

1 MS. ZURVALEC: Thank you.

2 MS. WALSH: We continue to have costs in public  
3 safety needs, education programs, revenue sharing where  
4 there's been effort to rebuild since the last recession  
5 because there were some significant cuts then. Just like  
6 there's uncertainty on the revenue side from the federal  
7 government, we're still uncertain about some of the actions  
8 on the budget side, particularly with the human services  
9 programs. So in terms of the budget process, it's a little  
10 different this year because we are awaiting a new governor.

11 So right now we would normally be a little farther  
12 into the budget process for Fiscal Year 20, but right now  
13 what we're having departments do is just develop their needs  
14 in terms of baseline costs to operate existing programs,  
15 identify technical changes and, of course, they're working  
16 on their requests internally for what kind of priority items  
17 and investments or reductions that they will recommend, but  
18 we'll need to wait for a new governor to come in and  
19 identify his or her priorities for the new year. Thank you.  
20 I'm happy to answer questions if there are some.

21 JUDGE WHITBECK: None from me.

22 MS. ZURVALEC: Thank you very much.

23 (Off the record)

24 MS. ZURVALEC: We are here on the matter of  
25 Michigan Corrections Organization and the Office of State

1 Employer who are at impasse. As the Impasse Panel, we're  
2 here to hear the presentations by the parties. So proceed  
3 if you're ready to start. Please state your name and your  
4 position and spell it, please, for our recorder. Thank you.

5 MR. FOLDIE: Madam Chairperson, my name is Jeff  
6 foldie. I'm the Director of Legal Affairs for the Michigan  
7 Corrections Organizations. My colleague is Mitchell Bean,  
8 who is to my right. I'm asking if there are any economical  
9 questions, that I defer to him for these proceedings. We do  
10 have a housekeeping matter that we would ask and that's I  
11 guess to bring a motion, formal motion to ask if we could  
12 live stream these events or at least record them. The  
13 nature of the business here today is impactful to say the  
14 least for our membership and we feel it's important that  
15 they at least get a glimpse of the representation that we're  
16 going to afford them today. Thank you.

17 MS. ZURVALEC: I'm sorry, Jeff. What is your last  
18 name again?

19 MR. FOLDIE: Foldie; F-o-l-d-i-e.

20 MS. ZURVALEC: Thank you. I'd like to hear from  
21 the Office of State Employer before we respond to your  
22 motion so we can understand what their position is on this.  
23 Thank you.

24 MR. FOLDIE: Certainly.

25 MR. WESAW: May I ask a question?

1 MS. ZURVALEC: Sure.

2 MR. WESAW: Are we live streaming now?

3 MR. FOLDIE: No, we're not.

4 MS. ZURVALEC: That's a good question. This is a  
5 case of first impression. We've never had the request  
6 before so we want to handle this appropriately. Cheryl,  
7 would you please come to the mic? Thank you.

8 MS. SCHMITTDIEL: Good morning, again. I'm Cheryl  
9 Schmitt diel, Office of the State Employer, director. We  
10 object to live streaming recording, video recording this  
11 proceeding. We see the Impasse Hearing as an extension of  
12 our bargaining process. We clearly would not be here except  
13 for the bargaining and the impasse that we have reached on  
14 one issue. Once it is recorded or live streamed, we don't  
15 know what will happen to it after that. This is not a  
16 public meeting. For those reasons, we do object.

17 MS. ZURVALEC: I'd like our staff John Gnodtke as  
18 general counsel to speak to the Civil Service rules and  
19 regulations regarding impasse and regarding the recording of  
20 it.

21 MR. GNODTKE: Thank you, Madam Chair. As was  
22 previously indicated, this is kind of an issue of first  
23 impression that has not been addressed previously. I think  
24 the relevant regulatory and legal considerations stem from  
25 two sources. One is Regulation 6.05 on Impasse Panels.

1           There are three particular standards that could be of  
2           assistance in your determination. The first is simply that  
3           Standard 3.6 stating that the panel shall rule on procedural  
4           requests, appearances of witnesses and other motions, so you  
5           do have the discretion to determine the provisions for the  
6           conduct of this proceeding.

7                     Attendance, Section 5.35 states that attendance at  
8           Impasse Panel hearing is limited to the participants. The  
9           term participant is not specifically defined in the  
10          regulation or rules other than in Standard 3C where it says  
11          participation, Impasse Panel participation for primary  
12          negotiations issues is limited to the Office of the State  
13          Employer and exclusively recognized employee organizations.  
14          Finally, Standard 3.4 indicates that record, the panel shall  
15          make a verbatim record of the proceedings. Transcripts may  
16          be made available to the parties at their own expense.

17                     A copy of the transcript is not necessary for  
18          determination by the panel. It's silent as to motions for  
19          the creation of own records or verbatim records of  
20          proceedings by the parties. One other consideration is when  
21          the Open Meetings Act was enacted some 40-ish years ago,  
22          there was an omnibus opinion by Attorney General Frank Kelly  
23          where it was stated because of the language in Article IV,  
24          Section 48 of the State Constitution limiting the authority  
25          of the legislature to enact laws providing for the

1 resolution of disputes concerning public employees in the  
2 state classified service, that the provisions of the Open  
3 Meetings Act did not apply to those sorts of proceedings  
4 involving classified civil servants.

5 So under that guidance from the Attorney General's  
6 opinion, 51.83, that would seem to suggest that we're more  
7 in the realm of Regulation 6.05 guidance in guiding your  
8 decision as to an Open Meetings Act analysis.

9 MS. ZURVALEC: Thank you. My decision is to --  
10 based on that information -- to allow for videotaping only.  
11 The reason behind that is as Mr. Gnodtke mentioned, the  
12 hearing itself is limited to the participants, either the  
13 Office of State Employer or, in this case, MCO. By video  
14 streaming, we are not limiting that to just the  
15 participants. I want to remain a little bit conservative  
16 here as it's a case of first impression.

17 We have an objection from the State Employer here  
18 also, that on the basis of the fact that the Impasse  
19 proceeding is an extension of the bargaining process and we  
20 do not have bargaining in the public in the State classified  
21 service, so I will support a videotaping which is not of  
22 course being broadcast. It is a recording, in effect a  
23 video recording of the proceedings with an official  
24 transcript here, of course which goes to the parties. If  
25 the Office of State Employer would also like a copy of the

1 video taping, I would say that would certainly you would  
2 want to provide for them at your request.

3 We can proceed with videotaping. With that MCO,  
4 you can proceed with your presentation on the issues.

5 MR. FOLDIE: Good morning. Prior to beginning I'd  
6 like to reserve five minutes for rebuttal, Madam  
7 Chairperson.

8 MS. ZURVALEC: All right.

9 MR. WESAW: Excuse me. I just have to ask one  
10 question. I'm not a tech. What do we have over here?

11 MS. LLOYD: This is just a basic digital camera  
12 that can take video also so it's taking video now. This was  
13 my cell phone that I had set up to do the live stream, but I  
14 did not push Start and I guess I'll just leave that there  
15 for the sake of convenience during the hearing. Or I can  
16 put it away if you'd like.

17 MR. WESAW: I will be very comfortable if you put  
18 it away. Sorry.

19 MS. ZURVALEC: That's fine.

20 MR. FOLDIE: Thank you. Good morning. For the  
21 record, my name is Jeffrey Foldie, the general counsel for  
22 the Michigan Corrections Organization. On behalf of its  
23 president Brian Osborn and its entire executive board as  
24 well as the 6,000 courageous men and women that secure the  
25 facilities and state prisons within the state of Michigan,

1 we want to thank you for our opportunity to appear before  
2 you today. I said we were here on behalf of 6,000 members.  
3 I wish I could have told you that we were here on the behalf  
4 of 600 members. Because if we were here on behalf of 6800  
5 members, we wouldn't be here.

6 The fact is, our membership is 750 members short.  
7 That's exactly why we are here today. We've been 750 short  
8 for some years. It's reaching an increasingly dangerous  
9 level of vacancy. Not just for the officers. It's  
10 dangerous for the Department. It's dangerous for the  
11 prisoners. It's dangerous for every staff member that works  
12 in the prison system and it's dangerous for the public.  
13 From our opening statement until the last word spoke at the  
14 bargaining table the MCO had a mantra of risk, reward and  
15 retention.

16 It was an important aspect of our bargaining that  
17 we do something to come to the table to close these ranks  
18 and to fill them. I probably don't have to tell you that  
19 the corrections officers within the prison are the police  
20 force. When the alarms sound or the duress signals go off  
21 or the screams for assistance come over the radio, it is our  
22 members that have the primary charge and duty to respond.  
23 When medical emergencies occur and there's a call for  
24 assistance because there's a man down, whether that is a  
25 staff member or a prisoner, it is our members who are

1 initially responding with the automatic defibrillators.

2 And when the prisoners who have been locked up in  
3 these prisons because they have been found not fit to walk  
4 in the communities that we have, have been overcome and have  
5 determined that the depression is too much and decide that  
6 they want to commit suicide to get out, it's our members  
7 that come through the door and attempt to save their lives.  
8 Unlike our colleagues in the communities, police officers,  
9 we don't have the luxury of responding to public service  
10 calls. We don't have the luxury of responding to traffic  
11 control points or to assist elderly people.

12 When our members are called, ladies and gentlemen,  
13 bad things are happening all the time. It is because of  
14 this that we're here today because this response force is  
15 severely depleted. We have over a 10 percent vacancy rate  
16 with the numbers of 50 of our officers leaving per month.  
17 Since 2012 33 percent of our officers have left the ranks.  
18 That's one third of our ranks have left in six years. Two  
19 factors I believe increase retention problems. First is the  
20 cumulative effect of working in a prison environment which  
21 is injurious to our members itself. Second, because of this  
22 retention problem, massive overtime, mandatory overtime has  
23 taken hold of our officers.

24 Both these factors are literally killing our  
25 members and your employees. As to the cumulative effect of



1 the career of working behind the walls, the career in and of  
2 itself imposes detrimental effects upon our employees and  
3 members. Studies and empirical evidence have shown that  
4 high rates of PTSD soak through the minds of our members  
5 equal to that of combat veterans. This PTSD contributes to  
6 many other factors. Suicidal risk. The evidence in these  
7 studies will show that out of 100 corrections officers,  
8 five, five are at a high level of the possibility of  
9 suicidal risk. I notice you have read our briefs.

10 In our briefs we have cited that since 2016 we  
11 have lost 11 of our brothers and sisters to suicide. I want  
12 to update that. As of that writing, we have lost another on  
13 October 24th. Retired less than a year, he took his life.  
14 It also contributes to high rates of substance abuse,  
15 marital problems and domestic violence as well as  
16 declinations in health. With regard to mandatory overtime,  
17 one fifth of our prisons, one fifth of our prisons are at a  
18 critical level and are facing mandatory overtime. One of  
19 these prisons by way of example and illustration is women's  
20 Huron Valley.

21 I'm certain or I'm hopeful that you've all seen  
22 the Free Press article that was released that was done on  
23 that. These women at this prison are used to working three,  
24 four, five and even six consecutive mandatory assignments,  
25 16 hours per day. In some cases, ladies and gentlemen, it

1 goes to 17 or 18 or 19 hours before they are relieved. Then  
2 when they are relieved from that assignment, they go out  
3 into the public to travel. The effects of this type of  
4 environment lead to exhaustion. They are less vigilant,  
5 less vigilant in a prison setting where hypervigilance is  
6 required.

7 It slows their response time. It goes without  
8 saying that morale problems are rampant and an increase in  
9 discipline. With all due respect, I must say if the public  
10 suffered from these factors, if the Michigan State Police or  
11 the county sheriff or the city police department was  
12 suffering under these types of laborious problems, there  
13 would be a public outrage in their communities. But us?  
14 We're tucked away behind walls. Our cancers are buried deep  
15 within the prison bowels with pleas falling upon deaf ears,  
16 hopefully until today. The mandatory overtime crisis  
17 exacerbates the already existing ills associated with the  
18 job.

19 How can this be acceptable? It's been occurring  
20 for years. How can we not immediately launch an endeavor to  
21 eradicate these factors that compound the dangers that face  
22 the corrections officers that protect the public every day,  
23 24/7? Two factors create a stable work force. The first is  
24 compensation and the second is the working conditions. With  
25 regard to working conditions, let's face it. This is a

1           prison setting. Very little can be done about the  
2           conditions in a prison. We don't have pastel walls. We're  
3           not going to have ergonomic chairs or ergonomic desks that  
4           we work at. We accept that. It is a prison setting.

5                       Therefore, we're left with compensation. I'm  
6           often confronted with the argument that says, Mr. Foldie,  
7           you argue safety, but yet you say money is the answer. How  
8           do you reconcile that? How does money affect the safety  
9           problem? It doesn't to be quite frank, but there's a cost  
10          benefit analysis. Those individuals in New York City that  
11          wash the windows on skyscrapers, that climb 60 floors, they  
12          won't do it for 10 or \$15. They'll do it for 40. They'll  
13          do it for 45. It's a simple cost benefit analysis and I  
14          just want to be plain and blunt with you on that.

15                      The arguments distilled down with us today after  
16          reading the briefs I believe leave us with three essential  
17          facts that cannot be argued differently. Money is  
18          available. Number two, a serious problem exists and has  
19          existed for a damn long time. And three, to this date the  
20          employer has just said no to our proposal. Madam  
21          Chairperson, we are widely aware of the dangers of coming to  
22          Impasse. This is not our first time. I've counseled our  
23          clients and our membership that Impasse is not where we want  
24          to be at any given time.

25                      I'm thankful for the work we did with the Office

1 of the State Employer in resolving every single issue right  
2 up until the 11th hour before we appeared here today leaving  
3 us this one single issue, but it is this one single issue  
4 that we cannot turn a blind eye to. Our members are  
5 suffering greatly and in suffering greatly, it's causing a  
6 dangerous impact on those parties that I told you about in  
7 my introduction, specifically the department itself, all  
8 staff, prisoners and the public alike.

9 In closing, the problem I would submit to you is  
10 so serious as we sit here today, everyone associated with  
11 Corrections, whether you're a nurse, whether you're an  
12 executive secretary, whether you're the deputy warden,  
13 whether you're the doctor, whether you're the wife of a  
14 corrections officer or the son, everyone associated with the  
15 Department of Corrections should be praying that MCO  
16 succeeds today. Thank you.

17 MS. ZURVALEC: Thank you. We will have some  
18 questions. I don't know if you want to ask questions at  
19 this point or wait -- you're going to have a presentation on  
20 the --

21 MR. FOLDIE: He's just here to answer any economic  
22 questions.

23 MS. ZURVALEC: All right. So this is your  
24 presentation?

25 MR. FOLDIE: This is the first part.

1 MS. ZURVALEC: So we are open for questions.  
2 Judge, do you have questions?

3 JUDGE WHITBECK: Counsel, first off, let me  
4 compliment you on your brief. It's very well done.

5 MR. FOLDIE: Thank you.

6 JUDGE WHITBECK: It's a good piece of work.  
7 Having said that, of course, first you say this problem has  
8 existed for a damn long time. How long? Where do you think  
9 this problem as beginning?

10 MR. FOLDIE: Judge, I think there's a combination  
11 of problems that I would address that question with. Number  
12 one is this. I think there's been some failed policies that  
13 have occurred over the years, both with the employer as well  
14 as with the legislature. So I would begin back in '96 when  
15 the pensions were taken away. No doubt --

16 JUDGE WHITBECK: Wait a minute. You say taken  
17 away. An alternative was offered; right? I mean, you  
18 switched from one type of retirement system to another.

19 MR. FOLDIE: I don't believe that's accurate,  
20 Judge. We had a defined benefit program that was set into  
21 effect and that was removed by the legislature.

22 JUDGE WHITBECK: Right. You now have a defined  
23 contribution program?

24 MR. FOLDIE: Contribution. That is correct. But  
25 I think those are wholly different in the eyes of our

1 membership.

2 JUDGE WHITBECK: It's different in my eyes. I  
3 went from one to the other. I understand the difference.  
4 It's not as if there's no retirement plan at the State  
5 level. There is.

6 MR. FOLDIE: There is.

7 JUDGE WHITBECK: It's just a different type of  
8 retirement.

9 MR. FOLDIE: I stand corrected.

10 JUDGE WHITBECK: But coming back to my point, what  
11 I'm trying to establish is a beginning point, a point at  
12 which you would say, look, this is when this problem --  
13 whether we call it retention or vacancy or turnover, this is  
14 when it really began. Then I assume you're going to say or  
15 might say from that point the data probably show some ups  
16 and downs in retention or turnover or vacancy, whatever word  
17 you want to use, until today at which point you say now it's  
18 really too high. I looked at your exhibits and I couldn't  
19 find one that told me what's the range here and when do we  
20 hit a crisis point?

21 When can we say this is dangerously too high?  
22 Well, okay. Give me a number. Translate that into  
23 something that I can look at a chart and say if we were to  
24 reduce this vacancy rate or retention rate by 10, 15, 20, 30  
25 percent, we would then bring it down within the level of it

1           may not be perfect but at least is reasonable. Is there  
2           such a document?

3                       MR. FOLDIE: I believe there's such a document and  
4           I believe there would be an exhibit if I might just point to  
5           our brief at Page 5. Judge, I can tell you this. One of  
6           the factors that occurred that in 2012 under the  
7           directorship of Dan Hines, he moved the academies from a  
8           state-run academy to college courses. During that period of  
9           time -- that lasted four years -- during that period of time  
10          there was a dramatic drop and a dramatic recruitment problem  
11          within the Department of Corrections. Specifically since  
12          2012 approximately 3,700 corrections officers have been  
13          hired. As of the same date to present, 1,212, that's 33  
14          percent, have left the corrections officers' ranks.

15                      So during that period of time I would -- in answer  
16          to your question, the best that I can do right here is point  
17          to that period of time from 2012 to 2016 when we had a  
18          dramatic drop and we haven't been able to recover from that  
19          point since.

20                      JUDGE WHITBECK: When you say a dramatic drop,  
21          there was a dramatic increase in turnover and in vacancies?

22                      MR. FOLDIE: That's correct, Judge.

23                      JUDGE WHITBECK: So you would say, I assume, that  
24          this problem really began to manifest itself at some date in  
25          2012?

1 MR. FOLDIE: I think the evidence objectively  
2 would show that's when it starts to manifest itself. That's  
3 correct.

4 JUDGE WHITBECK: That's six years worth of data.  
5 I'm not a statistician. Believe me.

6 MR. FOLDIE: Nor am I. That's why I have one  
7 sitting next to me.

8 JUDGE WHITBECK: It strikes me, though, that may  
9 not be enough data. It may be too short a period. I guess  
10 we'd have to think about that a bit. But within that  
11 period, let's just use that as an example, when do -- what's  
12 the number that you consider to be a number that is  
13 unacceptable that indicates all the problems that you  
14 mentioned either happening or are about to happen? What's  
15 the magic number? Is it 4 percent turnover or vacancy? Is  
16 it 12 percent? What's the magic number?

17 MR. FOLDIE: I do not have evidence to support  
18 this. I only know in speaking with my colleagues that  
19 attend the ACA -- the ACA standards and such around the  
20 United States, that an acceptable number that I've come to  
21 understand is 8 percent to 9 percent, up to 11 percent  
22 turnover is typically -- I don't know if it's acceptable,  
23 but that's typically the average number.

24 JUDGE WHITBECK: So that's a number that we could,  
25 not comfortably perhaps, but we could live with. During



1 this period were we ever above that number?

2 MR. FOLDIE: Were we ever above the 11 percent in  
3 the six years?

4 JUDGE WHITBECK: Right. Was there ever a point  
5 where we were not in crisis?

6 MR. FOLDIE: No.

7 JUDGE WHITBECK: So we were always above 11  
8 percent turnover during that period?

9 MR. FOLDIE: That's correct. I think that we've  
10 had a 700 officer vacancy rate for a period of time,  
11 extending before 2012, to be quite frank. Anywhere from  
12 probably -- my recollection is anywhere from 650 to 750.

13 JUDGE WHITBECK: Let me broaden the question just  
14 a little bit. You might want to ask Mr. Bean this one in  
15 particular. Again, I don't know if that's a long enough  
16 period to do what struck me as one possibility or an  
17 increase or a decrease in vacancy rates. The possibility is  
18 if the economy is good and wages are rising, there are jobs  
19 out there. I know there's the comparability question.  
20 Nobody wants a job that's comparable to a correction officer  
21 job. I accept that. I understand it. But it would strike  
22 me that in good economic times, you might see an increase in  
23 turnover, an increase in vacancy rates because there are  
24 more opportunities available.

25 Your members might go to work some other job for

1 more money and less risk. Mr. Bean, is that an economic  
2 proposition that makes any sense?

3 MR. BEAN: Yes, it does but a couple of  
4 clarifications there. We haven't had the kind of economic  
5 environment that we currently have for six or eight years.  
6 This is relatively new. So if there's actually been a  
7 change over time, that could be tied to -- the causality  
8 could be determined as good economic conditions. That would  
9 be one way to look at it. Now, if you really want to do an  
10 empirical study of this, you'd have to have a longer time  
11 series.

12 JUDGE WHITBECK: Yeah. This isn't not a big  
13 enough time period, is it?

14 MR. BEAN: Probably not. But to establish too  
15 much causality. But what you'd also do is you'd look at  
16 other states. You look at their retention rates. You look  
17 at their -- do a comparison with other states and -- of  
18 course, they may do things differently than we do. I'm sure  
19 they do, but that's the type of thing you'd have to do to --  
20 do you'd have a -- you'd have a panel of data that you want  
21 to look at.

22 JUDGE WHITBECK: You would also expect that if the  
23 prison population is going down, the number of beds is  
24 decreasing, that although the proportion of vacancies  
25 between the number of beds and the number of correction

1 officers may remain roughly the same. The absolute number  
2 might go down because you have less beds. Therefore, you  
3 need less guards. You'd have probably or perhaps the same  
4 vacancy rate when the absolute number you would need fewer  
5 corrections officers.

6 MR. BEAN: That depends on the type of prisoners  
7 you've got. You got different levels of prisoners that need  
8 different levels of supervision obviously.

9 JUDGE WHITBECK: You lead me exactly to my next  
10 question which is -- well, let's say you have two prisons.  
11 One of them is a minimum security, I don't like this term,  
12 but a cupcake environment. The other is a maximum security;  
13 Marquette. Wouldn't you expect to have a higher vacancy  
14 rate, a higher turnover, higher -- lower retention rates in  
15 Marquette than at Camp Cupcake?

16 MR. FOLDIE: I don't know, Judge, that that's  
17 accurate. You know, some decades ago there was a retention  
18 problem at these higher level facilities, the Level V's and  
19 Level IV's and there was a high security premium paid that  
20 was put into effect to maintain them, but I don't know we  
21 have any empirical data that says that there's a higher or  
22 lower retention rate in either. But I would say in the 30  
23 years I've been doing this business, I've seen lots of  
24 officers get hurt at Camp Cupcake and I've seen a number of  
25 officers that have been working in Camp Cupcake suffer from

1 the various same things that officers do at higher level  
2 facilities.

3 JUDGE WHITBECK: I think you're probably right.  
4 There's no single factor that you can pull out and say  
5 that's it, okay, we have a silver bullet here. If we can  
6 improve our physical environment to the Nth degree, we would  
7 have no retention problems. That probably is itself, if you  
8 have the most modern prison in the world with the most  
9 enlightened administration and the fewest number of write-  
10 ups, if you will, against the inmates, just go through any  
11 data that you might look at, you still would have retention  
12 problems given the nature of the work.

13 MR. FOLDIE: Certainly we would probably have  
14 retention problems. I don't think the objective here today,  
15 at least from MCO standpoint, is to ameliorate retention  
16 problems all together. Our objective is to lower those  
17 retention problems into a workable number.

18 JUDGE WHITBECK: And that workable level, if I'm  
19 understanding your testimony, is according to some standards  
20 roughly 11 percent.

21 MR. FOLDIE: That's my understanding, Judge. I'm  
22 pretty certain that that information is readily handy to  
23 some certain degree or at least there's some empirical  
24 evidence out there that would suggest that. My  
25 understanding in working in the field with former colleagues

1           that 8 to 11 percent typically is a retention rate which has  
2           been deemed acceptable by employers.

3                       MS. ZURVALEC: Retention rate or turnover rate?

4                       MR. FOLDIE: I'm sorry; turnover rate.

5                       MS. ZURVALEC: And right now are you saying it's  
6           at 33 percent or that's over the period of time? Excuse me.  
7           I'm just following up on that.

8                       MR. FOLDIE: Yes. From 2012 to the present time,  
9           once again, the numbers were we hired 3,704 corrections  
10          officers and to present, 1,212 have left the correction  
11          officer ranks. That's 33 percent.

12                      MS. ZURVALEC: I'm sorry. I didn't mean to  
13          interrupt. Judge?

14                      JUDGE WHITBECK: So really -- in fact, I don't  
15          blame you for this one bit. As a matter of fact, I think  
16          it's a responsible position to take. You're not really  
17          suggesting that by adopting your proposal we can eradicate  
18          the turnover problem. You're suggesting we can ameliorate  
19          it. My question is, how will we measure that? Is there a  
20          way in which -- let's assume we accept your proposal, in  
21          total or in part. Every time the state of Michigan adopts a  
22          demonstration program I cringe because nowhere in that  
23          program, or very rarely, do I see a mechanism for measuring  
24          success or failure.

25                      What would the mechanism be to measure success or

1 failure?

2 MR. FOLDIE: Judge, I think in the simplest terms  
3 and -- I guess the simplest I can say is that if we can  
4 orchestrate some plan to have this pilot put together -- our  
5 plan was over three years. We thought that was a period of  
6 time that was sufficient to determine whether or not we can  
7 start to maintain and hold the bodies that we have right  
8 now. I think the only benchmark that I can sit here and  
9 tell you that would be effective is to see for certain that  
10 we're maintaining and holding bodies within the ranks of the  
11 corrections officers. I think that kind of sounds  
12 sophomoric or simple, but --

13 JUDGE WHITBECK: No, not in the least. It's one  
14 way of measuring it.

15 MR. FOLDIE: It just seems to me that that would  
16 be the process. But following up on that question, Judge,  
17 might I just add that it's interesting that you bring that  
18 up because at the negotiating table, there were no  
19 discussions about those benchmarks or how we do this. At  
20 the negotiation table there was proposals submitted by MCO  
21 and flat rejections by the employer. Proposals submitted by  
22 MCO, flat rejections by the employer. I will tell you that  
23 in sidebar conversations there may have been some  
24 conversation that was brought about by the union at the 11th  
25 hour that talked even as much as a sliding scale.

1                   Much like they use in general contracting, whereas  
2                   a general contractor signs a contract and says if you  
3                   produce this by this point and you're ahead of schedule, you  
4                   get this bonus. In the reverse, the union had even talked  
5                   about here's our basic proposal. What if we talked about  
6                   doing something where the Department showed they were  
7                   bringing people in, they were retaining those people and the  
8                   mechanism would then have a sliding scale where the  
9                   retention fees that we were asking for would then reduce.  
10                  We were in conversations about that, but no proposals, no  
11                  formal -- I'm sorry -- no counterproposals ever came from  
12                  the Department.

13                  So I'm ill-equipped. I'm ill-equipped at this  
14                  time to give any in depth discussion about benchmarks.

15                  JUDGE WHITBECK: What I derive from the  
16                  Department's response is that they consider your proposal,  
17                  your retention pilot as being too expensive because they  
18                  estimate it will cost, I don't have it right here, but some  
19                  three times over the full payout, if you will, three times  
20                  what the simple 2 percent bonus would cost. I believe  
21                  that's their basic objection. Their basic objection is the  
22                  cost. They do say, and I agree with them, that there's got  
23                  to be some performance mechanism, some mechanism to measure  
24                  the performance.

25                  Otherwise, we're just putting another program into

1 effect that becomes part of the structure and once a program  
2 is in effect, it's very hard to eliminate it.

3 MR. FOLDIE: Let me be perfectly clear, your  
4 Honor. The Michigan Corrections Organization is not here  
5 seeking monies for persons or seeking benefits for persons  
6 just because they're on the payroll. We have an interest to  
7 have people at work. We engage in those discussions. This  
8 is not something that we're try- -- this is not a mechanism  
9 in which we're trying to shrewdly get some more compensation  
10 for our employees. The bottom line here is we want bodies  
11 in that prison. We want our members to have its partner or  
12 the two partners next to them. Not having to have worked 16  
13 or 17 hours on the shift before.

14 So I will agree with you on this. We are not  
15 looking for somebody to receive something simply because  
16 they are on the payroll. We are here today because we want  
17 bodies inside of the prison working. To bootstrap to that,  
18 Judge, it seems to me that when we have a problem bringing  
19 somebody in the front door and cannot keep people going out  
20 the backdoor, then we have to concentrate on the workforce  
21 that we have. We have to stabilize that workforce that we  
22 have so that when we bring those bodies in which we felt  
23 over a three year period of time -- we're talking about 750  
24 positions.

25 And they're having problems filling those



1 academies at this point in time. So we need to do something  
2 to stabilize the immediate workforce that we have and we are  
3 in total agreement that if our workforce -- if members of  
4 our workforce are off on long-term leave, they're doing us  
5 no good. Now, that's not to say they're not legitimately  
6 out there for a reason, but the fact remains as we sit here  
7 today, the principle and the principle cause of our proposal  
8 is to stabilize the immediate workforce we have until we can  
9 rehabilitate the numbers that are dwindling at this point in  
10 time.

11 So I agree with you as well and we agree with the  
12 State employer.

13 JUDGE WHITBECK: Those are my questions, Madam  
14 Chair.

15 MS. ZURVALEC: Mr. Wesaw, would you like to ask  
16 some questions?

17 MR. WESAW: I have some questions, but I'm not  
18 sure if they're for you, Jeff.

19 MR. FOLDIE: Mr. Wesaw, I didn't mean to  
20 interrupt, but my colleague was wondering if he could  
21 address the question that was last --

22 MR. BEAN: About the cost.

23 MR. FOLDIE: About the cost.

24 MS. ZURVALEC: Of course.

25 MR. BEAN: This is just a point of clarification,

1 Judge. The 2 percent -- this is from a document that comes  
2 out with every budget where the economics and the cost of  
3 the economic increases by department are given to the  
4 legislature. That way the legislature can pick and choose  
5 to vote it down and raise the -- but anyway, the General  
6 Fund cost for the 2 percent increase in the 2019 budget, the  
7 entire 2 percent is \$15.79 million. So if -- your  
8 supposition was it was three times that. That ain't a lot  
9 of money to be frank with you.

10 We're already -- in terms of the General Fund  
11 coming out 2018 -- we're already about \$450 million ahead of  
12 what the estimates are. And I point out -- and you actually  
13 have this set of documents. On average since 2000 budget  
14 lapse has been about \$132 million a year, General Fund  
15 budget lapse. So it's not -- there really isn't a lack of  
16 money out here.

17 MS. ZURVALEC: I think yo can go ahead. Judge,  
18 are you okay if we ask some questions over here?

19 JUDGE WHITBECK: Sure. Absolutely.

20 MR. WESAW: Just a couple of quick ones, Jeff.  
21 Aside from -- are you suggesting that your pilot retention  
22 program is the sole reason for your lack of ability -- not  
23 yours but the lack of ability to recruit officers?

24 MR. FOLDIE: Could you just ask me that again?

25 MR. WESAW: What do you see as the reason why

1 Corrections can't hire enough officers?

2 MR. FOLDIE: Well, I mean I guess I have to be  
3 brutally honest with you. I think the judge pointed it out.  
4 When economic times are good and you can make a certain  
5 living doing something without dealing with high risk  
6 felons, it seems to me that people are going to go that  
7 route. You know, if we had a situation where economic times  
8 are inhibiting the ability to recruit, I wouldn't disagree  
9 with that, but that does not -- that does not -- you know,  
10 it seems to me if we had a bad economic time, if we were in  
11 bad economics right now, we'd still have this problem and it  
12 is a grave problem.

13 We're here today and there is money, but it seems  
14 to me that the answer is, ah, we just don't want to go that  
15 route. And for us, obviously because we're appearing here  
16 today, it was just unacceptable. I have to agree with the  
17 judge that if we're in good economic times and there's a  
18 better road to travel where you don't have to walk into a  
19 prison and have a gate slam behind you and deal with 1200  
20 people that the courts have deemed not fit to walk among  
21 society you and I are, that's just the raw truth and I can't  
22 run from that.

23 MR. WESAW: I get that, but I look -- you know,  
24 you talk about the inside law enforcement. I look at the  
25 outside law enforcement. There's been a recruiting issue

1 for a number of years now for law enforcement officers  
2 outside. It's not about money. It's about today's society.  
3 We set records on the number of officers killed in the line  
4 of duty by gunshot. I'm just trying to figure out what --  
5 is it money or what. But I do have a question that maybe  
6 you can help me with. Are your officers covered by the Fair  
7 Labor Standards Act?

8 I was looking at the survey from the women's  
9 correctional facility and the number of hours that they  
10 work.

11 MR. FOLDIE: They are.

12 MR. WESAW: If they were covered under that, that  
13 almost seems like a violation of federal law.

14 MR. FOLDIE: There is a certain section of the  
15 Fair Labor Standards Act. I almost want to say it's Section  
16 K, but don't hold me to that. That allows law enforcement,  
17 fire personnel and including corrections personnel to be  
18 paid in a manner under a formula which is far different than  
19 what we typically see in other industries.

20 MR. WESAW: That would be a question for OSE.  
21 Because I think even in the State Police, their capped at 16  
22 hours in a 24 hour period. I don't think there's any  
23 exceptions for that. Some of your people, frankly, work a  
24 lot more than that. That might be a better question for  
25 them.

1                   MR. FOLDIE: Lucky you, Cheryl. You get your  
2 questions up front.

3                   MR. WESAW: So right now you're looking at 740  
4 vacant positions?

5                   MR. FOLDIE: That's correct.

6                   MR. WESAW: Is that actually 740 bodies that  
7 you're missing or is that 740 FTEs in the budget?

8                   MR. FOLDIE: That is 740 full time positions that  
9 we are short.

10                  MR. WESAW: Is that by a budget number? How do  
11 you arrive at that 740? As an example, I'm a little bit  
12 familiar with state budgets but not everybody's budget. In  
13 the state budgets that I'm familiar with, there are  
14 additional FTEs placed in that budget that are never  
15 intended to be filled so that there is extra money for  
16 overtime, some of those things that you just can't forecast.  
17 So my question, if you know -- again, it might be -- is that  
18 740 actual bodies, physical human bodies that you're short  
19 or is that 740 FTE positions within the budget that are  
20 vacant?

21                  MR. FOLDIE: 740 bodies.

22                  MR. WESAW: And then if we go back the six years,  
23 I'm trying to figure out where the 740 might fit into your  
24 argument. We're down it looks like by the numbers presented  
25 in the book, 5,000 prisoners and 629 MCOs. The prison

1 population in 2012 was -- I didn't write it down, but it's  
2 5,000 less today than it was then. The guard numbers --

3 MR. FOLDIE: Corrections officers.

4 MR. WESAW: Sorry. I'm amenable to that. I  
5 apologize for that. I do appreciate all the service of the  
6 men and women here. You're down 629 corrections officers.  
7 How does that mesh with the 740 that you're trying to get?

8 MR. FOLDIE: I guess I'm having a hard time  
9 appreciating your question.

10 MR. WESAW: In Employer's Exhibit Number 5 it  
11 shows your correction officer count in 2012 at 6343. Now  
12 you're down -- okay. I think I did some wrong math.

13 MS. ZURVALEC: Your count is almost a thousand  
14 less now.

15 MR. WESAW: Then the prison population in 2012 was  
16 43,000 and change and today it's 38,000 and change. Let's  
17 say -- in the contract, is there a ratio of correction  
18 officer to population?

19 MR. FOLDIE: There is not.

20 MR. WESAW: There is not? Okay. So there's no  
21 way to judge when the population goes down should the number  
22 of FTEs go down. I'm not suggesting it should. I'm just  
23 looking for --

24 MR. FOLDIE: I'm familiar with no benchmark that  
25 does that.

1 MS. ZURVALEC: Even like another -- I'll just say  
2 other states. Are there any other benchmarks that show  
3 ratio? Like a standard ratio or anything that would be --

4 MR. FOLDIE: Not that I'm familiar with. I can  
5 tell you -- I don't know if this helps the question the way  
6 that I perceive your question, that in that period of time  
7 when the prisoner ratio would drop, we weren't laying off  
8 corrections officers because the -- because we were still  
9 short. Those officers were being -- they could take a  
10 voluntary layoff, but typically the majority of them -- I  
11 don't even think we had very many that would take layoffs.  
12 The majority of them would relocate to prisons that had  
13 vacancies to help fill those vacancies.

14 MR. WESAW: The volume would reduce through  
15 attrition?

16 MR. FOLDIE: Correct.

17 MR. WESAW: SO of the 1200 that have left in the  
18 last few years, do you know how many of those were due to  
19 retirements or were all of those less than vested employees  
20 that left?

21 MR. FOLDIE: I can tell you by way of example.  
22 From September of 2017 to September of 2018 there were 613  
23 departures. 226 resigned. 258 retired. 51 were  
24 terminated. 14 were on an expired waiver or leave of  
25 absence and 36 were on a wait leave of absence. So the

1 majority, over 500 was between resignation and retirement.

2 MR. WESAW: Do you have anything else?

3 MS. ZURVALEC: I have some questions, too. Just  
4 one -- let's follow up on that exhibit you had, Exhibit 5  
5 with your count. In 2011 there were 4,240 corrections  
6 officers and then it jumped by a couple thousand. Can you  
7 explain what happened between '11 and '12, if you know?

8 MR. FOLDIE: Between 2011 and 2012 I can tell you  
9 that we were having -- we were still under the state run  
10 corrections academies. Under the state run corrections  
11 academies, when you hired in, much like the State Police,  
12 you began getting paid. At 2012 to 2016, there was kind of  
13 a -- I don't know how to call this other than a two tier  
14 system that occurred. In the first system you paid for your  
15 own schooling. You went to your own schooling. Once you  
16 finished the schooling, the Department as I recall would  
17 then find out if you fit the criteria.

18 You took the PT test and they gave you a little  
19 certificate that said you could come aboard and get hired.  
20 So the best way that I can explain that is in 2011 people  
21 coming on board were being paid immediately and were state  
22 employees. During the periods of 2012 to 2016 they were  
23 students paying for -- going to the academy and paying for  
24 it themselves and then coming aboard.

25 MS. ZURVALEC: To me that's sort of



1 counterintuitive. This is what I'm trying to figure out.  
2 It looks like something was put in place or something  
3 happened, an event that -- as you've described it, it sounds  
4 like we'd have fewer people employed because they wouldn't  
5 come to us when they're learning and being paid. And yet we  
6 have a jump of almost -- well, maybe it's not 2,000 but --

7 MR. GNODTKE: I'm sorry to interrupt. I believe  
8 that's the Henderson VRUO reclassification matters  
9 reflecting that --

10 MR. FOLDIE: Oh. There was that.

11 MS. ZURVALEC: So these were employees that were  
12 reclassified.

13 MR. FOLDIE: There was that case that causes us to  
14 be at the Supreme Court today.

15 MS. ZURVALEC: Thank you. I was like maybe there  
16 was some magic bullet in there that they were able to hire  
17 and we could look back on that practice and say here's  
18 something that actually worked.

19 MR. FOLDIE: Please don't look back on that  
20 practice.

21 MS. ZURVALEC: I got it. I have some questions  
22 that are more hypothetical for you to consider. I noticed  
23 in your statement and I very much appreciated that, that you  
24 were open to having more ideas and discussions. Your  
25 proposal, while you want us to take that very seriously and

1 we do, there might be other possibilities or solutions to  
2 the problems you're facing. I'm going to pose some of these  
3 questions to the employer, too, because the employer has  
4 acknowledged that the problem exists according to their  
5 statement and they say it's a national problem.

6 And it seems from the research that they provided  
7 here that this is being experienced, high vacancy, high  
8 turnover in other states around the country. My question is  
9 what research have you done, has the union done or has been  
10 discussed at the bargaining table or in any form about the  
11 best practices that other states have employed to reduce  
12 their vacancy and turnover rate? So that's Question Number  
13 1. What have you talked about? What ideas are working out  
14 there? What has been studied?

15 By way of example, just things that came to my  
16 mind, since the State has waived the initial requirement at  
17 18, I think it was 18 hours of college credit that could be  
18 -- upon hiring a corrections officer could get that within  
19 18 months or something. Programs like paid college tuition  
20 reimbursement programs, recruitment bonuses that are paid  
21 out after a period of time. Because as I read your  
22 proposal, I didn't see anything quite in it that said if I  
23 pay this out on this date, that the person couldn't leave  
24 the very next day. clearly if you're trying to retain  
25 someone, you want to build an incentive to make them stay,

1 not just for one year but obviously longer if possible. So  
2 those are the kinds of things I'm just wondering about. Has  
3 discussion taken place? Have you done any research about  
4 these programs? If so, what would be your comment on that?

5 MR. FOLDIE: I can tell you this. Prior to the  
6 bargaining session beginning the waiver of the college  
7 credits was something that MCO approached the Department  
8 with. It was MCO that spearheaded that actually, brought it  
9 to the Department, went to the training commission, had the  
10 training commission endorse it and then we brought it to  
11 Civil Service. That is one aspect that we've attempted.

12 In all fairness, the employer at Huron Valley  
13 women's where this crisis is the most critical, the employer  
14 came to us and asked about having a situation where we would  
15 have employees be allowed to -- we call them work site  
16 lines. For lack of better words, a prison is a work site  
17 and the prison next door is a separate work site and  
18 officers don't cross that for various reasons. Safety is  
19 one. The employer came to us and asked if we would  
20 entertain the notion of allowing officers to come in and  
21 help with the mandatory overtime there from other prisons.

22 That notion of crossing work site lines for  
23 decades has been taboo for us. But recognizing, recognizing  
24 that the women at Huron Valley were suffering so much, we  
25 did it. But I will tell you this day, as of yesterday we

1           have two employees that have crossed work site lines. It's  
2           not working.

3                       MS. ZURVALEC: So are you open to things like  
4           other programs? Recruitment bonuses? Retention bonuses?  
5           Tuition reimbursement? Typical tuition reimbursement  
6           programs that employers offer, if you pay for tuition for  
7           somebody, they got to commit to stay or they have to pay it  
8           back. There are disincentives for leaving. I'm just  
9           wondering how open the union is to exploring those options.

10                      MR. FOLDIE: Madam Chairperson, we are open to  
11           anything that will fill those bodies. I can tell you that  
12           our political director, Jeremy Tripp, is working on a  
13           tuition assistance program. It's in its infancy at this  
14           point, but we are working on a tuition assistance program at  
15           this very -- in fact, he's already met -- as I recall --  
16           he's already met with a few colleges that would conduct this  
17           training by online training. We are engaged in that at this  
18           point in time. I have to tell you this and I don't mean it  
19           to be a slight against the employer. Nonetheless, this  
20           bargaining session was something I've never experienced.

21                      There was very little conversation across the  
22           table. In fact, we have made a proposal -- and again, we'll  
23           admit our proposal on this programming was bare bones, but  
24           it was only to offer something for conversation. There was  
25           no conversation. There was no counteroffer. There was

1 nothing. There was conversation behind closed doors about  
2 what we're really trying to achieve and where we're trying  
3 to go. Even the question came up by the Office of State  
4 Employer, you know, what good does this do if you're paying  
5 people this incentive or this retention but they're not at  
6 work and they're off.

7 We backed up and said that's not our goal. Our  
8 goal is to put bodies next to bodies inside our prisons.  
9 We're open to those ideas. We're open to recruitment  
10 bonuses. In fact, I've had several discussions with MAGE's  
11 executive director who I know has talked to us about  
12 recruitment bonuses. As of my conversation with him  
13 yesterday, that's not going over so well with the employer  
14 even though there was a regulation that I understood to be  
15 wrote that allowed for us to do that, but the employer is  
16 not acting upon that. That's just a conversation that I've  
17 had. We're open to it. We're open to anything.

18 Our purpose here today, we resolved 99.9 percent  
19 of our issues right up until -- in fact, I'm ashamed to tell  
20 you that -- but if you read the brief right now, there's a  
21 section in the brief that talks about insurances and  
22 something else that I didn't have time to scratch out  
23 because we were negotiating right up to the day that we  
24 submitted our briefs. But you can be assured that as I  
25 indicated to you before, this is not -- we are not

1 interested in a shrewd attempt to gain something or more  
2 compensation. This is a direct attempt to get bodies and  
3 maintain bodies in the prisons to assist our membership in a  
4 very, very crisis mode.

5 MS. ZURVALEC: Thank you. Any other questions,  
6 Judge?

7 JUDGE WHITBECK: It wouldn't be a difficult  
8 calculation, would it, to say at current levels to reach  
9 below 11 percent turnover, we need X number of bodies? That  
10 wouldn't be hard to qualify exactly how many people you'd  
11 need?

12 MR. FOLDIE: It seems to me that it wouldn't be,  
13 Judge. I don't think that would be problematic.

14 JUDGE WHITBECK: We'll ask the employer the same  
15 question.

16 MR. FOLDIE: There you go, Cheryl. Lucky.

17 MS. ZURVALEC: I think we're -- those are all our  
18 questions for now. You'll have five minutes for rebuttal  
19 since we took a lot more of your time.

20 MR. FOLDIE: Thank you. I appreciate it.

21 MS. ZURVALEC: With that, we'll hear from the  
22 Office of State Employer.

23 MS. SCHMITTDIEL: Good afternoon. I'm Cheryl  
24 Schmitt diel, director of the Office of the State Employer.  
25 With me today we have Jonathan Patterson who is the human

1 resource director of the Michigan Department of Corrections.  
2 We also have Shannon Pike who is the budget and projections  
3 division administrator should you have questions that are  
4 best for the Department to answer. It sounds like maybe you  
5 will. MCO comes before you today requesting the panel  
6 recommend imposing a three year retention and  
7 professionalism pilot program on the Michigan Department of  
8 Corrections and the Department of Health and Human Services.

9 A small portion of the MCO membership was in the  
10 HHS. We respectfully request the panel's consideration of  
11 the Department of Corrections chosen direction to address  
12 staffing levels and permit the Department the opportunity to  
13 continue to focus on recruitment and hiring in Fiscal Year  
14 2020 as well as retention at all levels and allow time to  
15 see if MDOC's adjustments in assignment of staff are  
16 successful.

17 One of the differences between the parties on this  
18 particular issues is although the MCO is saying this is  
19 outside of the one-year re-opener -- one year agreement on  
20 wages and group insurances that they did sign off with a re-  
21 opener for Fiscal Years 21 and 22 even though they say their  
22 proposal is outside of it because they wanted to go for  
23 three years. From our perspective it's wages and we have a  
24 one year. So we're looking at it in terms of one year, not  
25 waiting three years necessarily to see what will happen or

1           what won't happen with the strategies that the Department  
2           has been implementing for hiring, which also addressed  
3           retention.

4                       The differences between the MCO proposal for the  
5           retention pilot and our proposed 2 percent lump sum increase  
6           for Fiscal Year 2020 because, again, the employer is looking  
7           at the one year for wages, is worthy of note. The MCO  
8           proposal provides more retention payment to any new employee  
9           who is not new status. Status is generally after one year  
10          of successful employment, satisfactory service to be  
11          extended but generally after one year. Their program starts  
12          at the one year level and then goes forward in three tiers.  
13          The OSE proposal for the 2 percent lump sum, and granted it  
14          is one year, is for everybody.

15                      Now, if you are a new employee and you have less  
16          than a full year, then you get a prorated amount, but you  
17          get something. The MCO proposal gives \$750 to each employee  
18          in that first tier which starts at one year seniority and  
19          goes to five years. The OSE lump sum of 2 percent would  
20          give each of these employees more than the \$750 designated  
21          for that first tier. It depends on where people are on the  
22          steps. And because the Department is in hiring mode, it  
23          could be more than the several hundred that it looks like  
24          right now, but it would be more for a good number of MCO  
25          represented employees.



1                    Their proposal is for three years. Our proposal  
2                    is for the one. But this proposal from MCO, if it is to go  
3                    three years, then as the Department continues to hire,  
4                    there's nothing for the new employee in the second year or  
5                    the third year of their proposal if you're a new employee in  
6                    the second year or the third year. Granted, we have no  
7                    wages right now agreed to for Fiscal Year 2021 and 2022, but  
8                    we will be back at the bargaining table in a few short  
9                    months looking at wages for those two years as a result of  
10                   the agreed upon re-opener with MCO.

11                   Our offer of the 2 percent lump sum to the MCO for  
12                   the one year, Fiscal Year 2020, remains open if they're  
13                   willing to accept it. Our goal is to recognize all  
14                   employees and acknowledge their contribution to the  
15                   Departments ability to meet its operational needs and  
16                   keeping the facilities running. The Civil Service rule  
17                   change that is cited by MCO in their brief for the large and  
18                   important portions of the contract loss actually gives  
19                   flexibility back to the agencies, the departments to best  
20                   determine how to assign staff. That rule becomes effective  
21                   January 1st, 2019.

22                   And yes, it did lead to interesting times at the  
23                   bargaining table this time around. The flexibility that is  
24                   going to be given back to the departments and the agencies  
25                   is to provide a more equitable access to prime vacation

1 time, for time off around prime holidays and for more even  
2 distribution of overtime assignments because those fall  
3 under the assignment of staff which becomes a prohibited  
4 subject of bargaining under the Civil Service rule change  
5 effective in 2019. The rule change is seen as an positive  
6 step towards addressing recruitment and retention of the new  
7 employees.

8 There is a new vacation book process that is going  
9 to be implemented January 1st which will allow prime  
10 vacation time to not necessarily be taken by the most senior  
11 as it happens for the most part now. There's also a change,  
12 I believe, coming for overtime distribution. Currently  
13 there is the 50 percent rule and I'm not very familiar with  
14 it, but it does mandate overtime for up to 50 percent of the  
15 lower senior if mandated overtime is occurring. MCO's  
16 proposal for their three year retention plan reinforces the  
17 idea that if you wait long enough, then things will get  
18 better.

19 Because if you look past the five years to the  
20 second tier, well, then it's \$1200 and if you make it past  
21 that second tier, then it's 1750. So you wait and you get  
22 more. That's not a novel concept, but it reinforces some of  
23 the challenge with new employees; hiring them and retaining  
24 them. Also, this is not as proposed a program that there's  
25 any discretion. All facilities don't experience the same

1 pressures. All facilities don't have the same staffing  
2 challenges and, yet, all bargaining employees would receive  
3 this proposal. It came from MCO late in the bargaining  
4 process.

5 There wasn't much, if any discussion and I wasn't  
6 there at the bargaining table about alternatives in large  
7 part because it came across as three years and our focus was  
8 one year on wages and group insurances. We had much  
9 discussion afterward. Behind closed doors we had numerous  
10 discussions with MCO. We were unable to reach agreement on  
11 this particular issue, although we did manage to reach  
12 agreement on everything else. The Department of  
13 Corrections' budget is 97.3 percent General Fund. We have  
14 information about how the revenues are coming in for the  
15 fiscal year and they're looking really great.

16 Well, we're talking about a pilot that starts in  
17 Fiscal Year 2020 and goes forward two more fiscal years  
18 after that. We don't know that the revenues will continue.  
19 We all hope that that long economic expansion continues to  
20 expand, but what we also don't know is what policy decisions  
21 may be made come 2019 and we also do know some budget  
22 pressures, but we don't know all of them because ther are  
23 going to be policy changes come 2019. So MCO faults us for  
24 not bargaining creatively and that we could have and should  
25 have come back at them with a counterproposal.

1                    Their premise was not what we were willing to  
2                    agree to for three years. We did offer for discussion about  
3                    if you want to take the 2 percent lump sum and look at it  
4                    differently, but they wanted the three year. That's pretty  
5                    much where it fell apart. We cited a concern about all  
6                    employees, all employees receiving their retention bonus  
7                    even regardless of whether they were still at work or if  
8                    they were on a leave or anything else, but that didn't  
9                    obligate us to pass a counterproposal because, again, we  
10                   were back to we might be able to work around something in  
11                   the one year but not in the three year under these  
12                   circumstances.

13                   The Department of Corrections has chosen to focus  
14                   on recruitment and hiring and they implemented many  
15                   strategies for increasing applicants and retaining staff.  
16                   So I have a listing of them here. They had a focus group to  
17                   -- I'm sorry. Not a focus group. It's a process, an  
18                   improvement committee that focused on training and  
19                   recruitment of officers. They have targeting recruiting and  
20                   that focuses recruiting in areas of need to make it easier  
21                   for applicants to come in, attend interviews, to attend the  
22                   academies. They have regional interviews. They've had  
23                   interviews throughout the state including in the Upper  
24                   Peninsula.

25                   They hold academies in places closer to where

1 people are to make it easier to attend. They've seen  
2 increased participation as a result of these strategies.  
3 They've hired an advertising agency to improve advertising  
4 to attract applicants. They're having more employees  
5 involved in actively recruiting new employees. They have  
6 wardens who campaigned at local community events to recruit  
7 officers. They've gone to community college to recruit and  
8 high schools to recruit. They have facilities who are  
9 utilizing mentoring programs to give new staff someone to  
10 talk to.

11 There's also a program, Effective Process  
12 Improvement and Communication. I'm sorry. A team,  
13 Effective Process Improvement and Communication that's  
14 starting to focus on official mentoring program for staff.  
15 They have a veterans' liaison that focuses on recruiting  
16 veterans. It's resulted in the increase of veteran hiring.  
17 The last few academies, about 25 percent of the new officers  
18 were former military. They accept now the military members  
19 joint services transcript towards the educational  
20 requirements.

21 We've had some discussion this morning about the  
22 change through Civil Service with the college deferral  
23 program that allows the officers to be employed and then  
24 still have the ability to finish obtaining their college  
25 credit. MCO was part of that decision making. As of

1           October 26 the Department had 2,391 applicants for  
2           corrections officers in 2018 so the interest is rising.  
3           They have pool right now of about 500 and that's a higher  
4           number in their pool than they've had for a long time. In  
5           Fiscal Year 18 we hired 360 officers.

6                         They're planning to hire 730 officers in Fiscal  
7           Year 19 with the first class being approximately 140 to 145  
8           officers and that's a higher number of officers in a class  
9           than they had all last year, in any class last year. We  
10          don't support the concept of the mandatory payment over a  
11          three year program. We respectfully request the time to  
12          monitor the effectiveness of these strategies. Again, we  
13          will be back at the bargaining table in 2019.

14                        MS. ZURVALEC: Questions?

15                        JUDGE WHITBECK: Yeah, two or three. Could you  
16          turn to Page 8 of your last brief? That is the brief dated  
17          October 12.

18                        MS. SCHMITTDIEL: Yes.

19                        JUDGE WHITBECK: Page 8. In the alternative the  
20          employer would not object with redistribution of the dollars  
21          that would otherwise be spent for the 2 percent lump sum  
22          payment in any matter the MCO may decide. That's caught my  
23          eye. Suppose the MCO decides to get into the shopping  
24          center business? Are you saying it will be perfectly okay?

25                        MS. SCHMITTDIEL: No, sir. I apologize for the

1 inartful drafting in any manner amongst its bargaining unit  
2 employees.

3 JUDGE WHITBECK: Say again?

4 MS. SCHMITTDIEL: In any manner amongst its  
5 bargaining unit employees as we had discussed away from the  
6 bargaining table with MCO. If they wanted to do --

7 JUDGE WHITBECK: You're essentially saying we'll  
8 give you X lump sum and you can spend it any way you want  
9 to. I mean, that's no way to run a railroad, is it? You  
10 don't want the union determining what expenditures the  
11 Department is going to make. I really don't understand that  
12 at all.

13 MS. SCHMITTDIEL: Having been part of the  
14 conversations with MCO about what alternatives there may be  
15 available for that same amount of money of the 2 percent  
16 lump sum, which is if they thought a tiered system such as  
17 what they were proposing might work better than the 2  
18 percent lump sum, that's what we had discussed with them as  
19 a possibility, but it was only on a one year basis and,  
20 again, it was go to the employees if they wanted to handle  
21 it as similar to what they did with their retention  
22 proposal.

23 JUDGE WHITBECK: Look, I used to be in the Federal  
24 government. There was something called the Baker Act. The  
25 Baker Act said you had to extend money along the lines

1        amidst appropriation. If you didn't, that was a crime. It  
2        seems to me there's no limit, at least according to that  
3        sentence, in what the union could decide what to use this  
4        money for, including any limits that might be contained in  
5        the appropriation legislation. I suggest without belaboring  
6        the point that you may wish to check with your counsel on  
7        this one. Because I really don't see how you could do it  
8        the way it's written here, so not to belabor the point.

9                You mentioned and I think in good faith and  
10        accurately the Department is increasingly targeting -- its  
11        targeted -- its recruitment efforts to recruit more  
12        corrections officers. It seems to me that your employees  
13        are raising a different question. I don't think they put it  
14        as broadly as I'm about to, but they are saying in essence  
15        that -- they didn't speak to recruitment very much. You can  
16        recruit all you want, but if in three years following hiring  
17        a correction officer you're losing a third of them,  
18        essentially you're spinning your wheels unless you're  
19        willing to take a 33 percent turnover within three years of  
20        hiring which seems to be what the union is saying.

21                It strikes me that the union raised a legitimate  
22        problem and that is during that three years, if I understand  
23        what they're saying, you lose a third of the people you just  
24        hired. Am I accurate in that?

25                MS. SCHMITTDIEL: We have various sets of numbers,



1           sir, and part of what MCO brought forward are numbers that  
2           we shared with them. I don't have that right in front of me  
3           and I will look for it, but sometimes what happens is people  
4           are not the right fit for the job or the job is not the  
5           right fit for them, and so the retention information that  
6           MCO shared with you, Mr. Foldie shared about those who  
7           retire, those who resign, those who depart in any given year  
8           goes to that, but we do have some information about  
9           departures within the newly or more newly hired employees.

10                         Some of them -- I'll have to double check the  
11           number, but it was in the first ten days. So the  
12           determination was made I'm sure that this was not the job  
13           for them. And no, that's not the way we want to be handling  
14           our hiring, but there's also the recruitment element of once  
15           you get into the program. You go through the academy. You  
16           start working at the facility. And so when we say hiring  
17           and recruitment and retention, we're looking at it from Day  
18           One going forward on the retention part of it.

19                         JUDGE WHITBECK: I understand that, but taking the  
20           problem that you raised which is someone is hired on Day One  
21           and by ten days he or she has figured out this job is not  
22           for me. Okay. I suggest that's a commonplace occurrence  
23           across job categories. Maybe accentuated somewhat once a  
24           person gets inside the prison and realizes just how tough  
25           this job is and it's very, very tough. I doubt that

1 accounts for a significant piece of that 33 percent  
2 turnover. It seems to me what your employees are saying is  
3 we're losing a third of the people that come in the door  
4 within three years of their hiring and there's something  
5 wrong here.

6 We're at a point, it seems to me they're saying,  
7 where you got 11 percent turnover ratio or vacancy rate,  
8 however you define it, which is below or rather above a set  
9 of national standards. Now, under those circumstances it  
10 strikes me that while their proposal may not be perfect or  
11 even acceptable to OSE or to the Board, they are at least  
12 legitimately identifying a problem that the employer, not so  
13 much the Office of State Employer, but the Department of  
14 Corrections needs to pay a considerable amount of attention  
15 to. I know on the positive side that -- on the previous  
16 page you say the MCO asked the panel to order the parties  
17 back to the bargaining table and to create a pilot for the  
18 same purpose of the CORPP.

19 I don't know what that means so I'm just going to  
20 skip over that. Implying that they would be agreeable to  
21 injecting eligibility requirements and limitations into the  
22 pilot. Let's assume that implication is correct. The  
23 employer asserts that the MCO has had ample opportunity to  
24 revise and propose a pilot more aligned with the economic  
25 limitations discussed at the table. Two sentences seem to

1 me to be in conflict. I'm thinking maybe they're willing to  
2 accept eligibility requirements and limitations which I  
3 think would be perfectly appropriate.

4 But on the other hand, we've already had ample  
5 opportunity to bargain. Which is it?

6 MS. SCHMITTDIEL: We did not receive any other  
7 variation, any variation of MCO's proposal. It came to us  
8 late. There was limited discussion at the table that was  
9 focused around the fact that we were offering a one year on  
10 wages. They were offering three year pilot program that  
11 looked like wages to us. So there was --

12 JUDGE WHITBECK: Well, it was. I don't think  
13 there's any question about that. It put dollar in  
14 employees' pockets.

15 MS. SCHMITTDIEL: Yes. And the ample oppor- --

16 JUDGE WHITBECK: No question about it. It's a  
17 pilot, but it's still wages.

18 MS. SCHMITTDIEL: Yes. And our concern is, in  
19 part, we have a re-opener in 2019. The wages we did have  
20 agreement with MCO on is the 2 percent increase in the base  
21 rate for Fiscal Year 2020 is a one-year agreement. We will  
22 be back at the table.

23 JUDGE WHITBECK: So you're saying we should just  
24 wait a year? Suppose they suggest to us that at least  
25 within this period -- and I think the period is open to

1 discussion, they're saying from 2012 to today's date, that  
2 the Department of Corrections has never achieved a turnover  
3 ratio or vacancy rate which is at or above national  
4 standards. If that's so, do you really want to wait a year?

5 MR. PATTERSON: Well, as far as the vacancy rate  
6 and the turnover rate, I'm going to have to get that  
7 information. Those numbers that were indicated by Mr.  
8 Foldie, I don't know if are 100 percent accurate. The one  
9 thing I will say --

10 JUDGE WHITBECK: They are or they aren't. I mean,  
11 you need to be prepared to say no, that's not right. You  
12 keep track of these things, don't you?

13 MR. PATTERSON: The turnover rate? Do we keep  
14 track of the turnover rate? We keep track of our vacancy  
15 rate which is about --

16 JUDGE WHITBECK: Well, either.

17 MR. PATTERSON: It's a little over 10 percent.

18 JUDGE WHITBECK: Either that vacancy rate is at or  
19 below -- I'm sorry -- at or above 11 percent or it isn't.

20 MR. PATTERSON: The vacancy rate is slightly over  
21 10 percent right now. However, as Mr. Foldie --

22 JUDGE WHITBECK: How long has it been at that  
23 status?

24 MR. PATTERSON: It started probably around 2014,  
25 2013, and it started with the college program that Mr.

1 Foldie indicated. But it is coming down.

2 JUDGE WHITBECK: We're now talking going back from  
3 2018 to 2013?

4 MR. PATTERSON: About -- yeah, 2013.

5 JUDGE WHITBECK: He said 2012. You're almost in  
6 agreement as to when the situation began and that it has  
7 continued for at least five and perhaps six years.

8 MR. PATTERSON: There was some issues with the  
9 college program that started back under the previous  
10 administration where employees were required to obtain their  
11 college education and their training at about 4,000 to  
12 \$5,000 cost before they could start with the department. We  
13 have since changed that back and we have seen growth.

14 JUDGE WHITBECK: When did you change it?

15 MR. PATTERSON: We changed that back in 2015, but  
16 it's taken some time through recruitment to build up those  
17 numbers. Like we said, our academies are now getting  
18 bigger. Our numbers in the applicant pool are larger than  
19 they have been in past years and some of that --

20 JUDGE WHITBECK: It's an unqualified success, but  
21 if you lose one person of it within three years of their  
22 coming into employment, you're almost at a wash, aren't you?

23 MR. PATTERSON: Yeah, but we're losing -- some of  
24 that is they're coming into employment -- a lot of what  
25 we're losing is due to the large prison expansion back about

1           25 to 30 years ago. We're losing a decent amount of  
2           officers through retirements as well as promotions. In  
3           other categories beyond just corrections officers that are  
4           part of their bargaining unit, we don't experience any type  
5           of retention or recruitment problem.

6                    JUDGE WHITBECK: Okay. I accept that. I thought  
7           listening to the testimony that going from 2012 to 2018  
8           might be too short a period and because simply you'd like a  
9           longer longitudinal line, if that's the correct term, But it  
10          strikes me that you have the data in hand that would, I  
11          hope, with a little tweaking, you can take these numbers  
12          back as far as you want to and see if there's a correlation  
13          between economic conditions which I suggest -- I don't know  
14          if it would be determinative but certainly would probably be  
15          at least in part a factor.

16                   My point, though, as I keep hammering at it, MCO  
17          has offered a solution in -- a procedural solution in that  
18          this Board could order the parties back to the table. I  
19          don't think a proposal to MCO that they just take the amount  
20          of the second year bonus and spend it any way they want  
21          to -- I doubt that this Board or the Civil Service  
22          Commission or its lawyers would view that with any great  
23          approval. Frankly I think maybe I would just let that one  
24          go as a fig leaf that got thrown in and probably shouldn't  
25          have been. But listen, these folks have outlined a serious

1           problem for you and they propose a solution.

2                         Then they said they were agreeable to  
3           modifications of that solutions, particularly with respect  
4           to eligibility requirements and limitations. Now, the piece  
5           they don't mention and the piece that you all to your credit  
6           have mentioned and which I fully agree is it is without an  
7           evaluation mechanism, without a defend, without a definition  
8           what consists a failure or what failure consists of and what  
9           success consists of. You're simply spending money premised  
10          on speculation, speculation being that if you increase pay  
11          by this amount over these three years, you're going to get a  
12          reduction in turnover.

13                         At the very least, there ought to be a mechanism  
14          built in that measures accurately whether or not that  
15          happens. If it doesn't happen, well, this is being pointed  
16          out. This won't break the pocket. Nobody likes to waste  
17          money. At least you'll know that you tried something. If  
18          it didn't work according to agreed upon measurements. If it  
19          does work, well, you have that whole spectrum go from. I  
20          doubt, though, that one of those spectrums is, and the point  
21          is well taken -- I mean, a modern correctional facility is a  
22          much better place to work than one of these -- than  
23          Marquette. You have to take Marquette out. It's an old  
24          structure. It's cold.

25                         Clearly the working conditions in the two

1 institutions are different. I don't know, though, how you  
2 could adopt a plan that pays employees inferentially based  
3 on the location of their work place. There's been some  
4 variation on that theme over the years, but as a basic  
5 principle, I think the Civil Service Commission has taken  
6 the position that you can't across the board make pay  
7 decisions based on work locations, that you just get into a  
8 host of problems there.

9 I'm not asking you to respond immediately. That  
10 would be unfair. I am suggesting that you may want to take  
11 another look at the MCO's proposal to go back to bargaining  
12 on this particular issue. Those are my questions.

13 MS. ZURVALEC: Thank you.

14 MR. WESAW: Just a couple easy ones. How many  
15 vacancies do you currently have? What's your number?

16 MR. PATTERSON: As of September, at the end of  
17 September so we look at October numbers, it was -- I think  
18 it was 730, somewhere in there.

19 MR. WESAW: I can appreciate the changes to  
20 vacation picks and all that kind of stuff, but when you've  
21 already got an overworked staff, how do you -- does that  
22 really make any sense? Because if you let more people off  
23 in good times, you've still got a backbone. It appears  
24 you've already got an over-stressed crew. How does that --

25 MR. PATTERSON: I think what Cheryl was trying to



1 say and what the Office of State Employer is trying to say  
2 is that we believe that we have -- we're enacting some  
3 strategies that will help with not only recruitment but also  
4 retention. It's not letting more staff off. It's making it  
5 more equitable. What we kind of experience in some of our  
6 exit interviews and talking to staff, especially new staff  
7 that are coming into the workforce now, is that they're big  
8 into work life balance. Some of the things is being able to  
9 have time off during what is considered prime vacation time  
10 during holidays, during the summer months, spring break.

11 With the changes in the rules where vacation  
12 scheduling has come out of the collective bargaining  
13 agreement, we're able to spread out that time. So it's not  
14 that we're letting more off. It's that we're spreading  
15 across the bargaining unit membership more. And so that  
16 some of those newer employees that have left historically in  
17 the last few years, some because maybe the economy -- it has  
18 been mentioned earlier that the economy is better so there  
19 is more options for them to go to, but also, too, I can't  
20 get off any time during the summer until I'm working as a  
21 corrections officers five, six, seven years.

22 I can't spend any time with my kids during  
23 Christmas, Thanksgiving until five, six, seven years when my  
24 seniority has increased. So we're enacting a vacation  
25 scheduling pick process now that we have the ability to do

1           that, as the employer, that we'll spread that equity amongst  
2           -- it still recognizes seniority, but the most senior  
3           employees can't just, for lack of a better word, snatch up  
4           all of the good time and leave hardly anything for the less  
5           senior employees. The same thing that was mentioned for  
6           overtime previously.

7                         The process was there was negotiated language that  
8           the mandatory overtime was the lower 50 percent of seniority  
9           was subject to all of the mandatory overtime. If you were  
10          in the upper 50 percent, you were exempt. So those are the  
11          things we believe with some of these changes will help not  
12          only recruit, bring people in, but also retain those who we  
13          have. So we're asking for that opportunity to see if our  
14          recruitment efforts -- we were set back by that. It was a  
15          failed proposal for lack -- I'll just say it was a failed  
16          process by the previous administration to have employees pay  
17          for their training and schooling before they actually came  
18          to us.

19                        We're now -- oh, you want to wait until the judge  
20          comes back.

21                        MS. ZURVALEC: It says "Do Not Disturb."

22                        (Off the record interruption)

23                        MR. WESAW: Jon, were you done?

24                        MR. PATTERSON: Well, I think what I was saying  
25          is, just kind of finishing up saying is -- so I think one of

1 the things that Mr. Foldie indicated was one fifth of our  
2 facilities are at critical staffing levels. So four fifths  
3 of our facilities, we have I would say sufficient staffing.  
4 I mean, we have facilities like Muskegon Correctional  
5 Facilities have no vacancies and there are several  
6 facilities that are in single digits of vacancies so they're  
7 not doing bad as far as like staffing.

8 There are several hundred members in other  
9 classifications, like the corrections transportation  
10 officers and the corrections security resident reps that are  
11 part of their membership that we don't experience any type  
12 of retention or recruitment problems in. Just to say that,  
13 I think we are employing some other strategies that will  
14 assist in both. They had testimonials from Women's Huron  
15 Valley and it's one of the facilities and I think it's the  
16 only facility that's usually singled out in their brief as  
17 to having a staffing problem.

18 Well, just as they had testimonials to the  
19 negative, we just recently received an email from an officer  
20 because we have decreased our vacancies at Women's Huron  
21 Valley significantly over the past few months from that  
22 targeted recruiting, from that targeted academies. Well, we  
23 hold the academies right down in Washtenaw County where they  
24 used to always be here in Lansing so it would require  
25 employees to travel back and forth on a daily basis or stay

1 here in Lansing.

2 Well, now we do the academies right there and the  
3 vacancies have decreased greatly where one of the employees  
4 sent to our director unsolicited of how happy she was that  
5 the warden had brought in new staff, decreased vacancies --  
6 I mean decreased the mandates and that now she hardly works  
7 any mandatory overtime. I mean, so I think there are things  
8 that we are doing, like I said, not only to increase  
9 recruitment, but those recruitment strategies will then lead  
10 to more retention. Employees do leave because they may get  
11 burned out. If we can bring in more, then we believe we'll  
12 have less going out the door.

13 MR. WESAW: Sticking with that facility, you heard  
14 my -- and I don't know who wants to tackle this, the Fair  
15 Labor Standards question. How is that working with what  
16 appears in the surveys answered by the corrections officers  
17 there, they're working possibly well over 16 hours in a 24  
18 hour period and sometimes day after day? Is there an  
19 exception for MCOs to go outside that, those numbers?

20 MS. SCHMITTDIEL: There is language in the  
21 collective bargaining agreement. My understanding is it's a  
22 function of collective bargaining. If there is a  
23 limitation, we will research that under the FLSA. I'm not  
24 aware, but it doesn't mean it's not there, that the Fair  
25 Labor Standards Act addresses the number of hours as opposed

1 to when the overtime pay kicks in for those who are eligible  
2 for the overtime.

3 MR. WESAW: It wasn't so much a factor of the  
4 overtime. It was the number of hours in a 24 hour period.

5 MS. SCHMITTDIEL: Correct.

6 MR. WESAW: That really becomes a safety issue.

7 MR. PATTERSON: Yeah. We will research that.  
8 Same thing. I'm not aware of that being a violation, but we  
9 can look into it.

10 MR. WESAW: I don't know if there's an exception  
11 for corrections. I know in the State Police, 16 hours was  
12 capped. You couldn't go over that.

13 MS. ZURVALEC: I think most of my questions have  
14 been covered. I just want to clarify something. It's  
15 between two exhibits from the State Employer. You have  
16 Exhibit Number 2 is the cost of the union's proposal for the  
17 pilot. Do you have that in front of you?

18 MS. SCHMITTDIEL: Yes.

19 MS. ZURVALEC: So the question is, before we get  
20 to the three years, the total cost 12 million per year  
21 essentially; right? Is that what that says?

22 MS. SCHMITTDIEL: Approximately.

23 MS. ZURVALEC: Approximately. Then the total cost  
24 of your lump sum is 10.4 million; is that correct?

25 MS. SCHMITTDIEL: Correct.

1 MS. ZURVALEC: I have no further questions. We  
2 have five minutes for a response from MCO that they reserved  
3 and then we'll break for lunch. Mr. Foldie, if you're  
4 ready.

5 MR. FOLDIE: Thank you. I appreciate this. I  
6 just want to make three quick points within one minute and  
7 then round this off with the last few minutes that I have.  
8 First and foremost, the State Employer made mention that  
9 they thought these rule changes that have come out are seen  
10 as a positive step towards the employees. The rule changes  
11 that have taken effect -- and I mean this as no disrespect.  
12 I mean it as just a matter of fact. The rule changes that  
13 have taken place have stripped 50 years of bargaining rights  
14 from our contract. I hope you will trust me that this is  
15 not a positive step in the eyes of our members.

16 Secondly, the employer again pointed out that the  
17 retention offer that we had made, a proposal that we had  
18 made, that they did not receive any other proposal and that  
19 it came late in the game. We would have bargained until  
20 yesterday. We received nothing on paper from the employer  
21 on that. MCO never received any counteroffer in any aspect  
22 whatsoever. So I just wanted to make those two points.  
23 Finally, the only thing I would say is this or wrap up is  
24 this. I woke up on the morning of October 27th, which was a  
25 Saturday, and I was thinking desperately what I wanted to

1 say to this panel.

2 I was lost for words to be quite frank because it  
3 seems to me that this is all boiled down to about dollars  
4 and cents. There's money out there. We have a problem and  
5 the people that are holding the purse strings do not want to  
6 give it to us to help us resolve that for their reasons. I  
7 appreciate that. I flipped on the telephone as I normally  
8 do first thing in the morning and I went to that dreaded  
9 Facebook and there was a post from a Lieutenant Brian Hughes  
10 on October 27th, 2018. I read that. I immediately  
11 contacted Mr. Hughes and I asked him if he would consider  
12 allowing me to read this into the record. He said sure.

13 And I'd like to take the opportunity to do that  
14 just to paint a picture from a supervisor, somebody that is  
15 outside of our bargaining unit and paint another picture.  
16 If I may approach, I have copies for you and I also have a  
17 copy for the employer as well.

18 MR. WESAW: Is he within the department?

19 MR. FOLDIE: Pardon me?

20 MR. WESAW: Is the supervisor within the  
21 department?

22 MR. FOLDIE: He is. Judge, I apologize. I didn't  
23 fax one down to you, but I'll try and speak clearly. "This  
24 will be a long post, but I'm going to do something most  
25 correctional staff don't do enough and that's open up. I

1           broke down today. I cried. I don't break often. I never  
2           talk about it or do it in front of anyone else. At first I  
3           couldn't comprehend another coworker's suicide. Then I got  
4           to thinking about our lives. We as correctional staff  
5           suffer in silence. Some of us deal with the daily stress  
6           better than others. Some of us can't cope at all. Some of  
7           us have seen horrendous things that people should never  
8           witness and things we will never forget.

9                         Some of us have even had to do things that haunt  
10          the shit out of us daily and are the things nightmares are  
11          made of. These demons are very real and the more I think  
12          about them, the more they scare me. When we are working in  
13          the moment, it just becomes our daily grind. It sadly  
14          becomes our normal, but when we retire or let those things  
15          creep in our minds, things change. When we go from working  
16          every day to retired, we have to face those demons that we  
17          spent 20, 25 or 30 years burying daily. I can say the last  
18          four to five suicides have been great officers and amazing  
19          people that no one would imagine in a hundred years that  
20          they would ever do this.

21                        That is the thought that haunts me. Demons are  
22          real and we can't escape them. These last several suicides  
23          were people that would have never taken their own lives.  
24          That tells me these demons are stronger than we realize and  
25          it can take us over on any given day. I used to say I would



1 never commit suicide. Now I wonder if those demons will  
2 catch me one day. I have many correctional demons that  
3 haunt me and bring me to tears when I even give them a  
4 second thought. I guarantee that these men never thought  
5 that they would succumb to suicide either. We suffer in  
6 silence and don't share these things with our families  
7 because we never want to expose our loved ones to the things  
8 that torture us.

9 We work in such a negative atmosphere. We work in  
10 the only profession where our own coworkers will talk shit  
11 about us if we save a prisoner's life. They will literally  
12 talk shit because you did your job and saved another human  
13 life. I can say I'm guilty of that myself and I have been  
14 on the receiving side. I guarantee some of my coworkers  
15 will talk about shit about me for making this post, but I  
16 don't care. I'm speaking the truth. I'm speaking the raw  
17 truth. Many of us will take things to the grave without  
18 ever speaking of them again. Stress also lowers our immune  
19 system causing many premature physical illnesses that take  
20 so many lives of correctional staff.

21 I used to wonder why these great, amazing people  
22 never reached out to anyone, even one of us that understand  
23 the struggle, but again, I totally understand. We are  
24 trained to be non-human and emotionless. We are weak if we  
25 show any emotion so we compartmentalize these demons. We

1 stay silent and fight the demons in our head. I have a love  
2 and respect for the people I've worked with past and  
3 present. I hope this is the last suicide we have knowing  
4 damn well there will be more. I have been doing this job  
5 for 23 years and every day my wife will ask me how my day  
6 was.

7 Every day for almost 23 years my response is,  
8 quote, "Just another day." I say this to my wife rather  
9 than it was just another day or I just seen a prisoner  
10 stabbed in the neck on Second Gallery of 12 Block and die  
11 choking on his own blood or while doing CPR on a  
12 probationary officer that just fell out because of a heart  
13 attack with prisoners around screaming, quote, "Die,  
14 motherfucker. Die, bitch," knowing these were the last  
15 words this officer heard as he died. The demons are real  
16 and although I'm here right now, I'm asking you to reach out  
17 for help if you're battling these demons.

18 I know that I would probably never ask for help  
19 either. That's why I say we suffer in silence. That's what  
20 we do. We just deal with it. I'm here for anyone that ever  
21 needs to vent or talk about their demons, corrections or  
22 not. To hell with religious beliefs, to hell with sports  
23 rivalries and to hell with political differences. I'm here  
24 for you. For those of you that continue to suffer in  
25 silence, just know you are never alone in your bed. I know

1           it feels lonely, but we're all dealing with our own battles  
2           right with you. Rest easy, Scotty Warner." Scotty Warner  
3           killed himself a couple days before this post.

4                         "Sorry for such a long post. Thank you," he says  
5           to his wife, "for always being here with me, whether I  
6           shared my demons or you just hugged me while I struggled in  
7           my own head." Madam Chairperson, Judge Whitbeck, Mr. Wesaw,  
8           the time is now. Not five minutes from now, not five hours  
9           from now, not five days, certainly not five months and  
10          certainly not a year. The time is now. We're asking for  
11          your help. Thank you.

12                        MS. ZURVALEC: Thank you very much. We will take  
13          a break.

14                        (Off the record)

15                        (Volume II concluded at 12:57 p.m.)

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