THE MATTER OF THE INTEREST	)	ARBITRATOR'S
	)	
ARBITRATION BETWEEN	)	OPINION
	)	
THE STATE OF OREGON DEPARTMENT OF STATE POLICE	)	AND
	)	
	)	AWARD
"THE STATE" or "THE EMPLOYER"	)	
	)	
AND	)	
	)	
OREGON STATE POLICE OFFICERS' ASSOCIATION	)	
	)	
"OSPOA" OR "THE UNION"	)	

HEARING: February 8, 2010
February 9, 2010
Salem, Oregon

BRIEFS: Employer's received: March 4, 2010
Union's received: March 4, 2010

HEARING CLOSED: March 4, 2010

ARBITRATOR: Timothy D.W. Williams
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REPRESENTING THE EMPLOYER:
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Tom Perry, DAS Labor Relations Manager

REPRESENTING THE UNION:
Daryl Garrettson, Attorney for OSPOA
Jeff Leighty, OSPOA President
Darrin Phellips, OSPOA U.P.

APPEARING AS WITNESSES FOR THE EMPLOYER:
Jim Walsh, Human Resources Consultant
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Thomas Perry, DAS Labor Relations Union
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ARN-2 Contract between the City of Eugene and Eugene Police Employees' Association, July 1, 2008 - June 30, 2011
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BACKGROUND

The Oregon State Police Officer's Association (OSPOA) represents a bargaining unit made up of employees within the Oregon State Police Department. Previously the Parties were bound by a Collective Bargaining Agreement which expired on June 30, 2009 (ARN-1). Presently, the Parties have come to an impasse in negotiations over the language of the successor agreement. OSPOA is a strike prohibited unit and thus is required under ORS 243.742 to submit unresolved issues to arbitration. Arbitrator Timothy Williams was selected per ORS 243.746 (2) to hear the matter.

ORS 243.746 (3) requires the arbitrator to set the date for hearing. Hearing was set for February 8 & 9, 2010. ORS 243.746 (3) further requires that each party submit to the other a "last best offer package on all unresolved mandatory issues" not less than 14 calendar days prior to the hearing. The last best offer packages were timely submitted. Additionally ORS 243.746 (3) permits each party 24 hours to modify its package. The State chose to submit a timely modified package.

A hearing was held before Arbitrator Timothy Williams in Salem, Oregon on February 8 & 9, 2010. At the hearing the Parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make

arguments in support of their positions. An audio recording was made of the hearing and a copy provided each Party and the Arbitrator. After the hearing, a transcription was made of the audio recording and certain citations found in this award come from that transcription.

At the close of the hearing, the Parties were offered an opportunity to give closing oral arguments or to provide arguments in the form of post-hearing briefs. Both parties chose to file post-hearing briefs. Briefs were timely received by the Arbitrator and the Arbitrator closed the hearing upon the date the briefs were due.

Upon receipt of the briefs, the Arbitrator began the work of providing a written arbitration award. His work was as required by ORS 243.746 (5) which specifies:

> (5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the Parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and an order. The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

In arriving at his final decision, the Arbitrator has been particularly mindful of those criteria specified in ORS 243.746 (4). Specifically, the Arbitrator is directed to pick the best offer package that he finds to be the most defensible under the criteria set out in paragraph (4) which are as follows:

(4) When there is no agreement between the Parties, or where there is a an agreement but the Parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, unresolved mandatory subjects submitted to the arbitrator in the Parties' last best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to paragraphs (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon. Notwithstanding the provisions of this paragraph, the following additional definitions of "comparable: apply in the situations described as follows:

(A) For any city with a population of more than 325,000, "comparable" includes comparison to out-of-State cities of the same or similar size;

(B) For counties with a population of more than 400,000, "comparable" includes comparison to out-of-State counties of the same or similar size; and

(C) For the State of Oregon "comparable" includes comparison to other states.

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) the stipulations of the Parties.

(h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the

arbitrator shall not use such other factors, if in the judgment of the Arbitrator, the factors in paragraph (a) to (g) of this subsection provide sufficient evidence of an award.

LAST BEST OFFERS

The last best offer packages of the parties can be summarized as follows:

OSPOA

1. All tentative Agreements to date.
2. All MOU's, LOA's etc. to date and except as attached for Articles 2, 25 (Including Article 25 Letter of Agreement) and 29.
3. Except as modified by Paragraphs 1 and 2 above, current language.

State

1. All tentative Agreements to date
2. All MOU's, LOA's, to date with the following exceptions:
   - Accrual Limitations - Holiday LOA, 19.1.1
   - Article 25 - Compensation
   - LOA - Salary Eligibility Date - Step advancement Freeze
   - Article 29 - Insurance
   - LOA, Part Time Employee Health Insurance Subsidy (Article 29)
   - LOA - Mandatory Unpaid Time OFF
3. Except as modified by Paragraphs 1 and 2 above, current language

ARTICLE 2 - MANAGEMENT RIGHTS

The State does not propose any changes to the language in Article 2 from the prior agreement. The Association proposes to add the following to the language from the prior agreement:

2.3 Temporary Employees and Retirees.

The employer over time has assigned temporary employees and retirees to duties which had previously been performed by sworn bargaining unit employees. The employer may continue to do so provided that:

a. The duties had been performed by temporary employees and retirees prior to the effective date of this Agreement.

b. The total number of hours worked performing bargaining unit work does not exceed more than 40,000 hours for the 2009-2011 biennium; and

c. No bargaining unit employees are on layoff status.

ARTICLE 19 - HOLIDAYS

The Association does not propose any changes to the language covering holidays in the prior agreement. The State proposes to execute a letter of agreement as a supplement to the language from the prior agreement on holidays. The proposed letter of agreement reads as follows:

LETTER OF AGREEMENT
ARTICLE 19 - HOLIDAYS

19.1.1. - ACCRUAL LIMITATIONS

This agreement is between the State of Oregon, acting through its Department of Administrative Services (Employer) on behalf of the Department of State Police (Agency) and the Oregon State Police Officer Association, OSPOA (Association).

An employee may submit a written request to his or her supervisor for cash out payment of up to one half of their

accrued holiday leave bank. This request must be submitted to their supervisor no later than July 1, 2010 and January 1, 2011. Such requests shall not exceed thirty-two (32) hours in total during the term of this agreement.

This agreement sunsets January 2, 2011.

ARTICLE 29 - INSURANCE

Both parties provide proposals with regard to insurance. Association exhibit #2 is a comparison of the last best offer packages. Both parties take the language from the prior agreement and make it current for the 2009-11 CBA. Under the insurance item, the Association asserts that there is no difference between the two proposals particularly with regards to the level of increased contributions. The Arbitrator notes that a review of the parties briefs indicates no discussion whatsoever with regard to insurance. The following is the Employer's proposed language on insurance:

ARTICLE 29 - INSURANCE

29.1 Flexible Benefits Plan.

Notwithstanding any past practice to the contrary, an Employer contribution will be made for each eligible employee who was paid regular hours in the month which are at least eighty (80) regular full time hours for the month, and participates in the flexible benefits program as administered by the Public Employees' Benefit Board (PEBB).

29.2 Contribution.

Plan Year 2007. Effective January 1, 2009 through December 31, 2009, the Employer shall make a contribution sufficient to cover the premium costs for the PEBB health, dental and basic life benefits chosen by each eligible employee.

The contribution for eligible participating employees with eighty (80) hours or more paid time for the month will be prorated based on the ratio of paid hours to full time hours to the nearest full percent.

Plan Year 2010. For plan year January 1, 2010 through December 31, 2010, the Employer will increase its monthly contributions by up to five percent (5%) of the actual monthly composite resulting for plan year 2009.

Plan Year 2011. For plan year beginning January 1, 2011 through December 31, 2011, the Employer will increase its monthly contributions by up to an additional five percent (5%) of the actual monthly composite resulting for Plan Year 2010, should the cost of insurance premiums increase by that amount or more.

Should insurance premiums for either plan year exceed the Employer contribution, employees may incur out-of-pocket costs. If in either or both of the plan years described above, the premium increase is greater than five percent (5%), the parties will jointly petition PEBB to use reserve funding to support any premium increases above five percent (5%) up to a maximum of ten percent (10%) in each year.

29.3 Purpose of Contributions.

The purpose of these flat dollar Employer contributions will be for use in the PEBB Flexible Benefits program. Should the Flexible Benefits program not be available, the flat dollar amount rate stated above will still be made available through alternative programs or distributed to employees in a manner mutually acceptable to the Association and to the State.

LETTER OF AGREEMENT
ARTICLE 29 -INSURANCE

Part-Time Employee Health Insurance Subsidy

This LOA is between the State of Oregon, acting through its Department of Administrative Services (Employer), and the Oregon State Police Officers Association (Association)

The Parties agree to the following:

The Employer will continue to pay the current part-time subsidy for eligible part-time employees who participate in the part-time plan through December 31, 2009, as follows:

- Employee Only (EE) - $206.94
- Employee & Family (EF) - $268.05
- Employee & Partner (EP) -$264.11
- Employee & Children (EC) - $235.47

2010 Part-Time Subsidy

- Employee Only (EE) - $227.30
- Employee & Family (EF) - $294.42
- Employee & Partner (EP) - $290.10
- Employee & Children (EC) - $258.63

PEBB to provide dollar amounts for 2011

For Plan Year 2010 and 2011, the subsidy will be paid at an amount so that employees will continue to pay the same out-of-pocket premium costs that were in effect for Plan Year 2009. If an employee changes from one tier to another or changes plans pursuant to PEBB rules, his/her out-of-pocket premium costs will be adjusted to reflect the appropriate plan year's out-of-pocket premium costs for his/her new tier.

ARTICLE 25 - COMPENSATION

The Parties are in agreement to freeze wage rates throughout the duration of the 2009-11 CBA at the rate in effect as of July 1, 2009. What is in dispute are proposed Letters of Agreement

(LOAs) covering a step increase freeze and the implementation of furlough days. The Association sets forth a single LOA covering both topics while the State has proposed two separate letters. The following are the two different proposals starting with the Association's.

ARTICLE 25 (Association's Proposal)
LETTER OF AGREEMENT

In recognition of the current economic situation the parties agree to reduce the compensation to which employees would be otherwise entitled under the terms and conditions of the parties Collective Bargaining Agreement Article 25, by way of a step freeze/roll back, the institution of mandatory unpaid Time Off Without Pay, (TOWP), and the liquidation of paid time off liabilities the vehicle of time off sell back, the parties do agree as follows:

1. Employees who received a step increase on or after July 1, 2009, but before the effective date of this Agreement shall, upon the effective date of this Agreement, have their salary adjusted downward to their previous step without change to their SED. Except as provided in this Agreement employees shall be paid at that step for a period of twelve months, at which time the employee shall have their step restored, without change to the employee's SED, and without having to wait twelve months for the employee's next step increase, if the employee is otherwise eligible.

2. In the event an employee is eligible for another step increase during the twelve months of the employee's rollback, the employee will move up to the wage he/she received before the roll back, but the employee's next step will then be deferred for whatever portion of the twelve months remains. The employee's SED will not be changed nor shall the employee be required to wait twelve months for their next step increase if they are otherwise eligible.

3. If the employee has not received a step increase prior to the effective date of this agreement and is during the 2009-2011 biennium eligible for a step increase, that employee shall have their step deferred for a

period of twelve months, at which time they will receive their step and any other step that they may be eligible for.

4. After the effective date of this Agreement, employees shall be required to take 112 hours off without pay (TOWP), to be scheduled and taken as provided for herein.

5. Employees who have bid vacation for calendar year 2010, may select TOWP to substitute for bid vacation. Employees may substitute all or part of their bid vacation with TOWP.

6. On the effective date of this Agreement employees will be required to schedule 56 hours of TOWP for calendar year 2010. Employees who have substituted TOWP for vacation pursuant to Paragraph 5 above shall only be required to schedule the difference between the substituted time and 56 hours if any.

7. The scheduling of TOWP required by paragraph 6 above shall be by seniority bid conducted within fifteen days of the effective date of this Agreement. This bid shall be conducted in the same manner as annual vacation bid and the TOWP selected may be denied for same reasons required to deny bid vacation.

8. In the event an employee fails to schedule TOWP as required, the employer may assign the TOWP required in Paragraph 6 above.

9. On or after January 1, 2011, but before June 30, 2011, employees shall be required to take an additional 56 hours of TOWP. Employees who took more than 56 hours of TOWP in calendar year 2010, shall have the hours taken over 56 hours count against the hours required herein. Employees shall bid the hours required in this Paragraph as part of their annual vacation bid, so long as the TOWP is taken on or before June 30, 2011. This bid will be conducted in the same manner and TOWP may be denied for the reasons as the annual vacation bid.

10. In the event an employee fails to bid the hours required in Paragraph 9 above, the employer may assign the TOWP required.

11. TOWP will count as hours worked for the purposes of calculating benefits and the eligibility for benefits,

including leave accrual, and shall also count as hours worked for the purpose of overtime eligibility and pay.

12. Employees called back to work while on TOWP will be treated as if they were called back to work on a regularly scheduled day off, unless the TOWP was substituted for a bid vacation, in which case they will be treated as if they were called back for a vacation.

13. Employees hired after the effective date of this Agreement shall have their TOWP pro rated.

14. In order to reduce the impact that TOWP will have on the operations of the employer, the parties further agree that employees may sell back discretionary paid time off, (Compensatory, Holiday and Vacation). The sell back of paid time is subject to the restrictions set forth in Paragraph 15 below, and the total time that may be sold back shall not exceed 120 hours over the life of this agreement.

15. Paid time may be sold back only in forty (40) hours increments up to the maximum provided for herein. An employee may request to sell back paid time no more than three times during the life of this Agreement and requests must be submitted between January 1, and October 15th of each year.

16. This Agreement is effective upon execution by the Parties, or awarded by the Arbitrator, whichever occurs first.

17. This Agreement expires June 30, 2011.

LETTER OF AGREEMENT (State's Proposal)
Salary Eligibility Date - Step Advancement Freeze

This Letter of Agreement is entered into by the State of Oregon, acting through its Department of Administrative Services, Labor Relations Unit (Employer), and the Oregon State Police Officers' Association (Association).

This Agreement supersedes all provisions in the collective bargaining agreement pertaining to step advancement upon the affected employees' salary eligibility dates (SED).

This Agreement suspends the LOA dated January 16, 2008 to add and drop steps for each salary range in all job classifications in the bargaining units.

Upon implementation of this LOA, the following applies:

1) As a result of the January 16, 2008 LOA, employees who advance to the new top step of their classification on or after July 1, 2009 through the effective date of a ratified tentative agreement or by the 1st of the month following the date of the interest arbitration award, will have their pay reduced to the prior top step.

   Employees advancing to a higher first step by virtue of the first step being dropped shall not have their pay reduced.

2) Employees who advance on the pay scale within their classifications' salary range on or after July 1, 2009, through the effective date of a ratified tentative agreement or the 1st of the month following the date of the interest arbitration award, whichever is appropriate, will be restored to their former step in effect as of June 30, 2009.

3) Employees shall not receive any step increases between the effective date of a ratified tentative agreement or the 1st of the month following the date of the interest arbitration award and shall continue for 12 months (freeze period).

4) Employees will continue to receive the initial increase upon promotion and reclassification upward. However, promotions or reclassifications to the new top step shall be subject to #1 above.

   Employees who promote during the freeze will receive an additional step either six months after the date of their promotion or the date the freeze ends, whichever is later. The salary eligibility date will be adjusted pursuant to the applicable provision in the CBA.

5) When the step freeze is lifted:

   a. An employee who received a merit step or advanced to the new top step in July through the effective date of a ratified tentative agreement or the first of the month following the date of the interest arbitration award, whichever is appropriate, will be restored 12 months after the

beginning of the freeze to the higher rate that was in effect July 1, 2009 (per the January 16, 2008 LOA).

b. For initial appointments to state service occurring between July 1, 2009 and before the 1st of the month following the effective date of the interest arbitration award, the affected employee shall receive a one step increase and on their SED thereafter pursuant to the applicable provision in the CBA.

c. All other employees will commence receiving step increases on their SED effective 12 months from the effective date of a ratified tentative agreement or the 1st of the month following the effective date of the interest arbitration award, whichever is appropriate.

6) This Agreement is effective the first of the month following 1) a ratified tentative agreement or 2) the first of the month following the effective date of the interest arbitration award, whichever is appropriate.

LETTER OF AGREEMENT (LOA) (State's Proposal)
Mandatory Unpaid Time Off

This LOA is between the State of Oregon, acting through its Department of Administrative Services (Employer) on behalf of the Oregon Department of State Police and the Oregon State Police Officers Association.

This LOA shall become effective February 1, 2010 or the effective date of the interest arbitration award, whichever is appropriate and automatically terminate June 30, 2011 unless the parties agree to extend or amend its provisions.

To the extent this LOA conflicts with any provisions of the collective bargaining agreements, this LOA shall prevail.

The agreement is as follows:

1) The State will implement mandatory unpaid time off for affected employees as follows:

Tiers by Salary Rate	Number of Days
$2451 to $3100	12 days
$3101 and above	14 days

For new employees, the Mandatory Unpaid time Off Day Off Obligation will be adjusted for the time remaining to June 30, 2011. Any employee who changes from one position to

another position within OSP or comes from a different agency that results in an increase or decrease in pay, the unpaid time off obligation may be adjusted based on time already taken and the time remaining to June 30, 2011.

2) Mandatory unpaid time off shall only be considered time worked for: a) vacation, sick leave and personal leave accrual, and b) Employer's insurance contributions.

3) Full time employees shall take mandatory unpaid time off in 8-hour blocks, unless otherwise provided in this agreement.

4) Floating Mandatory Unpaid Time Off. Employees will have their choice of days off, subject to operating needs.

   a) Employees will submit a mandatory unpaid time off request form to their supervisors at least thirty (30) days prior to the start of each quarter and supervisors will respond no later than fifteen (15) days prior to the start of each quarter.

   b) Where seniority bid process is in effect that provides for advance requests covering periods of time beyond the quarterly scheduling of mandatory unpaid time off days, the prescheduled vacation or compensatory time off shall take precedence over scheduling of mandatory unpaid time off days. Employees may schedule a mandatory unpaid time off day as part of their vacation requests. However, the quarterly scheduling of unpaid time off shall take precedence over short term vacation or compensatory time off requests.

   c) If an employee requests and receives approval for vacation in a future month, at the time of submitting his/her quarterly mandatory unpaid time off request form for the quarter in which the vacation is approved, the employee may request to substitute mandatory unpaid time off for pending vacation requests that occurs prior to June 30, 2011.

   d) Mandatory unpaid time off requests for the same days will be determined based on departmental seniority except that the exercise of seniority is limited to once in the biennium to ensure maximum availability of days for all employees.

e) Employees who have preapproved paid sick leave scheduled may request approval to substitute up to three (3) unpaid days per month for the pre-approved paid absence. Such requests to substitute days must be submitted pursuant to pursuant to 4a for the quarter in which the preapproved leave is approved.

f) Once mandatory unpaid time off has been scheduled, requests for vacation may be denied for operational reasons and cannot cause a rescheduling of approved mandatory unpaid time off days of other employees.

g) Unpaid leaves (FMLA/OFLA, Military Leave, Workers Comp, Leave Without Pay) and Float Day Observance.

(a) If an employee's scheduled mandatory unpaid time off day occurs when the employee is on leave without pay, the employee will be required to take or schedule the mandatory unpaid float day, unless the employee is on leave without pay for the entire calendar month.

(b) If an employee returns to work the fifteenth (15th) day or before in the last month of a calendar quarter, the employee shall schedule and take the mandatory unpaid float day in that quarter, or, with approval, may schedule one (1) mandatory unpaid float day in the following quarter except as provided in paragraph j. below.

h) Employees Returning to Work from Unpaid Leave Without Pay in the Last Month of a Calendar Quarter
If an employee returns to work from Leave Without Pay after the fifteenth (15th) day in the last month of a calendar quarter, the employee will not be required to take the floating mandatory unpaid time off for that quarter.

i) In an effort to ensure that the scheduling of time off is distributed throughout the term of this agreement, mandatory unpaid time off will be scheduled on a quarterly basis unless there is mutual agreement between an employee and his or her supervisor to schedule more days in some quarters and fewer in others, but in no case no more than three (3) days [twenty (24) hours] in a month. Half of an employees furlough obligation

must be met by September 30, 2010. See attached MUTO Obligation Chart.

j) If the mandatory unpaid time off is not scheduled or taken within the applicable quarter, then management reserves the right to ensure the mandatory unpaid time off is scheduled/ rescheduled within the same quarter, if possible, or next quarter, (except for the last quarter in the biennium, during which management may reschedule such time during the same quarter).

k) The agency shall not incur any penalty or overtime payment for adjustments to employees' schedules not to exceed a 32 hour workweek.

l) For purposes of initial implementation, an employee may submit his/her request for the current quarter within 30 calendar days of the Association CBA ratification notice and provided submission and approval is done prior to payroll cutoff.

m) For new Recruits, the number of furlough day obligations will be the same as the new hire obligation in effect on the day of graduation from DPSST Basic Police Academy instead of the original hire date.

6) No employee will be required to use mandatory unpaid time off on a holiday. An employee is not precluded from requesting to use mandatory unpaid time off on a holiday pursuant to the above provisions.

7) Unless required by law, no employee shall be authorized to substitute any other types of unpaid absences or paid leave to replace mandatory unpaid time off.

8) An employee shall not work on a date designated as mandatory unpaid time off. However, in emergency situations based on operational needs, the Agency head or designee may require the employee to work. Pursuant to the CBA, the Employer shall pay any appropriate call-in or penalty pay for requiring an employee to work on a scheduled day off. If the Employer requires an employee to work on a date designated as mandatory unpaid time off, the employee will have his or her choice of an alternate day, subject to operating needs and #4 above. A mandatory unpaid time off day, if canceled, will be rescheduled and must be taken prior to June 30, 2011.

9) An employee who is authorized to work an alternate scheduled shifts may be allowed to only work that part of his/her shift that exceeds the eight (8) hour block of the shift scheduled on a mandatory unpaid time off day.

10) Mandatory unpaid time off will not count as a break in service for purposes of seniority or employee salary eligibility date.

11) Mandatory unpaid time off shall not add to the length of an employee's trial service period.

12) Deductions from the pay of a FLSA exempt employee, for absences due to a budget required mandatory unpaid time off, shall not disqualify the employee from being paid on a salary basis except in the workweek in which the mandatory unpaid time off occurs and for which the employee's pay is accordingly reduced.

13) If a FLSA exempt employee is permitted to work in excess of forty (40) hours in a workweek in which the employee takes mandatory unpaid time off, then such employee shall be eligible for pay at the rate of time and one half (1 1/2x) for hours in excess of forty (40) hours that workweek.

14) For payroll purposes, the employees shall record mandatory unpaid time off taken with a specific payroll code established by DAS.

ARGUMENTS OF THE UNION

The Association strongly emphasizes that ORS 243.746 requires that the primary criterion to be considered by the Arbitrator is whether each Party's Last Best Offer is consistent with the interest and welfare of the public. The Association argues that the State's proposed language regarding furloughs, the reduction of paid leave, the Step freeze and the utilization of retirees all fails on this criterion.

First, the State's proposal regarding furlough days would have a strong negative impact on the Department's ability to maintain 24/7 patrol coverage to the detriment of the interest and welfare of the public. The 2009 Legislature established 24/7 patrol coverage as a goal and a priority at a time of fiscal crisis. The State's proposal creates several problems for the Department's ability to comply with the legislative mandate. The State's language creates confusion and inequity by requiring that Patrol Troopers, most of whom work a 10 hours shift, take 14 eight-hour days of furlough. The consequence for the Troopers is that they must either work the two-hour balance of the shift or take it as paid leave. The former scenario is rather unlikely, resulting in an additional 14 days of absence for employees who do not substitute paid leave for furlough hours.

By contrast, under the Association's proposal, which is stated in terms of furlough hours equivalent to the hours sought by the State, an employee would be absent for 11 days. The reduction in days worked under the State's language would amount to the loss of the services of five Troopers in the course of one year over that of the Association's. The State's justification that other bargaining units agreed to their proposal misses the point, ignoring the significant impact that the additional loss of service would have on 24/7 operations.

Similarly, the State's proposal regarding the sell back of holiday time results in the high probability that employees will

schedule both vacation and furlough days, thereby compounding the difficulty of maintaining 24/7 OSP coverage. By limiting the number of furlough days that can be taken to three per month, limiting sell back to one time during the biennium, not providing for a bidding process and restricting the number of hours to be substituted to eight, the State's proposal discourages employees from substituting furlough days for vacation. The consequence is an additional 14 days of absences. By contrast, the Association's proposal provides more flexibility for employees, making it advantageous to take furlough days rather than vacation and to sell back the vacation hours. The additional absences likely to be created by the Employer's proposed language further diminishes the Department's ability to comply with the mandate of providing 24/7 coverage.

There can be little argument that the State's requirement that employees who work ten-hour shifts take furlough days in eight-hour blocks cannot help but be viewed as putative and demoralizing because it requires employees to burn paid leave or work days of a mere two hours. The State seeks to further penalize employees by proposing that furlough days not be counted for purposes of overtime. Thus, a member of the bargaining unit, having agreed to the economic sacrifice of not taking eight hours of pay, can be called in on a day off and compensated at straight time. It is not in the interest and welfare of the public for the State to demand that those employees who are tasked with

keeping the highways safe and secure do more with less, while subjecting them to a situation which is guaranteed to generate labor strife and grievances.

Furthermore, the State's proposal is poorly written and unclear, both in regards to furloughs as well as the Step freeze. In response, Ms. Corbin repeated assertion that despite what the language states, she knows what it means. The Association's position is that the State's language in many respects is an example of greed on the part of the employer and will result in animosity on the part of the bargaining unit.

The Association argues that the State's Step freeze proposal is inherently unfair in that it creates a much greater penalty for some employees than others. Depending on an employee's anniversary date, the State's proposal would result in having steps deferred for differing periods of time and would also cause changes in the anniversary dates of some employees. Even more inequitable is the language regarding new hires which effectively penalizes those hired during the 2007-2009 biennium by allowing newly hired employees to surpass them to Step III. By contrast, under the Association's proposal all employees suffer a twelve-month freeze/giveback penalty. The public is much better served by a Department not burdened by the unrest which will unavoidably result from the inequalities inherent in the Employer's proposal.

Neither does the State's position regarding the utilization of retirees serve the public good. The State's argument that the

Association's proposal seeks to capture work not previously performed by the bargaining unit is a Red Herring. The Association's language clearly covers only its own historic work and as such is a mandatory subject for bargaining. Retirees no longer receive the same level of training, keep current on modern law enforcement techniques or perform vital law enforcement functions. Based on their decision not to commit to full time law enforcement work, it is evident that they no longer share the same commitment to the mission. By contrast, there is no evidence that the Association's proposal to limit the use of retirees would have any negative impact on the Department.

The Arbitrator should find that the Association's proposal is in the best interest and welfare of the public.

After the interest and welfare of the public, the major consideration for the instant interest arbitration is the cost of the Parties' proposals. The Association's position is that the State's argument that the Association's offer would create additional unbudgeted expenditures is inaccurate. As part of its original budget package, the legislature and governor allocated sufficient money to fund the status quo, including Step increases. HB 5054 then removed $136 million from the total State budget in order to balance the budget. The expectation was that employees would provide the necessary savings by agreeing to Step freezes and furlough days. No further concessions were expected. Thus, the issue before the Arbitrator in evaluating

the State's ability to pay argument in this case is whether the necessary savings are accomplished by the Association's proposal, which is to be favored under the primary criterion discussed above.

Throughout the bargaining process the Employer has failed to provide an exact amount of savings to be accomplished by the Department. The Employer's numbers have ranged from 4.3 million to 6.8 million dollars. The Employer's numbers regarding the average hourly rate for the bargaining unit and the number of its members are likewise unreliable. None of the State's exhibits show the assumptions, figures and methodologies utilized in their calculations. The Association finds the results of the State's calculations to be inherently untrustworthy. It appears that the State's evidence has been prepared in haste and with little shared understanding among the witnesses. The Association will assume that the latest number given by the Employer, 5.1 million dollars is the savings target for the Department.

The Association submits that its proposal for furlough days will generate 2.8 million dollars in savings. The proposal for the deletion of the shift differential will generate $1,943,664. Savings generated by transferring money from contracts for retirees to pay for regular troopers will amount to $1,140,000. The sum of the savings generated by the Association's proposal is $6,612,538, exceeding the target savings by a little over 1 ½ million dollars.

The State's counterargument is that the furlough savings generated by the Association's proposal are offset by its paid leave buy back provision. However, the State's position is not supported by any credible evidence. Mr. Perry was in no position to testify regarding whether there was a cash out offset resultant from the Association's vacation cash out proposal because he had no knowledge of whether vacation and compensatory time were budgeted. The Department's budgetary manager Mr. Kneeland knew he would be questioned on this issue, but conveniently did not have and did not remember the relevant documents. The State had the power to produce compelling evidence as to what was budgeted per employee and chose to produce insufficient evidence for the Arbitrator to have a basis to determine whether what was budgeted for vacation was sufficient to cover the Association's paid leave buy back proposal or whether it was an offset to the proposed furlough savings.

The Association submits that its proposed language regarding vacation buy back will not result in an offset to furlough savings. Supporting evidence consists in the vacancy savings to be realized in the biennium. The legislature budgeted for 49.44 more positions than is currently in the bargaining unit - a difference of nearly 7 million dollars. The adoption of the Association's offer would not cause the State to reduce the number of its employees, even had it not included the 12 month

Step freeze. The State's likely speculation that the legislature may strip the Department of the vacancy savings is highly unlikely. Laying off new troopers would be entirely inconsistent with the legislature's recent decision to allocate funds for 39 additional troopers during a budget crisis.

The Association provided compelling evidence that its proposal would generate the savings required of the Department. By contrast, the Employer's ability to pay argument is not supported by reliable evidence. To the extent that the State may have demonstrated that the cost criterion favors its proposal, it is not sufficient to outweigh the harm done to the interest and welfare of the public.

The Association proceeds to address two other criteria which play a less significant role in the instant arbitration proceeding - comparables and recruitment & retention - both of which favor its proposal. Regarding comparables, the Association argues that the adoption of the economic concessions as part of either proposal will cause the Parties to fall behind their comparables, but the Employer's significantly more so. This is because the Employer's proposal causes prolonged economic consequences for employees by sliding the entire system back by one Step for all but the new employees. By contrast, the Association's proposal will restore employees to their positions on the pay scale after a limited, and uniform, period of economic sacrifice.

The Association's analysis of the historic primary comparables of the States of California, Washington, Idaho and Nevada demonstrates that, based on a weighted average, the compensation of bargaining unit members is 10% behind at the five-year mark, 3.1% behind at the ten-year mark, and overall 5.9% behind. Evidence regarding the five largest cities in the State is even more compelling, as determined by the legislature, as it closer represents the labor market. The Association's analysis demonstrates a deficit of 13% at the five-year mark, and an overall deficit of 5.4% compared to the Cities.

The Employer's analysis purporting to demonstrate that OSP is compensated at 108% of the average is riddled with problems. It is based on the average of the four states. It contains no clear benchmark. It is based on employer cost rather than compensation received. It understated California by an admitted 3.5%. It makes an adjustment for social security without recognizing that the employer's social security cost is offset by the employee's. The Arbitrator should find that State and City comparators clearly weigh in favor of the Association's less economically damaging proposal.

The Employer's analysis regarding internal comparables is likewise problematic, especially as regards furlough days. Although strike permitted units may have accepted the State's proposal on furloughs, those employees generally do not work 10 hour days, they are not part of a 24/7 operation and they are not

entitled to interest arbitration. The more appropriate comparables of strike prohibited employees support the Association's proposal. Most importantly, the state legislature has specifically recognized that the State Police differs from other bargaining units and assigned it a separate set of comparables.

Regarding recruitment and retention, the Association argues that the State's exhibit purporting that the Department has no problems with this issue is misleading, showing only a 2.2% retention factor. The fact is that out of approximately 100 recruits, there were 12 resignations during the 2007-2009 biennium - a retention factor of 12%. That is a 500% increase in turnover compared to the 1997-1999 biennium. Considering the high degree of marketability of State Troopers, how many of those hired in 2007-2009 will be willing to remain with the State in the event that they are required to accept a pay cut, furlough days, and less compensation than their juniors? State Troopers are extremely expensive to train and every effort should be made during this difficult economic time to retain those in which the State has already invested its resources. The Arbitrator should find that evidence regarding retention and recruitment favors adopting the Association's proposal.

Lastly, the Association submits that the criterion regarding the consumer price index is not particularly relevant to the instant arbitration because neither proposal includes wage

increases. The Employer's data regarding whether bargaining unit wages have historically kept up with the CPI should be disregarded by the Arbitrator given that the purpose of the CPI is to determine whether current wages and benefits are keeping pace with the cost of living and given that the Employer's exhibit is simply wrong, showing a compensation increase from 2010 to 2011 even though no such increase is proposed.

For all of the reasons presented above the Association requests that the Arbitrator adopt its Last Best Offer.

ARGUMENTS OF THE EMPLOYER

The Employer's position is that the bleak economic situation faced by the state is the underlying foundation for evaluating the Parties' proposals. While the Association's proposal does provide for some budgetary reductions, it does not comply with the reasonable ability to pay criterion primarily because it contains hidden offsets the adoption of which would lead to the Department having to absorb substantial unfunded costs. The Arbitrator should find that the Association's proposal is simply not feasible at this time.

There is no dispute that the State's budgetary picture is bleak, placing it in a deficit position, and unlikely to improve soon. As testified to by Mr. Perry and Mr. Kneeland, the most recent election did not produce new funding and the State's one-time resources are now tapped, meaning that there is no operating

reserve available to cover any additional costs that may result from the subsequent bargaining process. Thus, as explained by Mr. Naughton, the State is forced to cut program costs, HB 5054 being a component of those reductions. The legislature allocated $2.5 million to the Department's furlough savings and $2.6 million to a step freeze for a total reduction of $5.1 million for this unit of government. There is also a definite risk that the legislature could take additional funds from the OSP budget in the form of "vacancy savings" and the Department has no contingency reserve fund to cover any further loss of resources.

The situation faced by the Department is that it must weather this biennium's economic downturn without additional resources or operating reserves, while striving to comply with the 2009 legislative mandate to the Department that it provide 24/7 patrol coverage on the State's highways. The State submits that the Association's costing data is flawed in several important respects. Most significantly, the Association assumes that the full cost of steps and full FTEs were funded in the Department's budget and therefore counts furloughs and the step freeze as savings. In reality, HB 5054 removed all funding for merit step increases, so the projected savings of $1,943,664 cited by the Association actually refers to money that the Department never had to begin with. Likewise, money projected to be saved by the implementation of furloughs, $2,800,000, was already withdrawn from the Department's budget. The

implementation of these measures will not "save" any money for the Department; it can only allow the Department to "break-even".

Other savings in the Association's proposal do not amount to what the Association alleges. $728,874 to allegedly come from the elimination of "shift differential" was transferred to offset the cost of cell phones for patrol vehicles and uniforms. Any savings to allegedly come from cut backs in retiree work will not materialize if the work is not performed. The "vacancy savings" that the Association argues count as part of the Department's budget cannot be realized because it is both a legislative priority and a feeling of many bargaining unit members that there is a need for additional troopers if the agency is to maintain 24/7 operations. Aside from which, the legislature will reappropriate any money not spent on hiring additional troopers. When the Arbitrator evaluates the Parties' Last Best Offers under statutory criteria, he should find that the key factors favor the State's proposals.

The State's proposal for holiday leave cash out of up to 32 hours resulted from concerns expressed by the Association, and supported by some of the data generated by the State, that employees were experiencing difficulty using holiday leave. The estimated "unfunded" cost of this proposal is $481,944.

The State's proposal for the suspension of new pay steps represents a cost of $1,332,796 due to the fact that merit step increases for which HB 5054 removed funding will resume

approximately half-way into the biennium. The State's proposal is consistent with the contracts negotiated with other bargaining units which provide that SEDs are not changed when a step is restored following a roll back period. Despite arguments by the Association to the contrary, the only times an employee's SED is affected under the State's proposal is when a promotion or reclassification of position takes place, in conformity with the CBA.

Likewise, the State's approach to mandatory unpaid time off for either 12 or 14 days with partial use as vacation-bid days is consistent with that adopted by other bargaining unit. Importantly, it also recognizes the fact that those agreements were reached earlier in the biennium and the available period to achieve cost savings for the Department is accordingly shorter. The main difference is that troopers may take up to three furlough days per month, resulting in the potential scheduling of up to six sequential furlough days provided they span two months. The total time allocated as unpaid is consistent with other units and the relevant language reasonably refers to "days" because the majority of State employees are on a 5/8 schedule. Those troopers who are not on a 5/8 schedule would be able to use appropriate leave or request to flex their schedules subject to supervisory approval.

As testified by Ms. Corbin, furlough days will not impact employees' leave accrual or any Employer insurance contribution

and will only affect the employees' wages including PERS. From the Employer's side, rescheduling employees' furlough days will not be subject to penalty payment provisions. And, unlike the Association's proposal, the State's provides for proration of unpaid time off for current, new, and separating employees.

As the evidence indicates, six of the strike-prohibited units have ratified similar packages. Only AFSCME Security and two small, specialized fire fighter units have not settled contracts. The reality is that, to the extent that the Department is unable to realize the enumerated savings through bargaining, it will have to make up the money in some other manner. The Arbitrator should find that the evidence presented by the State supports the finding that its proposal represents a more complete adherence to the statutory criterion that the unit of government must be reasonably able to pay while continuing to meet other priorities, specifically the priority to maintain 24/7 patrol coverage.

The State argues that its proposal is also to be favored under the statutory criterion regarding the interest and welfare of the public. It is in the public's best interest to have more troopers on the road during peak travel days such as Holidays. The limited cash-out of holiday leave proposed by the State ensures that the Department has the workforce available to cover those peak periods. It is also in the public's best interest to observe that the State is consistent in ensuring its employees

share equally in the sacrifices necessary to get through current economic difficulties while continuing to provide essential services. The Employer's proposal demonstrates consistency with the concessions made by the rest of the State's workforce as regards the temporary freeze on new pay steps, the suspension of step increases and mandatory unpaid time off.

The State proceeds to criticize the Association's proposal with respect to various issues. First, it addresses the Association's proposed restriction on employment of temporary and retired employees. According to the Employer, this proposal goes against the criterion of public interest because the relevant work was not historically performed by the bargaining unit, because the Association cannot meet the burden of identifying a problem with the status quo to justify the proposed change, and because it presents an inequitable standard likely to lead to future strife.

During his testimony, President Leighty equated "law enforcement work" with "bargaining unit work." The fact is that there is no statutory requirement in support of his interpretation. Rather, the Superintendent has statutory authority to appoint a state police force, subject only to the Governor's approval. Compelling evidence presented by the State, including the testimonies of Lts. Lane and Wilson as well as documentary evidence, demonstrates a historical shift in the State Parks Department and Oregon Fish & Wildlife from cadets to

retirees for reasons of safety. In presenting its proposal, the Association is overreaching to expand its base of work rather than maintain it. Neither is there a showing of a compelling reason for the proposed change - no basis to conclude that the current practices is unworkable, that there has been an external change requiring an adjustment or that any meaningful trade-off exists.

In addition, the proposed language will unavoidably create tension in several respects. That language begins with a statement of fact which invites the continual issue of having to identify which duties were allegedly previously performed by the bargaining unite. The following conditions likewise invite conflict. The first limitation is incongruous if the work has been done by retirees in the past. The second limitation severely restricts the Department's flexibility, cutting the number of hours to half of that used in the prior biennium, without any justification. The third limitation leads to unreasonable results: in the event that a laid-off employee is offered a position for which a retiree is also qualified, as provided for by the current CBA, and declines, the language prohibits the Employer from offering that work to a non-bargaining unit member. The Arbitrator should conclude that the work being done by retirees does not negatively impact the bargaining unit and there is no showing that the relevant portion

of the Association's proposal could serve the interest and welfare of the public.

The Association's proposal regarding the step roll-back and subsequent advancement also fails on this criterion. The Association's claim that the State's proposal changes the employee's SED is not supported by available documentation and is directly rebutted by the testimony of Ms. Corbin. There is no compelling justification for incurring the $446,000 cost the proposed language represents for the Department, especially when this unfunded sum will ripple through other Department operations such as the purchase of equipment.

The most significant problem to preclude a finding in favor of the Association's proposal is that the combination of its language regarding furlough hours and the sell-back of paid leave breaks the bank and results in a total known additional unfunded cost of $2,599,052 for the Department. From the Employer's perspective, the Association's proposal overreaches in requiring that the Employer bear the cost of allowing unpaid time to count as work time for purposes of overtime. The Association's math in support of this language is incorrect and fails to account for various wage provisions in the existing CBA. Neither is there a reasonable justification for expanding leave categories that employees could cash out. The Employer submits that the evidence demonstrates that the all-leave cash out would have budgetary

impact of such magnitude that the Department would be unable to achieve its cost saving objective.

The State reminds the Arbitrator that statutory criteria help to objectify the decision process and place the focus on measuring each Party's proposal against what works in favor of public interest rather than against one another. A uniform approach toward all state employees is far preferable to one which favors a small segment of the state workforce. The Association's proposal on the temporary wage freeze/roll back is more generous by a wide margin than what is in place for other state employees. The only way to generate the necessary savings from the implementation of a step freeze is to place a limitation on advancement to next steps which the Association's proposal lacks. The proposal regarding the cash out of leave is likewise broader than what has been agreed to with any other group of state employees. Furthermore, it presents an impediment to the Department's ability to comply with the legislative priority of having additional troopers on state roads.

Last, the State takes issue with the Association's methodology and conclusions regarding comparator data. According to the Employer, the Association's approach ignores evidence regarding "indirect monetary benefits" and "overall" compensation, in violation of the requirements and intentions of ORS 243.746(4). By contrast, comprehensive data presented by the State regarding its three largest groups of represented staff and

the "overall" compensation from four contiguous states demonstrates that state troopers are competitively compensated and under no threat of falling behind the CPI. Unlike the Association's, the State's evidence in support of its proposal is relevant and consistent with the statutory criteria.

For all of the reasons presented above, the State requests that the Arbitrator adopt its Last Best Offer.

ANALYSIS

Interest arbitration differs from grievance arbitration in the labor relations community primarily because it is driven by statutory dictates as opposed to the terms of a collective bargaining agreement. In most cases the statutes in question are those of the state within which the matter is being heard and thus the regulations that constrain the Arbitrator are specific to that specific state. Moreover, statutes are susceptible to modification and amendment thus having the potential to change over time.

This Arbitrator authored, in 1985, the first interest arbitration decision involving the State of Oregon and the Oregon State Police Officers Association; a fact that is in evidence as Association Exhibit 31. Under the statutory authority in place at that time, the Arbitrator provided the award on an issue by issue basis. In doing so, the Arbitrator was free to edit

individual proposals to ensure compliance with statutory criteria.

Since that time PECBA has been changed by the legislature and interest arbitration is provided on a total package basis. The Arbitrator no longer has the authority to edit the parties' proposals and must simply select one package or the other. Thus, each package must be viewed as a whole and the advisability of awarding the package considered in light of the criteria as set forth above. Obviously this puts the Arbitrator in a position, at times, of awarding a package that has individual parts that he or she does not find to be meritorious. In such a case, the package as a whole is viewed as better tuned to statutory criteria even though individual parts are seen as having substantial deficiencies. Frankly, awarding provisions that are seen as deficient does not make the Arbitrator feel comfortable, but it is the nature of the job in total package final offer interest arbitration.

Turning to the instant dispute, the Arbitrator spent considerable amount of time pouring through the exhibits provided by the Parties, reading the transcript that was made of the hearing and giving full and thoughtful consideration to the Parties' arguments. Ultimately, the Arbitrator is awarding the State's modified final offer package because he finds that it is the best total fit to the statutory criteria. He does so somewhat reluctantly because there are parts of the package which

he believes have some serious downsides. The Arbitrator offers the following multipoint analysis to explain the reasoning by which he arrived at the above conclusion.

First, there is a concern expressed in the briefs of both parties that data being used lacks clarity and precision; murky data. The Arbitrator notes that his experience leads to the conclusion that this assessment is generic to interest arbitration in general. No matter how hard the parties try, employment data is extremely difficult to pin down. Changes are constant; senior employees retire and junior employees are hired, new positions are created and old positions are eliminated, employees are promoted and work is reclassified. It used to surprise this Arbitrator when employers of larger jurisdictions were unable to provide the number of employees in the bargaining unit but only an estimation. He is no longer surprised by this fact. Of necessity, the data we use is generalized and we use it as best we can.

Second, the traditional statutory factors previously listed are not as helpful in this proceeding as in many interest arbitrations. The parties in the instant case have agreed on a wage freeze and the biggest issue at dispute involves reductions in compensation. Cost of living increases and comparability data were not, in this Arbitrator' view, a useful consideration in the work needed to reach a final decision.

Third, the statutory criteria require the Arbitrator to give first consideration to the interest and welfare of the public. It is the Arbitrator's conclusion that the interest and welfare of the public is best served by an award that has the least chance of resulting in a layoff of employees from this bargaining unit.

Fourth, the statute also specifies that the Arbitrator is to give full consideration to the "reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of the unit of government as determined by the governing body." The Arbitrator specifically notes the phrase *priorities of the unit of government*. Both parties acknowledged and repeatedly emphasized that the priorities of the legislature included restoring 24/7 coverage. Obviously this cannot happen if the Department faces a significant layoff. Moreover, if the interest and welfare of the public is served by avoiding layoff, including the loss of new hires, and the legislative priority is the restoration of 24/7 service, these two facts blend together into one dominant criterion.

The end result of the above analysis is that the Arbitrator's primaries consideration in reviewing final offer total package was the potential impact on avoiding layoff - providing 24/7 coverage.

Fifth, a work year has 52 weeks and a standard work schedule has 40 hours per week which leads to a total of 2080 hours per year. Since the CBA covers a biennium (2 years), the work hours are 4160. The Association set forth that the average hourly rate for this bargaining unit is $33.58[1]. If 4060 is multiplied times $33.58 and that number is multiplied times the number of employees in the bargaining unit then a reasonable financial number is created as to the cost of retaining the current set of employees. Additionally one must add the cost of overtime which the Arbitrator was informed amounts to approximately 22 hours per employee per month (Tr 175).

Sixth, the parties tended to emphasize the savings that are needed from the various reductions. The problem with this is that there was a substantial disagreement as to what constituted a saving that could be used by the Department and what constituted money lost to legislative action. Ultimately, the Arbitrator is of the belief that whether he selected the Association's final best offer or the State's final best offer, in either event, the Department would have to skillfully manage the money it received in order to keep its workforce intact. In other words, it's not what you have lost but what you have that is important. The bottom line of this point is the Arbitrator's

[1] This number comes from the transcript at page 154. The transcript page numbers are a reflection of how the Arbitrator's computer paginatd the file and this number may be different for the party's depending on their own computers. The Arbitrator does not certify this number but it does seem reasonable and works well for illustrative purposes.

conclusion that the State's proposal leaves more money in the available pot then does the Association's.

Further, it is undisputed that we are all involved in extremely difficult economic times. The very fact that the Union has offered to accept furloughs and step reductions indicates their full recognition of this problem. From the Arbitrator's perspective, there are two ways to help make the available money stretch sufficiently to maintain the current level of employment. One is to reduce the per employee cost which the parties purport to do by the step freeze and the furloughs. The second is to increase the amount of money in the pot, which is not likely to happen. It is the Arbitrator's conclusion that the State's proposal, particularly with regard to step freeze, does reduce the demand on the pot of money.

Seventh, the Arbitrator shares the Association's concerns over the State's furlough proposal. Frankly, the Arbitrator is not convinced that the State's furlough proposal will save much money. He found persuasive much of what the Union wrote about the matter in its brief. Additionally, he adds his concern over the fourteen day - 8 hour construct. Obviously, as the State acknowledged, the 14/8 was originally conceived for those people who work a five day, eight hour shift. The problem is that an employee on a 4/10 shift works 200 days in the average year while the 5/8 works 250 days. Taking 14 days out of the 250 is a significantly different problem than taking 14 days out of 200.

The Arbitrator is concerned that the way the State has structured this program will result in substantial additional overtime that will eliminate cost savings or reduced significantly 24/7 coverage and/or create a significantly increased downstream vacation liability. Ultimately the Arbitrator is of the belief that the Department will have to find a way to buy back vacation hours in order to deal with the problem. Of course, this is precisely what the Union proposed to begin with.

Eighth, as the Parties can tell from the Arbitrator's discussion of the last point, he sees significant deficiencies in what the State has proposed. Of course, at one level that is to be expected since we are all working with what might be called imperfect alternatives. Ultimately, however, the Arbitrator found sufficient problems with the Union's proposal on Article 2.3 as to reach a conclusion that on balance the State's total package was to be preferred over the Association's total package. These deficiencies include the following:

1. Since there is no reason to believe that the legislature would approve additional positions, the Association's proposal would require the Department to divert officers from 24/7 coverage. This is completely contrary to the legislative mandate and the primary goal of the Department.

2. The evidence is clear to the Arbitrator that some of the work in question is clearly bargaining unit work and some has never historically been bargaining unit work. While the Association's proposal requires only that the Employer reserve bargaining unit work for bargaining unit members, it does not appear to the Arbitrator that a clean separation can occur and the end result is that officers would have to assume work that has not been historically their.

3. As the Arbitrator understands the evidence, the Department receives compensation from other agencies or organizations for the services provided by the retirees. It then contracts with the retirees to provide the needed services. The end result is that the Department makes money which it uses to help defray other costs. If officers provided these services, as opposed to retirees, then the cost of providing the service would go up and the profits to the Department would go down. While the Arbitrator is sensitive to the need of the Union to protect bargaining unit work and to the fact that there are times that the interest and welfare of the public is best served when current officers are performing the duties, he is convinced that the cost shift is not in the best interest of any one given the State's current economic situation and the difficulty in funding the primary police services provided by the officers.

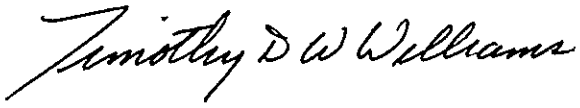
In sum, the Arbitrator is convinced that the State's total package results in less financial demand on the available money and does so without excessive harm. As such it is more likely than the Association's total package to avoid workforce reduction and to permit 24/7 coverage.

THE MATTER OF THE INTEREST	)	ARBITRATOR'S
	)	
ARBITRATION BETWEEN	)	INTEREST AWARD
	)	
THE STATE OF OREGON DEPARTMENT OF STATE POLICE	)	
	)	
"THE STATE" or "THE EMPLOYER"	)	
	)	
AND	)	
	)	
OREGON STATE POLICE OFFICERS' ASSOCIATION	)	
	)	
"OSPOA" OR "THE UNION"	)	

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the Opinion that accompanies this Award, it is awarded that:

1. The award is for the State's modified final offer total package.
2. Per the requirements of ORS 243.746 (6) the Arbitrator assigns his fees one-half to each Party.

This interest arbitration award is respectfully submitted, under the authority of ORS 243.742 and in compliance with ORS 243.746, on this the 1st day of April, 2010 by,



Timothy D. W. Williams
Arbitrator