

May 8, 2007

Kenneth H. Zimmerman, Chief Counsel to Governor Jon S. Corzine  
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PO Box 001  
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Subject: Report of THE ETHICS ADVISORY PANEL APPOINTED BY  
GOVERNOR CORZINE'S EXECUTIVE ORDER NO. 1.

In your capacity as Chief Counsel to Governor Jon S. Corzine, you requested the Panel to review whether there was a conflict of interest on the part of the Governor in conducting recent CWA contracts negotiations. The Panel had received a similar inquiry from Steven Lonagan, a citizen and Mayor of Bogota, (collectively "The Inquiry").

The Panel attempted to answer the Inquiry with all reasonable diligence, but the unfortunate accident to Governor Corzine intervened.

Nonetheless, we determined to issue the Report as soon as would not be unseemly.

Although we are not loath to discuss our role, we regard our end product as similar to a legal opinion. When it is filed, the opinion must speak for itself. The Panel will respectfully decline to elaborate further on the Inquiry.

Very truly yours,

Daniel J. O'Hern

John J. Farmer, Jr.

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REPORT OF DANIEL J. O’HERN AND JOHN J. FARMER, JR.  
IN THE MATTER OF THE INQUIRY OF GOVERNOR JON S. CORZINE

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**I. BACKGROUND OF THE PANEL AND  
SUMMARY OF CONCLUSIONS**

Pursuant to Governor Corzine’s Executive Order # 1, we have been continued in the position of advisors to the Governor concerning the requirements of the Governor’s Code of Conduct. Governor McGreevey established the Code in 2003. His successors have continued it.

Under the Executive Order, the Governor may consult with the Panel concerning whether a proposed course of action as executive is in compliance with the code. When requested by the Chief Counsel or Ethics Liaison Officer of the Governor, the Advisory Ethics Panel shall issue a written determination, which shall be made publicly available. The Code also provides that if a question is raised concerning the propriety of conduct of the Governor, and the Advisory Ethics Panel was not consulted by the Chief Counsel or the Ethics Liaison Officer prior to the Governor engaging in such conduct, the Advisory Ethics Panel shall have the discretion to review the question and to issue a public determination.

In this matter, in addition to the request from the Governor, Steven Lonegan, a citizen of the State of New Jersey and Mayor of Bogota, has addressed an inquiry to us. Both ask whether a financial or personal relationship between Carla Katz and the Governor may have created an impermissible conflict of interest in the recently concluded labor negotiations between the State and the Communication Workers of America (“CWA”). Ms. Katz is the President of one of seven local unions affiliated with the CWA that represent non-uniformed state workers.

This matter, therefore, does not come before us in a manner contemplated by the Code. The Governor did not seek our counsel concerning his relationship with Ms. Katz prior to start of the labor negotiations; rather, this is a request by the Governor for a review of conduct that has occurred, coupled with a similar request from a member of the general public. Despite the unusual context in these requests have been made, we have chosen to review the question in the exercise of our discretion, as provided in Executive Order 1. We will treat the two inquiries as a request from the Governor that is within our mandatory jurisdiction.

We are an advisory, not an investigative, body. Accordingly, we do not have the power to compel testimony or the production of documents. Consistent, however, with the nature of the Inquiry, we have undertaken to ascertain the facts that are necessary to determine the Inquiry. Specifically, we interviewed the Governor and his private counsel, as well as Thomas Shea, the Governor’s Chief of Staff, Angelo Genova, an attorney in private practice who served as the State’s lead negotiator in the CWA negotiations, David Beckett, the Director of the state’s Office of Employee Relations, and James McGovern, a

partner of Mr. Genova who assisted in the negotiations. The Panel also interviewed Carla Katz, and Mr. O'Hern also conducted a telephone interview with Steven Weismann, Esq. the attorney member of the CWA Bargaining Team. In addition to conducting interviews, we reviewed confidential contemporaneous documents relating to the progress of the CWA negotiations, personal e mails of the Governor and Mr. Shea, and public pronouncements of the Governor as well as other documents relating to the CWA negotiations. We also reviewed a confidential narrative of the CWA negotiations prepared by Mr. Genova. Finally, we reviewed a supplementary letter from Mayor Lonegan and a large number of press clippings referencing the conflict issue or the relationship.

For the reasons set forth more fully in our Report, we have reached the following conclusions:

1. Prior to the time that he began serving as Governor, Governor Corzine was involved in a personal relationship with Ms. Katz. He determined in November 2004 to end a phase of their relationship, and agreed to make significant payments to her. Some of those payments were to be made in future years. In August 2005, again prior to his becoming Governor, Governor Corzine determined to accelerate his financial agreement with Ms. Katz. Accordingly, no payments have been made to Ms. Katz while Governor Corzine has been in office, and no payments remain to be made. Because all payments were made to Ms. Katz prior to the Governor's taking office, the payments to Ms. Katz do not implicate the Governor's Code of Conduct.
2. Nonetheless, it is clear to us that the significant sums paid to Ms. Katz signify that the Governor's relationship with Ms. Katz was a very close one. It is also undisputed

that, although in a new phase, their friendship continues. Under these circumstances, the nature of their relationship would have presented a conflict with his duties if the Governor had acted in a matter that conferred a “financial benefit” on Ms. Katz or if the Governor had acted to benefit Ms. Katz “in a non-financial way but a matter of great importance.”

3. It is equally clear, however, that the Governor, in his handling of the CWA negotiations, did not allow his relationship with Ms. Katz to compromise his judgment. Mr. Genova advised the Governor and his staff at the outset of the bargaining process to expect to be contacted by union officials informally, and instructed them not to engage in discussions with unofficial contacts, but to insist that all bargaining be done through the State’s representatives. The State negotiators attest that the Governor adhered scrupulously to this instruction. Furthermore, the State negotiators point out that the ultimate contract agreement conformed remarkably closely with their goals at the outset of negotiations; the Governor never deviated from the initial goals identified by the State. Furthermore, the lead negotiating team on behalf of the CWA consisted of a regional and state CWA representatives plus counsel to the CWA. Ms. Katz, as the President of one of seven CWA locals, played a supporting role, as did the other local presidents. Although the Governor reported to his negotiating team that he had been contacted by Ms. Katz, among others, during the talks, he never requested that they modify the State’s bargaining position as a consequence of those contacts. He typically referred inquiries to the negotiating team or to his Chief of Staff. In fact, as the negotiations

intensified in February 2007, the Governor ceased communications with Ms. Katz and referred her to Mr. Shea. We reviewed e mails from the Governor and from Mr. Shea that are consistent with this account which we did not retain. There was no conflict of interest in the Governor's handling of the CWA labor negotiation.

4. We do caution, however, that close familial or associational relationships may easily lead to an appearance of conflicting interests, when those close associates of the Governor become involved in matters touching upon his official duties. The Governor has a non-delegable duty to govern; officials such as Ms. Katz also have a duty to act on behalf of their constituents or employers. Both have a duty to assure that their judgment on matters of state policy is unimpaired by their personal regard for one another. In such circumstances, any informal contact between Ms. Katz and the Governor relating to the ongoing union negotiations should have been – and ultimately was – strongly discouraged. We recommend that in the future, individuals having a close personal relationship with the Governor and an interest in public issues involving the Governor be referred from the outset to a designated and predetermined point of contact within the Governor's office – preferably his Chief Counsel or Ethics Liaison officer, if they are different people – who will hear his or her views but also remind him or her of the Governor's oft-stated priority that State officials avoid even the appearance of a conflict of interest. We recognize that such a policy may seem awkward or even strain relationships. It is, however, in our view, the only way to strike a balance between the Governor's non-delegable duty to govern and his right, even as a public figure, to a private life.

## **II. THE RELEVANT PROVISIONS OF THE CODE**

The Governor's Code of Conduct was recommended by a panel of former Counsel to New Jersey Governors who had experience in addressing issues of gubernatorial conduct. The Code recognizes that a Governor occupies a unique position as head of state, representative head of a political party and representative of public interests of the State and its citizens. The Code covers varied topics; including solicitation and receipt of gifts; attendance at events and functions; advocating the interests of public and private groups other than the State; travel and lodging; acting as head of a political party; conflicts of interest and appearances of conflicts; use of state information, property and funds; special casino, financial disclosure and related considerations; and use of state information, property and funds. For purposes of this inquiry, we are concerned with the Conflict of Interest provisions and the Appearance provision. There are seven subsections that define conflicts (the Conflict Provisions) and an eighth provision that concerns appearances of conflicts. (the Appearance Provision).

The text of Article III §(F)(1) is :

(1) The Governor shall not engage in conduct that constitutes a conflict of interest. A conflict of interest is defined as use by the Governor of the authority of his office or of any confidential information received through his holding public office for the private pecuniary benefit of himself, a member of his immediate family, or a business in which he or a member of his immediate family has a financial interest..... "Conflict" does not include:

(a) an action having a de minimis economic impact, or

- (b) an action that affects to the same degree the Governor and members of the general public, or
  - (c) a circumstance where the Governor's action may impact the Governor or members of his immediate family in a manner different in degree than members of the general public where the action reasonably cannot be avoided under the doctrine of necessity, and where the action is preceded by public disclosure of the interrelationship of the proposed action and the personal interest of the Governor or his immediate family.
- (2) The Governor shall not solicit or accept anything of monetary value, including a gift, loan, political contribution, reward, or promise of future employment based on any understanding of the Governor that the vote, official action, or judgment of the Governor would be influenced thereby.
  - (3) The Governor shall not have any direct or indirect interest, financial or otherwise, or engage in any business or transaction or professional activity that is in substantial conflict with the proper discharge of the Governor's duties in the public interest.
  - (4) The Governor shall not act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment except as herein provided.
  - (5) The Governor shall not either personally or through any person or entity undertake or execute any contract, agreement, sale or purchase valued at \$25.00 or more with any State agency, except as otherwise provided in the Conflicts of Interest Law and approved by the Advisory Ethics Panel.
  - (6) The Governor shall not undertake any outside employment; or any service, whether compensated or not, which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties.
  - (7) The Governor shall not accept any personal gift, favor, service or other thing of value under circumstances from which

the Governor knows or has reason to believe that such personal gift, favor, service or other thing of value is offered with the intent to unduly influence him in the performance of his public duties or under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the employee in the discharge of the employee's official duties.

(8) The Governor shall not knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his official duties that he may be engaged in conduct inconsistent with this Code.

Our disposition of this matter depends on the interplay of the Code with two factors: the Governor's relationship with Ms. Katz, and the progress of the CWA labor negotiations.

### **III. THE GOVERNOR'S RELATIONSHIP WITH MS. KATZ**

The Governor is a public figure, but he is entitled to a private life. This is particularly so when questions are raised concerning his conduct prior to becoming Governor. In this case, we were advised by the private counsel for the Governor that he was asked to assist the then-Senator Corzine in November 2004 in making certain financial arrangements with respect to Ms. Katz. These arrangements called for payments to be made to her at that time and in future years. In August 2005, Governor Corzine's private counsel assisted the then-Senator in adjusting the arrangements so that all payments due to Ms. Katz were accelerated. We are informed that no payments to Ms. Katz have been made since Governor Corzine took office, and that no future payments remain to be made. The Governor confirmed these representations, as did Ms. Katz and her private counsel. The

Governor and his private counsel, and Ms. Katz and her private counsel, declined to answer questions relating to the specific terms of the arrangement, such as whether they were memorialized in a formal instrument, or whether there is a written or verbal requirement that the terms remain confidential.

Because the financial arrangements precede the Governor's term of office, and the Code relates to the Governor's conduct as Governor, the fact of the making of the arrangements does not implicate the Code. The specifics of the arrangements would be relevant if the dollar amounts and other terms were necessary to determine whether the Governor had a "close relationship" or "close ties" with Ms. Katz that would implicate the Conflict Provisions of the Code. In the absence of information to the contrary, we take their "close relationship" and "close ties" as a given. In other words, whether the financial benefits conferred were in six-figures or higher, and regardless of the legal instrument used to formalize them, it is perfectly clear that Ms. Katz had "close ties" or a "close personal relationship" with the Governor as that would ordinarily be understood in assessing whether a conflict of interest was present in a given situation. The nature of their relationship, then, raises two questions: whether there was an actual conflict of interest created by the way that the Governor carried out his duties during the CWA negotiations; and whether the way in which the Governor handled the CWA negotiations created an appearance of a conflict of interest.

#### **IV. THE CONDUCT OF THE CWA NEGOTIATIONS**

The bargaining that occurred between the State and representatives of the CWA took place between September 20, 2006 and February 21, 2007. The overall policy and direction of the negotiations and the priorities set to be achieved in the bargaining were established by the Governor in combination with his senior staff. The charge to execute on these policies and initiatives was vested in a negotiating team comprising three key negotiators: Angelo Genova, a private attorney, as lead negotiator, David Beckett, Director of the Office of Employee Relations, and James J. McGovern, III, a Partner at Genova, Burns & Vernoia, outside labor counsel. Mr. Genova, in particular, related to us his thirty years of experience in public and private labor negotiations. In addition to these three lead negotiators, persons were identified from the various departments throughout State Government who are responsible for labor relations matters in their particular areas.

The Governor publicly announced his intention to engage in collective negotiations with State workers on a parallel track to other public initiatives for property tax reform. In his Special Address to the Legislature on July 28, 2006, Governor Corzine stated his commitment to achieving pension and health benefits reform through the collective bargaining process: “We ... have a collective bargaining process that I respect, and it is through that process that these challenging reforms [to the pension and health benefits systems] should be addressed. To that end, I am prepared to start the next round of contract negotiations with State employees as early as the middle of September.” Consequently, the Governor directed both outside counsel and support staff to prepare and develop priorities and strategies to effect this result.

Given the Governor's desire to have bargaining commence as part of this plan, an initial session with the CWA was scheduled and conducted on September 20, 2006. Internally, the State working group for the development of negotiation strategies included the Governor, the State Treasurer, representatives from Treasury, the Governor's Senior Staff, the Office of the Governor's Counsel, the Governor's Office of Employee Relations, and outside labor counsel. The group included policy advisors, labor relations professionals, fiscal experts and other experts.

The State's internal positions, priorities and agenda for a contract culminated in proposals submitted by the State on November 8, 2006. Some proposals were presented in writing while others were presented orally across the bargaining table to the full CWA Committee. We have reviewed the proposals submitted by the State on November 8, 2006. Allowing for the normal give and take involved in the collective bargaining process, they are consistent with the results achieved in the February 21, 2007 tentative agreement. These proposals set the parameters and the objectives for the bargaining against which the State would measure its success in executing on its agenda.

The Communication Workers of America is organized internationally. Its International President operates out of the Union's headquarters in Washington, D.C. The Union is organized into several regional areas throughout the country. The New York/New Jersey area is headed by CWA Regional Vice President Christopher Shelton. Mr. Shelton has jurisdiction and oversight responsibilities for Communication Workers of America Locals throughout New Jersey, in addition to those in New York and other venues.

Accordingly, Mr. Shelton is subject to election by the members of CWA located within his area of jurisdiction.

The Communication Workers of America is composed of numerous Locals throughout the country. There are seven (7) Locals which represent State non-uniformed employees employed by the State of New Jersey. The seven Locals each have their own Local President. Among these seven Locals, Local 1034 is headed by President Carla Katz. Her Local is the largest CWA Local, representing approximately 8,000 State workers employed by the State of New Jersey. The seven Locals in the aggregate represent approximately 40,000 State workers employed in the varied State Departments throughout the State Government.

Given the CWA's structure, the tradition has been that the State of New Jersey bargains with all seven Local Presidents collectively through their lead bargaining representatives. Accordingly, the lead negotiators for the CWA were Christopher Shelton, Area Vice President, Robert Masters, Regional Political Director of the CWA, and Steven Weissman, Esq., of Weissman & Mintz, LLC, counsel to the CWA. This group acted throughout the negotiations on behalf of the seven Local Presidents, including Ms. Katz. Local Presidents attended the bargaining sessions, and also participated in the bargaining in a limited manner. According to Mr. Genova, Mr. McGovern, and Ms. Katz, this bargaining structure was consistent with the way bargaining had been conducted in prior negotiations.

It is a common experience in collective bargaining that participants attempt to "end-run" the process by approaching interested parties informally. At the outset of the State's process, Mr. Genova cautioned the entire State team, including the Governor, of this

likelihood. Mr. Genova further instructed the State team, including the Governor, to try to avoid such informal discussions, and to redirect the caller to the formal bargaining process. According to Mr. Genova, he instructed all involved that “[t]o the extent a Union official would seek to bargain, and you find yourself in a position where such an exchange occurs, you should undertake efforts to divert that Union official to the bargaining table and back to me as the lead negotiator as best you can ....” The Governor recalled that this cautionary instruction was “drilled into me” by the negotiating team.

After the parties exchanged proposals in early November 2006, bargaining proceeded simultaneously with the debate in the Legislature over property tax reform initiatives. Efforts were underway in the Legislature through Joint Legislative Committees to propose a variety of reforms designed to effect structural change and reductions in property taxes. The activities of those committees resulted in a number of recommendations after their deliberations in November and December of 2006. At the same time, the State negotiating team was pursuing similar initiatives involving terms and conditions of employment at the bargaining table with the CWA. According to the State negotiators, the CWA’s attention clearly was directed at this point more to the Legislative process than to the bargaining that was taking place. In fact, the CWA expressed across the table directly, through its lead negotiator Christopher Shelton, early in the negotiations, the union’s concern that matters involving changes to employee pensions and health insurance not be the province of Legislative change but be negotiated in collective bargaining. This position was reiterated by counsel to the CWA, Steven Weissman. As reflected in his prior public statements, the Governor shared these views.

It was the impression of State negotiators that little progress was made with the CWA in November and early December 2006 because the union was very much invested in foreclosing these issues from becoming the subject of Legislative change. According to Mr. Genova, “the CWA and the other Labor Organizations embarked on a program to apply pressure on the Legislature to avoid dramatic change in the areas of pension and health insurance by way of Legislation.” It was also their impression in November and December 2006 that despite public pronouncements to the contrary, there were not enough votes to achieve legislative change in the areas of health insurance and pensions.

In interviews with us, State officials stated that although the health insurance and pension reforms advanced in the proposed legislation were more ambitious than those actually achieved in the tentative agreement of February 21, 2007, legislation was not a realistic option. Officials stated firmly that it was always uncertain whether there were sufficient votes to enable passage, or, if there were, whether the legislative cost of gaining passage would have been prohibitive. After discussion internally, these circumstances, combined with the Governor’s consistent and publicly stated intention to employ collective bargaining as a vehicle to address employee issues and terms and conditions of employment as a matter of principle, led the Governor to choose in early December to pursue employee health insurance reform and structural changes to employee pensions through collective negotiations.

On December 7, 2006, Governor Corzine wrote to Senator Codey and Assemblyman Roberts asking them to withdraw consideration of bills related to pension and health benefit reforms. Some legislators complained that this request by the Governor undermined

property tax reform efforts. Some persons questioned whether Carla Katz may have influenced the Governor to write the letter.

No one on the State team was surprised by the Governor's announcement. No one, including the Governor, recalled Ms. Katz having raised the issue apart from her bargaining team. Accordingly, the State team sought to achieve at the bargaining table a number of the reforms that had been reflected in proposed Legislation or in the Joint Legislative Committee Reports. According to Mr. Genova, "this created a significant challenge for the State's negotiators. We embraced it wholeheartedly because a number of these proposed legislative changes were the same agenda adopted for our bargaining by the Governor and our working group in October 2006."

After choosing the collective negotiations process as the vehicle to achieve the State's goals, State negotiators used the impending Budget Message of the Governor, scheduled for February 22, 2007, as a benchmark to drive discussions. Should the parties fail to reach an agreement, each side understood that the Governor might well change course and encourage the legislature in his budget message to revisit legislative options.

The bargaining intensified with a series of sessions which commenced on February 6, 2007. These sessions continued from that date through February 21, 2007, when, in the early morning hours, a tentative agreement was reached by the parties.

Throughout the approximately 2-1/2 week period, the parties engaged in intense bargaining at a variety of locations. The bargaining over key issues took place between each side's lead negotiators. The key economic issues were a matter of negotiation directly between Messrs. Shelton, Masters and Weissman, and Messrs. Genova, McGovern, and

Beckett. The role that the seven Local Presidents played in interfacing with the State's lead negotiators was a supporting role; they dealt extensively with Mr. McGovern on contract language issues relating to their specific locals. State negotiators recalled having met with virtually all of the seven Local Presidents, including Local President Carla Katz, to discuss issues specific to each of them.

State negotiators recalled that with respect to the negotiation of wages, health insurance and pension reform, the CWA's lead negotiators carried their union's collective message. Likewise, the lead negotiators on behalf of the State advanced the State's position in the negotiation. Any changes to the State's position were based, according to the State team, on regular conversations with the Governor, his Deputy Chief of Staff, Maggie Moran, and the State Treasurer and his staff, leading to consensus. In addition, the State's lead negotiators interacted regularly with representatives of the Division of Pensions and Benefits.

As part of the negotiating process, the parties broke into working groups on two occasions, December 21, 2006, and January 12, 2007, to address the details of their respective health benefits and pensions proposals. On January 16, 2007, the Union made a health care presentation which sought to have the State pursue its health care cost-sharing initiatives in other ways, suggesting that cost savings could be achieved by other changes which would not involve employees making payments towards the cost of their health insurance. That presentation was led by Hetty Rosenstein, President of CWA Local 1037, along with the CWA's outside consultant, Siegel & Company. The Pension Subcommittee, which met with representatives of Treasury on January 12, 2007, addressed

concerns particularly with regard to the governance of the State Investment Council. That break-out meeting was led by CWA Local President, James Marketti, Local 1032, and Rae Roeder, President of CWA Local 1033. The health benefits task force met with representatives of the State on December 21, 2006, and was led by CWA Local President Hetty Rosenstein. Local 1034 President Carla Katz did not play a leading role in the principal substantive negotiations or in the subcommittee meetings that occurred during negotiations.

The parties executed a tentative agreement in the early morning hours of February 21, 2007. That Tentative Agreement included, in addition to its economic items, approximately twenty-six (26) additional language items which had been initialed by the parties during the course of the bargaining.

The key economic terms of the Agreement provided for a four-year contract, with general wage increases across the board to all members of the seven CWA Locals and the entire bargaining unit of 3% in year one (July 1, 2007); 3% in year two (July 1, 2008); 3.5% in year three (July 1, 2009); and 3.5% in year four (July 1, 2010). In consideration for this wage increase (which in the State negotiators' view paralleled or was well within the range of public sector settlements in the region and in the State), the State secured, in its view, significant concessions. First, this Tentative Agreement introduces for the first time State worker cost-sharing for health insurance. The Agreement, once ratified, provides that employees will pay 1.5% of their annual base salary as a contribution to be used for the express purpose of offsetting the cost of health insurance provided by the State. This provision is unprecedented in the State of New Jersey, introducing for the first time for State

employees health care cost-sharing. It is intended by State negotiators to become a model to be cited by public employers throughout the State in their respective bargaining with local employees, teachers and county employees, as well as other State workers. In addition, the Tentative Agreement<sup>1</sup> provides for increases to brand name prescription drugs to encourage use of generic drugs, as well as increases in co-pays for doctor visits. The Tentative Agreement further provides for an increase in employee contributions to pensions, and increases the current retirement eligibility age from age 55 to age 60 for new employees. It further provides for the elimination of the current traditional health care plan, the consolidation of HMO's, and implementation of PPO to be utilized prospectively.

The lead negotiators for the CWA throughout were Christopher Shelton, Robert Masters and Steven Weissman. These three were the most significant players with authority to reach an agreement. In fact, Mr. Shelton had the authority to execute the Tentative Agreement on behalf of all seven Local Presidents. Ms. Katz was not identified in any way as special, or as among the CWA's lead negotiators.

On several occasions during the process, State negotiators recalled, the Governor during the course of a conversation would mention the fact that Ms. Katz had contacted him. When he did so, he communicated that Ms. Katz professed a particular view on a matter, typically about the pace or the seriousness of the bargaining process as opposed to the substance of a bargaining proposal. In those exchanges, the Governor's comments simply shared information as to what she said, and were not about advancing her unique interests, if

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<sup>1</sup> The Panel is informed that the Tentative Agreement has been ratified since the Panel undertook the Inquiry, but for convenience we will continue to refer to it as the Tentative Agreement.

any. These mentions of Ms. Katz always came up in conversations about other negotiation matters. State negotiators, as well as the Governor himself, do not recall any conversation with the Governor when the sole topic of conversation was what Ms. Katz had said.

At no time in any conversation with members of his team did the Governor employ words which communicated that he was trying to steer the team in a particular direction at the request of Ms. Katz. To the extent he did advance a particular position on a bargaining issue, according to the State team, his direction was consistent with the parameters set by the working group at the commencement of the bargaining in October 2006. According to Mr. Genova, "I never observed during the key period of February 6, 2007, through February 21, 2007, that he used words which communicated a desire to direct or manipulate me in a fashion that was designed to achieve a particular goal which he identified as belonging to Ms. Katz. And to the extent I had come to learn of her own Local's agenda in bargaining (for example, alternative work schedules, representation of Commerce and EDA employees, resistance to health insurance cost-sharing), the Governor did not use words with me suggesting that the State modify its positions on these issues because Ms. Katz may have sought these items." We corroborated this observation in personal e mails of the Governor that follow to the letter Mr. Genova's instruction that bargaining be conducted through the formal process. During the critical bargaining period, the Governor refused to communicate with Ms. Katz, and referred her to Mr. Shea, who told her that the Governor was "under strict instructions" not to discuss the union negotiations with her.

The Panel interviewed James J. McGovern, III. He was a key player on the State's negotiating team. He had served as the lead negotiator for the McGreevey Administration.

He said that then as well as now “we did not negotiate [the major issues] with union Presidents.” He said that “end runs” around the bargaining table are “common,” but affirmed that “nothing was ever communicated to me” from any higher source.

He was skeptical that the Legislature could have achieved the changes in health and pension benefits. In his experience, “if the unions are against it,” the Bill would not pass. He added that Ms. Katz’s specific major issues were the “flex-time” issue and the possible transfer of Commerce employees whom she represented to EDA. He said that there were “no positive results” for Local 1034 on these issues.

Mr. O’Hern interviewed Mr. David Beckett, Director of the Governor’s Office of Employee Relations, one of the three lead negotiators. He confirmed Mr. Genova’s description of the bargaining positions, “the [union] Presidents were not the lead negotiators.” He confirmed he received no direction from the Governor or the Chief of Staff concerning negotiating positions regarding stated goals. He emphasized that the “Governor was fixed on the budget cycle.” He wanted to be able to present a budget that would forecast actual expectations. With respect to the role of Carla Katz, he said that two of her main issues were flex-time, or flexible work schedules, and the effect on labor unions of the transition of the Department of Commerce to the EDA. Concerning flex-time, the departments “pushed back” very strongly because of managerial prerogatives. Beckett said that no improvements were made in these areas favoring labor. He reaffirmed that once they were “in the middle of it” concerning the core issues of health care cost sharing and pension changes, the negotiations were almost exclusively outside the province of any union local president. He said that the Governor made “it fairly clear to me” that the history of

labor negotiations had been to enhance benefits and that he wanted to adopt more business-like private sector approaches.

The Panel interviewed Thomas Shea, the Governor's Chief of Staff. He had been with Senator Corzine in Washington, D.C. and came to know Ms. Katz at that time. He said he did not need Mr. Genova to tell him that overtures might be made toward the Governor, and that caution need be taken. He informed us that as the Governor's gatekeeper, he informed Ms. Katz that the Governor "is under strict instructions" not to discuss these matters. Concerning the Governor's decision to seek pension and health benefit reforms in the bargaining process, he said that the Governor made it "crystal clear" in his July 2006 property tax speech that it was his goal to achieve the health and pension changes in the bargaining process. Once it came down to the "nitty gritty," extra caution was taken to avoid direct contact on such matters with Carla Katz. Shea too, was skeptical that the 41 votes in the Assembly and the 21 votes in the Senate could be found. He thought that barrier would be a huge hurdle to cross despite predictions to the contrary.

The Panel interviewed Governor Corzine at Drumthwacket on Wednesday April 11, 2007. The Governor said that he was briefed at the outset about the bargaining structure, knew the International President of the CWA, and did nothing to treat Carla Katz's union in any manner different from other units. He described his commitment, expressed early on in his public statements, to seek changes in health benefits and pension provisions through the collective bargaining process that were part of his entire approach to employee relations. Public sector benefits needed to be more on par with the private sector. Concerning the decision to negotiate the issues at the bargaining table, in addition to skepticism about

legislative change, he said that it is better to bargain with a variety of cards in your hand than with the one money card. It was a “constant theme” to be careful of individual approaches and to “try to deflect” them. Several times in the fall, Carla Katz complained to him of the slow pace of the bargaining, but made no substantive overtures and none were conveyed by him to the bargaining team. He described that it is not easy to disengage from a relationship that is both personal and political. The Governor recalls that as the pace of negotiations intensified in February, he met personally with the CWA’s lead negotiators and affirmed he wanted his team to “get the job done” at the table.<sup>2</sup>

The Panel interviewed Carla Katz. She described her role with CWA Local 1034, beginning as union organizer and rising through the ranks to senior staff representative and to President of Local 1034. Consistent with her role as President of a local with over 120 contracts to manage, she has participated in many contract negotiations. She has sat at the “State table” twice. She had participated in the last contract negotiations during the McGreevey administration.

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<sup>2</sup>The Panel also received a submission from Mayor Steven Lonegan, dated April 18, 2007, containing newspaper articles from various publications across the State. In his submission, Mayor Lonegan cites N.J.S.A. 52:13D-23(e)(4) which provides that “No State officer or employee or special State employee should act in his official capacity in any matter wherein he has a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity and independence of judgment.” The State conflict of interest law further provides that “No State officer or employee or special State employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violating his trust as a State officer or employee or special State officer or employee.” N.J.S.A. 52:13D-23(e)(7). Mayor Lonegan further cites the Legislative Code of Ethics provision 2:1(a) which declares that “No member of the Legislature shall undertake any employment or act in any way that impairs the objectivity or independence of judgment of the member of the Legislature in the exercise of his or her duties or is violating the public trust by an elected official or which creates a justifiable impression among the public that such trust is being violated. Finally, Mayor Lonegan states that “Executive Order No. 1, the Governor’s Code of Conduct, the State conflict of interest law, and the Legislative Code of Ethics all suggest that the primary concerns in determining the existence of a conflict of interest is the perception of the public. As the voluminous number of attached articles and editorials make clear, the public has the impression that the financial arrangement between the Governor and Ms. Katz places the Governor in a “conflict” with respect to negotiations with the labor union Ms. Katz heads.”

Her description of the negotiating process paralleled that of other witnesses. She described the pyramid –shaped negotiating team with the triumvirate from the national CWA union at the top, Chris Shelton, Bob Masters, and the attorney, Steve Weissman. She explained that this bargaining structure was appropriate because the national union “owned the contract” with the State.

She seemed mildly amused by, and rejected unequivocally, the speculation that she would be sitting at the bargaining table negotiating head to head with the Governor. Her role as President of the Local was first to get the views of her members through surveys and discussion and report those interests to the CWA Team that would formulate the overall bargaining strategy. She described the process as a “consensus effort” rather than an individual effort. She described her role as “essentially the same as all of the other members of the team.” Throughout the process, she continued to filter information back to her 17 member board and 550 shop stewards, and to solicit their input. Her focus throughout the process was on: opposing any change to the retirement age; opposing increased worker contributions to pension system without a corresponding state contribution; opposing employee contribution to health benefits; and advocating for worker friendly programs such as flex-time for workers, especially women.

She recalled the negotiations beginning in the fall of 2006 and meeting “very infrequently.” They worked on language issues but very little substantive bargaining occurred and she acknowledged being frustrated by the pace. She acknowledged that a principal focus of the CWA in the early stages of negotiations was to oppose legislation that would have changed the pension and health benefits rules and raised the retirement age. She

stated that the union did not oppose other aspects of the proposed legislation, such as the prohibition of “tacking” pensions based on multiple public jobs. Like others whom we interviewed she was skeptical that the votes could have been found in both houses of the Legislature for mandating the changes.

She stated that it is not uncommon that a participant in labor negotiations would sit down with the other side “outside of the process” and described such contacts with members of the State team as “not at all unusual.” She stated that she and the Governor have remained friends and acknowledged that they had contact through the early stages of the negotiations. Contact was by both e mail and telephone. Although she could not identify how frequently they had contact, she stated that it was not daily, but more than once per month. Ms. Katz insisted that most of their discussions did not involve the labor negotiations. When they discussed the negotiations, she recalled, they did so in “broad strokes” usually concerning the process as a whole. Ms. Katz stated that she had discussed in “general terms” with the Governor her opposition to the legislation that would have mandated cuts in health benefits and changed pension provisions. She denied that she had asked the Governor to write the letter asking that the Pension and Health Bill be withdrawn from legislative consideration. It is her impression that the CWA Team made that request of the Governor, and that the request was consistent with the Governor’s stated belief that such issues should be negotiated.

Ms. Katz recalled that she and the Governor kept their discussions general because they were both “conscious of the situation,” meaning the problem of their personal relationship intruding on their public sector obligations. She recalled that the issue of her

role in labor negotiations with Governor Corzine had been raised by Mr. Forrester in the 2005 gubernatorial campaign. She said that “we knew we were under heightened scrutiny.”

Ms. Katz confirmed that there was a point at which “we stopped talking completely.” Negotiations had accelerated in February in response to the Governor’s request for a contract that he could include in his budget message. During this period of intense negotiation, the Governor did not return her calls or e mail contacts. She recalled that she was told after the fact by Tom Shea, the Governor’s Chief of Staff, that the State Team had told the Governor to cease to return calls or have any other communications with her.

She disputed that her relationship with the Governor had interfered with her ability to represent her Local. Her issues had always been the same. She expressed disapproval of what she considered a more favorable settlement made by the State with the teachers’ union, although she acknowledged that local boards of education are free to bargain for teachers’ contributions to health benefits. She stated that she decided to recommend to her local that it oppose the Tentative Agreement because the teachers’ union had achieved a better agreement, because the Tentative Agreement failed to address issues such as flex-time and the fate of Commerce Commission employees, and because the existing contract did not expire until June 30<sup>th</sup>, leaving ample time for further negotiations.

Mr. O’Hern conducted a telephone interview with Steve Weissman, Esq., the attorney member of the CWA Bargaining Team. He described the overall structure of the CWA Bargaining Team as including himself and Chris Shelton and Bob Masters being the lead negotiators, but always acting as part of what he called the “Bargaining Committee” that included the seven presidents representing the locals. All decision making was made by

the entire committee, usually by consensus but when necessary by per capita vote from the locals. He stated that “all members” and per force Carla Katz, were treated in “similar fashion.” Although Shelton, Masters and he were the negotiators most directly involved with the State team, he reiterated that all decisions had to be brought back to the “full committee”. He affirmed that a condition to entering the early negotiations with the State was a commitment from the State that it would negotiate in good faith changes in health and pension provisions that were already being discussed in the Legislature. In early November, the CWA team presented proposals addressing the pension and health issues which he believed were appropriately to be addressed at the bargaining table. After the Legislature drafted its Bills proposing to effect changes, he found many items in the Bills that were “at the table”. He said CWA wrote to Legislative leadership and to the Governor’s office arguing that “our expectation is that you will be bargaining on these things.” To his knowledge, all contact with the State or the Governor was “done organizationally” through the national union. As did others, he thought that it would be a “heavy lift” for the Legislature to have finally passed the Bills.

In summary, our review of relevant documents and interviews with the principals supports the following findings: 1) The Tentative Agreement was negotiated in virtually all significant particulars by the State’s three lead negotiators and the CWA’s three lead negotiators, Messrs. Shelton, Weissman and Masters. 2) Ms. Katz did not play a key role in any direct way with Mr. Genova, Mr. McGovern or Mr. Beckett in the bargaining of the central elements of the Tentative Agreement. 3) No terms of the Tentative Agreement were negotiated between the Governor and Ms. Katz. 4) The Governor’s decision to ask that

legislation bearing upon pension and health benefits be withdrawn was based on his long-standing belief that such issues should be negotiated, coupled with skepticism about the likelihood of legislative passage and the possible legislative cost involved in securing the necessary votes. 5) The Governor and Ms.Katz did discuss the progress of the negotiations in personal communications in the early stages, but the Governor ceased communicating with her as the negotiations intensified. 6) The ultimate terms reached in the Tentative Agreement were consistent with the goals outlined by the administration at the outset of the talks.

#### **IV.APPLICATION OF THE CODE'S CONFLICTS PROVISIONS**

Our review of relevant documents and interviews with the principals supports the conclusion that no actual conflict of interest arising from the Governor's personal relationship with Ms. Katz infected the bargaining process. As noted, the agreement was negotiated in virtually all particulars by the State's three lead negotiators and the CWA's three lead negotiators, Messrs. Shelton, Weissman and Masters. Ms. Katz did not play a key role in any direct way with Mr. Genova, Mr. McGovern or Mr. Beckett in the bargaining of the central elements of the Tentative Agreement. Mr. Genova notes that "[i]n fact, when we did address issues unique to Ms. Katz (i.e. representation of EDA and Commerce employees, as well as alternative work schedule proposals), Ms. Katz was treated no differently than the other Local Presidents. Indeed, she probably achieved less by way of issues unique to her bargaining unit than others."

As a threshold matter, we reject any suggestion that the existence of the Governor's prior financial arrangements, and his continuing friendship with Ms. Katz, should disqualify the Governor from acting in any matter in which Ms. Katz may be involved. There are three sections of the Code that are relevant to the analysis. When the Governor acts in matters involving Ms. Katz there is no "private pecuniary benefit" to be conferred on a member of his family in violation of Article III §(F)(1). He has no "direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment" as proscribed by Article III §(F)(4). The question under Article III §(F)(3) is whether the past conferral of past financial benefits on Ms. Katz constitutes the possession by the Governor of a "direct or indirect interest, financial or otherwise... that is in substantial conflict with the proper discharge of the Governor's duties." Because the financial arrangements have been fully satisfied, the Governor has no financial interest that is in substantial conflict with his duties.

There remains, however, the question of whether he has an interest other than financial that is in substantial conflict with the performance of his duties. Although it is doubtful that a court would seek to apply common law principles to disqualify a Governor from taking an action, the principles are instructive and provide guidance. In Wyzykowski v. Rizas, 132 N.J. 509, 522 (1993), the New Jersey Supreme Court outlined the four circumstances in which a conflict of interest will be found:

- (1) "Direct pecuniary interests," when an official votes on a matter benefiting the official's own property or affording a direct financial gain;
- (2) "Indirect pecuniary interests," when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
- (3) "Direct personal interest," when an

official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance . . . ; [and] (4) "Indirect Personal Interest," when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.

[Id. at 525-26 (citing Michael A. Pane, Conflict of Interest: Sometimes a Confusing Maze, 2 New Jersey Municipalities 8-9 (March 1980)).]

The relevant provisions are subsections (2) and (3). We need not debate the definition of the relationship between the Governor and Ms. Katz, whether it was a “family-type” relationship as defined in the rules of court, or a “dating relationship” as defined in other governmental settlements. They were either “close friends” or persons “closely tied.” That relationship would have presented a conflict with his duties if the Governor had acted in a matter that conferred a “financial benefit” on Ms. Katz or had the Governor acted to benefit Ms. Katz “in a non-financial way but a matter of great importance.”

In evaluating the question of whether a “substantial conflict” is created by the relationship, we have considered that Governor Corzine was under a constitutional obligation as head of the Executive Branch not to abdicate responsibility for the overall budget impact of labor negotiations. Even when a direct financial benefit is conferred on family members, “different in degree than members of the general public,” there is not a conflict of interest when “the action reasonably cannot be avoided under the doctrine of necessity, and where the action is preceded by public disclosure of the interrelationship of the proposed action and the personal interest of the Governor or his immediate family.” Although Ms. Katz is not a member of the Governor’s “immediate family” the principle is the same.

Even if Governor Corzine were thought to have a “personal interest” in Ms. Katz’s success as a labor negotiator, we are satisfied that no benefit was conferred on Ms. Katz’s union that could be considered “different in degree” from the benefit conferred on other unions. Under Article III §(F)(1)(c) of the Code, had benefits been conferred on Ms. Katz’s union that were “different in degree” from those conferred on other unions, the Governor could have disclosed the benefit and the necessity for the action .

Thus, under the Code, the Governor did not have an interest that was in conflict with his official duties unless he were to act in matter that conferred on Ms. Katz or her union a benefit that was different in degree from the benefits received by other unions. Our review of the course of the CWA negotiations leads us to conclude that no actual conflict of interest infected either the negotiations or the Tentative Agreement that resulted from them. No term of the Tentative Agreement was negotiated between Ms. Katz and the Governor; the State negotiations were led by an accomplished team of labor lawyers, while the CWA negotiations were conducted by representatives of the national and regional union on behalf of the local chapters, including Ms. Katz’s local. The ultimate results of the negotiations were consistent with the direction outlined by the state at the outset. The Tentative Agreement was, in our view, the product of a typical, hard-fought labor negotiation.

#### **V. APPLICATION OF THE APPEARANCE OF CONFLICT STANDARD**

The Code states:

The Governor shall not knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public

having knowledge of his official duties that he may be engaged in conduct inconsistent with this Code.

The issue of how to avoid the appearance of a conflict of interest when the exercise of a public official's duties involves a family member or close associate has arisen repeatedly in recent years, in all branches of government. It is likely to recur. It has caused public officials great embarrassment, and cost some of them their jobs. It is a particularly difficult issue for a Governor; were Jon S. Corzine a cabinet officer, division director or administrative law judge, he might choose to disqualify himself in any matter in which Ms. Katz appeared. Particularly in matters of great public importance, such as the State's relationship with its unionized employees, the Governor does not have that option. He holds a constitutional office with non-delegable responsibilities. He cannot recuse himself from being Governor. Conversely, Ms. Katz is not a member of the Executive Branch of government. She is the representative chosen by constitutional right of the union of state employees to represent them. A useful example would be to consider the example of a brother. If a brother of Jon Corzine had held the post of President of a Local, the law would not disqualify the brother from sitting at the bargaining table and should not disqualify the Governor from the impartial performance of constitutional duties. Similarly, we should not ask Ms. Katz to cease to be who she is because she has had close ties to a person elected Governor.

At the same time, it is imperative in such situations that the parties both establish and respect the boundary between their professional duties and their private relationship. We believe that the correct solution in cases such as this is the one the Governor's office

ultimately reached: no direct communication between the Governor and his close associate relating to the ongoing negotiations, and the designation of a point of contact within the Governor's office to communicate with the close associate. Our advice, moving forward, is that the Governor's friends and other close associates be briefed in advance by the Governor's Counsel or Ethics Liaison Officer that they must have no direct communication with the Governor concerning matters involving the exercise of his duties as Governor in which they have a personal, professional, or pecuniary interest. If the close associate is unable or unwilling to honor such a commitment, then the Governor must cease communicating until the issue is resolved. This is a difficult standard to meet; it is by nature awkward, and may strain relationships. It is never easy to rebuff a friend or loved one. But there are other circumstances in which the law imposes, as an assurance of unimpaired judgment, a bright-line prohibition of communication; both grand and petit jurors, for instance, must observe such a prohibition.

In our view, such a bright-line prohibition is the surest way to preserve the Governor's private life while respecting his public duties. The boundary between public duty and private life must be strictly observed, or it will not be respected. In this case, although it would have been advisable to prohibit all communication with Ms. Katz concerning the labor negotiations from the outset, the Governor did seek to minimize the contacts, never allowed his relationship to affect his judgment, and ultimately reached the proper, if personally awkward, determination to cease communications. Although members of the public or of the media may have perceived an appearance of impropriety in the contract negotiations (see footnote 2), Governor Corzine did not create it. The Governor

took appropriate measures to assure that the appearance standard was met. All negotiations with Ms. Katz or her union were managed by the collective negotiations team that handles all State matters. Any attempts to communicate with him directly were deflected to the bargaining table. Ultimately, the Governor ceased communicating with her. No special benefits were received by Ms. Katz or her CWA local.

## SUMMARY

1. Like any person who has developed a close personal relationship with another, Senator Corzine was free in 2005, whether from obligation, affection or respect, to confer financial benefits on Ms. Katz.
2. The specifics of the financial arrangements with Ms. Katz do not implicate any provisions of the Governor's Code of Conduct.
3. The substantial nature of the financial arrangements demonstrate that the Governor and Ms. Katz had close personal ties.
4. Those close ties do not create an illegal conflict of interest under the Conflict Provisions of the Code that would disqualify the Governor from acting generally in labor relations matters that involve Ms. Katz provided that no special benefits are conferred on Ms. Katz or her union. We have seen nothing to suggest that such special benefits were conferred.
5. There is no appearance of impropriety arising from the Governor's ties with Ms. Katz when the Governor acts across the board on labor relations matters that affect all State employees, including the CWA, provided that the Governor follows the long-established bargaining procedures in State labor relations matter. The Governor sets policy. The bargaining team seeks to achieve that policy. That was done here. After the settlement, the New York Times wrote:

There were many skeptics who felt that Mr. Corzine, an official with a reputation as a friend of labor unions, would not be a tough bargainer.

“Without question, Governor Corzine delivered on his promise to achieve many of the Legislature’s pension and benefit reform goals through contract negotiations,” said Senate President Richard J. Codey, a Democrat, in a statement.

Speaker Joseph J. Roberts, Jr. of the State Assembly, also a Democrat, called the agreement “a balanced product that will be beneficial over the long term for taxpayers and government employees alike.”

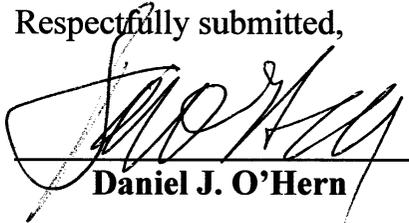
The Republican minority leader in Senate, Leonard Lance, also congratulated the governor on what he said was a significant change in state labor contracts, saying that “compensation in the public sector ultimately has to mirror compensation in the private sector, and this seems to be a step in that direction.”

Ronald Smothers. “Insurance Payment is Part of New Jersey Workers’ Pact”. *New York Times*. February 22, 2007.

6. Notwithstanding the above, Ms. Katz’s and the Governor’s personal conversations and contacts concerning the negotiations were inadvisable. The correct solution was the one ultimately reached. Out of an abundance of caution, the close ties between the two counsel that the Governor take all reasonable measures to insulate himself from personal discussions with Ms. Katz concerning State business in which she or her union may have an interest. We realize that when a relationship is both personal and political, it is difficult and awkward to avoid such discussions. There are times, however, when a bright-line prohibition on discussing pending matters has been deemed essential to preserving impartial judgment. The law requires such forbearance, for instance, of sitting grand and petit jurors. In the case of close personal associates of the Governor, we recommend that, at the outset, such persons be assigned a contact person within the Governor’s office for State issues, that the

Governor's Counsel or Ethics Officer brief the Governor's close personal associate on the necessity not to try to influence the Governor directly on state issues in which they have an interest, and that all contact on state issues be with the Governor's office contact. This approach, while awkward, will provide the necessary assurance that the Governor has acted without even the appearance of a conflict of interest.

Respectfully submitted,



Daniel J. O'Hern



John J. Farmer, Jr.