

BEFORE ARBITRATOR WILLIAM GREER
IN THE MATTER OF INTEREST ARBITRATION

Between the
ALASKA CORRECTIONAL OFFICERS ASSOCIATION
(ACOA)

And the
STATE OF ALASKA,
DEPARTMENT OF CORRECTIONS

POST HEARING BRIEF OF ACOA



Submitted the 27th Day of February 2009

For the Alaska Correctional Officers Association:

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OVERVIEW

Alaska Correctional Officers (C.O.s) face more assaults than any other Peace Officers. They spend more time with dangerous felons than all other peace officers combined. They are not second class peace officers when it comes to the injuries and stress or the obligation to protect the public that all other Peace Officers are charged with. They should not be second class citizens when it comes to peace officer pay, benefits, and specialty pay that other Alaskan Peace Officers enjoy. Whether it's their base pay, benefits, or specialty pay such as FTO pay, PTO pay, uniform allowance, C.O.s deserve the respect given to their peace officer counter parts.

Court Service Officers (CSOs) perform basically the same function as Correctional Officers except they work at the courthouse, instead of the prison. CSOs do not have to be Alaska Police Standards Council (APSC) certified, as Correctional Officers do. Why are CSOs paid more than C.O.s?

In the beginning CSOs were in an association/union that represented other Peace Officers, while Correctional Officers were lumped with secretaries and administrative clerks. CSOs were treated as Peace Officers all along. So today they make more money for being less trained, non – certified for doing the same job as Correctional Officers.

Through no doing of their own, C.O.s were placed in a union that did not represent their unique Peace Officer status. From the beginning their wages, benefits, and specialty pay began to lag behind other Peace Officers, through no fault of their own. In fact, at the first opportunity to become part of the Peace Officer community they took it. They did all they were ever allowed to do in order to improve their lot.

The problem is ... now the past is forgotten, and pattern bargaining only looks at percentage of increases of other State employees. Without an adjustment, C.O.s will always be behind their counter parts.

And that is a serious problem, now more than ever before. In three years, a new mega prison will open, the Goose Creek Correctional Center. During the course of this contract now being arbitrated, hundreds of more Correctional Officers will need to be hired to staff it. Keeping staffing up has always been a major problem for the Department of Corrections. Now, they have to hire as many as 200 Officers in just three years.

To add insult to injury, the new mega prison is being built 80 miles from Anchorage, 50 miles from Palmer. How can the DOC compete? How can the Department of Corrections attract new officers when the new jail is an hour and a half out of Anchorage, when you can make more as a Trooper, Police Officer, or even as a Court Service Officer right here in town. If someone seeking a career as a Peace Officer can make more money in town and not have to travel an hour and a half each way to work each day, why would they want to work at Goose Creek Correctional Center? In some cases even security guards can make as much as a Correctional Officer without the training, without the certification, and certainly without the stress and danger that C.O.s face every day. The DOC has a tremendous challenge in filling Goose Creek with Officers.

Unlike the offers made to all other unions this cycle, the State is offering Correctional Officers only 2 ½% in the first year, and 2% in the next two years while taking back RDO pay. The State will tell you their offer is about the future price of oil but the State's offer is more about a no-confidence vote that took place last year against the Governor's close friend, the Commissioner of Corrections, Joe Schmidt, than it is about the price of oil.

As with the last interest arbitration three years ago, the State is again arguing that oil will stay low and they will be broke in a year or two. That did not happen after the last Arbitration. Instead of the three years of doom and gloom predicted in our last Interest Arbitration, the State put billions and billions into their bank accounts as the price of oil climbed and climbed and finally reached over \$130 a barrel.

Alaska North Slope Oil climbed to \$132 a barrel and World Spot Prices to over \$140 a barrel last summer and gasoline prices skyrocketed. At the moment oil prices are low, when oil reached \$140 a barrel, consumption plummeted and the price dropped.

As with the Interest Arbitration three years ago, ACOA has presented Exhibits that the vast majority of professional oil experts and economists will tell you oil prices will continue to rise. Those Exhibits show the majority of the oil experts disagree with the State's future oil price predictions. As even the State economist confirmed, the majority of oil experts are predicting \$100 a barrel oil within two years, some as much as \$200 a barrel. ACOA will not, however, rely completely on outside experts, we ask the Arbitrator to look at the State's own forecasts in its Revenue Sources Book published by the Alaska Department of Revenue. The State's own budget forecast for 2010, the first year of the agreement that will come from this arbitration is for an average price of \$74 a barrel. This has since been revised downward in response to Legislative pressure, but the Department of Revenue's long-term forecast out to 2016 predict an average price in the mid-seventy dollar range.

The State cannot have it both ways. In the last Interest Arbitration, when the price of oil was high and, climbing higher, the State argued pattern bargaining, but when oil prices are at a temporary low, the State argues they can't afford pattern bargaining. The State wants it both ways. The State's position seems just a little unfair. Regardless of the price of oil, the State has billions and billions and still more billions in the bank. Per capita, they are by far the richest state in the union. When it comes to per capita worldwide, their only equals are countries such as Kuwait. They have money; it is simply a matter of how they want to spend it.

Consequently, we ask you to consider the proposals before you in light of the State's actual economic circumstances as demonstrated by the material it publishes and distributes. We ask you to consider our proposals on what the State of Alaska actually has in the bank.

C.O.s do the work of an Alaska Peace Officer. Due to staffing issues and reduced shift minimums, each Officer has carried an extra load. That workload will become heavier when, in three years, the new prison opens and the C.O. ranks are thinned out to staff it. The State does have the money; the State must be able to compete in the marketplace to hire two hundred more Officers, Peace Officers and they should pay them Peace Officer wages, benefits, and specialty pay.

ACOA's proposed Article 2.2 C: Officer Representative Confidentiality (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: “The confidentiality of Officer Representative discussions with member(s) regarding contractual or disciplinary issues shall be respected, except when an Officer Representative has information of a criminal nature. Officer Representatives shall not be asked or compelled to disclose information gained while acting in their capacity as an Officer Representative unless it involves knowledge of criminal misconduct.”

ACOA Argument: Section 7 of the National Labor Relations Act (NLRA)¹ gives employees the right, through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Supreme Court record in the case of *NLRB v J. Weingarten* recognizes that the action of an employee seeking to have the assistance of his union representative at a confrontation with his employer clearly falls within the wording of Section 7². The Association believes the employer's policies and actions, as have been applied to Officer Representatives, conflict with the NLRA and the *Weingarten* decision. The Association wishes to resolve that conflict by adding the above language to the Bargaining Agreement.

The Department's Standards of Conduct, when applied to Officer Representatives, compels them to report in writing any knowledge of criminal or unethical activity by other employees while on duty or on Department premises³. It also directs that employees not willfully depart from the truth in giving testimony or in connection with any official duty or investigation⁴. An absolute test to determine when an Officer Representative is acting in a representational capacity versus when they are acting as a State employee probably cannot be found. However, in many if not most cases, the distinction is clear, and in cases where disagreement exists, the services of an unbiased third party might be required. The Association does not argue that an employee who is an Officer Representative and observes an illegal or unethical act by a fellow employee should not be required to report that observation and honestly respond to questions about that event. We do argue that an Officer Representative who is approached strictly in their capacity as an Officer Representative, who has no knowledge other than as gained in that capacity, has an absolute right to confidentiality. For an employer to interfere with this right could likely be held to be an illegal interference in the internal activities of the Association.

The case that directly led to the Association's concern in this area was testified to during the hearing. It involved a Sergeant who was an Association Board Member and Representative who was called by an off-duty member who worked the opposite week from him. The calling member prefaced the conversation by asking, “You are my Association Officer Rep, right”? After he responded that he was, the member proceeded to share information and opinions of behavior she had observed and reported to the employer months earlier. The employee directly involved had already resigned and been convicted of a crime. The member was concerned about her observations not having been taken seriously when she expressed

¹ Association Exhibit A-4, Page 4

² Association Exhibit A-3, Page 4

³ State Exhibit S-25, Page 5

⁴ State Exhibit S-25, Page 2

them through the chain of command. The Sergeant Officer Representative was not told anything that Management had not already been apprised of. Uncertain of his responsibilities in light of his Fiduciary responsibility to the Association and its members⁵, he delayed in discussing it with Management until he had consulted with the Association and had returned to duty after his scheduled week off. Management then conducted a disciplinary investigation and demoted him back to the rank of Correctional Officer II.

The Association's proposed language is reasonable, will help ensure that Association member's rights under the NLRA are more adequately protected, and is intended to preclude instances such as testified to during the hearing and briefly discussed above.

⁵ Association Exhibit A-5

ACOA's proposed Article 9.2 A 1: Initial Pay Increases (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: “Pay increases resulting from APSC Certification shall be retroactive to the date the individual met their certification prerequisites and turned in a complete and correct F-7.”

ACOA Argument: The Association proposes to add the above language to the end of Article 9.2 A 1, which currently states that “The probationary period for Correctional Officers I and for all Correctional Officers II and III who are hired without a current APSC⁶ certification shall be the length of time required to receive APSC certification.”

Correctional Officer I is the training, entry level to the Correctional Officer career field. As a condition of continued employment, Correctional Officers I must obtain a basic Correctional Officer certificate issued by the Alaska Police Standards Council within 14 months of hire⁷. As noted in Article 9.2 A's current language, attainment of APSC certification is a prerequisite to advancement to Correctional Officer II. This is also the point at which new Correctional Officers' initial probationary period ends and at which they begin a new six-month probationary period as a Correctional Officer II⁸. This is also the point at which new Correctional Officers receive their first pay raise, a raise that varies from \$2.41 an hour in Anchorage to \$3.32 in Bethel⁹. All subsequent pay raises during an Officer's career are affected by the date they progressed from Correctional Officer I to Correctional Officer II.

The requirements to become APSC certified are that the Officer has completed the basic training program and field training program, has worked 12 consecutive months in probationary status, meets the employment standards, and attests and subscribes to the Code of Ethics¹⁰. Upon meeting these requirements, the Officer then completes, signs, and swears to the truth and accuracy of the information given on their Application for Certification, known as the Form F-7¹¹. Once the Officer has completed the F-7 correctly they are at the mercy of the Department of Corrections and the Alaska Police Standards Council to process the paperwork and award the certificate. The applying Officer has no control over that.

In reality, an Officer has no control over delays after accurately completing and turning in their F-7 to their institution. As testified to, delays of several months, between the time an F-7 is accurately and completely submitted and is approved, have occurred and periodically continue to occur. Without the Association's proposed language, two Officers hired on the same date and meeting all requirements and turning in accurate F-7s on the same date, on occasion receive their initial pay raises two to three months apart. The language the Association wishes to add would end the practice of penalizing Officers for delays they have no control over by making their pay raise retroactive to the date they met the requirements they are responsible for. This would affect the timeliness of subsequent pay raises.

⁶ The Alaska Police Standards Council, the statutory agency that certifies Police and Correctional Officers.

⁷ Association Exhibit A-75, Special Note at bottom of Page 2.

⁸ Article 9.2 A 1 and 2

⁹ Pay scales in Association Exhibit A-72

¹⁰ Association Exhibit A-85 (b) (1) through (5)

¹¹ Association Exhibit A-8

ACOA's proposed Article 9.7 A 3: Correctional Officer III Bargaining Unit Seniority
(NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: Correctional Officer III seniority shall be as described above, except that time in job classification shall be the ultimate determinant for decisions affecting only C.O. IIIs.

The Commissioner of the Department of Corrections shall quarterly prepare and prominently post the following ~~appropriate~~ bargaining unit seniority lists at each respective facility and shall provide copies to the Association:

- A. Statewide in alphabetical order
- B. Statewide in sequential numerical order
- C. Institutional in alphabetical order
- D. Institutional in sequential numerical order

ACOA Argument: Any discussion of the Association's proposal to add, "Correctional Officer III seniority shall be as described above, except that time in job classification shall be the ultimate determinant for decisions affecting only C.O. IIIs." must start by identifying what other parts of the Bargaining Agreement might be affected by adopting this language and how they might be affected.

The first and most obvious place to turn would be to Article 10 - Layoff¹². Currently, if a Correctional Officer III was to be laid off, the C.O. III with the least bargaining unit seniority would be selected and given the option of either displacing a junior Correctional Officer II or accepting a layoff. The proposed language does not change what happens regarding a Correctional Officer II who might be displaced by a Correctional Officer III. Were a layoff to occur that involved reducing the number of Correctional Officers III, the proposed language does affect the selection. Not unlike in a military setting, time in grade would become a determining factor and a Sergeant who had been a Sergeant for only three years but had worked for the Department for 12 years, could be displaced by one who had been a Sergeant for four years, but had only worked for the Department 11 years. Whether Management would like the results of this in any specific situation really boils down to "luck of the draw" and is not an event they would control under either the current or proposed language.

Another portion of the Agreement where Bargaining Unit Seniority might come into play is in Article 9.8 in regard to Correctional Officer III Transfers, although it really should not be an issue. The transfer language allows the Department to use either the transfer list or the competitive list¹³ or both concurrently for Correctional Officers III.

¹² Joint Exhibit J-2, pages unnumbered, Article 10.3 B

¹³ Joint Exhibit J-2, pages unnumbered, Article 9.8 B.2

The Department has not used the transfer list for Correctional Officers III for many years, instead choosing the option of using the competitive list. If the Employer is concerned that the Associations proposed addition to Article 9.8 B 2 might be adopted, we would point out that it does not require the Employer to make a selection based on seniority and has no bearing on the language in this proposal.

Another area where our proposed language might cause the employer to be falsely concerned is in the area of Shift Assignments¹⁴. As we pointed out through testimony and will discuss in more detail under our proposals for Article 22, the Employer has a right to determine the qualifications needed. Management selects who is promoted, who makes it through their probationary periods, and who gets what evaluations (if they trouble to write evaluations). If the employer will control the factors that are theirs to control they should not be threatened by the Associations proposed change to Correctional Officer III seniority language.

Using seniority is necessary for the continuing prevention of “good old boy” decisions being made that affect personnel matters; the Association’s proposed language on Correctional Officer III seniority is more a matter for the Association than for the employer.

Regarding the portion of the Association’s proposal that states “and shall provide copies to the Association: A. Statewide in alphabetical order, B. Statewide in sequential numerical order, C. Institutional in alphabetical order, D. Institutional in sequential numerical order.” This language changes little if any from what is currently being done. The Association’s specific needs can be met by providing four lists as cited above or by providing an Excel list that would allow the Association to sort it alphabetically, numerically and/or by institution. The members’ need is to be able to check their seniority, statewide and institutionally. The Association does not recall any testimony to indicate that providing the lists as requested would be any problem for the State, and the current practice supports our supposition that this can be done without being a problem.

¹⁴ Joint Exhibit J-2, pages unnumbered, Article 22.2 D

ACOA's proposed Article 9.8 A 4: Notification of Final Transfer Selection (NON-MONETARY)

ACOA proposal: The current Article 9.8 A 4 states that "The Division of Personnel shall provide a list of valid transfer candidates to the hiring manager". The Association proposes to add the following underlined language to the existing language: "...and to the Association, and the Association shall be notified of the final selection."

ACOA Argument: Transfer postings and transfer selections are a matter of great interest to Association members. Currently, the Association is not provided this information. Transfer postings are not privileged information, but currently we learn of them by checking the Department of Corrections website each day; likewise the names of members selected for transfers is not proprietary information. Currently, we must learn the results of transfer postings through the grapevine or by calling the employer when members inquire. We are not requesting notification prior to the notification of those who applied. Our request is reasonable and we have not been given any reason for the Employer's reluctance to accept it.

ACOA's proposed Article 9.8 B 2: CO III Postings (NON-MONETARY)

ACOA proposal: The Association proposes adding the following language to Article 9.8 B 2: "CO IIIs who wish to apply for competitively posted C.O. III positions may give notification to the hiring manager citing their intent to compete. Such notification shall result in the consideration of that applicant."

ACOA Argument: It might be important for us to start off by clearly stating that the Association does not question the Employer's right to post Correctional Officer III positions competitively and is not intended to require that C.O. III selections be made solely on the basis of seniority. Our intent is to seek relief for C.O. IIIs from having to repeat the involved process they completed to initially be promoted to C.O. III while still allowing them to compete for positions at other institutions. The competitive application process requires applicants to respond to detailed questions, provide a cover letter stating what they have specifically done to prepare themselves to be a C.O. III, and to provide a myriad of other information; it also requires applicants to register with Workplace Alaska and complete or update an Applicant Profile. These requirements are communicated in the Workplace Alaska Recruitment Bulletins¹⁵. C.O. IIIs, all of whom have already completed this process, find it cumbersome and demeaning to have to complete it a second time simply to compete against C.O. IIs seeking a promotion. The Association's proposal credits them with having done this in the past and relieves them from having to do it again to be considered, along with Officers who have yet to be promoted. It is our contention that those who are currently serving as C.O. IIIs be allowed to compete and be interviewed on the basis of having served as a C.O. III and based on their previous experience.

¹⁵ Association Exhibit A-74, unnumbered Pages 3 – 7.

State's proposed Article 9.8 C 3 e: Waiver Authority
(NON-MONETARY)

State proposal: The State proposes adding new language that states: "Maintain the authority to suspend or waive the transfer policy whenever necessary"

ACOA Argument: The State did not defend this proposal during Interest Arbitration and did not discuss it during negotiations. The language currently contained in 9.8 C 3 e grants the Director a reasonable and sufficient level of control over transfers by allowing him to react to staffing and experience levels. Granting the Director such broad and unlimited authority, as the State proposes, would put the Association's members at an untenable disadvantage.

The Association's proposed new language in Article 9.8 D called for recognizing that cooperation will be needed when, and if, a new facility opens. The Association's proposal opens the door to cooperatively deal with the requirements associated with such an event. The State's above proposal slams that door.

**ACOA's proposed Article 9.8 D: Applicability of Transfer Policy to C.O. Is
(NON-MONETARY)**

ACOA proposal: The Association proposes adding the underlined language: "The parties recognize that the intended opening of a new facility will create unique requirements that may require temporary changes to the provisions of this Article and agree to work cooperatively to ensure those requirements are met."

ACOA Argument: The Association was surprised by the Employer's rejection of this proposal. If and when the new Goose Creek Correctional Center opens, both parties will benefit by working cooperatively. Whether or not this language is included in the Bargaining Agreement, we sincerely hope that the Employer's rejection of it does not foretell a refusal to jointly address the challenges both parties will face.

State's proposed Article 9.8 D: Applicability of Transfer Policy to C.O. Is
(NON-MONETARY)

State proposal: The State proposes adding new language that states: "The transfer policy set forth in Article 9.8 does not apply to C.O. Is when initially hired."

ACOA Argument: As with the State's 9.8 C 3 e proposal, the State did not defend this during Interest Arbitration and did not discuss it during negotiations.

The parties have no less than four unresolved grievances pending arbitration on the issue of hiring C.O. Is instead of advertising for transfer applicants, therefore it might be appropriate to allow the issue to be resolved in that venue instead of this one. However, should the Arbitrator wish to issue a decision, we would argue that C.O. I positions are the entry level Correctional Officer classification that, when successfully trained, allows them to become Correctional Officers II. Giving the employer the authority to fill all openings with new hire C.O. Is renders the entirety of the Agreement's transfer language void and worthless. If vacancies are filled with new hires, there will be no transfer openings. When that occurs, the difficulty in filling Correctional Officer I openings at institutions, such as Spring Creek, will increase exponentially. The populations in Seward and surrounding communities are insufficient to support local hiring. Most new Officers at Spring Creek hire on with the expectation they will become eligible to apply for transfer two years later and with the expectation that selection for transfer will be based on seniority. Take that reasonable expectation away from Officers and staffing, hiring, and retention will become very difficult at several of our institutions. The State's proposed language should be rejected. It will render Article 9.8 meaningless and fails the test of reasonableness.

ACOA's proposed Article 12.1 A: Supporting Evidence (NON-MONETARY)

ACOA proposal: ACOA proposes adding the underlined language: "Discipline and discharge of permanent employees shall be for just cause. Failure to complete a probationary period does not require just cause and shall not be considered a disciplinary action. Discipline is defined as personnel action against a permanent employee resulting, from a just cause finding from the Employer. A copy of all disciplinary actions, including the evidence supporting each action taken by the Employer against Bargaining Unit members will be forwarded to the Association."

ACOA Argument: The proposed addition requests that, at the time the Association is provided copies of disciplinary actions, it also be provided copies of the evidence used to determine its member's guilt. The Association's duties and responsibilities include determining how to fairly represent disciplined members. Fair representation may or may not include filing grievances against disciplinary actions; grievances that, if unresolved, go to binding arbitration. Selecting the most appropriate post-disciplinary course of action is difficult unless the Association is provided all of the evidentiary information that led to the Employer's decision to discipline. The Association believes the Employer has a general obligation to provide the information necessary to allow it to properly meet its duties and responsibilities in this respect¹⁶, and believes providing the requested evidence is a part of that obligation. The grievance process is time consuming for both the Employer and Association. At times, providing the requested information may serve to reduce the number of grievances the Association files, thereby reducing the workload of both parties. At other times, making the requested information available will allow the Association to more clearly and concisely draft factual grievances.

¹⁶ NLRB v. ACME Industrial Co., 385 U.S. 432 (1967)

ACOA's proposed Article 12.2 A: Questioning by Supervisors (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: "The member shall be entitled to a fair, impartial investigation and all investigative interviews and questioning will be conducted by members of the supervisory unit."

ACOA Argument: It is difficult to envision the need to defend a proposal to modify the noun "investigation" by adding the adjective "impartial"; the concept seems so basic and indisputable, although we suppose it might also be difficult to understand why the Association feels the need to add such language. Unfortunately, the Association believes partiality was a factor in several investigations that resulted in members being disciplined. We hasten to point out that the "fair and impartial" language we propose exists elsewhere in State contracts¹⁷. Documenting our concern is difficult without having placed recordings of investigative interviews into the record – something we would not do. However, we can point to one small example that was mentioned in an arbitrator's decision that overturned a Sergeant's termination at the Spring Creek Correctional Center. Perhaps you recall Superintendent Turnbull's expressed frustration at having to bring "bad Officers" back because of arbitrations; this was one of those cases. During the arbitration of this case the Association pointed out many examples of leading questions intended to elicit answers that fit Management's preconceived opinion of what took place, but only one made it into the record¹⁸.

It is also difficult to envision a need to defend our proposed language that will preclude bargaining unit members from conducting investigative interviews of fellow members; unfortunately this has taken place. One such incident occurred at the Fairbanks Correctional Center in which Sergeant Danny Colang served as the Association's Representative and another Sergeant conducted the investigative interview. This has occurred several times at several institutions. You did hear rather revealing testimony during discussions of Association Representative confidentiality rights that indirectly relates to this issue. You heard testimony that Sergeants are not Supervisors. You also heard the State speak to their desire to move Correctional Officers III into the Supervisory Bargaining Unit. Allowing the State to continue or expand upon using Correctional Officers III to conduct investigative interviews infringes on the distinction between them and supervisory personnel that was recognized by the Alaska Labor Relations Agency, and threatens to give the employer increased leverage to remove them from our Bargaining Unit. There is no acceptable reason for our members to interview our members during investigative interviews. That is a function of Management.

¹⁷ Joint Exhibit J-3, Page 12, Article 7 Section 2;

¹⁸ Association Exhibit A-104, Page 16, next to last paragraph

ACOA's proposed Article 12.2 B: Allegations and Notice (NON-MONETARY)

ACOA proposal: "The Association proposes deleting the strike-through language and adding the underlined language: When the State determines sufficient information exists to warrant a formal investigation, which could result in disciplinary action, the State shall provide the Association and member(s) under investigation with a detailed written notice of the specific allegation(s) of misconduct, including the date, time and location, if known. The member shall have, where practical, a minimum of two of the employee's duty days reasonable time to prepare for the interview."

ACOA argument: Substantial support exists to defend the Association's proposal to require the State to provide detailed written notice of the specific allegation(s). One needs to look no further than Elkouri & Elkouri and the United States Supreme Court to find this support. It is well established that Public Sector employees have a property interest in their employment which cannot be taken away without due process. It is equally well established that due process includes a public employee's right to oral or written notice¹⁹. In the instance of Alaska Correctional Officers, this notice must be in writing²⁰. It is well established that employees are entitled to notice of the charges against them and an explanation of the evidence²¹ and that their notice must sufficiently explain the charges, as a vague boilerplate generic accusation will not suffice²².

The Association entered several examples of investigative notifications into the record that clearly represent unacceptable notice and failed due process²³. The State attempted to classify these as "old" notices and claimed the problem has "been fixed". In response to that claim we call your attention to the fact that you heard testimony from the State that the current Administration took over in December of 2006. The claim that these are old notices and that the situation has been fixed is without merit. Management would be well served to include our proposed language in the Bargaining Agreement if for no other reason than the educational value it will have for their supervisors and the fact that it may protect them from losing some future arbitration on technical grounds.

Employees reporting for investigative interviews with insufficiently detailed notices, with notice of only vague boilerplate accusations, are at a significant disadvantage. As testified to during the hearing, most Correctional Officers work seven, twelve-hour shifts in a row, followed by a week off. Without sufficient information, they often have no idea what they are being accused of. Note how many of the notice exhibits do not even advise the recipient of the date in question and that almost a month elapsed between the date noted in the notice and the hearing and that the notice in these instances did not include sufficient information to allow the Officers to properly prepare.

¹⁹ Elkouri & Elkouri, How Arbitration Works, Sixth Addition, Page 1255

²⁰ Joint Exhibit J-2, Article 12 .2 B

²¹ Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

²² Elkouri & Elkouri, How Arbitration Works, Sixth Addition, Page 1256 and Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

²³ Association Exhibits A-19, A-20, A-21, A-22, and A-23

The Association's Proposal that where practical, a member shall have a minimum of two duty days notice is reasonable. Alaska State Troopers are provided far more detailed information and copies of complaints and are given five working days between the day they are given notice and the day they are interviewed²⁴. Is there a reason why Troopers are entitled to more due process than Correctional Officers? We could cite numerous examples of Officers who were working a 6:00 p.m. to 6:00 a.m. night shift when notified that they had a hearing scheduled for three the next afternoon, some of whose on-shift representatives were on leave at the time, and many of whom were unable to contact a professional Association Representative before they awoke the next afternoon. That is not sufficient time to prepare. We could produce examples of other Officers who were called to investigative interviews for minor issues that could easily have waited until they returned to duty after their week off. Seeking a minimum of two duty days notice is not unreasonable.

²⁴ Association Exhibit A-24 and Joint Exhibit 3

ACOA's proposed Article 12.2 C: Copies of Written Complaints (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language and deleting the strike-through language: “When a ~~written~~ complaint that may result in discipline is filed by an inmate or citizen against an employee, ~~alleging physical assault, sexual misconduct, or other egregious misconduct (as defined by Policy and Procedure), a copy of the information contained in that complaint shall be made available to the subject employee and the Association with any written allegation of egregious misconduct delivered by the employer when a Notice of Investigative Interview is served.~~”

ACOA argument: Much of our argument in support of our proposal for Article 12.2 B is equally applicable here. We will attempt to avoid unnecessary repetition and ask that you consider portions of our earlier arguments to apply here as well. Correctional Officers have a right to defend themselves and a right to sufficient information to do so. The inability to cross-examine an anonymous accusing witness or defend against a secret accusatory document is significantly prejudicial²⁵. Correctional Officers work in an environment where false accusations are anything but unusual and these false accusations are not limited to ones coming from the prisoner population. In this author's experience as a Correctional Officer in an intake facility, a significant number of persons who come to visit prisoners themselves have criminal backgrounds. Many other visitors are simply frustrated at the rules and requirements that Correctional Officers are duty-bound to enforce upon them as visitors and upon their friends and or loved ones who are in custody. Correctional Officers deal with segments of the public that are not unlike those dealt with by their Trooper brothers and sisters, and need protections similar to those found in their contract²⁶. An Officer who is not provided a copy of complaints finds it difficult to answer the specific questions asked by someone who has studied the complaint. Often this is perceived as a withholding of information when the Officer involved knows nothing about what the details of the complaint might be. It is in both parties' best interest to avoid unnecessary disruptions and erroneous decisions such as might result by basing decisions of a Correctional Officer's responses to questions regarding a complaint they have not been allowed to review.

²⁵ Elkouri & Elkouri, How Arbitration Works, Page 363

²⁶ Association Exhibit A-24 and Joint Exhibit J-3

ACOA's proposed Article 12.2 D: Number in Hearing/Delays (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language and deleting the strike-through language: “A member under investigation is entitled to a representative representation prior to writing any required reports and during Investigative Interviews, if the member so desires. Not counting the investigated employee, the Employer and the Association may each have as many as two persons present during an Interview, unless a larger number is mutually agreed upon in advance. It is solely the responsibility of the member to secure such representation. The Employer will not unreasonably deny a request for a reasonable delay in order to allow a Professional Association Representative to be present. ~~Neither the member nor the Association may unreasonably delay an investigatory interview in order to obtain the services of a particular Association representative.~~ Representation may be provided either in person or telephonically. In cases containing explicit allegations of egregious misconduct, the employee may have up to 72 hours, from time of notice to arrange union representation.”

ACOA argument: The Association's proposal addresses three distinct Issues: the right to Association representation prior to writing any reports that the member reasonably believes might lead to discipline, equally limiting the number of persons the two parties may have at a disciplinary hearing, and a statement that the employer will not unreasonably deny a request for a delay to allow a Professional Association Representative to participate. We will attempt to defend each individually.

First, regarding the right to representation prior to writing any required reports. Department of Corrections policy²⁷ states that “During the course of an official investigation, employees shall cooperate fully by providing all information they may have concerning the matter under investigation...full cooperation involves responding to all questions truthfully and completely, and providing a signed statement or affidavit if requested.” The Association argues that an Officer's rights, when asked to write and sign a statement that he reasonably believes might lead to discipline, are no different than his Weingarten Rights when asked to answer questions while having a similar expectation that doing so could lead to discipline. If employers nationwide could simply ask employees to write a statement, instead of answering questions, they could basically do away with Weingarten Rights altogether.

Next, regarding the number of persons each party may have present during an investigative hearing. This has been a significant issue for the Association. The Employer's side of the table during investigative hearings at one institution regularly included the Superintendent, an Assistant Superintendent, a Lieutenant, and a Human Resources Specialist. On several occasions two Assistant Superintendents attended. The four or five Employer representatives present were each allowed to ask questions and at times it appeared several of the junior members present saw it as an opportunity to show how clever they could be. Yet, at this same institution the Association Business Agent's request to have an Association Shift Representative attend with him for training purposes was denied by the Superintendent. The Association's side of the table consisted of the Officer in the “hot seat” and one Association Representative. The Association's proposal is intended to level the playing field for all concerned.

²⁷ State Exhibit S-25, Page 5, F.3

Lastly, regarding language drafted that states that “the employer will not unreasonably deny a request for a reasonable delay in order to allow a Professional Association Representative to be present”. Disciplinary trends during this Administration’s tenure have been a major concern for the Association. Admittedly, when we sense major discipline might result, based on the limited amount of information we are provided, we do think it important for one of our professional Association Representatives to attend. In several instances the Association believes reasonable requests for reasonable delays have been unreasonably denied.

As was testified to, in the beginning of the current DOC administration’s tenure, there were incidents that seemed minor to the Officers and the Association that surprisingly resulted in serious discipline, up to and including termination. In one example an Officer was fired for a minor joke, the Arbitrator put him back to work with full back pay. Another Officer was given three days off for accepting a remand (inmate being booked) with a scratch, very small cut on his ear, instead of sending him to the hospital. The Arbitrator found the Officer innocent and ordered his file totally cleared.²⁸ In yet a third case an Officer was fired for assaulting an inmate, a nasty accusation. Again the Officer was reinstated with full back pay.²⁹ In many other cases, Officers who went through hell later had their discipline reduced to more appropriate levels³⁰.

In the end Arbitrators not only overturned the serious discipline but found the incidents as trivial as the Officers and the Association originally thought. If one Officer’s career can be at stake, that Officer deserves professional representation.

²⁸ Association Exhibit A-103

²⁹ Association Exhibit A-104

³⁰ Association Exhibit A-25

State's proposed Article 12.2 E: Pre-imposition Meeting (NON-MONETARY)

State proposal: The State proposes deleting all of Article 12.2 E as follows: ~~Pre-imposition Meeting. A final meeting will be offered to the employee(s) and his or her Association representative (if requested by the employee) after the Employer has made an initial determination that a sanction of a disciplinary suspension of 160 (one hundred sixty) hours or more, demotion for cause, or dismissal is warranted. The purpose of the meeting is to allow the employee to provide any extenuating or mitigating circumstances, which he or she believes, should be considered prior to the imposition of penalty. Nothing herein prevents a pre-imposition meeting in instances of suspensions less than 160 (one hundred sixty) hours.~~

ACOA Argument: The process and language the Employer wants deleted is language that has existed at least as far back as 2003, to the Correctional Officers' first Agreement as a separate bargaining unit. When the new administration took office in December of 2006, the Employer started listing the opportunity to provide mitigating and extenuating circumstances in their disciplinary notices and started stating it at the beginning of investigative interviews. In many cases, this offer was made without first having provided a clear understanding of what the allegations were³¹. Many such notices seemed to imply that this would be the employee's only opportunity to provide mitigating or extenuating circumstances, in violation of Article 12.2 E's existing language, some went so far as to clearly state this³². In almost every instance, the Association registered their objection.

Asking an employee to offer mitigating and extenuating circumstances before first establishing their guilt is a case of putting the cart before the horse. What mitigating or extenuating circumstances could someone possibly offer believing that they are innocent of misconduct, without giving the appearance of having admitted to their guilt? What effect would it have on the final determination if an innocent employee were offered mitigators or extenuators at this point in the process? One cannot draw a direct comparison between the administrative process and a criminal court, but there is a parallel between this and the right of one convicted in criminal court to make statements at a sentencing hearing.

During the arbitration hearing, you heard the State's representative suggest that no opportunity was needed to present mitigating and extenuating circumstances, that we should know that the State does that automatically in every instance. That is an issue we very much disagree upon, an ask you to review a few pages in the record surrounding the termination of a long time employee at Spring Creek³³ in making up your own mind on this point.

We ask you not to legitimize the employer's attempt to remove the Pre-imposition from the Bargaining Agreement. Our Agreement contains few of the checks and balances afforded to Alaska State Troopers by their contract³⁴, yet we deal with a very similar and litigious segment of the public.

³¹ Association Exhibits A-20, A-21, A-22, A-23,

³² Association Exhibit A-22

³³ Association Exhibit A-104, Pages 3 and 4 and the last paragraph on Page 19 speaking to a positive work record for over 19 years

³⁴ Joint Exhibit 3, Article 7, Pages 12-18

State's proposed Article 12.3 A: Notice
(NON-MONETARY)

State proposal: The State proposes deleting portions of Article 12.3 A as follows: "When a formal investigation is concluded and a course of action determined, the State shall promptly notify the member(s) under investigation and the Association. ~~The Employer shall endeavor to provide notice no later than thirty (30) days after the pre-imposition interview. No right to representation exists where the purpose of the meeting is solely to impose discipline based on a previously concluded investigation.~~"

ACOA Argument: The Association objects to the State's proposal to delete the requirement to "endeavor" to provide notice within thirty days of a pre-imposition hearing, as we object to their proposal to remove pre-imposition hearings entirely from the contract, which we strenuously object to in our response to the State's Article 12.2 E proposal. As an aside, we suspect the State's representatives may have been over exuberant in continuing their deletion through the last line of the paragraph, which states that members do not have a right to representation if a meeting is solely to impose discipline from a previously concluded investigation. That does not appear to be an item they would thoughtfully wish to remove' likewise it is not a line we object to removing.

ACOA's proposed Article 12.3 A: Notice of Closure (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language and deleting the lined through language in Article 12.3 A: "~~When a formal investigation is concluded and a course of action determined,~~ The State shall promptly provide the member(s) under investigation and the Association written notification when an investigation is concluded. The Employer shall endeavor to provide notice no later than thirty (30) days after the Investigative Interview or, if a Pre-imposition Interview is held, within thirty (30) days following that event. No right to representation exists where the purpose of the meeting is solely to impose discipline based on a previously concluded investigation."

ACOA argument: The Association's proposed changes to Article 12.3 A are more stylistic than substantive and were intended for clarification. The effect of accepting the Association's proposal would be to continue the status quo.

The Association's experience is that obtaining the previously agreed upon closure requires a concerted follow-up effort at several institutions, although all thirteen are subject to the same Article 12.3 A. The Association's motivation in proposing this change was to obtain an opportunity to re-emphasize the Employer's responsibilities in this area. We are far more concerned with the negative effect the State's proposed Article 12.3 A language will have than with defending our own and will argue against it separately.

ACOA's proposed Article 13.1 A: Forty-two (42) Hour Schedule (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: "The workweek for employees assigned to a forty-two (42) hour schedule shall consist of forty-two (42) hours in pay status and two consecutive days off within a maximum of seven (7) days, ~~allowing for two (2) consecutive days off and~~ All such employees shall be guaranteed a full workweek. The furlough provisions of 2 AAC 07.407 do not apply."

Members shall receive overtime pay at the rate of one and one-half (1 1/2) times their regular rate of pay for all hours in pay status over the member's normal scheduled workday. ~~Work performed by overtime eligible employees in excess of forty-two (42) hours of work in a workweek is overtime and shall be paid at the rate of one and one-half (1 1/2) times the applicable regular or shift rate of pay. Overtime pay or other premium pay shall not be pyramided or duplicated. Hours paid at the rate of one and one-half (1 1/2) the appropriate rate of pay for any reason shall be credited only once in the calculation of hours in the workweek.~~

ACOA Argument: As testified to during the arbitration hearing, the Association's changes in the first paragraph of this proposal are more stylistic than substantive and are intended for clarification. Such is not the case with our proposed changes in the second paragraph.

Our proposal asks for forty-two hour employees to receive time and one-half for all hours worked over their normally scheduled workdays. At the time this was presented, the Association only proposed this change for forty-two hour employees, feeling that, in most instances; eighty-four hour employees were adequately and fairly protected by the provisions for RDO (Regular Day Off) pay in Article 13.11. We will counter the State's proposal to take RDO Pay away as a separate matter.

Forty-two hour employees are at a decided disadvantage when called upon to work additional hours during a workweek that contains a holiday or during which they took leave. Predictably, leave and holidays keep them below their overtime thresholds and make them the most immediate and least expensive target when someone is needed to fill in for short staffing on a Security Shift. Even without leave or a holiday, their target-ability is further enhanced by the language currently found in Article 13. 5 A 3 a, which precludes the payment of four hours minimum overtime when less is required - if the work is assigned before they depart for the day or when the additional work is scheduled for the next day before departing today. One last factor comes into play to make 42-hour employees prime targets to be held over, given the requirement that 16 hours is the maximum anyone can work, absent an emergency. Eight and one-half (8 1/2) and or ten-hour a day Officers generally have more hours available to work than do the twelve hour officers.

The number of Employees affected by this proposal is relatively small, probably less than seventy state-wide. Granting of this proposal would go a long way to reducing the cheap availability target from forty-two hour Officers' backs and would reduce one of the few remaining disincentives for those working the forty-two hour work week. The Public Safety Employees Bargaining Agreement³⁵ provides this benefit to all 552 of its Bargaining Unit Members³⁶.

³⁵ Joint Exhibit J-3, Article 15, Section 14 b, Page 67 and 68.

³⁶ Public Safety Officers Bargaining Unit Profile at <http://dop.state.ak.us/iscsi/fileadmin/LaborRelations/pdf/buprofiles/PSEA.pdf>

ACOA's proposed Article 13.2 F and G: Holiday Pay for Hours Worked and Adjustments
(MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlines language:

13.2 Eighty-Four (84) Hour Schedule

- F. "If a holiday falls on the employee's regularly scheduled day off, the employee shall receive payment for the holiday for ~~eight (8) hours~~ the number of hours they are scheduled to work on their regularly scheduled workdays at the straight-time rate, provided the employee was in pay status for a portion of the last regularly scheduled workday prior to the holiday and in pay status for a portion of the next regularly scheduled workday after the holiday. Such holiday pay does not count for the purpose of computing overtime, nor the purpose of fulfilling the work period, unless worked as provided in paragraph E above."
- G. ~~"Every effort will be made to include adjustment(s) for holiday pay in the pay warrant issued for the appropriate pay period. If not possible, the adjustment(s) for holiday pay may appear on the next regularly issued pay warrant for the pay period following the pay period in which the holiday(s) occurred. Penalty pay shall not apply for pay shortages, which result from holiday pay adjustments."~~

ACOA Argument: These proposals are consistent with our positions in Article 19.2 B 2 and B 3. Arguments will be presented in conjunction with discussing those proposals.

ACOA's proposed Article 13.3 A 4: Management Responsibilities (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: “Management shall be responsible for the correct application and execution of the procedures contained herein. On occasion, Management may choose to delegate the tasks enumerated herein to certain Bargaining Unit members, however the responsibility for completing such tasks correctly remains Management’s and cannot be passed to non-supervisory personnel.”

ACOA Argument: In 2005, Arbitrator Castrey directed the State to pay a grievant for the hours he missed due to being erroneously passed over on the call-in list³⁷. The State, in most cases that followed that decision, have paid for hours missed due to persons being erroneously passed over, with a notable exception being when a question exists as to whether or not a person was called. The occurrence of an Officer being missed are rare, but in those instances, missed overtime payments have been made in response to Employee Notices of Pay Problem filed directly with the Employer and absent any Association intervention. However, whenever the issue of someone being passed over for overtime is discussed, the Employer is always quick to threaten disciplining members who were involved with the call-in process during an overtime skip, even though the numbers are not significant and patterns involving the same callers do not exist. We are troubled by Management’s threateningly suggesting discipline as a fix. In our judgment, it would make far greater sense for Management to exercise some modicum of supervision in the process. The Shift Sergeants, who are called upon to exercise overtime lists, are often at the center of every disturbance and crisis within our institutions and often must prioritize among the tasks that are thrown at them, to include the task of accurately completing the overtime list. The Shift Sergeants who make overtime calls are often at the mercy of others who did not accurately record the events that took place before they came on duty, such as those who exercised the list to pre-schedule necessary overtime for the shift that started their week off the same day that the Sergeant tasked to continue it, took over.

You heard testimony about a retired Assistant Superintendent who made it his mission to insure that those who would use the list were sufficiently informed to complete call-ins accurately. He took it upon himself to function like a manager; he reviewed the overtime sign-up list each week to ensure that it accurately reflected the required information. He made certain that the Sergeant who assumed duty Wednesday night, the last shift of the workweek, knew where he was on the list after pre-scheduling, he checked with the Sergeant who took the post Thursday morning to make sure he knew where he was on the list as he started his week on duty; he periodically reviewed the log and call records and kept things on track, and yes, when the facility was a hub-bub of activity, he made it a point to let the Sergeant know that he or someone else could complete the calls as necessary. He delegated the required tasks, but supervised to a level that allowed him to ensure that the responsibility was met.

³⁷ Association Exhibit A-28

The Employer attempted to characterize the Association's proposal as tasking Supervisory personnel to be responsible by having Lieutenants make the calls. That is not what our proposal states. The language does not prevent Correctional Officers from working the overtime list.

We did and do point out that the number of Supervisory personnel has increased since Article 13's procedures were first written, and that Lieutenant positions exist now that did not exist back then³⁸, many created out of vacant Correctional Officer positions from this bargaining unit. In spite of added layers of supervision, Management has an apparently natural tendency to hold the Officers they supervise wholly accountable without sensing a need to constantly train and supervise. There is no reason for Management not to accept more responsibility in this area.

In addition, as was testified to, at some institutions the amount of overtime needed and the number of C.O.s on the overtime list can be excessive. When a C.O. has to make 100 calls, in a short period of time because of inadequate staffing, he should not be the one penalized.

³⁸ Association Exhibit A-27

ACOA's proposed Article 13.3 B 4 and B 5: Pre-calling and Discipline Issues (NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

"B 4: Work Assignment Contact Lists will be used for purposes of pre-scheduling and for calling in Correctional Officers for work assignments. Correctional Officers on the List will be called in rotation. The Employer's designee is responsible for recording the attempted contact on the form and the nature of the response, if any. If the attempt ends with a message recorder, beeper, etc., there is no requirement that a message be left or additional contact attempt be made before moving to the next name on the list. Correctional Officers may supply up to two (2) telephone numbers on the Work Assignment Contact List and both will be called."

"B 5: A contact attempt is presumed to have been made as recorded. ~~Failure to complete Work Assignment Contact Lists properly may result in discipline.~~ "

ACOA Argument: As testified to during Arbitration, the Association's proposed change to 13.3 B 4 is another one of several proposals that is more stylistic than substantive, scheduling is scheduling whether done in advance or after the fact and use of the overtime list is needed in any event, which is the past practice. The significant increase in pre-scheduled overtime during the early years of this contract, as many as one hundred and forty-one twelve hour overtime slots per week at one institution, was the driving factor behind this proposal, but it is still a stylistic change.

The Association's proposed deletion in 13.4 B 5 is a significant change for our members, particularly in the light of Management's continued posturing regarding the imposition of discipline for overtime skips. We would ask you to take our Arguments for Article 3.3 A 4 into account. Rather than repeat those arguments here we will simply point out, as we did in testimony during arbitration, that the inclusion of this language in our contract neither adds to nor subtracts from the employer's right for just cause discipline.

ACOA's proposed Article 13.5: Recall (MONETARY)

ACOA proposal: The Association proposes deleting and replacing Article 13.5 A 1 through A 3 d with the following underlined language: “An overtime eligible Bargaining Unit member who is held over at the end of their assigned shift, or who is called in to work during their regularly scheduled non-duty time shall be entitled to a minimum of four (4) hours recall premium pay at the rate of one and one-half (1 ½) times their regular rate of pay (including the appropriate shift and differential). Should the total held-over or callback hours worked exceed four (4) hours, an overtime eligible Bargaining Unit member shall receive recall premium pay at a rate of one and one-half (1 ½) times the Bargaining Unit member's appropriate rate of pay (including the appropriate shift differential) for all such hours worked.

A. ~~Overtime Eligible Bargaining Unit Members.~~

- ~~1. If an overtime eligible Bargaining Unit member is called back to work within four (4) hours after the completion of the member's shift, the member shall be paid recall premium pay at a rate of one and one-half (1 ½) times the Bargaining Unit member's regular pay rate for actual hours worked. Regular rate of pay is the applicable rate for regularly scheduled work.~~
- ~~2. If an overtime eligible Bargaining Unit member is recalled later than four (4) hours after completion of the member's regular shift, the member shall be entitled to a minimum of four (4) hours recall premium pay at a rate of one and one-half (1 ½) times the Bargaining Unit member's appropriate rate of pay (including the appropriate shift differential). Should total callback hours worked exceed four (4) hours, an overtime eligible Bargaining Unit member shall receive recall premium pay at a rate of one and one-half (1 ½) times the Bargaining Unit member's appropriate rate of pay (including the appropriate shift differential) for all such hours worked.~~
- ~~3. The recall provisions of A.1 and A.2 do not apply in the following cases:
 - ~~a. If the additional work assignment has been scheduled prior to the Bargaining Unit member's leaving the work site at the end of the shift;~~
 - ~~b. If the member who is contacted to return to work is on standby when contacted to return to work;~~
 - ~~c. If the member has volunteered to be called for overtime during a specified pay period;~~
 - ~~d. If the member is not required to report to a workstation or other location in order to perform the work.~~~~

~~In such cases, all hours worked will be paid at the appropriate rate of pay.”~~

ACOA Argument: The Association's proposal combines the current language into one paragraph and deletes the disqualifiers currently found in 13.5 A 3 a - d. In discussing the deletions being made, we will devote individual paragraphs to 13.5 3 a and 3 c and will discuss 13.5 3 b and 13.5 3 d in one combined paragraph.

First, the issue of the minimum four hours recall provision not applying if the work was scheduled prior to a member's leaving the worksite at the end of their shift – we propose to delete that (13.5 A.3.a). Voluntary and mandatory holdovers are a fact of life and the decision to hold an Officer or Officers rarely, if ever, is withheld until after the on-duty crew has departed for the day, requiring someone to be called back. Whether one stays over voluntarily or because they are required to, plans are cancelled on the expectation and liability of being allowed to work at least four hours. Employees have a reasonable expectation to be allowed to work the hours they are being held over to work. Productive work, such as shakedown inspections or additional security checks, is always available in correctional institutions. Requiring the employer to provide or pay for a minimum of four hours is reasonable.

Next, the issue of the minimum four hours recall provision does not apply if a member volunteers for overtime during the same pay period – we propose to delete that (13.5 A.3.c). Pay periods for eighty-four hour employees are two weeks long and consist of one week of work and one week off. A member who signs up for overtime on his or her pay period week-off can be ordered to stay additional hours or to return for additional hours during their corresponding work-week. When this occurs, the member is denied the minimum four-hour work or pay protection that non-volunteers are afforded. Forty-two hour employees who sign up for overtime only on their days off, for example on Saturday and Sunday, are disqualified from the minimum four-hour provision when they are required to stay or are called back to work on their scheduled duty days. In essence, about the only members who qualify are the ones who never volunteer for any overtime, or those able to slip past their supervisors before being told to stay.

Lastly, the four-hour disqualifiers for those on standby and those not required to return to a workstation or other location to perform work (13.5 A.3.b and d). We believe that those on standby are adequately covered by the provisions of the Fair Labor Standards Act concerning the pay due on standby and when standby status ceases and work begins. If the Department feels a need to further enumerate those rules they should do so. The fact is that Standby status applies to few or no Correctional Officers and if it did, we would suggest the rules relating to it are inadequate in our Agreement. We are not certain what the Department had in mind with the disqualifier relating to someone who is required to work without being required to report to a workstation or location.

Correctional Officers deserve the right to go home at the end of their shifts and deserve to be adequately compensated for broken family and personal plans when they are not allowed to. We believe being compensated for a minimum of four hours when called back to work or when held over is equitable.

**State's proposed Article 13.3 B 5: Contacts made as recorded
(NON-MONETARY)**

State proposal: The State proposes deleting the strike-through language: "~~A contact attempt is presumed to have been made as recorded.~~ Failure to complete Work Assignment Contact Lists properly may result in discipline."

ACOA Argument: The State's proposal is ill advised. Article 13.3 B 4 directs that each attempted overtime contact and the response be entered into the log. I am not aware of a single institution that does not routinely keep this required log. The language the State proposes to delete was written into the contract for the purpose of avoiding "he said/she said" disagreements and grievances. In many instances, the required presumption that contact attempts were made as recorded has precluded disagreements between the Association and the employer. In one instance, unfortunately a recent one, it is central to an issue involving two employees who both parties believe to be credible; one who claims he wasn't called and the other who, when asked several weeks after the fact, recalls having called him. The log in this instance does not reflect that a call was made. This is one of very few recent overtime disputes that was not resolved with an Employee Notice of Pay Problem and that ultimately will go before an arbitrator for resolution. This writer is not aware of any other instances where in the State exhibited any concern over entries in the call-log being presumed to have been made as logged, although this same article has existed in the Agreement at least as far back as the 2000-2003 Agreement.

State's proposed Article 13.5 A 3. e: Pay when Called for Investigative Interviews (Monetary)

State proposal: The State proposes adding the following disclaimer to the list of reasons a member would not be due a minimum of four hours recall premium pay: "If the member has been called in for an investigative interview."

ACOA Argument: Article 13.2 A states that, "The workweek for employees on the twelve (12) hour schedule shall be a fourteen (14) day work period consisting of eighty-four hours in pay status with a maximum of seven (7) working days and seven (7) consecutive days off, and all employees shall be guaranteed a full workweek."

Management is more prone to violate their employees' rights to days off and time off unnecessarily when the blocks and incentives for not doing so are removed. Members who receive Notices of Investigative Interviews should not be presumed guilty before investigations have been completed and deserve to be afforded the same Article 13.5 rights as all other Officers. Requiring an Officer to come in for an Interview on his or her time off should be done only as a last resort. This will not be the case if this Article is sustained.

Management has a variety of tools available for use when they believe they are dealing with an egregious issue and has considerable flexibility to work around less serious disciplinary issues. We appreciate the opportunity to discuss a few tools and options and will start with investigations of non egregious issues. At any given time Officers are generally either working the night shift or resting up, working the day shift or resting up, or on their scheduled weeks off. With proper Notice, Officers working the day shift can be called in at almost any time. An Officer working on the Night shift (6:00 pm to 6:00 am) can be scheduled in for an interview anytime from 3:00 pm to 9:00am. When dealing with minor issues involving Officers on weeks off, Management just missed the first option, which would have been to expedite the process to conduct the hearing while the Officer was still at work. Two particularly viable options remain if that one was missed. The first would be to schedule the interview for a day after the employee returns to work. The least desirable option for all involved would be to schedule the interview on an employee's day off and pay for a minimum of four hours of the employee's time. The employer has separate options for dealing with more egregious issues.

Department of Corrections Policy and Procedure 202.08 (Disciplinary Actions) details several of the options available in instances where egregious issues are thought to be involved. We did not foresee using this as a reference, but we will mention it in some detail and have provided a link in the footnotes that leads to it on the Department's web site³⁹. Office managers and facility managers (e.g., Superintendents) have the option of placing employees on suspensions with pay for up to three work days. Using this option, an employee could be suspended leaving work at the end of their eighty-four hour work week. They could be prohibited from setting foot on Department property and/or from representing the Department in any fashion, and could be scheduled to return for an interview at sometime during the first three days of their next normally scheduled workweek. Only the three days they were not allowed to return during that workweek would qualify as paid administrative leave.

³⁹ <http://www.correct.state.ak.us/corrections/pnp/pdf/202.08.pdf>

P&P 202.08 authorizes the Directors of the Department and Human Resources to extend the suspension for up to 14 days; the Commissioner is empowered to extend it to the 30 day point. We ask you remind the Employer of the many tools they have that can be used and deny their request to be allowed to call Officers in for Investigative Interviews without having to pay them the minimum four hours pay.

ACOA's proposed Article 13.7 B: Standby Pay (MONETARY)

ACOA proposal: The Association proposes deleting the existing language in Article 13.7 B and replacing it with the following underlined language:

When a member is directed to be on standby, the member will receive standby premium pay in an amount equal to $\frac{3}{4}$ of an hour's pay at the member's regular rate of pay, for each eight-hour period, or portion thereof, that the member is so assigned. The member's regular rate of pay shall include geographic and shift differential.

~~An amount equal to ten percent (10%) of seven and one-half ($7\frac{1}{2}$) times the employee's hourly base salary will be paid to a member who is assigned to a standby roster for each calendar day or portion of a calendar day of such assignment. The daily rate of compensation shall include geographic and shift pay as appropriate.~~

ACOA Argument: Example A - Current Contract Language: The current contract language calls for an employee on standby to be paid an amount equal to 10% of $7\frac{1}{2}$ times the employee's hourly base for each calendar day or portion of a calendar day of such assignment. The daily rate of compensation shall include geographic and shift pay as appropriate. For an employee whose standard rate of pay is \$20.00 per hour, with no geographic or shift differential, to be on standby for one calendar day or a portion thereof, the math would be:

$$7.5 \times \$20 = \$150/10\% = \$15.00$$

Example B – Association Proposed language: The Association's proposal is that an employee on standby be paid $\frac{3}{4}$ th of one hour's pay for each eight-hour standby period or portion thereof. The daily rate of compensation shall include geographic and shift differential. For an employee whose standard rate of pay is \$20.00 per hour, with no geographic or shift differential, to be on standby for eight hours, the math would be:

$$\frac{3}{4} \times \$20 = \$15.00$$

Obvious Differences and costs: Hypothetical situations can be depicted that allow either example to be portrayed as costing more than the other. One such situation would be the person in Example B remaining on standby for one eight-hour period and a portion or all of another, in which case the cost will be \$30.00, twice as much as the current contract's cost. On the other hand, the current contract language is based on calendar days; if a night standby period was to start at 6:00 p.m., the same time as institutional night shifts, and was to extend until 1:00 a.m., the cost would also be \$30.00, twice what it would have been had the standby period not continued to a new calendar day.

The Association is not aware of any Correctional Officers currently performing standby duty and the Employer did not object to that statement when it was made during arbitration. Some time ago, Correctional Officers performed Electronic Monitoring standby duty on weekends and at nights, but that duty is now performed solely by Probation Officers. That might seem to make this a moot point except that it is much easier for a non-math major employee who never performed standby before to pick up the proposed language and

determine what they are due for standby than it is for that same person to pick up the current contract and determine what they are due.

The cost of the current language differs most significantly from the proposed language if a standby period crosses over into another calendar day, even if the total standby period is only 30 minutes long. The cost of the proposed language differs most significantly from the current language if the length of the standby period exceeds eight hours. Standby costs are most easily controlled if the person scheduling the standby understands the pay calculations and we would argue that what we have proposed will be easier to calculate and control.

ACOA's proposed Article 13.8: Logging work performed on the Telephone (MONETARY)

ACOA proposal: The Association proposes adding the underlined language: "When an overtime eligible Bargaining Unit member is required to perform work by telephone after the completion of the member's scheduled work hours or while in standby status, the time worked shall be recorded on the time sheet in fifteen (15) minute increments."

ACOA Argument: It is possible that the boldface type and underlining in the proposal originally presented to the State has caused them to misinterpret the reasonableness of what the Association has proposed. The Agreement currently states that work by telephone, at the completion of a members scheduled work hours, shall be logged in fifteen minute intervals. That is not something new. What is new is the addition that work performed by telephone shall likewise be logged in fifteen minute increments. The reason this was proposed dates back to several years ago when Correctional Officers and Probation Officers shared duties and performed telephone duties while serving in the Electronic Monitoring Section. One major function of the Officers on standby in this section was to be available to perform the "work" by phone when and as required, such as responding to a contract monitoring services' alarm call, answering questions, and providing guidance to persons under electronic monitoring supervision. Incomplete records were kept and at least two members of two separate bargaining units claimed sizable payments several years later after producing the security company's records of the time they spent on the phone performing tasks that the FLSA recognized as work⁴⁰. The five words we propose adding should help prevent this from happening at some time in the future if for some reason Correctional Officers find themselves performing standby duty.

⁴⁰ Association Exhibit A-30

ACOA's proposed Article 13.10: Overtime Pay Calculations (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: ~~When a Bargaining Unit member who is eligible to receive overtime works a shift that qualifies for shift differential pay, the Employer shall compute overtime on the basis of the following formula:~~

$$(\text{Base rate} + \text{shift differential}) \times 1.5$$

As provided for in the Fair Labor Standards Act, Overtime shall be compensated at the rate of one and one-half (1.5) times the member's regular rate of pay during the pay period in which the overtime is worked.

ACOA Argument: The Association's proposal is in line with the requirements of the Fair Labor Standards Act which requires that almost all remuneration be taken into account in making overtime calculations⁴¹. Examples of types of remuneration that Correctional Officers receive that the FLSA requires be included in overtime calculations are Shift Differentials, Specialty Pay, Longevity Pay, and Education Incentive Pay. The current contract language and does not comply with the FLSA and we have been advised that the FLSA prevails in this instance. It would be to everyone's benefit to enter into a new contract period with FLSA compliant language in instances where the FLSA prevails.

⁴¹ 29 U.S.C. 207 (e); Martin v. D. Gunnels Inc., 30 WH Cases 997 (C.D. Cal. 1991) as related in Association Exhibit A-31
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**ACOA proposed Article 13.11, 13.12, 13.13:
RDO Premium Pay, Hostage Situation Pay, Field Training Officer Pay
(MONETARY)**

ACOA proposal: ACOA proposes moving these three Premium Pay Articles to Article 21 and will discuss them as required there.

ACOA Argument: ACOA believes it is reasonable to list all manners of Premium pay in one section, that section being the Article having to do Wages. At one point the Employer articulated that that also made sense to them, as was evidenced by their agreement to move the article on Hostage Pay to Article 21; however, at some point we appear to have parted.

**ACOA's proposed Article 18.2 B: Relief Period
(MONETARY)**

ACOA proposal: The Association proposes adding the underlined language: Members may combine their meal breaks and fifteen (15) minute relief periods, as they wish in concurrence with institutional needs.

Proposed language: As was testified to in Interest Arbitration, some institutions allow Officers different options for breaks. Some allow members to combine their fifteen (15) minute breaks together or even to combine their fifteen (15) breaks together with their thirty (30) minute lunch break. These alternatives have been advantageous for both institutional Management, as well as employees. The language proposed makes it clear that Management has the final say so on any arrangement. Alternative language was discussed in arbitration. "*The State and ACOA shall meet and confer, in every facility, to determine whether employees may combine their meal breaks and fifteen minute relief periods.*" The language proposed is acceptable to ACOA as well.

ACOA's proposed Article 18.3: Meal and Relief Break Facilities
(MONETARY)

ACOA proposal: The Association proposes adding the underlined language: The employer shall provide an adequate area away from inmates where Officers may store and eat their meals. This area shall include running water, adequate dry storage and cold storage to accommodate assigned staff. (Facilities not currently possessing such facilities shall be given 18 months from the effective date of the contract to provide them).

ACOA Argument: The State testified that this was a monetary item. Since even moving beds out of a cell or buying a small refrigerator could cost money, we accept the State's position that this is a monetary item. With monetary items, under the Ground Rules, the Arbitrator can award the State's proposal, the Association's proposal or formulate a proposal of his own.

The State testified that this would cost mega dollars to build a separate building for employees next to the prison. That is simply absurd. As was testified to, all the Correctional Officers are requesting is an area away from the inmates to store food and eat. When inmates are present, C.O.s have to stay on guard, they cannot relax. In addition, you would not want inmates having access to your food.

As was also testified to, most institutions already have a separate place for C.O.s to eat with the exception being small institutions, such as Mat-Su Pre-Trial (MSPT). At MSPT, the employees did have a separate break room; to eat and take breaks but the Department took it away. It is not too much to ask to have it back. Where it is feasible, where an area is available within the institution that could be used as a break room or area, the State should provide it.

ACOA's proposed Article 19.2 B 2 & B 3: Observance of Holidays
(MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

B. Eighty-Four (84) Hour Schedule:

- 2: If a holiday falls on the employee's regularly scheduled day off, the employee shall receive payment for the holiday for ~~eight (8)~~ twelve (12) hours at the straight-time rate provided the employee was in pay status for a portion of the last regularly scheduled workday prior to the holiday and in pay status for a portion of the next regularly scheduled workday after the holiday. Such holiday pay does not count for the purpose of computing overtime, nor the purpose of fulfilling the work period unless worked as provided in Paragraph 1 above.
- 3: ~~Every effort will be made to include adjustment(s) for holiday pay in the pay warrant issued for the appropriate pay period. If not possible, the adjustment(s) for holiday pay may appear on the next regularly issued pay warrant for the pay period in which the holiday(s) occurred. Penalty pay shall not apply for pay shortages, which result from holiday pay adjustments.~~

ACOA Argument: Correctional Officers work twelve (12) hour shifts, not eight shifts. This Article should be consistent with Correctional Officers' actual work hours. If a Correctional Officer takes a leave day, the State takes twelve (12) hours. As with other Articles in the Corrections contract, if you take twelve (12) hours you should give twelve (12) hours.

As for 19.2 B 3, why should holiday adjustments be any different from any other pay issue? To our knowledge, no other Alaska contracts have this language.

ACOA’s proposed Article 20.1 A.1: Leave Accrual
(MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language in the charts below:

Years of Service	Hours/Pay Period
0-2	7.38
2-5	8.31
5-10	9.23
10+	11.08

<u>Years of Service</u>	<u>Hours/Pay Period</u>
<u>0-2</u>	<u>11.08</u>
<u>2-5</u>	<u>12.47</u>
<u>5-10</u>	<u>13.85</u>
<u>10-15</u>	<u>16.62</u>
<u>15 – 20</u>	<u>20.00</u>
<u>20+</u>	<u>24.00</u>

ACOA argument: The Association proposes to increasing the leave accrual rate for a starting Correctional Officer to an amount that equates to 2 days of leave a month; to increase the leave accrual rate for a 2 to 5 year Officer to an amount that equates to 27 days per year; to increase the leave accrual rate for a 5 to 10 year Officer to an amount that equates to 30 days per year; and to add new leave accrual increases to Officers at the 15 and 20 year points. Correctional Officer Pay and benefits are based on a 26 bi weekly pay system.

The proposal to increase the accrual rates for year groups already contained in the Agreement is based upon the provisions of Alaska Statute and the Alaska Administrative Manual. Adding new and increased categories at the 15-20 and 20+ year groups is intended to enhance recruitment and retention.

Alaska Statute 39.20.200⁴² States that Officers and employees of the state are entitled to personal leave with pay that accrues as follows: (1) two days for each full monthly pay period in the case of officers and employees with less than two years service; (2) Two and one-quarter days for each full monthly pay period in the case of officers and employees with two but less than five years of service; (3) Two and one-half days for each full monthly pay period in the case of officers and employees with five but less than ten years of service; (4) Three days for each full monthly pay period in the case of officers and employees with ten or more

⁴² Page 2 of Association Exhibit A-32

service. This statute is converted to charts and referenced the Alaska Administrative Manual 280.020⁴³. The Correctional Officer's request regarding leave accrual is very similar to what was granted to other Public Safety Officers in PSEA's 2008-2011 Bargaining Agreement⁴⁴

The Association's proposal to add leave accrual increases for Officers beyond the 10+ year point that currently is addressed in the contract is intended incentive to assist in the retention on seasoned and experienced Officers. Challenges in attracting and retaining employees are well document. In August of 2007, Governor Palin issued Administrative Order 237⁴⁵ to form an Executive Working Group to address such problems. In August of 2008 the Anchorage Daily News carried an article covering some of the steps being taken to recruit and retain Troopers and Public Safety Officers. The recruitment and retention challenges for Correctional Officers are no less of a Problem, as partially evidenced by Correctional Officers being offered a "finder's fee" type leave balance incentive very similar to that written into the Troopers most recent contract⁴⁶. This "finder's fee" is a step in the right direction, but considering the planned opening of the Goose Creek Correctional Center in 2012⁴⁷ that is expected to house 1200 to 1500 prisoners; additional incentives such as contained in this proposal are needed as well. The State of Alaska Workforce Profile for Fiscal Year 2007⁴⁸ reflected that 42 of 115 Correctional Officers III would be eligible to retire by the end of FY11 and that 12 could retire by the end of FY08. The data on Correctional Officers II suggests that 122 of 496 Correctional IIs will be eligible to retire by the end of FY11 and that 60 could retire by FY11. Even 2 CO Is will be eligible to retire within five years. These are normal retirements; resignations, non-retentions, and medical retirements would be additional. Surely the State should be taking all reasonable efforts to attract and retain Officers prior to the opening of Goose Creek. Our inquiries suggest that pay and benefit incentives will be the most effective.

⁴³ Page 1 of Association Exhibit A-32

⁴⁴ Joint Exhibit J-3, Article 14, Section 1 a 1-4, Page 50

⁴⁵ Association Exhibit A-78

⁴⁶ Joint Exhibit J-3, Article 14, Section 7, Page 55 and State Exhibit 25, last page

⁴⁷ Association Exhibit A-64

⁴⁸ Association Exhibit A-68, Page 5

ACOA's proposed Article 20.1 C: Leave – Personal Leave (NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

C. Personal leave may be taken by an employee at any time business permits, upon prior permission by the facility supervisor or designee. An employee's request for personal leave will not be unreasonably denied; however, at a minimum, when requested, pre-scheduled leave shall be approved for no less than one Officer from each twelve-hour security shift scheduled to be on duty. A requirement to pay overtime shall not be reason to deny leave to this minimum number of Officers. ~~However for employees on the 84-hour schedule, approval will not normally be granted for non-emergency personal business or medical appointments. This does not preclude approval of personal leave for vacation purposes, which is contiguous with the employee's days off.~~

ACOA Argument: Institutional staffing is broken down into four security shifts. At any given time one shift is working 12 hour days, another is working 12 hour nights, and two are on their scheduled week off break. The Association maintains that no less than one officer from each on duty shift should be allowed on leave at any given time, regardless of whether overtime might be needed or not.

The employer determines how many Officers must be hired to meet its staffing needs. This is done by determining what posts are essential and must be staffed 24 hours a day and applying a "relief factor" that takes into consideration Alaska's seven day off work schedule, vacation days, sick leave, holidays, training requirements, meal and break requirements, etc. In 1997, the department used a relief factor of 5.47, which meant that 5.47 Officers were required to staff each essential 24 hour post⁴⁹. Over the years the Department has lowered the relief factor to approximately 4.7. Overcrowding, the lowering of the relief factor and other factors that will be discussed have made it increasingly difficult for Correctional Officers to be able to take leave.

Add the Department's ability to control when replacements are hired and how long they allow positions to remain vacant into equation along with the difficulties precipitated by a lowered relief factor and it becomes increasingly more difficult for Officers to get leave requests approved. Historically, the Department has been reluctant to advertise for forecast and known vacancies prior to the opening actually existing. That has left many vacancies open for the period of time it takes to recruit and hire a new Officer. The employer controls the relief factor and the hiring process. When it's controlled poorly, Officers wishing to take leave are restrained from doing so.

One last factor comes into play along with those already mentioned. That is an unwillingness to expend overtime dollars to allow an Officer to take leave. In most cases, if a proper relief factor was used to determine staffing needs and replacements were hired in a timely manner, overtime costs would be much lower. When staffing needs are not properly provided for overtime costs increase or Officers are denied leave.

⁴⁹ Association Exhibit A-109, Cleary Report, Page 9

Staffing levels are not a mandatory subject of bargaining and, except through legislative and public awareness campaigns, the Association has little influence. Leave, however, is a mandatory subject of bargaining and it is one very much affected by staffing levels. In this regard, we argue that it is entirely reasonable to expect the employer to release at least one Officer from each shift at our smaller institutions simultaneously for leave, we think that goes hand in hand with existing language that states "leave will not be unreasonably denied".

ACOA's proposed Article 20.2 A.1: Requirement for Physicians Certification

(MONETARY)

ACOA proposal: The Association proposes changing the requirement for physician's certificates contained in Article 20.1 A.1 as follows:

Personal leave for medical purposes may be granted by the facility supervisor or designee only in the following instances, ~~subject to 20.1D above.~~

At the discretion of the facility supervisor or designee, an employee may be granted personal leave for a medical appointment or illness or injury of the employee. Employees shall not be asked to provide a physician's certificate for illnesses of less than three (3) days unless they have been previously notified in writing that they are suspected of abusing leave. All requests for physician's certificates for everyday illnesses shall comply with Health Insurance Portability and Accountability Act (HIPAA) confidentiality requirements and with the Americans With Disabilities Act. ~~The employee may be required to support said absence with a physician's certificate. Employees will not be required to provide a physician's certificate for illness of less than three (3) days unless improper use is suspected.~~

ACOA argument: Medical appointments most often must be made in advance and always cost money. There are many medical conditions and illnesses that appropriately cause a person to miss work that people don't generally run to their doctor for. In this age of ever increasing medical fees and rising insurance costs it makes little sense to require visits to physicians to document the brief absences that otherwise would not require medical appointments. In another vein, the protection and confidentiality of personal medical information should receive no less respect contractually than it does legally and the supervisory chain of command should not seek information any more detailed than they are allowed. HIPAA and the ADA provide limitations and provide appropriate channels for employers to gain advanced levels of information that do not include immediate supervisors.

Not allowing the employer to request a physician's excuse for absences of less than three days unless the member has been previously notified in writing that they are suspected of leave abuse is good policy and matches what the Association believes to be the intent conveyed in the Alaska Administrative Manual⁵⁰. Drawing from the record of an arbitration involving a somewhat similar issue in Multnomah County, Oregon⁵¹, the Association argues that its proposed language achieves a proper balance between what is reasonable to Alaska's citizens and what is fair to the employees. It alerts suspected abusers to the employer's intent to require medical certification for future absences and create a cost-effective disincentive for abuse and allows the employee to take action to avoid disciplinary measures.

⁵⁰ Association Exhibit A-34, Page 1, last paragraph.

⁵¹ Association Exhibit A-35, particularly from Page 12

Throughout discussions and at arbitration, the employer argued that this would somehow inhibit their ability to discipline. That simply is not the case. Being denied the ability to demand a medical excuse for an absence of less than three days has nothing whatsoever to do with their right to discipline unacceptable behavior with just cause. For example, if an employee who calls in sick ends up at the same charter boat as his Superintendent, just cause might exist and discipline would not be inhibited.

We close by asking: Why is the employer so much more interested in reducing leave abuse by through disciplinary examples than in preventing it through proactive measures?

ACOA's proposed Article 20.3 A & B: Leave – Absence and Payment for Court Leave and Jury Duty
(MONETARY)

ACOA proposal: The Association proposes adding the underlined language:

- A. An employee who is called to serve as a juror or subpoenaed as a witness, other than for Department Business shall be entitled to court leave for time spent in court and traveling to and from the institution and the court. (1) An employee's schedule may be adjusted for the duration of the time the employee is schedule to appear provided the Employer receives twenty-four (24) hours notice.
- B. Time spent in court on behalf of the Employer and time spent traveling to and from the institution to court, (2) shall be considered time worked.

ACOA Argument: Court Leave is addressed in Alaska Administrative Manual 280.090⁵². The intent expressed in the opening line of this directive manual is that "A full time, nonpermanent, or temporary employee is entitled to use court leave with no loss in pay and no reduction to annual or personal leave balances when summoned to serve as a juror or when subpoenaed as provided for in AS 39.20.270" (Underline added by the Association for emphasis). We contend that the clear intent is that an employee suffers no loss in pay when serving in court under the condition addressed above, and that that intent applies to the time missed while driving to and from the court just as surely as it applies to the time spent in court. In this regards, we consider our proposal to be more of a clarification than a change. The language being clarified is styled from the manual we quote above.

The Association feels the need to make enter this clarifying proposal because of situations that are encountered periodically at facilities that are located considerable driving distances from the courts where their Officers are called to serve. Most notable of these being Spring Creek, whose Officers are occasionally called to serve in the Soldotna court and, who on rare occasions are called to serve in the Anchorage Federal Court, and Palmer Corrections Center whose Officers must drive from Sutton to attend court in Palmer and who, on rare occasions are called to serve on Federal juries in Anchorage.

⁵² We regret not having included this as an exhibit but it is available on the State's web page through this link: http://fin.admin.state.ak.us/dof/ak_admin_manual/resource/280.pdf

ACOA's proposed Article 20.6 A - D: Leave – Business Leave Bank
(NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

- A. There is hereby created a Business Leave Bank for the sole and exclusive use of the Association. The use of Business Leave Bank shall be administered and managed solely by the Association, in accordance with the provisions of this article. ~~and subject to periodic audits by the Employer. Each audit shall be preceded by written notice, at least forty-eight (48) hours prior to the audit. Audits shall not be more frequent than twice each calendar year. The Employer shall provide the Association with a monthly statement reflecting additions and withdrawals and the current Business Leave account balance.~~
- B. The first eight (8) hours of accrued personal leave of all new Bargaining Unit members shall be transferred to the Association's Leave Bank. Upon request from the President of the Association, when authorized by the membership, the Employer shall transfer from one (1) hour to eight (8) hours from each Bargaining Unit member's personal leave account to the Association Leave Bank. Any additional leave transfers shall be in no less than one (1) hour increments. Additionally, upon request from the President or Business Manager of the Association, the Association shall be allowed to purchase Business leave on a dollar for dollar basis by submitting a check to the Employer.
- C. In addition, any bargaining unit member, at his or her option, may transfer annual leave in increments of one (1) hour to the Association Business Leave Bank. Transfers may be made at any time during the duration of this Agreement, except that no member may transfer an amount of leave that would cause their leave balance to drop below eighty-four (84) hours.
- ~~C.~~ D. Leave assessments from Bargaining Unit members new to the unit and donated personal leave will be converted to its dollar value at the hourly rate of the pay of the Bargaining Unit member from whom the leave was received. Those dollars (with benefit costs) shall be placed in the Business Leave Bank. When Business leave is used in accordance with the other provisions of this section, dollars will be withdrawn from the bank equal to the hourly rate (with benefit costs) of the Bargaining Unit member utilizing the leave times for the hours of leave taken. Leave used shall be no less than in one-hour increments.
- ~~D.~~ E. The Association agrees that it will not use the Leave Bank for any purpose other than bona fide Association business. The Association further agrees that the Leave Bank balance is not returnable to personal leave accounts. Requests for absences from duty for Business Leave shall be made by the President of the Association or the Association Business Manager and addressed to the appropriate Management level as designated in writing by the Employer. Each request will state specifically the purpose of the absence.

~~E.~~ F. State reports indicating the amount of dollars deducted and transferred to the Leave Bank shall have a presumption of being accurate.

~~F.~~ G. Business leave requests, which have an ACOA tracking number, will have a presumption of being authorized. The State shall not be held responsible in any discrepancy between the leave slip submitted by the member and ACOA.

~~G.~~ H. Requests for absences for Correctional Officers business shall not be unreasonably denied. Time paid as Business Leave shall be considered as time worked for the purpose of meeting the minimum required workweek.

ACOA Arguments:

Regarding the Association's proposed changes in 20.6 A: The language that currently exists in 20.6 A is totally out of sync with the realities of what takes place and has taken place for many years. One can only suppose because no one has ever paid attention, it is an area that is problem free. The Association manages the Business Leave Bank in accordance with the provisions of Article 20.6. Whether or not the Association "administers" it is not so clear and might best be understood as we discuss the remaining changes in this section. The existing reality is that the employer, not the Association, maintains all of the auditable records and it is the Association and not the employer who should be asking for audits. The State automatically takes the monetary equivalent of eight hours of leave from each new member and tracks that amount in the account designated for ACOA Business Leave. When the Association wishes to "spend" business leave, it seeks the institutional manager's approval for the leave and provides the member with a number to enter on his/her leave slip. The consecutive list of these numbers, the amount of leave expended, and the members name are all tracked on the only record the Association keeps. The actual leave slip is processed by and through the State and it is the State that deducts the appropriate amount from the account designated for ACOA leave. All of those computations are done by the State. The only valid audit that makes any sense would be for the States records to be audited to allow the Association to verify that the proper sums have been deposited to and deducted from that account. It is a monthly statement of the amounts added to and subtracted from that fund that we are requesting in this change to allow us to properly manage the account, which certainly seems to be administered by the State. We are certain that the State's own rules and regulations call for the auditing of accounts such as this, but that is certainly something we will consider adding into subsequent contracts.

Regarding the Association's proposed changes in 20.6 B: Several months prior to our entering into this round of negotiations, most probably due to personnel changes in a State agency, it became difficult for the Association to find out the amount remaining in our Business Leave Fund. Shortly thereafter, the State informed us that we were almost out of Business Leave. We asked to be allowed to purchase business leave and the State refused. Likewise, they refused to agree to the language we were attempting to bargain for to allow us to do so in the future. The State arguments against this during arbitration made absolutely no sense and defy logic. If the Association was to make a one-time leave assessment of its members, as the contract allows, the State would be forced to convert the number of hours taken from each member into cash to add to the account. That would entail somewhere in

the neighborhood of 750 individual calculations converting hours of leave to cash at each individual members rate of pay. We were led to believe other calculations would be needed to cover additional costs not directly expressed in rates of pay. Perhaps we are confused, but that seems very labor insensitive and risks mistakes proportionate to the number of calculations required. The Association's request to buy leave when desired seems to us as requiring only one transaction to convert a relatively large amount from the Associations monetary bank account by writing one large check to the State. That should be relatively simple and easy and non-labor intensive.

Regarding the Association's proposed changes in 20.6 C: The State, without any expressed reservations or concerns, allowed the Association to collect individual leave donations from members to be added to the Association's Business Leave Account. The language added here is simply intended to memorialize an ongoing practice.

ACOA's proposed Article 20.7 A & B: Leave – Injury Leave (NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

A. Injury Leave Account.

1. Effective July 1, 2009, two hundred and fifty thousand dollars (\$250,000) shall be transferred from the Injury Leave account to fund the Alaska Correctional Officer Legal Trust Fund and the remainder shall be left in the Injury Leave account.

~~2~~ 4. Employer Contribution. Effective July 1, 2009 and for the life of this Agreement, the Employer shall contribute eight ~~four~~ dollars (\$8 ~~\$4~~) per employee in pay status per month to the injury leave account and four dollars (\$4) per employee in pay status per month to the Alaska Correctional officer Legal Trust Fund, as addressed in Article 21.9.

~~3~~ 2. At the end of the fiscal year, the Injury Leave account shall be audited by the Employer and the funds remaining in the account shall be carried forward to the next fiscal year. Upon completion of any audit, a copy shall be provided to the Association offices.

B. Use of Injury Leave. In a case where an employee suffers a qualifying workplace injury or illness, (2) which is accepted by the Employer and paid under the provisions of the Workers' Compensation Act, the following plan shall apply:

1. Subject to availability of funds, an employee who is qualified to receive lost wage compensation under the provisions of the Workers' Compensation Act for an injury or illness suffered in the line of duty shall be granted paid Injury (3) leave of absence up to a maximum of one thousand (1000) hours during the term of this Agreement. ~~If the employee's absence from regularly scheduled work due to injury is more than one thousand (1000) hours, payment for that absence shall be made solely as prescribed in the Workers' Compensation Act and personal leave provisions of this Agreement. The application and interpretation of the provisions of the Workers' Compensation Act are not subject to the grievance/arbitration provisions of this Agreement.~~

2. Time spent on Injury Leave shall not result in a reduction to the employee's personal leave balance and shall not be counted as leave-without-pay for the purpose of advancing the member's merit or longevity anniversary dates.

3. If the employee's absence from regularly scheduled work due to injury is more than one thousand (1000) hours, payment for that absence shall be made solely as prescribed in the Workers' Compensation Act and personal leave provisions of this Agreement. The application and interpretation of the provisions of the Workers' Compensation Act are not subject to the grievance/arbitration provisions of this Agreement.

2- 4. A Superintendent or facility manager need not require a physician's statement in cases when an employee suffers a workplace injury which is the result of a qualifying injury and results in the employee's absence from regularly scheduled work for three (3) days or less.

~~3- 5. Qualification for Injury Leave. To qualify for injury leave, the employee or his supervisor must submit a contemporaneous incident or injury report. An injured employee is not qualified for injury leave unless a request is made in writing to the Superintendent or designee no later than twenty one (21) calendar days from the date the injury occurred, and the injured employee has not previously exhausted the maximum paid leave period for injury under these provisions. Effective 1 July, 2009, a request for Injury Leave to the Superintendent is not required to qualify for Injury Leave; a finding that the injury or illness qualifies for compensation under the Worker's Compensation Act shall be sufficient for this Agreements Injury Leave provisions to be invoked. It shall be the member's responsibility to coordinate with Workers Compensation to obtain documentation that the injury or illness has been determined compensable and to provide his or her Superintendent and the Association with copies of that documentation.~~

5 6. Assignment to Work. A member on either Worker's Compensation or on Injury Leave may be assigned limited duty at the discretion of the Department providing such work does not adversely affect the injury or adversely impact the member's ability to obtain medical treatment.

ACOA Arguments:

Regarding Article 20.7 A 1-3: The Legal Trust is a past benefit that Correctional Officers used to have under ASEA. The ACOA office has fielded umpteen calls requesting its use. The calls pertained to everything from divorces to wills, to real estate ventures to adoptions. The need for minor legal advice or assistance seems to be unending. Additionally, see the Association's arguments associated with its proposal for Article 21.16.

Regarding Article 20.7 B: The Association added "or illnesses" to the following sentence "In a case where an employee suffers a qualifying workplace injury or illness, (2) which is accepted by the Employer and paid under the provisions of the Workers' Compensation Act, the following plan shall apply:" to agree with the language already existing in the first sentence of 20.7 B 1 which states "...for an injury or illness suffered in the line of duty...". The Association recalls this being the intent of this paragraph when we agreed to it in a sidebar during the last interest arbitration we all shared. During the course of this contract, illnesses were covered. MRSA covered by Workers Compensation was covered by the Injury Leave account, as intended.

Regarding Article 20.7 B 1: The Association appears to have deleted a large portion of this article, but in actuality it has simply been moved to the separate sub-section identified as 20.7 B 3.

Regarding Article 20.7 B 2: The Association proposes adding new language stating that: “Time spent on Injury Leave shall not result in a reduction to the employee’s personal leave balance and shall not be counted as leave-without-pay for the purpose of advancing the member’s merit or longevity anniversary dates.” When the Association agreed to this language during a side-bar three years ago it was instead of arguing at arbitration that Correctional Officers deserved the same language that Troopers had at the time that was that they would be granted up to one year of paid Administrative Leave. We believed that the language the State was offering offered 1,000 hours of paid Injury Leave as an alternative, and that like paid Administrative Leave, it would not cause Anniversary Dates to be updated. The State, as the author of this language, was responsible to clearly convey what was intended and bears the bulk of the burden for the disagreements we now have. We have had several Correctional Officers seriously injured responding to assist their fellow officers. In one instance, an officer responding to help fellow Officers he was hired with and went through the Training Academy with, now finds himself six months behind them for all promotions and for retirement eligibility for having done so. That is simply wrong! Alaska Administrative Manual 280.210 provides that “An employee's leave, merit, and longevity anniversary dates are advanced one month for every 23 days of accumulated leave-without-pay in a leave year unless provided otherwise in statutes, regulations, or labor contracts⁵³.” Our proposed change is offered for the protection of Correctional Officers in the spirit of the allowance made in the AAM.

Regarding Article 20.7 B 5: The Association proposed changing the Article 20.7 B.5 as follows: “Qualification for Injury Leave. ~~To qualify for injury leave, the employee or his supervisor must submit a contemporaneous incident or injury report. An injured employee is not qualified for injury leave unless a request is made in writing to the Superintendent or designee no later than twenty one (21) calendar days from the date the injury occurred, and the injured employee has not previously exhausted the maximum paid leave period for injury under these provisions.~~ Effective 1 July, 2009, a request for Injury Leave to the Superintendent is not required to qualify for Injury Leave; a finding that the injury or illness qualifies for compensation under the Worker’s Compensation Act shall be sufficient for this Agreements Injury Leave provisions to be invoked. It shall be the member’s responsibility to coordinate with Workers Compensation to obtain documentation that the injury or illness has been determined compensable and to provide his or her Superintendent and the Association with copies of that documentation.”

As written, Injury leave is contingent on being approved as a compensable illness or injury under the Alaska Workers Compensation Act. The Association has no problem with routing the information through Superintendents, as all Workers’ Compensation Reports are routed, but we do disagree that any determination is needed outside of that provided by Worker’s Compensation.

Alaska’s Workers’ Compensation statutes offer adequate protection for the Employer against an unmeritorious claim. If Workers’ Compensation determines that the injury or illness is compensable, the member should suffer no loss or pay, benefits, or retirement service credit up to the maximum benefit of the Injury Leave program.

⁵³ Unfortunately, the Association did not present AAM 280-210 as an exhibit, however it is available on the State’s web page at the following link: http://fin.admin.state.ak.us/dof/ak_admin_manual/resource/280.pdf

ACOA's proposed Article 21.1: Wage Adjustments (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

"Effective July 1, 200~~6~~ 9, the wage scale in effect on July 1, 200~~5~~ 8, shall increase by ~~four~~ twelve percent (4-12%).

Effective July 1, 200~~7~~ 10, the wage scale shall increase by three percent (3%).

Effective July 1, 200~~8~~ 11, the wage scale shall increase by three percent (3%).

As per Article 21.3, every two years after Step F, an employee will be eligible for a 3.75% service step increase.⁵⁴

ACOA Argument: Wages are covered in the following pages.

⁵⁴ See ACOA proposal-argument. (Proposal 21.3 Pay Increments)

Article 21.1 A
Wages
Prologue
(MONETARY)

At the Arbitrator's request, we will not rehash the same material covered in the last arbitration. That Arbitration award is part of the record as per the Submission Agreement. The finding in that Interest Arbitration was that ACOA did prove its case on wages and the need for additional wages over the wages offered by the State.

Again, without going into great redundancy, we will touch on and update the record from the last Arbitration Brief.

First and foremost, the State of Alaska is still claiming poverty as they did last time. In the 2006 Interest Arbitration, they claimed the future price of oil would plummet, projected budget woes, and a bankrupt budget reserve account. In every respect the State's projections were wrong. Instead of losing billions as they projected to the Arbitrator, they increased all their accounts by billions. Even though the State has more money now than three years ago, they are again predicting to soon be broke. This is as unrealistic as it was in 1999, 2006, and now in 2009.

Article 21.1 A
Wages
Bargaining History
(MONETARY)

Again, the Arbitrator will take notice of the five-page Bargaining History included in the 2006-2009 Interest Arbitration. Except for three more years under their own independent banner, the history is the same. A quick review.

As was presented in the prior arbitration, Correctional Officers were trapped in a union that did not represent their needs and, as was testified to last time, used them as a bargaining chip for 8000 other union members.

This caused C.O. to lose ground to all other peace officer groups. A perfect example is the comparison of C.O.s to Airport Safety Officers (ASOs). In 1984, C.O.s' and ASOs' pay was identical. In 1986, ASOs were carved out of ASEA and placed into PSEA, a peace officer association. Today, ASOs are paid substantially more than C.O.s⁵⁵.

Correctional Officers finally gained control over their own destiny in 2004. The moment they had control, they went to contract interest arbitration to attempt to gain back some of the losses.

It would seem unjust to not look at past injustices due to the passing of past contracts, when, in fact, they were outvoted by the other 8000 employees that actually received gains at C.O.s' expense. It also seems unjust to allow pattern bargaining to now keep them at less than their counterparts, less than they deserve, through no fault of their own.

When they could leave other unions not representing their peace officer status, they did. When given the chance, they did not take a negotiated settlement for less and went to arbitration. C.O.s should not be penalized for the past, for things not within their control, such as wage deficiencies that they did not have the votes to prevent.

⁵⁵ Joint Exhibit J-3

Article 21.1 A
Wages
Changes in Other Bargaining Units
(MONETARY)

As was in the ACOA brief from the previous arbitration, the Governor and Commissioner are still enjoying their 38% raise. Legislators are still reaping the benefit of their 131% increase in per diem. Non-union employees are still receiving their 7 – 45% raises.⁵⁶ The three most recently negotiated contracts for other Bargaining Units were to the Alaska Public Employees Association, Inlandboatman Union, and the Public Safety Employees Association.

The Alaska Public Employees Association's last year received 5 ½%, 3%, 3% in a three year contract and other benefits. The Arbitrator is familiar with that decision and we will not bloviate. The most recent contract awarded by the State was the Inlandboatman Union and they received a substantial increase. The Arbitrator is not familiar with this contract and since there were some contradictory statements in the Interest Arbitration, we will go into the specific detail with citations.

In her testimony, Ms. Sutch sought to distinguish and minimize the State's settlement terms with the Inlandboatman Union (IBU), State Exhibit 23. Principally, Ms. Sutch tried to minimize the State's settlement by saying that the higher wage increases are justified by the fact that, unlike Correctional Officers, the unlicensed deck employees do not receive step increases. The argument misses the essential point that the wage systems come from two totally separate traditions. The IBU and other maritime unions have had collective bargaining rights since 1961(AS 23.40.020) and their wages, hours, and conditions are solely a product of bargaining as they are exempt from the State Personnel Act (AS 39.25.110) and the State Pay Plan (AS 39.27.011). They have a traditional trades and craft pay scheme of a single wage per classification. The State's Labor, Trades, and Crafts unit has a similar scheme though with more steps (Available at: <http://dop.state.ak.us/fileadmin/lr/pdf/contracts/LTC07-09Final.pdf> February 24, 2009). The Correctional Officers were historically under the State Personnel Act and State Pay Plan prior to the commencement of bargaining subsequent to the passage of the Public Employment Relations Act in 1972. Correctional Officers were then in the mostly white collar general government bargaining unit until their separation in 1997. Consequently, C.O.s were and remain on the traditional white collar civil service scheme of progressive merit steps with a relatively low starting wage leading up to the full "journeyman" wage at three to five years of service, depending on the specific scheme

In essence, an unlicensed deck employee gets the full wage for his/her classification on the day he/she starts the job. A C.O. must start in a lower classification, C.O. I, successfully complete probation and Police Standards Council certification over a period of a year or more, be promoted to the journey level classification of C.O. II but at a reduced wage, and then provide satisfactory service in order to progress through the steps to reach the full journey wage for the classification. In any event, any wage increase is imposed on the agreed upon value of the work and it is immaterial whether that full value is reached on the first day or in the fifth year; the increase is applied to all levels. It is important that it be understood that the merit steps are not cost of living adjustments but rather are progressive

⁵⁶ ACOA 2006-2009 Arbitration Brief

steps in reaching the full value of the job classification. Thus, merit steps must be distinguished from general wage adjustments.

The lump sum payment reflects approximately a 5% increase on the average wage for the unlicensed deck bargaining unit (Available at: <http://dop.state.ak.us/iscsi/fileadmin/LaborRelations/pdf/buprofiles/IBU.pdf> February 24, 2009). The out year settlements are for 5% in the second and 4% third years. The Arbitrator may not deduce from the tentative agreement entered into evidence that the prior agreement had conferred 6% in each of the second and third years of the prior agreement, significantly more than the Correctional Officers' '06 and '07 increases. Ms. Sutch correctly asserts that the IBU offered some concessions but admits that the value of the concessions is significantly less than the value of the wage increase or even the difference between the IBU settlement and the offer to the C.O.s. On information and belief, the value of the elimination of "split wages" in Rule 7 is around \$50K per year (See, Association Exhibit 76). Each percentage point increase in the IBU scale is approximately \$280K, so the savings from the elimination of split wages represents about two tenths of a percent.

In any event, the wage, hours, and conditions of the IBU and C.O.s stem from dramatically different bargaining histories and professional traditions so comparisons have their limits. Nevertheless, the State has demonstrated a pattern roughly consistent with that set with the Supervisors in interest arbitration, bargained with other units, and conferred upon non-represented employees. The minor concessions achieved with IBU do not significantly alter the value or cost of the agreed upon general increases.

The third most recently negotiated contract was for Public Safety Employees Association who received 5 ½ %, 3 %, and 3 % in their next three year contract.⁵⁷ This contract also contained significant additional benefits and incentives. This contract is noteworthy since it covers Court Service Officers that compete directly with C.O.s in the workplace.

⁵⁷ Joint Exhibit J-3

Article 21.1 A
Wages
Wages of similar employees employed by Comparable Employers
(MONETARY)

The State of Alaska and other employers within Alaska having similar employees are the bench mark for comparable jurisdiction. Although these similar employers do not necessarily have the same dangerous working conditions or extreme staffing problems, they do share similar job descriptions and live and work under the same economic conditions. Last time we presented a breakdown of all pay schedules for peace officers in Alaska.⁵⁸ The pay inequalities have not changed.⁵⁹ C.O.s are paid substantially less than the next to last peace officer group on the ladder. The next rung up from C.O.s is occupied by Court Service Officers and Juneau Court Service Officers. Approximately 10% pay differential separates ACOA from these peace officers, who are doing basically the same work.

ACOA's 2006 Interest Arbitration brief compared Correctional Officers to Alaska Court Service Officers and the Juneau Court Service Officers.^{60,61} To be a little repetitive from the last brief, both of these employee groups have almost identical job duties. Both work almost exclusively with inmates, both transport and supervise prisoners. As was testified to last time, Alaska CSOs have the same employer, and their duties are almost identical to Correctional Officers. In fact, the only real difference is that Court Service Officers spend slightly more time on transports. The vast amount of their day is still spent on maintaining and securing prisoners in their courthouse jail cells and supervising them in the courtrooms. Even though Correctional Officers and Court service Officers have the same job requirements there are some interesting differences. Alaska Court Service Officers do not have to be Alaska Police Standard Council certified, as do Correctional Officers. Neither the requirements of the job nor the minimum qualifications are as stringent as those for Alaska Correctional Officers. Court Service Officers also receive a uniform allowance and FTO pay, which Correctional Officers do not at this time enjoy.

Obviously, ACOA is not asking for Correctional Officers to be reclassified and is not asking for anyone's pay scale. C.O.s are asking to close the gap, to get closer to those doing the same job for the same employer.

The Department of Corrections has always had a problem being competitive in the workplace market, not just with other State jobs, but other security jobs as well. One added dimension as the Department gears up to hire two hundred plus Officers for the new mega prison, are the private security jobs around the state are just as attractive. The Association presented evidence⁶² that security jobs around the state paid comparable wages, and in some cases higher wages, than those paid to C.O.s. In almost all these security jobs, the qualifications were less, the workload much less, the dangers were less, and no one assaults you physically or by throwing feces and urine on you. The Department has to be not only more competitive in today's marketplace, but in the near future as the new prison comes on line.

⁵⁸ ACOA's 2006-2009 Interest Arbitration Closing Brief

⁵⁹ Association Exhibit A-77

⁶⁰ Joint Exhibit J-6

⁶¹ Joint Exhibit J-3

⁶² Association Exhibit A-107

Article 21.1 A
Wages
Recruitment and Retention
(MONETARY)

Again, we will not revisit the past, but will just do a quick recap and update. There have been serious issues with recruitment in the Department of Corrections for years. We will not walk through all the numbers from the last Arbitration dealing with the number of Correctional Officers and unfilled positions through the years, but serious problems with filling C.O. ranks was not disputed by the State three years ago or in the recent Interest Arbitration. You heard testimony from the current Deputy Director, the current Deputy Commissioner, and the previous Commissioner that recruitment is and always has been an uphill battle.

Now comes the new mega prison, Goose Creek Correctional Center. Two to three hundred more Officers must be hired in the next three years. Correctional Officers need real help with recruitment and retention now, in the present situation that exists in Corrections. The Goose Creek mega prison creates not only recruitment issues but also retention issues as well.

Recruitment, because they not only have to hire over two hundred more Officers for the new mega prison, but while still having to replace all those that quit and retire. As was testified to, just keeping up with those vacancy and turnover rates has been beyond the Department's capabilities based on their ability to compete in the Alaska Peace Officer workplace. Now, on top of the continuing vacancy and turnover rates, they need two hundred plus more Officers.

Retention becomes a serious issue with the new mega prison, due to burnout. Correctional Officers have been working understaffed for years. Working understaffed creates an additional workload on the Officers, additional stress, and additional safety issues...and that is today, before the new prison opens. What if they can only hire 100 Officers for the new prison? How much more understaffed will the Department be? How many more Officers will say enough is enough? How many more will leave Corrections for higher wages, better benefits, and specialty pay in other peace officer jobs? How many will choose to stay in Anchorage and not drive an hour and a half to work and back each day? How many will choose to stay with Corrections when they could make more money as a Peace Officer or even security guards without the stress?

As was testified to and discussed by both sides at the Interest Arbitration, the retirement scheme for all State employees was recently changed. A new Tier IV retirement was implemented and will affect all new employees hired during the duration of this 2009-2012 contract. Tier IV, unlike Tier I through III is a defined contribution as opposed to a Defined Benefit. One of the most positive benefits of working for the state was its retirement plan. That is now gone. The implication of the new Tier IV scheme has had a chilling effect on the hiring of new State employees. Particularly in today's volatile markets, a 401(k)-style "retirement" plan offers little incentive for a person to become an employee of the State of Alaska. Since the "retirement" plan is not attractive, other parts of the compensation and benefits plans must be made more attractive.

Article 21.1 A Ability to Pay (MONETARY)

Three years ago we started our brief on wages by stating, “the State’s ability to pay seems indisputable”, but the State did dispute their ability to pay. The State is still disputing their ability to pay even today. Three years ago, when the State said they would soon be broke, they had billions of dollars in the permanent fund account and two billion in the budget reserve account. Today, the State has billions of dollars in the permanent fund account and 6.6 billion dollars⁶³ in the budget reserve account. The State of Alaska did not go broke after the last Interest Arbitration. Every graph that the State presented in 2006 showed a line going straight down. Over the next three years, every graph was wrong.⁶⁴

It should be noted that in the prior brief it was pointed out that in 1999 the state was again way off on their projections of oil and subsequently, income and money reserves. Three consecutive contract cycles, three times the State predicted gloom and doom. Three times the State rejected oil expert opinions. Three times the State used their projections to deny needed raises to Correctional Officers. And three times their projections were wrong to the tune of billions and billions to dollars to the good.

When discussing the overall economic environment, Art Chance, retired Director of Labor Relations, generally thoughts were that the Arbitrator need look no further than page xi of the Comprehensive Annual Financial Report (available at: http://fin.admin.state.ak.us/dof/financial_reports/resource/08cafr.pdf - February 27, 2009) to see that Alaska’s revenues have skyrocketed since 2004 and have dramatically exceeded even the significantly increased expenditures since 2005. The State has extensive savings other than the relatively inviolate Permanent Fund including the Constitutional Budget Reserve and other funds in the amount of \$13.7 Billion as of June 30, 2008 (CAFR pg.5)⁶⁵. That is enough to operate the State government at the historically high State Fiscal Year (SFY) 2008 level for the next two years with NO other revenue coming in. While the State claims looming doom, the record shows that today’s “low” oil prices are about the same as the then-high price the State was getting in SFY 2004 and about the same as the 60-month moving average in November of 2008 (Revenue Sources Book Fall 2008, page 11)

Available at:

<http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?1531f><http://www.tax.alaska.gov/programs/documentviewer/viewer.aspx?1531f> February 27, 2009.

The reality of the State’s economic situation is that while it cannot indefinitely continue the dramatically higher spending of the last three or four years at current revenue levels, even

⁶³ Association Exhibit A-49

⁶⁴ Association Exhibit A-47

⁶⁵ The key phrase to understand whenever the State talks about its economic situation is “unrestricted general fund revenue available for appropriation.” That phrase must be carefully parsed. The State will admit if pressed that one of the “restrictions” is its own which it defines as historical and customary usage. The net effect is that all these funds are restricted and money in those funds is not made available to the Legislature for appropriation. Consequently, when the State talks about general funds available for appropriation, it has already seen to replenishment of those funds before releasing money for general appropriation.

current prices will support the level of spending prior to the price surge without resorting to the use of savings of any sort.

No one has a crystal ball and the State's revenue projections have proven themselves far from infallible. Nevertheless, the Revenue Sources Book and the Comprehensive Annual Financial Report are prepared under strict guidelines and are scrutinized by a wide audience including oil market traders, bond raters, potential investors in Alaska and many others. In the Revenue Sources Book and the CAFR, the Association is prepared to take the State at its word.

The State cannot dispute its ability to pay. Even in these uncertain times, the event horizon here is three years and no reasonably foreseeable event could cause the State to be unable to meet the obligations imposed by this labor agreement no matter what its ultimate terms. The State made no argument in support of its offer to ACOA, an offer considerably less than the SU arbitrated settlement adopted for the entire bargaining unit, less than the wages established for non-represented officers and employees, and less than its most recent voluntary settlement with the unlicensed deck employees represented by the Inlandboatman Union (IBU)⁶⁶. As the State offered no argument or evidence, one must wonder what motivated the State's offer.

The State catastrophizes the costs of any improvement in a labor agreement but the arbitrator should be aware of the sort of money we are actually talking about. Most of the testimony in this matter was about billions and billions of dollars; the costs of this agreement are in much more mundane numbers. The bargaining unit wage for each percentage point is worth about \$400, 000. The State is quarrelling over \$400,000 per percent in the Corrections contract when it has \$13,700,000,000 in savings in addition to the \$30,000,000,000, give or take a few billion, in the Permanent Fund.

⁶⁶ The strike class of unlicensed deck employees has been disputed but the only determination by the ALRA is Decision and Order 20 from 1978 which concluded that they were Class Two employees under AS 23.40.200. Class Two employees may strike but may be enjoined back to work if the employer can demonstrate to a superior court that a threat to public safety and health exists. Enjoined employees are entitled to interest arbitration under the same conditions as Class One employees.

Article 21.1 A
Wages
Cost of Living
(MONETARY)

As was presented by David Reaume last time and again this time⁶⁷, Alaska Correctional Officers' pay has lost ground against the Cost of Living for years. As this information is familiar to the Arbitrator, testified to and presented in both the APEA Arbitration and exhibits, we will not reprint the three pages in the previous brief. The losses are real and substantial.⁶⁸

In addition to the cost of living losses within Alaska, it should be noted that Alaska has one of the highest cost of living in the nation. Again, not to rehash the last Interest Arbitration's arguments, but it is a factor both in what is necessary to pay bills and in the comparison to wages of states that do not experience Alaska's high cost of living.

⁶⁷ Association Exhibit A-53

⁶⁸ Association Exhibit A-54, A-55, A-56, A-57

State's proposed Article 21.1: Wage Adjustments
(MONETARY)

State proposal: The State proposes deleting the strike-through language and adding the underlined language:

“Effective July 1, ~~2009~~2006, the wage scale in effect on July 1, ~~2008~~2005, shall increase by two and one-half percent (2.5%) ~~four percent (4%)~~.

Effective July 1, ~~2010~~2007, the wage scale shall increase by two percent (2%) ~~three percent (3%)~~.

Effective July 1, ~~2011~~2008, the wage scale shall increase by two percent (2%) ~~three percent (3%)~~.”

ACOA Argument: See ACOA's proposal-argument. (Proposed 21.1)

ACOA's proposed Article 21.2: Geographic Differential Pay
(MONETARY)

ACOA proposal: The Association proposes adding the underlined language:

Work Facility Location	% Above Basic Pay
Bethel	38.00
Fairbanks	4.00
Juneau	5.00
Ketchikan	8.00
Nome	34.00

The parties are aware that, during the course of this Agreement, geographic differential rates may change due to surveys currently in progress. In the event that a geographic differential is lowered during the term of this Agreement, the salaries of affected members shall be frozen at the geographic differential in effect on 1 July, 2009, for so long as they remain in their current geographic differential area, or until salary increases or changes in the member's position result in the member receiving a higher salary than the frozen amount. In the event that a geographic differential is raised during the term of this Agreement, the salaries of affected members shall likewise be raised, retroactive to July 1, 2009 or at time of report's release, whichever is sooner.

ACOA Argument: The State admitted they told ACOA as well as all other unions that the geographic study commissioned last year would be out for 2009. The other unions still do not know what is happening. We, as other unions, feel we were promised the study for 2009 but now the State says it was not a promise, just what they said would happen but it "did not turn out that way. The State has the results of the study in hand, but it seems is arguing the results.

This is all good for them. They do not accept the results; they enter into discussions, and discussions take time. It does not matter if they get a better result or not because if they can stall 90 more days the legislative session ends and they save on paying differential for one more year.

In the outlying area, when gas goes up or doubles as it did recently, everything else skyrockets. Price of oil did drop but the price of gas did not drop as oil did. The reason is everything has to be barged or flown in. The horror stories from these Officers as they fall behind each month, is as frustrating to them as it is to the Association.

Officers in outlying areas started getting killed in 2007. 2008 was a disaster for them also. Now they have to wait another year, 2009 - 2010, as well? This is not about consistency or payroll issues; this is about money. Never did the State mention that once the study came out that there were other issues to be resolved. They said clearly, the study will be out in February and it will be applied this legislative session.

If someone lives and works in an outlying area and later the study shows they are being harmed starting July 1, 2009, why should they wait until July 1, 2010? Retroactivity is only fair based on what the State said in negotiations based on any actual harm due to cost of living and based on simple fairness, the fact is a geographical study has been promised for a decade, not just by July 1, 2009.

ACOA's proposed Article 21.2: Spring Creek Incentive Start Date (MONETARY)

ACOA proposal: The Association proposes adding the underlined language to the portion of Article 2.2 that deals with Spring Creek Incentive Pay:

"Employees whose duty station is Spring Creek Correctional Center (SCCC) shall, upon the completion of one (1) consecutive year worked, be paid the equivalent of one (1) step above the earned step on the applicable salary schedule.

Employees whose duty station is SCCC shall, upon the completion of two (2) consecutive years worked, be paid the equivalent of two (2) steps above the earned step on the applicable salary schedule. Employees who have earned placement at the final step in the range shall receive the equivalent of the appropriate step increase established above.

Payment of the above incentives is to begin on the first day worked following the employee's attainment of the SCCC consecutive years worked prerequisite⁶⁹.

ACOA argument: The Association proposes this change to memorialize Arbitrator Mark Downing's decision in a dispute over when Spring Creek Incentive payments were to begin. His decision was that "...by not granting Spring Creek Correctional Center incentive pay until the first day of the pay period following the date that a Correctional Officer satisfied the one- or two- year qualifying requirement"⁷⁰.

⁶⁹ Association Exhibit A-82

⁷⁰ Association Exhibit A-81, Page 15

ACOA's proposed Article 21.3: Longevity Increments Pay Increments (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: ~~Employees shall continue to receive increments (steps J, K, L, and M) in accordance with the criteria of AS 39.27.022. The increments shall be those set out in this Agreement. An employee who has served two years at Step F will advance to Step J. Every two years thereafter, an employee will be eligible for a 3.75% pay increment increase. The denial of a performance incentive or pay increment increase must be done on or before the date an evaluation is due. If the rater fails to prepare a timely performance evaluation, any performance or service step increases shall be granted to the employee effective on the employee's merit or pay increment anniversary date. The fact that an evaluation is late shall not delay a merit or pay increment increase nor delay transition from probationary to permanent status.~~ An employee who has served two years at Step F will advance to Step J. Every two years thereafter, an employee will be eligible for a 3.75% pay increment increase. The denial of a performance incentive or pay increment increase must be done on or before the date an evaluation is due. If the rater fails to prepare a timely performance evaluation, any performance or service step increases shall be granted to the employee effective on the employee's merit or pay increment anniversary date. The fact that an evaluation is late shall not delay a merit or pay increment increase nor delay transition from probationary to permanent status.

ACOA Argument: The first line of the underlined new language is not in dispute. The next two lines, in regards to performance evaluations and withholding a step increase in an evaluation is late, is in dispute. Receiving evaluations in Corrections on time has been a systemic problem for as long as anyone can remember. There have been many attempts to correct the problem of late evaluations in the Department of Corrections, but they have all failed. The number one reason for late evaluations is the continuing issue of low staffing levels. Even the State representatives said it is a problem that is tough to solve. With the opening of the new prison, the problem of late evaluations will only become more acute as the Department guts other institutions to staff Goose Bay. An Officer should not be penalized by not receiving his step increase due to factors that are out of his/her control. The depth of the problem of late evaluations was evident from the Officers in attendance at the arbitration. Most had not had an evaluation since 2005, and two said it had been since 2003.

The Association brought up an additional issue. What happens if an Officer goes two, three, four, five years without an evaluation and then ends up in a personality conflict with his supervisor, who in turn writes a negative evaluation. This is not an uncommon occurrence in Corrections. How far back does the negative evaluation go? The State representative that was present did not have an answer.

The language in Article 14.1 D, Performance Evaluations, dealing with this same issue, was placed there specifically due to chronically late evaluations.

D. The denial of a performance incentive increase done through a performance evaluation must be done on or before the date the evaluation is due. If the rater fails to prepare a timely performance evaluation, any performance incentive increase shall be granted to the employee effective on the employee's merit anniversary date. The fact that an evaluation is late shall not delay the transition from probationary to permanent status.

This language was placed in the contract specifically due to issues with late evaluations. It was and is acceptable language to the State and reasonable language to keep an Officer from being penalized for something outside of his control.

State's proposed Article 21.5: Longevity Pay Increments
(MONETARY)

State proposal: The State proposes deleting the strike-through language and adding the underlined language: Pay increments, computed at the rate of 3.75% of the employee's base salary, shall be provided after an employee has remained in the final steps within the given range for two years, and every two years thereafter, if, at the time the employee becomes eligible for the increment, the employee's current annual rating by the employee's supervisor is designated as "acceptable or better service." ~~Employees shall continue to receive increments (steps J, K, L, and M) in accordance with the criteria of AS 39.27.022. The increments shall be those set out in this Agreement.~~

If a pay increment is delayed due to an untimely performance evaluation, upon receipt of the evaluation with an annual rating of "acceptable or better", the pay increment will be granted retroactive to the employee's anniversary date.

ACOA Argument: See ACOA proposal-argument. (Proposed 21.3)

State's proposed Article 21.3: ~~Longevity Increments~~ Spring Creek Recruitment and Incentive Pay
(MONETARY)

State proposal: The State proposes deleting the strike-through language and adding the underlined language:

“Employees whose duty station is Spring Creek Correctional Center (SCCC) shall, upon the completion of one (1) consecutive year worked, be paid the equivalent of one (1) step above the earned step on the applicable salary schedule for all work performed at the SCCC.”

Employees whose duty station is SCCC shall, upon the completion of two (2) consecutive years worked, be paid the equivalent of two (2) steps above the earned step on the applicable salary schedule for all work performed at the SCCC. Employees who have earned placement at the final step in the range shall receive the equivalent of the appropriate step increase established above.”

ACOA Argument: From time to time, SCCC Officers may be required to travel and/or work at other institutions. If they are required to do inmate transports, they should not be penalized. If another institution is in need of Officers for overtime, they should be penalized for coming to their assistance.

ACOA's proposed Article 21.4: Shift Differentials (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

A. Regularly Assigned Shift

There shall be two (2) shifts: the day shift from 0600 hours through 1800 hours and the night shift from 1800 hours through 0600 hours. (1) Shift Differential shall be paid in accordance with Article 21.4 B.

~~B. Shift Differential for other than Regular Assigned Shift~~

~~1. All members who are assigned to work a full shift originally assigned to another member shall be paid the appropriate shift differential as established in A above.~~

B. Shift Differential Pay

~~All members who are assigned to work less than a full shift originally assigned to another shall be paid as follows:~~

~~a. If the work starts between 12 noon and 7:59 p.m. the employee shall receive a 3.75 percent increase over their basic wage as established by this Article for all hours worked in each such shift.~~

~~b. If the work starts between 8 p.m. and 5:59 a.m. the employee shall receive a 7.5 percent increase over their basic wage as established by this Article for all hours so worked in each such shift.~~

1. Employees shall receive a 3.75 percent increase over their regular rate of pay for all hours worked between 6:00 p.m. and 11:59 p.m.

2. Employees shall receive a 7.5 percent increase over their regular rate of pay for all hours worked between 12:00 midnight and 06:00 am.

3. If the work starts between 6:00 am and 12:00 pm, the employee shall receive a 3.75% increase over the basic wage, as established in this Article for all hours worked between 6:00 pm and 6:00 am.

4. In compliance with the Fair Labor Standards act, for the purpose of overtime computation, shift differentials shall be included in the calculation for the straight time hourly rate of pay.

5. Should a member on a shift with a pay differential be temporarily reassigned to a shift that pays less or not shift differential, the member shall receive the shift differential associated with the shift prior to the temporary assignment. For purposes of this section, "temporary reassignment" shall include all involuntary duty, including but not limited to, court appearances, training, meetings, temporary duty assignments, and recall. This provision excludes members injured off-duty.

ACOA Argument: The State proposes to delete Article 21.4 A while the Association feels it critical to keep and expand that language. Stating that there are two shifts (a day shift and a night shift) is to continue the practice as it has existed almost since the beginning of time. There was a period where one or two institutions started their shifts at seven in the morning at seven at night while all others started their shift at six in the morning and six at night, but historically most institutions started at six and six as all currently do and have done for many years. Our concern with deleting all of 21.4 A as the State proposes, is that they could change day and night shift times to whatever times they like, to the point of losing all connection with days and nights.

The State and the Association both agree on the deletion of Article 21.4 B 1 and 2.

The Association feels its proposal to add Article 21.4 B 1-5, appropriately addresses the uniqueness of the Alaska Correctional Officers' shift schedules. Alaska Correctional Officers are the only Officers in the nation that work week on, week off and switch back from a week of night shifts and then to a week of day shifts. The transition is hard on one's body and health, but Correctional Officers love it and a Legislative Audit many years ago documented that it reduces overtime costs. Alternating from a week of nights to a week of days allows Management to have interaction and see every employee every month. The State and Association's language, although worded somewhat differently, are similar except that the Association's proposal provides an additional 3.75% between 12 midnight and 6 am and the Association's proposal is based on hours worked, not starting times. Using actual hours, instead of starting times, makes it difficult for the employer to avoid paying shift differential obligations by shifting the hours Officers have customarily worked. Eliminating the day or night shift language as the State proposes would allow them to require some Officers to start at 11:30am, work until 11:30pm, and by so doing avoid paying the 3.75% night differential. This is a monetary issue and the arbitrator can formulate a decision that meets both parties' needs.

State's proposed Article 21.6: Shift Differentials
(MONETARY)

State proposal: The State proposes deleting the strike-through language and adding the underlined language:

~~C. Regularly Assigned Shift~~

~~There shall be two (2) shifts: day and night. All Bargaining Unit members who work a night shift shall receive the swing differential of 3.75 percent increase over their basic wage for all hours worked in each such shift.~~

~~D. Shift Differential for Other than Regular Assigned Shift~~

~~1. All members who are assigned to work a full shift originally assigned to another member shall be paid the appropriate shift differential as established in A above.~~

~~2. All members who are assigned to work less than a full shift originally assigned to another member shall be paid as follows:~~

A.

c. If the work starts between 12 noon and 7:59 p.m. the employee shall receive a 3.75 percent increase over their basic wage as established by this Article for all hours worked in each such shift.

B.

d. If the work starts between 8 p.m. and 5:59 a.m. the employee shall receive a 7.5 percent increase over their basic wage as established by this Article for all hours so worked in each such shift.

ACOA Argument: See ACOA's proposal-argument. (Proposed 21.4)

ACOA's proposed Article 21.5: Hazard Pay (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: "By definition, any time an institution exceeds its published Maximum Cap a dangerous condition exists. Officers working when a facility exceeds its Maximum Cap, as evidenced on a regularly scheduled formal institutional count, shall be entitled to Hazard Pay."

Dangerous conditions shall be defined as working at heights more than twenty-five (25) feet above ground on the outside of towers, bridgework or antenna and handling explosives ~~so designated by the Employer~~, transportation by and working under a helicopter or working from low-altitude, light fixed-wing aircraft (~~except pilot~~), and ~~underwater diving~~ searching for escaped prisoners outside of the institutional perimeter."

ACOA Argument: When the current Administration came into office, they quickly pushed inmate counts up to dangerous levels. Those levels started to drop once legislators announced an audit of the Department. The Department officials at the Interest Arbitration testified that they had taken actions to reduce the inmate counts below the maximum cap. They also stated that the inmate count would stay lower. Since they themselves said it was a problem that they have worked hard to fix, they must realize the "hazards" of an overcrowded system. As Sergeant Danny Colang testified to even a family can become cranky if too many are forced into a small living space, and unlike inmates, they love each other.

On September 1, 2007 this new Administration changed the inmate count terminology from "Emergency Cap" to "Maximum Cap" and then they raised the allowable inmate count number under the new "Maximum Cap" heading. As for this Article, it means the State can regularly keep the inmate counts over what was previously considered an "emergency level" and not pay "Hazard Pay". They would only pay Hazard Pay if the inmate count goes over their newly named "Maximum Cap". Since they say that will not happen again. This Article should not be an issue for them, even after the Legislature's audit is finished.

ACOA's proposed Article 21.7: RDO Premium Pay
(MONETARY)

ACOA proposal: The Association proposes adding the underlined language: A member who works on their Regular Days Off (RDOs) shall receive time and one-half (1 ½) premium pay for all hours worked on their RDOs regardless of the number of hours worked during their regularly scheduled workweek. The pay shall not pyramid when the member is otherwise eligible for overtime premium pay by other operation of law or contract.

ACOA Argument: This Article exists as Article 13.11 in the current contract and the Association proposes moving it to Article 21 to consolidate premium pays in one location. Having suggested this move the Association then found that the State seeks to eliminate RDO pay and that we must defend against its deletion.

RDO language came into existence during mediation for the Association's 2004-2006 Agreement. It is unlikely you will be presented any arguments in this instance that did not surface and were not considered by the State before they voluntarily agreed to the RDO Premium Pay. The only argument we heard then, or now, is the supposition that Correctional Officers will, or perhaps have, intentionally abused RDO Pay by calling in sick during their work week and then coming in and earning RDO Premium Pay on their week off. No evidence has been produced to show that a disproportionate amount of RDO Premium Pay has gone to Officers who may have called in sick the week prior to earning RDO pay, no evidence has been produced to prove that any relationship exists between sick call-ins and RDO Pay, and no proof has been presented to document any relationship between the two. If such proof existed it should be readily available through payroll records and disciplinary records. The nature of the employer's statements seem always to be in couched in untraceable terms such as "We think," or "the Possibility exists". Since the inception of RDO language in the 2004 Agreement and not one issue related to RDO pay has ever been raised. The State's representatives at the bargaining/mediation table when RDO pay was agreed to in 2004 were fully aware of concerns similar to those expressed now. They accepted the language while possessing a firsthand knowledge with Correctional Officers who had previously been under a contract that allowed them to call in sick and then earn overtime pay while working the following week. This was prior to leaving ASEA.

If Correctional Officers might abuse RDO Premium Pay, as Management insinuated during our recent hearing before you, how, we would have to ask, is this happening? There are specific procedures that provide for Officers to be called in according to established procedures. They sign up, are randomly drawn and assigned a sequential call-in number, and are called when needed in the order established by that drawing. Management determines when overtime is needed and Officers are called only when overtime is needed. There can be no issue of RDO Premium Pay Abuse. If the allegation is that members are abusing leave, and that some that do are also benefiting from RDO Pay, then the issue would be Leave Abuse. But the Officers were needed when they responded for overtime. The employer has yet to produce any compelling evidence to substantiate a need to end RDO Pay. When the new prison opens, the issue of needing people on overtime around the State will become even more severe than it has been in the past. The RDO language was

intended to have people sign up for additional overtime, even when tired from their 84-hour week, even if they had already worked overtime that week.

RDO Pay was a significant factor leading to the ratification of the 2004-2006 Agreement by Correctional Officers. It will be a significant factor in Correctional Officer morale if removed from the Agreement.

ACOA's proposed Article 21.9: Field Training Officer (FTO) Pay (MONETARY)

ACOA proposal: "A Bargaining Unit member who is FTO-qualified shall receive a premium of 5% over their regular rate of pay so long as they remain FTO qualified. All costs of obtaining and maintaining FTO qualification shall be at the expense of the employer."

ACOA argument: During Interest Arbitration for the 2006-2009 Bargaining Agreement the State argued that the title "FTO Program" was the only thing DOC's program had in common with DPS' program. The State went on to argue that the DPS program had been in existence longer and that it was designed as a transition between the recruits' academic training at the Academy and the real world. The State, with their witnesses, misled you in many respects. Generally, they wanted you to believe that DPS has a real and necessary program and that DOC's is much less and therefore less deserving of premium pay, and that what DPS FTOs do is totally different from what DOC FTOs do. The result of the last interest arbitration is that Correctional Officers have an FTO Premium Pay Article, but receive no FTO pay. We welcome the opportunity to correct the misinformation you were left with in our previous meeting.

Do DPS' and DOC's FTO programs really have nothing in common? The requirements to provide FTO training as a portion of Police and Correctional Officer training and certification are rooted in Alaska Statute and are administered by the Alaska Police Standards Council (APSC). Yes, the Trooper's program is older, but the suggestion that the Correctional Officer's program is some recent overnight development could not be more incorrect. APSC was created by the Alaska Legislature in 1988, along with the enactment of standards for hiring, training, and certifying DPS Officers. Correctional Officers and the standards for hiring, training and certifying came under APSC supervision in 1988, at which time DOC's FTO requirements and program were established. The DOC FTO Program has been a required and controlled program for twenty years. Business Agent, Jim Lecrone, testified that the FTO manual he filled out for trainees under him in 1999 is very similar to the FTO manual contained in the Association's exhibits⁷¹.

What exactly do FTOs do? Referring to the Department's Field Training Manual as a guide, field training is supposed to be performed under the direct supervision of an FTO⁷². The FTO is responsible to ensure that each recruit gains experience in routine and specialized areas and is evaluated on their performance. Field Training Officer responsibilities are clearly enumerated, to include the requirement for weekly or more frequent reports, as required⁷³. The recruit's Field Training Manual is 41 pages long and lists most of the tasks the Field Training Officer is responsible to train on. The entire time an FTO is with a recruit, the FTO remains responsible for the accurate completion of the duties and responsibilities associated with the Post they are working. As most who have been in such positions know, it usually is much easier to do things oneself, but doing so would be counter-productive to training. Yes, there are differences between DPS' and DOC's FTO programs; they teach

⁷¹ Association Exhibit A-88

⁷² Association Exhibit A-88, Page 2

⁷³ Association Exhibit A-88, Page 4 and 5

different students in different settings to accomplish different tasks. This would be equally true if comparing the Trooper FTO program to the Anchorage Police Department's program.

The similarities and responsibilities are also striking. No Correctional Officer can achieve permanent status and complete their initial probation without first obtaining APSC certification⁷⁴. To be eligible to be awarded an APSC certificate an officer must complete the basic correctional officer academy, meet all statutory standards, and complete the required field training⁷⁵. Without a temporary extension from APSC no Correctional Officer can be employed for more that 14 months without certification⁷⁶. The Department of Corrections is tasked to establish the programs needed to instruct students to qualify for certification and the APSC approves those programs⁷⁷. The Field Training Manual used to certify students is addressed in Departmental policy⁷⁸. It is a very real manual used at all institutions. APSC requires Officers to begin Field Training, using the Department of Corrections Field Training Manual, immediately after being hired and tasks the Department to forward the completed manual to them within six months after the Officer starts work⁷⁹.

So what went wrong following the last interest arbitration that led to Correctional Officers having Premium Pay in their contract, but to no one being paid Premium Pay? Even in a classroom setting Officers were not getting paid, including the Academy instructors. Too much emphasis was placed on Classroom Training, when classroom training is not a significant part of what either DPS or DOC FTOs do. FTO training is generally a one-on-one where one converts the generalities learned elsewhere into the accomplishment of specific tasks. The FTOs relationship is generally one of "let me tell you what I am about to do and why; let me show you how we do this as I again discuss how and why; let me show you one more time; any questions; good, you try it; how do you think you just did; let me tell you how you might do it better; here do it again" and so forth followed by constant evaluation and periodic report writing.

Unfortunately, misinformation was passed as fact in our previous meeting that resulted in DOC FTO Pay being too closely tied to classroom training, and we did not sufficiently counter it. FTO's should be granted FTO pay for the same reasons DPS' FTOs are granted FTO pay; they perform an important role and people who are trained poorly can cause themselves or others to be injured or killed.

The State made a comment that they did not pay for Field Training Officers because it was voluntary. The fact is it is not voluntary if it is used as a determinant for promotions. There is added work and responsibility, which is reflected in other contracts. In comparison, APD pays their FTOs a five (5%) percent differential.⁸⁰ PSEA pays their FTOs seven and a half (7.5%) percent.⁸¹ And Multnomah County, Oregon, pays their trainers a five (5%) percent differential.⁸²

⁷⁴ Association Exhibit A-84

⁷⁵ Association Exhibit A-85

⁷⁶ Association Exhibit A-84

⁷⁷ Association Exhibit A-87

⁷⁸ Association Exhibit A-83

⁷⁹ Association Exhibit A-86, Page 3 sub-section (e)

⁸⁰ Joint Exhibit J-9, Page 35

⁸¹ Joint Exhibit J-3, Page 61

⁸² Joint Exhibit J-14, Page 62

Spring Creek Correctional Center (SCCC) receives many of the new recruits and does have a class room for some training. ACOA had heard that one Officer had been paid from SCCC, one time, soon after the ruling from the last interest arbitration. But we could not confirm it. At this year's interest arbitration, Spring Creek's Superintendent, Craig Turnbull was in attendance. He did not testify that any Officers were paid after the decision. As with "acting in a higher range", the State interpreted last interest arbitration's decision so as not one Officer received FTO pay, not at Spring Creek and not even at the Training Academy, which is in a classroom setting.

State's proposed Article 21. : FTO Instructor Pay
(MONETARY)

State proposal: The State proposes adding the underlined language: A Bargaining Unit employee who is FTO-qualified shall receive a premium pay of 5% of regular wages for time in conducting scheduled training classes.

ACOA Argument: See ACOA's proposal-argument. (Proposed 21.9)

ACOA's proposed Article 21.10: Prisoner Transportation Officer (PTO) Pay
(MONETARY)

ACOA proposal: The Association proposes adding the underlined language: "A Bargaining Unit member who is PTO qualified shall receive a premium of 5% over their regular rate of pay so long as they remain PTO qualified. All costs of obtaining and maintaining PTO qualification shall be at the expense of the Employer."

ACOA Argument: Prisoner Transportation Officers are commissioned by the State of Alaska. These Officers are the only Correctional Officers authorized to carry a weapon off the facility premises. The State conducts a PTO academy and Officers who are selected to attend must first pass an additional psychological evaluation and a more rigorous physical fitness test. Officers who want to become PTOs must also get approval from their chain of command. At the PTO Academy the instruction covers weapons training, malfunction clearance drills, EID, pressure point certification, OC spray. Then when an Officer passes, they are eligible to be recommended for commissioning as a Prisoner Transportation Officer.

PTOs require additional specialized training and expose themselves to risks that exceed those normally experienced by other Correctional Officers.

When this issue came before you three years ago the State argued that they provided all of the PTO's equipment, to include practice ammunition, adding that it would be irresponsible for them not to do so. They have since deleted the requirement that they regularly provide practice ammunition from their Policies and Procedures, but continue to maintain the requirement that PTOs must qualify regularly. PTO's must now provide their own practice ammunition as well as must practice on off-duty time without remuneration so as to be able to continue to meet the qualification requirements. Three years ago the State was right when it said failing to provide the other tools of the trade would be irresponsible. For this reason, as well as others, PTOs should be compensated.

ACOA's proposed Article 21.11: Commercial Drivers License (CDL) Pay (MONETARY)

ACOA proposal: The Association proposes adding the underlined language: “Any Bargaining Unit member who possesses a CDL that is used to benefit the Employer shall receive a premium of 5% of their regular rate of pay so long as they maintain their CDL qualifications. All costs of obtaining and maintain CDL qualification shall be at the expense of the Employer.”

ACOA Argument: Approximately nine months ago, after a series of rather contentious Labor Management Meetings, the Department determined that all Prisoner Transportation Officers (PTOs) assigned to the Central Transportation Office would be expected to train, qualify, and meet the continuing requirements required for the award and maintenance of Commercial Drivers Licenses (CDLs).

The requirement for CDLs and the requirement for PTOs to drive old Air Force 28 passenger buses converted for prisoner transportation use exposes this unique group of Officers to new training requirements⁸³, new drug testing requirements⁸⁴, new civil liabilities, and new disciplinary liabilities⁸⁵ that apply to no other Alaska Correctional Officers. If a PTO currently working in the Central Transportation Section does not wish to obtain a CDL, they risk being transferred back to an institution. A PTO who wishes to move into the Central Transportation Section in the future who does not agree to obtain a CDL will be prevented from doing so.

Previously, PTOs drove nothing larger than nine-passenger transportation vans. The risks they will encounter driving 28-passenger buses far exceed the risks they previously were exposed to. The first and perhaps most obvious is the added security risks associated with transporting such significantly larger groups of prisoners across routes that often have them out of range to communicate with any other law enforcement agencies. Perhaps equally obvious are the new and added risks associated with driving such larger vehicles in the Alaskan environment. The Association asserts that their unique exposure to new and expanded risks that no other Officers experience, qualifies them to receive special pay for doing so.

No other Correctional Officers are required to take drug tests as a pre-condition of employment or are included in a random drug testing program as a continuing condition of employment. No other Correctional Officers are required to drive 28-passenger buses. No other Correctional Officers are exposed to the liabilities of doing so on Alaska's often unforgiving highways.

⁸³ Association Exhibit A-91

⁸⁴ Association Exhibit A-90

⁸⁵ Association Exhibit A-90

We would add that the whole subject of CDLs was a contentious issue between the parties involved. The Association steadfastly maintained that CDLs were a mandatory subject of bargaining that could not be implemented without completing the bargaining process. Our demand that the employer cease their actions to implement their CDL plans until such time as it was resolved through the bargaining process went unheeded.⁸⁶

The Correctional Officers who bear the burdens and responsibilities associated with driving buses packed with up to 28 prisoners deserve added compensation for doing so.

⁸⁶ Association Exhibit A-93

ACOA's proposed Article 21.12: Multiple FTO, PTO, and CDL Pay
(MONETARY)

ACOA proposal: The Association proposes adding the underlined language: Bargaining Unit members who possesses and maintain more than one of the qualifications addressed in Article 21.9 through Article 21.11 shall be paid the total cumulative premium pay for each qualification.

ACOA Argument: This is common language in other contracts, including PSEA.⁸⁷ If a Correctional Officer is willing to take on additional responsibilities, they should be compensated as are other Alaska peace officers.

⁸⁷ Joint Exhibit J-3

ACOA's proposed Article 21.13 D: Acting in a Higher Range (MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: "An employee who has received prior written delegation from his/her division director or designee to perform essentially all of the duties of a specific position in a higher pay range than the employee's own shall, retroactive to the first (1st) day when he or she first assumed those higher duties, be paid at the step of the higher range that would be appropriate in case of promotion. Upon commencement of duties in the Bargaining Unit member's regular position, the Bargaining Unit member will return to the normal rate of pay."

ACOA argument: The Employer interprets current language as meaning that a person is not due acting status pay until they have worked more than 12 consecutive hours in a higher status. According to their interpretation, as stated in a memo to the staff at the Yukon Kuskokwim Correctional Center, an officer who worked one entire 12 hour shift and the first six hours of the following shift would be due 18 hours acting status pay, but an Officer who worked in acting status for an entire 12 hour shift who didn't also work in that status for consecutive hours the following shift would get no acting status pay. The Association disagrees with and has challenged the employer's interpretation and attempts to correct that through the language we propose.

Three years ago you decided in favor of language that eliminated the previous 15 consecutive work day requirement. The issue now is somewhat different than it was then, but the rationale you used in making that decision may well apply equally today. Your conclusion three years ago was that, "...comparability and fundamental fairness support the idea that an employee working in a higher classification should be paid at the appropriate step in the higher classification's pay range." That appears to have been the same rationale used when you awarding similar PSEA language in their 2005 Agreement. We argued then, as we argue now that, upon the temporary assumption of a higher classification, an individual acquires all of the responsibilities - PSEA characterized that as "all of the blame" - for the position.

A Correctional Officer who assumes Shift Supervisor duties is "on the hook" for his or her decisions and judgments from the instant he or she takes the reins. Without regard to how many consecutive hours worked in acting status, one will be asked to approve prisoner releases when they need approved and is disciplinarily liable for erroneous releases in the event any occur. Without regard to how many continuous hours one has worked in acting status, one is disciplinarily accountable to properly react to suicide attempts, assault incidents, and other critical incidents when and as they occur, and may even be held legally accountable for the decisions that are made in civil courts of law. It isn't a singularly function of time, it's a function of events and circumstances as well; one Officer might encounter more serious situations, incidents and be required to make more correct decisions in six hours than another encounters in 84 hours.

State's proposed Article 21.8 D: Acting in a Higher Range
(MONETARY)

State proposal: The State proposes adding the underlined language: "An employee who has received prior written delegation from his/her division director or designee to perform essentially all of the duties of a specific position in a higher pay range than the employee's own for a period of not less than twelve (12) hours shall, retroactive to the first (1st) day, be paid at the step of the higher range that would be appropriate in case of promotion. Upon commencement of duties in the Bargaining Unit member's regular position, the Bargaining Unit member will return to the normal rate of pay."

ACOA argument: See ACOA's proposal-argument. (Proposed 21.13 D)

ACOA's proposed Article 21.14 I: Termination Pay (MONETARY)

ACOA proposal: The Association proposes adding the underlined language: Except in cases of egregious misconduct, a permanent employee who is terminated must be given two weeks' notice before dismissal, unless the employee's presence at the work site is contrary to the best interests of the State, in which case the employee will receive two weeks pay in lieu of notice.

ACOA Argument: The Association's proposal is almost verbatim out of 2 AAC 07.415 and should be complied with when terminations are imposed.⁸⁸

⁸⁸ Unfortunately, the Association did not include 2 AAC 07.415 as an exhibit, but it is available on the State webpage through: <http://www.legis.state.ak.us/cgi-bin/folioisa.dll/aac/query=2+aac+07!2E415/doc/%7B@501%7D?>

ACOA's proposed Article 21.16: Legal Trust Fund (MONETARY)

ACOA proposal: The Association proposes adding the underlined language: “In addition to the wages and salary paid to Correctional Officers, the Employer agrees to pay the Alaska Correctional Officers Association Legal Trust Fund four dollars (\$4.00) per bargaining unit member in pay status per month, due within ten (10) days of the second pay period in each month.

The Fund shall be sponsored and administered by the Alaska Correctional Officers Association. The Employer shall have no voice in the amount or type of service provided by this plan; however, services provided by the Fund shall not be used in actions involving a position adverse to the State of Alaska. The Fund shall attempt to obtain the maximum service possible for the bargaining unit member. This Article confers only the right to demand and enforce payment of the required contributions. No dispute under or relating to such benefits or claims shall be subject to the grievance-arbitration procedure in the Collective Bargaining Agreement except that the Employer failed to make the agreed upon contributions. Only the State's failure to make the required contribution is subject to the grievance-arbitration procedure. The provision or retention of legal assistance under this Article is the sole and exclusive responsibility of the Association and/or the member.

Unless such actions are taken to demand and enforce payment by the State of the required contributions, the Association agrees to defend, indemnify and hold harmless the State against any and all legal actions, orders, judgments, or other decisions rendered in any proceeding as a result of the implementation of this Article.”

ACOA Argument: For many years Correctional Officers were part of the Alaska State Employees Association (ASEA). As part of their contract, \$8 was paid by the State into a legal trust account. When Correctional Officers changed over from ASEA in February 1998 to the Public Safety Employees Association (PSEA) the \$8 was first used to reduce their health care costs and later placed into an Injury Leave Account. The injury leave account covered the difference between what Workers Compensation paid and what they would have received if they were still receiving a full paycheck.

As time passed this account grew exponentially. At one point there was an issue with some Officers being denied injury leave. This was perplexing since there was plenty of money in the account. It was at that time we were told that the account was never funded and was now considered a paper account. By denying the injury leave, the State actually was saving money.

Correctional Officers were very concerned that what was real money going into a real account had turned into paper money. Correctional Officers wanted to take action to have the fund ... funded but the PSEA Business Manager met with State officials and reassured Correctional Officers that the State considered it “.... the same as cash” and no further actions was necessary.

The payment to Officers ceased to be an issue and the State increased the injuries that could be covered under the injury leave account. Even with the increased coverage, this account continued to grow. Today the account balance is \$506,176.22.⁸⁹ ACOA is requesting that a trust be established and \$250,000 from their Injury Leave Account be transferred to a Legal Trust Account.

The Legal Trust that ACOA is asking to be set-up is exactly as those already established by other unions.⁹⁰ Payroll Manager, Mark Minthorn, testified that there would be no problem setting up the fund or having it set up by July 1, 2009. The State never articulated any principled objection but the Association surmises that the State's real issue is that it would actually have to turn the paper account into real money and turn it over to ACOA. Since the account should have been real money all along, that objection should not be credited. The actual monetary term of this benefit is a benefit that ACOA already has but has not been able to use effectively. This proposal does not increase costs to the State and provides a useful benefit to ACOA's members.

⁸⁹ Exhibit A-37

⁹⁰ Joint Exhibit J-6, Page 34

ACOA's proposed Article 22.2 C: Shift Assignments

(MONETARY)

ACOA proposal: The Association proposes adding the underlined language: If a shift change is made in a manner that causes an employee to work in back-to-back work weeks, all hours worked in the second week shall be compensated at time and one-half times the employee's regular rate of pay, as if the employee were working on Regularly Scheduled Days off, even if the work is in a new pay period.

ACOA Argument: We cannot defend our proposed change without first providing some necessary background information. As described in Article 13.2 A of the Bargaining Agreement, "The workweek for employees on the twelve (12) hour schedule shall be a fourteen (14) day work period consisting of eighty-four (84) hours in pay status with a maximum of seven (7) working days and seven (7) consecutive days off, and all employees shall be guaranteed a full workweek.⁹¹" As testified to, Correctional Officers are under a pay system consisting of 26 pay periods each of which is two week long. Every 84 hour Officers' pay period consists of one seven day, 12 hour-a-day workweek and one week off. For one-half of the 84 hour officers, the first week of each pay period is their week off; for the other half the second week is their week off. Officers are assigned to four shifts to provide 24/7 coverage. While one shift is working 12 hour days, another is replacing them and working twelve hour nights. While these two shifts are working two others are off duty for seven days. At the end of those seven days one of the off duty shifts comes in and replaces the shift that has just completed their seven night shifts and is starting their break. That night, the other shift that has been off duty comes in and starts the first of their 12 hour shifts.

Changing an Officer from one shift to another is relatively easy when it is simply a matter of changing an Officer to the "sister" shift that is on the same week-on week-off rotation. Changing an Officer from one work week to the opposite work week is a bit more difficult and takes considerably more forethought and planning if it is to be done with as little inconvenience to the Officer involved as possible. The Association had witnesses telephonically available to testify that would have testified to having been required to work 14 twelve hour days in a row to facilitate changes of this nature. They would have also testified that none of the 168 hours they worked while working those 14 workdays in a row qualified for overtime pay. This was because although those workweeks were back to back, they were totally contained in two separate pay periods. They were not called because of the Employer's willingness to stipulate that this indeed happens.

You heard testimony from Mr. Lecrone that he felt it unsafe to work Officers so many days in a row without a break. He testified that for him, from his own experience, working any more than three days off during a week off was tiring and dulled his concentration to some extent, particularly if the three days were consecutive to seven that were just completed. He allowed that individual Officers would differ in regards to their abilities to work extended periods. He also testified that it was not the underlying intent of this proposal to find a new way to enrich Correctional Officers. This is not about money, it is about what the Association believes is the Employer's propensity to opt for the easiest solution when doing so didn't come with a price tag. Why else would an employer in this line of work think it acceptable to work someone 14 straight 12 hour days in a non-emergency situation?

⁹¹ Joint Exhibit J-2

There are many ways persons can be moved from one workweek to the other to eliminate or reduce the need for Officers to work excessive back to back schedules. Many take far more advance planning than others. In its simplest form, at one end of the “possibility” spectrum would be requiring back to back weeks to be worked, as discussed above. At the opposite end of the spectrum would be giving that same person back to back weeks off to accomplish the change, which would be a payroll wash in the 26 pay period arena. Between these two extremes there are ways the change can be implemented with smaller shifts and adjustments. We believe the employer’s motivation to scenario shift changes in the most acceptable manner for all involved will increase in direct proportion to the cost of not doing so. Evidently, Correctional Officers in Oregon experienced a similar concern and resolved it in a similar manner⁹².

⁹² Joint Exhibit J-10, Article 15, Section 3, Page 19

ACOA's proposed Article 22.6 A: ~~Temporary Duty Assignments~~ Duty Assignment Changes
(NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: "When the Employer changes the shift assignment of a member from one workweek to the opposite workweek, or changes (2) the duty assignment of an employee from an 84-hour assignment to a 42 40-hour assignment, or vice versa, the Employer, whenever feasible, will solicit volunteers from among the group of potentially affected employees and select the senior employee from among the qualified volunteers in the job class. If there are no qualified volunteers, the Employer shall select the least senior qualified employee. For purposes of this section, seniority is construed as Bargaining Unit seniority."

ACOA Argument: This Article was previously titled Temporary Duty Assignments, but had nothing at all to do with that subject. It dealt with moves from 42 hour weeks to 84 hour weeks, and vice versa. The major thrust of this proposal was to appropriately change the title to match the contents. A secondary action was to address workweek to workweek changes which have a tendency to be exceptionally disruptive to Officers and their families.

State's proposed Article 22.6 A: Temporary Duty Assignments
(MONETARY)

State proposal: The State proposes deleting the strike-through language and adding the underlined language: "When the Employer changes the duty assignment of an employee from an 84-hour assignment to a 42 ~~40~~-hour assignment, or vice versa, the Employer, whenever feasible, will solicit volunteers from among the group of potentially affected employees and select the senior employee from among the qualified volunteers in the job class. If there are no qualified volunteers, the Employer shall select the least senior qualified employee. For purposes of this section, seniority is construed as Bargaining Unit seniority."

ACOA Argument: No disagreement with the State's housekeeping correction, however we have submitted a separate proposal.

ACOA proposed Article 22.6 B: ~~Temporary Duty Assignments~~ Duty Assignment Changes
(NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language: “Following the procedures contained in Articles 22.6 and 22.7 shall be considered feasible unless the Employer gives the Association advance written notification, to include the reason they do not feel it feasible to follow those procedures. Disagreements regarding feasibility shall be settled through the grievance/arbitration process.”

ACOA Argument: “Feasible” is a nebulous ill-defined term that the parties have argued over since first incorporated into the Agreement, but it does not appear to be a term that the parties will ever pin down to a bright line test or be able to unequivocally agree to the meaning of. Being notified why something is not considered feasible before the action is taken does several things for all concerned parties. First, Management’s motivation and credibility is almost always questioned when individuals and the Association first learn Management didn’t consider the contractual selection process to be feasible until after the fact. In that interest there will always be those who believe Management determined it unfeasible after the fact when they knew what the results might be. Perhaps equally important, if the Association knows in advance and has had an opportunity to discuss the feasibility or unfeasibility with Management in advance, the off-chance always exists that Management will change their mind, or that the Association, knowing in advance might be able to support them in their decision. Lastly, we would submit that it is simply good leadership and policy to let all the players know the rules before the game begins.

ACOA's proposed Article 22.7: Temporary Shift Assignments
(NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: "When the Employer needs to temporarily change a shift assignment, the Employer, whenever feasible, will first solicit volunteers from among the group of potentially affected employees and select the senior employee from among the qualified volunteers in the job class. If there are no qualified volunteers, the Employer shall select the least senior qualified employee. For purposes of this section, seniority is construed as bargaining unit seniority."

ACOA Argument: The current Article 22.6 was titled "Temporary Duty Assignments" but the language did not discuss Temporary Assignments and the Association proposed changing the title to reflect what it actually dealt with. Concurrent with that change, the Association proposed adding this new section that actually did deal with temporary assignment changes, as addressed in the title. We believe that during the arbitration we agreed to the term Duty Assignments and to leave only "shift Assignments". In response to that, as depicted above, we removed all the offensive to Management references to "duty assignments" and left only the words "shift assignments".

ACOA's proposal Article 23.2 New language – New Clothing items & Quantities (MONETARY)

ACOA Proposal: The Association proposed new language:

Shirts	- 3 <u>Per year</u>
Trousers / Military-style BDUs	- 3 <u>per year</u>
<u>Soft-Body Armor Vest</u>	- 1 <u>Prisoner Transportation Officers Only</u>

Soft-Body Armor Vests are to be replaced in accordance with manufacturer's specifications and/or applicable safety standards.

ACOA Argument: The recognized past practice for as long as either party can recall has been for institutions to issue three sets of uniforms to each Officer per year. In spite of this recognized practice, there have been two occasions in the past eight years when, due to changes in uniform styles and suppliers, Officers have been unable to obtain their annual issue of uniforms in a timely manner and have had to wait more than a year for replacement uniforms. Correctional work often is very physical and hands on. Uniforms are regularly soiled and damaged in the course of accomplishing duties Correctional Officers consider routine and normal. Officers work in an environment where blood borne and bodily fluid borne pathogens are facts of life. For the most part, uniforms are washed daily and undergo considerable normal wear and tear. One's success as a Correctional Officer and one's ability to maintain a professionally commanding appearance are closely related. The Department recognizes the importance of appearance in its written policies⁹³ and Appearance is a mandatory rating block on Officer's Performance Evaluations. It is our understanding that the Department also budgets for three sets of uniforms a year. This understanding was reinforced by their arguments before you three years ago when they testified to their issuing at least three uniforms to each Correctional Officer as a reason not to be required to provide uniform allowances. Clearly and concisely stating this requirement in the contract is appropriate.

Prisoner Transportation Officers are required to have fitted and serviceable vests in order to accomplish their duties safely. You heard testimony that vests have a stated service life that should not be exceeded. You also heard testimony that there have been occasions when this has occurred. At one point there appeared to be some finger pointing from both sides of the table. This isn't about finger pointing. One never knows when an Officer's vest will be needed to stop a bullet, this is about replacing vests before they fail.

⁹³ Association Exhibit A-100

ACOA's proposed Article 23.2 Equipment and Clothing (MONETARY)

ACOA Proposal: The Association proposed the underlined language: "The Employer shall provide proper fitting and sized uniforms to all employees.

The Employer must provide uniforms to all employees within thirty (30) days of their annual hire date."

ACOA Argument: Departmental Policy and Procedure 201.07⁹⁴ directs that Officers be given uniform components and requires that Officers wear their uniforms in a manner that ensures professional appearance. Offered as an Exhibit was the Spring Creek Correctional Center Employee Handbook⁹⁵, tasking Officers to wear clean, pressed, properly fitted uniforms and expounding on such details as pants that are not to be too tight. Throughout this Administrations tenure there have been continuing problems with the quality and fit of the uniforms Correctional Officers were being issued. Many Officers have opened their own wallets to have ill fitting uniforms tailored, adjusted and repaired. It is expected that these issues will be resolved by changing vendors, but these expectations have yet to be confirmed and such promises have been made before. By adding qualifying language here, the Association's goal is to ensure that quality controls are put into place.

The Association questioned Superintendent Miller on the disbursement of uniform articles of clothing. Policy spells out which pieces the State will hand out. Disbursement of these pieces has not been followed as per Policy.

⁹⁴ Association Exhibit A-100

⁹⁵ Association Exhibit A-99

State's proposed Article 23.2 Uniforms (MONETARY)

State's Proposal: The State proposed deleting the strike-through language: ~~As the current inventory of uniforms is depleted, replacement uniforms will include trousers and shirts with a fabric blend no less than 35% cotton to synthetic blend.~~

ACOA Argument: In years past, the Department of Corrections purchased some very inexpensive uniforms made of very low-cost fabric. We do not know exactly what the material was but it had a plastic/nylon feel to it. During the negotiations that lead up to this language being included in the contract, there were stories of Officers running to an inmate fight, slipping, and then sliding on the floor. The pant's material, heated up by the pressure of the slide, melted. If a C.O. was ever caught in an actual fire, the results could be very painful.

The uniforms were also uncomfortable and did not breathe well. The Association would certainly be willing to waive the 35% cotton requirement if the fabric or material was such that it breathed, was comfortable, and would not melt in a fire or from sliding on the floor.

ACOA's proposed Article 23.3 Clothing Allowance (MONETARY)

ACOA Proposal: Members shall receive a sixty-three dollars (\$63.00) per month clothing maintenance/dry cleaning allowance with no requirement to submit receipts.

ACOA Argument: One prong of the State's argument against providing Correctional Officers a monthly uniform maintenance allowance at interest arbitration three years ago was that the Correctional Officers IVs who are in APEA's Supervisory Unit are given the same allowance as PSEA Troopers because they wear the same uniforms. In reality, except for the color, Supervisory CO IV's wear essentially the same uniform all other CO's wear. While arguing their case the state then went on to stipulate that "mistakes may have been made in the past regarding paying CO IVs a dry cleaning allowance, however it was never the State's intention to provide a uniform allowance to employees whose uniforms do not need to be dry cleaned." That is a matter of record in the decision that followed. In spite of the State's calling it a mistake and in spite of the fact that CO IV uniforms do not need to be dry cleaned, they not only continue to receive the allowance, it has increased from forty-eight to sixty-three dollars a month⁹⁶.

The Association's argument that Correctional Officers get extremely dirty that was made three years ago appears to have been undersold. We will not belabor that argument again, except to point out that while our supervisors are keeping their uniforms relatively clean in their offices, the Correctional Officers are hands-on with the inmates. We would also like to list issues Correctional Officers regularly deal with that leaves them feeling compelled to change their uniforms on a daily basis:

- Blood borne pathogens
- Bodily fluid borne pathogens
- Hepatitis
- Tuberculosis
- AIDS
- Methicillin Resistant Staphylococcus Aureas
- Body Lice
- Scabies
- Ad nauseum

The State sent a very poor message to Correctional Officers by admitting their error in providing an allowance to CO IVs and then continuing that allowance into a new contract with an increase, while persisting in denying the Association's members the same benefit.

APD clothing allowance⁹⁷
Alaska Troopers clothing allowance⁹⁸
Washington State will pay for uniforms to be cleaned⁹⁹

⁹⁶ Joint Exhibit J-4 , Pages 28 and 29

⁹⁷ Joint Exhibit J-9, Page 22

⁹⁸ Joint Exhibit J-3, Page 81

ACOA's proposed Article 23.4: Dress Uniform (NON-MONETARY)

ACOA Proposal: Dress Uniform. A dress uniform will be allowed. The Employer will not be responsible for providing the dress uniform and any design must be approved by the Employer.

ACOA Argument: Every year Correctional Officers go to a national convention where Officers from around the country are honored for heroism. Alaska attendees do not have a dress uniform, as do others. It is awkward. Every year during the Alaska Law Enforcement Week, Officers from around the State attend a memorial to fallen Officers. We have one Officer with a plaque on the monument. The ceremonial tradition is for an honorary rose to be placed for each Officer. We participated only one year, the year we ordered a dress uniform and received permission to use it for that one event.

Correctional Officers are not asking for the world. They will pay for their own uniform. The uniform has to be approved by the Department. They just want to be able to stand with other C.O.s nationally, and with other Peace Officers in Alaska with pride.

⁹⁹ Joint Exhibit J-12, Page 101

ACOA's proposal Article 24.1: Safety and Health – Safety Equipment (MONETARY)

ACOA proposal: The Association proposes adding the underlined language:

“Safety Equipment

As a minimum, the following shall be provided:

1. Personal man-down alarms on all radios assigned to institutional Correctional Officers,
2. Equipment to minimize the risk of injury to members of Tactical Teams and others called upon to quell physically unruly inmates and remands or to search institutional grounds for escapees,
3. Medical grade gloves and stick proof gloves for Officers performing shakedowns and searches of persons,
4. Hand sanitizers, soaps, and sprays suitable to aid in preventing the spread of Methicillin-Resistant Staphylococcus Aureus (MRSA),
5. CPR shields to abate the threat of pathogens and bodily fluids while performing CPR,
6. Radios and cellular telephones capable of communicating with the Alaska State Troopers and local law enforcement agencies shall be provided in all prisoner transportation vehicles.”

ACOA Argument: The Association believes these items to be the minimum necessary, which is addressed in the opening statement. Every institution differs in the manner they respond to disturbances and in whether or not they designate and train extraction or tactical teams. Spring Creek designates and trains such teams and would most probably equip differently than an institution where any and all available Officers respond on an as able to basis. The Association intentionally leaves such bottom line Management decisions to those tasked to manage, feeling that we would be more inappropriate to include specific items to the exclusion of others.

ACOA's proposed Article 24.2 B: Safety and Health – Recording and Reporting (NON-MONETARY)

ACOA proposal: The Association proposes adding the underlined language: “The Employer shall provide the Association with copies of all Special Incident Reports (SIRs) involving assaults on Association members; incidents of blood- borne pathogen, airborne pathogen, and/or bodily fluid exposure to Association Members; known or suspected instances of Association Members contracting MRSA; known or suspected cases of inmates contracting MRSA; or similar issues involving the health and safety of Correctional Officers. Information that is statutorily confidential shall be redacted.”

ACOA Argument: Although only touched on in the ACOA opening statement and a few comments in the Interest Arbitration, the Arbitrator could probably sense a serious change in the Association/Department relationship since the last Interest Arbitration. As with most situations where two parties are at loose ends, communication is a problem. The Association believed that as 300 plus inmates were placed into the prison system when this Administration took over and the inmate population became frustrated with the crowded living conditions, more Officers were assaulted and more cases of MRSA occurred. The Department denied that either MRSA or assaults were on the rise and refused Association requests for information. Subsequently, the Association asked for the information under the Freedom of Information Act. As things get worse inmates and inmates' families went to the press; and after numerous other issues, there was a no-confidence vote by Correctional Officers against the Department. The end result was the State Legislators calling for an audit of the Department of Corrections. This in turn led to new procedures being taken for MRSA protection and the Department moving the additional 300 inmates that had brought into the system, out of the Alaska system. If the Association and the State had traded information the divide could have been avoided.

The State mentioned confidentiality. Any issues with confidentiality can be avoided by redacting the names.

State's Proposed Article 24.2 B: Monitored Health Program
(NON-MONETARY)

State proposal: "Monitored Health Program

- A. The Employer agrees to inform Bargaining Unit members of identified hazards with which they may come into contact in accordance with the applicable regulations of the Alaska Department of Labor.
- B. The parties recognize that certain Bargaining Unit members may, in the regular performance of their duties, come in contact with pathogenic, carcinogenic and toxic substances or with infectious blood, airborne or body fluid borne diseases. When a qualifying member provides proof of having undergone an annual physical, the Employer will reimburse that member for actual, receipted out of pocket, un-reimbursed expenditures up to two hundred dollars (\$200). No more than one (1) such reimbursement will be made in any twelve (12) month period."

ACOA Argument: The current language has been in previous contracts. There has not been a single issue brought forward by the State on this language. The State did not articulate what the new language they proposed means.

ACOA's proposed Article 25.3: Compensation for Prisoner Transportation Travel Time
(MONETARY)

ACOA proposal: The Association proposes to add the underlined language: "Compensation for Prisoner Transportation Travel Time"

The following applies when an overnight stay is required ~~PTO is required to stay overnight~~ during the course of a prisoner transport."

ACOA Argument: Article 25.3 is currently written so as to apply exclusively to Commissioned Prisoner Transportation Officers (PTOs). This limitation fails to recognize the fact that there are three classifications of prisoners that must be transported by at least two Officers only one of whom must be an armed Prisoner Transportation Officer. Using an unarmed Correctional Officer as the second escorting Officer is acceptable in accordance with Departmental Policy. This creates the potential for two Officers traveling together on the same mission to be treated differently with regards to travel and per diem. The Association's proposal is intended to make the same rules applicable to both of the Officers who might be involved in transporting a prisoner. The impact and cost of this change will be minimal as the probability that a PTO and non-PTO will travel together on an overnight trip is slight.

**ACOA's proposed Article 25.6: Privately-Owned Conveyances:
(NON-MONETARY)**

ACOA proposal: The Association proposes to add the underlined language: "Privately-Owned Conveyances

Members are not obligated to use their privately-owned vehicles for State business. However, when members use their own vehicles for State business, reimbursement shall be consistent with IRS regulations."

ACOA Argument: On occasion, Correctional Officers have been directed to drive their private vehicles to perform temporary duty at locations other than at their assigned duty stations. Cases in point during the past year include an Officer at an institution who was directed to drive her personal vehicle to a hospital approximately seventy-five miles distant to provide security for a hospitalized prisoner or an Officer at another institution who was directed to drive his personal vehicle to the Training Academy, a distance of approximately forty-two miles from the institution. Not every Officer drives the same vehicle for the short distances involved between their homes and work that they would be comfortable driving if they had to drive greater distances. This is particularly true when an Officer does not feel their vehicle is mechanically "up for the trip" or that their tires are less than optimum for a winter drive on the highway. Beyond that, there are insurance and liability issues to include questions about whether or not an employee injured while driving their own vehicle to a temporary duty location would be compensated under Worker's Compensation.

The Public Safety Employees Association 2008-2011 Bargaining Agreement is a comparable contract that contains the language and protection that Correctional Officers seek¹⁰⁰.

¹⁰⁰ Joint Exhibit J-3, Article 8, Section 4, Page 20

State's proposed Article 26.1: Protection of Rights
(NON-MONETARY)

State proposal: Illegal Work "The Employer or Bargaining Unit member shall not knowingly require any Bargaining Unit member to perform work in violation of any Federal, State, or local laws."

ACOA Argument: This seems nonsensical to the Association. It is the Employer that directs work to its employees. One employee asking another employee to do anything, more or less illegal, falls well outside the scope of a contract between the State the Association. However, this is elevated to a matter of major concern in the light of the employer's testimony during arbitration that it would like to move Correctional Officer IIIs into the Supervisory Bargaining Unit. Many years ago the Alaska Labor Relations Agency decided that they did not belong in the Supervisory Unit and we think it would be inappropriate for you to inadvertently assist them in this Endeavour.

ACOA's proposed Article 29: Legal Indemnification (NON-MONETARY)

ACOA proposal: The Association proposes deleting the strike-through language and adding the underlined language:

Section 1. General

a. Definition

Providing a legal defense means that Employer appoints at its expense counsel to represent member in a legal action.

Indemnification means Employer's payment of a judgment or legal obligation that member incurred as a result of member's duties for Employer.

b. Claims against a member as a state employee:

In legal actions under AS 09.50.250 against a member, AS 09.50.253 provides for certification by the Attorney General and for the action to proceed exclusively against the state if the action arose from conduct within the scope of member's employment. A request for certification under AS 09.50.253 is made as provided in AS 09.50.253 and 9 AAC 33.010 and is not subject to the grievance arbitration procedure in Article 10 of this agreement.

c. Claims against a member under a federal or state law expressly authorizing a claim against a state official:

If AS 09.50.253 does not apply because federal or state law expressly authorizes an action against member, Employer will provide a legal defense and indemnify member as provided in sections 2-6.

Section 2. Providing a legal defense

~~The Employer shall provide for indemnification of members against losses arising out of any judgments or claims for acts committed by them in the course of or discharge of their duties and in the scope of their employment, provided that such losses do not result from the willful commission of wrongful acts or gross negligence of such members.~~

The Employer will provide a legal defense to a member named as a defendant or respondent in a legal action if member was acting within the scope of member's office or employment at the time of the incident out of which the action arose as follows: the ~~The~~ member shall have the right to counsel; however, the Employer shall have the right to determine which attorney will represent the member. If the member objects to the attorney provided by the Employer, the following process for selection of a defense attorney shall prevail: The Commissioner of the Department of Corrections and the Attorney General shall meet with the member and/or a representative of the Association in an effort to select an attorney who shall represent the member. The Attorney General shall make the final decisions; except, if in consultation with the member or his/her representative, the Attorney General determines that, due to an actual or potential conflict of interest, he/she or his/her representative cannot adequately defend both the State and the member, he/she shall select an attorney from outside the Attorney General's office to represent the member; such selection shall be subject to the approval of the member or his/her representative.

Section 3. Indemnification

A member charged in any civil action in the performance of his/her duties as required by the Employer shall not lose his/her position, pay or benefits; costs stemming from a civil suit against any member in the performance of his/her duties as provided in this Article shall be borne by the Employer, including any judgment rendered against the member. If it is determined by a court of competent jurisdiction that the member was not acting in the course or scope of his/her employment, the Employer is not liable for any judgment and may recover any costs incurred from the member.

The Employer will indemnify a member for a judgment or legal obligation if the judgment or legal obligation arose from member's action within the scope of member's office or employment except as provided in Section 6.

The Employer may provide a legal defense without assuming the obligation to indemnify member by notifying member in writing that it is reserving its right to deny payment of the judgment or obligation under this section.

Section 4. Scope of office or employment

The member is acting within the scope of member's office or employment if

- a. the member was employed or authorized to perform the act or omission;
- b. the act or omission occurred substantially within the authorized space or time of the office or employment;
- c. a purpose of the act or omission was to serve the state;
- d. the act or omission did not constitute willful, reckless, or intentional misconduct, gross negligence, or malicious conduct;
- e. Duties assigned that are outside the scope of an Officer's profession, i.e. Passing of medications;
- f. In the Department of Corrections, the Employer recognizes that while the passing of medications by Correctional Officers is an assigned job duty, the knowledge for the performance of this job duty is outside the scope of their profession. Therefore, the Employer agrees that no discipline or liability will be imposed on the employee for the passing of medications. The Employer also agrees not to expand the passing of medication to those institutions not currently performing those duties, unless the Employer can demonstrate that there is no other practicable means to distribute medication within those institutions.

Section 5. Disputes

The Employer's decision to withhold a legal defense or indemnification is subject to review by complaint for breach of contract in the superior court of this state and is not subject to the grievance arbitration procedure in Article 16 of this Agreement.

Section 6. Criminal Charges

If a member is charged criminally for acts committed by him or her in the course of or discharge of their duties and in the scope of their employment, the member shall be entitled to reimbursement of reasonable costs and attorney's fees if the member is acquitted or the charges dropped, providing that such charges do not result from the willful commission of wrongful acts or gross negligence of the member. Disputes involving entitlements of a member to reimbursement or the amount of costs and fees to be borne by the Employer, relating to this section, shall be submitted to the grievance arbitration procedure. The

~~member, within ten (10) days of receipt of actual notice of a claim subject to the provisions of this Article, shall forward the claim to the Employer at the following address:~~

~~Department of Administration
Division of Risk Management
P.O. Box 110218
Juneau, AK 99811-0218~~

~~The postmark of the forwarded claim or the date that the claim is delivered, whichever is sooner, will be deemed the date of forwarding the claim. Failure by the member to satisfy his/her obligation under this Article releases the Employer of its obligation under this Article.~~

ACOA Argument: Indemnification of State employees in lawsuits in the course of their employment has historically been either a creature of contract or at the discretion of the Attorney General. The State has recently enacted legislation setting out the circumstance under which it will provide legal defense or substitute itself for the employee as defendant in a suit. The State has proposed significant changes in the original language to more closely align the contract language with the statutory language and the Association has accepted many of the State's changes. There remain however serious disagreements.

Fundamentally, the State seeks to commit the entire matter of defense and indemnification to its discretion within the statutory bounds and offers no contractual remedy for disputes that might arise under this article. The Association is respectful of the Attorney General's prerogatives in defending the State and its employees and agents but it flies in the face of both letter and spirit of collective bargaining that the only relief offered for any dispute is to resort to the courts, even for matters as mundane as the responsibility for certain costs. Further, the State's proposal offers the Association no assurance that members will not be deprived of pay or benefits in the course of any lawsuit that comes within the ambit of this article.

The arbitrator is well aware of the population with which Association members interact and the high likelihood of either civil suits or criminal charges being brought against members of this Association. The State seeks a dramatic concession in that it has removed the protection in the current agreement for members against whom criminal charges are brought but which result in acquittal. The State offered no evidence or argument at hearing for its desire for this significant concession and the Arbitrator should find for the Association on this basis alone.

The Association seeks additional protection for its members who must pass medication to inmates. The State makes much of the fact that the Class Specification for Correctional Officers contemplates dispensing medication. By the testimony of the State's own expert, dispensing medication as that term is understood in the medical professions would be illegal for a Correctional Officer. It is also clear that the process to which C.O.s are trained and DOC policies are directed does not actually exist in the institutions. Clearly, Policy contemplates a process in which only pre-dispensed and packaged drugs are merely handed or passed to an inmate who then medicates him/herself.

It is evident that the actual process, especially in the smaller institutions, is much more involved and entails significant risk of error and significant potential for abuse or misuse by inmates. The Association is mindful of the Employer's need to dispense medications at times when no medical personnel are available. The Association submits that the proper course of action by the Employer is to employ the necessary medical staff. Since the Association has no means to compel the Employer to provide adequate medical staff, we seek the protection of legal indemnification in the situation where members are tasked to pass medication.

State's proposed Article 37: Duration of the Agreement (MONETARY)

State proposal: The State proposes deleting the strike-through portion of Article 37, as follows: ~~"The parties further agree that should the State enter into an Agreement with another labor organization that provides for an increase in another employee's wages in excess of that provided for in this agreement, upon request of this Association, this Agreement will be promptly reopened for the sole purpose of negotiating economic issues."~~

ACOA Argument: The Association objects to the State's proposal to take away our right to promptly reopen the Bargaining Agreement for the sole purpose of negotiating economic issues if the State were to enter into an Agreement with another labor organization that provides for wage increases significantly greater than provided in ours. This clause was negotiated and mutually agreed upon over six years ago and is exactly the same as exists in the current 2008-2011 Public Safety Employees Association bargaining agreement¹⁰¹. At no time during negotiations for the 2009-2012 Agreement do we believe the State discussed any reason why they wanted to remove this clause; only that they wanted it removed. We also do not recall any arguments being presented while at arbitration. We will not have had an opportunity to review their argument before seeing it for the first time when we receive their written brief. We will have no meaningful opportunity to counter.

¹⁰¹ Joint Exhibit J-3, PSEA Bargaining Agreement