

Pursuant to the provisions of Section 209.4 of the Civil Service Law and in accordance with the rules of the Public Employment Relations Board, an interest arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the State of New York (“State”) and the New York State Police Investigators Association, Inc. (“Association”) for the unit consisting of all Investigators and Senior Investigators of the Division of New York State Police (BCI). Hearings were held at various locations throughout New York State including New York City, Syracuse and Albany NY on the following dates: December 16, 17, 18, 1996, January 22, 23, 24, 1997, February 13, 1997, March 24, 25, 1997, April 15, 16, 17, 1997, May 27, 28, 29, 1997, June 24, 25, 26, 1997, July 24, 25, 1997.

At the hearings both parties were represented by the above appearances and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. A transcript of the hearings was taken and copies provided to the Public Arbitration Panel. The hearings were transcribed with a copy given to the Panel. The transcript totaled 2,115 pages. The record contained 100 Union exhibits, 358 State exhibits, and 8 Joint exhibits. At the conclusion of the hearings the parties filed briefs. Executive sessions were held on December 23, 1997 and January 21, 22, 29, and 30, 1998.

The Panel has deliberated on each issue and has carefully and fully considered all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the AWARD that constitutes the Panel’s best judgment as to a just and

reasonable solution of all issues raised in this interest arbitration proceeding. Those issues presented by the parties that are not specifically dealt within this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety.

In arriving at this AWARD the Panel considered the following statutory guidelines contained in Section 209(4)(c) of the Act:

- (v) the Public Arbitration Panel shall make a just and reasonable determination of the matters in dispute.**

In arriving at its determination, the Panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with employees generally in public and private employment in comparable communities.**
 - b. The interest and welfare of the public and the financial ability of the public employer to pay.**
 - c. Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.**
 - d. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.**
- (vi) the determination of the Public Arbitration Panel shall be final and binding upon the parties for the period prescribed by the Panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the Panel. Such determination shall not be subject to the**

approval of any local legislative body or other municipal authority.

With respect to the instant case the Panel was limited by the following provisions of Section 209(4)(e) of the Civil Service Law:

with regard to members of any organized unit of Investigators, Senior Investigators and Investigator Specialists of the Division of State Police, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed by law.

The parties have consented in writing, and have waived any objection, to the Panel's issuance of an AWARD extending beyond the two-year limitation contained in Section 209(4)(c)(vi) of the Civil Service Law. As such, the Panel is conferred with the authority to issue an AWARD covering a four-year period, and it has done so.

The Opinion and Award constitutes the findings of the Panel, however, the language contained herein is the sole responsibility of the Chairman.

BACKGROUND:

The bargaining unit at impasse contains approximately 900 Bureau of Criminal Investigation (BCI) Investigators, Senior Investigators, and Investigator Specialists, represented by the New York State Police Investigators Association ("NYSPIA" or the "Union") and employed by the State of New York, Division of State Police ("NYSP" or "Division"). (UX #1, #2, #3, #4) The NYSP is the ninth largest police department in the country with approximately four thousand sworn officers. The jurisdiction of the Division is statewide and investigators are often found working in conjunction with other local, state and federal enforcement agencies. BCI conducts the major investigations of the NYSP and

concentrates on matters involving crimes against person, narcotics, computer crime, money laundering, robbery and burglary, and is the largest state investigative force in the United States. (SX #351) (UX #87) The previous Collective Bargaining Agreement (CBA) covered the period April 1, 1991 - April 1, 1995. (JX #1) This proceeding is the first Interest Arbitration proceeding between the parties.¹

The Panel was cognizant of the Interest Arbitration Awards issued in the Trooper and Supervisor Units and credited the position of the State that the BCI members are part of the larger Division of State Police. As such there are certain economic factors which impact on all three units. Accordingly, as reflected in the areas of health insurance, salary compression, longevity, and training stipends, matters which have a potential impact on other units, the Panel was mindful of the relationship and obligations that the Division has as a multi-employer.² Interestingly, both parties referenced this argument at various points of their case. The GOER sought to equate the BCI unit with not only the Trooper and Supervisor Division units, but also with other state employees. The Union argued that regardless of any other statewide unit, their compensation and benefits were totally unrelated and they should be treated as an independent entity. The Panel Chairman rejected the relationship arguments of both parties and notes that the BCI unit is one of three Division police units and as such their compensation and terms and conditions of employment cannot be viewed in isolation. The BCI is an integral part of Division and while many of their arguments were predicated on

¹Two other Interest Arbitration proceedings have been conducted between the Division of State Police and the Troopers (See Trooper Award of Arbitrator Scheinman (SX #358)) and the State Police Supervisors (See Arbitration Award of Arbitrator Douglas). References to these Awards will be made as "Trooper" Award and "Supervisor" Award.

² The BCI unit is one of three law enforcement bargaining units that Division negotiates with. The PBA represents the uniformed Trooper unit and the Police Supervisor unit. Thus, should certain differentials be awarded to only BCI members, it might create a Division salary compression problem. For example raises to Investigators might create a situation whereby they earn more than Lieutenants in the Supervisor unit. From a total compensation scheme, this would be undesirable.

an independent police agency status, the record does not support that declaration.

STATUTORY CRITERIA

The Panel was guided in their deliberations by the requisite statutory criteria. As is often the case in interest arbitration proceedings, the comparability factor, played a critical role in this Award. As noted in Section (a) of the statute:

- a. *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with employees generally in public and private employment in comparable communities.*

The Panel debated and weighed the comparability evidence in great detail. Although the Chairman was not persuaded that the comparables submitted by the Union, essentially the federal service and downstate police agencies, were wholly analogous, he does note that in the downstate area of New York State, BCI investigators, especially Senior Investigators, lag behind in the compensation received by some counterparts. (UX #26B) The comparisons made by BCI to the Federal Bureau of Investigation, Drug Enforcement Agency, and other Federal law enforcement agencies were not credited by the Panel. That federal law enforcement agencies are autonomous and do not operate within a framework of a multi-faceted police agency, such as the Division, were acknowledged. Thus if the federal agent is to receive a certain benefit, there is no concomitant impact on members of other bargaining

units. In the instant case, should the Investigator receive a fringe benefit the spillover may reach the represented Major in the Supervisors' unit or the entry level academy Trooper in the Troopers' unit. While the federal law enforcement officer is part of the overall federal workforce, their salary and other benefits often have no relationship to other individuals found on the General Services schedule.³ The Federal analogy was not deemed persuasive to the Panel Chairmen.

As other arbitrators have noted, there is no direct comparable standard by which to assess the NYS Division of State Police. They are the only statewide law enforcement department and due to the extreme geographic and demographic variations found in NYS, no one such standard is applicable. The parties have previously recognized this by the creation of two distinct pay differentials. There presently exists a geographic pay deferential pursuant to an administrative process by which all qualifying downstate unit members are paid \$4,800.00 on Long Island and \$3650.00 in the metropolitan New York City area. Additionally, there is an additional location premium pay which is negotiated that provides \$786.00 to downstate Investigators and Seniors. Yet the discrepancies exist. The Panel chairman, although not persuaded that the Nassau and Suffolk County comparables submitted by the Union are controlling, is however concerned over the downstate disparity and urges that in future negotiations the location factor receive further review. (UX #7) Complicating the problem is that in several upstate troops, the pay of BCI personnel exceeds that of their local colleagues. Any such regional adjustments would have to consider the impact of differentials on those upstate and more rural troops. Additionally, regional and geographic adjustments

³ *It should be noted that federal law enforcement personnel, with few exceptions, are not unionized and as such do not collectively bargain their terms and conditions of employment. Even for those agencies where law enforcement is unionized or otherwise represented, salary and other benefits are determined through federal legislation and not by collectively negotiating. This factor was evaluated when rejecting the federal analogy.*

would have to factor in the impact on other Division members.

The position of the State throughout this proceeding was that the BCI unit must be treated similar to other statewide bargaining units and to deviate from the pattern would be restrictive and detrimental to statewide labor relations policy. The testimony of Allen DeMarco, Deputy Director of GOER, was that the BCI, along with the Trooper and Supervisor Units, had always negotiated within the context of the Division of State Police, and also in the framework of the state work force. (SX #34) That is why the State seeks to continue the same historical relationship. The Union, successfully argued, that the BCI, along with the two other Division units, were the only state employees to be covered under Interest Arbitration and that accordingly the policy of the State had been altered. Their position was persuasive to the Chairman. Once the legislature indicated a willingness to pass legislation enabling this unit to be subject to Interest Arbitration, they broke the unit away from the state configuration and while the Panel Chairman was cognizant of the statewide system, especially in the first two years of the Award, he urged that the BCI be treated more in accordance with police units than other statewide employee units. The Panel did find that police comparability weighed far greater than state employee comparability.

The second statutory criteria considered in detail by the Panel concerned:

- b. The interest and welfare of the public and the financial ability of the public employer to pay.*

In this area we were guided by the expert testimony provided by the parties as well as our own examination of the record. Part of the difficulty in assessing “ability-to- pay” is that the first two years of this Award covered the period April 1, 1995 - March 31, 1997. It is a far less troublesome task to assess an economic condition in retrospect than prospectively; thus, the

Panel has the advantage of analyzing the April 1995 economy in February of 1998 - a period nearly three years later.

The State's economic condition for the four-year AWARD period has been one of relatively great health. The record demonstrates that the State has enjoyed a budget surplus throughout the past three years. The testimony of Lee Vaughan, NYS Assistant Chief Budget Examiner, was that the 1995-1996 surplus was between \$300- 350 million, the 1996 - 1997 surplus approximately 1.42 billion, and the 1997 -1998 surplus at an estimated 1.3 billion. (TR- 1611-1630. (UX #64, 69,70) Vaughan did caution however that much of the balance has been derived from "FIRE," finance, insurance and real estate revenues and that the recent boom on Wall street is directly responsible for these surpluses. However, he cautioned that should the stock market lessen or diminish, the repercussions would be severe on the State's economy. (TR-1623) (SX #101) Vaughan also noted that the well-being of the State's economy was subject to cyclical fluctuations and although these were good years, the future was far more uncertain.

It appears that with respect to "ability-to-pay," there is little question that said capacity exists. At one point during the hearing the Union questioned whether it was necessary to even present an "ability-to-pay" argument since it contended the record was so overwhelmingly clear. Although the Union's position was initially rejected, upon further reflection such a argument was made and subsequently credited by the Panel. The essential difference between the parties with respect to the "ability-to-pay" criteria focused upon State priorities and whether or not funds should be expended for wage and salary adjustments or used in other areas such as debt or tax reduction. That policy choice, while of academic interest, is beyond the purview of the Panel.

The State presented testimony from Sara Johnson, Chief Regional Economist for DRI/McGraw Hill. Her testimony tended to be overly conservative and was unable to be reconciled with that of Vaughan. She noted that the national economy was slowing and that rising interest rates and dollar appreciation could diminish the ability of the State to pay. The surpluses in the record were explained by Johnson as intermittent. She testified that they did not account for the vast discrepancies between the economies of various regions within the State. (TR-144) Based on Johnson testimony, the State asserted that to remain competitive they could not afford to favor one bargaining unit (BCI) over the rest.

The statutory requirements of “ability-to-pay” were met and the Award contained herein subscribes to that criterion. While the reasons for this may vary and can be disputed, the record demonstrates that the State, as an employer, has the requisite statutory “ability-to-pay” the awarded increases and that the interest and welfare of the public are best served by making such payments and ensuring the continued services of a highly professional police agency such as the Division BCI.

With respect to the statutory question of, “. . . *the interest and welfare of the public* . . . ,” it is difficult to determine how the populace of New York State would benefit if the BCI salary demands were met in total. But it is equally true that to continue to treat NYSPIA as just another union for purposes of statewide collective bargaining when the public policy, as manifested and reflected through legislation, was to carve out exceptions for the three Division police units by affording them interest arbitration, is unwarranted.

An additional public policy concern addressed by this Panel was the status of Senior Investigators. The comparability figures introduced into the record noted a greater discrepancy between the compensation for these individuals than for Investigators. Thus, in

accordance with the statutory criteria, it was the belief of the Panel Chairman that the rewarding of the Senior Investigators with an additional \$2,000.00 salary adjustment for their expertise, serves the public interest. Similar arguments were considered when fashioning the longevity components of this Award.

Having established what is commensurate with a retroactive "ability-to-pay", it is significant to note that in April 1995, the economic forecast for the period at impasse was unknown, and as such, the State made a sincere effort to offer no wage increases to all units. It is for this reason that the Panel has awarded a compensation package that is greater in years three and four than in the first two years. This paradigm was also effective in gaining a four-year award as the Panel Chairman was apprehensive about the futility of a two-year award. He suggested that the "out-years", 1998 -1999, might contain additional increases if such authority to extend to a four-year package were granted. The resultant Award is, in part, a product of that instruction.

The Panel also considered the statutory criteria of:

C. Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

That BCI members are subject to unique occupation hazards is beyond dispute. Their profession requires extensive training and places upon them certain physical demands not found in other occupations. The testimony of Senior Investigators Grogan (TR-76-77) and Horton (TR-465-466) and Investigator Tynan (TR-250-54) were noted and credited. The BCI introduced a psychologist as an expert witness who testified as to the hazards and stress

associated with police work. His testimony was contradicted by that of a professor of psychology called by the State. The record is crowded with what may be described as “dueling psychologists” as the second psychologist questioned the research design, methodology, validation techniques, and statistical conclusions found by the first. (UX #22-24) (SX #100) Little would be gained by the Panel Chairman’s repeating the lengthy testimony and analysis of each. The record reflects that the Panel is of the belief that BCI members perform hazardous work and that the appropriate statutory criteria reflecting this element was dutifully considered.

It was further noted that BCI members, by making arrests and solving crimes, generate numerous monies and other assets which are retained by the Division and the State. Various statutes provide legal authority for the Division and the State to deposit these properties in a law enforcement account and permit these funds to be disbursed for law enforcement use. The record documents that these monies have been substantial and that BCI members played a significant role in obtaining said funds. Their role is acknowledged. The BCI unit argued that since their efforts have earned significant funding, a certain portion of them should be used to fund their demands. (See letter dated March 19, 1997 from Jules Smith to Panel explaining legal authority to seize and use funds.) (See, also SX #17, #18)) Although the efforts of the BCI in this regard are acknowledged by the Panel, the Chairman is unaware of any such authority whereby such monies could be used to fund this Award.

The physical and mental qualifications of the job were also considered. BCI designations are governed by State and Division rules and regulations. A physical examination is required for appointment. Selections are made from the ranks of Trooper, a factor that the Panel considered when assessing the various relationships among the three bargaining units.

Promotion from Investigator to Senior Investigator is governed by additional requirements including physical fitness. The Panel considered this element when Awarding certain training and physical fitness program pay.

Investigators and Troopers who enter service after January 1991 must possess either sixty college credits or their equivalent with prior service. (TR-1710) BCI members must have served as Troopers for four years or in certain circumstances, two years plus educational equivalencies. This factor was considered by the Panel when awarding additional funds for the completion of college degrees. (SX #350) That BCI members undergo extensive training was noted. In addition to the Trooper academy, BCI members must attend a basic criminal investigation course and, for narcotic officers, a basic narcotic investigation program. Additional specialized courses are also offered on an as needed basis. That BCI members were well trained and skilled in their competencies was noted by the Panel.

The statute further requires that the Panel consider:

- c. *The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.*

This criteria was vigorously contested as NYSPIA claimed that since they are a new bargaining agent, past agreements negotiated between the State and the predecessor agent (PBA) should play no role in this proceeding. The State argued in opposition. Additionally, NYSPIA asserts that since no statewide bargaining units were subject to interest arbitration prior to 1995, the past Agreements are of minimal value. The Panel Chair disagrees with that position. That a bargaining unit may elect new representation does not, de facto, disassociate them from all

prior Agreements. It must be noted that although the bargaining agent for the BCI changed, the rank-and-file did not.⁴ The individual members that constituted the BCI body under the PBA representation remained the same. Only the leadership and bargaining agent affiliation changed. The statute does not include an exemption for bargaining units that may elect to decertify one agent in favor of another. Thus bargaining history and past relationships were considered an element in the formulation of this Award. The position of the Union with respect to bargaining history and prior relationships was not persuasive. The Panel, having fully considered all the requisite statutory requirements, sets forth the following Opinion and Award.

⁴*NYSPIA was certified as the BCI bargaining agent on February 3, 1995.*

POSITION OF THE PARTIES AND FINDINGS OF THE PANEL:

1) TERM OF THE AWARD

The arguments supportive of an Award extending beyond two years are well documented and are known to the parties. The prior Agreement expired on April 1, 1995. If the instant Award were limited to the requisite two year statutory period, then the Award would have expired prior to its date of issuance. Due to the extended time frame involved, the Panel believes that this would not have been productive as the parties would have had to return to bargain a successor CBA for the subsequent period. A four-year Award was also considered to be beneficial inasmuch as there are several new elements contained herein that need an adjustment period to be fully understood and implemented. Accordingly, a two-year award would not have enabled the parties to “live under the contract” and experience the full benefit. Additionally, a four-year award recognizes the financial condition of the State and allows for larger raises to be awarded in years three and four than in the prior two.

An extended Award would not have been possible without the written permission of the parties and accordingly, the panel Chairman urged that such authority be granted. It was, and the Panel, based on the record, awarded a multi-year Award. It is Awarded that: *The term of this Award is from April 1, 1995, to March 31, 1999.*

2 - 3) BASIC ANNUAL SALARY AND CASH PAYMENT SUM

The record examined in detail the question of wage and salary adjustments. Both parties took totally divergent approaches to this complex question with the Union seeking a significant increase in the first year of the CBA by demanding an Award which would provide

for base salaries effective April 1, 1995, of \$65,000, for an Investigator and \$70,000 for Senior Investigators. After that base adjustment they proposed a salary increase of six and one half percent effective April 1, 1996 and seven percent effective April 1, 1997. As of the previous CBA the base pay for an Investigator was \$47,948.00 and for a Senior Investigator \$50,627.00. (Pay rates effective 10/1/94, (JX #1)) The Investigator title is held by approximately 80 percent of the unit. Accordingly most of the comparables were figured on this title with a premium added for the title of Senior Investigator. In the view of the Panel Chairman raises of this magnitude were not supported by the record and consequently were not granted.

NYSPIA referred to this adjustment in the base as the “centerpiece” of their demands and as an “equity increase”. To support it they argued federal sector and downstate police agency comparability. The Panel noted that if granted, this increase would have been greater than virtually any other interest arbitration award or negotiated salary increase introduced into the record. Raises and salary adjustments of this breadth were not supportable by the record. The Union further proposed that all BCI members who hold the rank of Sergeant receive an additional \$2,000.00. Their arguments are based on the State’s ability to pay and the comparability factor.

It is the position of the State that the NYSPIA demands are unwarranted and that instead their proposal is justified by the statutory criteria. The State proposed a package similar to that received by virtually every other statewide bargaining unit: zero percent increase for FY 1995-1996 and a \$550.00 lump sum payment with no increase to base for FY 1996-1997. The State further argued that BCI salaries have exceeded the cost of living increases and accordingly, no significant wage increase was justified. (SX #348) The record documented that change in “real income”, as measured by CPI adjustments, for the time

period April 1, 1979 - October 1996 increased by over thirty percent.

The comparability issue remains unresolved. The Union addressed comparability by submitting data primarily from downstate jurisdictions, including Westchester, Rockland, Nassau, and Suffolk counties. It is estimated that approximately one third of the BCI, over three hundred members, are assigned to downstate regions. Yet when asked to delineate downstate, the Union relied upon a federal definition which included Orange, Putnam and Dutchess counties. The State argued that downstate encompasses Westchester, Rockland, Nassau, and Suffolk in addition to New York City. Absent a definitional acceptance, the parties ranged far and wide with their comparables. With respect to location assignments, 4.8% of BCI members are stationed in Nassau and Suffolk Counties, and 18.2% in NYC, Westchester or Rockland. (SX #348) Thus over 77 % of the BCI are stationed in areas north of Westchester and Rockland Counties. The State characterized the BCI as primarily an upstate rural police force that only enters urban areas when specifically invited by the local jurisdiction.

The State prepared their economic analysis based on calculations by Richard Martin, Director of GOER Research, and Mike Roche, Director of NYS Classification and Compensation. It appears that survey categorization was based on comparability as determined by Roche, with Martin supplying the relevant economic analysis. The State contract data was for the year 1995. The Union argued that the Roche approach was narrow in scope as he relied on jurisdictions where only the precise title of Investigator or Senior Investigator was found. Martin was more expansive and included data from numerous jurisdictions excluded by Roche. (SX #348 Tab B)

The GOER data indicate that at the end of twenty and twenty-five years, NYSP salaries

for BCI remain the third highest of the State's proposed 25 comparables. Of the upstate jurisdictions surveyed the State argued that BCI members rank second out of twenty-five jurisdictions surveyed at the minimum level. (SX #348) At the highest level, Investigators are 2.6% below the maximum salary and 60.8 % above the lowest. Thus it appears that when comparing BCI to upstate police jurisdictions, the relative standings support the GOER position that comparability has been achieved and that only a modest increase is warranted. It is in the downstate area that significant differences exist between the BCI unit and local jurisdictions. Using the data supplied by GOER, in Nassau, Suffolk, and NYC, NYSP BCI rank 10th out of 12 jurisdictions. This same lag is noted for virtually every time /experience category.

Compared with other states, Roche maintained that the BCI was highly competitive. At the entry level of comparable states, NYS pays the highest minimum salary.⁵ At the maximum salary NYS ranks fifth out of thirteen. This thirteen-state survey was enlarged to include twenty-three state police agencies. Within that group NYSP again ranked number one in Investigator minimum pay but fell to tenth position after twenty-five years of service. (SX #348 p. 74)

With respect to the federal sector, Roche argued that the FBI was not a comparable and that no such comparisons were warranted.⁶ The State does note that BCI salaries were

⁵ *The States relied upon in the GOER survey included Texas, Minnesota, Iowa, Illinois, Wisconsin, California, Virginia, Montana, Maine, Florida, Nebraska and North Carolina. While no consensus was arrived at concerning comparability, it was noted that in every state except Texas and New York, there was some type of institutional longevity or incremental pay system. (SX 348 P.25) An additional survey added the state of New Jersey, Connecticut, Massachusetts, Pennsylvania, Delaware, Vermont, Michigan, Oregon, New Hampshire, and Indiana. Of these states, only Massachusetts has a fixed salary. (See, pps 69 - 74).*

⁶ *The State did use some federal comparisons and noted that certain federal agencies are "somewhat" comparable. (SX #348, @p. 60. (See also Martin's testimony. (TR - 2002))*

closer to the federal sector in 1996 than they were in 1980.

The record notes that when only entry level base salary is compared, BCI Investigators rank first out of all federal comparisons for federal law enforcement officers assigned to NYS. Yet when various federal location and FBI availability pay is calculated, the BCI salary drops to the lowest among federal agencies. At the maximum end of the federal pay schedule, and including other-compensation factors, the BCI Investigator (downstate) earns \$52,366 as compared to \$73,705 for a downstate US DEA or Secret Service Agent. The upstate discrepancy is even greater as the BCI Investigator earns \$47,948 as contrasted with the FBI Agent who earns \$71,816. (SX #348 @ p. 35)

To discount or minimize the differentials, the State further relied upon a weighted proportional analysis when assessing federal downstate salaries. By use of this technique, Martin was able to demonstrate that certain federal law enforcement salaries were skewed and were therefore not statistically significant.

The Investigator title is held by approximately 80 percent of the unit. Accordingly most of the comparables were figured on this title with a premium added for the title of Senior Investigator. The same analysis was also used to compare NYSP salaries with comparable State Police forces.⁷

In terms of Across the Board ("ATB") increases, the average of fourteen NYS police departments indicated that for the period 1/1/96 - 12/31/96, the average ATB increase was 3.20%. (SX 348 @ p.44) These departments include the cities of Buffalo, Fulton, and Oswego

⁷One problem encountered in determining comparability is explained by the comparison with the New Jersey State Police. While the BCI seeks their inclusion as a comparable, the GOER notes that the New Jersey title of Investigator and Senior Investigator are not permanent and that individuals are Troopers temporarily assigned to investigative duties. Other states have similar paradigms whereby all investigators are considered Troopers on temporary investigative assignments. (See Texas) Additionally, in New Jersey, all investigators are required to resubmit their applications as investigators every five years. In this situation, the question of comparability exceeds compensation.

and the counties of Albany, Broome, Chemung, Fulton, Genesee, Putnam, Saratoga, St. Lawrence, Tioga, Wayne, and Wyoming. For the same jurisdictions which had completed CBA (5) for 1997, the ATB average was 2.90%. (SX #348 @pps. 44-45) The average ATB for six State police agencies that had completed CBA for 1996 was 2.8%. (See, CBA for State Police Agencies in Florida, Illinois, Iowa, Minnesota, Nebraska and Wisconsin. (SX #348 @ p 46)

Comparability figures for selected upstate and downstate police agencies were introduced by GOER.⁸ This analysis proved valuable to the Panel in determining the existence of any discrepancies and the percentage of variance. For the upstate police agencies (N = 71) Division Investigators at the minimum salary ranked 6th of the sample size. The percentage of variance for the top position was 8.7% while the lowest ranked at a variance of 60.8%. At the 25-year level, NYSP ranked 9th of the same sample. The percent of variance for the highest paid department was 12.4% while the lowest was at 56.8%.⁹ (See SX # 348 pps, 75 - 86)

A similar survey was conducted for police departments in New York City, Rockland and Westchester counties. Of the 28 agencies cited, NYSP ranks 21st in terms of Investigator minimum salary. The variances were 31.2% (top) and 48.9% (bottom). At the twenty-five-year level, NYSP Investigators rank 26th of 28 with the variances at 40.4% at the top and 2.3% at the bottom. When factoring in Nassau and Suffolk Counties (N = 12), NYSP ranks 10th at the entry level with a top variance of 29.8% and 41.5% at the bottom. At the maximum levels,

⁸ *The comparability survey was conducted for the rank of Investigator. No studies of this magnitude and depth were introduced for the rank of Senior Investigator.*

⁹ *It is interesting to note that several of the "UPSTATE" police agencies cited by GOER are located in Counties referenced by the Union as the "DOWNSTATE Region" for which additional location pay was warranted. See, for example, Carmel PD, Putnam Co. PD, Poughkeepsie PD, Newburgh Town PD, Poughkeepsie City PD, and Newburgh City PD, jurisdictions claimed by GOER to be upstate and by NYSPIA as downstate. This further illustrates the difficulties in selecting comparability prototypes.*

NYSP is in last place with a top variance of 35.9%. (SX #348, see pps. 87-98.)

Pursuant to the statutory criteria of comparability, the record suggests that increases are justified for downstate BCI members while raises awarded for those in upstate areas need not be as substantial. Yet when considering the various options before it, the Panel was unable to devise a system whereby compensation differentials could be granted. It was suggested that perhaps the geographic differentials or location pay be increased, yet that solution would greatly exacerbate the problem of salary compression vis-a-vis the other two Division units. The State argues that,

“... if any salary adjustment is warranted under the facts of this case, that adjustment should be limited to those BCI unit members stationed in the downstate areas and should not be extended to the vast majority of the State where salaries are either ahead of or highly competitive with salaries of similar police organizations.” (See GOER brief @ 46)

The Panel agrees with that assessment and it is hoped that the recognition of the problem acknowledged in this Award can be further addressed in subsequent Agreements. Additionally, neither the Trooper nor Supervisors Award implemented such a regional adjustment. For this Panel to Award additional regional compensation differentials would substantially upset the salary ratios that currently exist among the three units. The Panel Chairman notes that the BCI unit is one of three that bargain with the State and accordingly the relative remuneration position of the other units (Troopers and the Supervisors) weigh on the relative BCI salary standings.

What is more significant than insulated comparability is that this Award dramatically changes BCI compensation. As noted by Arbitrator Scheinman in the Trooper Award:

“Thus in the final two (2) years of the Award we have treated Troopers more like police personnel in comparable jurisdictions and have begun a fundamental alteration in the economic terms and conditions of employment of the Troopers.

Thus, the financial circumstances of the State and its residents and taxpayer have been taken into account and the wages of the State's troopers have been brought more into line with the wages of police personnel in comparable jurisdictions" (SX #358 Trooper Award @p 93)

The instant Award follows that thinking in that the BCI is now on a path whereby they will be compensated more in line with other police, rather than state personnel. The Legislature and the Governor, by signing the interest arbitration legislation, agree with that philosophy. This Panel can do no less. The bargaining relationship between the parties has been predominately recast and it is hoped that this Award will establish the basis for successor Agreements based upon employment relationships found in equivalent police agencies.

The Union also proposed that the economic portion of the Award contain a provision whereby funds would be expended to compensate BCI unit members who have retired or left the Division during the time period that the parties were negotiating and arbitrating the instant Award. Although somewhat unusual in collective bargaining, NYSPIA acknowledged that a certain sum should be generated from funds that would have been expended in a general ATB increase to cover that amount. No opposition was raised by the GOER as long as total costs did not exceed what the Panel Chairman suggested the Award contain. Therefore, a "Coming-and-Going" ratio was established whereby unit members who had left the unit would receive a pro-rated portion of the salary adjustment. New BCI unit members and retirees would receive their prorated share to compensate them for the period that they actually served in the BCI and would not receive the full amount of the adjustment for the period that they were not deemed eligible.

After a review of the record and in accordance with the requisite statutory criteria, the Panel Awards as follows: *Effective 4/1/98 the following salary schedule shall be as follows:*

Investigators \$53,183 and Senior Investigators \$56,155. Effective 1/1/99 there shall be a 3.2 percent across the board wage increase. The salary schedule shall be as follows: Investigators \$54,885.00 and Senior Investigators - \$57,952.00. With respect to the issue of back pay to cover the period during which the parties were negotiating their successor Agreement and the time period involved in this Arbitration proceeding, the following lump sum payments are Awarded. Each member on the payroll from 4/1/95 through 3/31/98 shall receive a one time cash payment of \$11,047 payable on or about 3/31/98. Members who have not been on the payroll during this entire time shall be compensated as follows: \$142 for each full payroll period that they were on the payroll in this unit for that entire pay period. For members who worked less than a full pay period such compensation shall be on a pro-rata basis. For the purposes of overtime compensation, overtime worked after the following dates will be recalculated increasing overtime compensation by the following percentages: 7/1/96 - 3 percent, 1/1/97 - 5.06 percent, 7/1/97 - 7.69 percent, 1/1/98 - 10.92 percent. Notwithstanding the limitations provided in section 443 of the retirement and social security law, the amounts provided in this section shall be considered in their entirety and not suffer any limitation as set out in section 443 for retirement calculation purposes.

4. PREMIUM IN LIEU OF OVERTIME

This complex issue was litigated between the parties in a variety of forums including fact-finding, and state and federal courts. (UX #71, SX #113) While Investigators are eligible for and receive overtime pay under federal law, the issue of FLSA applicability for Senior Investigators is unresolved and still pending. There now exists a process whereby certain unit members are paid compensation in lieu of other overtime compensation (overtime premium)

whether or not they work overtime. The experience of overtime worked varies significantly among unit members with, depending on assignments, some Senior Investigators working numerous overtime hours while others have a more traditional work schedule. At the end of the 1991 - 1995 Agreement, the overtime premium was \$6,559.00 for Senior Investigators.

The Union has traditionally proposed that the overtime premium be rolled into the base salary and members would then be compensated on the adjusted base at the rate of time and one half for all hours worked over forty. The State has opposed this plan arguing that to roll the premium into the base and then compensate BCI members on that new amount would be in fact a double overtime premium system. The Panel Chairman agrees with that position and does not support the position of rolling the premium into the base salary. The Union proposed that effective April 1, 1995 the premium be raised to \$9,300 and then rolled into the base. Additional increases in the premium were demanded with the 1997 payment equaling \$10,600. Once in the base it would be computed for all additional base related payments. The State has proposed continuing the existing program. Based on the record and the evidence produced the Panel Awards as follows: *Effective 4/1/98 all Sr. Investigators shall receive an overtime premium in the amount of \$7,525. Effective 1/1/99 all Sr. Investigators shall receive an overtime premium in the amount of \$8,016.*

For investigators the present system provides for members to voluntarily earn a minimum of 9 and 1/4 hrs of overtime over a 29-work day schedule. (GUARANTEED OVERTIME PROGRAM - "GOT") At the end of the period the individual bank cannot exceed 27 and 3/4 hrs. Concomitant with that program the basic work week was extended from 40 to 41 and 1/4 hours by increasing the base salary by the same amount. Each member works an additional fifteen minutes per day to cover the increase. Issues of how the GOT impacts on

Division policy and police work was also introduced. Although no consensus was reached, it was evident that the overtime remains a significant issue of discord between the parties. The Panel, after considering options has decided to leave the GOT in place and not make any structural changes within.

5. COMMAND PAY

The question of remuneration for Senior Investigators occupied a great deal of testimony and debate throughout these proceedings. The record documents that especially in the area of enlarged job responsibility, inequities exist for Seniors and consequently the Panel awarded that a defined sum be set aside to compensate them for their greater obligations. Therefore, based on the record, the panel Awards that *Command Pay shall be instituted for the Sr. Investigators effective 4/1/98 in the amount of \$2,000.00 annually, payable on a biweekly basis.*

6. LONGEVITY

The NYSPIA has proposed that a longevity system be incorporated into the CBA. At present there is no such longevity or incremental step arrangement as new investigators receive the same pay as those with substantial experience. The State argues in opposite claiming that in 1982, the existing contractual longevity program was rolled into the base salary. (TR-1777) Thus it is the contention of the State that longevities already existed and are presently being paid as base salary. The position of the State is not persuasive. The comparables indicate that longevity schedules are frequently found in police CBA's. Additionally, the recent Awards in both the Trooper and Supervisor units enhance or create longevity.

Longevity plans reward senior personnel and are found in New York City, and in virtually every one of the twenty-three State Police agencies cited by GOER as comparables. In addition Illinois has an incremental plan. Having decided that longevity be paid, the Panel questioned which plan would be most appropriate. It was the view of the Panel Chairman that such longevity plans, as the one traditionally found in police CBA's, and which include "the stack system", be Awarded. The State had always argued that should any longevity plan be developed, it parallel those established in other state CBA's and not be "stacked." The position of the Union is credited and accordingly a police type longevity plan was established.

It was further determined by the Panel Chairman that the plan be identical to the one recently awarded by the undersigned in the Supervisor Award. By incorporating the longevity plan, the discrepancies between BCI and some of their comparables would be diminished. The longevity plan was limited to twenty years, the program most commonly found in comparable police agencies. It is also designed to compensate employees for the period that most serve prior to their retirement. Finally, it was also noted that many of the other state employee longevity programs were limited to twenty years. While the structure of the longevity plan is analogous to that found in police CBA's, the twenty-year maximum is consistent with other NYS agencies. Therefore, based on the record, the Panel Awards that;

Effective 4/1/98 unit members with 6 or more years of service with the Division shall be paid a longevity benefit, payable biweekly, as follows:

<u>Years of Service</u>	<u>Longevity Benefit</u>
6	\$800
7	850
8	900
9	950
10	1,000
11	1,050
12	1,100
13	1,150
14	1,200
15	1,250
16	1,300
17	1,350
18	1,400
19	1,450
20 or more	1,500

7. EXTRAORDINARY OVERTIME FUND

There exists an extraordinary overtime fund for Commissioned Officers which is under the control of the Superintendent. Monies from this fund are expended in those situations where Budget Policy and Reporting Manual G-140 is not applicable. It is not for the Panel to determine the eligibility criteria for the use of this benefit but only to Award for the use by Senior Investigators an amount to allow Senior Investigators to participate in the program.

Accordingly, the Panel believes that the present extraordinary fund be extended to Senior Investigators. Based on the record the following is Awarded; *Senior Investigators shall be eligible to receive compensation from the Division's Extraordinary Overtime Fund which will be funded with an additional amount of \$25,000 in fiscal year 1998-99.*

8, 9, 13. CLOTHING ALLOWANCE, MAINTENANCE ALLOWANCE and EQUIPMENT PAY

The Union has proposed that a clothing and maintenance allowance, and an equipment fund be established. With respect to the clothing fund, they are proposing that each member receive \$1,500.00 per year. They also seek an additional adjustment of 6.5% in the subsequent years. For the maintenance fund, they are demanding \$800.00 per year. An additional equipment fund is also being sought. The GOER argues that no other State employees receive these types of benefits, and that the proposal should be denied.

The record documents that uniform and maintenance allowances are familiar in police departments, and that detectives traditionally receive such an allocation. For example, in New York City, the City of Rochester, and the New Jersey State Police clothing allowances ranging from \$500 - \$1,500.00 are found. (UX # 27A) In addition, the Troopers receive \$100.00 per year. Additionally, that BCI members are required to wear conservative business attire, is noted. Considering the ability of the employer to pay, and the fact that the BCI is traditionally a plainclothes force, the Panel was persuaded that this benefit is warranted. Therefore, based on the record the Panel makes the following Award: *Effective 4/1/98 each member in this unit will receive an annual clothing allowance of \$1,400 to be paid biweekly. Effective 1/1/99 the clothing allowance will be increased by 3.2 percent plus \$100. (\$1,545) This allowance shall be*

counted for both overtime and retirement computation purposes. In addition, effective 4/1/98 each member in this unit will receive an annual maintenance allowance of \$363 to be paid biweekly. Effective 1/1/99 the maintenance allowance will be increased by 3.2 percent plus \$50. (\$425) This allowance shall be counted for both overtime and retirement computation purposes. With respect to equipment, the Panel Awards that during fiscal year 1998-99 each member shall receive \$177 as general reimbursement for equipment purchased by the members to be paid in June 1998.

10. PROFESSIONAL DEVELOPMENT FUNDS

The 1991-1995 CBA contained a provision which set forth a certain amount of funds for professional development, tuition reimbursement and related quality of working life activities. It is not for the Panel to determine the eligibility criteria for the use of this benefit but only to Award an amount to continue its funding. The parties expressed an interest in the continuation of this fund and although no set amount was agreed upon, the Panel has set the fund in the following amount. *The Article 25 Professional Development and Quality of Working Life Committee for the period 4/1/98 through 3/31/99 shall be funded in the amount of \$310,000 from which tuition reimbursement and stipend training will be conducted.*

11. PRODUCTIVITY GAIN PAYMENTS

The State maintains a productivity gain program for certain other bargaining units related to sick leave usage. Although there is no indication in the record that the BCI unit members in any manner have been less than forthright in their use of sick leave, it is the considered judgement of the Panel that such a program can benefit both the Division and the

individual unit members. Accordingly, an incentive to minimize sick leave, similar to the ones contained in the other two State/PBA Interest Arbitration Awards has been established. *Effective on April 1, 1998, members may participate in the Productivity Gain program. Unit members who use three (3) days or fewer sick leave per year shall be paid \$200 and unit members who use more than three (3) days but not more than five (5) days shall be paid \$100. This payment shall be made on or about June of the following year.*

12. EDUCATION PAY

The BCI contains numerous officers who have earned college degrees, some with the tuition assistance of Division and some completely on their own. These men and women are proud of their achievements and seek to be rewarded. The concept of Education Pay is commonplace throughout law enforcement collective bargaining with numerous jurisdictions offering tuition assistance and other forms of financial recognition. That Division encourages such college attendance and study is noted. In most instances college tuition is reimbursed. The Panel, seeking to reward BCI members for their education experience, Awards the following: *During fiscal year 1998-99 there shall be a payment to members who possess or obtain the following degrees, to be paid in June 1998. Members who obtain a degree after June 1998 will receive this benefit as soon as practicable. Only one (1) degree may be compensated.*

Associate - \$250

Bachelors - \$500

Graduate Degrees - \$750

14. PHYSICAL FITNESS PROGRAM

The Panel has recognized that the need of the Division and individual unit members are best served by a physically fit work force. Although there is no evidence to the contrary, the Panel believes that a systemized program of physical fitness should be encouraged and that members should be rewarded by participation in said program. Based on the record and in accordance with the statutory criteria, the Panel Awards that *during fiscal year 1998-99 each member will attend a fitness training and evaluation program and will receive a stipend of \$250 for such attendance. Additionally, on or about 3/31/99, \$453,486 shall be available to pay members for the incentive component of the fitness program payable after the expiration of the term of this AWARD in the following fiscal year.*

15 - 16. SPECIALITY TRAINING STIPEND - HIDTA/METROPOLITAN-URBAN ORIENTATION TRAINING

BCI members are called upon to perform a variety of specialized functions. These duties may range from the investigation of computer crimes to certain detailed forensic investigations. While not every BCI member can be an expert in all facets of investigation, there is a need for certain specialized training.¹⁰ The Panel, aware of this need, and in conjunction with Division needs, has allocated a certain amount of funds to be used for specialized training to be developed by Division. *The Panel therefore Awards that during fiscal year 1998-99 a training program will be implemented and funded in the amount of \$216,176 to provide specialty training similar to the training provided pursuant to Article 25.1E. Those*

¹⁰*The Panel Chairman was impressed with the professional credentials of numerous BCI members who gave testimony throughout this hearing. Special note should be given to the demonstrated expertise of Senior Investigator Donald Delaney, especially in the area of computer high technology investigations. (UX #18, #19)*

employees who participate shall receive approximately \$200. Attendance may or may not be on the members' own time depending upon the program of training and the benefit resulting to Division and the member.

Additionally, there presently exists within the law enforcement community a series of HIDTA - High Intensity Drug Trafficking Activity Training programs designed to combat drug traffic in metropolitan areas. It is the considered judgement of the Panel that such a HIDTA program be initiated within the Division and that during fiscal year 1998-99 two, two day training programs will be conducted for members in the greater metropolitan New York City area:

- A. HIDTA - High Intensity Drug Trafficking Activity Training*
- B. Metropolitan-Urban Orientation Training*

Such training will be available for members in NYC, Orange, Rockland, Dutchess, Putnam, Westchester, Nassau and Suffolk counties. Compensation for such training shall be \$500 for each program. Both programs shall entail 2 days of training, and members who participate in the training shall attend one day of each program on the members' own time and one day of each program on Division's time.

17. HOLIDAY PAY

The record is replete with reference to the problem of holiday pay. The issue is rooted in a 1995 decision by Arbitrator Selchick in which a certain formula for holiday pay was set forth. The Panel has fashioned an Award that is designed to meet the mutual needs of the parties. By adopting the following formula, not only will "back room investigators" receive

additional compensation but the benefit will now accrue to all unit members. It is the considered judgement of the Panel; *that the holiday pay be resolved as follows: Effective April 1, 1996 the arbitration decisions rendered by Arbitrator Jeffrey Selchick dated February 5, 1996 (OER Case No. 94-62-464) and June 7, 1997 (OER Case No. 94-62-464) shall no longer be in any force or effect. Hereafter, "time during which a member is excused from work because of holidays or days off in lieu of holidays" shall not be considered time worked for the purpose of computing overtime. However, consistent with Article 15.6 F, overtime payments owed pursuant to the Selchick arbitration decisions previously referenced shall be paid until March 31, 1996. Effective April 1, 1998, all unit members on the payroll on the last day of the pay period in which November 1 falls shall receive additional holiday compensation at their per diem rates of pay in the amount of four (4) days (thirty-three (33) hours) in fiscal year 1998-1999. The holiday payments shall be made by separate check on or about December 1 in each year, commencing in 1998.*

18. HEALTH INSURANCE

This issue was addressed in great detail by the State and was argued along comparability lines. The essential position of GOER was that every other Statewide unit has now negotiated their CBA for the period 1995-1999 and all of them have agreed to the health care changes sought by the State. Additionally, the Interest Arbitrators in the other two Division Interest Arbitration cases, awarded the identical benefits to those sought by the State for the BCI unit.

The record documents that there are approximately 250,000 NYS employees covered by various health insurance plans. (Empire Plan and HMOs) An additional 100,000 retirees

are also included in one of the health plans. The testimony of Priscilla Feinberg, the head of GOER Employee Benefits section, was that the BCI constituted approximately less than three tenths of one percent of the NYS Empire Plan enrollment. (TR-1400, 1402) To allow the BCI to continue in certain health insurance options that are no longer available to the much larger work force at large is counterproductive to the purchase of health insurance. Her position was credited. The basic position of the BCI was that the status quo was preferred yet the record did not support that position. It appears that health insurance benefits are experience rated for all participants as a whole and not by individual units. That the Empire Plan has generated dividends and other savings is noted. Yet what is critical is that these savings are distributed within the plan and not to any one group. Therefore, in accordance with the record and based on the comparability, the Panel Awarded the same benefit package as is currently found in the Trooper and Supervisor AWARD. Based on the record the Panel awards the following health insurance package.

A. AMBULANCE SERVICES

Effective April 1, 1998, covered medical expenses for local professional ambulance services under the Empire Plan shall be a paid-in-full benefit with a thirty five dollar (\$35) copayment. This shall replace the current benefit under the Empire Plan for professional ambulance services.

B. HEARING AIDS

Effective April 1, 1998, the current hearing aid benefit shall be replaced with a hearing aid benefit that provides a total maximum benefit of six hundred dollars (\$600) every four (4)

years for adults and six hundred dollars (\$600) every two (2) years for children under twelve (12) years old.

C. ROUTINE HEALTH EXAMINATION

Effective April 1, 1998, the current allowance for routine health examinations under the Empire Plan shall be increased and modified as follows: i) for unit members age forty (40) to forty-nine (49), one hundred and fifty dollars (\$150) every two (2) years and one hundred dollars (\$100) every (2) years for enrolled spouses and domestic partners, ii) for unit members age fifty (50) and older, one hundred and fifty dollars (\$150) every year and one hundred dollars (\$100) every year for enrolled spouses and domestic partners.

D. DENTAL BENEFITS

Effective April 1, 1998, coverage for unit members under the GHI Preferred Dental Plan will be enhanced as follows: i) coverage for sealants for children will be implemented, and ii) nonparticipating provider reimbursement will be increased to one hundred percent (100%) of the schedule of allowances for covered basic and prosthetic services. Effective January 1, 1998, the annual maximum benefit for unit members under the GHI Preferred Dental Plan will be increased from twelve hundred dollars (\$1200) to eighteen hundred dollars (\$1800) per person.

E. VISION CARE

Effective April 1, 1998, the contact lens allowance under the parties' vision care plan will be increased from seventy dollars (\$70) to one hundred and twenty-five dollars (\$125).

Effective April 1, 1998, an occupational vision benefit shall be implemented as part of the

parties' vision care plan.

F. POINT OF SERVICE

The Point of Service Plan design and implementation shall be remanded to the parties for further discussion.

G. MANAGED PHYSICAL MEDICINE

Effective April 1, 1998, the Empire Plan's medical care component shall be modified to offer a comprehensive managed care network benefit for the provision of medically necessary physical medicine services, including physical therapy and chiropractic treatments.

H. COPAYMENT FOR OUTPATIENT SERVICES

Effective April 1, 1998, the Empire Plan copayment for outpatient services, including emergency room services, shall be increased from fifteen (\$15) to twenty-five dollars (\$25). These outpatient copayments shall be waived for persons admitted to the hospital as an inpatient directly from an outpatient setting and for the following chronic care outpatient services: chemotherapy, radiation therapy, physical therapy and hemodialysis.

I. BASIC MEDICAL OUT-OF-POCKET MAXIMUM

Effective January 1, 1998, the Empire Plan annual out-of-pocket coinsurance maximum for unit members shall be increased from seven hundred and seventy-six dollars (\$776) to eight hundred and sixty-five dollars (\$865). Thereafter, beginning January 1, 1999, the annual out-of-pocket co-insurance maximum for unit members shall be increased in each

subsequent year by the percentage increase in the medical care component of the Consumer Price Index for Urban Wage Earners and Clerical Workers.

J. PRESCRIPTION DRUGS

Effective April 1, 1998, the current Empire Plan five dollar (\$5) prescription drug copayment shall be increased to eight dollars (\$8). Effective April 1, 1998, unit members shall be moved from an "open" pharmacy network to a "preferred provider" pharmacy network.

Effective April 1, 1998, the Empire Plan Prescription Drug Program shall include coverage for prescription vitamins and contraceptives.

K. HMO PREMIUM

Effective April 1, 1998, the State's contribution for HMO coverage for unit members shall be ninety percent (90%) of the cost of individual coverage and seventy five percent (75%) of the cost of dependent coverage, but in no event shall it be more than one hundred and five percent (105%) of the cost of the Empire Plan.

Effective January 1, 1999, the State's contribution for HMO coverage for unit members shall be ninety percent (90%) of the cost of individual coverage and seventy five percent (75%) of the cost of dependent coverage, but in no event shall it be more than one hundred percent (100%) of the cost of the Empire Plan.

L. BASIC MEDICAL DEDUCTIBLE

Covered expenses for mental health and/or substance abuse treatment or physical medicine services shall be excluded in determining the Empire Plan basic medical component

deductible.

M. DOMESTIC PARTNER COVERAGE

Effective April 1, 1998, Domestic partners of unit members who meet the modified definition of a domestic partner and can provide acceptable proofs of financial interdependence as outlined in the "Affidavit of Domestic Partnership" and Affidavit of Financial Interdependence" shall continue to be eligible for health care coverage.

N. JOINT LABOR MANAGEMENT COMMITTEE ON HEALTH BENEFITS

The parties' "Joint Labor Management Committee on Health Benefits" shall be funded by the State in the amount of two thousand seven hundred dollars (\$2700) for the period 1998-1999.

19. PERMANENT RANK OF SERGEANT

Desirous to reward individual unit members who have achieved the permanent rank of Sergeant, the Union has proposed and the Panel has agreed, that promotion achievements ought to be recognized by increased compensation. Yet, compounding this issue is the fact that Sergeants exist within a rigid hierarchy of both rank and compensation and that salary compression is a Division problem. Therefore, while some believed that a greater increase was warranted, the Panel Chairman cautioned that compression might upset the delicate compensation hierarchy that presently exists. Therefore, based on the record, the Panel awards as follows: *Effective 4/1/98 any member holding the permanent rank of Sergeant shall*

be paid \$200, payable on or about June 1, 1998.

20. SICK LEAVE ACCUMULATION

The Union sought to increase the amount of sick leave that an individual member could accumulate and then sell-back upon retirement. That provision is contained in the current Agreement – the only issue is the amount that may be accumulated. In consideration of the record, the Panel awarded as follows: *Effective April 1, 1998, the number of sick leave days BCI shall be able to accumulate and sell-back upon retirement pursuant to the contractual formula, shall be increased from two hundred and sixty (260) days of paid sick leave to three hundred (300) days of paid sick leave.*

21. LOCATION COMPENSATION

The Union sought a significant increase in location compensation demanding an increase from the present \$768.00 to \$5,000.00. Additionally they proposed to enlarge the geographic area for which such payments will be made. At present payments are made for New York City, Nassau, Suffolk, Westchester, and Rockland counties. NYSPIA proposes extending this benefit to Orange, Putnam, Dutchess, and Monroe counties. The State argued that no structural changes were warranted and that the amount of location compensation should be increased by the same amount as had been done for the other two units. The position of the State was deemed persuasive and accordingly the panel awarded as follows: *Effective as of the pay period closest to April 1, 1998, location compensation shall be increased to eight hundred and twenty-three dollars (\$823) per year.*

AWARD

1. **TERM**

The term of this award is from April 1, 1995 to March 31, 1999.

2. **CASH PAYMENT SUM**

Each member on the payroll from 4/1/95 through 3/31/98 shall receive a one time cash payment of \$11,047 payable on or about 3/31/98.

Members who have not been on the payroll during this entire time shall be compensated as follows: \$142 for each full payroll period that they were on the payroll in this unit for that entire pay period. For members who worked less than a full pay period such compensation shall be on a pro rata basis. For the purposes of overtime compensation, overtime worked after the following dates will be recalculated increasing overtime compensation by the following percentages:

7/1/96	3.0 percent
1/1/97	5.06 percent
7/1/97	7.69 percent
1/1/98	10.92 percent

Notwithstanding the limitations provided in section 443 of the retirement and social security law, the amounts provided in this section shall be considered in their entirety and not suffer any limitation as set out in section 443 for retirement calculation purposes.

CONCUR Burt T. 16 DISSENT _____

CONCUR _____ DISSENT Ronald J. Kiser

3. **BASIC ANNUAL SALARY**

Effective 4/1/98 the following salary schedule shall be as follows:

Investigators	Senior Investigators
\$53,183	\$56,155

Effective 1/1/99 there shall be a 3.2 percent across the board wage increase. The salary schedule shall be as follows:

Investigators	Senior Investigators
\$54,885	\$57,952

CONCUR Bennett DISSENT _____

CONCUR _____ DISSENT Rand Jones

4. **PREMIUM IN LIEU OF OVERTIME**

Effective 4/1/98 all Sr. Investigators shall receive an overtime premium in the amount of \$7,525.

Effective 1/1/99 all Sr. Investigators shall receive an overtime premium in the amount of \$8,016.

CONCUR Bennett DISSENT _____

CONCUR Rand Jones DISSENT _____

5. **COMMAND PAY**

Command Pay shall be instituted for the Sr. Investigators effective 4/1/98 in the amount of \$2,000 annually, payable on a biweekly basis.

CONCUR Bennett DISSENT _____

CONCUR Rand Jones DISSENT _____

6. LONGEVITY

Effective 4/1/98 unit members with 6 or more years of service with the Division shall be paid an annual longevity benefit, payable biweekly, as follows:

Years of Service	Longevity Benefit
6	\$800
7	850
8	900
9	950
10	1,000
11	1,050
12	1,100
13	1,150
14	1,200
15	1,250
16	1,300
17	1,350
18	1,400
19	1,450
20 or more	1,500

CONCUR Bennett/ly DISSENT _____

CONCUR _____ DISSENT Ronald J. K...

7. EXTRAORDINARY OVERTIME FUND

Senior Investigators shall be eligible to receive compensation from the Division's Extraordinary Overtime Fund which will be funded with an additional amount of \$25,000 in fiscal year 1998-99.

CONCUR Bennett/ly DISSENT _____

CONCUR Ronald J. K... DISSENT _____

8. CLOTHING ALLOWANCE

Effective 4/1/98 each member in this unit will receive an annual clothing allowance of \$1,400 to be paid by-weekly. Effective 1/1/99 the clothing allowance will be increased by 3.2 percent plus \$100. (\$1,545) This allowance shall be counted for both overtime and retirement computation purposes.

CONCUR Bennett/ly DISSENT _____

CONCUR _____ DISSENT Ronald J. K...

9. MAINTENANCE ALLOWANCE

Effective 4/1/98 each member in this unit will receive an annual maintenance allowance of \$363 to be paid biweekly. Effective 1/1/99 the maintenance allowance will be increased by 3.2 percent plus \$50. (\$425) This allowance shall be counted for both overtime and retirement computation purposes.

CONCUR Bentley DISSENT _____

CONCUR _____ DISSENT Rand J. [Signature]

10. PROFESSIONAL DEVELOPMENT FUNDS

The Article 25 Professional Development and Quality of Working Life Committee for the period 4/1/98 through 3/31/99 shall be funded in the amount of \$310,000 from which tuition reimbursement and stipend training will be conducted.

CONCUR Bentley DISSENT _____

CONCUR _____ DISSENT Rand J. [Signature]

11. PRODUCTIVITY GAIN PAYMENTS

Effective on April 1, 1998, members may participate in the Productivity Gain program. Unit members who use three (3) days or fewer sick leave per year shall be paid \$200 and unit members who use more than three (3) days but not more than five (5) days shall be paid \$100. This payment shall be made on or about June of the following year.

CONCUR Bernie Kelly DISSENT _____

CONCUR _____ DISSENT Donald J. [Signature]

12. EDUCATION PAY

During fiscal year 1998-99, there shall be a payment to members who possess or obtain the following degrees, to be paid in June 1998. Members who obtain a degree after June 1998 will receive this benefit as soon as practicable. Only one (1) degree may be compensated.

Associate - \$250

Bachelors - \$500

Graduate Degrees - \$750

CONCUR Berni/ky DISSENT _____

CONCUR _____ DISSENT Paul J. K...

13. EQUIPMENT PAY

During fiscal year 1998-99, each member shall receive \$177.00 as general reimbursement for equipment purchased by the members to be paid in June 1998.

CONCUR Berni/ky DISSENT _____

CONCUR _____ DISSENT Paul J. K...

14. PHYSICAL FITNESS PROGRAM

During fiscal year 1998-99, each member will attend a fitness training and evaluation program and will receive a stipend of \$250 for such attendance.

On or about 3/31/99, \$453,486 shall be available to pay members for the incentive component of the fitness program payable after the expiration of the term of this AWARD in the following fiscal year.

CONCUR Bennett DISSENT _____

CONCUR Randolph DISSENT _____

15. SPECIALITY TRAINING STIPEND

During fiscal year 1998-99, a training program will be implemented and funded in the amount of \$216,176 to provide specialty training similar to the training provided pursuant to Article 25.1E. Those employees who participate shall receive approximately \$200. Attendance may or may not be on the members' own time depending upon the program of training and the benefit resulting to Division and the member.

CONCUR Bennett DISSENT _____

CONCUR _____ DISSENT Randolph

16. HIDTA/METROPOLITAN-URBAN ORIENTATION TRAINING

During fiscal year 1998-99, two, two day training programs will be conducted for members in the greater metropolitan New York City area:

A. HIDTA - High Intensity Drug Trafficking Activity Training

B. Metropolitan-Urban Orientation Training

Such training will be available for members in NYC, Orange, Rockland, Dutchess, Putnam, Westchester, Nassau and Suffolk Counties. Compensation for such training shall be \$500 for each program. Both programs shall entail 2 days of training, and members who participate in the training shall attend one day of each program on the members' own time and one day of each program on Divisions' time.

CONCUR Burt Kelly DISSENT _____

CONCUR _____ DISSENT Ronald J. K...

17. HOLIDAY PAY

Effective April 1, 1996, the arbitration decisions rendered by Arbitrator Jeffrey Selchick dated February 5, 1996 (OER Case No. 94-62-464) and June 7, 1997 (OER Case No. 94-62-464) shall no longer be in any force or effect. Hereafter, "time during which a member is excused from work because of holidays or days off in lieu of holidays" shall not be considered time worked for the purpose of computing overtime. However, consistent with Article 15.6 F, overtime payments owed pursuant to the Selchick arbitration decisions previously referenced shall be paid until and including

March 31, 1996. Effective April 1, 1998, all unit members on the payroll on the last day of the pay period in which November 1 falls shall receive additional holiday compensation at their per diem rates of pay in the amount of four (4) days (thirty-three (33) hours) in fiscal year 1998-1999. The holiday payments shall be made by separate check on or about December 1 in each year, commencing in 1998.

CONCUR *Bur 7.14* DISSENT _____

CONCUR *Paul J. K...* DISSENT _____

18. HEALTH INSURANCE

A. AMBULANCE SERVICES

Effective April 1, 1998, covered medical expenses for local professional ambulance services under the Empire Plan shall be a paid-in-full benefit with a thirty five dollar (\$35) copayment. This shall replace the current benefit under the Empire Plan for professional ambulance services.

B. HEARING AIDS

Effective April 1, 1998, the current hearing aid benefit shall be replaced with a hearing aid benefit that provides a total maximum benefit of six hundred dollars (\$600) every four (4) years for adults and six hundred dollars (\$600) every two (2) years for children under twelve (12) years old.

C. ROUTINE HEALTH EXAMINATION

Effective April 1, 1998, the current allowance for routine health examinations under the Empire Plan shall be increased and modified as follows: i) for unit members age forty (40) to forty-nine (49), one hundred and fifty dollars (\$150) every two (2) years and one hundred dollars (\$100) every (2) years for enrolled spouses and domestic partners, ii) for unit members age fifty (50) and older, one hundred and fifty dollars (\$150) every year and one hundred dollars (\$100) every year for enrolled spouses and domestic partners.

D. DENTAL BENEFITS

Effective April 1, 1998, coverage for unit members under the GHI Preferred Dental Plan will be enhanced as follows: I) coverage for sealants for children will be implemented, and ii) nonparticipating provider reimbursement will be increased to one hundred percent (100%) of the schedule of allowances for covered basic and prosthetic services. Effective January 1, 1998, the annual maximum benefit for unit members under the GHI Preferred Dental Plan will be increased from twelve hundred dollars (\$1200) to eighteen hundred dollars (\$1800) per person.

E. VISION CARE

Effective April 1, 1998, the contact lens allowance under the parties' vision care plan will be increased from seventy dollars (\$70) to one hundred and twenty-five dollars (\$125).

Effective April 1, 1998, an occupational vision benefit shall be implemented as part of the parties' vision care plan.

F. POINT OF SERVICE

The Point of Service Plan design and implementation shall be remanded to the parties for further discussion.

G. MANAGED PHYSICAL MEDICINE

Effective April 1, 1998, the Empire Plan's medical care component shall be modified to offer a comprehensive managed care network benefit for the provision of medically necessary physical medicine services, including physical therapy and chiropractic treatments.

H. COPAYMENT FOR OUTPATIENT SERVICES

Effective April 1, 1998, the Empire Plan copayment for outpatient services, including emergency room services, shall be increased from fifteen (\$15) to twenty-five dollars (\$25).

These outpatient copayments shall be waived for persons admitted to the hospital as an inpatient directly from an outpatient setting and for the following chronic care outpatient services: chemotherapy, radiation therapy, physical therapy and hemodialysis.

I. BASIC MEDICAL OUT-OF-POCKET MAXIMUM

Effective January 1, 1998, the Empire Plan annual out-of-pocket coinsurance maximum for unit members shall be increased from seven hundred and seventy-six dollars (\$776) to eight hundred and sixty-five dollars (\$865). Thereafter, beginning January 1, 1999, the annual out-of-pocket co-insurance maximum for unit members shall be increased in each subsequent year by the percentage increase in the medical care component of the Consumer Price Index for Urban Wage Earners and Clerical Workers.

J. PRESCRIPTION DRUGS

Effective April 1, 1998, the current Empire Plan five dollar (\$5) prescription drug copayment shall be increased to eight dollars (\$8). Effective April 1, 1998, unit members shall be moved from an "open" pharmacy network to a "preferred provider" pharmacy network.

Effective April 1, 1998, the Empire Plan Prescription Drug Program shall include coverage for prescription vitamins and contraceptives.

K. HMO PREMIUM

Effective April 1, 1998, the State's contribution for HMO coverage for unit members shall be ninety percent (90%) of the cost of individual coverage and seventy five percent (75%) of the cost of dependent coverage, but in no event shall it be more than one hundred and five percent (105%) of the cost of the Empire Plan.

Effective January 1, 1999, the State's contribution for HMO coverage for unit members shall be ninety percent (90%) of the cost of individual coverage and seventy five percent (75%) of the cost of dependent coverage, but in no event shall it be more than one hundred percent (100%) of the cost of the Empire Plan.

L. BASIC MEDICAL DEDUCTIBLE

Covered expenses for mental health and/or substance abuse treatment or physical medicine services shall be excluded in determining the Empire Plan basic medical component deductible.

M. DOMESTIC PARTNER COVERAGE

Effective April 1, 1998, Domestic partners of unit members who meet the modified definition of a domestic partner and can provide acceptable proofs of financial interdependence as outlined in the "Affidavit of Domestic Partnership" and Affidavit of Financial Interdependence" shall continue to be eligible for health care coverage.

N. JOINT LABOR MANAGEMENT COMMITTEE ON HEALTH BENEFITS

The parties' "Joint Labor Management Committee on Health Benefits" shall be funded by the State in the amount of two thousand seven hundred dollars (\$2700) for the period 1998-1999.

CONCUR _____ DISSENT *Ben T. Coy*

CONCUR *[Signature]* DISSENT _____

19. PERMANENT RANK OF SERGEANT

During FY 1998 - 1999, any member holding the permanent rank of Sergeant shall be paid \$200, payable on or about June 1, 1998.

CONCUR *Ron 11/16/97* DISSENT _____

CONCUR _____ DISSENT *Ronald J. [Signature]*

20. SICK LEAVE ACCUMULATION

Effective April 1, 1998, the number of sick leave days that BCI unit members shall be able to accumulate and sell-back upon retirement pursuant to the contractual formula, shall be increased from two hundred and sixty (260) days of paid sick leave to three hundred (300) days of paid sick leave.

CONCUR *Ron 11/16/97* DISSENT _____

CONCUR _____ DISSENT *Ronald J. [Signature]*

21. LOCATION COMPENSATION

Effective as of the pay period closest to April 1, 1998, location compensation shall be increased to eight hundred and twenty-three dollars (\$823) per year.

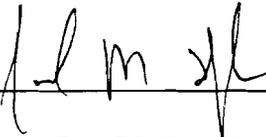
CONCUR _____ DISSENT Bernillo

CONCUR Paul J. [Signature] DISSENT _____



AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

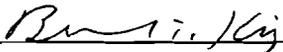


Joel M. Douglas, Ph.D.

Public Panel Member and Chairman

Dated: 3/6/98

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Bernard T. King, Esq.

Employee Panel Member

Dated: 3/6/98

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Ronald Kurach

Employer Panel Member

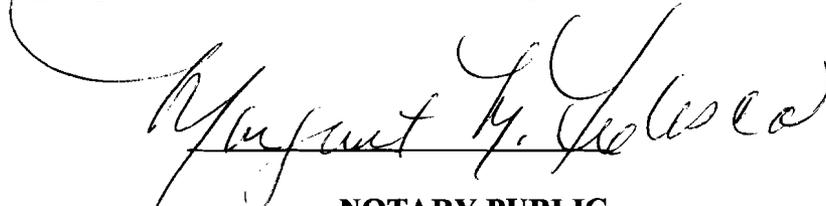
Dated: 3-6-25


Ronald Kurach

Employer Panel Member

Dated: 3-6-98

On this 7th day of March 1998, before me personally came and appeared RONALD KURACH, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.


NOTARY PUBLIC

MARGARET M. TEDESCO
Notary Public, State of New York
Qualified in Schenectady County
No. 4782319
Commission Expires October 31, 99

3/6/98

Bernard T. King

Date

Bernard T. King, Esq.

Employee Organization Panel Member

On this 6th day of March 1998, before me personally came and appeared Bernard T. King, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Margaret M. Tedesco
NOTARY PUBLIC

MARGARET M. TEDESCO
Notary Public, State of New York
Qualified in Schenectady County
No. 4782319
Commission Expires October 31, 99

3/6/98

Date

Joel M. Douglas

Joel M. Douglas, Ph.D.

Public Panel Member

On this 6th day of March 1998, before me personally came and appeared JOEL M. DOUGLAS, Ph.D., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Margaret M. TeDESCO

NOTARY PUBLIC

MARGARET M. TEDESCO
Notary Public, State of New York
Qualified in Schenectady County
No. 4782319
Commission Expires October 31, 99

Bernard T. King, Employee Organization Panel Member, concurring and dissenting.

I write separately because, although in many respects the Panel's Award is entirely proper and supported by the record, in a handful of key areas I find the Opinion and Award lacking.

I turn first to the one area of the Panel Chairman's Opinion that I find particularly troublesome and with which I must indicate my respectful but strong dissent. In my view, the fundamental issue in this first-ever interest arbitration between the parties is determining which employers/employees are the most comparable to the BCI unit for the purpose of determining the wages and other benefits directly relating to compensation. The Chairman never really answered that question.

Instead, the Chairman rejected the Union's position that the federal law enforcement agencies (FBI, DEA, et al.), were among the most comparable to the BCI unit; indeed the Chairman appears to go even further in rejecting the analogy than did the State in its presentation. This is surely wrong. The record (testimony of BCI unit members, Division officers, and retired FBI Agent Dale Anderson) was replete with evidence that BCI unit members regularly work alongside and on a par with federal law enforcement officers. Indeed, their testimony showed unequivocally that members of the BCI unit routinely work, as equals, with the FBI, the DEA, and other federal agencies. Plainly, these officers are highly, if not perfectly, comparable to the Investigators and Senior Investigators of the BCI; accordingly, the compensation levels of federal law enforcement officers must be considered in determining a "just and reasonable" Award.

The Chairman's attempt to distinguish the federal analogy is simply unpersuasive. Governments at all levels employ varying groups of employees and therefore must contend

with issues attending differences in compensation. Indeed, contrary to his statements, various federal law enforcement agencies employ both uniformed police officers and detectives (e.g., Secret Service, Customs). Moreover, whether or not the compensation received by federal law enforcement officers is determined through legislation or collective negotiating is of relatively minor importance. The far more important questions in determining comparability are the breadth, depth, and work quality of the respective police agencies.

In my view, it was error for the Chairman to buy into the State's argument that the compensation schemes of the troopers and supervisors units must necessarily box in that of the BCI unit. While such relationships are certainly relevant, they are by no means controlling, as is plainly evinced in the Panel's awarding of certain benefits that are not enjoyed by members of the other two units, e.g., clothing and maintenance allowances, and retroactive pay to retired unit members. In any event, the evidence should take the Panel's decision wherever it leads, notwithstanding the inadequacies of agreements or arbitration decisions involving the other two units. Finally, the State's patent attempt to "water down" the compensation numbers by including inapposite, small municipal police departments and largely rural sheriff's departments should have been more explicitly rejected. These jurisdictions are simply not comparable to the BCI unit. To the extent the Chairman relied on these comparables to support his decisionmaking, I dissent.

Notwithstanding the above criticisms, however, I wholeheartedly concur in several aspects of the Award. The increases in basic annual salary, while not going far enough, make up some of the ground lost by this unit over the last several years. The institution of longevity pay, clothing and maintenance allowances, sergeant's pay, and equipment pay

satisfy longstanding efforts by the Union to achieve greater parity in compensation with their fellow detectives. I also subscribe to the Panel's determination to address the inadequate compensation of Senior Investigators. Specifically, the institution of command pay is a significant achievement for the unit. In addition, the increase in the overtime premium for Seniors, while short of the Union's demand, was significant.

I also concur with much of the Chairman's sentiments with respect to the inadequate compensation of Downstate unit members. He rightly urges the parties to continue their efforts to reduce the discrepancies between these BCI unit members and their neighboring counterparts. I do not concur, however, with my fellow Panel members on their decision to award only \$823.00 in location compensation. Instead, this item should have been increased by several thousand dollars to address the problem acknowledged by the Chairman; the Union's proposal to expand the geographic scope of location pay should also have been adopted by the Panel.

On a related note, I also firmly support the institution of training programs in high density drug trafficking activity and metropolitan-urban orientation. These worthwhile programs will undoubtedly provide valuable skill enhancements to the benefit of both the members and the Division, as well as appropriately compensate the participants. I would urge, however, that in the future such programs be expanded to the Upstate metropolitan areas.

I also concur with the Panel's award of holiday pay, albeit with reservations as to the amount. Rather than four days' pay, the Panel should have awarded six days' pay – one-half for each of the twelve holidays provided for by contract.

I dissent, however, from the State-proposed health insurance program.

Unfortunately, the Panel looked to the health insurance of other State employees, rather than the programs enjoyed by comparable detectives. This too resulted from the Panel's inherently flawed approach of not selecting an appropriate group of comparable police agencies.

I also note my dissent with respect to the Panel's decision not to award two key items advanced by the Union. In my view, there is ample evidence in the record to support the proposed elimination of the parties' Guaranteed Overtime (GOT) Program. The GOT was an interim solution to the "problem" created by the result of litigation that forced the State to pay overtime compensation to Investigators in accordance with federal law. It is apparent from the record that the GOT is highly inefficient. The Union's proposal to abolish the program and roll the former overtime premium into the Investigator's base pay should have been granted.

Finally, I must dissent from the Panel's refusal to institute a premium rate payable to unit members who are ordered or scheduled to be on call. The disruption to members' personal life, while necessary because of the exigencies of police work, should be appropriately compensated.

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3/4/98

Bennett 17.16j

MARGARET M. TEDESCO
Notary Public, State of New York
Qualified in Schenectady County
No. 4782319
Commission Expires October 31, 99