



## **INVESTIGATION REPORT**

**Re: Allegations of Violations of State Police Commission Rules:  
6.4, 6.9, 6.14(a), 6.14(b), 19.3(a), and 19.5 by  
the Department of Public Safety, Office of State Police**

**FEBRUARY 2020**



## State Police Commission

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John Bel Edwards  
Governor

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Executive Director

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On October 10, 2019, at the regular, monthly meeting of the Louisiana State Police Commission (LSPC), formal charges of rule violations were made by State Police Master Trooper Dean Coates. Mr. Coates and his attorney, Brett Conrad, conveyed his grievance with the Office of State Police and referenced the correspondence he provided on September 20, 2019, (Exhibit A) wherein he requested a formal investigation. It was determined at the meeting that, pursuant to LSPC Rule 16.2, the undersigned, Executive Director would perform a preliminary investigation of the alleged violations and report to the Commission.

In addition to Master Trooper Coates' formal charges, Master Trooper Kevin Sulcer has submitted a complaint pertaining to missing "longevity pay" increases (Exhibit B); M/T Sulcer's complaint is closely aligned with the key components of M/T Coates' request, specifically in the area of longevity pay. There are two primary components of the complaints: allegations that Longevity Step Rate Increases (SPC 6.14) have not been properly applied in accordance with the Chapter 6 pay rules and allegations that there are violations of other Chapter 6 pay rules related to "service tenure" under the rules. Given the substantive material related to the two complaints, it is first necessary to present a review of the evolution of SPC Rule 6.14 and the Chapter 6 rule changes, the impact of SPC Rule 6.14 on the pay history of M/T Coates and M/T Sulcer, and allegations pertaining to other "service tenure" rules within Chapter 6.

As the Executive Director of the Louisiana State Police Commission, I make the following findings with respect to the allegations made against the Department of Public Safety, Office of State Police and submit these findings to the Louisiana State Police Commission. I have also attached the responses from the Department of Public Safety to the questions asked as part of this investigation (Exhibit C).

### The evolution of SPC Rule 6.14 and the Chapter 6 rule changes:

State Police Commission rule 6.14 was originally titled "Merit Increases", rebranded as "Performance Adjustments" in 2014 (see [General Circular No. 167](#)), and later amended to "Longevity Step Rate increases and Performance Adjustments" as proposed in General Circular No. 180. The most recent edits to Rule 6.14, in pertinent part, from General Circular 180 are as follows:

#### **6.14 Longevity Step Rate Increases and Performance Adjustments**

*(a) An employee who is in active status ~~as of June 30th of the performance evaluation year,~~ and who has achieved the rank of State Police Trooper or higher, will receive a longevity step rate increase in accordance with the approved pay plan. The employee*

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is also eligible for and may be granted a performance adjustment of 1% above the employee's rate within the approved pay plan, provided that the appointing authority has determined his performance merits a performance adjustment such an adjustment and funding for the performance adjustment is available. A longevity step rate increase shall be granted to employees each year.

*(b) When applying the longevity step rate increase ~~performance adjustment~~, the employee's current pay increases to the rate of pay established for the higher salary rate immediately following the employee's current rate in accordance with the approved pay plan within the pay range for which the employee's job title is assigned.*

In researching the history of the Chapter 6 rule changes and layoff avoidance issues, several logistical/leadership questions remain a mystery as they relate to the decision within the Department of Public Safety/Office of State Police (DPS/OSP). In 2015, if funding was not available for performance adjustments under SPC Rule 6.14, why did DPS/OSP request changes to SPC Rule 6.14 to require mandatory "shall" verbiage for payment of annual longevity step rate increases?

When posed the question, DPS responded with the following:

*The proposed revisions were developed in an attempt to rectify the continuing issue of annual increases being withheld as a performance adjustment and to make the annual increases mandatory. The goal was to conform to the concept of increases being made based on actual service tenure as originally envisioned with the adoption of a pay grid.*

*The pay grid structure was originally developed and adopted by the SPC in 1999. Implementation of the grid codified the pay structure by specifically assigning a designated salary that was based upon a pay level for each job title and the employees' years of service. Although vertical movement through the grid was based on service tenure, there was a requirement that employees receive acceptable ratings on their annual evaluations to be eligible for the next level of service tenure.*

*Due to budgetary shortfalls within the State, merit increases/performance adjustments were withheld from state employees (including SPC classified service) for numerous years resulting in employees being paid a rate not consistent with their service tenure level. On January 16, 2015 the Joint Legislative Committee on the Budget approved partial funding of the pay grid, and shortly thereafter, the governor approved partial implementation of the pay grid with an effective date of February 2, 2015. The current pay grid was fully implemented effective in July 6, 2015 after sufficient funding was provided to place all SPC classified service employees on the grid in accordance with the service tenure, provided that the employee was otherwise eligible for previously missed performance adjustments.*

*The state was however, continuing to experience budget shortfalls and sufficient funding to grant performance adjustments was not appropriated by the legislature resulting in the inability for employees to advance to their next 3% tenure step during FY 15-16. Although implementation of the new pay grid allowed all employees to be placed on the grid according to their eligible service tenure levels, the inability to provide this performance adjustment immediately thereafter set all employees behind one year.*

It is understandable that after experiencing multiple years of withheld annual merit increases (FY 2010/11, FY 2011/12, etc.) that pressure built from within the staff/employee ranks in 2015 to enshrine salary increases/movements in the pay ranges through "mandatory" longevity step rate increases; however, it



doesn't necessarily correlate with the budgetary situation facing the state at the time the rule revisions were being proposed. The agency appropriation was established in HB1 (Act 16) of the 2015 Legislative Session on 6/19/2015 and further outlined in the Office of Planning and Budget appropriation package on 7/2/2015; the agency should have been aware at that time that there would neither be funds available to support a performance adjustment effective October 1, 2015, nor funds to support such "shall" edits (inclusive of mandatory adjustments) within Chapter 6 for FY 2015/16. Through a search of the restored email files of the previous SPC Executive Director, the following timeline was constructed:

- 8/25/2015 – email from Lt. Robert Burns to Cathy Derbonne: "Hi Cathy, I met with LTC Dupuy about the proposed changes to Chapter 6 and I would like to speak with you about the process."
- 8/25/2015 - email from Cathy Derbonne to Lt. Robert Burns: "Robert, Thank you for your email. I am currently at the Taylor Porter's Law office downtown working with Ms. Feeney on some rule revisions as we speak. If you would like, you can forward Chapter 6 to me."
  - Lt. Burns/OpDEV forwarded the edits which at the time were only proposed changes to 6.14 to include "shall" verbiage.
- 9/1/2015 - email from Cathy Derbonne to Lt. Robert Burns: "Lt. Burns, Thank you for your email. Actually, Lt. Hyatt is coming to discuss the proposed changes sometime this morning. I mentioned to Lt. Hyatt last week that the entire chapter needed to be revised (which I have done) before submitting a General Circular before the next public hearing. We are meeting to go over the suggested changes for the entire chapter. You are more than welcome to attend this meeting. Please check with Hyatt regarding a time."
- 9/10/2015 - email from Cathy Derbonne to Charlie Dupuy; copied Mike Edmonson: "Authored in conjunction with Operational Development/ Rule revisions for Chapter 6 for your review."
- 9/25/2015 - email from Cathy Derbonne to David Young (LSTA): RE: Chapter 6 Rule Revision. "fyi, Rodney asked me to forward to you."
- 10/26/2015 – email from Lt. Burns to Cathy Derbonne: "Sending you this per Captain Besson."
  - Email contained file: Chapter 6 Rule OCT 26 2015
- 10/28/2015 – email from Cathy Derbonne to David Young (LSTA): "Franklin asked that I forward this to you."
  - Email contained file: Chapter 6 Rule OCT 26 2015
- 10/29/2015 – email from Cathy Derbonne to Franklin Kyle: in responding to the question from Franklin Kyle: "So this has the changes that satisfies all parties?" Cathy Derbonne responds, "Yes, I revised it per David [Young] and Frank Besson."

The aforementioned documentation shows that wheels were in motion as early as August 2015 to redefine Rule 6.14 as Longevity Step Rate Increases with "shall" verbiage for employees each year irrespective of the state's fiscal environment. The budgetary constraints on DPS in FY 2015/16 necessitated that Colonel Edmonson submit a layoff avoidance request on 10/1/2015 to withhold the FY 2015/16 performance adjustment; the request was approved by the SPC Executive Director. However, shortly thereafter, in coordination with DPS/OSP and the LSTA, on October 28, 2015, General Circular 180 was promulgated by the SPC Executive Director to revise multiple rules to include "shall" and "service tenure" verbiage within Chapter 6, including 6.14.



With rules promulgated “that satisfies all parties,” the State Police Commission considered the revisions and approved them at the November 12, 2015 regular business meeting. Executive Director Derbonne published Transmittal Sheet No. 57 on November 19, 2015, declaring the effective date of the Chapter 6 changes as November 12, 2015. As this item impacted wage and pay<sup>1</sup>, constitutionally it should have been presented for gubernatorial approval before affixing and declaring an effective date. On November 21, 2015, Executive Director Derbonne notified Colonel Edmonson via email that the governor’s signature will be required “in order to implement the longevity pay plan.” On November 22, 2015, SPC Chairman Kyle contacted Colonel Edmonson via email to advise that the colonel take the lead to get the governor to sign the changes “before he leaves office;” Colonel Edmondson thanked the chairman, board, and director for the work on the rule changes and copied Natalie Laborde (Governor’s Deputy Chief of Staff) “for her review and assistance.” On December 3, 2015, a formal letter was sent to Colonel Edmonson, from Director Derbonne stating “in accordance with Article 10, Sec 48 (c), any rule determination affecting wages or hours shall have the effect of law and become effective only after approval by the governor and subject to appropriations of sufficient funds by the legislature.” Governor Jindal left office without approving the Chapter 6 changes and Governor John Bel Edwards was sworn in on January 11, 2016.

On June 1, 2016, Executive Director Derbonne published Transmittal Sheet No. 58 to rescind the changes to Chapter 6 approved by the Commission on November 12, 2015. However, since there was no sunset provision in the unanimous approval of the Chapter 6 edits by the Commission, rescission would require Commission approval. Therefore, the notice should have only been to rescind Transmittal Sheet No. 57 which set the official effective date of the changes – the Chapter 6 rule edits should have remained in abeyance, awaiting gubernatorial consideration/approval. On the same day Transmittal Sheet No. 58 was issued, Executive Director Derbonne emailed Barry Duse (State Budget Director) and copied Jay Dardenne (Commissioner of Administration) and Lloyd Grafton (SPC Chairman) to advise the following:

*As of June 1, 2016, an approval by the Governor has not been received, and there is currently insufficient funding to implement the revisions. I met with Lt. Colonel Dupuy, Chief of Staff Department of Public Safety, and we both agree the proposed revision of Ch 6 which included a longevity pay to classified employees of the State Police Service, be rescinded in its entirety.*

On June 29, 2016, General Circular 181 was promulgated which proposed a new amended Chapter 6 and would necessitate formal rescission of the previously approved edits; however, a motion was made and unanimously passed at the August 11, 2016 State Police Commission meeting which granted “an additional (60) sixty days to allow State Police<sup>2</sup> to seek approval by the Governor for the longevity pay” and the other Chapter 6 edits approved by the commission on November 12, 2015. In the middle of state’s FY 2015/16 and FY 2016/17 budget crisis, the Office of State Police was given the opportunity to seek approval of the edits that would include “shall” and “service tenure” verbiage as well as the mandatory longevity step rate increases. On October 12, 2016, Governor Edwards approved the changes to Chapter 6 of the State Police Commission rules; however, the changes in his authorization were not approved retroactively to November 12, 2015, it was prospectively approved effective the date he signed the letter – October 12, 2016. The SPC Executive Director erred in publishing Transmittal Sheet No. 60 which included a retroactive effective date to November 12, 2015. Although an erroneous effective date, there does not appear to have been any proactive actions taken within DPS/OSP to instruct DPS/HR to fully implement the changes to Chapter 6 at the time Transmittal Sheet No. 60 was published – perhaps it was because the administration knew, and had known, that funding was not available for these types of changes as far back as July 2015.

<sup>1</sup> Historically all Chapter 6 edits are considered wage and pay edits.

<sup>2</sup> The SPC twice deferred to OSP to obtain the necessary approval from the governor for the Ch. 6 edits.

It wasn't until June 19, 2017, that the erroneous date and notification was superseded via Transmittal Sheet No. 61 with a prospective effective date of October 12, 2016 for the Chapter 6 changes; the date Governor Edwards actually signed the authorization letter. Since Transmittal Sheet No. 61 was published over 8 months after Transmittal Sheet No. 60, the agency could have understandably been applying the Chapter 6 rules as they could have reasonably understood them to be approved – November 12, 2015. However, it appears that DPS/Human Resources (DPS/HR) was operating unaware and/or without a directive to implement the edits and unique verbiage within the rule changes; this is evident by the email on May 31, 2018, wherein the Human Resources Director advises (in reference to the Rule 6.7 service tenure verbiage), "I did not realize it before, but I believe this was one of the rules that was amended when they approved the Ch. 6 rule changes."

The rules in effect at the beginning of FY 2016/17 require performance adjustments to be paid on the focused pay date of October 1, 2016; these rules were still in place until the governor effectuated a change to the Chapter 6 rules on October 12, 2016. Therefore, the agency should have been preparing to either pay the performance adjustment increase on October 1, 2016, or seek authority from the State Police Commission to withhold performance adjustments as a layoff avoidance measure – neither occurred. In the agency's response to questioning about why they did not prepare a layoff avoidance measure for FY 2016/17, they cite the confusion surrounding the implementation of the Chapter 6 rule changes:

*OSP did not submit a request for a lay off avoidance measure to the SPC for FY 16/17. As set forth more specifically below, the LSPC Rules were in a state of flux and both the Civil Service Commission and the Governor had made it clear that no state employees were receiving annual increases or eligibility for annual increases.*

*Prior to the start of FY16/17, the Chapter 6 rule revision had undergone numerous SPC actions. The rule revisions were adopted on November 12, 2015 (Transmittal Sheet No. 57). On June 1, 2016 Transmittal Sheet No. 58 was issued which rescinded the previously adopted rules. The transmittal cited Article X, Section 48 (C) of the Louisiana Constitution which requires any rule determination affecting wages or hours shall become effective only after approval by the Governor and sufficient funds appropriated by the legislature. On October 20, 2016 Transmittal Sheet No. 60 was issued stating the previously adopted rule revisions had received approval by the governor but did not provide information relative to an appropriation of sufficient funds by the legislature.*

*Transmittal sheets No. 57, 58, and 60 were later superseded by Transmittal Sheet No. 61 which issued on June 19, 2017. Transmittal Sheet No. 61 provided for an effective date of the rule changes to be October 12, 2016, the date by which approval of the governor was received. However, the requirement of sufficient funds was still not met.*

*The issues regarding gubernatorial approval as well as the numerous transmittal sheets regarding the proper implementation of the rule changes resulted in uncertainty, for both OSP and SPC, into what rules were in effect and at which time did they become effective. Furthermore, the fiscal status of the state resulted in inadequate funding available to provide annual increases to state employees. This was demonstrated by the Department of Civil Service adopting a rule on June 16, 2016 which suspended the ability of an appointing authority to grant performance adjustments to classified employees and also prohibited classified employees within the executive branch of government from gaining eligibility for a performance adjustment from June 29, 2016 through June 29, 2017. Additionally, Governor Edwards issued Executive Order JBE 16-32 freezing annual increases and the ability to gain eligibility for an increase for all unclassified employees.*



*Although the SPC did not issue a similar rule suspension in concert with the Department of Civil Service and the executive order, the intent of the executive branch to not provide increases or future eligibility for increases is apparent thus making the request for a layoff avoidance measure moot.*

In hindsight, the implementation of the Chapter 6 changes approved by the State Police Commission on November 12, 2015, and then Governor Edwards on October 12, 2016, was neither typical nor ideal; however, there is a remedy for issues related to budgetary constraints housed within the SPC rules (i.e. Layoffs and/or Layoff Avoidance measures). DPS should have been fully aware of the ramifications of supporting the popular but unfunded revisions to Chapter 6 given the fiscal situation of the state. One could see how the agency, amid the fiscal woes of FY 2016/17 and Executive action to freeze increases, didn't believe the rule changes signed on October 12, 2016 met the approval definition in Article X, Section 48(C); however, there is no documentation to show that they sought to suspend the implementation following issuance either Transmittal Sheets No. 57, 58, 60, or 61 or the sixty-day extension to seek approval granted on August 11, 2016. The rule changes, which were initiated in coordination with DPS/OSP under the Edmondson administration, and were given approval during the Edmonson administration when Governor Edwards signed the rules, were neither fully implemented by the agency nor protested as being unfunded, underfunded, and thereby delayed pending legislative funding. It is incumbent on the agency to provide comment and raise awareness as to the detrimental impact proposed rule changes could have on business operations so that those matters can be considered when the State Police Commission decides on such edits. Commissioners should expect that substantive changes to the Chapter 6 pay rules, worked out in conjunction with the Operational Development unit of DPS/OSP, would be fully vetted and realized as fiscally prudent and logistically possible.

In addition, it is reasonable to believe that organizational politics weighed heavily in the decision to continue support for the extremely favorable service tenure verbiage contained in the General Circular 180 edits although the administrative team was demonstrably aware that there would be insufficient funding for FY 2015/16 and again in FY 2016/17. There was support from DPS/OSP for the revisions; however, once approved with (albeit incorrect) published effective dates, there didn't appear to be any movement to disseminate across DPS and most importantly to DPS/HR to implement the new rules. Colonel Edmonson was able to bring his support forward for the popular rule changes prior to the election of a new governor; however, administratively he (and his team) were fully aware it wasn't feasible to implement in FY 2015/16 or FY 2016/17. Opposing the favorable Chapter 6 changes could have damaged Colonel Edmondson's support within the DPS/OSP staff ranks and with various employee associations at a time when his reappointment to Superintendent would have been considered; therefore, it appears that Colonel Edmonson's administration would either continue publicly supporting the Chapter 6 changes or simply remain silent knowing that there would not be next steps taken to proceed with the implementation of the changes. It was reported by The Times-Picayune on December 18, 2015, that Governor-elect John Bel Edwards selected Col. Mike Edmonson to continue to serve as head of Louisiana State Police in a move that was considered a historic reappointment for a State Police Superintendent. Less than seven months later, Lt. Colonel Dupuy, Col. Edmonson's Chief of Staff, was cited in the aforementioned email from Executive Director Derbonne to the State Budget Director: "[Lt. Col. Dupuy and I] both agree the proposed revision of Ch 6 which included a longevity pay to classified employees of the State Police Service, be rescinded in its entirety." The Executive Director then took steps to rescind the proposed revision and reauthor new Chapter 6 edits; however, there were members within DPS/OSP that continued to press forward and were ultimately successful in gaining a sixty-day extension from the Commission on August 10, 2016, and then final approval from the governor on October 12, 2016.



## Impact of SPC Rule 6.14 on the pay history of M/T Coates and M/T Sulcer:

Merit/Performance Adjustment/Longevity Step Rate Increase history for Master Trooper Dean Coates and Master Trooper Kevin Sulcer as well as the impact of agency decisions in applying SPC Rule 6.14 across the classified state police service:

### Hire date – FY 2009/10 – “Merit Increases”:

All eligible annual “Merit Increase” payments were awarded to each year from their respective dates of hire as a State Police Trooper through FY 2009/10 for M/T Coates and M/T Sulcer.

### FY 2010/11:

Governor Jindal issued Executive Order [BJ 2010-5](#) on March 19, 2010, freezing all merit increases and eligibility for the unclassified service and **urging entities with constitutional authority to freeze salary increases** for the 2010/11 fiscal year. In 2010, the State Civil Service Commission passed a special rule to suspend all eligibility and Merit Increase Authority for FY 2010/11 (see SCS General Circular No. [1798](#) and [1799](#)).

The State Police Commission did not promulgate a rule similar to the State Civil Service which withheld merit pay and eligibility for the fiscal year. Given that an Executive Order was issued by the governor and extraordinary action was taken by the State Civil Service Commission, the Department of Public Safety/Office of State Police did not award merit increases to any employees in FY 2010/11, including classified employees in the state police service. The State Civil Service rule change meant that DPS did not need to submit a layoff avoidance measure for approval for SCS classified employees. There is no record of official approval from the former Executive Director or the State Police Commission to withhold the 2010/11 merit increase for members of the classified state police service. **This is a significant oversight on the part of DPS; since the State Police Commission did not promulgate a special rule to suspend merit pay eligibility/authority for the classified state police service, DPS had an obligation to follow the existing SPC rules and request a layoff avoidance measure for FY 2010/11 to suspend merit increases.** There doesn't appear to be a rebuke of the rule violation; therefore, it doesn't appear that DPS was advised by the SPC to take corrective action for similar occurrences in the future.

### FY 2011/12:

Governor Jindal issued Executive Order [BJ 2011-9](#) on June 1, 2011, freezing all merit increases and eligibility for the unclassified service and urging entities with constitutional authority to freeze salary increases for the 2011/12 fiscal year. The State Civil Service Commission again promulgated and passed a rule to suspend Merit Increase Authority, this time for FY 2011/12 (see SCS General Circular No. [2011-005](#) and [2011-012](#)).

The State Police Commission did not promulgate a rule similar to the State Civil Service which withheld merit pay and eligibility for the fiscal year. Given that an Executive Order was issued by the governor and extraordinary action was taken by the State Civil Service, the Department of Public Safety did not award merit increases to employees in FY 2011/12. The SCS rule change again meant that DPS did not need to submit a layoff avoidance measure for approval for SCS classified employees. There is no record of official approval from the former Executive Director or the State Police Commission to withhold the 2011/12 merit increase for members of the classified

state police service; therefore, as in the prior year, it appears that DPS/OSP did not seek the authority to withhold merit increases for members of the classified state police service. **Again, this is a significant oversight on the part of DPS which, absent a rule rescinding 6.14 authority from the State Police Commission, had an obligation to follow the existing SPC rules and request a layoff avoidance measure for FY 2011/12 to suspend merit increases.** Once again, there doesn't appear to be an acknowledgement of the rule violation by the SPC; therefore, it doesn't appear that DPS was notified of the oversight.

#### **FY 2012/13:**

In FY 2012/13 there was no executive order from the governor in place to specifically suspend merit increases; however, the state's budgetary situation remained tenuous. Governor Jindal issued multiple executive orders to balance the state budget including suspending all Board and Commission authority to pay Per Diems (BJ 2012-20), an Executive Branch reduction of \$165 million dollars (BJ 2012-24), and an Executive Branch expenditure freeze (BJ 2012-25). On September 25, 2012, a DPS layoff avoidance measure was approved by the director of the State Civil Service wherein DPS/Public Safety Services certified their funding was reduced for FY 2012/13. The approval authority from State Civil Service granted the option to consider prospective payments of performance adjustments to employees affected by the measure. There is no record of DPS seeking State Police Commission authority to withhold performance increases and therefore they acted without proper SPC authority to suspend classified state police service performance adjustments in October 2012. **For a third year, DPS suspended merit-based increases due to a lack of sufficient budgetary funding and for a third year it appears that DPS violated SPC rules regarding classified members of the state police service by not seeking authority from the State Police Commission.** However, unlike the prior two years, they did restore the withheld FY 2012/13 increase and prospectively granted an increase to all eligible state police service employees on July 14, 2014. (Note: M/T Coates and M/T Sulcer did receive the prospective July 14, 2014 increase for missing fiscal year 2012/13.)

#### **FY 2013/14 & 2014/15 – "Performance Adjustments":**

The new "Performance Adjustment Model" was rolled out in 2013 for the classified state police service with a new focused payment date of 10/1 for all annual performance adjustment increases under SPC 6.14. The focused payment date was adopted from the State Civil Service model and used for continuity across all DPS agencies. M/T Coates and M/T Sulcer received annual performance adjustment increases on 10/1/2013 and 10/1/2014.

#### **FY 2015/16:**

##### **\*\* THE NEW STATE POLICE SERVICE PAY GRID WAS FULLY IMPLEMENTED ON JULY 6, 2015 \*\***

All eligible classified state police service employees were properly aligned to the new pay grid based on their service tenure effective July 6, 2015.

On October 1, 2015, Colonel Edmondson submitted a request to the State Police Commission to implement a layoff avoidance measure for FY 2015/16. The approval was granted by Executive Director Derbonne with "the option to consider granting performance adjustments or restoring the performance adjustment in accordance with SPC Rule 6.14 prospectively or retroactively to



October 1, 2015.” This appears to be the first layoff avoidance request from DPS/OSP to the State Police Commission since my review of documentation dating back to 2002. M/T Coates and M/T Sulcer did not receive a FY 2015/16 performance adjustment and neither did the other eligible state police service employees; however, this adjustment was prospectively granted to M/T Coates and M/T Sulcer along with all eligible state police service employees by the DPS/OSP in FY 2018/19 on June 3, 2019.

**FY 2016/17:**

Governor Edwards issued Executive Order JBE 2016-32 on July 1, 2016, freezing all merit increases and eligibility for the unclassified service and urging entities with constitutional authority to freeze salary increases for the 2016/17 fiscal year. In 2016, the State Civil Service Commission passed an official rule to suspend performance adjustment (merit) authority for FY 2016/17 (see SCS General Circular No. 2016-004 and 2016-016). The State Police Commission did not promulgate a new rule similar to the State Civil Service which would have withheld performance adjustment (merit) pay and eligibility for the fiscal year. Given that an Executive Order was issued by the governor and extraordinary action was taken by the State Civil Service, the Department of Public Safety did not award performance adjustment increases to employees in FY 2016/17. The SCS rule change meant that DPS did not need to submit a layoff avoidance measure for approval for SCS classified employees. **As with the similar circumstances of FY 2010/11 and FY 2011/12, it appears that DPS/OSP did not recognize that a formal layoff avoidance plan was necessary to withhold performance adjustment (merit) pay increases for members of the classified state police service.** I have not identified official approval from the former Executive Director or State Police Commission to withhold the FY 2016/17 performance adjustment (merit) increase for members of the classified state police service. It is significant that the rule changes to Chapter 6 which include Longevity Step Rate Increases were not signed by Governor Edwards until October 12, 2016; therefore, the rules in effect would still require a performance increase for all eligible state police service employees effective October 1, 2016 or approval of a Layoff Avoidance Measure to withhold performance adjustments for FY 2016/17. M/T Coates and M/T Sulcer did not receive a FY 2016/17 performance adjustment neither did the other eligible state police service employees; however, unlike the prior year, the administration neither sought State Police Commission authority to withhold the distribution of the performance adjustment on October 1<sup>st</sup> nor the authority to restore the withheld increase.

**FY 2017/18:**

Implementation of Longevity State Rate increases (“Longevity Pay”), in accordance with SPC Rule 6.14, began with FY 2017/18 since the Chapter 6 rule revisions were signed by the governor AFTER the focused distribution date of October 1, 2016 for FY 2016/17. Although there was no budgetary funding, as stated previously by DPS/OSP, there was an effort to commence Longevity Step Rate Increases. In FY 2017/18, the agency applied the provisions of 6.14(b) which states, “...the employee's current pay increases to the rate of pay established for the higher salary rate immediately following the employee's current rate in accordance with the approved pay plan within the pay range....” The focused October 1<sup>st</sup> annual increase pay distribution date previously utilized for performance adjustment pay increases was scrapped in favor of returning to employment anniversary date so that DPS/OSP could apply the longevity step rate increases in alignment with each individual employee's anniversary date based on years of service. In FY 2017, at the time Longevity Step Rate Increases began for members of the classified state police service, the employees had missed the FY 2015/16 increase due to layoff avoidance measures and the FY



2016/17 increase due to the agency's application of the governor's Executive Order freezing merit pay. Increases under 6.14 were made in accordance with the specific verbiage in the rule to "the higher salary rate immediately following the employee's current rate" which was the July 2015 rate of pay – this gap in pay steps is frequently referenced as the "missing" two years.

NOTE: M/T Coates received his first "Longevity Pay" increase on 9/9/2017 and M/T Sulcer received his on 9/13/2017; the pay dates are in alignment with each employee's state police service anniversary dates and were received in the first fiscal year in which it was fully implemented by DPS/OSP.

#### **FY 2018/19:**

Longevity Pay was reportedly fully funded in the FY 2018/19 budget for DPS/OSP – M/T Coates and M/T Sulcer received their "Longevity Pay" increases. Additionally, as previously referenced; the layoff avoidance measure approved in FY 2015/16 by the former SPC Executive Director was prospectively paid to all eligible DPS/OSP employees on June 3, 2019. – M/T Coates and M/T Sulcer received a prospective increase on 6/3/2019 for the performance adjustment withheld in 2015.

#### **FY 2019/20:**

Longevity Pay was funded in the FY 2019/20 budget for DPS/OSP – M/T Coates and M/T Sulcer received their "Longevity Pay" increases. As of the date of this report, Master Trooper Coates has received all Longevity Pay increases; however, the Performance Adjustment that would have been due on 10/1/2016 (because Longevity Pay wasn't signed effective until 10/12/2016) was withheld, albeit without SPC approval, just as had been done by DPS in FY 2010/11 and FY 2011/12 – following an Executive Order and SCS suspension of the authority to pay for classified SCS employees.

Fiscal Year	Increase	
NOTE: ALL Troopers were aligned with the new pay grid as of July 2015		
FY 2015/16	10/1/2015: NONE – Layoff Avoidance w/ SPC approval**	
FY 2016/17	10/1/2016: NONE – Performance Adj. SUSPENDED (without SPC approval)	
Gov. Edwards signs new Chapter 6 rules effective 10/12/2016		
FY 2017/18	Longevity Pay	Coates: 9/9/17, Sulcer: 9/13/17
FY 2018/19	Longevity Pay	Coates: 9/9/18, Sulcer: 9/13/18
**6/3/2019 prospective payment of the withheld 2015 Performance Adjustment		
FY 2019/20	Longevity Pay	Coates: 9/9/19, Sulcer: 9/13/19

Through my research of over 10 years of layoff avoidance issues with the Department of Public Safety, I found only one instance where they came to the State Police Commission to seek proper authority to suspend merit payments: October 2015. Repeatedly, if the governor took action through Executive Orders or State Civil Service took action via an extraordinary rule, DPS/OSP did not properly seek approval from

State Police Commission in addressing the impact of the state's budgetary issues on state police service employees – this was the case in FY 2010/21 and FY 2011/12.

It is my genuine belief, given the extraordinary budgetary situation facing the state, that should the DPS/OSP have come before the State Police Commission in FY 2010/11, FY 2011/12, and most recently in FY 2016/2017, they would have been granted the similar layoff avoidance approval from the State Police Commission. Although there were multiple occasions that appear to demonstrate a pattern of either disregard or oversight, **the only year pertinent to the current investigation is FY 2016/17 since all classified State Police Troopers were aligned to the new pay grid effective July 2015.**

I believe the State Police Commission has the ability to mitigate the oversight by DPS with a formal request from DPS/OSP for proper authorization for the 10/1/2016 layoff avoidance measure they implemented for FY 2016/17. Proper authorization from the Commission would permit a prospective restoration of the missed performance adjustment if/when funds become available; this layoff avoidance measure would have undoubtedly been approved by the State Police Commission if properly requested at the time. If a FY 2016/17 layoff avoidance authorization is approved and if DPS/OSP then chooses to restore the performance adjustment withheld on 10/1/2016, M/T Coates and M/T Sulcer, as well as all other eligible employees, would then (prospectively) be at their correct service tenure level on the State Police Service pay grid.

## Other Alleged Rule Violations:

### Rules 19.3 & 19.5:

M/T Coates alleges violation of SPC Rule 19.3 and 19.5 as it pertains to the Pay Plan implementation; however, Chapter 19, entitled "Transition to New Pay Structure" was amended by the State Police Commission in 2014 in preparation of the adoption of the new 2015 State Police Pay Grid. All classified state police service employees were aligned to the new pay grid based on their service tenure effective July 6, 2015. Although Chapter 6 rules were further amended in November 2015 by the State Police Commission, and later approved by the governor effective October 12, 2016, the updated Chapter 6 verbiage did not represent a shift or transition in the pay structure such to require further revision and/or application of Chapter 19 as was the case for the new pay grid implemented in 2015. Therefore, I do not believe there was a violation of State Police Commission Rules 19.3 and 19.5.

### Rule 6.5(c):

Although not part of the official complaints, this rule also contains "service tenure" verbiage. The agency has utilized this rule to reemploy former employees to DPS/OSP under the Noncompetitive Reemployment Rule 8.11 and compensated them according to service tenure. On occasion this has resulted in employees earning more on reemployment than they made when they left state police service. For example, an employee with twelve years of service but being paid at the ten-year level on the grid (due to two missed annual increases) could resign and then be later reemployed as the twelve-year level on the grid because of the service tenure provisions of 6.5(c). I have seen that this rule has been utilized by DPS/HR for noncompetitive reemployments since September 2017 based on a review of email documentation.



### **Rules 6.4, 6.7, and 6.9:**

Changes to SPC Rules 6.4, 6.7, and 6.9 as promulgated in General Circular 180 amended the rule verbiage to include references to "service tenure." M/T Coates alleges that these rules are not being applied uniformly and in accordance with the October 12, 2016 effective date as signed by the governor. The agency contends that funding was not received by the legislature to implement the changes; therefore, the constitutional requirement under Article X, Section 48(C) was not met to implement the rule changes at that time. As referenced in the aforementioned 6.14 history, Governor Edwards issued an Executive Order freezing merit increases for FY 2016/17 when there were budgetary cuts throughout the Executive Branch agencies.

On May 30, 2018, I received initial questions from Lt. Rodney Hyatt regarding the application of the service tenure verbiage of Rule 6.7 and the following day DPS H.R. Director Ginger Krieg contacted me to inquire about the application of the promotion rule which reads:

#### *6.7 Rate of Pay upon Promotion*

*(a) When an employee is promoted to a position in a higher grade, their pay shall be established for the corresponding salary rate representing their service tenure as applicable for the pay level assigned to the higher grade, along with all performance adjustments accrued prior to promotion.*

*(b) When an employee has been detailed with pay to a higher grade and is promoted to that same grade directly from the detail, their pay eligibility on promotion shall not be less than they received on detail.*

In my response, I advised that in reviewing Chapter 6, "It is my interpretation that these rules as drafted and adopted instruct the agency to continue to tie the rate of pay based on promotion and reentry to the actual service tenure and rank as adopted with the implementation of the 2015 pay structure.... If I have overlooked a provision or rule which would contradict my interpretation then the SPC Rules would prevail. There were many moving dates associated with the implementation of these rule changes; I'd be happy to sit down to discuss."

Following a conversation and subsequent meeting with Lt. Col. Jason Starnes, on 6/15/2018, a formal letter was sent, per his request, to summarize the take away from that meeting – promotions should be paid in accordance with service tenure per SPC Rule 6.7. Shortly thereafter, and prior to the end of the fiscal year, DPS/HR processed corrective personnel actions to ensure that all employees promoted since October 12, 2016 were paid according to service tenure. In my correspondence, dated November 5, 2019, when asked the question if everyone promoted on or after October 12, 2016 has been paid according to service tenure, DPS advised the following:

*Yes. Since this specific rule was determined to be effective on October 12, 2016 by approval of the governor, it was decided that if funding was available the appropriate action for the Department to take was to process those employees that had received a promotion on or after the effective date. Although the rule as written does not specifically address "longevity" increases, it states that "their pay shall be established for the corresponding salary rate representing their service tenure." Therefore, as funding allowed, those employees were adjusted to the salary on the grid in accordance with their service tenure and made effective on the date of their promotion.*



Additionally, DPS acknowledged that rules 6.4, 6.5, 6.5.1, 6.9, 6.10 contain "service tenure" verbiage. In their review of the number of DPS/OSP employees not currently being paid according to their service tenure and the estimated cost of adjusting those employees, DPS advised:

*As of 9/26/19, there were 466 employees not being paid according to their service tenure<sup>3</sup>, and the cost of prospectively adjusting those employees would be an estimated \$1.13 million for FY20. Retroactive costs to October 12, 2016 have not been calculated at this point. There appears to be no legal basis for a retroactive pay obligation where the legislature did not appropriate the funding as is required by the Louisiana Constitution. A determination of those costs would require an extensive review of each individual employee to determine adjustments and would have to take into account the number of days employed throughout that time period and what the rate of pay would have been versus what pay increases were granted by virtue of step increases received or other personnel actions such as promotions. Additionally, overtime rates and employee/employer retirement contributions would have to be calculated. Although this figure is not available at this time, the cost figure would be substantially higher.*

When asked about the discrepancy in the application of Rule 6.7 pay vs. other Chapter 6 rules referencing "service tenure", DPS replied:

*Rule 6.7 deals with promotions which is a specific type of personnel action. The other rules identified to contain "service tenure" verbiage deal with separate and distinctly different types of personnel actions as defined within the SPC rules.*

When questioned on the circumstances the Office of State Police would consider in adjusting pay for SPC Rule 6.9: Pay upon Reassignment, DPS advised:

*OSP would consider paying SPC Rule 6.9 Pay upon Reassignment if specifically appropriated by the legislature or should funding become available to make the payment without negatively impacting department operations.*

*Any SPC Rule 6.9 payment would be made as set forth below.*

*§6.9 provides "When an employee is reassigned to another position, the rate of pay shall be set representing his/her service tenure as applicable for the pay level assigned to the grade for which his/her position is allocated, along with all performance adjustments accrued."*

*To understand the implementation of this rule, the terms provided in Chapter 1 - Definitions need to be referenced and applied. The applicable and/or supporting definitions are listed as follows:*

**Allocation** - *the determination of the job to which a position is deemed to pertain.*

**Job or Job Title** - *is a homogeneous cluster of work tasks. Taken as a whole, the collection of tasks, duties and responsibilities constitutes the assignment for one or more individuals whose work is the same nature which is performed at the same skill/responsibility level. This definition means the same as "Class".*

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<sup>3</sup> Promotions since 9/26/19: 10/16/19 – 8; 12/3/19 – 4; 1/23/20 – 9. Those 21 employees should now be paid according to the service tenure provision of SPC Rule 6.7 thereby reducing the total to 445 not paid at service tenure.

**Job Specification** - a summary of the most important features of a job including the general nature of the work performed, specific task responsibilities, and employee characteristics (including skills) required to perform the job. A job specification focuses on the job itself and not any specific individual who might fill the job.

**Position** - any office and any employment in the classified Service. Position for job evaluation and pay purposes means a collection of duties and responsibilities assigned to an individual employee. Multiple positions may constitute a job.

**Promotion** - a change of a permanent employee in the Classified Service from a position of one job to a position of another job assigned to a higher pay grade.

**Reassignment** - the change within the same department of a probationary or permanent employee from a position in one job to another position in a different job, both jobs of which have the same pay range.

**Transfer** - the change of an employee from a position in one department to a position in another department without change in probation or permanent status and without a break in service of one or more working days.

§6.9 refers to reassignment of an employee to another position and addresses their rate of pay relative to service tenure. First, the definition of Reassignment utilizes the terms of both "Position" and "Job." Position is a collection of duties and responsibilities assigned to an employee but states that multiple positions constitute a Job. "Job or Job Title" are synonymous and constitute one or more individuals whose work is the same nature which is performed at the same skill/responsibility level.

The SPC allocates Jobs or Job Titles based upon specifications and are assigned Job Class Codes, pay levels, function and level of work, and other factors. Examples of Job Titles are Cadet, Trooper, Sergeant, etc. and cover all classified titles within the state police service. As defined, Allocation determines the job for a position. This process is further defined in Chapter 5 - Classification Plan.

The issue in the application of this rule is identifying those employees that had reassignments to other positions in the department that meet the provisions of the rules and supporting definitions. For example, LSP frequently "transfers" employees across sections of the department (i.e. a Trooper is moved from Troop A to the Criminal Investigations Division). On the surface, this employee's move would appear as a reassignment, however that is not how this rule should be interpreted. Assuming the employee was assigned the job title of Trooper and was moved to another section in the department at the same job title of Trooper, then this does not meet the definition of a reassignment since he/she did not change "Jobs." The employee may have moved to a different position but not to a different job.

Other definitions support the distinction between a transfer and a reassignment. "Transfer" refers to a change in position but not a change in job. "Promotion" refers to a change in job but one that is at a higher level such as a promotion from Trooper to Sergeant. The employee changed jobs to one of a higher level and a different job class code and specification.

This rule has been misinterpreted to mean that anytime an employee was moved from one position to another, implementation of a salary adjustment was necessary effective on the date of



*the personnel action; however, the provisions of the rule and supporting definitions clearly do not support that interpretation.*

The circumstances arising from the piecemeal adoption of the Chapter 6 rule changes and complaints from M/T Coates and M/T Sulcer appear to have caused DPS/HR to review and distinguish their routine personnel practices as they pertain to Chapters 1 and 6 because the Chapter 6 edits, for the first time, build in salary movement verbiage that hasn't been fully implemented at DPS/OSP. Distinguishing reassignment/transfer were never truly necessary until service tenure verbiage was included with the Chapter 6 rules; the explanation provided by the agency represents their business reason/understanding in applying the rules according to the definitions within Chapter 1 and rules of Chapter 6. I do not believe there is a willful violation intended to suppress wages; on the contrary, I see that the current administration under Colonel Reeves is restoring missed performance adjustments, attempting to roll out phased uniform increases based on guidance provided to him through his agency administrators on the agency's understanding of Chapter 6 edits and effective dates, and is balancing his responsibility as the fiscal head of DPS. As the agency indicated in their responses, SPC Rule 6.7 is tied to a specific type of personnel action in the personnel management system dealing with promotions; the employee/agency would reasonably expect salary movements upward in the pay grid as they were promoted. However, a lateral movement, such as a transfer or reassignment, would not traditionally be associated with a change in rate of pay because the location of work and/or type of work performed remains allocable to the existing job title and/or pay grade.

DPS was specifically asked, via my correspondence dated November 5, 2019, about the circumstances involving M/T Coates' placement in position #7129401 within Internal Affairs and whether or not any other pay rules within Chapter 6 would have applied to M/T Coates since his placement in that position; DPS responded:

*M/T Coates was placed in position #7129401 on 3/30/2015. In response to a request by M/T Coates, he was moved from Troop A to Internal Affairs. A PAR was done to move M/T Coates and his position from Troop A to Internal Affairs on 3/12/18.*

*No other pay rule within Chapter 6 would have applied to M/T Coates since his placement in position 7129401 as there has been no promotion, demotion, detail, or other change in job code that would trigger a pay mechanism.*

Based on my review of Mr. Coates' personnel action history, I must concur with the agency. The last position change for M/T Coates was on March 30, 2015 – this predates the proposed Chapter 6 rule changes. Additionally, M/T Coates attained the level of Master Trooper on September 9, 2010, also predating the Chapter 6 rule changes. Other than the FY 2016/17 Performance Adjustment which was to be paid on October 1, 2016 but withheld due to the agency's application of the governor's Executive Order freezing increases, it appears that M/T Coates (and M/T Sulcer) received all eligible Longevity Step Rate Increases. Should the State Police Commission grant approval of the unauthorized layoff avoidance measure implemented in FY 2016/17, Master Trooper Coates and Sulcer as well as the other eligible members of the classified state police service not already being paid according to service tenure could be prospectively raised one 3% step on the state police service pay grid and be prospectively paid according to the grid based on actual service tenure.



## Conclusion and Recommendation

The State Police Commission was Constitutionally established in 1991 as a separate Civil Service System for members of the state police service. The Office of State Police falls under the administrative umbrella of the Department of Public Safety which must manage personnel under two separate civil service systems. Through a review of the historical record, it appears that DPS failed to request proper authorization from the State Police commission for layoff avoidance measures in FY 2010/11<sup>4</sup>, FY 2011/12<sup>5</sup>, FY 2012/13<sup>6</sup>, and FY 2016/17<sup>7</sup>. It is apparent, from the responses submitted to my questions, that the Office of State Police felt as if a need to request layoff avoidance authority was moot due to issuance of gubernatorial executive orders regarding Merit Increase Freezes. However, gubernatorial executive orders and layoff avoidance approval for state civil service employees from the State Civil Service Commission do not substitute or supplant the necessary approvals of the State Police Commission. (La. Const. Article 10, Sect. 48 et seq.)



The Department of Public Safety - Office of State Police should demonstrate an understanding that the State Police Commission is the exclusive, separate, and autonomous civil service authority over the classified members of the state police service. I recommend that DPS/OSP submit a formal acknowledgement for the repeated oversight of the State Police Commission's authority with regards to layoff avoidance measures for the classified state police service. Furthermore, I recommend that the agency submit a formal request for approval to withhold the FY 2016/17 performance adjustment; given that the Chapter 6 rules in place on October 1, 2016, still referenced performance adjustment (not longevity step rate increase until October 12, 2016), any such request under the rules at that time would still permit prospective adjustments. Therefore, should the commission choose to "bless" the oversight and ratify the suspension of the October 1, 2016 (FY 2016/17) performance adjustment, DPS/OSP would have the ability to grant a prospective increase. The FY 2015/16 performance adjustment was granted prospectively on June 3, 2019; therefore, should a prospective increase be granted for the FY 2016/17 performance adjustment DPS/OSP would have granted all possible adjustments under Rule 6.14 between July 2015 and present. The Commission's authority would not supplant Executive Order JBE 2016-32 as it pertains to any members of the state police service in the unclassified service for FY 2016/17.

It is notable that in January 2019 a request was made from DPS/OSP to add jobs to the State Police Service pay plan; the agency was required to submit a certification of funding with that request. It will be the standard practice to require a certification of funding for all future pay plan changes which have a fiscal note. We hope that ensuring funds are identified and available at the outset of any proposed pay plan change would mitigate any possibility of future occurrence of a similar chain of events. The Chapter 6 changes that unfolded over the course of FY 2015/16 and FY 2016/17 put the proverbial cart before the horse by not having identifiable funding to support the changes. The Office of State Police, under Colonel Reeves' administration, has attempted to apply the rules as approved by the governor; however, since the edits weren't rolled out by the prior administration across DPS/OSP (including DPS/HR), there were oversights and underestimations as to the scope and price of fully implementing the changes. In

<sup>4</sup> Executive Order BJ 2010-5

<sup>5</sup> Executive Order BJ 2011-9


<sup>6</sup> SCS Layoff Avoidance Request

<sup>7</sup> Executive Order JBE 2016-32

calculating that the budget could absorb the cost of the movements required under SPC Rule 6.7, the fiscal team and DPS/HR did not look to or account for the similar movements contained within other rules as it wasn't the customary practice to see pay changes associated with lateral or reassignment movements.

In hindsight, it may have been more appropriate for DPS to refute the legitimacy of the entire Chapter 6 edit effective date rather than attempting to apply the rule edits piecemeal and within their budget; nonetheless, I believe the current superintendent's administration has acted in sincerity to work within the rules to restore withheld performance adjustment for FY 2015/16, to pay rehires in accordance with rules 6.5(c), to pay promoted employees in accordance with 6.7(a), and to roll out longevity step rate increases in accordance with 6.14 as of FY 2017/18 forward. The performance adjustment for FY 2016/17 was withheld based on the prior administration's practice in handling Executive Orders to freeze increases – this oversight of the requirements of Chapter 17 must be remedied and proper approval must be requested from the State Police Commission for all layoff avoidance measures. The State Police Commission was enacted through legislation and by a vote of the citizens of Louisiana to handle all civil service matters for members of the classified state police service; therefore, the Department of Public Safety must appropriately recognize and respect that authority. Lastly, DPS provided their rational business reasons for the piecemeal implementation and lack of service tenure pay movements on reassignments, transfers, etc.; it is for the Commission to determine if additional information or testimony is needed or if the possibility of a prospective adjustment for the withheld October 1, 2016 performance adjustment is sufficient remedy based on a review of the facts contained within this report as they pertain to the unconventional development and approval of the Chapter 6 rule edits over the course of a tumultuous two fiscal years.<sup>8</sup>

Respectfully Submitted,

  
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Jason Hannaman, PHR, SHRM-CP  
Executive Director

2/7/2020  
\_\_\_\_\_  
Date

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<sup>8</sup> Executive Order 2016-32 and State Civil Service action suspended all merit/performance increases for state civil service classified employees and unclassified employees; those employees have no remedy and no eligibility for any performance-based increase for FY 2016/17.