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IN THE MATTER OF  
FACTFINDING BETWEEN

State of Florida

AND

American Federation of State, County and  
Municipal Employees, Council 79

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SPECIAL MASTER  
RECOMMENDATIONS

SM 2001 – 005

MASTER CONTRACT

(AND ANCILLARY ISSUES)

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SPECIAL MASTER

Mark R. Sherman

DATE OF HEARING

March 12, 13 & 14, 2001

PLACE OF HEARING

Third Floor Conference Room  
Division of Human Resource Management  
4050 Esplanade Way, Building 4040  
Tallahassee, Florida, 32399-0950

DATE OF RECOMMENDATION

March 31, 2001

APPEARANCES

For the State of Florida: Terry Perkins, Chief Negotiator  
Florida Department of Management Services  
4050 Esplanade Way, Building 4040  
Tallahassee, Florida, 32399-0950

For the Union: Mike Campbell, Associate Director  
A.F.S.C.M.E., Council 61 *c/o*

111 Gadsden Street, Suite 100  
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## ISSUES AT IMPASSE

An immense number of issues were submitted to Impasse Proceedings before the Special Master. Almost all of these related to the Parties' competing proposals for the successor Master Contract. The list below identifies the Articles declared to be at Impasse. Most Articles involve multiple issues. Issues that are not related to a specific provision of the existing Master Contract are annotated accordingly.

- \* Article 1: Recognition
- \* Article 2: Pay Plan and Classification of Work
- \* Article 5: Union Activities and Employee Representation
- \* Article 6: Grievance Procedure
- \* Article 7: Discipline and Discharge
- \* Article 8: Workforce Reduction and Privatization
- \* Article 9: Reassignment, Transfer, Change in Duty Station, Promotion
- \* Article 10: Promotions
- \* Article 11: Classification Review
- \* Article 13: Health and Safety
- \* Article 14: Performance Review
- \* Article 15: Seniority
- \* Article 16: Employee's Insurance Premium Check –off
- \* Article 18: Leaves of Absence, Hours of Work, Overtime, Disability Leave
- \* Article 20: Training
- \* Article 21: Out of Title Work

- \* Article 22: Disability Leave
- \* Article 23: Hours of Work/Overtime
- \* Article 25: Wages
- \* Article 27: Insurance Benefits
- \* Economic Self Sufficiency Program (not currently embodied in contract)
- \* Lump Sum Bonuses Chapter, 60L-18 (not currently embodied in contract)

## STATUTORY AUTHORITY

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216.163 Governor's recommended budget; form and content; declaration of collective bargaining impasses —

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(6) At the time the Governor is required to furnish copies of his or her recommended budget to each senator and representative under s. 216.162 (1), the Governor shall declare an impasse in all collective bargaining negotiations for which he or she is deemed to be the public employer and for which a collective bargaining agreement has not been executed. Within fourteen days thereafter, the Governor shall furnish the legislative appropriations committees with documentation relating to the last offer he or she made during such collective bargaining negotiations or recommended to the mediator or special master appointed to resolve the impasse.

447.403 Resolution of impasses —

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(2) If no mediator is appointed, or upon the request of either party, the commission shall appoint, and submit all unresolved issues to a special master acceptable to both parties. If the parties are unable to agree on the appointment of a special master, the commission shall appoint, in its discretion, a qualified special master, the parties may proceed directly to resolution of the impasse by the legislative body pursuant to paragraph (4)(d). Nothing in this section precludes the parties from using the services of a mediator at any time during the conduct of collective bargaining.

(3) The special master shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved

contract issues. The hearings shall be held at times, dates, and places to be established by the special master in accordance with rules promulgated by the commission. The special master shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on his own behalf. Within 15 calendar days after the close of the final hearing, the special master shall transmit his recommended decision to the commission and to the representatives of both parties by registered mail, return receipt requested. Such recommended decision shall be discussed by the parties, and each recommendation of the special master shall be deemed approved by both parties unless specifically rejected by either party by written notice filed with the commission within 20 calendar days after the date the party received the special master's recommended decision. The written notice shall include a statement of the cause for each rejection and shall be served upon the other party.

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447.405 Factors to be considered by the special master. The special master shall conduct the hearings and render his recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special master in arriving at a recommended decision shall include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

(2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.

(3) The interest and welfare of the public.

(4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:

- (a) Hazards of employment.
- (b) Physical qualifications.
- (c) Educational qualifications.
- (d) Intellectual qualifications.
- (e) Job training and skills.
- (f) Retirement plans.
- (g) Sick leave.
- (h) Job security.

(5) Availability of funds.

38D — 19.008 Recommended Decision of Special Master.

(1) Following the close of the hearing(s), the special master shall review and consider all of the relevant evidence which has been presented during the hearing(s) and any oral or written

argument provided by the parties, and he shall prepare a recommended decision. In reaching a decision, the special master shall consider only that evidence presented at the hearing(s) in light of those factors set forth in Section 447.405, Florida Statutes. The special master's recommended decision shall include findings of fact and recommendations for settlement of each issue in dispute.

(2) Within fifteen (15) calendar days after the close of the hearing(s), the special master shall transmit his recommended decision to the Commission and to representatives of both parties, by registered mail, return receipt requested.

## BACKGROUND

The American Federation of State, County and Municipal Employees, Florida Council 79 (the Union) represents roughly 75,000 career service personnel employed by the State of Florida (the State). These include personnel from the Human Services, Professional, Operational Services, and Administrative / Clerical Bargaining Units. The Parties have a mature and responsible history of bargaining, dating back to the late seventies and early eighties. The current Master Contract is a product of that bargaining process and accordingly, the Party that proposes departures from its provisions bears the burden of persuasion in the Special Master Process.

The current contract was implemented on August 1, 1999, and runs through June 30, 2001. In July 2000, the State initiated the bargaining process in relation to the new Master Contract and an initial bargaining session was held in September. Subsequent negotiating sessions on the Master Contract were held in November, December and January. At the January meeting, the State made a wage offer in relation to some of the personnel in the bargaining unit and foreshadowed a number of proposed changes that were to be incorporated in the Governor's "Service First" initiatives for the State

personnel system. The Union rejected the State's partial wage offer and reacted skeptically to the Governor's proposed revisions.

A few days later, on January 19, the State informed the Union that the Governor had issued his Recommended Budget and that an impasse under Chapter 216.163 had automatically come into being. On February 21, 2001 the Public Employees Relations Commission notified this Special Master of his selection in relation to this impasse. This "artificial" or "deemed" impasse (as the State called it) was procedurally affixed to a conventional impasse under Chapter 447.403 in February, when the State declared impasse in its parallel negotiations for the provision of Lump Sum Discretionary Payments to bargaining unit members. (These negotiations and the negotiations over a competency-based initiative for personnel of the Economic Self Sufficiency division had gone on sporadically and in tandem with the Master Contract Negotiations.)

At the end of his February 26, 2001 letter to the Union, the State's Chief Negotiator indicated "the State intends to include this issue, as well as all other outstanding issues at impasse, during the special master proceedings with Mark R. Sherman, the Special Master appointed by PERC on February 21, 2001." Hearings were subsequently scheduled for March 12, 13, and 14 in Tallahassee.

At the outset of those hearings, the Special Master made it clear to the Parties that he expected them to offer factual evidence in support of their positions, that the Party proposing departure from the status quo bore the burden of persuasion, and that they should both be attentive to the decision-making criteria laid out in the statute. With one exception that will be discussed below, the Union agreed with the State's position that both the Master Contract, as well as all other outstanding issues an impasse, should be

referred to the Special Master process. Over the next three days, the Parties were afforded full and fair opportunity to present all relevant testimony and evidence in support of their positions. Although the Parties agreed to some minor post-hearing submissions by the Union, the record of the hearing was officially declared closed on March 14, 2001.

The Special Master agreed with the State's persistent assertion that he should render his recommendations within the fifteen-day statutory time frame outlined in Chapter 447.403. He made every effort to comply with these time limitations despite the fact that this is one of the most complex and voluminous impasses ever referred to the Special Master process. He issues the following Findings of Fact and Recommendations, two days late, in the hope that they guide the Parties toward "a prompt, peaceful, and just settlement" of the issues at impasse.

## PARTIES' POSITIONS ON THE ISSUES AT IMPASSE

### ARTICLE 1: RECOGNITION

#### **POSITION OF THE STATE:**

The State proposed that Sections 2 and 3 be removed from Article 1 and that they be inserted in the previously vacant Article 2. That Article, it was proposed, would cover Pay Plan and Classification of Work. (See below.) This meant that the State's proposed language for Article 1 read as follows:

#### **SECTION 1 - Inclusions**

(A) The State hereby recognizes the Florida Public Employees Council 79, American Federation of State, County and Municipal Employees, AFL-CIO, as the exclusive representative for the purposes of collective bargaining with respect to wages, hours, and terms and

conditions of employment for all employees included in the Human Services, Professional, Operational Services, and Administrative and Clerical Bargaining Units.

(B) The bargaining units for which this recognition is accorded are as defined in the certifications issued by the Florida Public Employees Relations Commission, hereinafter also referred to as "PERC," (Human Services Unit, Order Number 76E-1405 issued on December 21, 1976; Professional Unit, Certification Number 377 issued on January 9, 1978; Operational Services Unit, Certification Number 418 issued on July 14, 1978; Administrative and Clerical Unit, Certification Number 542 issued on June 25, 1981) and as subsequently amended by PERC.

(C) This Contract includes all full-time and part-time Career Service employees in the classifications and positions listed in Appendix A of this Contract, except for those full-time and part-time employees excluded in Article 2 of this Contract.

### **POSITION OF THE UNION:**

The Union proposed the status quo for Article 1. It argued that it was only sensible to leave the inclusions and exclusions sections in the same Article of the Agreement.

## ARTICLE 2: PAY PLAN AND CLASSIFICATION OF WORK

### **POSITION OF THE STATE:**

The State offered no specific contract language that illustrated the full effect of the revisions it proposed to Article 2. Nevertheless, in the materials provided to the Special Master, three proposals were summarized in the following words:

- Union notice and opportunity to consult when the State moves a position or class to a different pay plan or outside the Union's bargaining units.
- Exclusion and New Positions/Classes Sections of Article 1 are transferred to this new Article
- Classification Review (Article 11) is transferred to this new Article

At the hearing the State elaborated. It indicated its preference that the previously vacant Article 2 be transformed into the Article governing Pay Plan and Classification of Work. As indicated above, part of this proposed revision included the suggestion that Sections 2 and 3 from Article 1 be inserted in the newly created Article 2. The State also proposed that the provisions of Article 11 on Classification Review be incorporated into the new Article 2. Almost parenthetically, the State also indicated that this Article should be revised to increase the probationary period of all new employees (including promoted personnel) from six months to one year. Finally, there was one additional proposal that did not take the form of statutory language. This was the State's proposal that it would "provide Union notice and opportunity to consult when the State moves a position or class to a different pay plan or class outside the Union's bargaining units."

**POSITION OF THE UNION:**

The Union proposed the status quo and that Article 2 remain vacant.

**ARTICLE 5: UNION ACTIVITIES AND EMPLOYEE REPRESENTATION**

**POSITION OF THE STATE:**

The State proposed that the language of Article 5 be clarified in three specific ways. First, the State proposed that Section 4 be revised to delete the requirement that the State supply bargaining unit employees' "home address on file" to the Union upon request. It explained that this revision was necessary to comply with recent judicial pronouncements in the field of public records law. The second revision recommended by the State concerned the use of the term "accredited" in Section 6. The State pointed out

that it would be more consistent to use the word "recognized," rather than "accredited" in relation to the Union's stewards. Third, the State proposed that all references to "representatives of the Union" in Section 7, subsections (A), (B), and (C) be substituted for references to "unit employees of the Agencies selected by the Union." In this case, it was inferred that the revision was designed to insure that the Agency would be consulting with its employees who were Union members and not with Union officials who may not even be Agency employees. A final point was made by the State in response to the Union's proposal that it be accorded representation rights over Predetermination Conferences. (See below.) Specifically, the State asserted that it respected the Weingarten Rights of all employees, but did not feel the State should provide paid time to Union stewards to deal with disciplinary issues that had not yet risen to the level of a grievance. Consequently, the State's proposal read as follows:

**Article 5**  
**UNION ACTIVITIES AND EMPLOYEE REPRESENTATION**

It is the policy of the Union and the State that the President of AFSCME Council 79 shall be responsible for all Union decisions relating to employee representation and Union activities covered by this Contract. The agree that the President may delegate certain activities; provided, however, that the President or a member of the President's staff will handle those Union activities which require action by or coordination with the Governor or the Governor's designated representative.

**SECTION 1 - Definitions**

The term "Steward," as used in this Contract, shall mean a State Career Service employee covered by this Contract who has been designated by the President of AFSCME Council 79 to investigate grievances at the Oral Step and to represent grievants at the Oral Step and Step 1 meetings on grievances which have been properly filed under Article 6 of this Contract, when the Union has been selected as the employee's representative.

**SECTION 2- Designation of Employee Representatives**

(A) The President of AFSCME Council 79 shall furnish to the State a list of Stewards, Staff Representatives and Regional Directors. The State will not recognize any person as a Steward, Staff Representative or Regional Director whose name does not appear on the list.

(B) The Union shall be authorized to select Stewards to serve as employee representatives. Stewards shall be selected in accordance with the following:

(1) Agency/Regional/District Headquarters Locations

One Steward per collective bargaining unit may be selected for each agency, regional or district headquarters. Additionally, if there are unit employees in such location who regularly work more than one shift, one additional Steward may be selected for each such shift. If the number of unit employees regularly assigned to the first, second or third shift exceeds 50 employees, an additional Steward may be selected for each multiple of 50 unit employees regularly assigned to that shift.

(2) Institution

If an agency has employees who are permanently assigned to an institution, one Steward per collective bargaining unit may be selected for each such institution. Additionally, if there are unit employees at the institution who regularly work more than one shift, one additional Steward may be selected for each such shift. If the number of unit employees on the first, second or third shift exceeds 50 employees, an additional Steward may be selected by the Union for each multiple of 50 unit employees regularly assigned to that shift.

(3) Remote/Satellite Work Locations

If an agency has employees who are permanently assigned to a remote or satellite work location (such as a food stamp office, fire tower or maintenance yard) one Steward per collective bargaining unit may be selected for each such work location. Additionally, if there are unit employees in such locations who regularly work more than one shift, one additional Steward may be selected for each such shift. If the number of unit employees regularly assigned to the first, second or third shift exceeds 50 employees, an additional Steward may be selected by the Union for each multiple of 50 unit employees regularly assigned to that shift.

(C) The Union shall furnish the State the name, social security number, official class title, bargaining unit, name of employing agency, and specific work location of each Steward who has been designated in accordance with Paragraph (B) of this Section. The State shall not recognize an employee as an authorized Steward until such information has been received from the Union. If a dispute arises as to whether an employee has been properly certified as a Steward, management shall contact the Chief Negotiator of the Department of Management Services to verify certification.

(D) When an employee has been appropriately designated to serve as a Steward in accordance with Paragraph (B), and the State has been notified in accordance with Paragraph (C), the Steward shall be authorized to investigate grievances and represent grievants in accordance with Article 6, subject to the following limitations:

(1) A Steward will not be allowed time off with pay to investigate his own grievance.

(2) Time spent by a Steward in investigating a grievance shall be the minimum amount of time necessary to perform the specific investigation involved.

(3) A Steward shall be allowed to represent an employee in any collective bargaining unit covered by this Contract; however, the Steward must be selected from those Stewards within the same work unit as the grievant's work unit. If no Steward is located in the grievant's work unit, the Steward must be selected from the work unit which is located closest to the grievant's work location, subject to the limitations prescribed in Article 6.

### SECTION 3 - Bulletin Boards

(A) Where State-controlled bulletin boards are available, the State agrees to provide space on such bulletin boards measuring nine square

feet for Union use. Where bulletin boards are not available, the State agrees to provide wall space measuring nine square feet for Union-purchased bulletin boards.

(B) The Union bulletin boards shall be used only for the following notices:

- (1) Recreational and social affairs of the Union
- (2) Union meetings
- (3) Union elections
- (4) Reports of Union committees
- (5) Union benefit programs
- (6) Current Union contract
- (7) Training and educational opportunities
- (8) Decisions reached through consultation meetings, as approved by the Chief Negotiator of the Department of Management Services
- (9) Notices of wage increases for covered employees.

(C) Materials posted on these bulletin boards shall not contain anything which violates or has the effect of violating any law, rule or regulation.

(D) Postings must be dated and bear the signature of an authorized Union representative.

#### SECTION 4 - Employee Lists

Upon request of the President of AFSCME Council 79, the State will, on a quarterly basis, provide the Union with a list giving the name, classification title, and gross salary for each employee in these bargaining units. This list will be prepared on the basis of the latest information on file at the time the list is prepared. Where employee lists are fully available at no cost to nonpublic entities, they shall be made available to the President of AFSCME Council 79 upon written request, at no cost.

#### SECTION 5 - Class Specifications/Rules

The State will provide the President of AFSCME Council 79 with a copy of any revisions to the Career Service System class specifications for positions within these bargaining units, and any revisions to the Personnel Rules of the Career Service System. Any request for additional copies of the Personnel Rules will be made by the President of AFSCME Council 79 and directed to the Chief Negotiator of the Department of Management Services.

#### SECTION 6 - Representative Access

(A) The State agrees that recognized representatives of the Union, whether Local Union Representatives, Council Representatives or International Union Representatives, shall have access to the premises of the State which are available to the public.

(B) If any area of the State's premises is restricted to the public, permission must be requested to enter such areas and such permission will not be unreasonably denied. Such access shall be during the regular working hours of the employee and shall be to investigate an employee's grievance. The Union at its discretion may offer additional supplemental benefits to members of the bargaining unit, the cost of which shall be borne by the member. The Union shall have the right to enroll members during normal working hours, provided such enrollment does not unreasonably interfere with work operations. The Union agrees to comply with all accounting and payroll deduction procedures as established by the State.

#### SECTION 7 - Consultation

(A) In order to provide a means for continuing communication between the parties and upon request of the President of AFSCME Council 79, the Secretary of the Department of Management Services and/or designated representative(s) and not more than six unit employees of the affected Agency(ies) selected by the Union shall make a good faith effort to meet and consult. Such meetings shall be held at a time and place designated by the Department of Management Services.

(B) Upon request by a Union representative, no lower than a Union Regional Director, the Agency Head and/or designee(s) and the Union representative, with not more than six unit employees selected by the Union, shall make a good faith effort to meet and consult. Such meetings shall be held at a time and place to be designated by the Agency Head or designee after consulting with the Union representative.

(C) Upon request by the appropriate Union Regional Director, the Step 1 Management Representative and/or his designee(s) and the Regional Director and/or the Regional Director's designated Staff Representative, with not more than three unit employees selected by the Union, shall make a good faith effort to meet and consult. Such meetings shall be held at a time and place to be designated by the Step 1 Management Representative after consulting with the Regional Director.

(D) All consultation meetings will be scheduled after giving due consideration to the availability and work location of all parties. If a consultation meeting is held or requires reasonable travel time during the working hours of any employee participant, such participant shall be excused without loss of pay for that purpose. Attendance at a consultation meeting outside of regular working hours shall not be deemed time worked.

(E) The purpose of all consultation meetings shall be to discuss matters relating to the administration of this Contract and any agency activities affecting unit employees. It is understood that these meetings shall not be used for the purpose of discussing pending grievances or for negotiation purposes. The parties shall exchange agenda indicating the matters they wish to discuss no later than seven calendar days prior to the scheduled meeting date. Toward the mutually beneficial end of improving employee benefits and reducing health care benefit costs, both parties agree to joint consultation meetings to review the current health insurance program, review recommended improvements in the program, and to study and promote joint health and fitness programs for state employee participation. Such meetings may be called periodically by either party, but no more frequently than quarterly.

(F) Decisions reached through consultation meetings shall be reduced to writing and a copy shall be furnished the Chief Negotiator of the Department of Management Services and the President of AFSCME Council 79 within 30 days following the meeting.

#### SECTION 8 - Negotiations

The Union agrees that all collective bargaining is to be conducted with State representatives designated for that purpose by the Governor, as chief executive officer. While negotiating meetings shall normally be held in Tallahassee, the State and the Union may mutually agree to meet elsewhere at a State facility or other location which involves no rental cost to the State. There shall be no negotiation by the Union at any other level of State government.

**POSITION OF THE UNION:**

The Union favored language that provided it with greater representation rights in relation to Predetermination Conferences. Specifically, the Union suggested that since these meetings were important, and often resulted in discipline, that stewards should be paid to represent employees in these meetings. The Union favored the consistency of this approach since the stewards were also going to be in paid status when the disputes were handled as grievances, later in the process. Accordingly, the Union suggested that the words “and at Predetermination Conferences” be inserted after the phrase “under Article 6 of this Contract” at the end of Section 1. It also favored the insertion of a paragraph (C) at the end of Section 6 that would give it the right to offer additional supplemental benefits to members that would be member funded. As a result of these revisions, its proposal for Article 5 would read as follows:

**Article 5**

**UNION ACTIVITIES AND EMPLOYEE REPRESENTATION**

It is the policy of the Union and the State that the President of AFSCME Council 79 shall be responsible for all Union decisions relating to employee representation and Union activities covered by this Contract. The parties agree that the President may delegate certain activities; provided, however, that the President or a member of the President's staff will handle those Union activities which require action by or coordination with the Governor or the Governor's designated representative.

**SECTION 1 - Definitions**

The term "Steward," as used in this Contract, shall mean a State Career Service employee covered by this Contract who has been designated by the President of AFSCME Council 79 to investigate grievances at the Oral Step and to represent grievants at the Oral Step and Step 1 meetings on grievances which have been properly filed under Article 6 of this Contract, and at Predetermination Conferences, when the Union has been selected as the employee's representative.

**SECTION 2- Designation of Employee Representatives**

(A) The President of AFSCME Council 79 shall furnish to the State a list of Stewards, Staff Representatives and Regional Directors. The State will not recognize any person as a Steward, Staff Representative or Regional Director whose name does not appear on the list.

(B) The Union shall be authorized to select Stewards to serve as employee representatives. Stewards shall be selected in accordance with the following:

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If an agency has employees who are permanently assigned to a remote or satellite work location (such as a food stamp office, fire tower or maintenance yard) one Steward per collective bargaining unit may be selected for each such work location. Additionally, if there are unit employees in such locations who regularly work more than one shift, one additional Steward may be selected for each such shift. If the number of unit employees regularly assigned to the first, second or third shift exceeds 50 employees, an additional Steward may be selected by the Union for each multiple of 50 unit employees regularly assigned to that shift.

(C) The Union shall furnish the State the name, social security number, official class title, bargaining unit, name of employing agency, and specific work location of each Steward who has been designated in accordance with Paragraph (B) of this Section. The State shall not recognize an employee as an authorized Steward until such information has been received from the Union. If a dispute arises as to whether an employee has been properly certified as a Steward, management shall contact the Chief Negotiator of the Department of Management Services to verify certification.

(D) When an employee has been appropriately designated to serve as a Steward in accordance with Paragraph (B), and the State has been notified in accordance with Paragraph (C), the Steward shall be authorized to investigate grievances and represent grievants in accordance with Article 6, subject to the following limitations:

(1) A Steward will not be allowed time off with pay to investigate his own grievance.

(2) Time spent by a Steward in investigating a grievance shall be the minimum amount of time necessary to perform the specific investigation involved.

(3) A Steward shall be allowed to represent an employee in any collective bargaining unit covered by this Contract; however, the Steward must be selected from those Stewards within the same work unit as the grievant's work unit. If no Steward is located in the grievant's work unit, the Steward must be selected from the work unit which is located closest to the grievant's work location, subject to the limitations prescribed in Article 6.

### SECTION 3 - Bulletin Boards

(A) Where State-controlled bulletin boards are available, the State agrees to provide space on such bulletin boards measuring nine square

feet for Union use. Where bulletin boards are not available, the State agrees to provide wall space measuring nine square feet for Union-purchased bulletin boards.

(B) The Union bulletin boards shall be used only for the following notices:

- (1) Recreational and social affairs of the Union
- (2) Union meetings
- (3) Union elections
- (4) Reports of Union committees
- (5) Union benefit programs
- (6) Current Union contract
- (7) Training and educational opportunities
- (8) Decisions reached through consultation meetings, as approved by the Chief Negotiator of the Department of Management Services
- (9) Notices of wage increases for covered employees.

(C) Materials posted on these bulletin boards shall not contain anything which violates or has the effect of violating any law, rule or regulation.

(D) Postings must be dated and bear the signature of an authorized Union representative.

#### SECTION 4 - Employee Lists

Upon request of the President of AFSCME Council 79, the State will, on a quarterly basis, provide the Union with a list giving the name, home address on file, classification title, and gross salary for each employee in these bargaining units. This list will be prepared on the basis of the latest information on file at the time the list is prepared. Where employee lists are fully available at no cost to nonpublic entities, they shall be made available to the President of AFSCME Council 79 upon written request, at no cost.

#### SECTION 5 - Class Specifications/Rules

The State will provide the President of AFSCME Council 79 with a copy of any revisions to the Career Service System class specifications for positions within these bargaining units, and any revisions to the Personnel Rules of the Career Service System. Any request for additional copies of the Personnel Rules will be made by the President of AFSCME Council 79 and directed to the Chief Negotiator of the Department of Management Services.

#### SECTION 6 - Representative Access

(A) The State agrees that accredited representatives of the Union, whether Local Union Representatives, Council Representatives or International Union Representatives, shall have access to the premises of the State which are available to the public.

(B) If any area of the State's premises is restricted to the public, permission must be requested to enter such areas and such permission will not be unreasonably denied. Such access shall be during the regular working hours of the employee and shall be to investigate an employee's grievance. The Union at its discretion may offer additional supplemental benefits to members of the bargaining unit, the cost of which shall be borne by the member. The Union shall have the right to enroll members during normal working hours, provided such enrollment does not unreasonably interfere with work operations. The Union agrees to comply with all accounting and payroll deduction procedures as established by the State.

(C) The Union at its discretion may offer additional supplemental benefits to members of the bargaining unit, the cost of which shall be borne by the member. The Union shall have the right to enroll members

during normal working hours, provided such enrollment does not unreasonably interfere with work operations. The Union agrees to comply with all accounting and payroll deduction procedures as established by the State.

#### SECTION 7 - Consultation

(A) In order to provide a means for continuing communication between the parties and upon request of the President of AFSCME Council 79, the Secretary of the Department of Management Services and/or designated representative(s) and not more than six representatives of the Union shall make a good faith effort to meet and consult. Such meetings shall be held at a time and place designated by the Department of Management Services.

(B) Upon request by a Union representative, no lower than a Union Regional Director, the Agency Head and/or designee(s) and the Union representative, with not more than six Union representatives from the agency, shall make a good faith effort to meet and consult. Such meetings shall be held at a time and place to be designated by the Agency Head or designee after consulting with the Union representative.

(C) Upon request by the appropriate Union Regional Director, the Step 1 Management Representative and/or his designee(s) and the Regional Director and/or the Regional Director's designated Staff Representative, with not more than three representatives from the Agency, shall make a good faith effort to meet and consult. Such meetings shall be held at a time and place to be designated by the Step 1 Management Representative after consulting with the Regional Director.

(D) All consultation meetings will be scheduled after giving due consideration to the availability and work location of all parties. If a consultation meeting is held or requires reasonable travel time during the working hours of any employee participant, such participant shall be excused without loss of pay for that purpose. Attendance at a consultation meeting outside of regular working hours shall not be deemed time worked.

(E) The purpose of all consultation meetings shall be to discuss matters relating to the administration of this Contract and any agency activities affecting unit employees. It is understood that these meetings shall not be used for the purpose of discussing pending grievances or for negotiation purposes. The parties shall exchange agenda indicating the matters they wish to discuss no later than seven calendar days prior to the scheduled meeting date. Toward the mutually beneficial end of improving employee benefits and reducing health care benefit costs, both parties agree to joint consultation meetings to review the current health insurance program, review recommended improvements in the program, and to study and promote joint health and fitness programs for state employee participation. Such meetings may be called periodically by either party, but no more frequently than quarterly.

(F) Decisions reached through consultation meetings shall be reduced to writing and a copy shall be furnished the Chief Negotiator of the Department of Management Services and the President of AFSCME Council 79 within 30 days following the meeting.

#### SECTION 8 - Negotiations

The Union agrees that all collective bargaining is to be conducted with State representatives designated for that purpose by the Governor, as chief executive officer. While negotiating meetings shall normally be held in Tallahassee, the State and the Union may mutually agree to meet elsewhere at a State facility or other location which involves no rental

cost to the State. There shall be no negotiation by the Union at any other level of State government.

## ARTICLE 6: GRIEVANCE PROCEDURE

### **POSITION OF THE STATE:**

The State felt aggrieved in recent years by a number of arbitration decisions in which arbitrators arguably determined issues that were not placed before them. To remedy this situation, the State suggested that the phrase “The arbitrator has no authority to determine any other issue(s) other than the issue(s) submitted in the step 3 decision.” be included in Section 3, Part 5, Paragraph (e). (Due to the relatively insubstantial nature of this revision, the entire Article will not be reproduced.)

### **POSITION OF THE UNION:**

The Union proposed the status quo in relation to this Article.

## ARTICLE 7: DISCIPLINE AND DISCHARGE

### **POSITION OF THE STATE:**

The State offered no specific contract language to flesh out three very basic reforms it proposed to Article 7. Nevertheless, in the materials provided to the Special Master, those three proposals were summarized in the following words:

- Provides increased Agency Head discretion
- No restrictions relative to discipline being used for future progressive discipline
- Only dismissals will be subject to the Grievance Procedure

At the hearing, the State explained that it would offer language that would protect employees' rights to appeal to the Public Employees Relations Commission. Moreover, there would still be protection against personnel actions based on political patronage. However, the degree of protection would be watered down, particularly as the employee would bear the burden of proof. The Agency Head would only need to show that he or she exercised "sound discretion." In addition, only dismissals would be challengeable. A final modification that the State proposed to Article 7 was the deletion of Section 1, (A) (2) and (4) that invalidated the progressive discipline weight of oral and written reprimands after the passage of 12 and 24 months, respectively. The State argued that it should be able to consider disciplinary reprimands prior to 12 (or 24) months before the occurrence of any repeat infraction.

**POSITION OF THE UNION:**

The Union was primarily concerned with the maintenance of the status quo in relation to Article 7. In Section 1 (E) and again at the end of its proposed Section 3, the Union attempted to obtain current protections under color of contract even if those protections are no longer mandated under regulation or statute. The only respect in which the Union was not seeking the maintenance of the status quo was in relation to the rights of employees who were terminated pending the resolution of criminal charges. In this regard, the Union argued that many of its members were left in limbo for an unacceptable length of time while criminal charges were resolved, often in their favor. For this reason, the Union suggested some additional language at the end of Section 1 (B) that would allow employees to be placed on administrative leave pending the outcome of their criminal proceedings. In a position statement that was transmitted to the Special Master

on the final day of the hearing, the Union argued that the State had improperly referred this issue to impasse. The core of its argument was summarized in the following two sentences from that position statement: "Florida law sets forth the just cause standards which the state must use to promote, suspend, or discharge employees as well as the procedures the employees must use to the appeal these adverse actions. The State cannot lawfully insist to impasse that the Union waive its statutory right to "just cause" dismissals, demotions, or suspensions. 'The waiver of such a statutory right cannot be a mandatory subject of bargaining.' See, *Palm Beach Junior College*, 468 So.2d 1089." However this position statement did not alter the Union's proposed language for Article 7. The text of the proposal is contained below.

**Article 7**  
**DISCIPLINE AND DISCHARGE**

SECTION 1 - Disciplinary Action

(A) Reductions in base pay, demotions, suspensions, and dismissals may be effected by the State at any time against any employee. Such actions against employees with permanent status in the Career Service System for disciplinary reasons shall be grievable in accordance with the grievance procedure in Article 6 if the employee alleges that the action was not for just cause. However, any reduction in base pay that is required by the Career Service System Personnel Rules shall not be grievable. It is the policy of the State that disciplinary action will be initiated in a timely manner once the State has actual knowledge of the event giving rise to the disciplinary action; therefore, the State will make a good faith effort to initiate any disciplinary action within 60 days of actual knowledge of the event giving rise to the disciplinary action. Disciplinary action shall be subject to the grievance procedure as follows:

- (1) Oral reprimands shall not be grievable under the provisions of this Contract.
  - (2) An oral reprimand will be considered invalid under the provisions of Article 12(D) if the employee is not disciplined for the same offense during the succeeding 12 months.
  - (3) Written reprimands may be grieved up to Step 3 and the decision at that level shall be final and binding.
  - (4) A written reprimand will be considered invalid provided the employee is not disciplined for the same offense during the succeeding 24 months, and the written reprimand was not for an offense which could have resulted in the employee's dismissal.
- (B) A complaint by an employee with permanent status concerning any written reprimand or employee performance appraisal which contains criminal allegations or criminal charges may be grieved through the arbitration step of the Grievance Procedure. Such an employee shall not

be terminated pending the resolution of criminal charges, however, the state may place the employee on administrative leave pending the outcome of criminal proceedings, or just cause determination under the relevant career service rules.

(C) An employee may request a Union representative be present to advise and/or assist the employee during any disciplinary investigation meeting in which the employee is being questioned relative to alleged misconduct of the employee, or during a predetermination conference in which suspension or dismissal of the employee is being considered. The purpose of the disciplinary investigation will be explained to the employee at the beginning of the meeting.

(D) If filed within 14 calendar days from the date of receipt of notice from the agency, by personal delivery or by certified mail, return receipt requested, a complaint by an employee with permanent status in the Career Service concerning a reduction in base pay, demotion, suspension, or dismissal may be grieved at Step 2 and processed through the Arbitration Step, in accordance with the Grievance Procedure in Article 6 of this Contract. Arbitration decisions shall be final and binding.

(E) The Employer shall bear the burden of proof by a preponderance of the evidence that it has just cause for any disciplinary action.

#### SECTION 2 - Employee Copy

Each employee shall be furnished a copy of all disciplinary entries placed in the employee's official personnel file and shall be permitted to respond thereto, and a copy of the employee's response shall be placed in the employee's personnel file.

#### SECTION 3 - Notice

Notice of reduction in base pay, demotion, suspension, or dismissal affecting an employee who has attained permanent status in the Career Service System shall be in accordance with the provisions of Chapter 60K-9 (as in effect on January 1, 2001) of the Personnel Rules of the Career Service System. The Employer may not change rules described in 60K-9 applicable to bargaining unit employees during the life of this Agreement except by voluntary Agreement of the Union.

## ARTICLE 8: WORKFORCE REDUCTION AND PRIVATIZATION

### **POSITION OF THE STATE:**

The State offered no specific contract language to flesh out three very basic reforms it proposed to Article 8. Nevertheless, in the materials provided to the Special Master, those three proposals were summarized in the following words:

- Appointment offers for employees subject to lay off shall be subject to agency needs as well as sufficient funds and salary rate for a vacant position

- When the Union is notified of a layoff, any resulting meeting or consultation with the Union shall not delay the implementation of the layoff action
- In lieu of re-employment for the employee with the highest retention points for one year, the laid off employee is notified and permitted to apply for a period of 6 months following layoff

During its presentation, the State provided additional elaboration concerning the reasons underlying, and the specifics behind the various revisions suggested to this Article. In particular, the State took issue with the Article's reliance on Chapter 60 K-17 of the Personnel Rules of the Career Service System. These provisions, which currently embody a practice known as "bumping," were portrayed as inefficient, cumbersome and responsible for needless delay. Anticipating legislative and executive activity that would drastically amend these provisions, the State argued strongly against any attempts by the Union to codify the provisions of Chapter 60 K-17 in the new Master Contract. In fact, the State specifically proposed that all references to Chapter 60 K-17 be deleted from the Article. Moreover, as an alternative to recall provisions based on seniority, the State proposed that it only be obliged to notify any employee who was laid off of the existence of subsequent vacancies and provide those individuals with an opportunity to apply for them for a period of six months. In addition, the State proposed that there should be some sort of revision to the Article to ensure that the State could take account of agency needs, the availability of funds and relative salaries when any reorganization involved transferring employees into a different cost center within the same agency. Finally, the State proposed that the Article should be revised to include language that prevented any

consultation with the Union over layoffs from delaying any implementation of the reduction in force.

## **POSITION OF THE UNION:**

The Union offered revised language for Article 8 that had one basic purpose in mind. That purpose was the maintenance of the status quo and the retention of the provisions of Chapter 60 K-17. In this regard, the proposed Article below represented an attempt to codify those provisions.

### **Article 8 WORKFORCE REDUCTION AND PRIVATIZATION**

#### **SECTION 1 - Layoffs**

(A) When unit employees are to be laid off as defined in the Florida Statutes, the State shall implement such layoff in accordance with the provisions of Chapter 60K-17 of the Personnel Rules of the Career Service System.

(B) If there is to be a layoff of employees the State shall take all reasonable steps to place any adversely affected employees in existing vacancies for which they are qualified.

(C) If work performed by employees in any unit is to be performed by non-State employees, the State agrees to encourage the employing entity to consider any adversely affected unit employees for employment in its organization if the State has been unable to place the employees in other positions within the Career Service System.

#### **SECTION 2 - Job Security**

The State shall make a reasonable effort to notify the Union at least 30 days in advance of classes within a bargaining unit that will be involved in a layoff. Prior to the actual layoff, the State will meet with the Union to discuss the effect of the layoff on the employees involved.

#### **SECTION 3 - Procedures**

A. For the purpose of administering this Article, the following definitions shall apply:

(1) Layoff - Termination of employment due to abolishment of positions necessitated by a shortage of funds or work, or a material change in the duties or organization of an agency.

(2) Break in service - For purposes of this Section, any period of time in excess of 31 calendar days when moving from one position to another position in a pay plan covering Career Service, Selected Exempt Service, or Senior Management Service.

(3) Competitive area - The area within the agency in which the layoff shall be conducted and in which those employees affected may exercise retention rights to reassignments and demotions.

(4) Selective competition - The process of excluding positions within the competitive area from the layoff due to unique or specific qualifications associated with those positions and which differentiate them from other positions in the class.

(5) Class series - A group of classes which are sufficiently similar in kind of work performed to warrant similar titles but sufficiently different in level of responsibility to warrant different levels of pay.

(6) Adversely affected - An employee with Career Service status filling a position identified for abolishment regardless of whether an actual layoff occurs.

(7) Class Determination - For purposes of this rule, the distinction between higher and lower level classes, and the classes to which employees are reassigned, promoted, or demoted, are determined by level of responsibility, pay range assignment, and essential functions of the position.

#### B. Procedures.

(1) The Employer shall identify the positions to be abolished and designate the competitive area in which the layoff shall be conducted. The competitive area designation shall take into consideration the similarity of work, which may include any special qualifications required for positions; the organizational unit, which may be by agency, department, division, bureau, or other organizational unit; and the commuting area for the work affected. Competitive areas shall be as broad in scope as practical and as operational requirements allow within the above described considerations.

(2) The Employer may establish selective competition within the competitive area if specific qualifications are necessary for a position and if the duties and responsibilities requiring such qualifications are clearly reflected in the official position description on file with the agency.

(3) Procedures for layoff within the competitive area are as follows:

(a) Layoff shall be by class.

(b) Any employee who does not have Career Service status may be laid off without applying the provision for retention rights.

(c) No employee with permanent status in the affected class shall be laid off while an employee who does not hold permanent status is serving in that class unless the permanent employee does not elect to exercise his retention rights or does not meet selective competition criteria.

(d) All employees who have permanent status in the affected class shall be ranked on a layoff list based on the total retention points derived as follows:

1. Length-of-service retention points shall be based on one point for each month of continuous service in a Career Service position.

a. An employee who resigns from one Career Service position to accept employment in another Career Service position is not considered to have a break in service if such break is not in excess of 31 calendar days.

b. An employee who is laid off pursuant to subsection B(3)(j) of this Section, and is reemployed within one year from the date of layoff, shall not be considered to have a break in service.

c. Moving from Career Service to Selected Exempt Service or Senior Management Service and back to Career Service does not constitute a break in service unless the employee's break between services is more than 31 calendar days. Only time spent in Career Service can be counted in calculating retention points.

2. Retention points deducted for performance not meeting performance standards or work expectations defined for the position shall be based on the five years immediately prior to the agency's established cutoff date. Five points shall be deducted from the length of service points for each month spent on a Performance Improvement Plan as defined and referenced in Sections 60K-8.002 and 60K-8.0021, F.A.C. (as in effect January 1, 2001), or for each month spent in a Below Performance Standards status. In the case of a reassignment or demotion to a class within a series, reduction of retention points shall be calculated in the same manner for a class in a series as for a class outside a series.

3. Prior to implementation of the Review and Performance Planning (RAPP) System, each period covered by a performance appraisal shall be the period reflected on the official performance appraisal form on file in the employee's personnel file. If there is any period of service prior to the implementation of the RAPP System which is not covered by a performance appraisal as indicated by the dates shown on the official performance appraisal form, the employee shall not have retention points deducted.

(e) The layoff list shall be prepared by totaling retention points. Employees eligible for veterans' preference pursuant to Section 295.07(1)(a) or (b), Florida Statutes, shall have ten percent added to their total retention points, and those eligible pursuant to Section 295.07(1)(c) or (d) shall have five percent added.

(f) The employee with the highest total retention points is placed at the top of the list, and the employee with the lowest total retention points is placed at the bottom of the list.

(g) Agencies shall then choose and consistently apply one of two methods in determining the order of layoff. These methods are commonly referred to as "bumping."

1. Option 1: The employee at the top of the list shall have the option of selecting a position at the bottom of the list based on the number of positions to be abolished, e.g., 20 positions in the affected class, 5 positions to be abolished. The employee at the top of the list can select any of the positions occupied by the 5 employees at bottom of the list. The next highest employee on the list then has the option of selecting any of the positions occupied by the 4 remaining employees at the bottom of the list with the process continuing in this manner until the 5 employees at the top of the list have exercised their option.

2. Option 2: The employee at the top of the list has the option of selecting any position occupied by any employee on the list with fewer retention points in the class. The next highest employee and remaining

employees shall be handled in a similar manner until the list is exhausted.

(h) Should two or more employees have the same combined total of retention points, the order of layoff shall be determined by giving preference for retention in the following sequence:

1. The employee with the longest service in the affected class.
2. The employee with the longest continuous Career Service.
3. The employee who is entitled to veterans' preference pursuant to Section 295.07(1), Florida Statutes.

(i) Employees who work less than full time shall have their retention points determined by computing length-of-service points and deducting points for periods of performance that the employee did not achieve the standards or expectations defined for the position, in proportion to the time worked. Calculations shall be made in accordance with this Article.

(j) An employee who has Career Service status and who is to be laid off shall be given at least 14 calendar days notice of such layoff or in lieu thereof, two weeks pay or a combination of days notice or pay, in lieu of the full 14 calendar days notice, to be paid at the employee's current hourly base rate of pay. The notice of layoff shall be in writing sent to the employee by certified mail, return receipt requested. Within 7 calendar days after receiving the notice of layoff, the employee shall have the right to request a demotion or reassignment within the competitive area in lieu of layoff to a position in a class in which the employee held permanent status, or to a position in a class at the level of or below the class, in which the employee held permanent status within the series. Such request must be in writing, and reassignment or demotion cannot be effected to a higher class within the series.

(k) An employee's request for demotion or reassignment shall be granted unless it would cause the layoff of another employee who possesses a greater total of retention points.

(l) An employee who is adversely affected as a result of another employee having a greater number of retention points shall have the same right of reassignment or demotion under the same procedures as provided in this section.

(m) If an employee requests a demotion or reassignment in lieu of layoff, the same formula and criteria for establishing retention points for that class shall be used as prescribed in this section.

(n) The agency head shall forward to the Department of Management Services up-to-date applications of affected employees no later than 7 calendar days prior to the effective date of layoff. The department shall also maintain a centralized data base of laid-off employees for providing updated information to agencies. All agencies using the class shall, for a period of two years following layoff, hire, except for good cause, those employees who have been laid off from the class. For a period of two years after layoff, no original appointment shall be made to the class until all employees who have been laid off from that class have been considered. Agencies shall document in the selection folder and justify the reasons for not hiring a laid-off employee in that class. Employees re-hired in the same class from which they were laid-off, shall be reemployed with permanent status.

(o) For one year following layoff, when a position is to be filled, or a new position is established in the same agency and in the same class within the affected competitive area, the laid off employees with the highest number of retention points shall be offered reemployment and subsequent offers shall be made in the order of employee's total retention points. Reemployment of such employees shall be with permanent status. An employee who refuses such offer of employment shall forfeit any rights to subsequent placement offers as provided in this subsection.

(p) An employee who accepts a voluntary demotion in lieu of layoff and is subsequently promoted to a position in the same class in the same agency from which the employee was demoted in lieu of layoff, shall be promoted with permanent status.

(q) Under no circumstances is a layoff to be considered a disciplinary action, and in the event the employee elects to appeal the action taken, such appeal must be based upon whether the layoff was in accordance with the provisions of this Section and other applicable laws, rules and regulations.

#### SECTION 4 - Privatization

The State will make a reasonable effort to notify the Union of the contracting out or privatization of services involving classes within a bargaining unit within 30 days after the agency decides to contract out or privatize services. The State shall furnish the Union a copy of any Request For Proposal (RFP) to contract out or privatize services. The State and the Union agree that the contracting out or privatization of services shall be a proper subject of Consultation in accordance with Article 5, Section 7.

### ARTICLE 9: REASSIGNMENT, TRANSFER, CHANGE IN DUTY STATION, PROMOTION

#### **POSITION OF THE STATE:**

The State offered no specific contract language in relation to the three revisions it proposed to Article 9. Nevertheless, in the materials provided to the Special Master, those three proposals were summarized in the following words:

- Transfers Article 10 - Promotions into current Article 9 - Reassignment, Transfer, Change in Duty Station
- Modified current free assignment provision that the employee with the greatest length of service shall normally fill the vacancy; adds

condition that the reassignment must be in the best interest of the agency

- First consideration will not be given for promotions when such personnel action is contrary to the best interests of the agency

In the view of the State, there was an underlying logic to its suggestion that the Promotion Article be transferred into this one. Specifically, when a vacancy occurs, the hiring authority does not know if the candidate is an existing employee seeking a promotion, some other state employee, someone seeking a transfer, or just a state resident. Therefore, it was the State's opinion that all of these provisions should be lumped into one Article. In regard to the issue of reassignment, the State was adamant that it should be able to find the most qualified applicant, and not be bound to choose the existing employee who has the greatest length of service. Accordingly, it proposed that Section 2 (D) and (E) be removed from the Article so that it would no longer be required to give first consideration to existing employees, nor would seniority dictate who “shall normally fill a permanent vacancy.” Similarly, in relation to Promotion, the State also argued for the removal of language that required it to give first consideration to existing employees and that the language that cited seniority as the criterion which should normally govern promotion decisions. Last but not least, the State argued that the “best interest of the agency” should be the paramount criterion that governs all promotion and reassignment decisions.

#### **POSITION OF THE UNION:**

The Union disputed the need for a reorganization that involved moving the contents of Article 10 into Article 9. Not only did it dispute the logic behind the State’s

proposal, but it also argued that there was no justification for departing from the status quo in relation to this Article or Article 10.

### ARTICLE 10: PROMOTIONS

#### **POSITION OF THE STATE:**

The State proposed the incorporation of this Article into Article 9 with a number of revisions. (See above.)

#### **POSITION OF THE UNION:**

The Union argued for the status quo in relation to this Article.

### ARTICLE 11: CLASSIFICATION REVIEW

#### **POSITION OF THE STATE:**

The State favored the inclusion of this Article in a new version of Article 2. (See above.)

#### **POSITION OF THE UNION:**

As indicated above, the Union was adamant in its contention that Article 11 should stay where it is and continue to be a separate provision in the Agreement. However, the Union was not in favor of the status quo in relation to this Article. Instead, it proposed three basic changes. The first of these was that employees should be able to grieve reclassification disputes through to Arbitration under Article 6 of the Agreement. The second change suggested by the Union was that employees be able to file a grievance when their workload exceeded standards adopted by the Legislature. The third revision

sought by the Union was the inclusion of another section to the Article. This section would mandate that performance standards adopted by the State be consistent with applicable Federal guidelines. In the opinion of the Union, these revisions were necessary to keep the workloads of bargaining unit members within a realistic framework. As a result, the contract language sought by the Union would read as follows:

**Article 11**  
**CLASSIFICATION REVIEW**

SECTION 1 - Additional Duties

(A) When an employee alleges that the employee is being regularly required to perform duties which are not included in the position description of the position being filled by the employee, and the employee alleges that the duties assigned are not included in the official Career Service class specification to which the position is allocated, the employee may request in writing that the Agency Head review the duties assigned to the employee's position. The Agency Head or his designee shall review the duties as requested. The employee will receive a copy of the written decision within 60 days of the request. If the decision is that the duties assigned are sufficient to justify reclassifying the position, either the position will be reclassified or the duties in question will be removed. Shortage of funds shall not be used as the basis for refusing to reclassify a position after a review has been completed. If the decision is to reclassify the position and the employee is to receive a promotional pay increase, the pay increase shall be effective from the date the agency received the employee's request for a classification review.

(B) If the employee is not satisfied with the decision, the employee, with or without representation, may request in writing a review by the Chief Negotiator of the Department of Management Services or designee. The Chief Negotiator's review will be in accordance with Chapter 110, Florida Statutes.

(C) The written decision of the Chief Negotiator of the Department of Management Services or designee as to the classification of the position shall be subject to the grievance procedure provided in Article 6 up to and including arbitration final and binding on all parties.

SECTION 2 - Work Load Quotas

(A) When an employee alleges that the employee is being regularly required to carry an inequitable work load quota, the employee may request in writing that the Agency Head review the work load quota assigned to the employee. The Agency Head or his designee shall make the final written decision on the complaint which shall be binding on all parties. The employee will receive a copy of the written decision within 60 days of the request.

When an employee alleges that the employee is being required to carry a work load in excess of work load standards adopted by the legislature, the employee may file a grievance in accordance with Article 6.

(B) The parties agree, during the term of this Contract to review the State's policies on employees' personal liabilities which may result

from their responsibility for work load quotas. If it is found that employees have a liability as a result of such quotas, the parties will meet to discuss an appropriate remedy.

(C) The State and the Union agree that work load quota problems are an appropriate item for discussion in consultation meetings as described in Article 5.

#### SECTION 3 - Use of Inmate Labor

(A) Employees working for any agency, exclusive of the Department of Corrections, who are not told at the time of employment in that position that they may be required to work with or supervise inmates, may, because of religious or moral objections, request reassignment to a comparable position not requiring work with or supervision of inmates. Such requests shall not be unreasonably denied.

(B) It shall be prohibited for any agency head, or any other officer or employee of an agency, to take any retaliatory action against an individual who, in accordance with this Section, requests reassignment to a position not requiring work with or supervision of inmates.

#### SECTION 4 - Performance Based Standards

When the state adopts performance-based standards, such standards shall be consistent with applicable Federal guidelines or relevant national standards. An agency's failure to comply shall be subject to the grievance procedure in accordance with Article 6. It is agreed that the decision to adopt performance-based standard shall be a proper subject of collective bargaining.

## ARTICLE 13: HEALTH AND SAFETY

### **POSITION OF THE STATE:**

The State put forth language that included what it considered to be a couple of minor but sensible revisions. These revisions included a provision that allowed the Union to select a bargaining unit employee to serve on any safety committee created by management in a statewide facility. The other revision was the addition of language that mandated a good faith effort on the part of certain agencies to inform potential employees that they may be required to work with dangerous persons. In relation to this Article the state offered the following language:

#### **Article 13 HEALTH AND SAFETY**

#### SECTION 1 - Safety Committee

(A) It shall be the policy of the State of Florida to make every reasonable effort to provide employees a safe and healthy working environment.

(B) Where management has created a workplace safety committee in a State-controlled facility, the Union shall select one bargaining unit employee of the agency to serve on such committee.

(C) Where management has not established a safety committee, both the State and Union shall work toward the establishment of one in each State-controlled facility.

#### SECTION 2 - Employee Safety

(A) Any employee becoming aware of a work-related accident shall immediately notify the supervisor of the area where the incident occurred.

(B) When an employee believes that an unsafe working condition exists in the work area, the employee shall immediately report the condition to the supervisor. The supervisor shall investigate the report, and make a reasonable effort to take action deemed appropriate. The nature of the action taken shall be based on the seriousness of the condition. Within 30 10 days after the report of unsafe working condition is received, the supervisor will furnish a response to the employee and, where the employee's report was in writing, the supervisor shall respond in writing.

(C) The Department of Corrections and the Department of Juvenile Justice will make a good faith effort during the selection process to advise applicants that they may be the to work with sexual predators or violent juveniles.

#### SECTION 3 - Grievability

Complaints which arise under the application or interpretation of this Article shall be grievable, but only up to Step 3 of the Grievance Procedure of the Contract.

### **POSITION OF THE UNION:**

The Union proposed seven basic changes to the provisions of Article 13. First, the Union argued that it should be the party who selects a bargaining unit employee to serve on any safety committee. Second, in an effort to compensate for the abolition of the Department of Health And Safety, the Union proposed that each agency should have a certified health and safety specialist. Third, the Union proposed that independent physicians be designated to conduct occupational physicals with the Parties agreeing on the identity of those independent physicians. Fourth, the Union argued for reduction in the number of days that an agency is allowed to prepare its written response to an

allegation that an unsafe working condition exists. In the union's view, 30 days was too long when safety was the primary issue. Fifth, the union proposed that employees should have the right to decline unsafe work. In the Union's view, since these sorts of protections were already provided by legislation such as OSHA and the NLRA, it was reasonable for them to seek codification of those protections in their contract. Sixth, the Union sought language that would allow the reassignment of employees who were required to work around dangerous individuals if they were not advised of the possibility of such assignments in advance. The Union argued that such language was both sensible and equitable. Seventh and last, the Union argued that agency heads should be prohibited from retaliating against any individuals who sought reassignment in order to avoid contact with dangerous individuals. As a result of these proposed changes, the Union's proposal for new contract language read as follows:

**Article 13**  
**HEALTH AND SAFETY**

SECTION 1 - Safety Committee

(A) It shall be the policy of the State of Florida to make every reasonable effort to provide employees a safe and healthy working environment.

(B) Where management has created a workplace safety committee in a State-controlled facility, the unit employees union shall select at least one person at the facility to serve on such committee.

(C) Where management has not established a safety committee, both the State and Union shall work toward the establishment of one in each State-controlled facility.

(D) Each agency shall have a certified health and safety specialist.

(E) Mandatory occupational physicals shall be conducted by an independent third party or from a provider selected from a pool of providers mutually agreed upon by the Union and the State.

SECTION 2 - Employee Safety

(A) Any employee becoming aware of a work-related accident shall immediately notify the supervisor of the area where the incident occurred.

(B) When an employee believes that an unsafe working condition exists in the work area, the employee shall immediately report the condition to the supervisor. The supervisor shall investigate the report, and make a reasonable effort to take action deemed appropriate.

The nature of the action taken shall be based on the seriousness of the condition. Within 30 10 days after the report of unsafe working condition is received, the supervisor will furnish a response to the employee and, where the employee's report was in writing, the supervisor shall respond in writing. An employee acting in good faith may refuse to accept an assignment when the employee has reasonable grounds to believe an unsafe or unhealthy working condition exists in the work area which poses an immediate threat to the employee's physical well-being.

(C) Employees working for any agency, exclusive of the Department of Corrections and the Department of Juvenile Justice, who are not told at the time of employment in that position that they may be required to work around, with or supervise sexual predators or violent juveniles, may, because of religious or moral objections, request reassignment to a comparable position not requiring such exposure. Such requests shall not be unreasonably denied.

(D) It shall be prohibited for any agency head, or any other officer or employee of an agency, to take any retaliatory action against an individual who, in accordance with this Section, requests reassignment to a position not requiring such exposure.

### SECTION 3 - Grievability

Complaints which arise under the application or interpretation of this Article shall be grievable, but only up to Step 3 of the Grievance Procedure of the Contract.

## ARTICLE 14: PERFORMANCE REVIEW

### POSITION OF THE STATE:

The State offered no specific contract language in relation to the two very basic reforms it proposed to Article 14. Nevertheless, in the materials provided to the Special Master, those two proposals were summarized in the following words:

- Immediate supervisor approval of performance review is replaced with recommended appraisal by immediate supervisor and approval of appraisal by higher management.
- The performance review of an employee shall not be subject to the grievance procedure.

During its presentation at the hearing, the State provided greater specificity concerning its proposed revisions to this Article. One of the additional details revealed at the hearing

was the State's proposal to give all employees four performance appraisals per year. From the State's standpoint, this was an effort to address the criticism that supervisors were not putting employees on adequate notice regarding their bad performance. This way, employees would not have to wait to the end of the annual cycle to find out that their performance was deficient or that they were not on track to receive a performance-based bonus. Since so much of their proposed reform was based on performance, the State argued that it was only natural for it to intensify its regime of performance appraisal. In addition, the State proposed that all supervisory performance appraisal ratings should be subject to approval by senior management. The State pointed out that under the current system, the immediate supervisor is the last authority and that this has sometimes lead to the problems of leniency and strictness in ratings. The State argued that under its proposed reforms, these distortions in the performance appraisal process could be eliminated. Last but not least, the State proposed that no aspect of the performance appraisal system should be subject to the grievance procedure. It argued that the submission of such grievances to the procedure was unproductive and a waste of time.

**POSITION OF THE UNION:**

The Union portrayed the State's proposals in relation to Article 14 as unrealistic. It pointed out that there are many employees in the bargaining unit who do not even receive an annual performance appraisal review at the current time. It argued that to mandate four performance appraisals per year was an unreasonable burden upon supervisors and would result in a surfeit of useless data in the personnel files of employees. Since supervisors already have the responsibility of conducting a "special evaluation" of employees whose performance is substandard, the Union disputed the need

for such frequent performance appraisals to keep employees abreast of Management's view of their performance. The Union was also skeptical of the State's proposal that senior management should have the authority to overrule the performance appraisal ratings of supervisors. It pointed out that many senior managers have supervisory authority over dozens and sometimes hundreds of employees. In the view of the Union, it would be highly unlikely that these individuals would have a better knowledge of an employee's performance than the immediate supervisor. As a result of these considerations, the Union proposed the status quo in relation to this Article.

## ARTICLE 15: SENIORITY

### **POSITION OF THE STATE:**

The State offered no specific contract language in relation to the reforms it proposed to Article 15. In fact, the materials provided to the Special Master, did not even summarize the proposed changes that were suggested. The only material that was provided in relation to the proposed revisions of this Article was a transcript from the Governor's State of the State Address, delivered March 6, 2001. In any event, the State did elaborate on its proposals at the Hearing. Specifically it contended that seniority was a poor criterion upon which to base employment-related decisions. As an alternative, the State suggested that merit, competency, skills, knowledge, and ability were superior criteria. As a consequence, the State suggested that the performance appraisal system for career service personnel could be adapted and improved to assist management in the determination of employment entitlements.

## **POSITION OF THE UNION:**

As it did in relation to other Articles, the Union sought to enshrine the principle of seniority in the language that it proposed for this Article. Specifically, the Union sought the separation of this Article into three Sections. At the end of Section 1, it sought the inclusion of language underpinning the integrity of the state personnel system. At the end of Section 2, it sought to insure the extension of the principle of seniority to cover promotion and transfer decisions. It argued that there had been many instances of “wired positions” being filled by unqualified outsiders. This language was the Union’s effort to remedy that situation. At the end of Section 3, it sought the inclusion of seniority disputes within the realm of fully grievable matters under Article 6 of the Agreement. Consequently, the language proposed by the Union read as follows:

### **ARTICLE 15 SENIORITY**

#### SECTION 1. Definition and Intent

For the purpose of this contract, “Seniority” shall be defined as the employee’s length of continuous service in the Career Service System. The State and the Union recognize the need to ensure the integrity of the state personnel system and to reduce the appearance of impropriety through pre-selection techniques.

#### SECTION 2. Seniority Consideration

The State and the Union further recognize the value of an experienced workforce and agree that an employee’s seniority should be considered, along with the needs of the agency, when effecting decisions on promotions, transfers, vacations, shift assignments and off-duty days.

#### Section 3. - Grievability

Disregard for this consideration by an agency shall be a proper subject of Consultation in accordance with Article 5, Section 7 subject to the grievance procedures of Article 6 of this contract.

## ARTICLE 16: INSURANCE PREMIUM CHECK –OFF

### **POSITION OF THE STATE:**

The State explained that agency heads currently have the discretion to supplement payroll deductions for employees who would like to take advantage of Union-administered insurance programs. In the view of the State, this has led to undue pressure being placed on agencies to offer Union sponsored insurance through the check-off process. The State explained that it felt as though the Union lost sight of the fact that this provision dealt with a discretionary entitlement, not a right. To rectify the situation, and remove this undue pressure, the state recommended that this Article should be deleted and left vacant.

### **POSITION OF THE UNION:**

The Union adamantly opposed the deletion of this Article. It maintained that this Article allowed the Union the latitude to find and offer insurance programs that were cheaper and better than those currently offered. Since the State and its agencies offered alternative vendors to provide coverage, the Union felt it was unfair that it be prohibited from investigating the possibility of superior coverage for its members. As a consequence, the Union argued for the status quo in relation to this Article.

ARTICLE 18: LEAVES OF ABSENCE, HOURS OF WORK,  
OVERTIME, DISABILITY LEAVE

**POSITION OF THE STATE:**

The State offered no specific contract language to flesh out three very basic reforms it proposed to Article 18. Nevertheless, in the materials provided to the Special Master, those three proposals were summarized in the following words:

- Adds a cap of 240 hours to special compensatory leave credits which reflects the current practice of the State
- Transfers Article 22 - Disability Leave, into previously proposed Article 18 - Leaves of Absence, Hours of Work, Overtime.
- Allows employees who accrue unused Sick Leave over the payout limit to redeem it for a retirement credit.

At the hearing, the state explained that it was proposing the inclusion of Articles 22 and 23 into Article 18. The logic behind this move was to put all of the provisions that dealt with leave and hours of work in the same Article. It illustrated with the example of an employee who takes the day off under Article 18, but then works extra hours under Article 23. Under the State's proposal, all the relevant provisions covering this situation would be found conveniently in one Article of the Agreement, whereas the current method of organization would require the employee to go to two different Articles of the Agreement to calculate his pay. From the State's standpoint, this was unacceptable and necessitated the suggested revisions. In addition to this proposed rationalization, the State suggested that the language be amended to add a cap of 240 hours to special compensatory leave credit. It explained that this was left out of the current Agreement by

accident. Since this had continued to be the practice of the Parties in the interim, the language that the State suggested was portrayed as a simple affirmation of the existing status quo.

**POSITION OF THE UNION:**

The Union opposed the amalgamation of Article 22 and 23 into the existing Article 18. It argued that there are major conceptual and practical differences between the hours of work, disability leave, and other types of leave. Apart from one provision, the Union was in favor of the maintenance of the status quo. The one revision of the Article that the Union proposed was the inclusion of a provision to allow the re-employment of personnel who left their position within the bargaining unit to assume full time duty with the Union. In view of the difficulties that some personnel had experienced in returning to their former employment with the State, the union found that such a provision was necessary to ensure those individuals an adequate leave of absence. As a consequence, the Union proposed the following language for this Article:

**Article 18  
LEAVES OF ABSENCE**

SECTION 1 - Leaves

Retain current language.

SECTION 2 - Negotiation Committee

Retain current language.

SECTION 3 Union Activities

Employees covered by this Contract shall have the right to request leave without pay for the purpose of attending Union conventions, conferences and meetings. When such requests cannot be granted, the supervisor shall provide such denial in writing.

Members of the Union elected or selected by the Union to do work which takes them from their employment shall, at the written request of the Union receive leaves of absence for the period of employment with the Union and upon their return shall be re-employed in the same pay grade without any loss of seniority.

(C) Members of the Union elected or selected by the Union to attend duly authorized Union conference or conventions shall, at the written request of the Union receive administrative leave.

## ARTICLE 20: TRAINING

### **POSITION OF THE STATE:**

Contingent upon the availability of funds, the State proposed that Article 20 be revised to provide additional educational opportunities to members of the bargaining unit. Specifically, the State proposed that the tuition free entitlement to university courses be expanded to include all 28 community colleges in the State. However, in the materials supplied to the Special Master at the hearing the State failed to include the revised language that would give effect to its new proposal. Since the language cited in its materials is identical to the current language in the Agreement, it has not been reproduced below.

### **POSITION OF THE UNION:**

While the Union was very receptive to the State's offer to extend tuition reimbursement to community colleges, it expressed a desire to see the actual proposed contractual language that would give effect to this proposal. The Union indicated that when that occurred, it would be very likely to tentatively agree to such a proposal.

## ARTICLE 21: OUT OF TITLE WORK

### **POSITION OF THE STATE:**

The State argued that this Article should be vacated. Its position was that the provisions contained herein should be transferred to Article 25, Section 4.

**POSITION OF THE UNION:**

The Union proposed the maintenance of the status quo in relation to this Article. It argued that it did not make any logical sense to transfer its provisions to Article 25.

ARTICLE 22: DISABILITY LEAVE

**POSITION OF THE STATE:**

As indicated above, the State favored the incorporation of the provisions of this Article into Article 18. It was the State's position that all Articles dealing with Leave should be consolidated.

**POSITION OF THE UNION:**

The Union proposed the maintenance of the status quo in relation to this Article. It argued that it did not make any logical sense to transfer its provisions to Article 18, since Disability Leave was very different from the types of Leave dealt with in Article 18.

ARTICLE 23: HOURS OF WORK/OVERTIME

**POSITION OF THE STATE:**

As indicated above, the State favored the incorporation of the provisions of this Article into Article 18. (See discussion of the position of the State in relation to Article 18.)

**POSITION OF THE UNION:**

The Union proposed the maintenance of the status quo in relation to the location of the provisions of this Article. It argued that it did not make any logical sense to

transfer its provisions to Article 18. However, it argued that it had valid concerns that would need to be addressed by a series of changes to some of the provisions of this Article. The first concern was for a small proportion of employees who were carrying extremely heavy workloads (at institutions, for example) and who were capping out on hours. To address this situation the Union suggested language that would give them the options like declining additional assignments, converting their leave to Sick Leave or obtaining “appropriate compensation.” A second proposal of the Union was that employees who had worked two shifts should be entitled to two shifts off. It claimed this additional period off was necessary for full recuperation. A third proposal argued by the Union was that “appropriate compensation” be provided for people who worked on days when storms or other natural disasters caused the State to give administrative leave to the bulk of the workforce. The Union argued that, as it was, the employees who reported for duty were no better off than those who stayed home on such days. As a result of these proposed revisions, the Union’s proposed language would read as follows:

**Article 23**  
**HOURS OF WORK/OVERTIME**

SECTION 1 - Hours of Work and Overtime

(A) The normal workweek for each full-time employee shall be 40 hours.

(B) Management retains the right to schedule its employees; however, the State will make a good faith effort, whenever practical, to provide the employees with consecutive hours in the workday and consecutive days in the workweek.

(C) Work beyond the normal workweek shall be recognized in accordance with the provisions of Chapter 60K-5 of the Personnel Rules of the Career Service System. Special compensatory time may be accumulated up to a maximum of 240 hours, except an employee who has reached the maximum of 240 hours of special compensatory time shall have the option to:

1. Convert any additional special compensatory time to sick leave or;
2. Decline the assignment of any further hours that would qualify as special compensatory time or;
3. Receive appropriate compensation for such hours assigned within the pay period.

(D) Management retains the right to approve or disapprove time off for its employees. However, the State will make a good faith effort, whenever practical, to allow employees to use compensatory leave credits as requested by the employee. Failure to approve an employee's specific request shall not be grievable under the provisions of Article 6 of this Contract.

(E) The State agrees that the assignment of overtime is not to be made on the basis of favoritism. In any case, where an employee has reason to believe that overtime is being assigned on the basis of favoritism, the employee shall have the right to the Grievance Procedure under Article 6 herein, to Step 3.

(F) The Union agrees to support those changes in Chapter 60K-5 of the Personnel Rules of the Career Service System that may be required in order for the State to be in compliance with the Fair Labor Standards Act as it is applied to public employees.

## SECTION 2 - Work Schedules

(A) Where work schedules are rotated, employees' normal work schedules, showing each employee's shift, workdays and hours, will be posted no less than 10 calendar days in advance, and will reflect at least a two workweek schedule; however, the State will make a good faith effort to reflect a one month schedule. With prior written notification of at least three workdays to the employee's immediate supervisor, employees may mutually agree to exchange days or shifts on a temporary basis. If the immediate supervisor objects to the exchange of workdays or shifts, the employee initiating the notification shall be advised that the exchange is disapproved.

(B) Where work schedules are rotated, the State will make a good faith effort to equalize scheduled weekend work among employees covered by this Contract in the same functional unit whenever this can be accomplished without interfering with efficient operations.

(C) When an employee is not assigned to a rotating shift and the employee's regular shift assignment is being changed, the State will schedule the employee to be off work for a minimum of two shifts between the end of the previous shift assignment and the beginning of the new shift assignment.

(D) When an employee works two consecutive shifts, the State will make a good faith effort to allow the employee a minimum of 2 consecutive shifts off prior to returning to work.

## SECTION 3 - Rest Periods

(A) No supervisor shall unreasonably deny an employee a 15-minute rest period during each four-hour work shift. Whenever possible, such rest periods shall be scheduled at the middle of the work shift. However, it is recognized that many positions have a post of duty assignment that requires coverage for a full eight-hour shift, which would not permit the employee to actually leave his post. In those cases, it is recognized that the employee can "rest" while the employee physically remains in the geographic location of his duty post.

(B) An employee may not accumulate unused rest periods, nor shall rest periods be authorized for covering an employee's late arrival on duty or early departure from duty.

## SECTION 4 - Worked During Emergency Conditions And Holidays

When, pursuant to the Personnel Rules of the Career Service System, an employee is determined to be necessary for providing essential services in those facilities which have been closed under Executive Order for emergency conditions; is required to work on an observed holiday; or, is

required to work extra hours during a holiday work week or pay period, the employee shall be compensated as described below. Compensation and any leave usage or credit shall be determined at the end of the 40-hour workweek or included employees and pay period for excluded employees on an hour-for-hour basis.

(A) Work during declared emergency conditions by Executive Order:

(1) An employee providing essential services shall be credited with hours of work and, in addition, receive disaster compensation on an hour-for-hour basis for the number of hours worked for the period the facility is closed.

(2) When an employee is determined to not be necessary for providing essential services in those facilities which have been closed under Executive Order, the employee shall be eligible for administrative leave up to an amount equal to the employees scheduled work hours for the period that the facility is closed.

(3) At the end of the workweek or pay. But, as appropriate, employees should be compensated in the following order:

(a) Employees shall be credited with time actually worked. If the hours worked to exceed the normal pay for the work week or pay period, employees will be compensated for all overtime earned;

(b) If the hours actually work are still below the normal pay for the work week / pay period, leave shall be used to bring the employee to the normal rate of pay in the following order:

(1) Any annual leave, sick leave, or regular compensatory leave that have been approved;

(2) And the administrative leave for which the employee is eligible. Any unused administrative leave that is not needed to bring the employee to the normal pay shall be canceled.

(c) In addition to the above, the employee providing essential services shall receive disaster compensation to be paid at the employee's current regular hourly rate of pay for each hour worked while the facility disclosed by order of the governor, regardless of whether overtime was earned or leave used during the work week or pay period.

(B) Work in all other circumstances where facilities are closed; work on an observed holiday; or extra hours worked during a holiday work week or pay period:

(1) An employee required to work when the facility has been closed under the direction of the Department of Management Services or the agency head due to any other condition not covered by an Executive Order, would be eligible for special compensatory leave on an hour-for-hour basis for the number of hours work each day that the facility is closed.

(2) An employee required to work on a holiday show be eligible for special compensatory leave equal to the time working on the holiday, not to exceed the number of hours in the employees established workday. However, if the holiday falls on an established workday of less than eight hours, the employee will be eligible for an eight-hour holiday.

(3) An employee required to work extra hours during holiday work week or pay period shall be eligible for special compensatory leave equal to the number of extra hours worked.

(4) At the end of the work week or pay period, as appropriate, the employee show be compensated in the following order:

(a) The employee shall first be credited with time actually worked;

(b) Eligible special compensatory hours during the work week/pay period will get added to the hours of actual work to bring the hours worked up to the normal hours for the work week/pay period. Any remaining eligible special compensatory leave our show be converted to special compensatory leave credits;

(c) If the employee is still below the normal pay for the work week/pay period, leave show be used to bring the employee to the normal rate of pay in the following order:

(1) Any annual leave, sick leave, or regular compensatory leave that have been approved;

(2) Any administrative leave for which the employee is eligible. Any unused administrative leave eligibility that is not needed to bring the employee to the normal pay shall be canceled.

(C) Administrative leave shall not count as hours worked for overtime purposes.

## ARTICLE 25: WAGES

### **POSITION OF THE STATE:**

The State sought to locate a number of provisions in the Wages Article that were not previously located here. These included the provisions regarding Out of Title Work, Lump Sum Discretionary Payments and the ESS Program. As indicated above, the Special Master declined to recommend that the Out of Title Work provisions be relocated to this Article. As regards Lump Sum Discretionary Payments and the ESS Program, the Special Master provides an account of the State's position on these issues in a separate section below.

In introducing its wage offer, the State explained that it viewed the current wage negotiation as part of a transition. Although there was an "across-the-board" component to this year's offer, the State indicated that there would be an increasing emphasis on "pay for performance" in the coming years. As far as this year was concerned, the State was willing to offer a 2% "across-the-board" pay increase effective October 1, 2001. This would be complemented by additional "pay for performance" components. Specifically, amounts equaling another 3% in bonuses would be set aside. The State felt that because

some of this additional bonus money would benefit meritorious employees who were “exemplary,” or were in danger of being hired away by higher paying employers, this represented a strategic targeting of the State’s available funds for pay raises. While conceding in its own salary survey that starting and average salaries in some of the bargaining unit’s job classifications were below market, it pointed to the reduced turnover rate as proof that its overall salary structure had become more competitive. Moreover, the State was proud to report that an independent consulting firm found its benefit package to be among the best in the State.

While it did not go as far as to characterize its wage offer as “generous,” the State did portray it as “responsible.” It contrasted its package with what it considered to be the unreasonable demands of the Union. In particular, it pointed out that the additional 2% across the board increase sought by the Union would cost an additional \$136 million. (Most of this was taken up by the Union’s claim for a minimum \$1,500 raise for every member of the bargaining unit.) In addition, the State pointed out that reclassifying nearly 9000 employees into Special Risk Retirement status could cost an additional \$25 million. Last but not least, the State calculated the cost of the Union’s “modest” deferred salary savings plan at roughly \$19 million additional dollars per year. All in all, the State concluded that it was directing dollars for salary increases in a responsible way that focused on rewarding and keeping the best State employees, while maintaining competitive wages for the overwhelming majority of other state employees.

#### **POSITION OF THE UNION:**

The Union offered the testimony of economic experts who resonated upon the rosy economic picture in Florida. Ample documentation was provided illustrating how

Florida was among the Nation's leaders in several key indicators of economic growth and prosperity. On top of that, the Union argued that there were significant economic windfalls enjoyed by the State due to conspicuous factors such as the enormous valuation of public employee pension funds. The Union argued that all of these factors supported the very sensible wage claims it was making.

The Union proposed that all bargaining unit employees should receive a 4% pay increase or \$1500, whichever was greater. The Union suggested to the Special Master that some members of the bargaining unit were close to the level of "working poor" and that 2% of their wage may amount to as little as \$300 per year. The Union went on to justify the "me too" language found in Section 1 (A) and backed it up with the "just in case" language in Section 2 (F). The Union indicated that it was still interested in the existing lump sum discretionary payments for its members, but only if the important details could be worked out with the State. Last but not least, the Union argued for a Deferred Salary Savings Plan that would provide for a modest \$250 matching commitment from the State. It concluded the presentation of its demands by characterizing them as justifiable and realistic.

As regards justification, the Union provided a variety of comparative data to illustrate what it felt was the defensibility of its wage claim. In relation to other bargaining unit classifications, the Union offered two similar job postings: one from a State job and one posted by a moderately affluent Florida county that showed a salary roughly 30% above the State's posting. The Union argued that such differentials were commonplace. The Union also offered some comparative data on minimum and maximum salaries for benchmark jobs across heavily populated Florida Counties. These

tables showed that State salaries for the benchmark jobs fell somewhere in the middle of all job categories. Last but not least the Union provided press clippings showing the pay increases provided to the Governors cabinet-level officials were many times the 2% he was offering bargaining unit members. From the Union's perspective these comparisons only lent further legitimacy to its argument that bargaining unit members deserved more than the State was offering.

## ARTICLE 27: INSURANCE BENEFITS

### **POSITION OF THE STATE:**

The State favored the status quo in relation to this Article. In rebuttal to the Union's extensive proposals, the State emphasized that all benefits have to be in accordance with the corresponding legislative appropriation.

### **POSITION OF THE UNION:**

The Union proposed a number of additions to the provisions dealing with Insurance Benefits contained in Article 27. These additions included language in Section 1 that maintained the current level of coverage that employees enjoyed in 2000 – 2001 throughout the next Fiscal Year. In addition, the Union argued that since the vesting period for pensions had been reduced from 10 years to 6 years, it only made sense to reduce the number of years a bargaining unit member had to work before eligible for retirement. A third revision proposed by the Union was the designation of certain members of the bargaining unit into Special Risk Retirement Status. The Union argued for the inclusion of certain categories of workers based on the very arduous and often dangerous nature of their employment.

As a result, the Union's proposed language for Article 27 would be:

**Article 27**  
**INSURANCE BENEFITS**

Section 1. Insurance Benefits

The State agrees that the cost of employee co-payments, deductibles, and premiums associated with the State Employees Group Health Self-Insurance Plan for Fiscal Year 2001 - 2002 shall not exceed the cost of such items for fiscal year 2000 - 2001. The State further agrees that the benefits provided under the State Employees Group Health Self-Insurance Plan during Fiscal Year 2000 - 2001 shall not be reduced, and shall be provided in a manner to ensure quality continuity of care.

Section 2. Pension Benefits

Contingent upon substantive legislation becoming law that would grant such retirement benefits to such employees, employees will have the opportunity to retire from state service with full benefits after 25 years of participation in Florida Retirement System.

B. Contingent upon substantive legislation becoming law that would grant such retirement benefits to such employees, special risk retirement status shall be conferred upon bargaining unit employees defined under s. 119.07, and those employees employed as a correctional juvenile justice, mental health, developmentally disabled, forensic, or protective service worker whose responsibilities include direct contact, custody, control, or physical restraint of forensic patients, correctional inmates, or juvenile detainees, in a correctional or forensic facility or institution, including but not limited to the employees assigned to the attached classifications.

**ECONOMIC SELF SUFFICIENCY PROGRAM**

**POSITION OF THE STATE:**

The State offered a presentation by the ESS Program Director that highlighted the evolving accomplishments of her program. She contrasted the current accomplishments of her department with its unfortunate situation less than a decade ago. It was clear that the State felt that she had responded to the Legislature's challenge to train, test, and certify a fully competent workforce. From the State's Standpoint, the preparations had been almost completed, but the whole program was on hold while the Union decided if it would "turn the key." It was also clear that the State felt that this department was

undertaking initiatives that were congruent with main thrusts of the Governor's "Service First" initiative. The ESS Program was getting the assistance of a private sector expert in testing, training, appraising and certifying its employees. It was rationalizing its overall employment classification system. Moreover, it had devised a system to distribute cash incentives based on merit. In short, the State portrayed it as a department that was poised to become more efficient and accountable if only it could obtain Union cooperation. In this regard, the State pointed out that it had made several Program adjustments to address the concerns of the Union. These included concessions as important as providing an extra chance to take the exam and a different weighting balance between exam assessment and performance assessment. In view of these concessions it argued that there was no reason for the Union's continued reluctance. It urged the Special Master to recommend the State's final proposal for the ESS Program.

**POSITION OF THE UNION:**

The Union found fault with several aspects of the State's proposed ESS Program. Noting that it had signed off on a prior, similar agreement in relation to another group of employees from the Department of Children and Families, the Union contrasted what it considered to be some important shortcomings in the current proposals put forward by the State. Paramount among these continuing concerns was the fact that the State had not determined what a passing score would be on the proposed test. Another concern of the Union was the difficulty involved in devising a genuinely job-related test that could be administered to a variety of ESS staff who worked in very different areas of eligibility assessment. A final major concern of the Union in relation to the State's ESS proposal was that it could actually increase turnover in a department that already had chronically

high turnover. In this regard the Union focused on the Program Director's admission that she had no current turnover data available to her. In summary, the Union urged the Special Master to recommend its most recent version of the ESS proposal.

## LUMP SUM PAYMENTS

### **POSITION OF THE STATE:**

The State expressed frustration with its inability to convene meaningful negotiations over this issue. As far as the State was concerned, it was sitting on money that it would have liked to distribute. It offered to convene a consultation workshop regarding criteria for lump sum bonus eligibility, but neither the consultation workshop nor any detailed bargaining occurred. Although the basic principle was to use this money to recruit, retain, and reward meritorious employees, it had no success in communicating the potential of this legislative provision to the Union. According to the version of events provided by the State, impasse was declared before any meaningful bargaining took place.

### **POSITION OF THE UNION:**

The Union's account of its negotiations over the provisions of the Chapter 60 L-18 did not differ substantially from the State's. Basically, the Union confirmed that very little was accomplished in their sparse discussions over this issue. Despite the fact that it was a mandatory subject for bargaining, the Union felt as though the State was not bargaining fairly. The Union felt it was justifiably suspicious over the discretion that could be exercised by Agency management to determine eligibility. The Union felt that such unilateral rule making may constitute an Unfair Labor Practice and it ultimately filed

a charge with the Public Employees Relations Commission. However, before the charge was dismissed, impasse had been declared in relation to this issue and negotiations were stillborn.

## FINDINGS OF FACT AND RECOMMENDATIONS

### ARTICLE 1: RECOGNITION

#### **FINDINGS OF FACT:**

The organization of provisions in a collective bargaining agreement is not a matter of pure logic. Nor can the provisions of a collective bargaining agreement be pulled apart and reassembled without having an unpredictable impact on the operation and interpretation of the agreement. Furthermore, when the agreement provides for a finite number of items that can be the subject of reopened negotiations every year, the organization of the provisions in the collective bargaining agreement becomes an important issue of strategy.

The Special Master process places the burden of persuasion on the party that is proposing change from the status quo, and in relation to this sort of suggested revision, the burden is a heavy one. At the very least, the moving party would have to demonstrate that there was serious confusion and administrative dysfunction as a result of the way the articles in the agreement were currently organized. The moving party should also bring forth evidence of advantages gained by other parties who have used the method of organization that was being proposed. The State did none of these things. Moreover, the State failed to convince the Special Master that there was any factual or logical basis for having the “inclusion” provisions in a different section than the “exclusion” provisions. Last but not least, the State did not demonstrate that there was actually a precedent for

Special Masters reorganizing collective bargaining agreements at the behest of one of the Parties.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to Article 1.

ARTICLE 2: PAY PLAN AND CLASSIFICATION OF WORK

**FINDINGS OF FACT:**

For the same reasons outlined above in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for reorganizing Articles in the manner proposed by the State. He will deal with the State's proposals regarding Article 11 in relation to his discussion of that Article, below.

**RECOMMENDATION:**

The Special Master recommends that Article 2 remain vacant.

ARTICLE 5: UNION ACTIVITIES AND EMPLOYEE REPRESENTATION

**FINDINGS OF FACT:**

The State demonstrated the factual necessity of a revision to Section 4. For reasons made clear by the case law cited by the State, the Agreement should no longer mandate that employees' addresses be provided to the Union. In addition, the State made cogent arguments for the consistency of using the term "recognized" rather than "accredited" in Section 6 of this Article. However, the State failed to adequately justify its proposal that it should only have to consult with representatives of the Union that are actually State employees. There was no evidence brought forth that the current

arrangements resulted in inefficiencies or lack of proper representation of employees' interests. Similarly, the Special Master could find no factual justification for the Union's proposal that representation rights be extended to Predetermination Conferences. Although it may be true that the discipline can result from these Conferences, there was no evidence brought forth that employees were the not permitted representation in these meetings. Nor was there any evidence that the Agreement should depart from the principle that stewards should only be paid for their representational activities once a dispute had risen to the level of an actual "grievance." Finally, the Union failed to explain any tangible examples of advantages that would result from the language that it proposed concerning additional supplemental benefits. In the absence of any effort to illustrate the factual nature of these advantages, the Special Master had no alternative but to reject this proposal.

**RECOMMENDATIONS:**

The Special Master recommends revisions to Section 4 and Section 5 in accordance with the proposals of the State. In all other respects, the Special Master recommends the status quo in relation to this Article.

**ARTICLE 6: GRIEVANCE PROCEDURE**

**FINDINGS OF FACT:**

The State provided adequate factual support for the "avoidance of doubt" language that it proposed for inclusion in Article 6. It was apparent to the Special Master that on more than one occasion the State had encountered an arbitrator who

misunderstood the limits of his authority. Under the circumstances, the Special Master accepts the factual need for this clarifying language.

**RECOMMENDATIONS:**

The Special Master recommends that the following “limitation” be inserted in Section 3, Part 5, Paragraph (e) for the purpose of clarification: “The arbitrator has no authority to determine any other issue(s) other than the issue(s) submitted in the Step 3 Decision.” The Special Master recommends the status quo in all other respects in relation to this Article.

ARTICLE 7: DISCIPLINE AND DISCHARGE

**FINDINGS OF FACT:**

The Special Master will not express a view concerning the jurisdictional point raised in Union’s Position Paper on this Article. Perhaps some other forum will determine if this Article has been properly referred to the Special Master process. However, in the meantime, it is the responsibility of this Factfinder to “render his recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of [this] dispute” Accordingly, the following Findings of Fact and Recommendations are offered in relation to this Article.

The Special Master accepts the basic premise that State agencies should enjoy greater discretion in their administrative and disciplinary dealings with their employees. In particular, the introduction of competency-based initiatives will play an important role in streamlining and rationalizing many of these processes in the future. However, it is a Finding Of Fact by this Special Master that the State has not demonstrated how the

revisions that it suggests to this Article assist in the accomplishment of these goals. No evidence was brought forth to indicate that the current system of career service protections resulted in an exorbitant expense or the retention of unqualified individuals. In other words, there was no factual evidence brought forward to show that the system was broken or dysfunctional. On the other hand, the Special Master found that some of the State's proposals in relation to Article 7 would not only be unworkable, but could also lead to a reduction in the prospects for prompt, peaceful and just settlement of disputes between the Parties.

A prime example of this problem was the suggestion that employees should bear the burden of proving that they were discharged improperly. This would be analogous to asking accused criminals to defend themselves before the State laid out charges against them. From the standpoint of procedural fairness, it would be heresy. From the standpoint of practical application, it would be unworkable

Another example was the suggestion that the “just cause” standard should be replaced with a new standard called “sound discretion.” This belies an understanding of the historical significance of the “just cause” standard to civil service protections. A fundamental component in the State's ability to prove that a personnel action is **not** motivated by patronage is its responsibility to demonstrate that it had just cause for its actions. At the hearing, the State did not explain how its proposed new standard could effectively maintain protection against patronage without maintaining the requirement that the State prove that it acted for just cause. In addition to this problem, no clear explanation was provided regarding how the “sound discretion” standard would differ in practice from the “just cause” standard. It is worth noting in this respect that when labor

agreements in the federal sector have attempted to move away from the “just cause” standard to a standard based on “promoting the efficiency of the Agency,” there has been little if any practical difference from the application of the traditional “just cause” standard. Finally, the State provided no examples of any other jurisdiction that used a “sound discretion” standard, let alone moved from the “just cause” standard to a “sound discretion” standard. By stark contrast, the “just cause” standard is used throughout the United States and, in one form or another, in many countries throughout the world.

A final facet of the State’s proposed revision to Article 7 that the Special Master found flawed was the suggestion that only discharge should be eligible for processing through its machinery. The State produced no statistics or even anecdotal evidence to demonstrate that the right to grieve suspensions and other matters under Article 7 had created unreasonable costs or intolerable inefficiencies. By contrast, the elimination of this “safety valve” in the employment relationship could have a serious impact upon employee morale as well as the perception of job security and fair play in State employment.

There were two other revisions to Article 7 suggested by the Parties. One was the State’s proposal that the “dead letter” provisions be removed from Section 1 (A). The other was the Union’s proposal that employees not be terminated pending the resolution of criminal allegations against them. In relation to the State’s proposal, no cases were cited demonstrating how chronically substandard employees had abused these provisions. In relation to the Union’s proposal, although there was anecdotal evidence of injustice, there was no workable alternative spelled out in the language that was offered.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article.

## ARTICLE 8: WORKFORCE REDUCTION AND PRIVATIZATION

### **FINDINGS OF FACT:**

The processes known as “bumping” and “recall” are currently embodied in law in a form that strikes a balance between the principles of “last in first out” and “management’s right to manage.” Chapter 60 K-17 of the Personnel Rules of the Career Service System is still the governing provision as of the date of the issuance of the Special Master’s Recommendations in this case. Therefore, to recommend departure from these rules at this stage would be without effect and pointless on the part of the Special Master. Although these processes are based on objective standards, such as longevity in employment and Veterans’ status, these provisions establish an elaborate system of “retention points” that is incredibly complex and justifiably criticized.

Nevertheless, apart from undocumented anecdotes about delays and cost centers that could not fund their newly bumped positions, the State produced no hard evidence that “bumping” or “recall” rights created demonstrable inefficiencies or insurmountable administrative problems. On the other hand, there is every reason to believe that if the process were replaced by a more subjective one based on “Agency needs” that there could be a dramatic increase in legal challenges to agency actions under Article 8. As imperfect as the “retention point” system happens to be, it is based on objective factors such as seniority and consequently, it is far less prone to employee suspicion and legal challenge. When the predominant criterion is seniority, discrimination and patronage allegations can become a moot point. For these reasons, the Special Master prefers the “known evil” in

this instance. If the State wants to bring about an end to “bumping” and “recall” provisions, it will be necessary to accomplish this in a forum other than impasse proceedings.

Regarding the proposal that consultation with the Union should not delay the implementation of workforce reductions, the Special Master is extremely wary. In the first place, there was no factual evidence adduced of any previous consultation causing any delay. However, this proposal is flawed on a more fundamental level. To explain, meaningful consultation is almost always going to have the potential of slowing down unilateral implementation of change. Moreover, the process of consultation may sometimes result in the discovery of viable alternatives that may not only delay, but even eliminate the need for some reductions in force. To forbid this genuine consultation from occurring with explicit contract language is tantamount to declaring that the State has the right not to take the consultation process seriously.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article.

ARTICLE 9: REASSIGNMENT, TRANSFER, CHANGE IN DUTY  
STATION, PROMOTION

**FINDINGS OF FACT:**

For the same reasons explained in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for reorganizing Articles 9 and 10 in the manner proposed by the State. Nevertheless, he will now explain his Findings of Fact in relation to the State’s proposals relating to Reassignment, Transfer and Change in Duty Station.

In this regard, the Special Master was more sympathetic with the State's contention that the balance between seniority rights and its right to manage is askew in relation to this Article. In particular, the Special Master agreed that the mandate of "first consideration" could cause undue delay and might well impair the State's ability to select the most qualified candidate for reassignment or transfer. Therefore, the Special Master will recommend that any reference to "first consideration" be revised to provide for "full consideration" of employees who have submitted a Request for Reassignment Form.

However, the Special Master was not persuaded that an additional dilution of the principle of seniority was required in this Article. Specifically, there was no evidence that the current provision that the hiring agency should "normally" select the most senior individual has led to problems. This is particularly true as this language is counterbalanced against explicit language that establishes the legitimacy of additional factors such as the "employee's work history" and "the needs of the agency."

**RECOMMENDATIONS:**

The Special Master recommends no change to the organization of this Article and recommends the status quo in all but one respect. Namely, he recommends that the reference to the term "first consideration" in Section 2 (D) be replaced with a reference to the term "full consideration."

**ARTICLE 10: PROMOTIONS**

**FINDINGS OF FACT:**

For the same reasons outlined in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for amalgamating Articles 9

and 10 in the manner proposed by the State. He will now deal with the State's proposals regarding revisions to the Promotions provisions of the Agreement.

As indicated immediately above, the Special Master agreed that the mandate of "first consideration" could unduly delay and possibly impede the State's ability to select the most qualified candidate. In this instance, however, it would be candidates for promotion. Therefore, the Special Master will recommend that the reference to "first consideration" be deleted and be replaced with a reference to "full consideration" of employees who have submitted a Request for Promotion Form.

**RECOMMENDATIONS:**

The Special Master recommends no change to the organization of this Article and recommends the status quo in all but one respect. Namely, he recommends that the reference to the term "first consideration" in Section 3 (A) be replaced with a reference to the term "full consideration."

ARTICLE 11: CLASSIFICATION REVIEW

**FINDINGS OF FACT:**

The Union succeeded in convincing the Special Master that the provisions of this Article should remain where they are. However, the Union did not convince the Special Master that he should recommend any of the proposed changes it outlined to this Article. Workloads, for example, are a topic within the range of matters that the State has the right to determine unilaterally, unless the issue of disparate treatment arises. When agency employees are overburdened, as is currently alleged by the Union, this may be relevant to issues such as employee morale and retention. However, it is not within the scope of the

Special Master's conventional authority to recommend a lighter distribution of workload. Whether there are Federal guidelines in this area is irrelevant to these impasse proceedings. The Union did not demonstrate, as a matter of fact, that bargaining unit members were unable to perform the duties assigned to them. Nor did they demonstrate the utility of making such disputes grievable. (This Special Master would not want to be the Arbitrator asked to second-guess an agency head on the maximum workload to impose upon an employee.) In summary, there was no factual basis established for the revisions proposed by either the Union or the State in relation to this Article.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article.

ARTICLE 13: HEALTH AND SAFETY

**FINDINGS OF FACT:**

The evidence provided by the Union to support its numerous proposed revisions to this Article was mostly anecdotal. Apart from the fact that the Special Master has no authority to recommend that State agencies create positions for "certified health and safety specialists," there were other shortcomings in the Union's arguments. For example, the Union failed to demonstrate a single instance where the failure to have an independent physician caused an injustice or hardship on its members. Similarly, the Union did not provide evidence of any bargaining unit members who had been exposed to unsafe conditions for an unnecessarily long period. Therefore, it did not justify its proposal for a reduced response time for agencies to provide written responses to safety

allegations. Likewise, no factual examples were cited where bargaining unit members should have been entitled to decline “unsafe work.”

As indicated above, while there was anecdotal evidence that some bargaining unit employees had been assigned supervision of dangerous persons, there was no evidence whatsoever that this was a widespread phenomenon. Nor, for that matter, was there evidence that these persons had been misled about the nature of their work, had been denied an opportunity to transfer, or had been victimized for seeking a transfer. In the absence of evidence to this effect, there was no factual basis for the Special Master to make the sort of recommendations sought by the Union.

By contrast, the proposals made by the State in relation to Article 13 were relatively modest and, consequently, required little probative support. In particular, the State conceded that Section 1 should be revised to permit the Union to select a bargaining unit employee to serve on the safety committee. Similarly uncontroversial was the proposal that would require two State agencies to “make a good faith effort” to notify candidates for employment that they may be required to work with dangerous persons. As no reason was offered why all employees who could routinely be required to work with sexual predators or violent juveniles should not be notified of this possibility, the Special Master felt it was in the public interest and in the interest of bargain unit members, that all affected employees receive such notification.

**RECOMMENDATIONS:**

The Special Master recommends that Article 13 be amended in Section 1, as proposed by the State, to permit the Union to select a bargaining unit representative on any safety committees that might be formed. The Special Master also recommends that

Sub-section (C) be added to Section 2 to provide that “All State agencies employing bargaining unit members will make a good faith effort during the selection process to advise applicants for any relevant classifications of jobs that they may be required to work with sexual predators or violent juveniles.”

## ARTICLE 14: PERFORMANCE REVIEW

### **FINDINGS OF FACT:**

None of the State’s proposed changes to Article 14 were supported by any facts that were brought to the attention of the Special Master. There was no evidence that having immediate supervisors in charge of ratings had lead to leniency, strictness, or any other form of performance appraisal distortion. Nor was there evidence that higher-level management would be any more accurate in their assessment of individual performance than immediate supervisors. Nor, for that matter, was there any evidence that the limited grievance rights associated with unfavorable performance appraisals had caused any systemic dysfunction or inefficiency. Most significant in its absence, however, was the lack of any evidence that the State had undertaken effective measures to insure the validity of its performance appraisal instruments. After all, there are the hundreds of different jobs in the bargaining unit, and one size does not fit all when it comes to performance appraisals.

Given the emphasis placed upon merit over seniority in the State’s “Service First” initiatives, the Special Master was surprised that the State could offer no evidence that its performance appraisal technology was currently adequate or that it was being systematically examined in order to assess and improve its validity. As a result of this

apparent lack of job-specific, job-related, performance appraisal technology, it was impossible for the Special Master to recommend any of the State's proposals that were based on the accuracy of its performance appraisal data. The Special Master believes it would be irresponsible to make the transition to a merit and competency-based system without first establishing valid instruments for measuring merit and competency.

In relation to the State's proposal that performance appraisals be conducted quarterly rather than annually, the Special Master's response comes in the form of a rhetorical question: "If the State cannot demonstrate the validity of its performance appraisal instruments when they are administered once a year, what is the point in conducting those same appraisals four times a year?" In addition, there would be an inordinate waste of managerial time involved in quadrupling the administrative responsibility of all managers in relation to appraisal related duties. At the end of the day, the State provided no evidence to demonstrate that the current PIP system inadequately put employees on notice of the need to improve their conduct or performance. As a result of these determinations of fact, the Special Master was not persuaded that there should be any departure from the current language of this Article.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article.

ARTICLE 15: SENIORITY

**FINDINGS OF FACT:**

As indicated above, the Special Master agrees that seniority is an imperfect decision-making criterion. As a selection device it does not consistently reward the most

competent or meritorious employee. On the other hand, its application deters countless discrimination suits and it happens to be the most objective method at the State's disposal in the absence of validated performance appraisal technology. The State offered some interesting observations about the relative value of seniority and merit as decision-making criteria, but offered no real proposals. Nonetheless, it did argue against the grievability of seniority issues and, in this regard, the Special Master agreed. The channeling of seniority-based claims into a Consultation process instead of the Grievance Procedure represents a fundamental component of the status quo in the Parties' relationship. The Union did not succeed in establishing the factual basis for its claim that circumstances necessitated such a shift from the status quo. Regarding its assertion that seniority should be considered in relation to promotions and transfers, the Special Master regards this as a reference to the current provisions of Articles 9 and 10 as well as to the Personnel Rules of the Career Service System. These provide for the qualified use of seniority as a criterion in these instances.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article, except that he recommends the inclusion of the terms "promotions and transfers" to the seniority/consideration list in Article 15 to reflect current practice.

**ARTICLE 16: INSURANCE PREMIUM CHECK -OFF**

**FINDINGS OF FACT:**

Neither Party presented clear or specific factual evidence in support of its position on this Article. As a practical consequence, the Special Master was left with no option other than recommending the maintenance of the status quo.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article.

ARTICLE 18: LEAVES OF ABSENCE, HOURS OF WORK,  
OVERTIME, DISABILITY LEAVE

**FINDINGS OF FACT:**

Of all the argued reorganizations proposed by the State, this one made the most sense to the Special Master. He can understand why the State would want to include some of its newly drafted Leave provisions in this Article rather than Article 23. Nevertheless, despite the logic of some of its proposed reorganization, for the same reasons outlined above in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for reorganizing Articles in the manner proposed by the State. Consequently, he will deal with the State's proposals regarding Article 18 here and will address the State's proposals on Article 22 and 23 in relation to his discussion of those Articles, below.

For its part, the Union provided an empirical basis for its proposal in relation to Leave for Union officials. While the Union could only offer one factual example of a Union official who had their State employee status jeopardized by undertaking a full-time Union position, this was a notable example. In was the Union's State President. The fact that the Parties could not negotiate a satisfactory ad hoc arrangement to protect this

important of an official indicated that contract language (like that sought by the Union) was necessary.

**RECOMMENDATIONS:**

The Special Master recommends the inclusion of the sentence -

Members of the Union elected or selected by the Union to do work which takes them from their employment shall, at the written request of the Union receive leaves of absence for the period of employment with the Union and upon their return shall be re-employed in the same pay grade without any loss of seniority.

at the end of the current section 3 in Article 18 of the Agreement.

ARTICLE 20: TRAINING

**FINDINGS OF FACT:**

There are many reasons why the extension of the “tuition-free courses” policy to community colleges constitutes an important new benefit for bargaining members. For many State employees, this could well represent the most important innovation in the new Master Contract. In addition, the extension of this program would also constitute an important “benefit” for the State as well. Given the shift to competency-based approaches, providing access to community colleges is an effective and cost-efficient way for the State to invest in its own human resources.

**RECOMMENDATIONS:**

The Special Master recommends the inclusion of language in Article 20 that would extend the “tuition-free courses” policy to community colleges.

ARTICLE 21: OUT OF TITLE WORK

**FINDINGS OF FACT:**

For the same reasons outlined above in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for moving the provisions of this Article to Article 25 in the manner proposed by the State.

**RECOMMENDATIONS:**

The Special Master recommends the status quo in relation to this Article.

ARTICLE 22: DISABILITY LEAVE

**FINDINGS OF FACT:**

For the same reasons outlined above in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for reorganizing Articles in the manner proposed by the State. Apart from the State's suggestion that the provisions of this Article be moved and that it be vacated, there were no substantive revisions proposed by either party.

**RECOMMENDATION:**

The Special Master recommends the status quo in relation to this Article.

ARTICLE 23: HOURS OF WORK/OVERTIME

**FINDINGS OF FACT:**

For the same reasons outlined above in relation to Article 1, the Special Master was not persuaded that there was any factual or discretionary basis for amalgamating the provisions of this Article into Article 18. As indicated above, however, he can understand the basic logic in seeking the inclusion of some Leave-related proposals into Article 18, while leaving this Article to govern Hours of Work and Overtime. Nevertheless, he will now deal with the Parties' proposals regarding Article 23.

The Special Master was not convinced of the factual basis for the Union's three proposals in relation to Article 23. The Union did not provide any factual evidence that there were large numbers of employees capping out on special compensatory leave. Consequently, the Special Master was not persuaded of the need for them to have options like declining assignments or converting the leave to Sick Leave. Moreover, there was no reason cited for giving employees who had worked two consecutive shifts more than 16 hours off. Third, while the Union did offer anecdotal evidence about pay inequities that occurred in the wake of a recent Hurricane, there was no evidence that this state of affairs was chronic or widespread. Moreover, the provision that the Union offered to address this potential inequity was impossibly labyrinthine in nature. As a result, the Special Master declined to recommend any of the three proposals put forth by the Union.

On the other hand, the Special Master was more receptive to the State's proposals in relation to this Article. Specifically, he accepts that the 240-hour cap on special compensatory leave credits represents the real status quo of custom and practice for the Parties. Consequently, he is willing to recommend the inclusion of language to this effect in this Article. In addition, the State offered a clear explanation of the factual basis for another proposal that it made. Specifically, the Special Master agreed that employees who accrue unused sick leave above the payout limit should be permitted to redeem that leave for a retirement credit. As indicated above, it appears the State wanted these provisions rolled into Article 18, but despite the Special Master's unwillingness to locate them in that Article, he is willing to recommend their inclusion in this one.

**RECOMMENDATIONS:**

The Special Master recommends the inclusion of language that formally establishes a 240-hour cap on special compensatory leave credits. The Special Master recommends the inclusion of language that would allow employees who accrue unused Sick Leave above the payout limit to redeem that leave for a retirement credit.

## ARTICLE 25: WAGES

### **FINDINGS OF FACT:**

Although the Wages segment of a Special Master hearing is often the most empirically robust from the standpoint of quantitative data, ironically, it can also be the most subjective segment. This is often due to the complexity and sheer volume of the comparative economic data that is routinely produced. It is also because the scale of expenditure on public employee wage increases is generally a matter of political priorities, rather than statutorily mandated empirical determinants like occupational income comparisons or the actual availability of funds. The Special Master believes that the discussions around this Article have illustrated this point.

Under the circumstances (particularly with a huge and diverse bargaining unit such as this one) the issue for the legislative body probably has less to do with what is fair from a comparative standpoint, than what is expedient from a political standpoint. In this regard, the important issue concerning “status quo” in this Article does not relate to existing language but instead relates to existing workers. Namely, the issue is whether the public employer’s wage offer continues to provide an attractive enough package of compensation and benefits to retain existing, quality workers. In this case, these are the

very workers that the “Service First” initiative is attempting to retain (as well as attract and reward.)

Unfortunately for the State, a critical part of its traditional package of compensation and benefits consists of the provisions that reward loyalty and protect job security. This is unfortunate for the State, since an integral part of its objectives in this set of negotiations has been the dilution of these provisions. In practice, this has the effect of seriously undermining the appeal of the “second to none” benefits package that the State persistently touted. Job security and built-in rewards for loyal service are among the most critical benefits that public sector employment has to offer. When they are removed, a significant and valuable benefit is removed for all employees. It is not only mediocre employees who place a premium on these provisions. Quality workers also value these protections and entitlements. The failure of the State to recognize this fact is the most profound flaw in its bold new reforms.

The Special Master firmly believes that the State cannot press on with its plans to eviscerate the benefits of career service employment, and at the same time seek to attract and retain the most qualified staff. It is not logical. It will not work. Quality workers will leave and the result will eventually be “Service: Worst” instead of “Service First.”

If the State persists in dismantling the basic protections of career service employment that are enjoyed elsewhere throughout the nation, it must significantly increase its overall wage offer to compensate for this anachronistic and unprecedented reversal of public sector employment rights. In conformity with this set of facts, the Special Master offers a contingent Recommendation that applies to this Article. As

referenced above, this contingency relates to the State's determination to adhere to its plan of diluting seniority and job security rights.

**RECOMMENDATIONS:**

If the proposed revisions to the Master Contract and the Personnel Rules of the Career Service System result in the erosion of conventional job security protections or the qualified application of seniority to employment decisions, the Special Master recommends the adoption of the wage proposal spelled out by the Union. On the other hand, if there is no erosion of conventional job security protections or the qualified application of seniority to employment decisions, the Special Master recommends the State's proposed wage offer.

ARTICLE 27: INSURANCE BENEFITS

**FINDINGS OF FACT:**

For all intents and purposes, the State advocated the status quo in relation to this Article. On the other hand, the Union made three proposals. The first was that the level of insurance benefits be frozen at prior levels for the first year of the New Master Contract. Since this proposal represents the status quo and no one produced evidence why this level of coverage could not or should not be maintained, the Special Master was willing to go along with this proposal. However, the same considerations did not apply to the Union's other two proposals. Specifically, there was no basis established for the Union's proposed reduction in the retirement eligibility period. Most workers would like the option of retiring earlier, but a better justification is required than "we want it and we think the employer can afford it." In addition, while there was some initial appeal in the

Union's argument that some members of the bargaining unit should enjoy Special Risk Retirement status, these arguments were not articulated with the degree of factual specificity required to support a Special Master recommendation that departed from the status quo. For these reasons the Special Master only recommends the first of the Union's three proposals.

**RECOMMENDATIONS:**

The Special Master recommends that premiums, co-payments, deductibles and benefits provided for under the State Employees Group Health Self-Insurance Plan be frozen (to the extent possible) for fiscal year 2001 / 2002.

ECONOMIC SELF SUFFICIENCY PROGRAM

**FINDINGS OF FACT:**

The State's presentation on the issue of the ESS Program was factually based, informative, and provocative. It raised interesting questions about the limits of Union / Agency cooperation and the ability of State government departments to "reinvent" themselves. While the Program Director did not have all the answers, she impressed the Special Master as being an open-minded individual who was willing to compromise and adapt her plans to address the legitimate concerns of the Union.

She not only demonstrated an ability to work effectively with the Union, but also with her outside expert, in this instance, to validate the tests and performance appraisal instruments. As this process continues, the State would do well to note the volume of time and effort that has gone into it. The development of job-related / job-specific performance standards and measurement technology for the 5000 employees of ESS has

taken months and it is not yet complete. If this program really does represent the direction of the “Service First” initiative, then the State should prepare for a fourteen-fold replication of this effort. Before switching over to a merit-based system, it will be necessary to develop similar standards and measurement techniques for the remaining 70,000 employees (holding hundreds of different jobs) in the bargaining unit.

Clearly, there are still unresolved issues related to some of the important operational characteristics of the Proposed program. More progress will have to be made in validation, perhaps tailoring different tests and appraisal devices for staff who have been limited in their work experience to specific types of eligibility issues. In addition, cut off scores should be established for the test or tests, since the failure to have cut-off scores creates the perception that the State can “move the goalposts” as it likes.

Nevertheless, after carefully considering the Parties’ competing proposals, the Special Master reached the factual conclusion that the ESS Program represents a worthwhile evolutionary step, carrying on from the 1998 Competency Based Pay Plan implemented in another DCF division that was half the size of the ESS group. Unlike the Union’s most recent ESS proposal, the plan as laid out by the Program Director seemed to meet the requirements of the new legislation. With the following qualifications, the Special Master is therefore willing to recommend the State’s version of this proposal.

**RECOMMENDATIONS:**

The Special Master recommends the State’s proposed Memorandum of Agreement for the ESS program provided that the State -

- 1) Establishes specified cut-off scores for tests and
- 2) Thoroughly validates tests and appraisal instruments

## LUMP SUM PAYMENTS

### **FINDINGS OF FACT:**

The Special Master will not venture any Findings of Fact in relation to this issue. Quite simply, the Parties did not provide any substantive information about the proposal and counter proposals in relation to Nonrecurring Discretionary Lump Sum Bonuses. Clearly, no real bargaining took place. Moreover in the absence of any meaningful dialogue, it would be premature and pointless for the Special Master to issue any Recommendations in relation to this issue. More bargaining needs to take place.

### **RECOMMENDATIONS:**

The Special Master declines to issue any Recommendations in relation to this issue for the reasons explained above.

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DATE

MARK R. SHERMAN  
SPECIAL MASTER