . . . [A] statutory bargaining obligation cannot be created merely because Respondent and the Employer have agreed to bargain about a nonmandatory subject.

Social Services Union, Local 535, Service Employees International Union and North Bay Development Disabilities Services, 287 NLRB 1223 (1988).

Here, although the State submitted and argued in favor of its health insurance proposal, the State did so with the expressed reservation that it believed that the Labor Act did not require it to bargain over this permissive subject matter, as demonstrated by its charge filing.[3] Thus, the FOP's insistence that the interest arbitrator rule in its favor on the non-mandatory subject to

[3] Attached as Exhibit 3 is an excerpt from the State's post hearing brief (*see* footnote nos. 10 and 40).

resolve the parties' impasse is a violation of the Labor Act. *See Wheeling Firefighters Assoc.*, 17 PERI ¶ 2018 (ILRB 2001) (the respondent violated the Labor Act by insisting to impasse (interest arbitration) proposals concerning permissive subject matter); *see also Village of Midlothian*, 29 PERI ¶125 (ILRB 2013).

For these reasons, and because this Labor Board, not an arbitrator, is vested with jurisdiction to interpret parties' obligations under the Labor Act, the State respectfully submits that the Labor Board, not the arbitrator, should rule on this issue of first impression.

C. *Wheaton Firefighters Union, Local 3706, IAFF,* Does Not Support The Executive Director's Dismissal Of The State's Charge.

The purpose of interest arbitration is to serve as a mechanism for resolving impasse disputes concerning public employers and unionized employees occupying security, peace officer or fire fighter positions. *See* 5 ILCS 315/18 (referring to the "impasse arbitration procedures set forth in Section 14 of this Act.") Although it is true, as the Executive Director notes, parties to interest arbitration may exchange proposals and may even reach agreement through that process (and the FOP and the State engaged in such exchanges and reached such agreements here on many issues), once the matter is submitted to the interest arbitration panel for decision it is so submitted because the parties have reached impasse over the remaining issues that are not agreed to. With all due respect to the Executive Director, for the FOP (or any union) to insist that a public employer agree to the Union's position on a non-mandatory subject of bargaining as a pre-condition to avoiding the "impasse arbitration procedures" under the Labor Act (5 ILCS 315/14, 18) is nothing more than requiring an employer to agree to bargain over a non-mandatory subject to break an impasse, which is an unfair labor practice. Thus, the FOP's continued permissive bargaining demands and submission to interest arbitration proposals concerning subject matter to which the State has no bargaining obligation violated the Labor Act. *See Wheeling Firefighters Assoc., supra*; *see also Village of Midlothian, supra.*

In the June 6, 2016 Dismissal, the Executive Director relied upon *Wheaton Firefighter Union, Local 3706, IAFF and City of Wheaton*, 31 PERI ¶ 131 (ILRB 2015) for the proposition that the State has no basis to complain about the FOP's conduct because the State "willingly engaged in such bargaining with the FOP." However, as established in Sub-section A, *supra*, both Illinois and federal law recognize a party's right to agree to bargain over permissive subjects, but retain "its right to refuse to bargain about the subject later." *General Service Employees Union, Local 73, supra.* Here, the State has demonstrated that its insurance proposal was submitted to the Arbitration Panel expressly subject to the Labor Board's ruling on the instant ULP Charge:

> On March 11, 2016, the State filed with the ILRB an unfair labor practice charge against the FOP in connection with the FOP's insistence upon bargaining to impasse a permissive subject of bargaining. That ULP Charge is currently pending at the ILRB. 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.

See Exh. 3.

Thus, the Executive Director's finding that the State engaged in the same conduct as the FOP is incorrect (something that a full investigation would undoubtedly have uncovered). Clearly, the FOP's conduct, not the State's, violated the Labor Act. *See Wheeling Firefighters Assoc., supra*; *see also Village of Midlothian, supra.*

Further, the State submits that *Wheaton Firefighter Union, Local 3706, IAFF*, was decided too narrowly to control here. Specifically, under *Wheaton Firefighter Union, Local 3706, IAFF*, the Labor Board held that:

> Under this precedent, Board Rule 1230.90(k) provides a party with the mechanism for preventing an arbitrator's consideration of a subject of bargaining that it is convinced is merely a permissive subject of bargaining. It can object to consideration of that issue in good faith, and

> the arbitrator is precluded from ruling on it. Conversely, if the party proposing the subject is convinced the proposal concerns a mandatory subject of bargaining, it may file an unfair labor practice charge with the Board alleging that the other party's objection to the arbitrator's consideration of the issue violates either the Section 10(a)(4) or Section 10(b) (4) duty to bargain in good faith. ***It is only in this context that this Board will consider the mandatory or permissive nature of the proposal.*** (Emphasis added)

Id.

The holding in *Wheaton Firefighter Union, Local 3706, IAF*, is too narrow because it would require parties subject to interest arbitration to wait until, if ever, a party files a charge at impasse to determine the parties' bargaining obligations under the Labor Act. The better approach, as in *Wheeling Firefighters Assoc.*, *supra*, is to allow a party to file an actionable charge if it is being forced to bargain to impasse over nonmandatory subjects. Otherwise, the non-violating party's right to have a ruling as to its bargaining obligations is held hostage by the violating party's unilateral decision whether to seek review by the Labor Board. This is very inefficient and, for employers as large as the State, leads to wasted resources for issues than can and will arise in the future.

D. The Issue Presented In This Case Concerns A Matter Of Great Public Interest.

Even if the Labor Board determines that the FOP's actions do not constitute an unfair labor practice, the Labor Board should still issue a ruling as to the impact of the 2004 Amendments upon the State's obligation to bargain over health insurance.[4] As established below, the Labor Board, based on precedent from the Illinois Supreme Court, has adopted an exception to the general principle that substantive issues should not be addressed if there is no active dispute (and therefore no remedy available to redress the underlying claim).

[4] And refer the matter for a hearing on the *Central City* test if health insurance is determined to be a mandatory subject of bargaining notwithstanding the 2004 Amendments.

The Illinois Supreme Court has ruled that the "public interest exception allows a court to consider an otherwise moot case when: (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *In re Alfred H.H.*, 331 Ill. Dec. 1, 5 (2009). The Labor Board has recognized that "a matter is moot when it involves no actual controversy, interests or rights of the parties, or where the issues have ceased to exist." *Service Employees International Union, Local 73*, 30 PERI ¶ 194 (ILRB 2014). However, "[e]xceptions to the mootness doctrine include matters that are capable of repetition yet evade review, and matters of great public interest." *Id.* (recognizing and relying upon the exception); *see also Vienna School Dist. No. 553*, PERI ¶ 1008 (IELRB 1986) (ULP not rendered moot due to the public interest exception); *Wilmette Edu. Assoc., IEA-NEA*, 3 PERI ¶ 1069 (IELRB 1987) (applying the public interest exception after concluding that the legal issues presented may arise during other negotiations if not resolved). As established below, the salient facts giving rise to the State's ULP Charge satisfy each factor for application of the public interest exception.

As to the first factor, "the public nature criterion is only satisfied when it has been clearly established that the issue is of 'sufficient breadth or has a significant effect on the public as a whole.'" *In re Marriage of Eckersall*, 390 Ill. Dec. 89, 93 (2015). Here more than 100,000 individuals participate in the State's health insurance plans and, for each month this issue remains unsettled, the State incurs at least $35 million dollars in additional and otherwise avoidable expenditures. Clearly, the State's need to obtain legal guidance in connection with potentially avoidable expenditures amounting to over $140 million dollars per quarter has a significant effect on the public as a whole.

As to the second factor, "issues of first impression may be appropriate for review under the public interest exception." *In re Shelby R.*, 374 Ill. Dec. 493, 498 (2013). Here, it cannot be

disputed that the Executive Director has conceded that the State "is correct that its arguments raised in this unfair labor practice charge have never been squarely addressed by the Board." *See* June 6, 2016 Dismissal, p. 4, fn. 2. Thus, the State has satisfied this factor, as the Director of CMS needs guidance as to the impact of the 2004 Amendments to the Labor Act.

As to the final factor, the State reminds the Labor Board that CMS is responsible for labor relations, which includes contract negotiations, with *all* State unionized employees and is statutorily responsible for administrating the State's health insurance. *See* State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et. seq.* Therefore, as to health insurance, it is clear that disputes concerning CMS' bargaining obligations under the Labor Act will reoccur on a continuing basis.

IV. CONCLUSION

The Labor Board should overturn the dismissal of the Executive Director and rule on the question of law that this case presents – namely rule that the State has no obligation to bargain over health insurance under the 2004 Amendments, and that it is an unfair labor practice for FOP to insist that the interest arbitrator decide this matter. In the alternative, the Labor Board should remand the case for hearing before the Administrative Law Judge for hearing on whether under a *Central City* analysis the benefit of bargaining over health insurance is significantly outweighed by the burden of having the State bargain over what would result in inconsistent insurance plans negotiated with 34 labor unions.

Dated: June 17, 2016

Respectfully submitted,

State of Illinois (Department of Central

Thomas S. Bradley
One of its Attorneys

Joseph M. Gagliardo
Thomas S. Bradley
Mark W. Bennett
Brian K. Jackson
Laner Muchin, Ltd.
515 North State Street - Suite 2800
Chicago, IL 60654
Telephone: (312) 467-9800
Facsimile: (312) 467-9479

Certificate of Service

I, the undersigned attorney, hereby certify that I caused a copy of the foregoing APPEAL FROM EXECUTIVE DIRECTOR'S JUNE 6, 2016 DISMISSAL OF CHARGE WHICH RAISES A DISPOSITIVE ISSUE OF LAW to be served upon the parties listed below on this 17th day of June, 2016, to:

Kathryn Nelson, General Counsel
Illinois Labor Relations Board
160 N. LaSalle Street, Suite S-400
Chicago, IL 60601-3103
via hand delivery

Joel D'Alba
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Blvd.
Suite 1900
Chicago, Illinois 60606
via email and U.S. mail

Thomas S. Bradley

EXHIBIT 1

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services (State Police)	)	
Charging Party	)	
and	)	Case No. S-CB-16-023
Troopers Lodge #41, Fraternal Order of Police,	)	
Respondent	)	

DISMISSAL

On March 11, 2016, Charging Party, State of Illinois, Department of Central Management Services (State Police), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-referenced case, alleging that Respondent, Troopers Lodge #41, Fraternal Order of Police (FOP or Union) violated Section 10(b) of the Illinois Public Labor Relations Act (Labor Act), 5 ILCS 315 (2014), *as amended.* After an investigation conducted in accordance with Section 11 of the Labor Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

I. INVESTIGATION

Charging Party is a public employer within the meaning of Section 3(o) of the Labor Act and subject to the jurisdiction of the State Panel of the Board pursuant to Sections 5(a-5) of the Labor Act. Respondent is a labor organization within the meaning of Section 3(i) of the Labor Act, and the exclusive bargaining representative of a bargaining unit (Unit) of State Police Officers, below the rank of Master Sergeant, employed jointly by the Illinois State Police and the

Illinois Department of Central Management Services (Employer or State). The Employer and the Union are currently in negotiations for a successor to their July 1, 2012 – June 30, 2015 collective bargaining agreement (2012-2015 CBA) for the Unit. Under the 2012-2015 CBA, Unit employees are eligible to participate in the State's Group Insurance Plan.

This unfair labor practice charge concerns the obligation to bargain the subject of employee health insurance. The Employer contends the Union violated the Labor Act by demanding to bargain over health insurance. The Employer contends it has no obligation to bargain health insurance for two reasons. First, the Employer asserts that the State's Group Health Insurance Plan was made a non-mandatory bargaining subject of bargaining by Public Act (PA) 93-839, which amended the Labor Act, the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et. seq.* (Group Insurance Act) and the Illinois Procurement Code, 30 ILCS 500/20-1 *et. seq.* (Procurement Code), referred to collectively herein as the "2004 Amendments." Second, the Employer asserts that under the balancing test set forth by the Illinois Supreme Court in Central City Education Association v. the Illinois Educational Labor Relations Board, 149 Ill.2d 496 (1992) (Central City), the subject matter of health insurance is not a mandatory subject of bargaining.

The 2004 Amendments

The 2004 Amendments amended Section 15(a) of the Labor Act as follows:

> § 15. Act Takes Precedence. (a) In case of any conflict between the provisions of this Act and any other law ***(other than Section 5 of the State Employees Group Insurance Act of 1971),*** executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control. Nothing in this Act shall be construed to replace or diminish the rights of employees established by Sections 28 and 28a of the Metropolitan Transit Authority Act, Sections 2.15 through 2.19 of the Regional Transportation Authority Act. ***The provisions of this Act are subject to Section 5 of the State Employees Group Insurance Act of 1971.***
> 5 ILCS 315/15(a) (Emphasis on language added by 2004 Amendments.)

The Employer asserts that these amendments expressly exempt the Group Insurance Act from the supremacy clause of the Labor Act, and specifically make the provisions of the Labor Act subject to Section 5 of the Group Insurance Act. The Employer asserts that these two changes result in Section 5 of the Group Insurance Act being exempt from any bargaining obligation found in the Labor Act.

The Employer cites various provisions within Section 5 of the Group Insurance Act that establish the authority of the Director of the Illinois Department of Central Management Services to implement health insurance plans for employees and their dependents, subject to certain statutory limitations. The Employer argues that prior to the 2004 Amendments, the Director's power was restricted by Section 15(a) of the Labor Act, which gave the Labor Act precedence over the Group Insurance Act and, presumably, conferred an obligation to bargain over health insurance. As noted above, the Employer asserts that this obligation was eliminated by the 2004 Amendments. The Employer explains that the 2004 Amendments created "new and different checks and balances on the power of the Director to provide health insurance..." including a new State policy that the Director must follow.[1] The 2004 Amendments also create reporting oversight by the Commission on Government Forecasting and Accountability (COGFA) and reporting oversight by the Illinois Procurement Policy Board. The State asserts that these new

[1] The new state policy set forth in the 2004 Amendments is found in Section 5 of the Group Insurance Act and provides as follows:

> Sec. 5. Employee benefits; declaration of State policy. The General Assembly declares that it is the policy of the State and in the best interest of the State to assure quality benefits to members and their dependents under this Act. The implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs for members and their dependents. Specifically, but without limitation, members should have continued access, on substantially similar terms and conditions, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, the Director must administer this Act consistent with that State policy, but may consider affordability, cost of coverage and care, and competition among health insurers and providers. All contracts for provision of employee benefits, including those portions of any proposed collective bargaining agreement that would require implementation through contracts entered into under this Act, are subject to the following requirements...

checks and balances do not require or even contemplate collective bargaining. Finally, the State asserts that although the Board has previously found health insurance to be a mandatory subject of bargaining, the Board has never ruled on the impact of the 2004 amendments. As such, this is a matter of first impression before the Board.[2]

Central City test

The State notes that the Illinois Supreme Court has never addressed whether the test set forth in Central City should be used to determine whether an issue is a mandatory subject of bargaining under the Labor Act. The State further notes that the Central City test predates the 2004 Amendments by 12 years. Finally, the State asserts that the Central City test is inapplicable in this case because the General Assembly exempted the issue of health insurance from collective bargaining via the 2004 Amendments. However, the State asserts that should the Board determine that an analysis under the Central City test is appropriate in this case, the benefits of bargaining health insurance are far outweighed by the burden such bargaining would impose on the Employer. The Employer notes that it bargains collective bargaining agreements with 34 different labor organizations, including the FOP. The Employer asserts that the 2004 Amendments impose onerous procurement deadlines and that the process of procuring health insurance plans is document intensive, time consuming and involves extensive interactions between State employees, consultants, insurance carriers and providers. The Employer asserts that it would be unduly burdensome if the State had the additional requirement to bargain with each of the 34 labor unions over health insurance.

[2] This is not the first time that the Employer asserted it had no obligation to bargain employee health insurance with the FOP. During bargaining for the 2012-2015 CBA, and while interest arbitration for that contract was pending, the FOP filed a Unilateral Petition for Declaratory Ruling in Case No. S-DR-14-004 on or about April 14, 2014. The FOP sought a determination as to whether health care premiums and related costs are mandatory subjects of bargaining under the Labor Act. In those proceedings, the Employer advanced the same or very similar arguments that are advanced in the instant unfair labor practice charge. That is, the Employer argued it had no obligation to bargain employee health insurance with the FOP. The former General Counsel rejected those arguments. Illinois Department of State Police, 31 PERI ¶ 176 (IL LRB-SP G.C. 2014). Nonetheless, the Employer is correct that its arguments raised in this unfair labor practice charge have never been squarely addressed by the Board.

Negotiations between the parties for a successor to the 2012-2015 CBA

On or about May 11, 2015, the parties commenced negotiations for a successor to the 2012-2015 CBA. The parties were unable to agree to the terms of a successor agreement, and on or about August 20, 2015, the FOP filed a Demand for Compulsory Interest Arbitration. The parties selected Daniel Nielsen to serve as their neutral interest arbitrator. The first day of Interest Arbitration was held on or about December 23, 2015, and the last day of hearing was held on April 8, 2016. The parties have submitted, or are in the process of submitting, their post-hearing briefs to Arbitrator Nielsen.

It is undisputed that both parties exchanged proposals on health insurance during these negotiations. It is also undisputed that both parties submitted proposals on health insurance to Arbitrator Nielsen as part of their final offers. It is undisputed that the State never took the position, during negotiations or when submitting final offers to the interest arbitrator, that the subject of health insurance is not a mandatory subject of bargaining. The State did not object to the Union's final offer on health insurance as being a permissive subject of bargaining. In contrast, the Union objected to the Employer's final offer and revised final offer on health insurance claiming that it was a waiver of the Union's right to midterm bargaining and therefore a permissive subject of bargaining.

On January 13, 2016, the State filed a unilateral Petition for Declaratory Ruling with the Board's General Counsel. The State sought a ruling on whether the State's proposal on health insurance is a permissive or mandatory subject of bargaining. The General Counsel issued her Declaratory Ruling on March 1, 2016. Troopers Lodge #41, Fraternal Order of Police and Illinois State Police, 32 PERI ¶ 162 (IL LRB-SP G.C. 2016).

In its filings for the Declaratory Ruling Proceedings, the Employer asserted, apparently for the first time since negotiations for a successor to the 2012-2015 CBA had begun, that it was

not required to bargain over health insurance based on the Labor Act and the Group Insurance Act. The Employer further argued that health insurance plan design and cost was a permissive subject of bargaining under the Central City test. In the alternative, the Employer argued that the specific proposal at issue was a *mandatory subject* of bargaining because it did not seek a waiver of the Union's right to midterm bargaining and it did not reserve to the Employer unfettered discretion to determine premium contributions and salary tiers. The Union argued in the Declaratory Ruling proceedings that the Employer is obligated to bargain health insurance, but that the proposal at issue was permissive because it required the Union to waive its right to midterm bargaining over changes in health insurance.

In her Declaratory Ruling, the General Counsel first acknowledged the prior case law finding employee health insurance to be a mandatory subject of bargaining, including the 2014 Declaratory Ruling on this topic involving the same parties. However, the General Counsel went on to note:

> Nevertheless, I acknowledge that the Employer raises some salient considerations with respect to its managerial authority to provide a plan to employees, and burdens of bargaining over health care plan design it provides. While I am cognizant of my role in the Declaratory Ruling process to resolve the parties' obligation to bargain over particular subjects, I am also mindful of its limitations. The Central City balancing test can be most completely performed following a full factual inquiry before a Board ALJ, whereas I am precluded from resolving factual disputes raised by the parties in a declaratory ruling. Moreover, the Board is at liberty to reexamine its case law and interpretations of the [Labor Act], whereas I am guided by the Board's prior case law and I am also informed by prior Declaratory Rulings, in the interests of maintaining consistency. Accordingly, if either party wishes to develop a full factual record or advocate for a change in established case law, they should employ the unfair labor practice procedures set forth in the [Labor Act] and the Board rules. Id.(Internal citations omitted.)

Turning to the specific Employer proposal on health insurance that was at issue, the General Counsel agreed with the Employer that the proposal involved a mandatory subject of

bargaining because it did not amount to a waiver of the FOP's right to midterm bargaining over changes in employee health insurance.

II. DISCUSSION AND ANALYSIS

The Board has previously held that employee health insurance is a mandatory subject of bargaining. City of Kankakee (Kankakee Metropolitan Wastewater Utility), 9 PERI ¶ 2034 (IL SLRB 1993); City of Blue Island, 7 PERI ¶ 2038 (IL SLRB 1991). Of course, this does not preclude an employer from arguing that under its unique factual situation, the burden of bargaining health insurance outweighs the benefit of such bargaining and that the topic is therefore permissive under Central City. Similarly, the prior case law does not preclude an employer from arguing that subsequent statutory changes have eliminated the obligation to bargain over health insurance. The Employer in this case is making both of these arguments.

The problem with this charge is that, even if I assume for the purpose of this investigation that the Employer is correct that it has no obligation to bargain health insurance, the charge still does not raise a question of law or fact for hearing. This is because parties can *choose* to bargain over permissive subjects of bargaining. Similarly, the Board has recently held that submitting a permissive subject of bargaining to an interest arbitrator does not violate the Labor Act. Wheaton Firefighters Union, Local 3706, IAFF and City of Wheaton, 31 PERI ¶ 131 (ILRB-SP 2015). This means that even if the Employer is correct (under either one or both of its theories) that it has no obligation to bargain over health insurance, the undisputed available evidence indicates that it willingly engaged in such bargaining with the FOP. As noted above, both parties exchanged proposals on health insurance and both parties submitted health insurance proposals to the interest arbitrator. Under the facts presented in this case, I cannot find that the Union engaged in any conduct that would raise a question for hearing under the Labor Act.

I am mindful of the fact that the General Counsel, in her Declaratory Ruling, noted that a Central City analysis involving a detailed factual inquiry must be addressed by the Board in the context of an unfair labor practice charge. I certainly do not disagree with that concept. However, under the facts presented in this particular charge, where both parties willingly engaged in bargaining over health insurance, there is no basis for the issuance of a Complaint for Hearing.

In order to issue a Complaint for Hearing, I must find that the charge raises a question of law or fact for hearing. Inherent in that standard is a burden on the Charging Party to show some evidence that the Respondent engaged in conduct that *may have* violated the Labor Act. Here, in bargaining over employee health insurance, the FOP engaged in the exact same conduct as the Employer. Indeed, it was not until the interest arbitration proceedings were underway that the Employer first asserted that it had no obligation to bargain health insurance, and then only in the context of the Declaratory Ruling proceedings. Under such circumstances, I find it to be procedurally inappropriate for me to issue a Complaint for Hearing.[3]

III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a

[3] As such, the State's Motion to Bifurcate Ruling on the Two Issues Raised in the State's Unfair Labor Practice Charge is denied.

statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 6th day of June, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Melissa Mlynski
Executive Director

EXHIBIT 2

ILLINOIS LABOR RELATIONS BOARD

DO NOT WRITE IN THIS SPACE
CASE NUMBER
DATE FILED

☒ **STATE PANEL:** One Natural Resources Way, First Floor
Springfield, Illinois 62702-1270
(217) 785-3155 FAX: (217) 785-4146

☐ **LOCAL PANEL:** 160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400 FAX: (312) 793-6989

CHARGE AGAINST LABOR ORGANIZATION

INSTRUCTIONS: In accordance with the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended,* and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code §1200.20 and 1220.20, the following information is required. Submit an original and one (1) copy of this charge to the Illinois Labor Relations Board. If more space is required for any item, attach additional sheet(s), numbering items accordingly. **State Panel cases (e.g., State of Illinois, municipal and county government) must be filed in Springfield; Local Panel cases (e.g., City of Chicago and Cook County government) must be filed in Chicago.**

This agency is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined in 5 ILCS 315 (2010), *as amended.* Disclosure of this information is REQUIRED. Failure to provide any information will result in this form not being processed.

BY STATUTE, ONLY CHARGES FILED AND SERVED ON THE PARTIES WITHIN SIX (6) MONTHS OF THE DATE OF THE EVENT OR CONDUCT WHICH IS THE SUBJECT OF THE CHARGE WILL BE PROCESSED BY THE ILLINOIS LABOR RELATIONS BOARD.

1.	NAME OF LABOR ORGANIZATION AND AFFILIATION (against whom charge is brought) Fraternal Order of Police, Illinois Troopers Lodge 41	TELEPHONE NUMBER (217) 529-4104
	STREET, CITY, STATE, ZIP 5880 South Sixth Street, Springfield, IL 62703	FAX NUMBER (217) 529-4269
		E-MAIL
2.	LABOR ORGANIZATION REPRESENTATIVE Joel D'Alba and Ryan Haggerty	TELEPHONE NUMBER (312) 263-1500
	STREET, CITY, STATE, ZIP Asher, Gittler & D'Alba, Ltd., 200 W. Jackson Blvd., Suite 1900, Chicago, IL 60606	FAX NUMBER (312) 263-1501
		E-MAIL jad@ulaw.com; rah@ulaw.com
3.	NAME OF CHARGING PARTY Illinois State Police	TELEPHONE NUMBER (217) 782-3255
	STREET, CITY, STATE, ZIP 801 South 7th Street, 1100-S, Springfield, IL 62794	FAX NUMBER (217) 524-7660
		E-MAIL
	JOB TITLE (at time of alleged unfair labor practice)	NAME OF EMPLOYER (at time of alleged unfair labor practice)
4.	CHARGING PARTY REPRESENTATIVE Thomas S. Bradley and Mark Bennett	TELEPHONE NUMBER (312) 467-9800
	STREET, CITY, STATE, ZIP Laner Muchin, Ltd., 515 N. State Street, Suite 2800, Chicago, IL 60654	FAX NUMBER (312) 467-9479
		E-MAIL tbradley@lanermuchin.com; mbennett@lanermuchin.com

5.	**It is alleged that the above-named labor organization has engaged in (an) unfair labor practice(s) within the meaning of Section 10(b) subsection(s) (4) of the Illinois Public Labor Relations Act.**
6.	**BASIS OF CHARGE** (specify in detail: facts, names, addresses, sites, dates, etc.) (use attachments if necessary)
	Date(s) of alleged wrongful action(s): July 10, 2015 and continuing to present.
	Name(s) of individual(s) involved: See Attachment A
	Location(s) of alleged wrongful action(s): See Attachment A
	Describe what happened: See Attachment A
	SUPPORTING DOCUMENTS (please include copies of any documents relevant to your charge) The supporting documents filed with this charge will be considered part of the charge and will be served on the Labor Organization
7.	**RELIEF OR REMEDY SOUGHT BY CHARGING PARTY** See Attachment A

I have read the above petition and all attachments. The statements contained therein are true to the best of my knowledge and belief.

[redacted]

Signature of person filing petition

NAME: Thomas S. Bradley

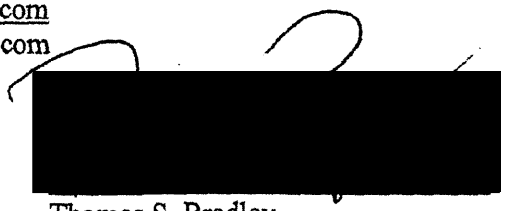
TITLE: One of the Attorneys for the Illinois State Police

DATE: 3/11/2016

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I caused the foregoing **Charge Against Labor Organization** in the above-captioned matter to be served on the party listed below, by depositing in the U.S. mail located at 515 N. State Street, Chicago, Illinois 60654 before the hour of 5:00 p.m. on this 11th day of March, 2016, addressed to:

Joel D'Alba, Esq.
Ryan Haggerty, Esq.
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Boulevard, Suite 1900
Chicago, Illinois 60606
312/263-1500
jad@ulaw.com
rah@ulaw.com



Thomas S. Bradley

ATTACHMENT A

ATTACHMENT A

Troopers Lodge #41, Fraternal Order of Police ("FOP") has committed an unfair labor practice in violation of section 10(b)(4) of the Illinois Public Labor Relations Act (the "Labor Act"), 5 ILCS 315/10(b)(4), by demanding that the State of Illinois and Illinois State Police ("ISP") bargain over health insurance, because: (1) under a 2004 law, PA 93-839, that amended the Labor Act, the State Employees Group Insurance Act of 1971, 5 ILCS 375/1 *et seq.* (the "Group Insurance Act"), and the Illinois Procurement Code, 30 ILCS 500/20-1 *et seq.* (the "Procurement Code") (collectively referred to as the "2004 Amendments"), the Director of Central Management Services ("CMS") is authorized to enter into health insurance contracts and provide health benefit plans to employees and their dependents, subject only to certain statutory limitations that do not require collective bargaining, and certain reporting oversight obligations to the Commission on Government Forecasting and Accountability ("COGFA") and the State Procurement Policy Board, which do not require the Director to collectively bargain over such contracts and plans; and (2) under the balancing test set forth by the Illinois Supreme Court in *Central City Education Ass'n, IEA/NEA v. Illinois Educational Labor Relations Board*, 149 Ill. 2d 496, 523 (1992), any benefits that might be realized from such bargaining are far outweighed by the substantial burdens that are imposed by doing so, and, as recommended by the Board's General Counsel in the attached March 1, 2016 Declaratory Ruling, the Board should grant the State an evidentiary hearing to establish the *Central City* factors:

> I acknowledge that [the State] raises some salient considerations with respect to its managerial authority to provide a [health care] plan to employees, and burdens of bargaining over health care plan designs it provides. . . . The *Central City* balancing test can be most completely performed following a full factual inquiry before a Board ALJ, whereas I am precluded from resolving factual disputes raised by the parties in a declaratory ruling. *See* 80 Ill., Admin Code 1200.143(b)(2). Moreover, the Board is at liberty to reexamine its case law and interpretations of the Act. . . . Accordingly, if either party wishes to develop a full factual record or

> advocate for a change in established case law, they should employ the unfair labor practice procedures set forth by the Act and the Board Rules.

See Troopers Lodge 841, Fraternal Order of Police and Illinois State Police, Case No. S-DR-16-104, Declaratory Ruling, p. 13 (March 1, 2016).

For this additional reason, and, as set forth in greater detail below in the supporting Affidavits of Jennifer Hammer and John Terranova, the demand of the FOP to bargain over health insurance constitutes bad faith bargaining and, therefore, an unfair labor practice in violation of Section 10(b)(4) of the Labor Act, 5 ILCS 315/10(b)(4).

I. BARGAINING HISTORY

A collective bargaining agreement ("CBA") between the Illinois State Police ("ISP") and Fraternal Order of Police ("FOP") ran from July 1, 2012 through June 30, 2015. On or about May 11, 2015, the parties commenced negotiations for a new CBA. That same day, the FOP, modeling the AFSCME contract, made its first proposal regarding health insurance. The FOP's June 9, 2015, economic proposal contained the same healthcare proposal. On July 10, 2015, the FOP submitted its substantive health insurance proposal. On July 14, 2015, the FOP submitted a revised health insurance proposal. The FOP made subsequent health insurance proposals on October 14, 2015 and November 11, 2015.

On August 19, 2015, the parties declared impasse in the negotiations and, on August 20, 2015, the FOP filed a Demand for Compulsory Interest Arbitration. The parties selected Dan Nielsen as their neutral interest arbitrator. The parties agreed to submit their final offers to Arbitrator Nielsen two days prior to the first day of hearing, scheduled for December 23, 2015. On January 8, 2016, the FOP submitted its final offer on health insurance. The FOP subsequently objected to the ISP's final offer and, on January 12, 2015, the ISP made a revised final offer on health insurance. On January 13, 2016, the parties recommenced their interest

arbitration hearing. The FOP has since presented more than 25 exhibits in opposition to the State's health insurance plan.[1] On January 29, 2016, the ISP filed a Petition for a Declaratory Ruling with the General Counsel arguing, among other things, that the ISP has no legal obligation to bargain over the design of its health insurance plan. The General Counsel, on March 1, 2016, issued a declaratory ruling in the ISP's favor as to whether its health insurance plan was properly before the arbitration panel and, as noted above, invited the ISP to present evidence and argument to this Board on the issue of whether the ISP has a legal obligation to bargain over health insurance. On March 11, 2016, the ISP filed this Charge Against Labor Organization with the Illinois Labor Relations Board contending that FOP's demand that ISP bargain over health insurance is an unfair labor practice.

The arguments that the ISP raises in its charge are matters of first impression for the Board's consideration. For the reasons set forth below, the Board should rule that the ISP has no obligation to bargain with the FOP over health insurance and that any demand by the FOP for such bargaining constitutes an unfair labor practice under Section 10(b)(4) of the Labor Act.

II. THE 2004 AMENDMENTS TO THE LABOR ACT, THE GROUP INSURANCE ACT, AND THE PROCUREMENT CODE ESTABLISH THAT THE STATE HAS NO OBLIGATION TO COLLECTIVELY BARGAIN OVER HEALTH INSURANCE

A. Under the 2004 Amendments To The Labor Act, Section 5 of the Group Insurance Act Trumps The Labor Act

Under the 2004 Amendments, the State has no obligation to collectively bargain over health insurance. First, PA-93-839 amended Section 15(a) of the Labor Act and Section 5 of the Group Insurance Act to expressly exempt Section 5 of the Group Insurance Act from the

[1] Although the ISP, because of the FOP's insistence upon bargaining over health insurance, has also presented health insurance exhibits and testimony during the interest arbitration hearing, this does not impact the issue of whether the State Employees Group Insurance Act of 1971, Labor Act and other applicable law require bargaining over such subject matter.

supremacy clause of the Labor Act (entitled "This Act Takes Precedence"), so that neither the Labor Act nor any collective bargaining agreement negotiated under it takes precedence over Section 5 of the Group Insurance Act. Specifically, Section 5 was amended to say the provisions of the Labor Act shall prevail over any other law "other than" Section 5 of the Group insurance Act. If this were the only amendment made to the Labor Act by PA-93-839, then the Labor Act and the Group Insurance Act would have thenceforth stood on equal footing and, under the statutory construction canon of *in pari materia*, the Board would be required to construe the two statutes "harmoniously." *Maksym v. Board of Election Commissioners*, 242 Ill. 2d 303, 320-21 (2011) (where two statutes are read *in pari materia* they should be given a harmonious construction). However, PA 93-839 further amended Section 15(a) to make the provisions of the Labor Act "subject to" Section 5 of the Group Insurance Act. Section 15(a) of the Labor Act, as amended by PA 93-839 (the amendatory language is shown in italics) provides, in pertinent part, as follows:

> § 15. Act Takes Precedence. (a) In case of any conflict between the provisions of this Act and any other law ***(other than Section 5 of the State Employees Group Insurance Act of 1971)***, executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control. Nothing in this Act shall be construed to replace or diminish the rights of employees established by Sections 28 and 28a of the Metropolitan Transit Authority Act, Sections 2.15 through 2.19 of the Regional Transportation Authority Act. ***The provisions of this Act are subject to Section 5 of the State Employees Group Insurance Act of 1971.***

5 ILCS 315/15(a) (emphasis supplied)

The Labor Act does not define the phrase "subject to." It is well settled that where an undefined term is used in a statute a court will look to the dictionary definition to determine the meaning of the term in the statute. *Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL

113907, ¶48 ("[i]t is appropriate to use a dictionary to ascertain the meaning of an otherwise undefined [statutory] word or phrase"; Court uses dictionaries to define meaning of "company" in Vehicle Code); *Skaperdas v. Country Casual Ins. Co.*, 2015 IL 117021, ¶18-21 (Court uses dictionary definition of "insurance broker" and "insurance agent" to determine meaning of "insurance producer" as used in Code of Civil Procedure) *Metropolitan Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶20 (Court uses dictionary definition of "due" to determine the word "due" in Tax Delinquency Amnesty Act means "[i]mmediately enforceable" and "[o]wing or payable; constituting a debt"); *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶76 (Court uses dictionary definition of "assess" as meaning "to determine the rate or amount of [as a tax, charge, or fine]" to determine "income tax assessment" as used in tax code); *People v. Dominguez*, 2012 IL 111336, ¶¶18-19 (Court uses dictionary to determine the term "substantially advise" in Illinois Supreme Court Rules does not mean verbatim recital of rule, but rather means to convey its "essence"); *Gaffney v. Bd. of Trustees of Orland Fire Protection Dist.*, 2012 IL 110012, ¶¶60-61 (Court uses dictionary definition of "emergency" to determine "emergency" in Public Safety Employment Benefits Act means unforeseen circumstance requiring immediate response); *People v. Gutman*, 2011 IL 110338, ¶¶14-15 (Court uses dictionary definition of "proceeds" to determine the word "proceeds" as used in Illinois money laundering statute meaning "gross receipts" rather than "profits"); *People v. Comage*, 241 Ill. 2d 139, 144-45 (2011) (Court uses dictionary definition of "conceal" to determine "conceal" as used in obstruction statute means "preventing disclosure" or "place out of sight"); *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 7-12 (2011) (Court looked to several dictionaries to determine that the word "statutory" in Chicago Residential Landlord and Tenant ordinance meant "legislation enacted by any lawmaking body, including legislatures, administrative boards, and municipal courts."); *People v. Davison*, 233 Ill.

2d 30, 36-37 (2009) (Court uses dictionary definition of "poisonous" to determine that "poisonous gas" as used in the Criminal Code would be gas that "is poison," "poisonous," or "has the qualities or effects of poison," and is not limited to substances designed for chemical warfare); *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 363 (2009) (Court uses dictionary definition of "enforcing" as meaning "to give force to" or to "put in force: cause to take effect: give effect to," and the dictionary definition of "otherwise" as "different" or "in different circumstance: under other conditions" to determine meaning of "otherwise enforcing" in the Tort Immunity Act); *Price v. Phillip Morris*, 219 Ill. 2d 182, 243-44 (2005) (Court uses dictionary definition of "authorize" as "give legal authority; to empower," or "[t]o formally approve; to sanction," and dictionary definition of "specific" as "[o]f, relating to, or designating a particular or defined thing; explicit," "[o]f or relating to a particular named thing" in determining what the term "specifically authorize" means in the Consumer Fraud Act); *Kozak v. Retirement Bd. of Firemen's Annuity and Ben. Fund of Chicago*, 95 Ill. 2d 211, 215 (1983) (Court uses dictionary definition of "current" as "occurring in or belonging to the present time" to determine meaning of "current" in the Pension Code); *Bowes v. City of Chicago*, 3 Ill. 2d 175, 200 (1954) (Court uses dictionary definition of "adjacent" as "lying near, close or contiguous; neighboring; bordering on; as, a field adjacent to the highway" to determine meaning of "adjacent" as used in the Cities and Villages Act); *People v. Kucharski*, 2013 IL App (2d) 120270, ¶35 (Court uses dictionary definition of "obscene" rather than *Miller v. California*, 413 U.S. 15 (1973) standard in determining meaning of "obscenity" in electronic harassment statute); *People v. Vasquez*, 2012 IL App (2d) 101132, ¶70 (Court uses dictionary definition of "extraordinary circumstances" as "highly unusual," and "not commonly associated with a particular thing or event" to determine meaning of "extraordinary circumstances" in DUI statute); *People v.*

Horsman; 406 Ill. App. 3d 984, 987 (2nd Dist. 2011) (Court uses dictionary definition of "imprisonment" as "the act of imprisoning or the state of being imprisoned;" or "to put in prison: confine in a jail" to determine meaning of "imprisonment" in Vehicle Code); *Cojeunaze Nursing Center v. Lumpkin*, 260 Ill. App. 3d 1024, 1028-31 (5th Dist. 1994) (Court uses dictionary definition of "kinship" to determine that "first degree of kinship" in Nursing Home Act means a spouse); *Conlon-Moore Corp. v. Cummins*, 28 Ill. App. 2d 368, 372 (1st Dist. 1960) (Court used dictionary definition of "wages" as "Pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salary or fees" to determine meaning of "wages" in Wage Payment Act).

Although there is no rule of law as to *which* dictionary should be used in determining the meaning of undefined terms in a statute, Illinois courts often turn to Webster's dictionaries in conducting this analysis (including the above-cited cases). *See Poris v. Lake Holiday Property Owners Ass'n*, 2013 IL 113907, ¶49-50 (Webster's Third New International); *Metropolitan Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶20 (Black's); *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶76 (Webster's Third New International); *People v. Dominguez*, 2012 IL 111336, ¶¶18-19 (Merriam–Webster's Collegiate and Black's); *Gaffney v. Bd. of Trustees of Orland Fire Protection Dist.*, 2012 IL 110012, ¶¶60-61 (Webster's Third New International); *People v. Gutman*, 2011 IL 110338, ¶¶14-15 (2011) (Webster's Third New International and Black's); *People v. Comage*, 241 Ill.2d 139, 144-45 (2011) (Webster's Third New International); *Landis v. Marc Realty*, L.L.C., 235 Ill.2d 1, 7-12 (2011) (Webster's American Dictionary of the English Language, Webster's Third New International, Burrill's Law, and Bouvier's Law); *People v. Davison*, 233 Ill. 2d 30, 36-37 (2009) (Webster's Third New International); *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 363 (2009) (Webster's Third New International and Black's); *People v.*

Beachem, 229 Ill. 2d 237, 243-46 (2008) (Webster's Third New International and Black's); *Price v. Phillip Morris*, 219 Ill. 2d 182 243-44 (2005) (Black's); *Kozak v. Retirement Bd. of Firemen's Annuity and Ben. Fund of Chicago*, 95 Ill. 2d 211, 215 (1983) (Random House Dictionary of the English Language Unabridged and Webster's Third New International); *Bowes v. City of Chicago*, 3 Ill. 2d 175, 200 (1954) (Webster's New International, Second Edition); *People v. Kucharski*, 2013 IL App (2d) 120270 ¶35 (Merriam–Webster Online Dictionary); *People v. Burk*, 2013 IL App (2d) 120063, ¶39 (Webster's Third New International); *People v. Vasquez*, 2012 IL App 101132 (2d), ¶70 (Black's); *People v. Horsman*; 406 Ill. App. 3d 984, 987 (2d Dist. 2011) (Webster's Third New International); *Cojeunaze Nursing Center v. Lumpkin*, 260 Ill. App. 3d 1024, 1028-31 (5th Dist. 1994) (Webster's Third New International and Black's); *Conlon-Moore Corp. v. Cummins*, 28 Ill. App. 2d 368, 372 (1st Dist. 1960) (Webster's New International Dictionary, 2nd Ed.)

Here, the amendment to Section 15(a) of the Labor Act implemented by PA 93-839 uses the term "subject" as an adjective – technically, as the linking verb complement of the noun "provisions" (which refers to the "provisions" of the Labor Act). Webster's New Collegiate Dictionary gives the following definitions of the word "subject" as an adjective:

> As an adjective, "subject" means, "1. Owing obedience or allegiance to the power or dominion of another. 2 suffering a particular liability or exposure . . . *subject to temptation* . . . having a tendency or inclination , , , Prone . . . *subject to colds*. 3. Dependent upon or exposed to esp. as a prelude to finalization . . . *the plan is subject to discussion*."

Subject, Webster's New Collegiate Dictionary (1979)

Webster's New World College Dictionary, 5th Edition, also defines "subject" as an adjective as:

> "1. Likely to be affected by or to experience something. *a country subject to extreme heat; Menu listings and prices are subject to change; He's subject to sneezing fits*. 2. Conditional upon. *The local board sets local*

> *policy, subject to approval from the State Board.* 3. Placed or situated under; lying below, or in a lower situation. 4. Placed under the power of another; owing allegiance to a particular sovereign or state."

Subject, Webster's New World College Dictionary, (5th ed. 2014)

Applying these definitions to the amendments to Section 15(a) of the Labor Act, the phrase "**The provisions of this Act are subject to Section 5 of the State Employees Group Insurance Act of 1971**" means that the provisions of the Labor Act are "conditioned upon," "dependent upon," "affected by," and "placed under or situated lower than" Section 5 of the Group Insurance Act. Read together, and with the "other than" exemption, the meaning is clear: Section 5 of the Group Insurance Act is exempted from, and trumps the supremacy provisions of the Labor Act, including, *a fortiori*, any bargaining obligation contained therein.

This interpretation is consistent with the use of the phrase "subject to" in other statutes where one statute is, by the express terms of the statute, "subject to" another statute. For example, in passing laws regulating health care insurance plans operating in Illinois, the General Assembly has consistently included language in such statutes making clear that the plans are "subject to" the Illinois Health Insurance Portability and Accountability Act, 215 ILCS 97/1 et seq., ("Illinois HIPAA"). Thus, the privacy protections contained in Illinois HIPAA and the protections that Illinois HIPAA provides for pre-existing conditions trump the regulatory schemes imposed by the other statutes. *See* Health Maintenance Organization Act, 215 ILCS 125/5-3.5 (regulates HMO insurance plans; §3.5 makes act "subject to the Illinois Health Insurance Portability and Accountability Act as provided in Section 15 of that Act"); Limited Health Services Organization Act, 215 ILCS 130/4002.5 (regulates group insurance plans for ancillary services *i.e.*, dental, vision, ambulance, pharmacy; §4002.5 makes act "subject to the Illinois Health Insurance Portability and Accountability Act as provided in Section 15 of that Act"); Voluntary Health Services Act, 215 ILCS 165/15.25 (regulates insurance coverage for

independent health care providers via subscription; §15.25 makes act "subject to the Illinois Health Insurance Portability and Accountability Act as provided in Section 15 of that Act"); Illinois Insurance Code, 215 ILCS 5/155.33 (regulates all insurance carriers in Illinois, §155.33 makes Code "subject to the Illinois Health Insurance Portability and Accountability Act as provided in Section 15 of that Act"); Illinois Health Insurance Portability and Accountability Act, 215 ILCS 97/15 (provides limitations on preexisting conditions and guarantees renewability for individual and employer group health insurance plans and regulates disclosure of personal health information; §15 expressly references previously cited statutes); see also Quad Cities Interstate Metropolitan Authority Act, 45 ILCS 35/120 (creates state agency to implement agreement between Iowa and Illinois to jointly provide community services to Quad City metro region; §120 makes Act "subject" to state compact between Iowa and Illinois codified at 45 ILCS 35/120). So, too, here, the inclusion of the phrases "subject to" and "other than" in the 2004 Amendment to Section 15(a) of the Labor Act means that the powers granted to the Director of CMS under section 5 of the Group Insurance Act exclude and trump any obligations contained in the Labor Act -- including any obligation to collectively bargain.

B. Under Section 5 of the Group Insurance Act, The Director of CMS Has Wide Ranging Powers To Provide Health Insurance, Subject To Statutory Limitations And Reporting Oversight Which Does Not Require Collective Bargaining

Section 5 of the Group Insurance Act grants the Director of the Illinois Department of Central Management Services (see 5 ILCS 375/3(i) (definition of "Director" under Group Insurance Act) wide-ranging power to implement health insurance plans for employees and their dependents. First, under Section 5 of the Group Insurance Act, the Director of CMS is required to provide health insurance to employees and their dependents, either through contracts or other methods:

> The Director shall contract or otherwise make available group life insurance, health benefits and other employee benefits to eligible members and, where elected, their eligible dependents.

5 ILCS 375/5

Second, the Director of CMS is authorized to enter into contracts to provide health insurance to employees and their dependents:

> The Director is authorized to execute a contract, or contracts, for the programs of group life insurance, health benefits, other employee benefits and administrative services authorized by this Act (including, without limitation, prescription drug benefits).

5 ILCS 375/5

Third, Section 5 authorizes the Director of CMS to issue request for proposals for third parties to provide health benefits:

> The Director may prepare and issue specifications for . . . health benefits, other benefits and administrative services for the purpose of receiving proposals from interested parties.

5 ILCS 375/5

Before the 2004 amendments, Section 5 placed only the following limitations on the Director's power to provide health benefits. First, Section 5 limited the term of any health insurance contract, stating such contract term "may not extend beyond 5 fiscal years." 5 ILCS 375/5 Second, with regard to renewal, Section 5 provided if a health insurance contract contained a renewal option, the Director could, upon recommendation from COGFA, exercise such renewal option for the same contract for up to a period of five years. 5 ILCS 375/5. Third, with regard to rates, Section 5 required the Director to consider the following factors in allowing increases in premiums, fees or charges requested by a health insurance contractor:

> Upon recommendation of the Commission, the Director may exercise renewal options of the same contract for up to a period of 5 years. Any increases in premiums, fees or charges requested by a contractor whose contract may be renewed pursuant to a renewal option contained therein,

> must be justified on the basis of (1) audited experience data, (2) increases in the costs of health care services provided under the contract, (3) contractor performance, (4) increases in contractor responsibilities, or (5) any combination thereof.

5 ILCS 375/5

Of course, prior to the 2004 Amendments, there was a fourth restriction on the power of the Director to provide health benefits and let health insurance contracts. It was contained not in Section 5 of the Group Insurance Act, but rather in Section 15(a) of the Labor Act, which made the provisions of the Labor Act and any collective bargaining agreement negotiated under the Labor Act supreme over other statutes. However, as noted above, the 2004 Amendments to Section 15(a) of the Labor Act freed the Director of CMS from any obligation to collectively bargain health insurance, by exempting Section 5 of the Group Insurance Act from the supremacy clause of the Labor Act, and making Section 5 of the Group Insurance Act supreme to any contrary provision in the Labor Act through the insertion of the "subject to" and "other than" clauses in Section 15(a) of the Labor Act.

The 2004 Amendments to Section 5 of the Group Insurance Act implemented new and different checks and balances on the power of the Director to provide health insurance through: (1) articulation of a new policy that the Director of CMS must follow in providing health insurance; (2) new reporting oversight to COGFA of the Director's exercise of his power to provide health insurance; and (3) new reporting oversight to the Illinois Procurement Board and compliance with the substantive restrictions imposed by the Illinois Procurement Code. These are each discussed in detail below.

1. The 2004 Amendments to Section 5 Required The Director Of CMS to Administer the Group Insurance Act Consistent With An Articulated State Policy

The 2004 Amendments to Section 5 articulate a State policy (the "Policy") and require the Director of CMS to administer the Group Insurance Act consistent with this Policy (emphasis below added):

> The General Assembly declares that it is the **policy** of the State and in the best interest of the State to assure **quality benefits** to members and their dependents under this Act. **The implementation of this policy depends upon, among other things, stability and continuity of coverage, care, and services under benefit programs** for members and their dependents. Specifically, but without limitation, members should have continued access, **on substantially similar terms and conditions**, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, **the Director must administer this Act consistent with that State policy, but may consider affordability, cost of coverage and care, and competition among health insurers and providers.**

5 ILCS 375/5

Notably, the Policy has two components. The first component is the substance of the Policy itself, which calls for "quality benefits for members and their dependents," and then gives some examples of the factors upon which the implementation of the policy depends. The second component of the Policy is the statement that the Director "must administer this Act consistent with the Policy" but in doing so "may consider affordability, cost of coverage and care, and competition among health insurers and providers." The General Assembly was clearly striking a balance with this amendatory language, requiring the Director to administer the Group Insurance Act consistent with the State's policy of providing quality health care, but also affording the Director discretion to consider "affordability, cost of coverage and care, and competition among health insurance and providers" in doing so. Nothing in this balance required or contemplated collective bargaining.

2. The 2004 Amendments Give COGFA Reporting Oversight Over Health Benefits and Health Insurance Contracts, But Not A Veto Over The Decisions The Director Makes

The 2004 Amendments further give COGFA reporting oversight over the health benefits and health insurance contracts that the Director provides. The Amendments require, in new section 5(i) of the Group Insurance Act, that for every contract for health insurance benefits, the Director must provide COGFA with the following monthly reports and information:

> By April 1 of each year, the Director must report and provide information to the Commission concerning the status of the employee benefits program to be offered for the next fiscal year. Information includes, but is not limited to, documents, reports of negotiations, bid invitations, requests for proposals, specifications, copies of proposed and final contracts or agreements, and any other materials concerning contracts or agreements for the employee benefits program. By the first of each month thereafter, the Director must provide updated, and any new, information to the Commission until the employee benefits program for the next fiscal year is determined. In addition to these monthly reporting requirements, at any time the Commission makes a written request, the Director must promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission any additional requested information in the possession of the Director concerning employee benefits programs. The Commission may waive any of the reporting requirements of this item (i) upon the written request by the Director. Any waiver granted under this item (i) must be in writing. Nothing in this item is intended to abrogate any attorney-client privilege.

5 ILCS 375/5(i)

Although the scope of the reporting oversight is broad, including, but not limited to, "documents, reports of negotiations, bid invitations, requests for proposals, specifications, copies of proposed and final contracts or agreements, and any other materials concerning contracts or agreements for the employee benefits program," it is clear COGFA's oversight is limited to requesting information and receiving reports from the Director concerning health insurance and health benefits. COGFA does not have the right to veto decisions that the Director makes.

COGFA is also empowered under section 5(ii) of the 2004 Amendments to request information from the Director after a newly awarded contract is posted in the Illinois

Procurement Bulletin, in compliance with section 15-25 of the Illinois Procurement Code. Section 5(ii) of the Group Insurance Act states:

> (ii) Within 30 days after notice of the awarding or letting of a contract has appeared in the Illinois Procurement Bulletin in accordance with subsection (b) of Section 15–25 of the Illinois Procurement Code, the Commission may request in writing from the Director and the Director shall promptly, but in no event later than 5 business days after receipt of the request, provide to the Commission information in the possession of the Director concerning the proposed contract. Nothing in this item is intended to waive or abrogate any privilege or right of confidentiality authorized by law.

5 ILCS 375/5(ii)

Notably, although subsection (b) of Section 15-25 of the Illinois Procurement Code requires contracts to be posted in the Illinois Procurement Bulletin, the Code, by its express terms does not apply collective bargaining agreements: ***"This Code shall not apply to . . . . : (5) Collective bargaining contracts."*** 30 ILCS 500/1-10(b) (emphasis added)

To ensure that the Director complies with the new reporting obligation set forth in new section 5(ii) of the Group Insurance Act, the 2004 Amendments also provide that a contract awarded by the Director for health insurance may not become effective until the 30-day period set forth in section 5(ii) expires:

> No contract subject to this Section may be entered into until the 30–day period described in item (ii) has expired, unless the Director requests in writing that the Commission waive the period and the Commission grants the waiver in writing.

5 ILCS 375/5(iii)

Moreover, should the Director seek to make a substantive modification to a health insurance contract after it is awarded, the Director has to comply with the reporting obligations set forth in Section 5(ii) and 5(iii) with regard to such modification:

> If the Director seeks to make any substantive modification to any provision of a proposed contract after it is submitted to the Commission in

> accordance with item (ii), the modified contract shall be subject to the requirements of items (ii) and (iii) unless the Commission agrees, in writing, to a waiver of those requirements with respect to the modified contract.

5 ILCS 375/5(iv)

The 2004 Amendments also set the dates when the annual open enrollment period begins (referred to in the statute as the "annual benefit choice period"), and require the Director to transmit to COGFA copies of the final contract for the benefit program to be offered in the upcoming fiscal year by the start of such period:

> By the date of the beginning of the annual benefit choice period, the Director must transmit to the Commission a copy of each final contract or agreement for the employee benefits program to be offered for the next fiscal year. The annual benefit choice period for an employee benefits program must begin on May 1 of the fiscal year preceding the year for which the program is to be offered. If, however, in any such preceding fiscal year collective bargaining over employee benefit programs for the next fiscal year remains pending on April 15, the beginning date of the annual benefit choice period shall be not later than 15 days after ratification of the collective bargaining agreement.

5 ILCS 375/5(v)

Finally, the 2004 Amendments require the information and documents that the Director provides under sections 5(i)-(v) to be transmitted electronically to COGFA, require the Director to take steps to preserve the confidentiality of such information, and exempt such documents from disclosure under the Freedom of Information Act:

> (vi) The Director must provide the reports, information, and contracts required under items (i), (ii), (iv), and (v) by electronic or other means satisfactory to the Commission. Reports, information, and contracts in the possession of the Commission pursuant to items (i), (ii), (iv), and (v) are exempt from disclosure by the Commission and its members and employees under the Freedom of Information Act. Reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) must be kept confidential by and may not be disclosed or used by the Commission or its members or employees if such disclosure or use could compromise the fairness or integrity of the procurement, bidding, or contract process. Commission meetings, or portions of Commission

> meetings, in which reports, information, and contracts received by the Commission pursuant to items (i), (ii), (iv), and (v) are discussed must be closed if disclosure or use of the report or information could compromise the fairness or integrity of the procurement, bidding, or contract process.

5 ILCS 375/5(vi)

Thus, although the 2004 Amendments subject the Director to reporting oversight by COGFA, such oversight does not require the Director to engage in collective bargaining concerning the health care benefits and health insurance contracts.

3. The 2004 Amendments Also Subject Health Insurance Contracts To The Illinois Procurement Code.

The 2004 Amendments also subject health insurance contracts to the Illinois Procurement Code. Specifically, the 2004 Amendments provide:

> All contracts entered into under this Section are subject to appropriation and shall comply with Section 20–60(b) of the Illinois Procurement Code (30 ILCS 500/20–60(b)).

5 ILCS 375/5

In addition, P.A. 93-839 extensively amended the Procurement Code itself, giving the Illinois Procurement Policy Board much broader rule-making authority and oversight over the contracts entered by State agencies.

As noted above, the 2004 Amendments to the Group Insurance Act make two specific references to the Illinois Procurement Code. First, an agency awarding or letting a contract must give notice in the Illinois Procurement Bulletin, "in accordance with subsection (b) of Section 15-25 of the Illinois Procurement Code." 5 ILCS 375/5(ii). That section of the Procurement Code was also a newly added section which was part of P.A. 9-839. It states:

> Each chief procurement officer, associate procurement officer, and State agency shall promptly notify the Procurement Policy Board in writing of any proposed new procurement rule or policy or any proposed change in an existing procurement rule or policy."

30 ILCS 500/5-25(b)

This amendment, along with other amendments to the Procurement Code, broadened the authority of the Procurement Policy Board over the State contracting process, giving the Board greater oversight and the ability to seek information from State agencies and hold hearings regarding contracts of which state agencies have given notice, and expressly making each of the specific categories of state contracts listed in the Procurement Code to be "subject to" the rule making and oversight authority of the Procurement Policy Board. *See, e.g.*, 30 ILCS 500/20–150 (overall general contracting); 30 ILCS 500/25-200 (supplies and services contracts); 30 ILCS 500/30-150 (construction contracts); 30 ILCS 500/35–150 (professional and artistic services contracts); 30 ILCS 500/40–150 (real property and capital improvement leases); 30 ILCS -150 (concessions contracts). Second, the amendments of P.A. 93-839 to Section 5 of Group Insurance Act specifically reference another section of the Procurement Code:

> All contracts entered into under this Section are subject to appropriation and shall comply with Section 20-60(b) of the Illinois Procurement Code (30 ILCS 500/20-60(b))."

5 ILCS 375/5

Section 20-60 (b) of the Procurement Code states:

> (b) Subject to appropriation. All contracts made or entered into shall recite that they are subject to termination and cancellation in any year for which the General Assembly fails to make an appropriation to make payments under the terms of the contract.

30 ILCS 500/20-60(b)

When this section of the Procurement Code is read together with Section 15(a) of the Labor Act and Section 5 of the Group Insurance Act (as it must be, given that PA 93-839 amended the three acts together), the General Assembly is demonstrating a clear intent not only that employee benefits contracts need not be collectively bargained, but also that the General

Assembly was increasing its oversight over the process of employee benefit contracting, without exercising a veto over the Director's decisions. This was discussed in the floor debates surrounding the passing of P.A. 93-839 in an exchange between Representative Currie, who sponsored P.A. 93-839, and Representative Hamos:

> Hamos: "Representative Currie, I'm looking at a new agency that we are creating with this Bill which is called a Procurement Policy Board which is actually a new agency with staff. So, first of all, have we appropriated money for this new agency to hire staff?"
>
> Currie: "First of all, Representative, this is not a new agency. The Procurement Policy Board was created some years ago. Currently, it is housed within the Department of Central Management Services. Under this legislation, the Procurement Policy Board will become somewhat more independent so that it can better accomplish its oversight responsibilities. . . . we thought it was important for them to have the... the cloak of independence rather than just being reliant upon the agency they're watching to provide them with their food and drink."
>
> * * *
>
> Hamos: Okay . . . If there is a bid on a specific issue, can a disgruntled loser, somebody who didn't get the bid, appeal to this Procurement Policy Board for any kind of redress?"
>
> Currie: "This board does not have a veto power over any contract decision made by other state agencies. We already have the board in place. The issue here is to make sure the board has the opportunity consistent with its current authority to review state contracts above $10 thousand and ... shine a little bit of light through the possibility of public hearings and can make recommendations to an agency. But there is no veto power. The agency can continue down a path even if the policy... the Procurement Policy Board recommends otherwise."
>
> * * *
>
> Hamos: "So, Representative Currie, what do you think then is the change that you are trying to... to effectuate here? If we already have this board, what do you see that it will do better or differently by setting it up as an independent agency of State Government?"
>
> Currie: "Two changes, and I think they're both important. One is that this Procurement Policy Board will have clear independence from the agency that is letting the contracts. I think that will give them a greater capacity to

> get the information they want. They'll have staff that belongs to them to help them analyze specific contracts. I am hopeful that these changes will mean that there will be more sunshine on state contracting practices."

S.B. 2206, 93rd Ill. Gen. Assembly, Reg. Sess., 2004 House Debates, July 24, 2004, Transcript pp. 124-128 (emphasis added).

C. The Impact of the 2004 Amendments Is A Matter of First Impression For the Labor Board

Although the Board ruled before on unfair labor practice charges involving health insurance benefits, it has never before ruled on the impact of the 2004 Amendments. In *American Federation of State, County and Municipal Employees, Council 31*, 31 PERI ¶142 (IL SLRB 2015) (the "*AFSCME Case*"), the Labor Board affirmed the Executive Director's deferral to arbitration of a union's charge that the State of Illinois, Department of Central Management Services committed an unfair labor practice when it made a unilateral change to health benefits during the term of a bargaining agreement. Although the Board held "health benefits and insurance are mandatory subjects of collective bargaining," neither the union or the State asserted nor did the Board consider or rule upon the argument that ISP makes here – namely, that under the 2004 Amendments the State does not have an obligation to bargain over health insurance. Instead, the authority that AFSCME cited and upon which the Board relied was *City of Kankakee*, 9 PERI ¶2034 (ISLRB 1993). *City of Kankakee* is not applicable here because: (1) it was decided in 1993, 11 years before the enactment of the 2004 Amendments at issue in this proceeding; and (2) it was based on a dispute between a union and a *city* employer, *not a state employer*, and thus the decision is inapposite to the current factual disposition; and (3) the *City of Kankakee* decision was, itself, decided based on NLRB decisions that concern private employers and the unions that represent their employees, and which too do not take into account the effect of the 2004 Amendments. Respectfully, the ISP's charge raises issues not litigated in the

AFSCME Case and not decided by this Board in that case. Therefore, the decision of the Board in the *AFSCME Case* and the *City of Kankakee* case upon which the *AFSCME Case* primarily relies are not applicable.

In a 2005 Labor Board State Panel decision, *Service Employees International Union, Local 73*, 21 PERI ¶148 (IL LRB-SP 2005) (the "*SEIU Case*"), this Board affirmed the Executive Director's dismissal of an unfair labor practice charge against the Department of Central Management Services ("CMS") made by union members employed by the Secretary of State for refusing to bargain over health insurance. The union attempted to argue that the Secretary of State and CMS were joint employers as CMS provided health insurance to the union members pursuant to the Group Insurance Act. *Id.* However, this Board found that there was no evidence of a historic pattern of bargaining between CMS and the union, and that CMS's only obligation pursuant to the Group Insurance Act was to provide the same benefits it offered non-union employees to the union members. *Id.* As in the *AFSCME Case*, the issue of the 2004 Amendments was not litigated in the *SEIU Case*.

Likewise, Board decisions that substantially predate the 2004 Amendments and/or which are based on NLRB decisions are not dispositive. *See, e.g., City of Peoria Municipal Employees Ass'n v. City of Peoria,* 11 PERI 2007 (ISLRB 1994) (noting that health insurance is a mandatory subject of bargaining); *AFSCME Council 31 v. County of Jefferson*, 10 PERI 2035 (ISLRB 1994) (questions regarding employee health benefits are a mandatory subject of bargaining); *Operating Engineeers Local 399 v. City of Kankakee,* 9 PERI 2034 (ISLRB 1993) (change in insurance benefits and failure to bargain over change of insurance carrier unfair labor practice); *ASFSCME v. County of Jackson,* 8 PERI 2006 (ISLRB 1992) (health insurance

mandatory subject, citing NLRB law); *City of Blue Island,* 7 PERI 2038 (ISLRB 1991) (health insurance mandatory subject, citing NLRB law).

Further, although the IELRB has ruled that health insurance is a mandatory subject of bargaining under the IELRA, its decisions are not applicable because the 2004 Amendments were not applicable to the IELRA and none of the IELRB decisions consider the impact of the 2004 Amendments. *Univ. of Ill. Bd. of Trs. (Chicago and Urbana)*, 9 PERI ¶1112 (IERLB-ALJ 1993); (ALJ noted, citing prior IELRB decisions that relied on NLRB case law, that health insurance benefits are a mandatory subject of collective bargaining under the IELRA"); *S. Ill. Uni. Bd. of Trs. (Carbondale)*, 8 PERI ¶1112 (IERLB-ALJ 1992) (same); *Georgetown-Ridge Farm Cmty. Unit Sch. Dist. 4*, 7 PERI 1045, Case Nos. 90-CA-0047-S, 90-CA-0048-S (IELRB Hearing Officer's Recommended Decision and Order, March 21, 1991), *aff'd.*, 7 PERI 1106 (IELRB Opinion and Order, October 2, 1991); *Vienna School District No. 55 v. IELRB*, 162 Ill. App. 3d 503 (4th Dist. 1987) (finding health insurance is a mandatory term of bargaining based on an NLRB decision concerning a private employer that predated the 2004 Amendments); *see also Serv. Emps. Int'l Union, Local 73*, 21 PERI ¶178 (IELRB 2005) (finding that CMS was not a joint employer with the University of Illinois Urbana-Champaign);

In sum, the issue of the impact of the 2004 Amendments is a matter of first impression for the Board.[2]

---

[2] In *Troopers Lodge No. 41, Fraternal Order of Police and ISP*, Grievance No. 13-D50-13 (Nathan, 2014), although Arbitrator Harvey Nathan considered whether unilateral changes to insurance benefits violated the contract, he expressly declined to issue a ruling as to whether such changes violated State law. *Id.* ("The Arbitrator will not engage in a discussion of whether the Employer's actions were in violation of State law.") For this further reason, this is a matter of first impression.

D. Conclusion: Under The 2004 Amendments ISP Has No Obligation To Bargain Health Insurance With FOP, And FOP's Demand That ISP Do So Is An Unfair Labor Practice Under Section 10(b)(4) of the Labor Act

For the reasons set forth herein, the Board should rule that, under the 2004 Amendments, ISP has no obligation to bargain with FOP over health insurance, and FOP's insistence that ISP engage in such bargaining is an unfair labor practice under Section 10(b)(4) of the Labor Act, 5 ILCS 315/10(b)(4).

III. ISP HAS NO OBLIGATION TO BARGAIN UNDER THE TEST SET FORTH BY THE ILLINOIS SUPREME COURT IN THE *CENTRAL CITY* CASE

In *Central City Education Association v. the Illinois Educational Labor Relations Board*, 149 Ill.2d 496 (1992), the Illinois Supreme Court announced a three-part test for determining whether an issue is a mandatory subject of bargaining under the Illinois Educational Labor Relations Act (the "IELRA"). First a determination must be made whether the matter is one of wages, hours and terms and conditions of employment. *Id.* at 523. If the answer is no the inquiry ends, and the employer is under no duty to bargain. *Id.*

If the answer to the first question is yes, then a determination must be made whether the matter is also one of inherent managerial authority. *Id.* If the answer to this second question is no, the analysis stops, and the employer is under a duty to bargain. *Id.*

If the answer to the second question is yes (*i.e.*, it is a matter involving wages, hours, or terms and conditions of employment, and also is a matter of inherent managerial authority), then the IELRB balances the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer. *Id.* "Which issues are mandatory, and which are not, will be very fact-specific questions which the IELRB is eminently qualified to resolve." *Id.*

The Illinois Supreme Court has never addressed the issue of whether the three-part test announced in *Central City* should be used to determine whether an issue is a mandatory subject of bargaining under the Labor Act. Moreover, *Central City* interprets an employer's obligations under the IELRA, and it was decided 12 years before the 2004 Amendments were enacted which, as discussed above, make clear that the State has no obligation to collectively bargain over health insurance under the Labor Act.

The Appellate Court has applied the *Central City* test for determining whether an issue not covered by Section 5 of the Group Insurance Act is a mandatory subject of bargaining under the Labor Act. *Fraternal Order of Police v. Illinois Labor Relations Board*, 2011 IL App (1st) 103215, ¶¶24-30 (using test to determine whether employer was obliged to bargain over consolidation of training districts); *Village of Oak Lawn v. Illinois Labor Relations Board*, 2011 IL App (1st) 103417, ¶¶17-26 (using test to determine whether employer was required to bargain over minimum training levels); *Forest Preserve District of Cook County v. Illinois Labor Relations Board*, 369 Ill. App. 3d 733, 753-54 (1st Dist. 2006) (using test to determine whether employer required to bargain over subcontracting); *Chicago Park District v. Illinois Labor Relations Board*, 354 Ill. App. 3d 595, 601-04 (1st Dist. 2004) (using test to determine whether employer was required to bargain over reduction in hours). However, neither the Illinois Supreme Court nor the Appellate Court has ever ruled on whether an issue covered under Section 5 of the Group Insurance Act is a mandatory subject of bargaining under the Labor Act. Moreover, although, as noted above, the Board has a prior ruling on this issue, it was based on NLRB law that predates the 2004 Amendments and, therefore, is inapplicable.

Thus, the question of whether the *Central City* test applies to a determination of whether ISP is required to collectively bargain under the Labor Act for matters covered by Section 5 of the Group Insurance Act is a matter of first impression.

ISP contends that, for the reasons set forth above, the *Central City* test in inapplicable to a determination of whether ISP is obligated to bargain over matters covered by Section 5 of the Group Insurance Act. No balancing of benefits and burdens is necessary because the General Assembly has already determined that the Director of CMS has no obligation to bargain over such health insurance matters, and must, instead, comply with the substantive limitations set forth in the Group Insurance Act that apply to health insurance under the reporting oversight of COGFA and the Procurement Board.

However, should the Board determine that an analysis under the *Central City* test is appropriate for determining whether ISP is obligated to bargain over matters covered by Section 5 of the Group Insurance Act, ISP contends that the benefits of bargaining over such matters are far outweighed by the burdens of doing so and, therefore, ISP should not be required to bargain over health insurance benefits.

As noted by the General Counsel in her Declaratory Ruling of March 1, 2016, the "*Central City* balancing test can be most completely performed following a full factual inquiry before a Board ALJ." *Id.* Should the Board determine that *Central City* may apply to a determination of whether ISP must bargain collectively over matters covered by Section 5 of the Group Insurance Act, then ISP requests an expedited hearing[3] at which the facts concerning the benefits and burdens of collectively bargaining health insurance and health plans may be adduced at an evidentiary hearing.

---

[3] The interest arbitration with FOP, which has been ongoing since December 2015, is currently scheduled to conclude in approximately 30 days; so time is of the essence.

That such a factual inquiry would be appropriate is made clear by the affidavits of Jennifer Hammer and John Terranova, attached hereto. Mrs. Hammer, who is Special Counsel to the Governor for health care, and Mr. Terranova, who is the Deputy Director of CMS, would testify, among other things, that:

- The process of negotiating with the various health insurers and providers is document intensive, time consuming and involves interactions between State employees, consultants, insurance carriers and providers. (Hammer Aff., ¶ 6)

- With respect to the time intensive nature of this process. The rate-setting process begins during the month of October prior to the start of the next fiscal year, which begins on July 1 of a given year. (Hammer Aff., ¶ 13)

- Rate projections are finalized in February and are submitted to the Commission On Government Forecasting and Accountability ("COGFA") that same month. (Hammer Aff., para. 16) This allows COGFA to complete its annual insurance report by April 1, which is required by statute. (Hammer Aff., ¶ 17)

- Following COGFA's review and approval of carrier rates, the rate modeling and claims data reporting is updated and submitted to two (2) outside actuarial firms in compliance with the State Employee Group Insurance Act. (Hammer Aff., ¶¶ 11, 19)

- Once the rates are approved and finalized by April, the insurance rates for the next fiscal year are made available for the May Benefit Choice Period. During this period, State employees may elect to make changes in their insurance coverage. (Hammer Aff., ¶ 20)

- The information and programs necessary to effectuate these charges are provided for the payroll departments at each State agency, the public universities and retirement systems. The new rates take effect each July 1. (Hammer Aff., ¶ 21)

- The manpower involved in this process is immense. (Hammer Aff., ¶ 22)

- From the State's perspective, contract administrators are involved in working with our outside actuary to renegotiate the carrier rates. This would include representatives from CMS' CFO Office and the Benefits Rate-Setting Manager. (Hammer Aff., ¶ 23)

- The carrier rate and insurance claims projections are finalized and the rate-setting models are completed and furnished to our outside actuary. Once our outside actuary firms confirm that the rates are proper, the rates are submitted to the State Employees' Retirement System ("SERS") actuary for approval of the retiree rates. (Hammer Aff., ¶ 25)

- In total, the rate-setting process takes about six (6) weeks to complete and involve the following individuals:

  - State Contract Administrators;

  - Rate-Setting Manager;

  - Deloitte personnel, for example, who perform actuary duties during the first review of the projected rates;

  - Gabriel Roeder Smith personnel, for example, who perform actuary duties during the second review of projected rates;

  - Retiree rates are finalized with SERS and Payment Unit; and

  - In connection with the Benefits Choice Period: Between CMS' staff, the Group Insurance Representatives (GIR) staffed at the State agencies and the outside Vendor Representatives, well over 300 individuals are involved with the administration of the State's health insurance plans. (Hammer Aff., ¶ 26)

- The process of offering insurance coverage to State employees also involves, of course, the Governor (via GOMB), General Assembly ("GA") and COGFA. (Hammer Aff., ¶ 27)

- This portion of the rate setting process involves CMS' Benefits Rate-Setting Manager and CFO, GOMB's analysts for CMS, and the GA. Budget meetings occur throughout the year and in preparation for the Governor's budget and session. (Hammer Aff., ¶ 29)

- Once the State's objectives for the upcoming fiscal year have been determined, CMS then meets with the various insurance carriers and providers, as discussed in greater detail above. (Hammer Aff., ¶ 31)

- To accomplish the foregoing in a time and cost efficient manner, the State pools employees in order to maximize tax dollars and streamline the contracting process. (Terranova Aff., ¶ 8)

- As a result, the State does not negotiate individual plans for the various State agencies or based upon an employee's membership in any particular bargaining unit. (Terranova Aff., ¶ 9)

- The State collectively bargains with 34 different unions. These 34 unions represent approximately 48,934 State employees. (Terranova Aff., ¶ 10)

- In negotiating the design and costs of the plans to be offered, it would be unduly burdensome if the State were required to negotiate with each and every labor union over the State's commitment of investment tax dollars, the designs of the

plans to be developed and contracted for and the methods by which employee contributions will be determined. (Terranova Aff., ¶ 12)

- Any benefit of bargaining over this decision making process enjoyed by any particular set of employees would be wholly outweighed by the enormous burden it would place on the State's ability to collectively, efficiently and timely negotiate insurance contracts on behalf of all State employees. (Terranova Aff., ¶ 13)

- Furthermore, negotiating plan designs among individual bargaining units would result in inconsistent insurance coverage options, inconsistent plan costs and would undermine the State's ability to maximize the value of its tax dollars by streamlining coverage options made available to all potential plan participants. (Terranova Aff., ¶ 14)

In sum, should the Board determine that the *Central City* test applies to the issue of whether ISP has an obligation to bargain over health insurance, the Board should grant ISP an expedited hearing to establish why the *Central City* factors, when applied to the salient facts at issue, militate in favor of the Board issuing a ruling that any benefit of bargaining with the FOP over the health insurance decision-making process would be wholly outweighed by the enormous, unduly burden it would place on the State's ability to offer and administer health insurance for its employees in compliance with the mandates of the State Employees Group Insurance Act of 1971 and additional, applicable law.[4]

---

[4] The cases cited above involving units of local government (*see* p. 23, *supra*) are distinguishable under the *Central City* analysis for the additional reason that the burden of bargaining health insurance for one or two bargaining units and a relatively small number of employees in a town or school district does not come close to comparing to the substantially larger burden the State faces in collectively bargaining health insurance with 34 separate unions – many of which represent and negotiate on behalf of multiple, separate bargaining units who have separate contracts – who collectively represent approximately 48,934 State employees. For example, according to the Village of Oak Lawn's website, the Village of Oak Lawn's **total** population is only 57,000. *See* http://www.oaklawn-il.gov/residents#ad-image-19; *see also Village of Oak Lawn v. Illinois Labor Relations Board, supra.*

IV. CONCLUSION//RELIEF OR REMEDY SOUGHT BY CHARGING PARTY

In conclusion, the relief or remedy sought by ISP is an order stating ISP has no obligation to bargain with FOP over health insurance. ISP further requests FOP be ordered to cease and desist from making any demand on ISP to bargain over health insurance.

HAMMER
AFFIDAVIT

AFFIDAVIT OF JENNIFER HAMMER

I, Jennifer Hammer, being duly sworn under oath, hereby depose and state that if called as a witness I would testify of my own personal knowledge as follows:

1. I hold the position of Special Counsel to the Governor, Policy Adviser for Healthcare and Human Services for the Office of Governor Bruce Rauner. I have held this position since January 2015.

2. My duties and responsibilities include, but are not limited to, providing public policy guidance concerning the State Employee Group Health Insurance Program (the "Program").

3. In providing this guidance, I work hand-and-hand with the Director of the Illinois Department of Central Management Services (the "State") in administering the plan design and contracting portions of the Program.

4. In my capacity as Policy Adviser for Healthcare and Human Services, I have personal knowledge of the process by which the State, pursuant to the State Employees Group Insurance Act, makes available group life insurance, health benefits and other related employee benefits to eligible employees and, where elected, their eligible dependents.

5. In contracting for these services, the State considers a wide range of factors, including, but not limited to, plan affordability, cost of coverage and care, and competition among health insurers and providers.

6. The process of negotiating with the various health insurers and providers is document intensive, time consuming and involves interactions between State employees, consultants, insurance carriers and providers.

7. For example, in terms of the document intense nature of this process, we begin working with our outside actuary consultants to review actual claims data and documentation provided by our carriers.

8. Carrier rates are largely established based upon "Incurred But Not Reported" spreadsheets ("IBNR"). The State's self-insurance claims are reported and projected through these same IBNR spreadsheets.

9. The IBNR spreadsheets are internal documents that are generated from vendor provided data concerning the State's healthcare liabilities.

10. The negotiated carrier rates, enrollment trends, self-insurance claims data, and administrative expenses are all based on industry models, and these models are relied upon during the rate-setting process.

11. The rates and related paperwork are initially reviewed by an outside actuary firm, and then are submitted to a second actuary firm that reviews the rates again as a quality control

measure. This secondary review is required by the State Employees Group Insurance Act of 1971.

12. Rate-setting takes place through face-to-face meetings, calls, the exchange of email, and creation and review of Excel spreadsheets throughout the process. Following the end of a given fiscal year, the rates are reconciled and presented to the federal government for yet another level of review and audit.

13. With respect to the time intensive nature of this process. The rate-setting process begins during the month of October prior to the start of the next fiscal year, which begins on July 1 of a given year.

14. The rate-setting process is intentionally scheduled to coincide with the annual budgeting process.

15. Rate negotiations begin with the carriers and, if any new requests for proposals ("RFPs") are required, those RFPs are issued in advance of the rate-setting process.

16. Rate projections are finalized in February and are submitted to the Commission On Government Forecasting and Accountability ("COGFA") that same month.

17. This allows COGFA to complete its annual insurance report by April 1, which is required by statute.

18. Compliance with this time sensitive process allows for the timely creation and review of CMS' projections. It also allows COGFA sufficient time to forecast the State's estimated group insurance liability.

19. Following COGFA's review and approval of carrier rates, the rate modeling and claims data reporting is updated and submitted to the two (2) outside actuarial firms as discussed above.

20. Once the rates are approved and finalized by April, the insurance rates for the next fiscal year are made available for the May Benefit Choice Period. During this period, State employees may elect to make changes in their insurance coverage.

21. The information and programs necessary to effectuate these charges are provided for the payroll departments at each State agency, the public universities and retirement systems. The new rates take effect each July 1.

22. The manpower involved in this process is immense.

23. From the State's perspective, contract administrators are involved in working with our outside actuary to renegotiate the carrier rates. This would include representatives from CMS' CFO Office and the Benefits Rate-Setting Manager.

24. These individuals work with the Governor's Office of Management and Budget ("GOMB"), COGFA and the legislature in developing the rates and associated budgets.

25. The carrier rate and insurance claims projections are finalized and the rate-setting models are completed and furnished to our outside actuary. Once our outside actuary firms confirm that the rates are proper, the rates are submitted to the State Employees' Retirement System ("SERS") actuary for approval of the retiree rates.

26. In total, the rate-setting process takes about six (6) weeks to complete and involve the following individuals:

State Contract Administrators;

Rate-Setting Manager;

Deloitte personnel, for example, who perform actuary duties during the first review of the projected rates;

Gabriel Roeder Smith personnel, for example, who perform actuary duties during the second review of projected rates;

Retiree rates are finalized with SERS and Payment Unit

In connection with the Benefits Choice Period: Between CMS' staff, the Group Insurance Representatives (GIR) staffed at the State agencies and the outside Vendor Representatives, well over 300 individuals are involved with the administration of the State's health insurance plans.

27. The process of offering insurance coverage to State employees also involves, of course, the Governor (via GOMB), General Assembly ("GA") and COGFA.

28. Specifically, after developing its public policy goals in consideration of the projected budget, CMS meets with GOMB, GA and COGFA to discuss the State's plans for healthcare in a given fiscal year.

29. This portion of the rate setting process involves CMS' Benefits Rate-Setting Manager and CFO, GOMB's analysts for CMS, and the GA. Budget meetings occur throughout the year and in preparation for the Governor's budget and session.

30. Hearings are scheduled by the GA and COGFA. Liability and revenue forecasting, trending information, cost savings and the impact on the various collective bargaining agreements are discussed during this time period.

31. Once the State's objectives for the upcoming fiscal year have been determined, CMS then meets with the various insurance carriers and providers, as discussed in greater detail above.

FURTHER AFFIANT SAYETH NOT

[redacted]

Jennifer Hammer

Subscribed and sworn to before me

this 10th day of March, 2016

[redacted]

Notary Public

OFFICIAL SEAL
SAMANTHA JO MURRAY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-18-2019

TERRANOVA
AFFIDAVIT

AFFIDAVIT OF JOHN TERRANOVA

I, John Terranova, being duly sworn under oath, hereby depose and state that if called as a witness I would testify of my own personal knowledge as follows:

1. I currently hold the position of Deputy Director, Office of Labor Relations for the Illinois Department of Central Management Services ("CMS"). I have held this position since January 20, 2015.

2. Prior to my selection as Deputy Director, Office of Labor Relations, I had more than 20 years of labor relations experience with CMS. Those experiences concerned CMS' contract negotiations with various unions.

3. My current duties and responsibilities include, but are not limited to, serving as CMS' lead negotiator for the AFSCME contract, which covers the largest group of organized State labor. I also supervise CMS personnel who are responsible for serving as lead negotiator for various union contracts with the State.

4. I have reviewed the Affidavit of Jennifer Hammer. The statements therein are consistent with my understanding of the processes by which insurance plans and rates are determined.

5. CMS works closely with Mrs. Hammer and members of her Department in administering the State's insurance programs, pursuant to the State Employees Group Insurance Act.

6. This includes, but is not limited to, preparing for and attending various meetings with the Governor's Office, General Assemble, and Commission On Government Forecasting and Accountability.

7. Once CMS finalizes the State's objectives for a given, upcoming fiscal year, CMS will meet with multiple insurance carriers and providers to effectuate the contracting process based on CMS' financial and plan design goals.

8. To accomplish the foregoing in a timely and cost efficient manner, the State pools employees in order to maximize tax dollars and streamline the contracting process.

9. As a result, the State does not negotiate individual plans for the various State agencies or based upon an employee's membership in any particular bargaining unit.

10. Currently, the State collectively bargains with 34 different unions. Those unions are as follows:

(1) AFSCME/CU-500; (2) Teamsters- Downstate; (3) Teamsters- Cook County; (4) Teamsters- Fox Valley; (5) Teamsters- Protech 916; (6) Teamsters- ISP Master Sgts.; (7) International Union of Bakery, Confectionary, and Tobacco Workers; (8) International Brotherhood Boilermakers- Iron Shipbuilders, Blacksmiths, Forgers and Helpers; (9) Illinois State Brick Layers and Allied

Craftworkers; (10) United Brotherhood of Carpenters and Joiners of America (Chicago Regional Council, Mid-Central Illinois Regional Council, and St. Louis Missouri District Council) (11) International Brotherhood of Electrical Workers; (12) Service Employees International (SEIU) Union Local 1, Fireman and Oilers; (13) International Union of United Food and Commercial Workers; (14) Laborer's International Union of North America; (15) International Association of Machinist and Aerospace Workers; (16) International Union of Operating Engineers; (17) International Union of Painters and Allied Trades; (18) United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of USA and Canada; (19) United Union of Roofers, Waterproofers, and Allied Workers; (20) International Association of Sheet, Metal, Air and Transportation (SMART); (21) Illinois Federation of Teachers (IFT); (22) Illinois Nurses Association (INA)-RC 23; (23) Illinois Federation of Public Employees (IFPE) RC-29/33/45/56; (24) FOP- ISP Troopers & Command Council; (25) INA-RC 36; (26) ISP Teamsters; (27) Metropolitan Area Police (MAP); (28) Fraternal Order of Police (FOP)- RC104; (29) Police Benevolent & Protective Agency (PB&PA)- RC110; (30) SEIU Local 73- PSA 8X; (31) SEIU Personal Assistants; (32) SEIU Childcare Providers; (33) Illinois State Employees Association (ISEA)- VR 704; and (34) ISEA- VR 706.

11. The foregoing unions represent approximately 48,934 State employees.

12. In negotiating the design and costs of the plans to be offered, it would be unduly burdensome if the State were required to negotiate with each and every labor union over the State's commitment of investment tax dollars, the designs of the plans to be developed and contracted for and the methods by which employee contributions will be determined.

13. Any benefit of bargaining over this decisionmaking process enjoyed by any particular set of employees would be wholly outweighed by the enormous burden it would place on the State's ability to collectively, efficiently and timely negotiate insurance contracts on behalf of all State employees.

14. Furthermore, negotiating plan designs among individual bargaining units would result in inconsistent insurance coverage options, inconsistent plan costs and would undermine the State's ability to maximize the value of its tax dollars by streamlining coverage options made available to all potential plan participants.

FURTHER AFFIANT SAYETH NOT

[redacted]

John Terranova

Subscribed and sworn to before me

this 10th day of March, 2016

[redacted]

OFFICIAL SEAL
ANNETTE A WILTFANG
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/16/16

EXHIBIT 3

IN THE INTEREST ARBITRATION
BEFORE THE ARBITRATRATION PANEL OF DANIEL NIELSEN (CHAIRMAN/NEUTRAL), JOSEPH HARTZLER (EMPLOYER REPRESENTATIVE), AND BRUCE BIALORUCKI (UNION REPRESENTATIVE)

STATE OF ILLINOIS, ILLINOIS DEPARTMENT OF STATE POLICE,	)	
and	)	Case No. S-MA-15-347
TROOPERS LODGE NO. 41, LABOR ORGANIZATION.	)	

THE STATE OF ILLINOIS' POST HEARING BRIEF

Joseph M. Gagliardo
Thomas S. Bradley
Mark W. Bennett
Violet M. Clark
David A. Moore
Brian K. Jackson
Laner Muchin, Ltd.
515 N. State Street
Suite 2800
Chicago, Illinois 60654
(312) 467-9800
(312) 467-9479 Fax

Attorneys for the Employer
State of Illinois, Illinois Department of State Police

TABLE OF CONTENTS

I. BACKGROUND INFORMATION 1

A. The Employer's Final Offer is Consistent with the Worsening Fiscal Crisis the Employer Faces 1

B. State of Illinois / Department Of State Police 9

C. The Fraternal Order Of Police / Troopers Lodge No. 41 10

D. The Parties' Bargaining History. 11

II. THE RELEVANT STATUTORY CRITERIA 11

III. STIPULATIONS OF THE PARTIES 13

IV. THE ISSUES PRESENTED 13

V. SUMMARY OF THE PARTIES' FINAL OFFERS 16

A. The Employer's Final Economic Offer Concerning Compensation Is Fair and Fiscally Responsible. 18

B. FOP's Final Economic Offers Concerning Compensation Are Excessive and Fiscally Irresponsible. 20

C. Summary: The ISP's Non-Economic Proposals Are Reasonable. 21

D. Summary: The Union's Non-Economic Proposals Are Unreasonable. 23

VI. THE STATE'S COMPARATORS ARE MORE APPROPRIATE THAN THE UNION'S 25

VII. THE STATE'S POOR ECONOMY SUPPORTS THE IMPLEMENTATION OF THE ISP'S ECONOMIC PROPOSAL 31

A. The Parties Final Offers on Base-Wages. 31

B. The ISP's Merit Pay And Gainsharing Proposal Is Generous In These Dire Economic Times. 32

C. The CPI Analysis Supports The State's Economic Offers. 33

VIII. THE COMPELLING CASE FOR A FREEZE ON ACROSS THE BOARD WAGE INCREASES, CONTRACTUAL STEP INCREASES AND SENIORITY ADVANCEMENT, AND FOR MAINTAINING THE STATUS QUO AS TO SHIFT DIFFERENTIAL PAY 34

IX. THE STATE'S MERIT INCENTIVE PROGRAM IS REASONABLE AND CONSISTENT WITH MARKET TRENDS 37

A. Dr. Gibbs Is An Expert In The Field Of Employment Compensation 38

B. Incentive Pay Is Fairly Common In Public Employment Settings 39

C. Public Employees Are More Generously Compensated Than Their Private Sector Counterparts 40

X. THE STATE'S HEALTH INSURANCE PROPOSAL REFLECTS THE ECONOMIC REALITIES FACING THE STATE 41

A. Cost Sharing Between The State And Its Employees 41

B. The State's Health Insurance Proposal Is Part Of A $815 Million Dollar Healthcare Cost Savings Initiative 42

C. The State's Proposed Additional Premium Contribution Tiers Are Reasonable... 44

XI. THE ISP'S NON-ECONOMIC PROPOSALS ARE MORE REASONABLE 46

A. The ISP's Final Offer Regarding Fair Share Deductions Is Consistent With The U.S. Supreme Court's Recent Questioning Of *Abood* 46

B. The ISP's Final Offers Concerning The Union's Use Of Designated ISP Bulletin Boards And Access To ISP Facilities Is Reasonable And Consistent With Applicable Law. 47

C. The FOP's Proposed Amendment To The Seniority Provision Is Consistent With The State And Union's Respective Obligations To Ensure That Minority Groups Are Afforded Equal Opportunities. 49

D. The State's Proposal Modifying The Savings Clause Is Reasonable. 50

XII. THE UNION'S PROPOSED BREAKTHROUGHS ARE UNREASONABLE 51

A. The FOP's Proposed Changes To The Officer Bill Of Rights Are Unreasonable. 51

B. The FOP's Proposal Restricting The ISP's Use Of Audio/Visual Evidence Of Trooper Misconduct Is Unreasonable. 53

C. The Addition Of The FOP's Proposed Residency Article Would Undermine The ISP's Ability To Strategically Position Its Human Assets. 55

D. The FOP's Proposed Changes To The MASA Program Are Unreasonable And Would Violate The State Police Act. 57

E. The FOP's Proposal To Add A Good Standing Provision Is Unreasonable. 58

XIII. CONCLUSION 60

The Union's healthcare proposal seeks to essentially keep in place current employee contribution levels for Quality Care Health Plans and Managed Care Health Plans without regard to market trends or the State's uncontested poor fiscal condition. The Union's proposal does not afford employees the right to elect a plan (by richness) that is tailored to an individual employee's medical needs. The Union's plan is unreasonable because it ignores the economic realities facing the State, would undermine the State's reasonable need to lower its $2 billion dollar annual healthcare expenditures to close its projected multi-billion dollar budget deficit (which does not include $1.5 billion dollars of unpaid healthcare liabilities currently owed), and denies employees from having an opportunity to select a plan that fits the individual employee's needs.[10]

A. The Employer's Final Economic Offer Concerning Compensation Is Fair and Fiscally Responsible.

In the context of the State's dire fiscal crisis, the State's final offer is fair and consistent with the positions it has taken in all 29 of its contract negotiations for 2016 successor CBAs, *i.e.*, there are no across-the-board or step increases in base wages in each of the finalized 18 successor contractors (covering thousands of State workers) and in negotiations for the remaining 11 successor contracts the State has made similar wage proposals. The State's position on this economic issue is based the factors set forth in the Act including the undisputed $9 billion dollar deficit in GR for FY 16 alone. Further, COGFA, a neutral entity to these proceedings, projects that the State's anticipated GR in FY 17 and FY 18 will not rise more than $1.8 billion dollars, without regard to inflation, which will not cause the State's multi-billion dollar deficit to close, and likely will cause it to grow over the term of the collective bargaining agreement. In short, the State is facing a historic deficit in

[10] The Union's proposal is also unreasonable because it attempts to mandate bargaining over plan designs. This issue is the subject of the State's pending ULP Charge against the Union. *See* ILRB Case No. S-CB-16-023.

X. THE STATE'S HEALTH INSURANCE PROPOSAL REFLECTS THE ECONOMIC REALITIES FACING THE STATE

The FOP's proposal for health insurance represents a significant breakthrough and is wholly inconsistent with the Parties' long bargaining history. Specifically, ***there has never been individual bargaining with any of the unions*** over bargaining unit specific health insurance. (Tr. Jan. 13, pg. 14) Rather, for obvious cost saving reasons, the State pools all of its eligible employees in negotiating with insurance carriers and has historically negotiated *rates* with only AFSCME, which represents the largest number of State employees who are represented by unions. (Tr. Jan. 13, pgs.14-15)[40]

A. Cost Sharing Between The State And Its Employees

Marcia Armstrong, a Consultant, is a contractual employee for the Department of Central Management Services, which is responsible for administrating the State Employees Group Insurance Program (the "Insurance Program"). (Tr. Jan. 13, pg. 32) Her consulting duties include, but are not limited to, assisting with the insurance rate-setting process, performing actuarial review with the State's outside consultants, and preparing financial statements for the Insurance Program. (Tr. Jan. 13, pg. 32; RX 32, Tab 1)

Ms. Armstrong testified that the average monthly healthcare costs for a State employee is $1,611. (Tr. Jan. 13, pg. 44) Ms. Armstrong further testified that the average yearly healthcare cost for the State for a State employee is $24,000, once retiree healthcare benefits are factored into an annual equation. (Tr. Jan. 13, pg. 45)

[40] On March 11, 2016, the State filed with the ILRB an unfair labor practice charge against the FOP in connection with the FOP's insistence upon bargaining to impasse a permissive subject of bargaining. That ULP Charge is currently pending at the ILRB. 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.

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-16-087

It is hereby ordered that the State of Illinois Department of Central Management Services, its officers and agents shall:

A. Cease and desist from:

1. Failing to bargain collectively in good faith with the American Federation of State, County and Municipal Employees (Union) by failing to provide requested information;
2. Failing to bargain collectively in good faith with the Union by declaring impasse on packages where the parties are not at impasse;
3. Failing to bargain collectively in good faith with the Union by declaring impasse on packages when the State has failed to provide requested information or failed to provide the Union with a sufficient opportunity to review and respond to the information; and
4. Failing and refusing to bargain collectively in good faith with the Union, in any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act;

B. Take the following affirmative actions designed to effectuate the policies of the Act:

1. As soon as practicable, provide the Union with the following information:
   a. Examples of criteria to determine high performing employees under the State's merit pay proposal;
   b. The projected savings for each of the healthcare cost savings initiative the State wanted the Union consider;
   c. A costing of savings generated by various levels of increases in deductibles and other out-of-pocket health insurance costs;
   d. A costing of the Union's concession on vacations as it related to the State's initial proposal;
   e. The information requested in Ron Hudson's letter of February 10, 2016:
      i. Current list of all state employees under the Governor's jurisdiction which includes employee name, classification title, agency, race, gender, hire date, work county, bargaining unit, pay grade and salary;
      ii. A list with the same information above on January 12, 2015;
      iii. A complete list of all new hires under the jurisdiction of the Governor since July 1, 2012, which includes employee name, classification title, agency, race, gender, hire date, work county, bargaining unit, pay grade and salary; and
      iv. A list of all promotions under the jurisdiction of the Governor since July 1, 2012, which includes employee name, classification title (prior title and the employee was promoted to), agency, race, gender, hire date, promotion date, work county bargaining unit, pay grade and salary; and

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.

Appendix C

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

f. The following information requested in Mike Newman's letter of February 11, 2016:

   i. Information related to distribution of merit pool bonuses;

   ii. More specific information regarding bargaining unit titles and IDHR categories;

   iii. The basis on which the State believed the Union's Parking proposal to be a permissive subject of bargaining;

   iv. Whether the State still justified its proposal to limit overtime for only after 40 hours of work given the settlement of the Teamsters contracts; and

   v. Whether the State still justified its position on daily overtime given the settlement of the prevailing wage contracts;

2. Upon request, bargain collectively in good faith with the Union over the terms of provisions of a successor agreement, specifically, the following packages: Wages and Steps; Appendix A – Health Insurance; Non-Discrimination, Upward Mobility (UMP), and Filling of Vacancies; Layoff; Outstanding Economics; Health and Safety Outstanding Issues; and Semi-Automatic/Classification In-Series Advancement packages.

Date: _____ State of Illinois Department of Central Management Services
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.