

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between:

STATE OF NEW YORK,

Employer,

-and-

NEW YORK STATE POLICE INVESTIGATORS
ASSOCIATION,

Employee Organization.

FINAL AND BINDING AWARD
OF TRIPARTITE PANEL

PERB CASE 1A2004-002

PUBLIC EMPLOYMENT RELATIONS BOARD
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The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN:

Jeffrey M. Selchick, Esq.

PUBLIC EMPLOYEE ORGANIZATION PANEL
MEMBER:

Jules L. Smith, Esq.
Blitman & King LLP

PUBLIC EMPLOYER PANEL MEMBER:

Walter J. Pellegrini, Esq.,
General Counsel
Governor's Office of Employee
Relations

Appearances:

For the State of New York:

Governor's Office of Employee
Relations
Michael N. Volforte, Esq., of Counsel

For the NYS Police Investigators Association

Blitman & King LLP
Bernard T. King, Esq., of Counsel
Kenneth L. Wagner, Esq., of Counsel

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 NYS Police Investigators Association ("Association") for the unit consisting of Investigators and Senior Investigators of the Division of New York State Police.

Hearings were held on the following dates: September 7, September 13, September 30, October 25, October 26, November 22, November 23, December 6, December 13, December 15 and December 16, 2004. 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.

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: 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 interests and welfare of the public and the financial ability of the public employer to pay; comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards or employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills; 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 following provisions of section 209(4) (e) of the Civil Service Law limited the Panel:

With regard to members of any organized unit of troopers, senior investigators, investigator specialists, commissioned or non-

commissioned officers of the division of state police, the provisions of this section shall not apply to issues relating to disciplinary procedures and investigations or eligibility or assignment to details and positions which shall be governed by other provisions prescribed by law.

The Panel, consistent with the request of the parties, expedited the process by issuing an AWARD with an Opinion to be issued in the near future. 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 resolution of all issues raised in this Interest Arbitration proceeding. Those issues presented by the parties that are not specifically dealt with in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. The status quo on those rejected items, if any, shall be maintained.

BCI AWARD

1. HEALTH INSURANCE

The following changes to Article 11 – Health Insurance are made:

- a. Effective **March 31, 2005**, the Hospital Emergency Room co-payment will increase to \$50.
- b. Effective **March 31, 2005**, the Hospital Outpatient co-payment will increase to \$35. Coincident with the increase in the hospital outpatient co-payment, services provided in a hospital owned or operated extension clinic will be paid by the hospital carrier.
- c. Effective on **March 31, 2005**, the Hospital component (inpatient and outpatient services) of the Empire Plan will be modified as follows:
 - The Hospital carrier will establish a network of hospitals (acute care general hospitals, skilled nursing facilities and hospices) throughout the United States.
 - Any hospital that does not enter into a participating agreement with the hospital carrier will be considered to be a non-network facility.
 - Covered inpatient services received at a network hospital will be paid-in-full. Covered outpatient services (outpatient lab, x-ray, etc. and emergency room) received at a network hospital will be subject to the appropriate co-payment.
 - Covered inpatient services received at a non-network hospital will be reimbursed at 90% of charges. There will be a separate \$1500 annual Hospital coinsurance maximum per enrollee, enrolled spouse/domestic partner and all dependent children combined established for non-network hospital out-of-pocket expenses.
 - The \$1500 Hospital coinsurance maximum is for non-network hospital expenses only and cannot be combined with any coinsurance maximums for other Empire Plan components.
 - Covered outpatient services received at a non-network hospital will be reimbursed at 90% of charges or a \$75 co-payment whichever is greater. The non-network outpatient coinsurance will be applied toward the \$1500 annual coinsurance maximum.
 - Once the enrollee, enrolled spouse/domestic partner or all dependent children combined have incurred \$500 in non-network expenses, a claim may be filed with the medical carrier for reimbursement of out-of-pocket non-network expenses incurred above the \$500 and up to the balance of the coinsurance maximum.

- Services received at a non-network hospital will be reimbursed at the network level of benefits under the following situations:
 - Emergency outpatient/inpatient treatment;
 - Inpatient/outpatient treatment only offered by a non-network hospital; and
 - Inpatient/outpatient treatment in geographic areas where access to a network hospital exceeds 30 miles does not exist.
 - Care received outside of the US
 - Anesthesiology, pathology and radiology services received at a network hospital will be paid-in-full less any appropriate co-payment even if the provider is not participating in the Empire Plan participating provider network under the medical component.
- d. Effective **March 31, 2005**, no payment will be made for inpatient hospital days determined to be non-medically necessary by the hospital carrier.
- e. Effective **March 31, 2005**, the participating provider office visit, office surgery, radiology and laboratory co-payments will increase to \$15.
- f. Effective **March 31, 2005**, the Empire Plan Prescription Drug Program will be modified as follows:
- i. A third tier of prescription drugs and prescription drug co-payment will be created to differentiate between preferred and non-preferred brand-name drugs.
 - ii. The co-payment will be \$5 for generic drugs, \$15 for preferred brand name drugs and \$30 for non-preferred brand name drugs for up to a 30-day supply at either a retail pharmacy or the mail service pharmacy.
 - iii. The co-payment will be \$10 for generic drugs, \$30 for preferred brand name drugs and \$60 for non-preferred brand name drugs for a 31 to 90 day supply at a retail pharmacy.
 - iv. The co-payment will be \$5 for generic drugs, \$20 for preferred brand name drugs and \$55 for non-preferred brand name drugs for a 31 to 90 day supply at the mail service pharmacy.
- g. Effective **March 31, 2005**, the Empire Plan Centers of Excellence Programs will be expanded to include Cancer Resource Services. The Cancer Resource Program will provide:
- Direct telephonic nurse consultations;
 - Information and assistance in locating appropriate care centers;

- Connection with cancer experts at Cancer Resource Services network facilities;
 - A modest travel allowance; and
 - Paid-in-full reimbursement for all services provided at a Cancer Resource Services network facility when the care is pre-certified.
- h. Effective **March 31, 2005**, a Prosthetic and Orthotic network will be available to Empire Plan enrollees. Devices purchased through a network vendor will be paid-in-full.
- i. Effective **March 31, 2005**, the Empire Plan Basic Medical component will include a network wrap discount option.
- Empire Plan enrollees will have access to an expanded network of providers through an additional provider network;
 - Basic Medical provisions will apply to the providers in the expanded network option (deductible and 20% coinsurance);
 - Payment will be made by the Plan directly to the discount providers, no balance billing of discounted rate will be permitted;
 - This program is offered as a pilot program and will terminate on December 31, 2006, unless extended by agreement of both parties.
- j. Effective **March 31, 2005**, the infertility lifetime maximum benefit will increase to \$50,000 per covered individual.
- k. Effective **January 1, 2005**, the hearing aid allowance will be \$1,200 per hearing aid per ear.
- l. Effective **March 31, 2005**, mastectomy prosthetics will be a paid-in-full benefit.
- m. Effective **January 1, 2005**, the maximum lifetime benefit for non-network substance abuse services shall be increased to \$250,000.
- n. Effective **March 31, 2005**, the State and the NYSPIA Joint Committee on Health Benefits will develop and implement two additional disease management programs.
- o. The NYSPIA Joint Committee on Health Benefits will work with the State to implement a direct debit vehicle to be utilized under the Medical Flexible Spending Account.
- p. Effective **January 1, 2005**, the maximum annual Dental Care benefit per person shall be increased to \$2,300.
- q. Effective **January 1, 2005**, the maximum lifetime benefit for orthodontic treatment shall increase to \$2300.

- r. Effective **January 1, 2004**, eligible expenses under the Medical Flexible Spending Account will be expanded to include over-the-counter medications according to guidelines developed by the Medical Flexible Spending Account Administrator.
- s. The State shall seek the appropriation of funds by the Legislature to support the NYSPIA Joint Committee on Health Benefits initiatives and to carry out the administrative responsibilities of the Committee in the amount of \$3680 for each of the following periods: April 1, 2003 to March 31, 2004 and April 1, 2004 to March 31, 2005. One-half of these amounts in each year shall be made available to each party.

2. CASH PAYMENT SUM

Each member on the payroll from **4/1/03 through 3/31/05** shall receive a one-time cash payment of \$10,771 payable as soon as practicable after 3/31/05.

The calculation of this cash payment is inclusive of a 3% increase on all members existing basic annual salary on 4/1/03 and 4/1/04, a 3% increase on the existing location pay, supplemental location pay, maintenance allowance, clothing allowance, equipment pay, premium pay and command pay on 4/1/03 and 4/1/04, \$1500 in expanded duty pay for the period of 4/1/03 to 3/31/04 and \$2500 in expanded duty pay for the period 4/1/04 to 3/30/05. This amount was then divided by the number of members of the unit to produce the cash payment sum for each member. No additional amounts shall be due for these increases and/or new pays other than the cash payment described herein for the period April 1, 2003 to March 30, 2005. Members shall continue to receive the salaries, pays and allowances in effect on March 31, 2003 for the period April 1, 2003 to March 30, 2005. Effective March 31, 2005, salaries, pays, and allowances have been increased, changed or eliminated as stated in this award.

Members who have not been on the payroll during this entire time shall be compensated as follows: \$203 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 during the following period shall be recalculated increasing overtime compensation by the following percentages:

4/1/03-3/31/04	3%
4/1/04-3/31/05	6.09%

The State shall introduce legislation seeking that the amounts provided in this section shall be considered in their entirety and not suffer any limitation as set out in section 443 and 431 for retirement calculation purposes.

3. BASIC ANNUAL SALARY

Effective **3/31/05**, element 15 of the 1999-2003 IA award shall be made permanent and the salary schedule for investigators assigned to the duty stations in the following geographic areas shall be as follows:

Nassau and Suffolk Counties	\$74,398
City of New York, Westchester and Rockland Counties	\$74,287
Rest of State	\$73,857

Effective **3/31/05**, the salary schedule for senior investigators shall be as follows:

All geographic areas	\$71,578
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4. PREMIUM IN LIEU OF OVERTIME

Effective **3/31/05**, all Sr. Investigators shall receive an overtime premium in the amount of \$9900.

Premium shall continue to be paid on a bi-weekly basis. This additional compensation shall be paid on a bi-weekly basis and shall be counted for both overtime and retirement computation purposes.

5. COMMAND PAY

Effective **3/31/05**, Sr. Investigators shall receive command pay in the amount of \$2470.

Command pay shall continue to be paid on a biweekly basis. This additional compensation shall be paid on a bi-weekly basis and shall be counted for both overtime and retirement computation purposes.

6. ADDITIONAL COMPENSATION – SENIOR INVESTIGATORS

Effective **3/31/05**, the extraordinary overtime fund shall be eliminated.

Effective **3/31/05**, time during which a Senior Investigator is excused from work because of leave at full pay and days in lieu of the twelve (12) recognized legal holidays shall be considered as time worked for the purpose of computing additional compensation for the hours worked in excess of 171 in a 28-day schedule.

7. CLOTHING AND EQUIPMENT PAY

Effective **3/31/05**, the clothing allowance and equipment pay shall be eliminated.

8. MAINTENANCE ALLOWANCE

Effective **3/31/05**, each member in this unit will receive an annual maintenance allowance of \$2622.

This allowance will continue to be paid bi-weekly. This allowance shall be counted for both overtime and retirement computation purposes.

9. PROFESSIONAL DEVELOPMENT AND TRAINING FUNDS

The Article 25 Professional Development and Quality of Working Life Committee for the period **4/1/03 through 3/31/05** shall be funded in the amount of \$81,900 annually from which tuition reimbursement, the Masters Program and EAP shall be funded.

10. EXPANDED DUTY PAY

In recognition of their expanded duties, including those related to counter-terrorism and other post-September 11th initiatives, computer crimes, and law enforcement activities involving gambling regulation, effective **3/31/05** each unit member shall continue to receive additional compensation in the amount of \$2500 annually. This additional compensation shall be paid on a bi-weekly basis and shall be counted for both overtime and retirement computation purposes.

11. SUPERVISORY RESPONSIBILITY

In recognition of the assumption of supervisory responsibility by certain Investigators of this unit not currently designated as supervisors, effective **3/31/05**, the following categories of investigators shall be compensated as follows:

- a. For those Investigators who are designated as "Unit Coordinators," he/she shall be entitled to Command Pay commencing on the first day he/she is designated as a "Unit Coordinator". Those members so designated shall continue to earn overtime as an Investigator.
 - i. An investigator in the BCI will not be designated a "Unit Coordinator" unless he/she:
 1. fulfills those duties listed in Regulation 4.8; and
 2. is assigned by a Commissioned Officer some duties listed in Regulation 4.7; and
 3. is designated by the Field Commander upon recommendation of the Troop or Detail Commander.

- b. In the event of an existing vacancy, the Field Commander may designate a member to serve as an "Acting Senior Investigator" or an "Acting Administrative Senior Investigator." A member so designated shall be entitled to Command Pay commencing on the first day he/she is designated as an "Acting Senior Investigator" or an "Acting Administrative Senior Investigator". On the 29th day after such designation, he/she shall be entitled to additional compensation in the amount of \$70.94 for each bi-weekly pay period he/she remains in this assignment. Those Members so designated shall continue to earn overtime as an Investigator.
- c. Command pay paid herein shall be paid in the same manner as it is paid to Senior Investigators.
- d. This additional compensation shall be paid on a bi-weekly basis and shall be counted for both overtime and retirement computation purposes.

There shall be no monies due for any claim of out-of-title work and/or for the assumption, or claimed assumption, of supervisory responsibilities by any member of this unit prior to the implementation of these provisions. After such implementation date, the amount of any monetary relief due to an individual who claims that he/she is working out of title and/or has assumed supervisory responsibilities shall in no event be retroactive to a date earlier than fifteen (15) calendar days prior to the date of the filing of a grievance and/or other litigation, whichever is earlier. There shall be no compensation due for the assumption of increased responsibility by any other member of the unit. The State shall seek an appropriation to study the issue of out of title work.

Disputes concerning the proper application of these provisions shall be resolved as follows:

A non-contract grievance may be filed with the Division of State Police. Such grievance shall be the subject of a labor-management meeting between the Division and NYSPIA.

If the dispute is not resolved in that meeting, the Division shall issue a decision outlining the nature of the dispute. NYSPIA shall have the right to refer the dispute to the Director of the Governor's Office of Employee Relations ("GOER"), or his/her designee within the time frames provided in Article 15 with respect to non-contract grievances. The parties shall meet to attempt to resolve the dispute and shall be entitled to bring all individuals necessary to resolve the dispute with them to this meeting.

If the dispute remains unresolved, the Director of GOER, or his/her designee, shall issue a decision outlining the nature of the dispute.

NYSPIA shall have the right to commence an Article 78 proceeding to challenge the decision of the Director of GOER or his/her designee from this decision within the time limits provided by law.

12. LOCATION COMPENSATION

Effective **3/31/05**, supplemental location compensation, provided in element 14 of the 1999-2003 Interest Arbitration Award (IA 99-0017) shall be increased for the members of this unit whose duty station is located in the following counties:

Putnam, Orange, Dutchess	\$1061
New York City, Rockland, Westchester	\$1591
Nassau, Suffolk	\$1857

The supplemental location compensation shall continue to be administered in the same manner as regular location compensation.

Effective **3/31/05**, location compensation (regular) shall be increased to \$1273 per year.

13. RESPIRATOR LENS INSERTS

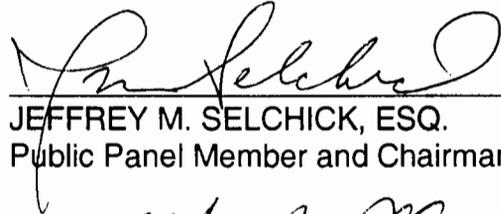
The State shall seek an annual appropriation to fund the acquisition and distribution of eyeglass lens inserts for respirators for members of the Division in the amount of \$50,000.

14. EMPLOYEE BENEFIT FUND

The Article 11.13 Employee Benefit Fund payment shall be \$49 per member for the period April 1, 2003 to March 31, 2004 and \$49 per member for the period April 1, 2004 to March 31, 2005. The number of members for each year shall be determined by taking the number of full-time annual salaried employees in the unit on the March 1st prior to each year. There shall be no continuation of the Fund or the payments unless expressly agreed to by the parties.

15. TERM OF THE AWARD

This Interest Arbitration Award covers the period commencing April 1, 2003 and to March 31, 2005.



JEFFREY M. SELCHICK, ESQ. 2-4-05
Public Panel Member and Chairman Date

Concur

Dissent



WALTER J. PELLEGRINI, ESQ. 2/4/05
Employer Panel Member Date

Concur

~~Dissent~~



JULES L. SMITH, ESQ. 2/7/05
Employee Organization Panel Member Date