

Memorandum of Understanding
between
the State of New York
and
the New York State Correctional Officers and Police Benevolent Association, Inc.

1. **Term:** April 1, 2016 to March 31, 2023.

2. **Bill of Rights**

- a. Amend "G" as follows: (G) An employee shall be entitled to Union representation at an interrogation if it is contemplated that such employee will be served a notice of discipline pursuant to Article 8 of this Agreement or if the employee would be entitled to representation under Civil Service Law section 209-a.(1)(g). Such employee shall not be required to sign any statement arising out of such interrogation.
- b. Add new "N" as follows: (N) The employer shall provide a copy of the interrogation transcript/recording of an individual to the employee when a notice of discipline is served against such employee.

3. **Article 5**

- a. Amend Article 5.7 per attached *Attachment A*.

4. **Article 7**

- a. Side letter instituting grievance "hold" procedure per attached *Attachment B*.
- b. Amend Article 7.2(a) Step 3 procedure per attached *Attachment C*.

5. **Article 8**

- a. Amend Article 8 to implement suspension review procedure per attached *Attachment D*.
- b. Article 8.9 per attached *Attachment E*
- c. Article 8.8
 - i. Amend to eliminate sunset clause
 - ii. Agree to opt out review procedure as follows: Where an agency chooses to exercise its limited ability to opt out of the Expedited Arbitration procedure and move a case to "full" Article 8 arbitration, upon the union's request, the Director of GOER, or designee, shall review the reasons for such opt out and, if such reasons are found lacking, shall order the case to proceed under the Expedited Arbitration procedure.
 - iii. Agree to side letter forming labor management committee to study operation of expedited process as follows: The parties agree to form a labor-management committee that, after ratification of the agreement shall meet to study the expedited disciplinary process to inform the renegotiations of the arbitrator assignment process and make other procedural changes that are mutually agreed upon.
- d. Agree to form labor/management committee to review discipline cases involving excessive use of force. Provide funding for training in excessive use of force prevention in the amount of \$5 million.

6. **Article 11— Compensation**

- a. Article 11.2 - across the board increases to salary schedule:
 - i. April 1, 2016 — 2%
 - ii. April 1, 2017 — 2%

- iii. April 1, 2018 — 2%
 - iv. April 1, 2019 — 2%
 - v. April 1, 2020 — 2%
 - vi. April 1, 2021 – 2%
 - vii. April 1, 2022 – 2%
- b. Agree to move arbitration ineligible employees to arbitration eligible schedule effective April 1, 2021
- c. Article 11.7 (a) - Location Pay
- i. Across the board increases on 4/1/2020; 4/1/2021 and 4/1/2022
- d. Article 11.12 (new) Hazardous Duty Pay (bi-weekly payment, pensionable, overtime). Payable to employees after first year of service.
- i. 4/1/2019 - \$750 for arb eligible employees; \$150 for non-arb eligible employees
 - ii. 4/1/2020 - \$200(\$950) increase for arb eligible employees; \$50(\$200) non-arb
 - iii. 4/1/2021 - \$200 increase (\$1150) for arb eligible employees
 - iv. 10/1/2021 - \$350(\$1500) increase for arb eligible employees
- e. Effective October 1, 2021, the 25-year longevity shall be increased by \$500.
- f. Agree to Inconvenience Pay side letter as follows: The parties agree to form a labor-management committee that, after ratification of the agreement, shall meet to study the payment of and procedures involved in the payment of inconvenience pay and implement any agreed upon changes to how and when inconvenience pay is provided.
- g. Retroactive payments shall be made to current employees who qualify and individuals who retired on or after effective date of agreement.

7. Article 12

- a. Health insurance changes per attached *Attachment F*.
- b. Across the board increases will be applied to Article 12.10(b).

8. Article 13

- a. Increase funding amounts in 13.1, 13.5 and 13.6 by across the board increases

9. Article 14

- a. Amend Article 14.3 per attached *Attachment G*.
- b. Agree to side letter interpreting Article 14.5 as follows: The parties agree that Article 14.5 shall be interpreted to include the position of "court officer" within the office of court administration and trooper within the division of state police. The parties will meet and discuss other titles that fall within this article.
- c. Agree to side letter on Workers' Compensation per attached *Attachment H*.
- d. Agree to remove Article 14.12 and 14.13.

10, Article 15

- a. Agree to side letter establishing new denominator for calculation of overtime per attached *Attachment I*.

11. Article 24

- a. Amend Article 24.1 to read as follows: For the purposes of this Article, seniority shall be defined as the length of an employee's service in title including sick leave, military leaves not to exceed four years, and other leaves of absence which do not exceed one year and Workers' Compensation Leave.

- b. Agree to side letter clarifying Article 24.1 with respect to reductions in force per attached *Attachment J*.

- c. Agree to side letter forming labor-management committee as follows: The parties agree to form a labor-management committee comprised of an equal number of representatives of GOER and NYSCOPBA to analyze and study the issue of current practices and procedures associated with employee's ability to bid and be awarded bids when on approved leaves. The parties agree that they will implement any agreed upon revisions to current practice and procedures.

Article 25

- a. Increase funding amounts in 25.6, 25.9 and 25.10 by across the board increases
- b. Agree to labor-management committee to discuss Article 25.10 and 13.5(b) per attached *Attachment K*.

13. Reopener

- a. Side letter per attached *Attachment L*.

14. Side letters

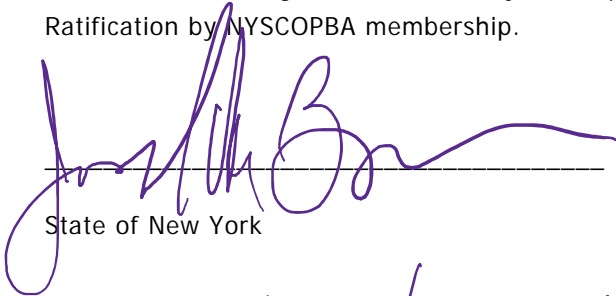
- a. Agree to side letter on Justice Center per attached *Attachment M*.
- b. Agreed upon increased arbitrator's fees for Article 7 and Article 8 proceedings.

15. Paid Family Leave. The parties agree to continue discussions on Paid Family Leave and work out the details of any agreed upon implementation of Paid Family Leave in a labor-management committee.

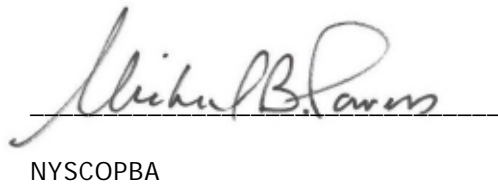
16. Unchanged Provisions,

- a. Except as otherwise provided herein, all existing contractual provisions, side letters and MOUs remain in effect.

17. Ratification. This agreement shall subject to approval by NYSCOPBA's Executive Assembly and Ratification by NYSCOPBA membership.



State of New York



NYSCOPBA

Dated: 12/14/2018

Dated: _____

5.7 Union Leave

Attachment A

A permanent employee or employees nominated by the Union may be granted by the Employer a leave or leaves of absence with full salary from their regular position for the purpose of serving with the employee organization subject to the conditions of this paragraph. Each such leave, its term and renewal, shall be subject to the discretionary approval of the Director of the Governor's Office of Employee Relations. The Union shall periodically, as specified by the Director of the Governor's Office of Employee Relations, reimburse the State for the salary, wages and any other payments paid to each employee by the Employer during such leave of absence together with the cost of fringe benefits, excluding the Health Insurance, Dental, and Vision Benefits Compensation components of that fringe benefit rate, at the percentage of salary, wages as determined by the Comptroller. In addition, this reimbursement will include, as determined by the department of civil service, the employer's share of premium for health and dental benefits as well as the employer's actual costs associated with providing vision benefits and, the cost of any Opt-Out program payments, if any. The Union shall purchase an insurance policy in the form and amount satisfactory to the Director of the Governor's Office of Employee Relations to protect the State in the event the State is held liable for any damages or suffers any loss by reason of any act or omission by such employee during the period of such leave of absence with full salary.

Article 7
Side letter

Attachment B

The union, once a grievance is filed at step 1, may inform the employer that it is placing the grievance on "hold" so that it may pursue an informal resolution of the grievance. Once on hold, the grievance procedure is tolled until such time as the union informs the employer that it wishes to end the "hold" status and have the grievance processed. For any grievance that is placed on hold and has the potential of accumulating financial liability, no additional financial liability shall be due, should the employer be found to have violated the agreement, for any period the grievance is in hold status for longer than 30 days.

Article 7.2

Attachment C

Step 3. In the event that the grievance has not been satisfactorily resolved at Step 2, an appeal to the Director of the Governor's Office of Employee Relations may be taken by the Union in writing within 60 days from the day on which the Union received the Step 2 decision. Such appeal shall contain a copy of the Step 2 decision and a short, plain written statement of the reasons for the disagreement with the step 2 decision. All communications concerning appeals and decisions at this Step shall be made by personal service, registered or certified mail.

The Director of the Governor's Office of Employee Relations, or the Director's designee, shall issue a short, plain decision on the grievance within 30 working days after receipt of the appeal unless the Union requests a meeting to discuss the grievance.

Every other week (on a designated day), representatives from the Union and the Governor's Office of Employee Relations will meet and review all the grievances that have been appealed to the Step 3 level during the previous two-week period and for which a meeting has been requested. The Director of the Governor's Office of Employee Relations, or the Director's designee, shall issue a short, plain decision on a grievance for which a meeting has been requested within 30 working days after the conduct of the meeting where the grievance was discussed. If warranted, an agency representative may be in attendance at these meetings. At these meetings, the grievance will be read, reviewed and tactically distributed for processing in one of the following ways:

- ~~1. Expedited Decision. For grievances with respect to which either side believes that the decision is going to be traditional and involves issues which cannot resolved by the grievance process, the Governor's Office of Employee Relations shall provide, within ten days, a written Step 3 response in the form of a brief answer.~~
- ~~2. On site Review, if both representatives believe that a step 3 hearing review is necessary, the parties will agree to schedule such a review on the next trip to the work location in question, Trip to regions or work locations will be scheduled in advance on a circuit basis to ensure that each work location can be visited at least once every four months., if necessary.~~
3. ~~Safety Issues.~~ Issues which are, in fact, safety and health concerns (not to include staffing issues) may be referred to an Agency Level Statewide Safety and Health Committee. A safety specialist from the employing agency and the Union can review the issues and determine if there may be methodologies available for resolution of the issues. Resolutions will be reduced to writing. In the event the issues cannot be resolved, either party may refer them to the conference phase of the Alternate Dispute Resolution Process where applicable.
4. ~~Hold Status.~~ The grievance may be put on hold for two weeks so that either or both sides can gather more information or make local contacts. Those grievances placed in hold status will become the first to be discussed at the next meeting between representatives from the Union and the Governor's Office of Employee Relations.

**Article 8
Side Letter on Suspension Review**

Attachment D

For only those suspensions without pay under Article 8.4(a)(1) that are not cases subject to Article 8.9 or cases under Article 8.4(a)(2) where the employee is charged with the commission of a crime, the following review process may be invoked:

- (1) Within five (5) business days of an employee's suspension, NYSCOPBA may request that the Article 7 "triage" arbitrator review, as quickly as can be scheduled, the reasons for the suspension under Article 8.4(a)(1) to see if such suspension should be initially upheld and continue.
- (2) For the purpose of such review, the Article 7 "triage" arbitrator shall accept as true the contents of the NOD and shall limit review to the reasons the suspension does or does not meet the contractual standard.
- (3) To request a review, NYSCOPBA shall email the "triage" arbitrator (copying the employer's representative and GOER), advising of its request and attaching a copy of the notice of suspension and a copy of the NOD (where issued). If no NOD has been issued, the arbitrator shall be emailed a copy of the NOD by the employer upon issuance.
- (4) Within five (5) business days of NYSCOPBA's request for a review, the employer's representative and NYSCOPBA shall each email to the arbitrator a statement of no more than two (2) pages, stating their position as to whether or not the contractual standard has been met. The opposing party and GOER shall be copied on the submission.
- (5) At the next scheduled contract "triage" session after receipt of such request for review or as soon thereafter as is practicable, the arbitrator shall review the documents and the arguments of the parties. If the arbitrator feels the need to hear from the employer and NYSCOPBA, the arbitrator may hold a conference call or meeting with both sides. The arbitrator shall render a short email decision to the parties stating that probable cause for the suspension under Article 8.4(a)(1) has, or has not, been met.
- (6) Where the arbitrator determines that probable cause has not been met, the employee will be restored to the payroll or have leave credits restored, as the case may be, retroactive to the date of suspension.
- (7) Nothing herein shall restrict the authority of the Article 8 arbitrator who hears an NOD from deciding guilt or innocence of an employee and if guilty, what the appropriate penalty may be. The Article 8 arbitrator shall simply be informed that the individual is suspended without pay or is not suspended without pay.
- (8) In cases where the "triage" arbitrator determines that there was probable cause for the suspension, nothing herein shall restrict the Article 8 arbitrator from determining, at the conclusion of the case and after all evidence has been considered, whether there was probable cause for the suspension.
- (9) In cases where the "triage" arbitrator determines there was not probable cause for the suspension, the Article 8 arbitrator who hears the NOD shall not be authorized to consider the lack of a suspension in determining an appropriate penalty.

The parties hereby establish a Labor/Management committee to address any issues arising out of the implementation of this side letter, including, but not limited to, the impacts upon the time and attention of the "triage" arbitrator.

8.9

(a) The parties have agreed to establish special procedures, including certain mandatory penalties and in lieu of those elsewhere in Article 8, for the following allegations of misconduct:

- (1) using excessive force against an inmate, parolee, patient or ward of the State;
- (2) sexual offense as defined by the penal law with an inmate, parolee, patient or ward of the State; or
- (3) distributing, or possessing with the intent to distribute, drugs or other dangerous contraband (intoxicants, Class A tools, cell phones) to inmates, parolee, patients or wards of the State.

(b) If an employee is charged in a notice of discipline with one or more of the offenses in Article 8.9(a), such notice of discipline shall be decided by a tripartite panel consisting of a neutral arbitrator, a panel member appointed by the Appointing Authority and a panel member appointed by NYSCOPBA.

(c) The neutral arbitrator shall be selected from a panel of arbitrators established by joint agreement of NYSCOPBA and GOER. Once the panel is established the arbitrators shall be placed in order and rotated in order as each case arises. A neutral arbitrator can be skipped only by agreement of the parties however nothing herein prevents the recusal of a neutral arbitrator pursuant to any conflicts the neutral arbitrator has with hearing a matter. Each of the parties is to bear the cost of its panel member and each of the respective parties is to share equally in the cost of the neutral member. The neutral member shall be chosen as chairperson. The determination of the tripartite panel shall be final and binding on the parties and shall be subject to review by a court of competent jurisdiction pursuant to CPLR Article 75. The burden of proof before the panel shall be on the employer to prove the charges by a preponderance of the evidence and on the grievant to prove any affirmative defense raised. The panel shall not have the authority to impose any other burden of proof upon the employer. A finding of guilt on any charge only requires the agreement of two of the three tripartite arbitration panel members. The tripartite arbitration panel shall conduct a hearing in such manner as otherwise agreed to by the parties and if needed, the parties shall issue joint instructions to the panel on the conduct of such proceedings.

(c) If a tripartite arbitration panel, following a completed arbitration hearing, finds that an employee is guilty of charges under subsections (a)(2) or (a)(3) above, the penalty for said misconduct shall be termination from employment and loss of accumulated vacation credits.

(d) If a tripartite panel, following a completed arbitration hearing, finds an employee to have used excessive physical force against an inmate, parolee, patient or ward of the state that caused serious physical injury as defined by Penal Law §10(10), and under circumstances where the panel finds the actions of the employee were not taken in a good-faith effort to maintain or restore discipline but were done maliciously and sadistically to cause harm, the penalty shall be termination and loss of accumulated vacation credits.

(e) For notices of discipline alleging excessive force against an inmate, patient or ward of the state where the panel does not, following a completed arbitration hearing, find all the conditions described in subsection (d) above to have occurred, the panel may impose a penalty from within the range of penalties currently prescribed in Article 8. However, the panel shall not, in its

determination of a penalty, give any weight or consideration to the fact that a penalty for such conduct has not been prescribed by this article.

(f) The parties agree that such panel of neutral arbitrators shall receive training regarding this process and the standards thereunder before any neutral member may serve as a member of the panel. The parties shall conduct such training as soon as the panel is constituted and every three years thereafter.

Attachment F

**HEALTH INSURANCE BENEFITS FOR EMPLOYEES REPRESENTED BY NYSCOPBA
NYSHIP CHANGES**

BENEFIT	CURRENT	PROPOSED 4/1/19 IMPLEMENTATION
<u>Hospital Program:</u>		
In-Network Urgent Care	\$40 copayment	\$50 copayment
In-Network Outpatient Services:	\$40 copayment	\$50 copayment
In-Network Outpatient E/R:	\$70 copayment	\$100 copayment
In-Network Outpatient Surgery:	\$60 copayment	\$95 copayment
In-Network Outpatient PT	\$20 copayment	\$25 copayment
Coinsurance Maximum	3,000 EE/\$3,000 SP/\$3,000 DC ½ for SG _≤ 6	\$3,750 EE/\$3,750 SP/\$3,750 DC ½ for SG _≤ 6
Skilled Nursing Facility	365 days	120 days
<u>Medical Program:</u>		
<u>In-Network</u>		
Primary Care Provider	\$20 copayment	\$25 copayment
Specialty Provider	\$20 copayment	\$25 copayment
Urgent Care	\$20 copayment	\$30 copayment
Ambulatory Surgery Center	\$30 copayment	\$50 copayment
Ambulance Service	\$35 copayment	\$70 copayment
PT Services	\$20 copayment	\$25 copayment
<u>Out-of-Network</u>		
Basic Medical Deductible	\$1,000 EE/\$1,000 SP/\$1,000 DC	\$1,250 EE/\$1,250 SP/\$1,250 DC
Basic Medical Coinsurance Max.	\$3,000 EE/\$3,000 SP/\$3,000 DC	\$3,750 EE/\$3,750 SP/\$3,750 DC

	½ for SG _{<6}	½ for SG _{<6}
<p><u>Prescription Drug Program:</u></p> <p><u>Retail:</u> Up to 30-day supply 31-90-day supply</p> <p><u>Mail Service:</u> Up to 30-day supply 31-90-day supply</p> <p>New To You Program Flexible Formulary Side Letter</p>	<p>\$5, \$25, \$45 \$10, \$50, \$90</p> <p>\$5, \$25, \$45 \$5, \$50, \$90</p> <p>Active ". . .and. . ."</p>	<p>\$5, \$30, \$60 \$10, \$60, \$120</p> <p>\$5, \$30, \$60 \$5, \$55, \$110</p> <p>Eliminate Replace "and" with "or are"</p>
<p><u>Managed Mental Health Program:</u></p> <p>Office Visit/Other Outpatient Services</p> <p>Basic Medical Deductible</p> <p>Basic Medical Coinsurance Max.</p>	<p>\$20 copayment</p> <p>\$1,000 EE/\$1,000 SP/\$1,000 DC</p> <p>\$3,000 EE/\$3,000 SP/\$3,000 DC</p> <p>½ for SG_{<6}</p>	<p>\$25 copayment</p> <p>\$1,250 EE/\$1,250 SP/\$1,250 DC</p> <p>\$3,750 EE/\$3,750 SP/\$3,750 DC</p> <p>½ for SG_{<6}</p>
<p><u>FSA Debit Card:</u></p> <p>Implement Debit Card</p>	<p>No benefit</p>	<p>Implement a direct debit vehicle or electronic submission option effective 1/1/19 or as soon as practicable thereafter.</p>
<p><u>State JCHB Initiatives:</u></p> <p>VBID Program</p> <p>Telemedicine Program</p>	<p>No benefit</p> <p>No benefit</p>	<p>Development through Joint Committee as a Pilot Program.</p>

		Development through Joint Committee as a Pilot Program.
<u>CanaRx</u>	No Benefit	Should it become permissible for the Federal Food and Drug Administration to allow the purchase of select brand name prescription drugs on behalf of New York State employees and dependents covered under The Empire Plan Prescription Drug Program from sources outside the United States, the parties will work through the Joint Committee on Health Benefits to develop an alternative drug program to enhance the current Empire Plan Prescription Drug Program, if practicable. Implementation of the alternative drug program will not take place without the agreement of the NYSCOPBA Joint Committee on Health Benefits.
<u>Dental Program:</u>		

Annual Maximum	\$2,300 per person per year	\$3,000 per person per year
Composite (white fillings)	Paid @ Amalgam Rate	Covered as Composite
Dental Implants	Not Covered	Covered (subject to \$600 limitation per implant)
Lifetime Orthodontic	\$2,300 lifetime limit	\$3,000 lifetime limit
<u>Vision Care Program</u>		
Digital Progressive Lenses	Not Covered	Covered at a Participating Provider with \$90 copayment
Yearly Exams for Contacts	Not Covered	Allowed for enrollees whose last contact lenses were covered through the Vision Care Program

Article 14

Attachment G

14.3 Bereavement/Family Sick Leave

- (a) Employees shall be allowed to charge absences from work in the event of death or illness in the employee's immediate family against accrued sick leave credits up to a maximum of ~~15~~ 30 days in any one calendar year.
- (b) For the purpose of defining eligibility for paid leave because of illness or death in the family, the term "family" shall be defined as the employee's spouse, child, parent, grandparent, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, grandchild, step-sibling, step-parent, step-child or any person living in the employee's household.
- (c) Requests for ~~bereavement~~ leave shall be subject to approval of the appointing authority; such approval shall not be unreasonably denied.
- (d) An employee's absence from work which would normally be approved as sick leave under Article 14.3 and charged against sick leave credits shall, at the employee's request, be approved as a charge against other leave credits if the employee has utilized the full amount of sick leave accruals referenced in Article 14.3(a) or has other exhausted their sick leave accruals. Such approval shall not be unreasonably denied.

Article 14.9 (h)

Attachment H

The State and NYSCOPBA agree to continue the standing Joint Committee on Workers' Compensation. The Committee shall consist of an equal number of representatives selected by NYSCOPBA and an equal number of representatives selected by the State. The Committee will be responsible for

- the ongoing review and oversight of the MEP
- evaluating the current leave at full pay benefit to take into account taxes that would be paid by an individual if they were working so that individual on benefit doesn't make more remaining out of work;
- analyzing light duty process and procedures including but not limited to the third-party review process, current light duty standard, expand light duty to include medically appropriate assignments beyond current standard and eliminate inconsistencies in application of current standard;
- analysis and implementation of an agreed upon pilot PPO as soon as practicable after ratification. Includes addressing implementation issues and make recommendation on geographic location issues. Expansion subject to agreement of parties. PPO minimum participation length shall be 120 days;
- Review and implementation of revised agreed upon administrative procedures including but not limited to using 3-point contact and follow up contacts from employer or employer's representative; unit-wide medical documentation submission, receipt and review procedures to ensure consistent application of employee status; accident reporting procedures; issues related to attendance at IME and SME; and issues related to scheduled loss of use and employee status.

Article 15

Attachment I

Overtime Denominator side letter

The parties agree that April 1, 2019, the denominator for the calculation of overtime shall be 2080 rather than 2000 on a prospective basis.

Article 24.1

Attachment J

Reductions in force side letter

A unit member who is subject to a layoff or reduction in force pursuant to Civil Service Law 80 or 80-a shall not be considered to have his/her service broken for the purpose of Article 24.1.

Article 25.10/13.5(a)
Family/EAP Side Letter

Attachment K

The parties agree to meet and agree on the combination of these articles, after the ratification of the agreement, so that these articles are consistently applied across all state bargaining unit agreements.

Side letter — reopener

Attachment L

As was discussed in negotiations for the 2016-2023 agreement, upon execution and ratification of the Agreement, NYSCOPBA has the right to reopen negotiations, during the term of the agreement, with respect to the sole issue of a general salary increase for fiscal year 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022 and/or 2022-2023, if any other state bargaining unit agrees to and ratifies a general salary increase exceeding 2.0% in any of these fiscal years. This right is conditioned on taking into account the overall value of compensation increases for NYSCOPBA members during the term of the NYSCOPBA Agreement and the value of any concessions obtained by the state contained in the collective bargaining agreement used as justification by NYSCOPBA to demand reopening.

**Side letter
Justice Center proceeding**

Attachment M

During the negotiations for a successor agreement to the 2011-2016 collective bargaining agreement, the parties discussed issues associated with substantiated cases of neglect by the NYS Justice Center for the Protection of People with Special Needs (Justice Center). While no resolution of those issues was reached, the parties agreed to form a labor-management committee to explore issues associated with these findings and the associated administrative proceedings conducted by the Justice Center.

Articles 7 and 8

Arbitrators - unpublished side letter

Increase number of Article 7 arbitrators to 6 or as many other arbitrators are as agreed upon. Pay \$1200.

Increase number of Article 8 arbitrators as needed.

Pay \$1200, Special panel - pay \$1800.

Other Matters

Parties agree that upon ratification, that PERB Case No. U-35624 shall be withdrawn with prejudice and that the currently provided clear bag shall become the standard issue clear bag. The parties shall meet in labor-management and agree upon an acceptable larger clear bag which, once agreed to shall become an alternative to the standard issue clear bag and if chosen for use by a member shall be procured for use without expense to the Department.