

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration Between

THE STATE OF NEW YORK

Public Employer,

-and-

NEW YORK STATE LAW ENFORCEMENT OFFICERS
UNION, DISTRICT COUNCIL 82, AFSCME, AFL-CIO
(SECURITY SUPERVISORS UNIT)

Employee Organization,

PERB Case No. IA2005-001

BEFORE: Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Walter J. Pellegrini, General Counsel, GOER
Employer Panel Member

Ennio J. Corsi, Esq., General Counsel, Council 82
Employee Organization Panel Member

APPEARANCES:

For the State of New York

Amy M. Petragani, Esq., Associate Counsel, GOER

For Council 82, Security Supervisors Unit

Kevin S. Casey, Esq., Of Counsel

**OPINION
AND
AWARD**

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board (“PERB”), to make a just and reasonable determination of a dispute between the State of New York (“State”) and the New York State Law Enforcement Officers Union, District Council 82 (“Union”) regarding the Security Supervisors bargaining unit (“SSU”).

The Union is the certified bargaining agent for the SSU which at the time of this proceeding, consisted of fifteen titles, six of which are eligible to be included in the instant interest arbitration. The titles in the unit that are eligible for interest arbitration are Chief Environmental Conservation Officer, Environmental Conservation Investigator 3, Sergeant Park Patrol, Lieutenant Park Patrol, Captain Park Patrol, and Correction Lieutenants. All of these titles, except for Correction Lieutenants, are Police Officer titles. There are approximately 626 employees in titles in this unit who are eligible for interest arbitration, 550 of whom serve as Correction Lieutenants.

All of the titles described above are eligible for interest arbitration for the first time. Section 209.4(f) of the Civil Service Law limits interest arbitration to those unit members who are defined as Police Officers pursuant to subdivision 34 of Section 1.20 of the Criminal Procedure Law and to those members employed by the NYS Department of Correctional Services and are designated as Peace

Officers pursuant to subdivision twenty five of section 2.10 of the Criminal Procedure Law. Section 209.4(f) further limits this interest arbitration to those items “directly related to compensation” while excluding “non-compensatory issues.”

The last collective bargaining agreement (Agreement) addressing the terms and conditions of employment for the titles in the unit expired on March 31, 2003. The State and the Union began negotiations for a successor Agreement to the one that expired on March 31, 2003, but such negotiations were unsuccessful. A mediator was assigned by PERB to assist the parties in their negotiations dispute, but mediation was unsuccessful. On April 11, 2005, the Union filed a Petition for Interest Arbitration (Joint Exhibit 2) pursuant to Section 209.4 of the Civil Service Law.

The State filed a response to said Petition on April 25, 2005 (Joint Exhibit 3). Thereafter, the undersigned Public Arbitration Panel (Joint Exhibit 1) was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were conducted before the undersigned Panel on February 7, 2006, February 8, 2006, February 15, 2006, March 7, 2006, March 8, 2006, April 12, 2006, May 8, 2006, May 11, 2006, May 25, 2006, June 19, 2006 and July 11, 2006. At all hearings, both parties were represented by counsel. Both parties

submitted numerous and extensive exhibits and documentation, including written closing arguments, and both parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, argument and issues submitted by both parties. After significant discussion and deliberations at numerous Executive Sessions held between July 11, 2006 and September 7, 2006, the Panel reached majority agreement on the terms of this Interest Arbitration Award. The Award consists of many compromises induced by the Panel Chair and represents a complete package. Neither of the advocate Panel members would accept each individual recommendation in isolation. However, as only a simple majority is required on each item, the support of all items by at least the Panel Chairman and the Employee Organization Panel Member results in this binding Award. On the overall package however, the Employer Panel Member indicated his dissent. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chairman and the Employee Organization Panel Member.

At the request of the parties, a Summary of Award, attached hereto as Appendix A, was issued on September 8, 2006, with the understanding that the Opinion would follow. Both parties subsequently submitted briefs which were received by the Panel Chairman on or about December 21, 2007 and were considered by the entire Panel. The Final Opinion and Award is set out herein.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' arbitration eligible terms and conditions of employment for the period April 1, 2003 through March 31, 2005.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

- 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 other employees generally in public and private employment in comparable communities;
- b) the interests 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 the 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.

COMPARABILITY

Position of the Union

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with “other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities.”

The Union contends that all of its titles should be compared on a primary basis with the New York State Police (NYSP). It maintains that its unit members have the same statewide jurisdiction of the NYSP. It asserts that most of its titles enforce the same laws, receive similar training, have similar educational and physical requirements, utilize similar equipment and techniques, and are subject to the same dangers and hazards of employment as NYSP members.

The Union maintains that Correction Lieutenants also work in an extremely stressful environment, are subject to numerous risks and have a multitude of supervisory responsibilities. It stresses that there are dramatic inequities in terms of compensation paid to its members and the compensation paid to members of the NYSP and that the supervision duties performed by Correction Lieutenants is analogous to that of NYSP supervisors. Consequently, in the Union’s estimation, a more logical and equitable relationship should be created vis-à-vis

compensation paid to its Correction Lieutenants and the amount paid to NYSP members in a like title.

The Union has also presented extensive information regarding the training, requirements, activities, salaries and benefits for positions in each of the three agencies it represents in this proceeding (e.g. Lieutenant Park Patrol) and has compared each of the positions with the NYSP. Additionally, in an attempt to provide a broader perspective, the Union has presented information from contiguous states with similar titles to its unit members, although the Union argues that the comparable titles in contiguous states are not as comparable to its members as is the NYSP.

The Union initially addresses employees in the titles of Chief Environmental Conservation Officer (CECO) and Environmental Conservation Investigator 3 (ECI 3). It notes that CECOs and ECI 3s have rigorous educational requirements that are higher than the requirements for the NYSP. It also points out that employees in these titles are defined as a Police Officer within the meaning of Section 1.20 of the Criminal Procedure Law and that they may be assigned anywhere in the State.

The Union argues that when these officers were trainees they attended a 26 week Police Academy that provides approximately 120 more hours of instruction than the NYSP Academy. The Academy curriculum covers all basic police instruction such as Criminal Procedure Law, Penal Law, Vehicle and

Traffic Law, firearms, etc. The Union asserts that the curriculum of both training schools is essentially interchangeable, except that the Police Academy for Environmental Conservation Officers (ECO's) also covers Environmental Law and regulations. Along these lines, the Union notes that NYSP Superintendent Wayne Bennett acknowledged that ECO Academy training is similar to the training at the NYSP Academy.

The Union avers that ECO "in-service" training is also quite similar to that provided to the NYSP. All ECO's are required to have in-service training two times a year on a variety of topics. There are also many specialized courses available to ECO's such as weapons of mass destructions and drug interdiction. In the Union's estimation, since its officers are trained in both general law enforcement (similar to the NYSP) and the complex world of hazardous materials, its compensation should bear some relationship to their level of expertise and professionalism.

The Union insists that ENCON supervisors have a broad array of police enforcement responsibilities. ENCON supervisors enforce all the laws of the state, and not just the Environmental Conservation Laws. They patrol in police uniform, in marked police vehicles. They are armed and they enforce the Penal Law generally in all matters such as frauds, forgeries, assaults and even homicides. They also inspect residential, retail, commercial and industrial sites and enforce marine laws and regulations. According to the Union, ENCON

supervisors routinely encounter dangerous chemicals and are regularly exposed to hazardous medical waste in the course of the performance of daily duties.

The Union insists that CECOs have supervisory responsibilities that cover a large number of people and a large amount of geographic area. They direct Environmental Law enforcement in regions ranging from two to nine counties. They regularly confer with heads of regional environmental programs to coordinate law enforcement. They command staffs of 10 to 30 ECOs and assign the ECOs to specific patrols and projects.

CECOs become the face of Environmental Law enforcement in their region. They attend local and regional meetings of sportsman clubs and civic groups to answer questions and explain environmental programs. They are also the lead agency official in coordinating law enforcement with other jurisdictions, including the Canadian government.

The Union asserts that CECOs are responsible for all law enforcement activities that occur within their regions on a 24/7 basis. These activities include dealing with hazardous spills and regulation of petroleum storage facilities. They are also responsible for special assignments such as river details that attract tens of thousands of people into rural areas over a very short period of time.

ENCON supervisors also develop tactics to deal with hazards such as chronic wasting disease among the deer population. They develop and

implement initiatives to deal with car crushers, junk yards and wood burning heating appliance investigations.

According to the Union, ENCON supervisors frequently call upon their scientific knowledge to investigate and prosecute criminal activity. For example, ENCON supervisors developed procedures for the safe handling of anhydrous ammonia which is extremely toxic. The ammonia is used as a fertilizer for corn and is used to make methamphetamine. The Union maintains that the investigation and handling of methamphetamine labs is primarily handled by ENCON supervisors because of their expertise in dealing with extremely hazardous chemical substances.

The Union maintains that CECOs have duties that are similar to NYSP Captains and Majors. They have a similar number of subordinates as an NYSP Captain, but cover a larger geographic area similar to that of an NYSP Major.

The Union avers that CECOs are "grossly underpaid" and that the gap between NYSP Captains' pay and the amount paid to CECOs has dramatically increased over the past ten years or so. For example, in 1995 an NYSP Captain had a job rate of \$62,000 and the CECO job rate was about \$57,000 which is an 8.9% difference. In 2003, the State Police Captain job rate was over \$100,000 which was 48.3% higher than the CECO job rate.

The substantial differences in longevity pay between CECOs and NYSP Captains further exacerbates the pay differential problem, in the estimation of the

Union. For example, the Union states that total longevity earned for NYSP Captains over a 25 year career is \$50,000 or 33.6% more than the amount earned by CECOs.

The Union asserts that the State failed to demonstrate that titles similar to ENCON supervisors in similar states are appropriate to compare to SSU titles. Nonetheless, the Union notes that the average minimum salaries paid to employees in similar titles as CECO in states contiguous to New York is \$53,755, which is \$3,000 or 5.3% more than the minimum salary for CECOs. In the Union's estimation, the disparity is much greater at the maximum level. The average of the contiguous states is \$83,150, which is \$14,000 or 20.3% higher than the maximum rate for the New York CECOs. In summary, the Union insists that ENCON supervisors are grossly under compensated whether you compare them with the NYSP or compare them to like titles in contiguous states.

Turning to Park Patrol Sergeants, Lieutenants and Captains, the Union notes that to become eligible to serve in any of those titles one must previously serve as a Park Patrol Officer (PPO). In the Union's estimation, this is relevant because the qualifications to become a PPO are that same as those which apply to NYSP officers, namely, the completion of sixty college credits, thirty of which could be substituted for by an honorable discharge after two years of military service, or completion of a specific police training course. At the Police Academy all PPOs must complete a 26 week residential training academy that is modeled

after the NYSP Academy. The PPO Academy uses NYSP instructors and the NYSP lesson plans for topics such as Vehicle and Traffic Law enforcement, accident investigation, Breathalyzer test operator, etc. In fact, the Union contends that the PPO Academy exceeds the requirements of the NYSP Academy as it provides training in areas such as Marine Law enforcement that is not provided at the NYSP Academy. In the Union's view, an analysis of the curriculum of both the PPO Academy and the NYSP Academy would show that they are substantially the same in almost all other respects. In addition, the PPO field-training program is modeled after the NYSP, according to the Union.

All of the Park Patrol supervisors must attend a four week supervisors' school. These individuals also receive training on how to respond to critical incidents. The Union asserts that this demonstrates that there is an expectation that the supervisors will deliver services well beyond those traditionally expected to be provided within a State Park. Supervisors also receive training in Marine Law Enforcement and Impaired Boater Programs.

The Union asserts that in order to become a Park Police Sergeant, Lieutenant and Captain, an individual must demonstrate expertise in all law enforcement methods as well as great command of the Penal Law, Criminal Procedure Law, Vehicle and Traffic Law and other NYS and Federal laws relevant to law enforcement. They also must possess practical skills in deploying

staff such as assigning and reviewing work, evaluating performance, maintaining high standards, and increasing efficiency.

The Union observes that Park Patrol Sergeants schedule and assign staff, conduct on the job and classroom instruction and conduct police investigations. They also act as a liaison between PPOs and local police, respond to emergencies, handle budget matters and conduct recruiting interviews.

A Park Patrol Lieutenant assumes even broader supervisory responsibilities. They manage all police activities in their assigned zone. They complete performance evaluations and make recommendations regarding personnel matters, including terminations. They deploy staff and arrange for coverage at special events. They select staff to participate in specialized training and make recommendations for changes in operating rules and policies.

Park Patrol Captains serve under the general direction of the Chief. They evaluate the performance of supervisory personnel and conduct and manage the training program for all PPOs and Park Patrol supervisors. They coordinate special event coverage, supervise the procurement of uniforms and equipment and manage all police activities in the absence of the Chief.

The Union maintains that Park Police supervisors have a variety of duties that measure up to the NYSP supervisory staff. Indeed, the Union notes that the agency has a Sergeant, Lieutenant and Captain in the Internal Affairs

Department, a Communications and Fleet Coordinator position, and an Administrative Staff Officer with statewide responsibilities.

The Union argues that the duties of a Park Police Sergeant are no different than the duties of a sergeant in any police agency. The sergeants maintain control and responsibility for the officers they supervise. They check paperwork, review patrol activities, arrest activities and engage in patrols. They also formulate schedules and supervise investigations. Sergeants are frequently the highest ranking officer in the area. Hence, they are not only on call almost all of the time, but they also frequently have to supervise civilian personnel such as secretaries and janitors.

The Union notes that Park Police supervisors oversee special units such as canine units, bicycle units, a SWAT team, dignitary protection and search and rescue operations. These individuals routinely work with the U.S. Coast Guard and often coordinate with other agencies such as Border Patrol, ATF and the National Transportation Safety Board. Park Police supervisors also prosecute tickets, engage in patrols while carrying a weapon and are engaged in the counter-terrorism task force.

According to the Union, the testimony from Manuel Vilar was particularly notable. Mr. Vilar serves as a Sergeant in the Park Police. He described the duties of serving as a Park Police supervisor in the urban environment of New York City. Sergeant Vilar explained that the parks are utilized by tens of

thousands of people. This brings the positive and negative elements of the community into the parks. Sergeant Vilar testified to incidents of guns and drugs in the parks and how Park Police supervisors work with the New York City Police Department to combat these issues.

The Union points out that Park Police supervisors are required to travel from one State property within their patrol zone to another State property within their patrol zone. This requires Park Patrol Supervisors to cross many jurisdictions during which time they may be assigned law enforcement activities. In the Union's view, even though the primary duty of the Park Police Department is to enforce the law and maintain order in NYS park properties, they also enforce the law off all NYS properties and throughout NYS generally as needed.

The Union urges the Panel to take notice of the fact that the activities that police supervisors in any agency perform off NYS park property are the same as the activities Park Police supervisors perform on State park property. The Union insists that the record establishes that the Park Police Department deals with very serious police matters on State park property such as robberies, burglaries, rapes, child abuse, lewdness and homicides. They must interview suspects, execute search warrants, secure crime scenes and appear in various local and County Courts. They carry weapons and patrol in marked police vehicles, on foot, by boat, snowmobiles and bicycles. They also engage in dignitary protection on park property. In the Union's estimation, the Park Police supervisors' work

activities are so similar to NYSP supervisors that NYSP supervisors are the most comparable title they should be compared to in terms of salary.

The formal integration, sharing and coordination agreement between the NYSP and the Park Police further supports the Union's position that NYSP supervisors are the most appropriate to compare to Park Police supervisors. In support of this contention, the Union maintains that the Park Police Agency became almost identical to the New York State Police between 1998 and 2003. During that time, the Parks Director of Law Enforcement, the highest ranking officer in the agency, was a high ranking member of the NYSP. Many changes were instituted with the Park Police during those years. Educational standards were upgraded, an age limitation for qualifying to become a PPO was instituted as well as a polygraph examination. In addition, candidates were deployed based on the needs of the agency, just like the NYSP. Finally, the events of September 11, 2001, hastened the process of integrating law enforcement among various agencies and required Park Police supervisors to focus greater attention on security bulletins from the Department of Homeland Security and analyze vulnerable locations in and around NYS park properties, among other things.

The Union asserts that the only real difference between Park Police supervisors and NYSP supervisors is that Park Police supervisors earn far less salary than members of the NYSP. For example, from 1995 to 2002, Park Police

Sergeants earned 14% to 26% less than NYSP Sergeants, whereas in 2003 the difference climbed to 58.7%.

The difference in the amount of longevity earned further exacerbates the inequity, according to the Union. Total longevity earned by a Park Police Sergeant over a 25 year career is \$76,455 whereas total longevity for a NYSP Trooper is \$147,750, which is a difference of 48.3%.

Park Police Sergeants also earn less than the average minimum and maximum salary of matched titles in contiguous states, even though they have higher educational requirements. They earn 4% less than the average minimum and 16.8% less than the maximum salary when compared to similar titles in neighboring states. For Lieutenants and Captains in the Park Patrol, the spread is even worse. New York Park Patrol Lieutenants earn between 11.9% and 30.3% less than Park Patrol Lieutenants in contiguous states and Captains in the New York Park Patrol earn 31.5% less at the maximum level than Park Patrol Captains in contiguous states. The Union maintains that this data demonstrates that Park Police supervisors are grossly underpaid and that their work is equivalent to that performed by NYSP Troopers.

Turning to the Correction Lieutenants, the Union notes that in order to become a Correction Lieutenant, a candidate must serve for at least one year as a Correction Sergeant in the New York State Department of Correctional Services and 3 years as a Correction Officer for the Department. They must be conversant

with a variety of procedures, rules and policies. In the Union's estimation, the evidence establishes that Correction Lieutenants must demonstrate far greater leadership and a broader knowledge of corrections rules, policies, laws and regulations than Correction Officers and Sergeants.

The Union points out that Correction Lieutenants are normally the third highest ranking officer in a Correctional Facility. They frequently have full responsibility for implementing security measures under the direction of the Superintendent of the facility. In addition to supervising Correction Officers and Sergeants, Lieutenants must also observe inmate behavior for the purpose identifying potential problems in the facility.

Upon hire, all Correction Officers must complete an eight week training program. Officers undergo training in physical fitness, interpersonal skills, first aid, CPR, weapons, chemical agents, as well as the policies and procedures of the Department. While working as a Correction Officer, there is an annual training requirement of 40 hours per year. Many of the training courses are the same courses taken by police supervisors in the SSU.

The Union stresses that many Correction Lieutenants received specialized training when they served as Correction Officers. The Union notes that there are specialized assignments at each facility such as Range Officer, who provides training at the range. Each facility also has a firefighting team, and an emergency response team. The Union asserts that the extensive training and experience of

Correction Lieutenants was brought to life by the testimony of its witnesses including Lieutenants Dan Hanson, Mike Ambrosino, Dave Dresser and Mike LaDue. In the Union's view, their testimony made it abundantly clear that Correction Lieutenants have extensive training, broad knowledge and that they are frequently trained with police agencies in addition to corrections personnel.

The Union maintains that Correction Lieutenants also demonstrate their dedication to their profession by moving to different facilities around the State in order to attain rank. All of the Lieutenants who testified spoke of moving to at least six facilities over the course of their career. Most endured time in and around New York City which required great financial hardship due to the higher cost of living which is undisputed in and around New York City. The Union submits that there are very few professions, even within law enforcement, that require such regular moves to attain rank. The financial hardships endured, as well as the emotional difficulties encountered by families due to such required movement, are significant and must be considered by the Panel.

In terms of work activities, the Union contends that Correction Lieutenants are required to perform a myriad of duties in a Correctional Facility. They are first responders for administering CPR and for implementing the coordination of hospital visits for inmates. They work in tandem with medical staff and psychologists to handle inmate behavioral problems such as self mutilation or suicidal issues. They typically supervise a dozen Correction Sergeants and

hundreds of Correction Officers. They frequently serve as Watch Commander, who is the highest ranking individual within a facility. They are responsible for pre-shift briefings, staffing reports, overtime, inmate counts, administration of restricted keys, transportation of inmates, special housing for problematic inmates and a variety of other activities.

The Union stresses that Correction Lieutenants serve in an environment that is fraught with danger. They operate in an environment filled with convicted felons, gangs and the presence of diseases such as AIDS and tuberculosis. Nonetheless, Correction Lieutenants remain role models of professionalism, leadership and restraint.

The Union posits that Correction Lieutenants should be compared with NYSP Zone Sergeants because Zone Sergeants supervise staff much in the same way that Correction Lieutenants supervise staff. The Union also compares them with Correction Lieutenants in contiguous states.

The Union contends that the breadth of work performed by Correction Lieutenants has not been reflected in their compensation, especially when their salaries are compared to NYSP Zone Sergeants over the past ten years or so. For example, in 1995 a NYSP Zone Sergeant earned approximately \$1,000 more than a Correction Lieutenant. However, in 2003, a NYSP Zone Sergeant earned \$25,000 more than a Correction Lieutenant. Just as is the case with the other SSU titles, the inequities in longevity only exacerbates the problem as 25 year

NYSP Sergeant longevities total \$147,750 whereas longevities for Correction Lieutenants are just over \$87,000, a difference of 41%.

The Union asserts that the Panel will see a disturbing trend when it considers the compensation provided to Correction Lieutenants from neighboring states. The maximum pay for Correction Lieutenants in New York is \$59,273 whereas the average maximum pay in the contiguous states is \$69,274, a difference of 16.9%.

In conclusion, the Union avers that it has demonstrated that SSU members perform services that are substantially similar to the NYSP. It maintains that there is no reasonable justification for there to be such a wide disparity in the compensation paid to its members and the compensation paid to members of the NYSP as well as their counterparts in contiguous states. The Union urges the Panel to cure the inequities in compensation that have been presented in this case.

Position of the State

The State strongly disagrees with the Union's contention that SSU members are most properly comparable to NYSP troopers. The State does not dispute that many of the members of the SSU unit are in fact Police Officers and that they sometimes perform duties that are quite similar in nature to those performed by members of the State Police. However, the State maintains that the

State Police overall mission, size and total scope of responsibilities distinguish it from SSU unit members and the agencies that employ them.

The State points out that the Superintendent of the State Police is appointed by the Governor, with the advice and consent of the Senate. The Superintendent has the ability to cross-designate other police officers in the State to assist the State Police so that such police officer's jurisdiction is statewide. The State notes that the State Police has a singular mission, namely, to protect and defend the people of the State while preserving the rights and dignity of all. It asserts that the State Police exists only as a police agency and it is the State's primary police force. It has a singular mission of policing and law enforcement.

The State does not intend to demean the members of SSU in asserting that the SSU members should not be compared to the State Police. The State recognizes the important role they play in the prevention and detection of crime. Instead, it is the State's view that members of SSU perform duties that are more limited and specific because the agencies they work for do not have the primary function of serving as a police agency. The State notes that the mission of the Office of Parks, Recreation and Historic Preservation is to provide safe and enjoyable recreational opportunities for State residents. The mission of the Department of Environmental Conservation is to conserve, improve and protect the environment. Finally, the distinction between the mission of the NYSP and the Department of Correctional Services is even more pronounced as Correction

Lieutenants serve as Peace Officers rather than Police Officers. The mission of the Department of Correctional Services concerns the care and custody of inmates and is wholly unrelated to the prevention and/or detection of crime. Since these agencies are the stewards of the Parks, the environment, and Correctional Facilities across the state, the duties of SSU members in the first instance is geared toward supporting the mission of these agencies.

Additionally, the State asserts that the individual police forces within the SSU unit are much smaller than that of the NYSP. Whereas the State Police has 5,781 employees, 4,693 of whom are sworn members, the Department of Environmental Conservation employed 3,361 employees, 328 of whom are sworn members. The Parks Department has 1,538 employees, 300 of whom are sworn officers. Hence, whereas 80% of the State Police work force consists of sworn officers, 9.76% and 19.51% of the employees of DEC and Parks employees are Police Officers primarily devoted to law enforcement and Correction Lieutenants are not devoted to law enforcement. In the State's estimation, this underscores its argument that the State Police are different from members of the SSU unit because it is the only agency of the four that has its primary mission as a police function.

The State notes that the State Police are broken down into ten troops divided by geographical areas and that every part of the State is covered. Each troop has a Troop Commander. Under each Troop Commander is one captain

and two lieutenants who lead the investigative side of the troop. The uniform side is broken down into regional areas with a zone commander who has the rank of Captain. Zone Sergeants assist the zone commander. Line Sergeants are in charge of the work of troopers under their command. The Department also has a department of Internal Affairs, Administration, Field Command and Employee Relations.

In terms of qualifications, the State contends that NYSP qualifications are different than those of SSU members. Troopers must take an exam administered by the NYSP as opposed to a civil service examination. Troopers must have no convictions for certain crimes. An extensive background investigation is conducted, including a psychological examination, and each individual must have completed 60 college credits or 30 college credits plus military time in order to enter the NYSP Academy.

The State maintains that its residential training academy is important in that it molds the troopers into a team. During the Academy, troopers are instructed on Criminal Law, Penal Law, Vehicle and Traffic Law, etc. Troopers also receive instruction on riot control, accident investigation, DWI and other matters.

The State contends that its field training program and ongoing training is rigorous and extensive. It states that troopers receive twelve weeks of field training and that they have an ongoing training requirement of 120 hours every three years.

In terms of the activities of troopers, in addition to troopers being assigned road patrol, there are many specialized units within the State Police. These include an aviation unit, bomb disposal unit, K-9, a SCUBA unit and a commercial vehicle enforcement unit among others. A collision re-constructionist is assigned to every troop except New York City, who helps with reconstruction and mapping out crime scenes involving automobiles. The State Police also has a Protective Services unit which is responsible for protecting the Governor and family.

The State asserts that the NYSP have a critical role regarding policing the entire State and beyond. It has a Violent Felony Warrant Squad and Narcotics Enforcement Unit which continuously conducts operations in cities. The NYSP also may be called to assist across the country to assist such as during Hurricane Katrina. The NYSP actively monitors terrorist threat levels and maintains a presence at the US-Canada border crossings.

The State argues that another difference between NYSP troopers and SSU members is that NYSP troopers do not have the right to arbitral review of disciplinary matters whereas SSU members have such a right. In addition, whereas a very small portion of SSU members are engaged in investigative duties, a large portion of the NYSP is devoted to investigatory activities. The State notes that more than 1,100 sworn officers are devoted full time to investigatory activities through the Bureau of Criminal Investigation. The NYSP has a Forensic Identification Unit whose primary responsibility is to provide crime

scene investigation expertise in murders, burglaries, rapes, assaults and vehicular accidents. Other investigators have expertise as polygraphists, in hostage negotiation, terrorism investigation, gaming and narcotics. The gaming unit is responsible for enforcing all gaming operations in the State and the narcotics unit performs a variety of narcotics investigations that include street-level dealings, wiretapping and money-laundering investigations. The NYSP also has a cyber crimes unit which is responsible for cyber crimes investigations and technology infrastructure intrusions. It also has a unit that tracks the most heinous crimes, including assessing trends and similarities in violent crimes and rapes.

Another significant distinction between NYSP members and SSU members is seniority. According to the State, once an SSU member receives his or her first assignment, he or she has the full benefit of seniority with respect to transfers, work locations, job assignments, shift assignments, days off and promotional opportunities. In addition, the State avers that involuntary assignments are almost nonexistent for SSU members. To the contrary, seniority plays virtually no role in the employment decisions made for members of the NYSP. The State insists that the "best interests of the Division" governs virtually every aspect of employment and that seniority is a tangential consideration at best.

Scheduling for the investigative side of the NYSP is wholly dependent on the individual's assignment. Investigators are on-call for investigations that must occur at any time of day or night. They can also be mandated to work an extra 11

hours beyond their regular hours in each 28 day cycle, which is built into their current compensation and carries no additional compensation.

The State maintains that in response to the September 11, 2001 terrorist attack, the NYSP created an entire unit comprised of more than 200 employees that is fully devoted to counter-terrorism activities. Terrorist activities are monitored and several of the officers in this unit have been given top-secret clearance with the FBI. This special security clearance allows the State to have access to highly sensitive information the moment it is available. When there is an elevated security alert, the NYSP provides guidance and input to the Office of Homeland Security. Members of the NYSP Joint Terrorism Task Forces have been sent overseas for case investigations.

The NYSP has a Special Investigations Unit that conducts long-term investigations including wiretap investigations. This Unit works in close cooperation with the FBI, the Secret Service, the Office of the Attorney General and the New York City Police Department. Oftentimes, the investigations they are working on are high profile and extremely sensitive. NYSP members working on this Unit have been sent overseas. For example, a Member was sent to Bahrain in 2002 to take custody of an individual when the "Lackawanna Six" indictments were announced and another member was sent to Jordan as part of the investigation.

The NYSP also has four Weapons of Mass Destruction Teams situated throughout the State. These teams focus on responding in the event of another terrorist attack and mitigating the effects of such an attack. These teams are trained able to enter contaminated environments, collect evidence and assist the FBI.

The State also stresses that the nature and breadth of special assignments that NYSP members work on sets it apart from SSU members. First and foremost, is the fact that NYSP members are assigned to these units at the sole discretion of the Superintendent of the State Police. Assignments include permanent assignments to the Aviation Unit, the Bomb Disposal Unit and the SCUBA Unit.

NYSP supervisors also serve on the Mobile Response Team (MRT). This is the Division's elite tactical team that responds throughout the State to some of the most volatile and difficult operations, including hostage negotiation, large scale search operations, barricaded subjects, narcotics raids and land, air and water search and rescue operations.

NYSP supervisors also work on the Executive Services Detail. This involves assignments to supervise the Capitol Police, which patrols Empire State Plaza and the State Capitol. Another discrete function of the Executive Services Detail is the Protective Services Unit, which is responsible to protect the Governor, his family, and other high ranking members of State Government.

The work performed by members of the NYSP on special temporary details also distinguishes it from the work performed by SSU members. NYSP supervisors play an active role in planning and implementing security for activities such as the US Open, the New York State Fair and economic summits where the President of the United States and other world leaders are present.

The State maintains that there are significant differences in NYSP work schedules and overtime pay that also demonstrate the inappropriateness of the comparables proposed by the Union. The State observes that NYSP members in the rank of Lieutenant and above are ineligible for overtime pay and that NYSP Sergeants may not receive overtime pay until they have worked one hundred and sixty eight (168) hours in a twenty-eight (28) day schedule. In stark contrast, all SSU members receive overtime after working forty (40) hours in a week. All SSU members receive fifteen minutes of overtime pay each day for "pre-shift briefing," which applies even when members do not physically stand for lineup.

The State insists that random drug testing is another area of great distinction between NYSP members and SSU members. Whereas NYSP members are subject to random drug testing in addition to testing for cause, random drug testing does not apply to any of the SSU members.

Hence, the State maintains that the activities described above demonstrate the tremendous breadth of knowledge and responsibility that NYSP supervisors must assume. In the State's view, NYSP supervisors reach into every potential

realm of law enforcement across the State and beyond. It asserts that the NYSP is unmatched by any other law enforcement agency in the State. Moreover, when one considers the sizes of the forces, the missions of the agencies, and the differences in job duties and responsibilities, it should be abundantly clear that SSU members are not comparable to the NYSP and are not entitled to receive similar compensation as earned by members of the NYSP.

The State takes issue with the evidence presented by the Union. It argues that the Union's expert witness failed to support the alleged appropriateness of the Union's comparisons in this case. The expert witness failed to articulate any understanding of the NYSP structure and/or activities of some of its members. Thus, his testimony did not demonstrate that SSU members are similar to NYSP supervisors in any way.

The State insists that the economic comparisons should be based on 2003 salaries. This is the case because the NYSP supervisors received raises in 2004 and 2005 whereas SSU members have not yet received increases for those years. The State claims that the SSU comparisons of like titles in contiguous states also should be given no weight because they are not "apples to apples" comparisons. In the State's view, the SSU used 2005 salaries of like titles in contiguous states except for Massachusetts, while SSU has not had a raise pursuant to a collective bargaining agreement since 2002. In the State's view, this calls into question the overall validity of the SSU statistics.

The State also requests that the Panel be mindful that the 2003-07 agreement between the State and the NYSP included operational changes proposed by the State. More importantly, the State observes that NYSP supervisors were granted binding interest arbitration in 1995, while members of the SSU did not receive the right to binding interest arbitration until many years later. Hence, it is patently unreasonable for the SSU to expect and/or be granted increases that would allow it to “catch up” in such a short period of time.

The State maintains that its salary comparisons are valid, accurate and more reliable than the Union’s comparisons. It suggests that its comparison was created after conducting a survey of 33 states with a population of five million or more or with public sector collective bargaining. The State ultimately decided to include surveys from contiguous states and the counties within New York. It asked the neighboring jurisdictions to match a title in their state to the New York State titles and provide the State with a job description. Thereafter, the State analyzed the titles by having Nicholas J. Vagianelis, Director of Classification and Compensation within the State Department of Civil Service, determine the appropriate matches so that an appropriate analysis of comparables could be made. The State contends that this analysis is the only analysis of comparables that should be relied on by the Panel. In the State’s estimation, its comparison is extremely accurate and truly makes an “apples to apples” comparison between SSU titles and similar titles in contiguous states.

The State maintains that its comparison of Correction Lieutenants to other comparable titles in the counties in New York State is valid and comports with the Panel's statutory charge. In the State's estimation, its comparison between State Correction Lieutenants and County Correction Lieutenants is appropriate as the statute requires the Panel to make an assessment of employees performing similar services or requiring similar skills under similar working conditions. The State's comparison is not invalid just because some of the titles in the local jurisdictions do not provide the exact same services or require the exact same skills.

The State asserts that even though the comparisons may not be perfect, perfection is not required the statute. Since the primary mission of County Correction Lieutenants is to serve in a Correctional Facility that oversees the custody and confinement of inmates, this is a valid comparable.

The State contends that the evidence establishes that Real Income Growth from 1980 to March 2003 ranged from 14.08 for Correction Lieutenants to 27.25 for Sergeants in Park Patrol. In other words, actual purchasing power for individuals in these positions increased between 14% and 27% more than the Consumer Price Index during the 23 year period. The State argues that its data also shows that purchasing power for SSU members' also outpaced increases for private industry and government during the period of 1981 through 2003.

The State concedes that its comparison shows a mixed picture in terms of the competitiveness of SSU salaries vis-à-vis salaries of comparable titles in contiguous states. For example, for the Park Patrol Sergeant title, the State concedes that New York is behind New Jersey and Connecticut for all years of service, although the gap significantly decreases between New York and New Jersey at 20 years of service. However, the State asserts that New York pays its Park Patrol Sergeants more than Pennsylvania at all years of service.

With respect to the CECO title, the State acknowledges that although New York was ahead of New Jersey at five years of service, it fell only slightly behind New Jersey at ten, fifteen, twenty and twenty-five years of service. The State could not obtain specific salary figures for CECO in Connecticut, except for the twenty-five (25) year level, which was 1.47% ahead of New York. New York paid its CECO more than Massachusetts at all years of service.

With respect to Correction Lieutenants, the State points out that New York was behind Massachusetts and New Jersey at five, ten and fifteen years of service, with the gap narrowing significantly by the fifteenth year of service. The State maintains that New York pays more than Connecticut, Pennsylvania and Vermont at all years of service up to twenty-five (25) and that it pays more than Massachusetts at twenty (20) and twenty-five (25) years of service. The State concedes that its pay remains below New Jersey at all years of service.

The State insists that the picture of comparability is much more optimistic within New York State. For example, the State argues that the evidence establishes that SSU Lieutenants' pay far outpaced the salaries of employees in comparable titles in the Clinton/Watertown HUB, the Elmira HUB, and the Albany HUB. SSU Lieutenants fare even better in the Oneida HUB with SSU Lieutenants being paid between 26.89% to 46.11% higher than the salaries of employees in comparable titles in Oneida County and Schoharie County. Within the Wende HUB, the State argues that it pays more than lieutenants located in those counties. However the State concedes that the gap is narrow.

The State concedes that it does not fare as well in the Green Haven and New York City HUBS. The State asserts that this has limited applicability as only 16% of the Lieutenants employed by the State work in these HUBS.

The State sorts out all of its data in the record by concluding that New York is very competitive with the salaries paid to individuals in titles in contiguous states. It argues that New York's compensation structure looks even better when State salaries are compared to county salaries. New Jersey and Connecticut are typically ahead of New York and the other contiguous states are mostly behind New York. In the State's estimation, there is no statutory requirement that the salaries of these employees be equal to or ahead of similarly situated employees. The State argues that a conservative salary increase is most appropriate and that the Union's salary proposal must be rejected.

In conclusion, the State strongly opposes the Union's argument that it should be provided with comparability to the State Police. The State argues that the Union's position ignores the historical fact that a monetary disparity has always existed between the amount paid to titles represented by the Union and those of the State Police. It suggests that this monetary disparity is a function of time and operational changes. It notes that whereas this is the first time that SSU unit members are eligible for interest arbitration, the State Police has had interest arbitration since 1995.

The State urges the Panel to take into account the fact that the increases in State Police pay were predicated upon significant operational changes that greatly benefitted the State. Among other things, the State has a Fair Labor Standards Act 207K overtime pay exemption and the State receives more work from troopers than the State receives from SSU unit members before overtime begins. It also has greater flexibility with scheduling and the monetary penalties associated with scheduling changes due to emergencies. Unlike the State Police, members of SSU do not work 168 hours in a 28 day cycle, they do not work 12 hour days, they do not have discipline without resort to arbitral review, they do not have the size or statewide mission of the State Police and they do not have random drug testing as the State Police have. For all of these reasons, the State contends that members of the SSU unit are not comparable to members of the State Police.

In conclusion, the State urges the Panel to determine that the comparable titles and salary comparisons offered by it are valid, accurate and more reliable than those offered by the Union.

PANEL DETERMINATION

The issue of comparability is of utmost importance in this matter as this is the first time that SSU members have had the opportunity to argue this issue in a final and binding interest arbitration forum. In that sense, the issue of comparability of SSU members is a matter of first impression and without precedent. The Panel has given serious consideration as to the most appropriate way to resolve this issue because its determination has real economic consequences for both parties today and in the foreseeable future. The primary question for the Panel is which bargaining units are comparable to SSU unit members. The Union argues that its members are most comparable to the New York State Police. On the other hand, the State disputes this comparison, emphasizing that SSU police supervisors are more similar to like titles in contiguous states and that Correction Lieutenants are more similar to comparable titles in counties in New York State.

After carefully considering the evidence in the record and the arguments of the parties, the Panel is persuaded that the State Police are distinguishable from members of the SSU unit. That being said, there is no doubt that SSU police officers are police officers in every sense of the term. Thus, the Panel concludes

that proper salary placement for SSU police supervisors should exceed the pay provided to comparable employees in New York in the Department of Corrections with movement upward and toward the salaries of the State Police.

In reaching the conclusion that the State Police should be treated differently than SSU members, the Panel finds that the State Police's sheer size, depth, expertise and comprehensive statewide jurisdiction distinguish it from other police departments and police officers in the State. The fact is, unlike the agencies that SSU members work for, the State Police agency's central mission is to serve as the State's flagship police force. They are the State's first line of protection and have a cadre of members with expertise in every conceivable area of law enforcement.

The record establishes that the State Police has numerous department members with expertise in all of the critical police functions including accident investigation, bomb detection, anti-terrorist activities, gaming, homicide investigations and protection of the Governor. They have comprehensive statewide jurisdiction and may be assigned anywhere in the State to meet Departmental needs. The State Police exercises such primary jurisdiction over statewide law enforcement that the Superintendent of State Police has the authority to assign police officers from any jurisdiction in the State to assist the State Police with important police business.

In terms of other noteworthy distinctions between the two groups, members of the State Police are subject to random drug testing and have no right to arbitral review of disciplinary actions taken against them. There are also operational distinctions, such as work hours and eligibility for overtime.

The Panel also cannot overlook the historical differences between the State Police and members of SSU, as well as the Legislature's obvious intent to maintain those historical differences. Salaries for members of the State Police have always exceeded salaries of employees in the titles represented by SSU. Notably, the Legislature granted the State Police the right to interest arbitration since 1995 and its right in this regard is comprehensive. The State Police has the right to pursue issues at arbitration that are directly related to compensation and may also bring to interest arbitration all matters related to terms and conditions of employment, with the exception of discipline and assignments. Unlike the State Police, the Legislature limited what issues the SSU unit could submit to interest arbitration. Section 209.4 (f) expressly limits this arbitration to matters directly related to compensation.

Thus, in light of the fact that the State Police has had the right to interest arbitration for a longer period of time than SSU, as well as the fact that SSU members have a more limited right to interest arbitration, the only logical conclusion for the Panel to reach is that the Legislature intended that SSU members occupy a different place than that of the State Police insofar as salaries

are concerned. If the Legislature intended for SSU members to occupy the same top salary levels as members of the State Police, it seems obvious to the Panel that the Legislature would have granted SSU the exact same right to interest arbitration as is enjoyed by the State Police. In light of these clear distinctions, the Panel concludes that SSU should not be placed at the same level of salary as the State Police through the interest procedure granted to SSU by the Legislature.

However, and most importantly, the Panel finds that SSU Police Officers should receive higher salaries than Correction supervisors. The Panel reaches this conclusion because the historical pattern of treating individuals in the police titles represented by the SSU on an equal basis with Corrections supervisors for comparability purposes is flawed and must be discontinued. The record is replete with evidence establishing that SSU members who are Police Officers are highly trained with a high degree of police expertise in a variety of law enforcement areas. They have higher educational requirements than Corrections Officers. They receive sophisticated and comprehensive police training at residential academies for no less than twenty weeks. During the police academies, SSU police members are immersed in all aspects of law enforcement. After the police academy SSU police members are assigned to field training programs that are comparable to those provided to the State Police. Police officers in this unit also receive specialized training (e.g., environmental law for DEC officers) that is far

more sophisticated and unique than what is required for an individual to be a correction officer.

Once SSU members are out in the field, they are expected to be full fledged police officers in every sense of the way the term is commonly understood. They make arrests for violations of the law ranging from DWI's to rapes and homicides. They patrol and respond to calls for service in marked and unmarked patrol vehicles. They engage in short-term and long-term investigations. They have units with specialized expertise in areas such as bomb detection and marine enforcement. They regularly provide assistance to officers from other law enforcement agencies. They deal with frauds, assaults, may engage in high speed pursuits, and are trained and able to perform virtually any other police officer functions.

The record shows that all of the members of this unit who have been granted Police Officer status pursuant to the New York Criminal Procedure Law perform traditional police officer duties on a regular and consistent basis. Their work is quite distinguishable from the work performed by Corrections Officers whose primary function is the care and custody of inmates. Accordingly, the Panel concludes that, for salary purposes, SSU police supervisors should be at a level that is above Correction supervisors but below the State Police.

With respect to Correction Lieutenants, the Panel initially wishes to recognize that Correction Lieutenants work in dangerous and challenging

environments and that they are responsible for supervision of virtually all that occurs in a Correctional Facility. The decisions they make regarding safety and security affect not only the hundreds of staff and inmates in their facilities, but the public as well. Indeed, the dangerous and challenging environment they work in clearly led to the legislation that granted Correction Lieutenants the right to have final and binding interest arbitration.

The work of Correction Lieutenants requires them to work within the framework of a paramilitary organization. This requires them to strictly abide by all rules and regulations and to also make sure that subordinate employees strictly abide by all rules and regulations. At the same time, they must adopt a wide range of strategies to handle a diverse and dangerous inmate population. It is obvious that their work is very unique and very dangerous.

Nonetheless, in determining the appropriate comparable job titles, the Panel Chairman concludes that NYSP supervisors should not be considered as a significant comparable. In reaching this conclusion, the Panel Chairman is persuaded by the conclusions of Arbitrator Thomas Rinaldo in the first interest arbitration involving New York State Correction Officers and Sergeants wherein Arbitrator Rinaldo noted:

In the final analysis, New York State Troopers and Correction Officers and Sergeants, while performing important missions in a context of danger and challenge, are in significantly different employment settings to justify the Panel's conclusion that New York State Troopers are not a proper object of any substantial comparison. It is noted that the entry requirements for New

York State Troopers and Correction Officers are significantly different, initial training periods and courses of instruction differ considerably, and the work environments of New York State Troopers and Correction Officers are substantially different. For example, New York State Troopers, in addressing the protection of public safety, enforce the full complement of laws whereas Correction Officers and Sergeants have a different basic mission. [PERB Case No. IA2004-009]

The Panel finds that the most relevant comparables should be State Correction Lieutenants in the contiguous states of New Jersey, Connecticut, Massachusetts, Pennsylvania and Vermont. The Panel further finds that Vermont should have the least influence of the comparables in the contiguous states due to its size, population and completely rural nature.

Just as Arbitrator Rinaldo found in the interest arbitration for Correction Officers and Sergeants, this Panel rejects the assertion that local Correction Lieutenants in the counties within New York should play a significant role in the universe of comparables. It is this Panel's conclusion that it should reach salary determinations in this Award primarily based upon comparisons with Correction Lieutenants in the five contiguous states. At the same time, the Panel feels that it should not completely ignore the salary and other economic items provided to NYSP supervisors and Correction Lieutenants in counties in New York. Such salaries must be considered as part of the world of relevant comparables.

ABILITY TO PAY

As is clearly required by the provisions of Section 209.4 of the Civil Service Law, the Panel has carefully considered the financial ability of the State to pay the salary and other economic enhancements provided by this Award.

Position of the Union

Although the Union has accepted the overall economic package provided by this Interest Arbitration Award, the Union maintains that the State clearly has the ability to pay for the salaries and other economic changes it proposed in this proceeding. It contends that the testimony and documentary evidence provided by its financial expert witness, Christopher Fox, demonstrates that the State exaggerated its claimed financial problems. For example, the Union asserts that Mr. Fox testified that the State's own projections of gross domestic product increases of 4.2% in 2004, 3.5% in 2005, and 3.3% in 2006 is "pretty decent growth" and that other economic forecasters such as the Congressional Budget Office forecast greater economic growth than the State did for 2006. Other positive economic data includes the State's projected income growth of 5.5% in 2006 coupled with New York's inflation figures which are expected to be in the range of 3% annually from 2005-2007. Finally, the stock markets gains in 2005 and 2006 produced massive bonus payments to employees at financial institutions. These payments generated increased tax revenues for the State and helped the State economy in a number of other ways.

In the Union's estimation, the financial data strongly supports its contention that the people of the State and the corporations of the State are earning substantially more money and that the State is capturing a greater percentage of it. All of this leads to increased revenues for the State and increases its ability to pay members of the SSU.

The Union states that it is no surprise that Mr. Fox concluded that the State could pay for its proposal in light of all of the strong financial data. In the Union's estimation, since revenues have increased at a faster rate than expenditures and since the Legislature extended interest arbitration to this unit, there is no reasonable basis to conclude that the State cannot pay for its proposal. Finally, it argues that the State's financial expert witness, Robert Megna, essentially echoed the testimony of Mr. Fox.

Position of the State

Robert Megna, Chief Budget Examiner for the Economic and Revenue Unit within the State Division of Budget (DOB) testified as to the State's financial condition. According to the State, the DOB expressed some concern as to inflation and the national housing market. Since the prices of homes may not go higher for quite some time, New York is likely to lose revenue from this part of the market. The State also asserts that Mr. Megna testified that New York's economy recovered from the last recession a bit slower than the national rate of recovery and that employment growth has been slowing.

The State also expresses serious concern about projected State budget deficits. For example, it notes that that State was facing a \$2.5 billion budget gap for 2006-07 at the time its arguments were submitted to the Panel and that even larger gaps are projected for 2007-08 and 2008-09. Additionally, State spending toward health care, Medicaid and school aid continues to rise each year. Along these lines, the State notes that the Campaign for Fiscal Equity lawsuit dealing with State funding for New York City schools was resolved and will result in additional expenditures by the State toward education.

The State avers that its ability to pay is not the sole part of this criterion that must be considered. It states that the initial part of the criterion includes the interest and welfare of the public in addition to the State's ability to pay. In the State's view, the 620 unit members covered by this Award should not receive such a high share of salary increases given the diverse number of constituents the State serves. The State maintains that the excessive raise proposed by the Union is not reasonable when the State needs to use the surplus to reduce debt, fund education and care for the sick and poor, among other things. Hence, the State concludes that the Union's proposal must be rejected and it is in the interest and welfare of the public to grant the raises offered by the State in this proceeding.

PANEL DETERMINATION

Notwithstanding the fact that the Panel spent considerable time reviewing the financial testimony and documentation regarding the State's finances, and considered the analysis of both the State's and the Union's financial experts, a full discussion of the State's financial situation is not warranted herein due to the overall agreement on this Award. While it can certainly be argued that the State has the ability to pay for all of the salary increases proposed by the Union, the Panel determines that it would not be in the interest and welfare of the public to do so at this time. The number of constituents and services the State must provide resources for is simply too enormous and equitable balancing of expenditures must occur. In addition, the State's projected future budget gaps coupled with the cooling housing market renders the Union's proposal untenable at this time based upon an analysis of the State's ability to pay. That being said, there is no doubt that the record establishes that the State has the ability to pay for this Award. The State enjoyed far greater revenues during the term of this Award than the projected revenues for a variety of reasons, including record profits in the financial sector. Incomes in New York continue to grow above the rate of inflation and the State's economy was vibrant and healthy during the term of this Award.

Accordingly, in accordance with Section 209.4 of the Civil Service Law, the Panel finds that the State has the financial ability to pay for the increases provided by this Award.

SALARY

Position of the Union

The Union proposes that the NYSP salary schedule be implemented for its bargaining unit. It recognizes that implementing the NYSP salary schedule would result in its unit members receiving significant raises. Nonetheless, it maintains that its proposal is fair and appropriate when one considers its members' recent history of below market raises or no raises whatsoever, coupled with the expansion of coordinated law enforcement responsibilities.

In support of its proposal, the Union notes that its members have not had a salary increase since April 1, 2002. The Union asserts that during the period from April 1, 2002 through 2005, when its members received no salary increase, the compounded consumer price index was 14%. Hence, a substantial salary increase is warranted because SSU members' have lost a considerable amount of purchasing power over the past few years.

The Union argues that its members must receive significantly greater compensation than Correction Officers even though there is a prior history of being paid virtually the same amount as Correction Officers and Correction Sergeants while in the same bargaining unit. The Union contends that this is

fundamentally unfair as SSU police supervisors and Correction Lieutenants have more responsibility, greater expertise and more training than Correction Officers and Correction Sergeants.

The Union insists that its proposal is also justified because it has demonstrated that the qualifications of its unit members are equal or greater than those applicable to the NYSP. It also maintains that the functions performed by SSU members are substantially similar to those performed by the NYSP. In light of the similarity of work activities, the Union insists that there is no justification for its unit members being paid 60-70% less than their counterparts in the State Police.

Position of the State

The State proposes an \$800 non-recurring payment for all unit members on payroll effective April 1, 2003 with a salary schedule increase of 2.5% effective April 1, 2004. The State maintains that its proposal should be adopted by the Panel because it is consistent with the settlements between the State and the other major statewide bargaining units (CSEA, PEF and UUP) for those same years.

Contrary to the Union's claims, the State asserts that SSU salaries have increased in excess of inflation over the past 23 years. The State argues that its comparison of unit members' salary increases with consumer price index increases over the past 23 years shows that Real Income Growth increased from

between 14% to 28%, depending on job titles. In other words, the State maintains that unit members' actual purchasing power increased by these percentages over the past 23 years. Furthermore, the State estimates that unit members' purchasing power increased even more when longevity increases are factored in. The State insists that this data proves that the State's current pay plan is fair and effective in that it more than adequately has kept pace with inflation.

The State also maintains that the Union's proposal is excessive and not justified. It asserts that the cost of the Union's proposed salary schedule with longevities constitutes a 134% increase. In the State's view, these expenditures are not in the best interest of the citizens of New York. The State does not have unlimited resources, and unfortunately must fund a multitude of other priorities including, but not limited to caring for the poor, sick, elderly, as well as funding education.

Finally, the State insists that the Union's proposal must be rejected because SSU members should not be compared to the State Police for the reasons described in the Comparability section herein. It also states that there is a historical justification for providing NYSP members with higher wages than SSU members. Notably, the NYSP has had the right to interest arbitration since 1995, whereas this award is the first opportunity for SSU members to utilize the compulsory interest arbitration procedures.

PANEL DETERMINATION

The Panel's determination regarding comparability shapes much of its determination regarding salary. As indicated *supra*, the evidence supports the conclusion that members of this unit should receive salaries at a level above Correction Officers but below those of the State Police with movement toward the State Police. The Panel is also of the opinion that the historical distinctions of providing the State Police with higher wages than SSU members cannot be ignored in that it represents a reasonable placement on the continuum of where SSU members should be placed vis-à-vis the State Police. Recognition of the differences between the duties of Correction Officers and Correction Sergeants as compared to Correction Lieutenants is addressed by the classification system of the State of New York by placing Correction Lieutenants in a higher salary grade than Correction Officers and Sergeants on the salary continuum. Further, the Panel recognizes the distinction as will be noted hereafter with the Award of the Correction Lieutenant Command Pay.

On balance, the economic improvements awarded by the Panel herein are just, reasonable and fair. The evidence establishes that SSU members' salaries require more than a going rate increase in order to be competitive. Consequently, the Panel concludes that economic improvements beyond strict base wage adjustments are appropriate in order to make SSU police officer salaries more competitive and as a way to provide some distance between the salaries of SSU

police officer members and those of correction supervisors. The economic adjustments awarded by the Panel are also justified because the record establishes that SSU members are equally (if not better) trained than their counterparts in contiguous states. However, their compensation levels are only somewhat competitive with what is paid to like titles in contiguous states. The record makes it abundantly clear that compensation for SSU members' vis-à-vis Correction Officers and employees in like titles in contiguous states will not become more competitive unless additional salary improvements, beyond base salary, are awarded. These adjustments are also reasonable and warranted in order to improve recruitment and retention for positions represented by SSU.

The Panel takes note of the fact that the record establishes that SSU police supervisors are highly trained, full service police officers who protect the public throughout the State. Compensation improvements are warranted so that compensation paid to SSU police supervisors starts to comport with the qualifications and skills they are required to possess and utilize. Moreover, even though the Panel has determined that the State Police are not comparable to members of the SSU, the differences between SSU police supervisors and the State Police in terms of training, mission, and expertise are not so vast that SSU police supervisors should be as under-compensated as they are compared to the State Police. Consequently, the Panel determines that the compensation increases it is awarding are warranted so that all SSU members can receive

genuine economic improvements compared to State Corrections personnel and so that SSU police supervisors can narrow the current gap between their compensation and that paid to the State Police.

The Panel also recognizes that Correction Lieutenants are experts in the care and custody of inmates and that they also must possess significant leadership and supervisory skills. In terms of comparable titles, there is a genuine need for Correction Lieutenants' salaries to be adjusted upward to make their salaries more competitive with lieutenants in the five contiguous states. There is also a need to create greater distance in this Award between the pay provided to Correction Lieutenants and the pay provided to the individuals they supervise.

The Panel concludes that 3% base salary increases are warranted for both April 1, 2003 and April 1, 2004 as those rates are in excess of the salary increases provided by the State to virtually all of the other bargaining units. The record establishes that the State agreements with CSEA, PEF and UUP provided \$800 non-recurring bonus payments effective April 1, 2003, followed by 2.5% salary schedule increases effective April 1, 2004. The increases awarded to the SSU base will allow its members to make gains vis-à-vis those units. Moreover, the 3% salary increases are greater than the base adjustments provided to Correction Officers and other members of the Security Services Unit, who received base wage adjustments of 2.25% effective April 1, 2003 and 2.75% effective April 1, 2004.

The Law Enforcement Adjustment Differential (LEAD) is yet another means of justifiably improving SSU unit members' compensation in recognition of their status as Police Officers. This payment to all Police Officers in the SSU unit will further distinguish it on the salary continuum and will assist with providing its members the more competitive compensation the record reflects they deserve. The initial payment of \$2,500 commences during the pay period April 1, 2004 through March 31, 2005 and is equally divided over the 26 payroll periods in that fiscal year. On March 31, 2005, the LEAD differential of \$2,500 will be added to the base salary for eligible unit members.

In reaching a final Award, the Panel also considered the third statutory criterion, which involves a comparison of the peculiarities of the profession, such as the hazards of the job. The Panel acknowledges the important and dangerous work performed by SSU members. Their dangers and sacrifices are real. Their unique work as high ranking police and correction supervisors serves to ensure the safety of the public overall and, more specifically, at State parks and correctional facilities throughout the State. Moreover, ENCON supervisors routinely protect citizens throughout the State from a variety of environmental risks that can be dangerous and potentially deadly. The Panel also notes that in the current post-September 11, 2001 environment, there are increased demands on police unit members that are abundantly clear from the record. Accordingly, the Panel finds strong support in the record for its decision to award SSU police

officers with expanded duty pay in the amount of \$1,545 for the period April 1, 2003 to March 31, 2004, followed by an increase to \$2,575 for annual expanded duty pay beginning in the period April 1, 2004 to March 31, 2005.

The Panel also takes notice that many of the SSU unit members possess highly specialized police skills that readily distinguish them from most other police units in the State. Specifically, Park Police Supervisors and ENCON Police Supervisors possess a high degree of expertise and frequently must use their skills in the areas of Marine and Off-Road Enforcement. Since these skills are so critical to the job of SSU police supervisors, the Panel awards a \$1,500 annual payment commencing April 1, 2003 to all SSU police supervisors in the PPO and ECO job series. Similarly, the Panel finds that the Union has clearly established that ENCON supervisors must have a keen understanding of the procedures for safely identifying and handling hazardous material. This training and expertise, which is beyond the typical police training and expertise, is a requirement for all ENCON police supervisors. This is not only highly technical and sophisticated, but also dangerous. Hence, the Panel awards a \$1,500 annual hazardous material payment to all ENCON police officers commencing April 1, 2003.

Finally, the record establishes that Correction Lieutenants are responsible for a broad range of duties necessary for the operation of a State Correctional Facility. They typically supervise hundreds of staff, coordinate inmate visits to outside hospitals, are first responders to provide first aid and interact with the

State Office of Mental Health with respect to inmate behavioral problems. They are also responsible for infectious disease control, crime scene control and virtually every other important activity that occurs in a Correctional Facility. It is clear to the Panel that there is not enough of a difference in the salaries paid to Correction Lieutenants and the salary paid to the individuals they supervise. The Corrections Command Pay Annual Differential of \$1,500 is awarded to Correction Lieutenants in recognition of the massive responsibilities they undertake each and every day they work.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein, and after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY AND OTHER ECONOMIC ITEMS

Salary – Effective April 1, 2003, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and who are full-time annual salaried employees shall receive a general salary increase of 3%. Effective April 1, 2004, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to

subdivision twenty-five of section 2.10 of the criminal procedure law and who are full-time annual salaried employees shall receive a general salary increase of 3%.

Law Enforcement Adjustment Differential (Lead) – Effective for the period April 1, 2004 to March 31, 2005, the State shall provide a Law Enforcement Adjustment Differential (LEAD) to all members of this unit who are police officers and are full-time annual salaried employees in recognition of their police officer status in the amount of \$2,500. This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes. On March 31, 2005, \$2,500 will be added to the base salary for eligible unit members. There shall be no separate payment after that date for LEAD.

Expanded Duty Pay – In recognition of the additional duties and responsibilities performed by members of this unit who serve as police officers as a result of the September 11th terrorist attacks, all members of this unit who are police officers and are full-time annual salaried employees will receive expanded duty pay in the amount of \$1,545 for the period April 1, 2003 to March 31, 2004. Effective April 1, 2004, the expanded duty pay will be increased to \$2,575 annually. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Marine/Off Road Enforcement Pay – Effective April 1, 2003, all members of this unit who are police officers and are full-time annual salaried employees and are employed by the Office of Parks, Recreation & Historic Preservation or the Department of Environmental Conservation Division of Law Enforcement will receive \$1,500 annually in recognition of their expertise in Marine and Off-Road Enforcement. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Hazardous Material Pay - Effective April 1, 2003, all members of this unit who are police officers and are full-time annual salaried employees and are employed by the Department of Environmental Conservation Division of Law Enforcement will receive \$1,500 annually in recognition of their expertise and handling of Hazardous Material. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Corrections Command Pay – Effective April 1, 2003, all members of this unit who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and are full-time annual salaried employees will

receive \$1,500 annually in recognition of the command duties and responsibilities of Correction Lieutenants with regard to infectious disease, mental health, crime scene control, prisoner transport, and other inter-agency coordination issues which arise in corrections facilities. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

LONGEVITY PAYMENTS

Discussion on Longevity Payments

The Union seeks to clarify that time served in either the Security Services bargaining unit and/or Security Supervisors bargaining unit and/or Agency Law Enforcement Services bargaining unit will be counted as service time toward the calculation of longevity in this unit. The last aspect of the Union's longevity proposal is to create a new 25 year longevity that is the same as the amount paid to employees receiving the 20 year longevity payment. The Union asserts that a 25 year longevity is appropriate in this unit because its members cannot retire after 20 years of service. Instead, all members have either a 25 or 30 year retirement plan. The Union also maintains that a 25 year longevity is appropriate because Correction Officers and Sergeants received a new \$8,500.00 longevity, effective April 1, 2003 in the interest arbitration award issued by the Rinaldo Panel in 2006. The State objects to the Union's proposal, arguing that its limited

resources would be better used toward the general wage adjustment than toward longevity.

Upon review, the Panel finds that longevity payments are an integral part of compensation for police and corrections supervisors. Establishing a 25 year longevity is fair and appropriate in light of the fact that unit members must work at least 25 years in order to receive retirement benefits. The Panel also finds that it is reasonable for the new 25 year longevity to bear some relationship to the other longevities currently provided to unit members. The Panel also finds that time spent in titles in the Security Services unit and/or Security Supervisors unit and/or the ALES unit should be credited as time worked for longevity purposes. This is reasonable in view of the fact that the work performed by members of this unit when they were formerly in either the Security Services unit, the Security Supervisors unit or the Agency Law Enforcement Services unit was either actual police or corrections work and was directly related to the work performed by members of this unit. The State may very well have trouble attracting Security Services Unit or ALES members to take positions in this unit if their prior years of service in subordinate, but related positions, would not count toward longevity. Finally, the Panel finds that it is fair and reasonable for these unit members to receive a 25 year longevity in view of the fact that subordinate employees to these unit members receive a 25 year longevity. Thus, it is the determination of the Panel that the new 25 year longevity shall be equal to the difference between

the 10 year and 15 year step within each grade level as this is consistent with the amount provided to Police Officers and Sergeants who are members of the ALES unit.

Accordingly, the Panel finds that establishing a 25 year longevity for unit members is warranted so that the overall compensation paid to unit members is adequate, fair and equitable when viewed against the Union's comparables.

AWARD ON LONGEVITY PAYMENTS

Effective April 1, 2003, there shall be a twenty-five (25) year longevity to be added to the salary schedule for all members of this unit who are police officers or who are employed by the NYS Department of Correctional Services and are designated as peace officers pursuant to subdivision twenty-five of Section 2.10 of the Criminal Procedure Law and are full-time annual salaried employees. This longevity will be equal to the 10-year and 15-year step within each grade level. Time spent in titles in the Security Services Unit and/or Security Supervisors Unit and/or Agency Law Enforcement Services Unit shall count toward satisfaction of the continuous service requirement that already exists for eligibility for longevity. All other requirements for longevity remain in place.

POLICE CLOTHING MAINTENANCE ALLOWANCE

Discussion on Police Clothing Maintenance Allowance

SSU police supervisors have been receiving a \$550 annual clothing maintenance allowance that has been fixed at \$550 since the mid-1990's according to the Union. The Union proposes that this allowance be increased to \$1,250 effective December 1, 2003 and to \$1,400 effective December 1, 2004. It argues that this increase is appropriate because its members are subject to grooming and overall appearance rules and regulations and because the \$550 annual payment has been stagnant for so many years. The Union also proposes that a \$200 annual shoe allowance be established. It insists that this is appropriate as many of its unit members are physically active and walking outside throughout most of the year. The State rejects this proposal arguing that there is no funding available for the kinds of increases proposed by the Union.

Upon review, the Panel finds that some increase in the clothing maintenance allowance is warranted at this time, although not nearly to the extent proposed by the Union. In the Panel's view, it is more critical that some of the other economic items proposed by the Union be more substantially addressed than the clothing maintenance allowance at this time.¹ Since the State's resources are limited, the Panel awards an annual increase of \$25 for 2003-04

¹ The Panel notes that it is providing more significant increases toward the clothing allowance for SSU police officers on plain clothes duty.

for a total of \$575 annually and an additional annual increase of \$50 for 2004-05 for a total of \$625 annually.

AWARD ON POLICE CLOTHING MAINTENANCE ALLOWANCE

Effective April 1, 2003, all members of this unit who are police officers pursuant and are full-time annual salaried employees will receive a \$575 clothing maintenance allowance to be paid on or about December 1st of each year. This allowance will be increased to \$625 on April 1, 2004. Any eligible unit member who receives this payment cannot receive the Clothing Allowance referenced in the next section of this Award. An eligible unit member must satisfy all other contractual requirements for this allowance.

POLICE CLOTHING ALLOWANCE

Discussion on Police Clothing Allowance

The Union proposes that all Police Officers who are assigned to plain clothes duty receive an annual clothing allowance of \$1,800.00 per year. The Union asserts that its proposal is fair and appropriate because it would provide money to unit members who are required to purchase and maintain suits and other plain clothes required for the job. The State argues that there is no funding available for this proposal.

Upon review, the Panel finds merit in the Union's request to the extent that Police Officers who do not typically wear a uniform should receive a clothing

allowance that is greater than the allowance provided to police officers who wear issued uniforms. The Panel reaches this conclusion because these unit members are responsible to maintain and care for a greater number of articles of clothing than police officers wearing regular police uniforms. An increased allowance for unit members in these positions will help defray some of the increased costs they incur.

AWARD POLICE CLOTHING ALLOWANCE

Effective April 1, 2003, all full-time annual salaried employees who are police officers and who are assigned to plain clothes duty will receive \$1,000 annually for a clothing allowance for the purchase of the appropriate dress clothing. This allowance shall be payable to all employees assigned to plain clothes duty who are police officers and are full-time annual salaried employees in this unit on the payroll on the last day of the payroll period in which November 1 of each year falls. Such allowance shall be payable by separate check on or about December 1 of each year. Any eligible unit member who receives this payment cannot receive the Police Clothing Maintenance Allowance set forth above.

CORRECTIONS CLOTHING MAINTENANCE ALLOWANCE

Correction Lieutenants in this unit have been receiving a \$550 annual clothing maintenance allowance that has been fixed at \$550 since the mid-1990's according to the Union. The Union proposes that this allowance be increased to \$1,250 effective December 1, 2003 and to \$1,400 effective December 1, 2004. It argues that this increase is appropriate because its members are subject to grooming regulations and because the \$550 annual payment has been stagnant for so many years. The Union also proposes that a \$200 annual shoe allowance be established. It insists that this is appropriate as Lieutenants are required to monitor activities by walking in and around correctional facilities each and every day. The State rejects this proposal arguing that there is no funding available for the kinds of increases proposed by the Union.

Upon review, the Panel finds that very significant increases toward the clothing maintenance allowance are warranted at this time. The Panel observes that this allowance has been neglected for nearly ten years. These unit members are required to abide by stringent grooming regulations and are expected to set an example to all corrections employees. Notably, in the interest arbitration award for NYSCOPBA unit members, Correction Officers were awarded uniform allowances that increase to \$1,075 annually. In the Panel's estimation, Lieutenants supervising Correction Officers should receive a clothing maintenance allowance that is greater than the employees they supervise.

AWARD ON CORRECTIONS CLOTHING MAINTENANCE ALLOWANCE

Effective April 1, 2003, all members of this unit who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the Criminal Procedure Law and are full-time annual salaried employees will receive a \$1500 clothing maintenance allowance to be paid on or about December 1st of each year. An eligible unit member must satisfy all other contractual requirements for this allowance.

LOCATION PAY/SUPPLEMENTAL LOCATION PAY

Effective April 1, 2005, NYSP supervisors in the counties of Nassau, Suffolk, Rockland, Westchester, Orange, Dutchess and Putnam as well as New York City received location pay in the amount of \$1,311 annually. NYSP supervisors in these counties and New York City also received supplemental location pay ranging annually from a low of \$1,126 for those troopers working in Orange, Dutchess and Putnam to a high of \$1,970 to those troopers working in Nassau and Suffolk.

Unit members working in Dutchess, Orange and Putnam counties do not currently receive location pay or supplemental location pay. The Union proposes to not only expand location pay for its members working in Dutchess, Orange and Putnam counties, but to also establish location pay for unit members working in

Albany, Erie and Monroe counties due to the high cost of living in all of those counties. The Union asserts that in 2000 Arbitrator Joel Douglas recognized the higher cost of living in Putnam, Dutchess and Orange counties when he expanded location pay to include those counties for the NYSP. The Union argues that the greater cost of living encountered by NYSP members working in those counties is no different than what its members must contend with. In the Union's estimation, it is logical and fair for its members to receive at least the same location pay as enjoyed by the NYSP.

The Union proposes that location pay be increased to \$2,000 in the first year of the award and to \$2,500 in the second year of the Award. It submits that the record strongly establishes that its members assigned to these high cost areas have suffered economic hardships. This is the case because police and correction supervisors who accept promotions into this bargaining unit are frequently assigned to the New York metropolitan area at the beginning of their supervisory employment, at a time when they are earning the least amount of money.

The State maintains that it does not have money available to fund the Union's proposal. Instead, it proposes that location pay expanded to unit members working in Dutchess, Orange and Putnam counties in the second year of the award at the amount of \$615 annually. It also proposes to increase the location pay provided to unit members working in the counties of Nassau, Suffolk,

Westchester, Rockland and New York City to \$1,230 annually, but not to establish supplemental location pay for this unit for economic reasons.

Upon review, the Panel finds that the current location pay being provided to unit members is not adequate. The Panel concludes that the evidence supports increases toward location pay and supplemental location pay. Members of this unit should receive location payments that are competitive when compared with those received by the NYSP. The Panel's decision to increase location pay to \$1,236 effective April 1, 2003 to those unit members working in the counties of Nassau, Suffolk, Westchester, Rockland and New York City, will essentially put them on par with the amount received by NYSP in those counties.

Similarly, the Panel finds that unit members in the counties of Nassau, Suffolk, Westchester and Rockland as well as New York City should receive supplemental location pay that is similar to that received by NYSP members working in these areas. The Panel concludes that the supplemental location pay for unit members that is awarded below allow will allow unit members working in these areas to receive payments that are competitive with those received by the NYSP.

The Panel also determines that some supplemental location pay must be established for unit members working in Putnam, Dutchess and Orange counties. The record establishes that the cost of living is higher in these counties than a vast majority of the State. However, even though the Panel concludes that supplemental location pay should be established, the Panel determines that it

should not be provided at the rate paid to unit members working in and right around New York City because the cost of living in and around New York City exceeds the cost of living in Dutchess, Putnam and Orange counties. Finally, the Panel also finds that the evidence does not establish that the cost of living is so high in Erie, Monroe or Albany counties that location pay is appropriate.

AWARD REGARDING LOCATION PAY AND SUPPLEMENTAL LOCATION PAY

Location Pay – Effective April 1, 2003, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, are full-time annual salaried employees and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the state comptroller, is located in the city of New York, or in the counties of Rockland, Westchester, Nassau or Suffolk shall receive location pay in the amount of \$1,236 annually. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Supplemental Location Pay - Effective April 1, 2003, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, are full-time annual salaried

employees and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the state comptroller, is located in the city of New York, or in the counties of Putnam, Orange, Dutchess, Rockland, Westchester, Nassau or Suffolk shall receive supplemental location pay in the following annual amounts:

Orange, Putnam, Dutchess \$1,030	NYC, Rockland, Westchester \$1,545	Nassau, Suffolk \$1,803
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Effective April 1, 2004, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, are full-time annual salaried employees and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the state comptroller, is located in the city of New York, or in the counties of Putnam, Orange, Dutchess, Rockland, Westchester, Nassau or Suffolk shall receive supplemental location pay in the following annual amounts:

Orange, Putnam, Dutchess \$1,061	NYC, Rockland, Westchester \$1,591	Nassau, Suffolk \$1,857
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This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

HEALTH INSURANCE

The State proposes that the health insurance plan for this bargaining unit be modified in a way that is consistent with the way the State has had the health plan modified with other State employees either through negotiated settlements or through Interest Arbitration Awards. The State notes that it had Priscilla Feinberg, Director of the Employee Benefit Management Unit within GOER, testify as to the health insurance settlements that State has reached with the various units. Ms. Feinberg also identified the 2003-05 Interest Arbitration Award between the State and the BCI within the Division of the State Police as that Award also made changes to the health plan for BCI members.

The State asserts that the changes made to the health plan for all State workers are largely consistent, with only minor variations amongst the bargaining units. In the State's view, these changes reflect various enhancements that benefit employees as well as some cost saving measures that reflect the reality of the need for employees to make some sacrifices due to the exploding cost of health insurance. The State contends that the Panel should at least impose upon this unit the same changes to the health plan that were imposed upon the BCI unit for the period 2003-2005.

The Union recognizes that it must make some changes to the health plan. However, the Union contends that certain benefits must be offered in order for the proposed changes to be fairer and more palatable for its unit members. As an

example, the Union proposes a LASIK vision care benefit. The Union states that vision is critical to the performance of its unit members' duties. It notes that the State negotiated a discounted LASIK surgery benefit on behalf of its PEF unit, a unit of primarily white collar workers. In the Union's estimation, assuring high quality vision is directly related to the job of a police officer. Thus, it maintains that this benefit should be established and that it could be paid for or at least subsidized by some of the increased co-pays that may be put into effect by the Panel.

Health insurance continues to be one of the most difficult and contentious labor-management issues because of its importance to employees and their families and because its cost has grown so dramatically over the past several years. Both parties' have made some extremely persuasive arguments in support of their respective positions.

The Panel is persuaded that it should impose changes to the health insurance plan that are similar to the changes made by the State with the various other bargaining units. These changes at least allow the State to achieve some cost containment in the area of health insurance, which is appropriate at this time. The Panel also finds that it is appropriate to provide a LASIK surgery benefit to bargaining unit members as fully described in Attachment B. Other bargaining units have received some form of a LASIK surgery benefit and similar increases to employee benefit funds. Consequently, as consideration for some of the

changes that will be made to the unit members' health plan, the Panel feels it is just and appropriate to award the LASIK surgery benefit.

AWARD ON HEALTH INSURANCE

For all members of this unit who are police officers or who are employed by the NYS Department of Correctional Services and are designated as peace officers pursuant to subdivision twenty-five of Section 2.10 of the Criminal Procedure Law, Appendix B attached to this Award, summarizes all changes to health insurance. These are the same changes to health insurance as were made in the ALES Award.

REMAINING ISSUES

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following Award on these issues:

AWARD ON REMAINING ISSUES

Except for those proposals and/or items previously agreed upon by the parties herein, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

DURATION OF CONTRACT

Pursuant to the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award provides an Agreement for the period commencing April 1, 2003 and ending March 31, 2005.



JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

8-8-08

Date



WALTER J. PELLEGRINI, ESQ.
Employer Panel Member

8-07-08

Date

[Concur]

[Dissent]



ENNIO J. CORSI, ESQ.
Employee Organization Panel Member

8-7-08

Date

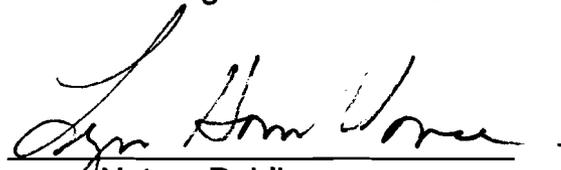
[Concur]

[Dissent]

STATE OF NEW YORK)
COUNTY OF ALBANY) ss. :

On this 8th day of August 2008 before me personally came and appeared Jeffrey M. Selchick, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2012

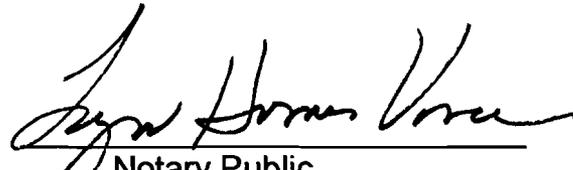


Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss. :

On this 7th day of August 2008 before me personally came and appeared Walter J. Pellegrini, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2012



Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss. :

On this 7th day of August 2008 before me personally came and appeared Ennio J. Corsi, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

MATTHEW PATRICK RYAN
Notary Public, State of New York
No. 02RY6080868
Qualified in Albany County
Commission Expires September 23, 20 10

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Interest Arbitration Between:

STATE OF NEW YORK,

Employer,

-and-

**FINAL AND BINDING AWARD
OF TRIPARTITE PANEL**

PERB Case No. 2005-001

**NEW YORK STATE LAW ENFORCEMENT
OFFICERS' UNION, DISTRICT COUNCIL 82,
AFSCME, AFL-CIO (Security Supervisors Unit),**

Employee Organization.

The Public Arbitration Panel Members are:

PUBLIC PANEL MEMBER & CHAIRMAN:

Jeffrey M. Selchick, Esq.

PUBLIC EMPLOYER PANEL MEMBER:

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

**PUBLIC EMPLOYEE ORGANIZATION PANEL
MEMBER:**

**Ennio J. Corsi, Esq.
General Counsel
Council 82**

Appearances:

For the State of New York:

**Governor's Office of Employee
Relations
Amy M. Petragani, Esq.,
Of Counsel**

**For the New York State Law Enforcement
Officers' Union, District Council 82,
AFSCME, AFL-CIO:**

**Kevin Casey, 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 New York State Law Enforcement Officers' Union, District Council 82, AFSCME, AFL-CIO ("Council 82") for the Security Supervisors Unit. Hearings were held on the following dates: February 7, 2006; February 8, 2006; February 15, 2006; March 7, 2006; March 8, 2006; April 12, 2006; May 8, 2006; May 11, 2006; May 25, 2006; and July 11, 2006. 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 SUMMARY OF 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 such 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 other 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 of 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)(f) of the Civil Service law limited the Panel:

(f) With regard to any members of collective negotiating units designated as security services or security supervisors, who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, or in regard to members of the collective negotiating unit designated as the agency law enforcement services unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, 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 Panel, consistent with the request of the parties, expedited the process by issuing a SUMMARY OF AWARD with and 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 SUMMARY OF AWARD that constitutes the Panel's best judgment as to a just and reasonable resolution of all issues raised in this Interest Arbitration proceeding. The language of this SUMMARY OF AWARD is not final contract language. Those issues presented by the parties that are not specifically dealt with in this SUMMARY OF AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. The status quo on those rejected terms, if any, shall be maintained. All other terms and conditions of employment also remain subject to the status quo.

SUMMARY OF AWARD

- 1. Salary:** Effective April 1, 2003, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and are full-time annual salaried employees shall receive a general salary increase of 3%. Effective April 1, 2004, all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and are full-time annual salaried employees shall receive a general salary increase of 3%.
- 2. Law Enforcement Adjustment Differential:** Effective for the period April 1, 2004 to March 31, 2005, the State shall provide a Law Enforcement Adjustment Differential (LEAD) to all members of this unit who are police officers and are full-time annual salaried employees in recognition of their Police Officer status in the amount of \$2500. This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes. On March 31, 2005, \$2500 will be added to the base salary of eligible unit members. There shall be no separate payment after that date for LEAD.
- 3. Expanded Duty Pay:** In recognition of the additional duties and responsibilities performed by the members of this unit as a result of the September 11th terrorist attacks, all members of this unit who are police officers and are full-time annual salaried employees will receive expanded duty pay in the amount of \$1545 for the period April 1, 2003 to March 31, 2004. Effective April 1, 2004, the expanded duty pay will be increased to \$2575 annually. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.
- 4. Longevity:** Effective April 1, 2003, there shall be a twenty-five (25) year longevity added to the salary schedule for all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and are full-time annual salaried employees. This longevity will be equivalent to the difference between the 10-year and 15-year step within each grade level. Time spent in titles in the Security Services Unit and/or Security Supervisors Unit and/or Agency Law Enforcement Services Unit shall count toward satisfaction of the continuous service requirement that already exists for eligibility for longevity. All other requirements for longevity remain in place.
- 5. Police Clothing Maintenance Allowance & Police Clothing Allowance:** Effective April 1, 2003, all members of this unit who are police officers and are full-time annual salaried employees will receive a \$575 clothing maintenance allowance to be paid on or about December 1st of each year. This allowance will be increased to \$625

on April 1, 2004. Any eligible unit member who receives this payment cannot receive the Police Clothing Allowance payment referenced in the paragraph below. An eligible unit member must satisfy all other contractual requirements for this allowance.

Effective April 1, 2003, all full-time annual salaried employees who are police officers and who are assigned to plain clothes duty will receive \$1000 annually for a clothing allowance for the purchase of the appropriate dress clothing. This allowance shall be payable to all employees assigned to plain clothes duty who are police officers and are full-time annual salaried employees in this unit on the payroll on the last day of the payroll period in which November 1 of each year falls. Such allowance shall be payable by separate check on or about December 1 of each year. Any eligible unit member who receives this payment cannot receive the Police Clothing Maintenance Allowance referenced in the paragraph above.

6. Corrections Clothing Maintenance Allowance: Effective April 1, 2003, all members of this unit who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and are full-time annual salaried employees will receive a \$1500 clothing maintenance allowance to be paid on or about December 1st of each year. An eligible unit member must satisfy all other contractual requirements for this allowance.

7. Marine/Off-Road Enforcement Pay: Effective April 1, 2003, all members of this unit who are police officers and are full-time annual salaried employees and are employed by the Office of Parks, Recreation, & Historic Preservation or the Department of Environmental Conservation Division of Law Enforcement will receive \$1500 annually in recognition of their expertise in Marine and Off-Road Enforcement. This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes.

8. Hazardous Material Pay: Effective April 1, 2003, all members of this unit who are police officers and are full-time annual salaried employees and are employed by the Department of Environmental Conservation Division of Law Enforcement will receive \$1500 annually in recognition of their expertise and handling of Hazardous Material. This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes.

9. Corrections Command Pay: Effective April 1, 2003, all members of this unit who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law and are full-time annual salaried employees will receive \$1500 annually in recognition of the command duties and responsibilities of Corrections Lieutenants with regard to infectious disease, mental health, crime scene control, prisoner transport, and other inter-agency coordination issues which arise in corrections facilities. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

10. Location Pay: Effective April 1, 2003 all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, are full-time annual salaried employees, and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the State Comptroller, is located in the City of New York, or in the counties of Rockland, Westchester, Nassau, or Suffolk shall receive location pay in the amount of \$1236 annually. This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes.

11. Supplemental Location Pay: Effective April 1, 2003 all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, are full-time annual salaried employees, and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the State Comptroller, is located in the City of New York, or in the county of Putnam, Orange, Dutchess, Rockland, Westchester, Nassau, or Suffolk, shall receive supplemental location pay in the following annual amounts:

Orange, Putnam Dutchess	NYC, Rockland, Westchester	Nassau, Suffolk
\$1030	\$1545	\$1803

Effective April 1, 2004 all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, are full-time annual salaried employees, and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the State Comptroller, is located in the City of New York, or in the county of Putnam, Orange, Dutchess, Rockland, Westchester, Nassau, or Suffolk, shall receive supplemental location pay in the following annual amounts:

Orange, Putnam Dutchess	NYC, Rockland, Westchester	Nassau, Suffolk
\$1061	\$1591	\$1857

This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes.

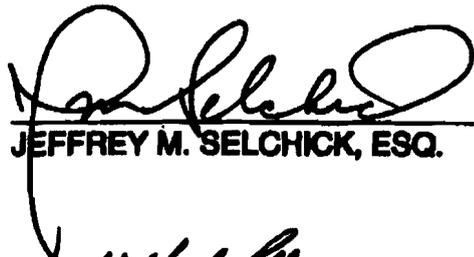
12. Health Insurance: For all members of this unit who are police officers or who are employed by the state department of correctional services and are designated as peace officers pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law – same changes to health insurance as those made in ALES Award.

13. **Retroactive Payments:** Retroactive payments required as a result of the provisions of this Award are not to be capped by any limitations to calculation of the final average salary.

14. **No Interest or Other Penalty:** Notwithstanding any law(s) and/or argument(s) to the contrary, no member of this unit to whom this Award applies shall be entitled to, or owed, any interest and/or other penalty, for any reason, on any monies due to such member pursuant to this Award.

15. **TERM OF THE AWARD**

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



JEFFREY M. SELCHICK, ESQ.

9/7/06
DATE

Concur

Dissent



WALTER J. PELLEGRINI, ESQ.

9/7/06
DATE

Concur

Dissent



ENNIO J. CORSI, ESQ.

9/8/06
DATE

STATE OF NEW YORK)
COUNTY OF ALBANY)ss.:

On the 7th day of September, 2006, before me personally came and appeared JEFFREY M. SELCHICK, 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.



NOTARY PUBLIC

AMY M. PETRAGNANI
Notary Public, State of New York
No. 02PE6013267
Qualified in Albany County
Commission Expires September 14, 2006

STATE OF NEW YORK)
COUNTY OF ALBANY)ss.:

On the 7th day of September, 2006, before me personally came and appeared WALTER J. PELLEGRINI, 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.

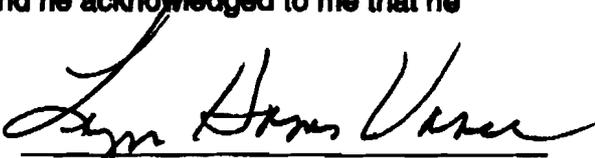


NOTARY PUBLIC

AMY M. PETRAGNANI
Notary Public, State of New York
No. 02PE6013267
Qualified in Albany County
Commission Expires September 14, 2006

STATE OF NEW YORK)
COUNTY OF ALBANY)ss.:

On the 9th day of September, 2006, before me personally came and appeared ENNIO J. CORSI, 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.



NOTARY PUBLIC

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2008

ARTICLE 12- HEALTH INSURANCE

- 1. Effective March 31, 2005 the Hospital Emergency Room copayment will increase to \$50.**
- 2. Effective March 31, 2005 the Hospital Outpatient copayment will increase to \$35. Coincident with the increase in the hospital outpatient copayment, services provided in a hospital owned or operated extension clinic will be paid by the hospital carrier.**
- 3. Effective March 31, 2005 no payment will be made for inpatient hospital days determined to be non-medically necessary by the hospital carrier.**
- 4. Effective 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 copayment.**
 - 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. The enrollee will be responsible for 10% of charges(coinsurance) or a \$75 copayment whichever is**

greater. The non-network outpatient coinsurance/copayment 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;
 - Inpatient/outpatient treatment received outside of the US; and
 - Inpatient/outpatient treatment in geographic areas where reasonable access to a network hospital does not exist.
 - Anesthesiology, pathology and radiology services received at a network hospital will be paid-in-full even if the provider is not participating in the Empire Plan participating provider network under the medical component.
5. Effective March 31, 2005 the participating provider office visit, office surgery, radiology and laboratory copayments will increase to \$15.
6. 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 copayment will be created to differentiate between preferred and non-preferred brand-name drugs.
 - ii. The copayment 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.
 - 1. When a brand-name prescription drug is dispensed and an FDA-approved generic equivalent is available, the member will be responsible for the difference in cost between the generic drug and the non-preferred

brand-name drug, plus the non-preferred brand-name copayment (\$30).

iii. The copayment 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.

1. When a brand-name prescription drug is dispensed and an FDA-approved generic equivalent is available, the member will be responsible for the difference in cost between the generic drug and the non-preferred brand-name drug, plus the non-preferred brand-name copayment (\$60).

iv. The copayment 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.

1. When a brand-name prescription drug is dispensed and an FDA-approved generic equivalent is available, the member will be responsible for the difference in cost between the generic drug and the non-preferred brand-name drug, plus the non-preferred brand-name copayment (\$55).

7. Effective March 31, 2005 the Empire Plan Centers of Excellence Programs will expand to include Cancer Resource Services. The Cancer Resource Services 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 travel allowance of up to \$10,000; and
- Paid-in-full reimbursement for all services provided at a Cancer Resource Services network facility when the care is pre-certified.

8. Effective March 31, 2005 a Prosthetic and Orthotic network will be available to Empire Plan enrollees. Devices purchased through an

approved network provider will be paid-in-full under the participating provider component of the Empire Plan.

9. Effective March 31, 2005 the Empire Plan Basic Medical component will include the Basic Medical Provider Discount Program. This program offers discounts from certain physicians and other providers who are not part of the Empire Plan participating provider network but are an Empire Plan Multiplan provider. To be eligible to receive the Basic Medical Provider Discount Program the following conditions must be met:

- The Empire Plan is the primary coverage;
- Basic Medical services were received from a non-participating provider ;
- The non-participating provider is in the Multiplan network;
- The Multiplan provider discounted fee is lower than the Basic Medical reasonable and customary allowance; and
- The annual Basic Medical deductible has been met.

This benefit will sunset on or about December 31, 2006, unless extended by agreement of both parties.

10. Effective March 31, 2005 the Empire Plan infertility lifetime maximum benefit will increase to \$50,000 per covered individual.

11. Effective March 31, 2005 the Empire Plan hearing aid allowance will be \$1,200 per hearing aid per ear.

12. Effective March 31, 2005 Empire Plan mastectomy prosthetics will be a paid-in-full benefit.

13. Effective March 31, 2005 the Empire Plan maximum lifetime benefit for non-network substance abuse services will be increased to \$250,000

14. The State and the ALESU Joint Committee on Health Benefits will develop and implement two additional Empire Plan disease management programs.

15. The ALESU 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.

16. Effective March 31, 2005 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.

- 17. Effective March 31, 2005 the maximum annual Dental Care benefit per person will be increased to \$2,300.**
- 18. Effective March 31, 2005 the maximum lifetime benefit for orthodontic treatment will increase to \$2,300.**
- 19. The State will seek the appropriation of funds by the Legislature to support the ALESU Joint Committee on Health Benefits initiatives and to carry out the administrative responsibilities of the Committee in the amount of \$6,400 for the period April 1, 2003 to March 31, 2004 and \$6,400 for the period April 1, 2004 to March 31, 2005.**
- 20. Effective March 31, 2005 the Vision Care Plan will be modified as follows:**
 - a. Lasik and other similar vision care procedures performed to correct nearsightedness and/or farsightedness not covered by the Empire Plan or an HMO will be a covered service for employees only.**
 - b. Corrective Vision Care coverage will only be available through a network of participating board eligible/board certified ophthalmologists trained in this field. The Vision Care Plan administrator will be responsible for the network and will make every effort to recruit and retain providers throughout New York State.**
 - c. Corrective Vision Care coverage will include a preliminary exam, the actual procedure and up to two follow-up visits.**
 - d. Employees receiving such services will have a copayment equal to 10% of the discounted cost of the procedure up to an out-of-pocket maximum of \$200.**
 - e. Employees will be eligible for one Corrective Vision Care procedure every five (5) years per eye.**
 - f. The ALESU Joint Committee on Health Benefits will review the Corrective Vision Care coverage component at regular intervals to monitor utilization, network adequacy and cost.**
 - g. The five (5) year limit may be waived based on evidence of a significant vision change due to injury or illness.**
 - h. Spouses/Domestic Partners and dependent children will be eligible to receive discounted (up to 25 percent) Laser Vision Correction**

Services from a participating network provider. Any and all costs associated with such dependent Laser Vision Correction Services will be the responsibility of the employee.