

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between:

STATE OF NEW YORK,

Employer,

**FINAL AND BINDING AWARD
OF TRIPARTITE PANEL**

-and-

NEW YORK STATE CORRECTIONAL
OFFICERS & POLICE BENEVOLENT
ASSOCIATION, INC. (Security Services Unit),

PERB Case No. IA2008-008

Employer Organization.

PUBLIC PANEL MEMBER & CHAIRMAN:

Jeffrey M. Selchick, Esq.

PUBLIC EMPLOYER PANEL MEMBER

John V. Currier, Deputy Director
NYS Governor's Office of Employee Relations

PUBLIC EMPLOYEE ORGANIZATION PANEL MEMBER:

Natalie A. Carraway, Esq.
Sheehan, Greene, Carraway, Golderman & Jacques, LLP

Appearances:

For the State of New York:

Michael N. Volforte, Esq., Acting General Counsel
Clay J. Lodovice, Esq., of Counsel
Gary Simpson, Esq., of Counsel
NYS Governor's Office of Employee Relations

For the New York State Correctional
Officers & Police Benevolent Association, Inc.

Sheehan, Greene, Carraway, Golderman & Jacques, LLP
William F. Sheehan, Esq., of Counsel
Edward J. Greene, Esq., of Counsel

BACKGROUND

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 (PERB), 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 Correctional Officers & Police Benevolent Association, Inc., ("NYSCOPBA" and "Union"). The Union members who are parties in this proceeding work for the New York State Department of Correctional Services ("DOCS"), which is an Agency located within the Executive Branch of State government. DOCS operates 70 Correctional Facilities in the State, which consists of maximum, medium, and minimum security prisons, shock camps, minimum security camps, and a drug treatment campus.

The record shows that, as of November 23, 2008, DOCS facilities housed 61,502 inmates. Forty percent of those inmates were males classified as maximum security, 50% were males classified as medium security, 3% were males classified as minimum security; in addition 1% were work release inmates, 1% were minimum security camp inmates, 4% were female inmates, and 1% were inmates at the drug treatment campus at Willard, New York. The DOCS positions that are covered by this proceeding, according to the record, make up approximately two-thirds of the employees of DOCS. Specifically, the bargaining

unit members that are covered by this Interest Arbitration proceeding occupy the following positions:

<u>Title and Salary Grade</u>	<u>Number of Employees</u>
Correction Officer (SG-14)	18,773
Correction Sergeant (SG-17)	1,299
Correction Officer Trainee (NS)	799
Community Correction Center Assistant (SG-15)	27
Institution Safety Officer (SG-9)	<u>3</u>
Total	20,881

The last Collective Bargaining Agreement between the parties covers the period April 1, 2003 to March 31, 2007. The terms and conditions of employment for the period April 1, 2003 to March 31, 2007, relating to compensation for interest arbitration eligible unit employees, is set forth in an Interest Arbitration Award, which Panel was chaired by Arbitrator Thomas Rinaldo, Esq., (“Rinaldo Panel”). Thereafter, the record indicates that the Union petitioned for the instant interest arbitration proceeding in June 2008. The State filed a Response in July, 2008. The parties filed Improper Practice Charges with the PERB, which Charges, the record shows, were settled by a Stipulation that was executed on December 12, 2008.

The record herein shows that the parties convened before the Panel and hearings, in fact, were held on December 22, 2008, and on January 28, February 3, 5, 9, 25, and 26, March 4, 12 and 16 and April 6 and 8, 2009. At the hearing, the parties were represented by Counsel and other representatives. Numerous

and extensive exhibits and documentation were submitted by the parties, and both parties presented extensive arguments on their respective positions. Briefs have also been filed by the parties with the Panel.

The Panel has fully reviewed all data, evidence, arguments, and issues submitted by both parties. After significant discussion and deliberations at the Executive Sessions, and additional study by the Panel Chair thereafter, the Panel determined the terms of this Instant Arbitration Award. Since only a simple majority is required on each item, the support at all times of at least the Panel Chairman and one other Panel member results in this binding Award. Accordingly, all references to “the Panel” shall mean the Panel Chairman and at least one other concurring Panel member. At the request of the parties, a Summary of Award was issued on April 30, 2009. This Summary of Award is set out herein along with the Final Opinion and Award.

The positions originally taken by the parties are quite adequately specified in the petition and the response, the numerous hearing exhibits, and the parties’ post-hearing briefs, 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 certain terms and conditions of employment relating to compensation for interest arbitration eligible unit members for the period April 1, 2007 to March 31, 2009. In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 204 of the Civil Service Law:

a) comparison of the wages, hours and conditions of employment of the employee 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 interest and welfare of the public and the financial ability of the public employer to pay;

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

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

POSITION OF THE UNION

On the issue of comparability within the context of the parties' salary proposals, the Union notes that it presented testimony of Dr. Amy McCarthy, an economist with McCarthy Consulting in Edgewater, Maryland, who brought the Panel's attention to a "compensation analysis" wherein she compared the wages of the members of the Union to State Correction Officers in the five states contiguous to New York. According to the Union, this approach was consistent with the Rinaldo Panel Award because of that Panel's decision to focus comparability on correction officer titles in these five contiguous states. Thus, the Union notes that Dr. McCarthy did not include any counties in her analysis, and, on this point, the Union claims that the Rinaldo Panel "rejected the validity of a comparison to counties, the present record only reinforces that position."

The Union emphasizes what it perceives to be the persuasiveness of focusing comparability on the five contiguous states, particularly the four largest ones of Connecticut, Massachusetts, New Jersey, and Pennsylvania. As to Vermont, the Union observes that while New York is the fourth largest State prison system in the United States, Vermont is the fourth smallest such system. Moreover, the Union observes, there is no major urban center in Vermont, and the Union argues that "Vermont provides a less compelling comparison to New York than do the other four states."

The Union observes that the presentation of Dr. McCarthy revealed that, for the 20 year period from April, 1987 to March, 2007, the base pay of State Correction Officers rose 82.4% but the Consumer Price Index increased 88%, and the “real job rate, a measure of the purchasing power of the salary, thus declined by 3%.” During the same 20 year period, the Union notes, the Employment Cost Index rose 91.2% though the job rate for the Correction Officer rose only 82.4%. This allows the Union to conclude that “other employers have paid their employees increases in excess of what New York State has paid its correction officers over that [20 years] period.”

Excluding Vermont, New York for the last four fiscal years, the Union claims, was below the median salary for Correction Officers averaged over 25 years of service, and, in fiscal year 2009, including Vermont, New York was only 1.7% ahead of the median “but substantially behind Massachusetts ... and very substantially behind New Jersey ... despite New Jersey not having had a raise since January of 2007.” Using a “Total Compensation Analysis”, the Union notes that Dr. McCarthy’s analysis disclosed that the State is the fourth lowest of the five states” and “11.1% below the median 25-year hourly rate.” For Correction Sergeants, the Union puts forth, New York is below the median for fiscal year 2008 at both “contract minimum” and “contract maximum” after 5 steps.

The Union also notes that Dr. McCarthy offered a salary ratio between State Troopers and the Correction Officers for the period between April 1987 and

March 2007, which revealed that the “base pay” of the Correction Officer as seen as a percentage of the State Trooper base pay “declined dramatically.” Comparing state trooper salary to correction officer salary in the contiguous states, excluding Vermont, the Union notes, shows New York State's Correction Officers last in terms of the ratio. The Union professes that it is not asserting that Correction Officers are to be viewed “as if they were state troopers”, noting that such an approach was rejected by the Rinaldo Panel. Though the Union acknowledges differences that exist in training, duties, and working conditions, it nevertheless asserts that it must be considered “also true that state troopers and correction officers share certain characteristics that other state employees do not possess,” and that they are “among the few units of State employees upon whom interest arbitration has been conferred.” It is clear, according to the Union, that the Legislature and the Governor “have recognized that the State’s correction officers are part of the State’s law enforcement community, for whom binding interest arbitration is appropriate.”

Evidence in the record supports the conclusion, the Union further argues, that its members have been publicly acknowledged for “their excellence.” It is also the case, according to the Union, that there is a “closer” connection between the Correction Officers and the State Troopers than there exists between Correction Officers and the civilian workers in the State. Hence, the Union

claims that “the terms and conditions of employment of state troopers in New York are more relevant and compelling than those of other State employees, and the panel should afford them greater weight.”

The Union rejects the State’s salary comparisons to the extent that they include County Corrections Departments. It points to the testimony of its Executive Vice President Chris Hickey. The Union maintains that the record shows that significant differences exist between County jails and State correctional facilities, the largest being “the makeup of the inmate population.” The Union also identifies the differences in the size of the facilities as well as the assignment and transfer process. It contends that the State has done little more than rely upon the evidence before the Rinaldo Panel, which “concluded” that “the county corrections salary comparisons are not worthy of consideration by the panel.” The Union also rejects the State’s approach in methodology in making the comparison between State and County Correction Officers, contending that the State’s study was defective because increases in effect after March 31, 2007 were not taken into account, nor was the State’s approach “as reliable as using the fiscal year approach followed by Dr. McCarthy.”

According to the Union, the civilian state employee bargaining units in NYS that have settled collective bargaining agreements for the period 2007-2011 received across-the-board general salary increases of 3%, 3%, 3% and 4%, in the four years of the agreements. Law enforcement bargaining unit agreements

for the same period of time have received the same increases plus stipends because of law enforcement responsibilities. The Union's wage proposals are also supported by a comparison with salary increases for federal employees and salaries of state officials in the contiguous states. There is also evidence, the Union puts forth, that correction agencies throughout the country now experience difficulties in recruitment and retention. In sum, the Union contends that the record establishes that there is a “declining interest in the Correction Officer position, increasing number of retirements, and a smaller candidate pool from which to select qualified replacements.” Any “important comprehensive approach” to this issue, the Union maintains, “is to make the salary and benefits package more attractive.” In this regard, the Union identifies the “public interest” criterion.

Regarding the expanded duty stipend proposal before the Panel, the Union claims that DOCS, during the past few years, has been involved in an evolution of its approach so that there are “[i]ncreased residential programs and more individualized treatment” for inmates that “has greatly expanded officers’ and sergeants’ already complex and countless duties.” The Union identifies the Employee Manual that is issued to member of the Union by DOCS and the number of DOCS rules referenced in the Manual “covering hundreds of topics directly related to how each officer and sergeant must perform his or her job.”

The Union indicates that the Employee Manual items are in addition to DOCS issued "Directives" which are also coupled with any number of State laws and regulations that Officers and Sergeants are expected to know. Furthermore, there are now a number of duties that they perform on a daily basis that are "above and beyond ensuring the custody, security, and safety of inmates in State correctional facilities." These duties are identified by the Union as "intelligence gathering; hostage negotiating; counseling; preliminary investigation of criminal matters; evaluating employees; fighting and preventing fires; engaging in programs for sexual offenders and mentally ill inmates; training in weapons, chemical agents, defensive tactics, cultural diversity; and providing emergency response in the event of major disturbances."

The Union identifies the testimony of several Correction Officers and Sergeants (Kogut, Maternowski, Golden, Conney, Jones, Degroff, Fleming, and Viddivo) regarding the duties of members of the bargaining unit that extend beyond providing a "safe, secure confinement of inmates," and the Union claims that the relevant record evidence amply justifies the expanded duty stipend proposal. The additional duties and responsibilities include, the Union asserts, the Crisis Intervention Unit; Corrections Emergency Response Team; Sex Offender Program; the Special Treatment Program; Fire and Safety Duties; Narcotics Identification System and Ion Scanning; Weapons Training Officer; Blood Exposure Response Team; and Critical Incident Stress Management. The

Union also notes that Correction Sergeants, in addition to general supervisory duties, must also address formal evaluations of Correction Officers under their supervision. The Sergeants, the Union claims, must also handle inmate disciplinary proceedings and have been obliged to extend their duties to various investigatory and report preparations. Sergeants also serve on a number of committees including committees that review “good time” issues concerning inmates.

As to its Workers’ Compensation Leave benefit whereby the compensatory leave with pay would be extended from six months to twelve months, the Union emphasizes that the work faced by members of the bargaining unit is “dangerous and demanding.” This fact, the Union observes, was recognized by the Rinaldo Panel in its Award, and the legislature has also acknowledged the hazards of the Union members’ duties when it extended to two years the leave of absence available to officers who are disabled by inmate assault under Section 71 of the Civil Service Law. The Union points out that the record contains graphic accounts of injuries sustained by members of the Union, including testimony from Officer Saddlemire and Officer Gould. The “numerous programs” that DOCS has in place, the Union argues, show that the Department is aware of the hazards surrounding the duties performed by the members of the Union. The record evidence also discloses how Correction Officers “are injured at work more

frequently than most of their fellow state employees.” The Union contends that, once injured, Correction Officers “tend to have more lost time as a result of their injuries.” Delay in returning to work, according to the Union, can also be attributed to the need for the employee to be cleared by the State’s physicians as well as the difficulties encountered with the New York State Insurance Fund. It is the Union’s position that the six month leave simply does not allow Officers who incur significant injuries sufficient time to heal and return to work.

On the question of comparability in the context of this proposal, the Union observes that the Rinaldo Panel ruled that there was a need to “distance” the members of the Union from other State employee labor organizations that are not eligible for interest arbitration. The Union asserts that the five contiguous states utilized by the Rinaldo Panel, with Vermont taken into account “to a lesser degree”, members of the State Police, and municipal law enforcement personnel in the State, should be utilized as the basis for comparison for this proposal. As to the contiguous states, the Union observes that the record shows “how the workers’ compensation benefits payable for non-heightened risk injuries in Massachusetts, Connecticut and Vermont compares to New York’s is dependent upon a number of factors” which “factors are largely unique to the individual claimant in each case.” The Union acknowledges that it is “difficult to argue that their benefits are not comparable to New York benefits.” According to the Union, as “to Pennsylvania and New Jersey, however, those states offer benefits which

significantly exceed those available to New York's State correction officers regardless of the cause of the disability." For Officers disabled because of injuries sustained in the line of work, or "heightened risk injuries," the Union claims that "it is clear and beyond dispute that New York lags significantly behind its contiguous states."

Comparing the members of the Union with other municipal correction officers, the Union identifies the provisions of General Municipal Law §207-c and concludes that "it is clear that the benefit provided to NYSCOPBA's members is significantly inferior, and should be addressed by this panel." As to State Troopers, Investigators, Senior Investigators, and Investigative Specialists, the Union puts forth that said benefits "are significantly more generous than those currently held by correction officers ... and that disparity continues to grow." The Union maintains, therefore, that its Workers' Compensation proposal should be awarded.

The Union identifies its "performance advances" proposal whereby it seeks to reduce the number of performance advance steps from five to four effective April 1, 2007 and from four to three effective April 1, 2008. By these reductions, the Union claims, the State will achieve a "recruiting tool that will assist in attracting potential correction officer candidates at a time of declining interest in the profession." Its "longevity payments" proposal, the Union asserts, is based

on the Trooper longevity model, which, the Union argues, “is more representative of a law enforcement longevity system than a civilian longevity pattern.” Troopers, the Union notes, achieve annual increases in longevity payments beginning at six years and continuing up to 25 years, whereas Correction Officers have a “flat” system that begins at ten years and increases only at 15, 20, and 25 years. Furthermore, the Union alleges, the current longevity system does not carry over the dollar amount of separation between 20 and 25 years that is found between the 10 and 15 and the 15 and 20 year steps. It notes that, in the Security Supervisors Unit, the separation between steps remains consistent and that, in the 2003-2005 Security Supervisors Unit Interest Arbitration, the Panel in that case added a new 25 year longevity step in an amount that exceeded the 20 year step by the difference between the 10 and 15 year steps. The Union contends that “what is right and appropriate for the lieutenants should apply with equal force to the officers and sergeants.”

As to its “location compensation” proposal, the Union claims that the justification for adding Ulster to the list of counties that become eligible for location compensation is predicated on the federal government’s classification of New York counties eligible for federal locality pay. According to the Union, the federal government’s decision that federal employees who are working in Ulster County should receive location pay should support the conclusion that State employees should also receive location pay.

Regarding its “inconvenience pay” proposal, the Union points to the proposal seeking to increase the night shift differential and the evening shift differential. The Union asserts that, despite the Award of the Rinaldo Panel, a “further increase is warranted to address the many inconveniences faced by those who work the evening shift or night shift.” This proposal is also justified by comparability, the Union argues, as well as the need to produce an “incentive” to keep senior Officers on these shifts.

Its “pre-shift briefing” proposal, the Union puts forth, would incorporate 15 more minutes into the basic work week according to the formula set forth in its proposal. Given what the Union perceives to be the “long history and demonstrated importance” of the 15 minute briefing, the Union claims it is now “time to recognize that the regular, normal work day for correction officers is 8.25 hours, not 8 hours,” which allows the Union to conclude that the “standard work week should be recognized as 41.25 hours.” The Troopers, the Union observes, converted to a longer workweek and the additional hours that would make up the increased work week, under its proposal, would be rolled “into base pay at the overtime rate of pay.” An extension of the work week to 41.25 hours, the Union further observes, would then render it “necessary to adjust the rate of leave accruals to reflect the change.”

As to its “advancement within a salary grade” proposal, the Union asserts that it would not be fair for an Officer to be denied an increment when the Officer has worked at least 100 shifts during the course of the fiscal year “simply because one or more of those shifts were on overtime and therefore performed on the same day as another shift.”

Its “equipment purchase and maintenance allowance” proposal, the Union claims, would grant members a stipend to be used to purchase items utilized in the course of duties that are not supplied by the DOCS such as key clips, baton rings, flashlights and pocket knives.

The “employee benefit fund” proposal, the Union claims, is one that addresses “the unique needs and working conditions of correction officers” and the proposal should be granted because a “reasonable increase” would bring Union members on par with other State law enforcement bargaining units.

The Union claims that on health insurance the State has made a proposal calling for “significant concessions.” The Union observes that it recognizes the need for savings to be realized in this area, but such a need cannot detract from the importance of the benefits that are “essential to the health and well being of NYSCOPBA’s members, their families and dependents.” The Union argues that savings the State claims would be achieved by modifications to health insurance should be returned to the Union members “in the form of additional and enhanced benefits.” The Union notes that it seeks as “enhancements” an

extension of eligibility for coverage under the health insurance plan from 12 months to 24 months for members who are removed from the payroll on account of an inmate assault and other benefits identified by the Union in the proposal, including “Lasik/correction vision care benefit.” Such benefits, the Union puts forth, have been extended to other units.

The Union asserts that its “wellness incentive” would, in the final analysis, provide “enormous benefits to both the State and its correction officers.” The “physical fitness program” proposal, the Union claims, would likewise provide significant benefits in the form of a “healthier workforce.” On the question of overtime, recall and scheduling, the Union notes that it opposes the changes sought by the State since, in the Union’s estimation, the State presented no evidence to support its proposal.

Regarding the statutory criterion of “ability to pay”, the Union notes that this criterion is not the only one the Panel must apply and it is within the Panel’s discretion as to how much weight will be given to the different criteria. Moreover, the Union puts forth that the presentation offered through its witness, Kevin Decker, clearly establishes that the “State has the ability to pay for any significant pay increase awarded by the panel.” It is the Union’s contention that Mr. Decker’s presentation takes into account the State’s documentation and reports. The Union observes that it recognizes, as did Mr. Decker, that the State is

operating within difficult financial circumstances, but the Union contends, such circumstances “are by no means unprecedented and do not preclude an appropriate salary increase for correction officers and correction sergeants.” It notes that Mr. Decker emphasized a number of points in his testimony, including the fact that protected revenue shortfalls must “be kept in perspective” and the fact that the State entered the current 2008-09 fiscal year “with healthy reserves”.

As to the testimony offered by the State’s budgetary expert, Qiang Xu, the Union argues that Dr. Xu’s testimony contained his acknowledgment that the forecasts on which he relied “predicted positive economic growth for 2010 and (for those whose forecasts go out that far) for 2011.” Moreover, the testimony of this witness, the Union notes, contained the observation that the State’s budget is “now in balance.” As to the testimony of Mr. Colafati on behalf of the State, the Union notes, among other items, that the “\$60 billion dollar budget gap through 2011-2012 was reduced to \$11 billion.” It notes Mr. Decker’s testimony that “ability to pay” must be seen in a context that “considers the availability of tax and other revenue sources; the public employer’s spending priorities; emerging trends regarding expenditures and tax/revenue rates and bases; and the underlying economics and demographics of the community from which revenues are generated.” It is clear, according to the Union, as Mr. Decker concluded, that the State could pay any “size raise” that the Panel could award.

The Union also identifies the hazards of employment that its members face, including occupational stress, inmate assaults and contraband, infectious diseases, gang-related activity and hostage situations. Further, the Union identifies the terms of past agreements with the Security Services Unit. In conclusion, the Union urges that “the interest and welfare of the public are surely not only relevant and statutorily necessary considerations here, but in a very real sense vital, as the State’s prison system houses more than 60,000 convicted felons.” Its members, the Union notes, “are the heart and soul of the system” and “[t]he public has a strong interest in seeing that its State correction officers and correction sergeants are the best they can be.”

POSITION OF THE STATE

On the issue of comparability, the State notes that the 2007 Award of the Rinaldo Panel stated that comparables should include State Correctional Officers in the contiguous States of Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont. In addition, the State observes that it offered considerable evidence concerning salaries and benefits of Correction Officers and Sergeants in the New York State Counties in which a DOCS “Hub” is located. The State maintains that such Correction Officers and Sergeants engage in similar functions in “locales” that are the same as the members of the

Union. Hence, the State claims that the evidence concerning local Correctional Officers “provides an accurate demonstration of the comparable salaries for individuals that live alongside the Security Service Unit Members.”

In support of its position on comparability, the State notes the evidence offered from Nicholas Vagianelis, the Director of Classification and Compensation for the NYS Department of Civil Service, and evidence offered through Kathleen Jordan, an Employee Relations Associate with the Governor’s Office of Employee Relations. Ms. Jordan’s presentation divided what the State contends to be the comparable jurisdictions into two groups: contiguous states and counties where a DOSC facility is located. The analysis performed in these two groups disclosed salaries and other benefits fixed as of March 31, 2007.

Regarding the contiguous States, Ms. Jordan testified that the base salary for the Correction Officers titles plus longevity was greater than those for comparable titles in Connecticut, Pennsylvania, and Vermont at all years of service examined. (1, 5, 10, 15, 20 and 25) and that the base salary plus longevity for New York was behind New Jersey at all years of service and behind Massachusetts at 1, 5, 10 and 15 years of service but, for Massachusetts, comparable at 20 and 25 years of service. At 15 years of service, the State notes, New York is either “competitive or ahead” of all contiguous states save for New Jersey with a “nearly identical” situation prevailing for the Correction Sergeant title at 20 years of service. The State observes, within the context of

the contiguous states, “New York only truly trails behind New Jersey” and that it can be concluded that “New York’s compensation for these titles is solidly within the top tier of ranges paid by other contiguous states for these same titles.”

As to the NYS counties where DOCS has facilities of the 30 jurisdictions examined in this group, only two (Westchester County and New York City) are ahead of the Union’s from 5 years through 25 years of service and, in the Correction Sergeant title, the same two jurisdictions are “constantly ahead of New York State.” It is the State’s position that “overall, the New York State’s Correction Officer and Correction Sergeant fare much better than similar employees of local jurisdictions who live and are employed alongside one another.”

On the comparability issue, the State also maintains that the evidence discloses that salaries to the members of the Union, when compared to wage rates “in the economies of the regions in which they live”, show that, at base salary plus longevity, a New York State Correction Officer with 15 years of service “exceeds the average regional wage in 11 of those 12 regions” in which wage rates have been measured. Further, the State notes, that Correction Officers and Sergeants have seen their salaries increase at a rate greater than the growth in the national and regional wages and thus they “are exceeding general economic growth.”

The State rejects any claim by the Union that State Troopers should be included in the universe of comparables. The State observes that the Rinaldo Panel specifically rejected this contention by the Union. In addition, the State asserts that evidence presented to the instant Panel, including that provided by Colonel Christensen, Deputy Superintendent of Employee Relations, and evidence presented to the Rinaldo Panel by Lieutenant Colonel Sheppery, reveals a wide area of differences “in minimal qualifications, initial training/academy, continued training and job duties between the job titles” found in the bargaining unit and among the Troopers.

The State also identifies the statutory criterion of the interests and welfare of the public and the financial ability of the public employer to pay. It focuses on evidence presented through Qiang Xu, Chief Budget Examiner for the Economic Policy and Analysis Unit, within the State Division of Budget, concerning the economic outlook for both New York State and the United States. The presentation offered through this witness, according to the State, discloses how “key financial events in 2008 had a severe adverse effect on the State’s economy, jeopardizing the State’s ability to collect tax revenues.” Thus, the State identifies what it characterizes as the “downfall of five independent investment banks in the fall of 2008” and the fact that the federal government now has embarked on greater regulations of independent investment banks. Thus, the State claims that there will be “both reduced personal income tax

collection and reduced consumer consumption” in the State. The State, in this regard, also identifies the “sharp decline of profits from other member firms listed on the New York Stock Exchange” as well as “the decline in capital gains.”

The State notes the Union’s likely argument that a “worse case” scenario has been presented by the State but, the State puts forth, the economic forecast of the State Division of Budget “is actually more optimistic than several other leading and prestigious forecasters.” The State also notes that the national recession that began on December 1, 2008 must be considered “problematic” in its timing because it would appear that the national economy historically has recovered from a recession before the economy of New York State. The State identifies evidence that it entered the current recession in September of 2008 and it is not clear “how long the current fiscal crisis will last, or just how long-lasting and severe the damage caused by the crisis will be.”

The State also identifies evidence presented through Dominic Colafati, Chief Budget Examiner for the Department of Budget’s Expenditure and Debt Unit. This evidence, the State claims, shows that the “overall fiscal position” of the State “has deteriorated dramatically since the enacted budget was finalized for 2008-2009, in part due to the deterioration of the State and national economies as set forth in Dr. Xu’s presentation.” In this regard, the State identifies evidence regarding anticipated budget gaps. Though the federal

stimulus bill will provide about 24.6 billion dollars to the State over a three year period, the State notes that only “nine billion dollars in unrestricted aid will be made available to New York.” Even with the assistance of the unrestricted aid, the State observes, it “would still be left with a cumulative gap of 39 billion dollars at the end of the three-year period.” Its two “rainy-day funds”, the State notes, do not come close to filling the gaps, and because it is a “cash-basis entity,” the State observes that it “does not set aside cash for future labor settlements.” The State puts forth that the record evidence conclusively demonstrates that it “faces an unprecedented fiscal crisis” and there is “clear and convincing” evidence that the State simply does not have funds to address the Union’s proposals. Furthermore, the State claims that the interests and welfare of the public must be taken into account, particularly since the State is now “struggling to stay afloat in a once-in-a-lifetime fiscal crisis.”

Regarding comparisons with “other trades or professions”, the State acknowledges the dangers that are “inherent in a correctional facility”, but also points to record evidence presented through DOCS Deputy Commissioner LeCLaire that recent technological innovations and proper training has helped officers and all staff in the facility to be safe. To the same end, according to the State, is the testimony of DOCS Director of Human Resources Martuscello that over the period between 2001 and 2008 assaults and similar incidents among and by inmates have declined. The State also observes that the testimony of Mr.

Vagianelis from Civil Service explained the classifications of the Correction Officer and Correction Sergeant titles and reflects that the dangers and difficulties of the job have been incorporated into the “current salary grades in the State’s classification system.”

Turning to past Agreements, the State notes the record evidence comparing salaries for members of the Union with the Consumer Price Index for the Northeast Region and to a “constant dollar” measure for the past 27 years. The State claims that this evidence discloses that “successive collective bargaining agreements have provided correction officers and correction sergeants with wage growth beyond that of the economy at large ... thereby placing the correction officers and correction sergeants in a better position vis-à-vis their neighbors over the quarter century.” Members of the Union, the State also puts forth, have seen their fringe benefits stay on pace with other bargaining units of State employees.

The State focuses on various proposals in setting forth its position before the Panel. These proposals focused on by the State are its wage proposals, longevity proposals, overtime recall proposal and meal allowance elimination proposal. These proposals, the State argues, must be considered “meritorious and self-explanatory.” Regarding the pre-shift briefing proposal, the State points to the evidence offered by the testimony of Seren Hrachian, Associate Director,

Governor's Office of Employee Relations. Its proposal to eliminate payment for pre-shift briefing on days when unit members do not actually work, the State notes, is to address an "outmoded" situation to eliminate a \$4.80 payment so that members of the Union are compensated "for the time spent actually working when assembling for line-up."

The State also focuses on its Health Insurance proposal and the evidence presented by the testimony of Pricilla Feinberg, Associate Director of the Employee Benefit Management Unit within the Governor's Office of Employee Relations. According to the State, Ms. Feinberg articulated the proposed health insurance benefits as part of an effort to provide a full range of medical benefits in the most effective, in terms of cost and the provision of services, for both the individual employee and the State as employer."

The State also highlighted its Workers' Compensation proposal that seeks to modify the existing Article 14.9 contained in the Agreement. It observes that this proposal would continue the full pay benefit without any charge for accruals for the period of six months "for injuries sustained as the result of an assault or in responding to an inmate or facility emergency." The proposal, the State notes, would also "place the injuries resulting from events that would be similar to any, and all, State employees, including those of other bargaining units who also work within a New York State Correctional facility" such that for the non-assault/non-emergency injuries" members of the Union would "receive comparable benefits

that other employees would receive when caused by similar situations or similar reasons, i.e. the statutory benefit.” The State contends that the “recent dramatic increase in the statutory benefit” also “will provide a net benefit that is very comparable to what the NYSCOPBA members currently receive.” Furthermore, its proposal, the State puts forth, “is to ensure that the contractual Workers’ Compensation benefit remains a wage ‘replacement’, rather than a wage ‘enhancement.’”

The State maintains that the evidence offered through Linda Boettner, an Employee Relations Associate in the Governor’s Office of Employee Relations, provides substantial factual justification for the Worker’s Compensation proposal. Additionally, the State points to the evidence presented by Daniel Martuscello, Director of Personnel, for DOCS, concerning the handling of Workers’ Compensation claims. The State maintains that it is significant that the evidence presented through this witness demonstrated that there is an excess of 8,000 civilian positions within the DOCS that have “at least 50 percent direct inmate contact throughout the workweek.” (Emphasis in original). Not one of these 8,000 employees, the State observes, are able to obtain six months at full pay benefit for injuries in the workplace even if the injury is caused by an inmate or an emergency that is specific to a Correctional Facility. The State’s proposal will place members of the Union “on par” with the 8,000 civilian employees.

AWARD

Term of Award

As set forth in the Summary of Award, the Award herein covers the two-year period commencing April 1, 2007 and ending on March 31, 2009.

Panel Discussion on Nature of Work

Necessary to a full understanding of this Award is a brief discussion of the nature of the work performed by Correction Officers and Sergeants in New York State correctional facilities. An identification of the bargaining unit and its work, the Panel observes, cannot be fully made without setting forth some salient facts regarding the particular “hazards of employment” for the bargaining unit members. Such identification, needless to say, is apt given the “hazards of employment” factor set forth by the Legislature to be considered by a Panel under Section 204 of the Civil Service Law.

Thus, the Panel observes the stress inherent in the jobs performed by unit members. As stated by the Department of Justice, Office of Justice Programs, in a publication entitled “Addressing Correctional Officer’s Stress,” “[s]tress among correctional officers was widespread” and “[t]he threat of inmate violence against officers, actual violence committed by inmates, inmate demands and manipulation, and problems with co-workers are conditions that officers have reported in recent years [that] can cause stress.” Along with other factors that

include “poor public image” and “rotating shift work”, the stress, the publication goes on to state, “can impair officers’ health, cause them to burn out or retire prematurely, and impair their family life.”

The NYS inmate population itself, according to the record evidence, is one with substance abuse problems, mental health problems, and symptoms of such difficulties that can reach the stage of psychotic disorders. The Panel also notes the perhaps less obvious stressors in the form of “role conflict” and “role ambiguity” where officers are, at the same time, required to pursue security goals and treatment functions and to adhere to the “letter” of rules in a paramilitary organization with the attendant need to be flexible in addressing the challenges of a diverse inmate population.

Needless to say, the dangers of the work place for members of the bargaining unit are very real. In 2007, for example, there were 556 reported inmate assaults on staff incidents, some of which included weapons and human waste or other fluids. These incidents, it should be noted, involved 2189 staff members, not to mention the 1946 staff members who were involved in the 701 inmate assaults on inmates in 2007. The dangers and hazards of the workplace also include exposure to infectious diseases, evidenced by the fact that in 2005 over 4,000 NYS prison inmates had HIV or AIDS. Officers are also exposed to the very dangerous hepatitis B and C viruses on a daily basis. Further, the

Department of Correctional Services has had to develop policies to limit exposure to inmates who are infected with tuberculosis.

The workplace also involves interaction with inmates involved in gang activity. The record shows that gang membership in adult correctional facilities increased substantially between 1991 and 1999. In addition, every member of the bargaining unit while at work is aware of the possibility of confronting hostage situations. And many have, and suffer the post traumatic stress that follows such confrontations.

In sum, the Panel, when viewing the Union's proposals, including those specifically addressed below, has taken into account the unique hazards and stresses confronting members of the bargaining unit. There is no question that members of the bargaining unit perform under dangerous and stressful conditions on a daily basis, and that any compensation award must recognize such hazards of the job. While the Panel further recognizes that it must balance the nature of the work against the State's limitations on ability to pay, the Panel must emphasize that it is convinced, by the voluminous evidence in the record herein, that NYS Correction Officers and Sergeants perform on a daily basis in jobs that are dangerous but necessary to our civilized society. It is imperative that their overall compensation package recognizes and values such work. This Panel has attempted to balance such reality against the State's ability to pay.

Panel's Analysis of Comparability

The Rinaldo Panel, although noting that the Union's eligibility, via legislative and executive approval, distanced the Union "from the historical relationship with other state employee labor organizations", nevertheless found that there were significant differences between State Troopers and members of the Security Services Unit at issue herein. The Rinaldo Panel thus determined that, notwithstanding the fact that members of both unions perform "important missions in a context of danger and challenge", the Troopers could not be considered a "proper object of any substantial comparison." The Rinaldo Panel further found that the differences between members of the Union and other State employees were such that it was not "profitable to compare the eligible members eligible for interest arbitration with other State labor organizations."

Hence, the Rinaldo Panel found "the universe of comparables should include other state correctional officers in essentially the same geographical region as Union members." Thus, the Rinaldo Panel determined that the most relevant universe of comparables [consisted of] State Correction Officers in the contiguous states of Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont." In selecting these contiguous states, the Rinaldo Panel further observed that "that the inclusion of Vermont does not mandate that the Panel forget and not take into account the obvious fact that, in size and population,

Vermont does not particularly match with New York State and the four other contiguous states.” Finally, the Rinaldo Panel ruled that it found “no basis to include local, correctional officers within New York in the universe of comparables.” However, the Rinaldo Panel stated that it found “no mandate in the law to blind itself to the terms and conditions of employment of New York State Troopers, correctional officers in non-contiguous states, and local correctional officers.”

This Panel would first note that the concept of precedent is not particularly suited for the interest arbitration process. Nevertheless, the ruling of an earlier Panel, particularly a Panel whose Award sets forth the terms and conditions of the immediate predecessor agreement, should be closely considered during the analysis required to achieve, within the context of the statutory criteria, a fair and equitable Award. Abrupt departures from the rationale of an earlier Panel’s Award would not serve the parties’ interests. Further, any departures in reasoning would seem to be best made by an identification of “changed circumstances” to justify the departure.

In considering the record before it, this Panel does not find any evidence that would persuade it to deviate from the Rinaldo’s Panel analysis on comparability. That is to say, the chief focus of comparability should be on the five continuous states, with Vermont’s substantial differences to New York being taken into account and given less weight. As the Rinaldo Panel was careful to

note, however, its selection of the five contiguous states did not “blind” it to considering to some extent other collective bargaining relationships, which would extend to Troopers and local Correctional Officers in New York. This Panel is therefore in agreement with such analysis and adopts such finding herein.

Panel’s Analysis of Ability to Pay

Several observations on “ability to pay” made by the Rinaldo Panel are worthy of note. This Panel would emphasize, however, that “ability to pay” encompasses factors that are very fluid in nature, and one Panel’s analysis of ability to pay is based on a consideration of circumstances at that time; circumstances that are subject to change based on current financial considerations. The Rinaldo Panel did note that it attached significance to the legislation that extended interest arbitration to NYSCOPBA as having “constituted a recognition on the State’s part that, they would have to, from a compensation point of view, recognize the unique status of correction Officer vis-à-vis other state employee labor organizations.”

The Rinaldo Panel also observed the Union’s reliance on the holding by the Court of Appeals in *City of Buffalo v. Rinaldo*, 41 N.Y.2d 764, that, as the Rinaldo Panel noted, grants a “Panel a fair amount of discretion concerning what weight should be placed on ability to pay when considering wage increases.”

The record before this Panel, to no one's surprise, reflects a significant difference on the question of ability to pay from the record before the Rinaldo Panel. The presentation offered by Dr. Xu, on behalf of the State, which has not been significantly refuted by the Union, offers a rather comprehensive overview of a deteriorating economic situation in the State. The Panel finds that the State's description of the economic situation confronting it as a "fiscal crisis" is apt. Furthermore, the Panel has no reason to quarrel, nor does it find compelling evidence to the contrary, regarding the presentation offered through Mr. Colafati concerning the effects of the economic crisis on the State's budget.

Quite frankly, there is no reason for the Panel to catalogue all of the evidentiary sources that support the conclusion that the State's ability to pay, realistically understood, has been compromised. The Panel would hasten to add that Mr. Decker's presentation on behalf of the Union does support the conclusion that the State has some ability to fund modest increases in salary and other benefits. The Panel must be careful, however, lest it impose too great a strain on the State's fiscal situation as to harm the interests and welfare of the public.

Panel's Analysis on General Salary Increases and Longevity

The Union seeks an across-the-board wage increase of 6%, effective on April 1, 2007 and another 6% increase effective April 1, 2008. The State's wage proposal, submitted in July 2008 before all aspects of the economic crisis surfaced, was an across-the-board increase of 2% for each year of an Agreement. The Union's longevity proposals seek to implement a new system whereby longevity is paid for each year of service, with payments beginning at seven years; said payments to be, effective April 1, 2007, in an amount of \$450 for salary grades 14 and below and \$475 for salary grades 15 and above; effective April 1, 2008, the longevity payments to be \$475 for salary grades 14 and below and \$500 for salary grades 15 and above. The State objects to the Union's proposal on longevity.

In viewing the parties' proposals, the Panel notes that the current agreement on longevity pays out at 10, 15, 20 and 25 years. The Rinaldo Panel set specific amounts, effective April 1, 2003, for longevity payments, which were reflected at salary grades 9, 14, 15, and 17, with an increase to match salary increases for each of the years of its Award.

Needless to say, the Panel's findings above on comparability and the State's ability to pay inform its decision on these proposed increases. The compensation analysis offered by the Union through Dr. McCarthy shows that,

for the contiguous States save for Vermont, unit members fall somewhat below the median at 20 and 25 year career salary plus longevity for fiscal years 2008 and 2009 as well as somewhat below the median for these four contiguous States at the 25 year career salary and all longevity measured on fiscal years 2006 through 2009. Dr. McCarthy's presentation, for the 20-year period between 1987 and 2007, demonstrated that the base pay for unit members rose at a rate below the Consumer Price Increase as well as below the rate of the Employment Cost Index. The State's presentation through Ms. Jordan reflected that Correction Officers and Sergeants fare better when they are compared with local Correctional Officers, but, as the Union then notes, its members do not measure favorably when compared with State Troopers.

On balance, in light of all record evidence, which mandates that the Panel take into account current economic realities, the Panel finds it prudent to award only modest increases in salary and longevity. These increases take into account all statutory criteria and continue comparability within reasonable ranges among the five contiguous States. The salary increases awarded herein must be viewed in tandem with longevity. Moreover, the Panel notes the record would reflect the State's realization of savings in the area of health insurance, which savings temper the amount of the increases. Finally, the Panel also observes that the Award has increased compensation in the area of the expanded duty stipend, which thus adds to the overall compensation increases.

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

Award on Salary

Salary: Effective April 1, 2007, all members of this unit who are employed 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 3.0 %. Effective April 1, 2008, 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 shall receive a general salary increase of 3.0 %.

Award on Longevity Payments

Longevity Payments: For 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, prior to application of the April 1, 2007, across the board increase awarded herein, the 25-year longevity shall be increased based on a recalculation by subtracting the 10-year longevity from the 15-year longevity and adding the resulting difference to the 20-year longevity.

Upon recalculation of the 25-year longevity, effective April 1, 2007, longevity payments provided to eligible members upon completion of 10, 15, 20 and 25 years of service shall be increase by 3%. Effective April 1, 2008, longevity payments provided to eligible members upon completion of 10, 15, 20 and 25 years of service shall be increased by 3.0 %.

Panel's Analysis on Location Pay

The Rinaldo Panel found the “need to make a modest increase of location pay” and to add Rockland County to the list of counties which receive location pay. That Panel noted that, although it “generally eschewed reliance on the New York State Troopers as a basis of comparison, there is a specific justification for taking into account the factors that have been utilized for creating the amount and geographical region of location pay for New York State Troopers.” In addition, the Rinaldo Panel increased the amount of location pay.

The Union’s proposal seeks to now add Ulster County to the list of counties eligible for location compensation. It notes the federal government’s decision that federal employees working in that county should receive location pay. The Union also seeks to increase the amount of location pay for each year of the two year Agreement. The State objects to this proposal.

Upon review, the Panel is not persuaded by the Union’s presentation. The fact that the federal government’s has determined that Ulster County, for its purpose and its employees, qualifies as a location pay site does not *per se* require a conclusion that Ulster County should be included in the location pay sites herein. Nevertheless, the Panel finds that its flexible approach to comparability allows it to take note of the fact that increases in location pay, perhaps not surprisingly, have been negotiated by all of the State employee bargaining units that reached Agreement with the State for the term 2007 to

2011. The Panel also notes the Rinaldo Panel comparison to State Troopers on this issue also reflected its flexible approach.

Accordingly, and after consideration of the evidence in the record and the criteria set forth in §209.4 of the Civil Service Law, the Panel makes the following:

Award on Location Pay

Location Pay: Effective April 1, 2007 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, 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 location pay in the following annual amounts:

Orange, Putnam Dutchess	NYC, Rockland, Nassau, Suffolk, Westchester
\$1160	\$3117

Effective April 1, 2008 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, 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 location pay in the following annual amounts:

Orange, Putnam
Dutchess

NYC, Rockland, Nassau,
Suffolk, Westchester

\$1195

\$3210

These payments will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes. Furthermore, effective April 1, 2007, there shall be no other payment for location pay or supplemental location pay as they have been combined into a single payment and increased in accordance with the amounts set forth herein.

Panel's Analysis on Health Insurance

The Panel would note that the parties' presentations at the hearing, while not reflecting an agreement on health insurance, did reflect the understanding that health insurance is a vexing problem due to increased costs. At the same time, it is clear that this is a significantly important benefit to members of the bargaining unit and their dependents. A delicate balance of combining savings and yet maintaining or, for that matter, enlarging benefits, would appear to the Panel to have been the parties' goals in this area.

The Award herein on health insurance, the Panel submits, incorporates the most conscientious approach available under the circumstances to reach the dual goal of maintenance of benefits and savings. The Panel specifically notes in the area of maintenance of benefits that the Award sets forth a health insurance plan that, as the Union has sought, increases from 12 months to 24 months the coverage for an employee out of work due to inmate assault; adds coverage for

adult immunizations by including immunization for shingles; adds an annual diabetic shoe benefit; and adds prosthetic wigs to the coverage. Further, the health insurance includes a benefit for lasik/corrective vision care consistent with the Union's proposals. This represents a major enhancement to health benefits.

Accordingly, and after consideration of the record evidence and after due consideration of the criteria set forth in §209.4 of the Civil Service Law, the Panel makes the following:

Award on Health Insurance

Health Insurance: For 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, changes to health insurance are summarized in Addendum A attached to the Summary of Award.

Panel's Analysis on Expanded Duty Stipend

In its proposals in this proceeding, the Union has sought an expanded duty stipend of \$1,750 effective April 1, 2007, and \$2,000 effective April 1, 2008. The proposal further provides that the "annual stipend" should "be equally divided over the 26 payroll periods in each fiscal year and which shall count as compensation for overtime and retirement purposes, and to be rolled into base pay effective March 31, 2009." As seen in its statement of position, the Union maintains that there are numerous "increased responsibilities" that its

membership has been obligated to assume beyond the traditional duties associated with the Correction Officers and Correction Sargent positions.

The Panel is persuaded by the record evidence that members of the Union have indeed been called upon to engage in new types of responsibilities as the mission of DOCS has evolved in terms of what is required by the State to fulfill its mission in caring for and securing a large and changing inmate population. The DOCS evolution of mission, the Panel notes, is accompanied by legislative mandates as well as changing rules and regulations of DOCS. The expanded duties and responsibilities, it can also be noted, involve greater amounts of training. In the final analysis, there is more required today by the State and DOCS of its Correction Officers and Sergeants than required at the time of the Rinaldo Panel Award.

As the Panel observed in its Award on salary and longevity, the Award on this topic was taken into account as a means of additional compensation to be provided to members of the Union. The Panel also would note of its awareness of the current fiscal crisis, but must emphasize that there is a need to keep members of the Union on pace in the universe of comparables and, at the end of the day, to ensure a fair and equitable level of compensation.

Accordingly, and after consideration of the record evidence and after due consideration of the criteria set forth in §209.4 of the Civil Service Law, the Panel makes the following:

Award on Expanded Duty Stipend

Expanded Duty Stipend: Effective April 1 2007, 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, shall be paid an expanded duty pay in the amount of \$1500.00 per year.

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

Panel's Analysis on Pre-Shift Briefing

Both parties submitted proposals in this area. The Union sought to increase the basic work week to 41.25 hours on the ground that there is a "present practice of assembling 15 minutes prior to the commencement of the tour of duty." The Union proposal thus sought to "increase the minimum daily payment from \$4.80 to \$10.00." The State's proposal sought to compensate employees only when "authorized to actually assemble for pre-shift briefing."

The Union notes correctly that, as set forth in the record evidence, a requirement that Officers assemble for a pre-shift briefing 15 minutes before their commencement of their tour has been in effect since the 1972-74 Agreement between the parties. Furthermore, the Panel is persuaded by the record evidence that this pre-shift briefing, given the context in which it occurs, is a way for DOCS to impart important information and otherwise brief front-line staff. In

addition, various relevant announcements concerning Union and personnel matters as well as training matters are covered in these 15 minutes. Information needed to be transmitted from one shift to another, the Panel finds, is also transmitted during this period of time.

The State's proposal is predicated on its contention that the current system is "outmoded" because unit members receive compensation for pre-shift briefing at points in time when they do not actually work. In addition, the Panel takes note of the fact that under the Federal Fair Labor Standards Act, and its regulations, overtime is not required for Correction Officers who work 43 hours or less during a seven-day work period. Nevertheless, there is the reality that members of a Union, in reality, work a 41.25 hour work week, and logic would dictate, that even when on paid leave, recognition should be made of the length of this work week.

The Panel finds that, beyond the broad contours of a 41.25 hour work week, it becomes difficult to address specifics regarding what changes should be made in the method of payment based on the implementation of a 41.25 hour work week. The Panel also finds that overtime should not be payable, consistent with FLSA, until after an employee works a 41.25 hour work week. The Panel believes that the "devil is in the details" and that the most effective way at this juncture to work out these details is for the parties to form a labor management committee, which would include, *inter alia*, representatives from the State

Department of Civil Service and the Office of the State Comptroller to arrive at an understanding that is feasible and consistent with the Award to be rendered. Should this joint committee not reach agreement, this Panel will reconvene to address further details and issue an Award thereon.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the criteria set forth in §209.4, makes the following:

Award on Pre-Shift Briefing

Pre-Shift Briefing: For 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, the Panel directs that the State and NYSCOPBA to form a labor management committee together with the New York State Department of Civil Service and New York State Office of the Comptroller. Such committee shall find a way to effectuate a change in the method of payment for the pre-shift briefing based on implementation of a new 41.25 hours work week, inclusion of the current pre-shift briefing payments in base salary and that overtime thereafter only becomes payable after an employee works a 41.25 work week. In the event the Joint Committee is unable to reach agreement regarding such method the Arbitration Panel shall reconvene and may meet with the Joint Committee to facilitate and accomplish resolution.

Panel's Analysis on Employee Benefit Fund

The Union seeks to increase the employee benefit fund from \$30 to \$100, effective April 1, 2008. It observes that this fund, which sets forth a prescribed amount per employee, is utilized for life insurance and other programs and benefits. This Panel notes the Rinaldo Panel's Award of \$25 per employee in the first three years and \$30 in the final year of that Award. This Panel agrees with the Rinaldo Panel's observation that there are a number of "beneficial purposes of the fund" but also that there is a need for a "realistic appraisal that the State's ability to pay limits the amount of the increase that can be provided." An application of these observations to the record before it allows the Panel to issue an Award that will modestly increase the benefit fund.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the criteria set forth in §209.4, makes the following:

Award on Employee Benefit Fund

Employee Benefit Fund: Effective for the period April 1, 2007 to March 31, 2008, the payment to the employee benefit fund for each member of this unit who is employed by the state department of correctional services and is designated as a peace officer pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, and is a full-time annual salaried employee will be increased to \$35.

Effective for the period April 1, 2008 to March 31, 2009, the payment to the employee benefit fund for each member of this unit who is employed by the state department of correctional services and is designated as a peace officer pursuant to subdivision twenty-five of section 2.10 of the criminal procedure law, and is a full-time annual salaried employee will be increased to \$40.

Panel's Analysis on Labor Management Committee

The Panel finds that the parties have agreed that the record evidence establishes that funding for Labor Management Committees has been established before the jurisdictional term of this Award. In addition, the Panel notes the parties' agreement to continue such funding as further set forth in Addendum B attached hereto.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the criteria set forth in §209.4, makes the following:

Award on Labor Management Committee

Labor Management Committees: Funding for Labor Management Committees established before the jurisdictional term of this Award shall continue and be funded in accord with Addendum B attached hereto.

Panel's Analysis on No Interest or Other Penalty

The Panel notes that the record evidence before it, as elaborated by discussions between and among Panel members during Executive Sessions, reflected difficulties in issues that arose in the past pertaining to the funding and payments due under the Rinaldo Panel Award. To eliminate the contentions that arose in this area, the Panel finds it prudent to include in its Award a "no interest or other penalty" provision.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the criteria set forth in §209.4, makes the following:

Award on No Interest or Other Penalty

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.

Panel's Analysis on Remaining Issues

The Panel has reviewed in great details 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 overall 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 a 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 set forth in the above Award, any proposals and/or items than those specifically set forth in this Award are hereby rejected.

s/Jeffrey M. Selchick
JEFFREY M. SELCHICK, ESQ.

4/23/10
DATE

Concur

s/John V. Currier
JOHN V. CURRIER

4/15/10
DATE

Dissent

Concur

s/Natalie A. Carraway
NATALIE A CARRAWAY, ESQ.

4/19/10
DATE

Dissent

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the ____ day of _____ 2010, 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 same.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the ____ day of _____ 2010, before me personally came and appeared JOHN V. CURRIER 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 same.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the ____ day of _____ 2010, before me personally came and appeared NATALIE A. CARRAWAY, Esq. to me known and known to me to be the individual described herein and who executed the foregoing instrument and she acknowledged to me that she executed same.

Notary Public

Addendum A
NYSCOPBA Article 12 - Health Insurance

Modifications to February 5, 2006 proposal for an Interest Arbitration Award (April 1, 2007 to March 31, 2009)

Health Insurance Eligibility (Empire Plan and HMO)

1. Effective **March 31, 2009, covered dependent students shall be provided with a 3-month extended benefit period upon completion of each semester as a covered full-time student (or equivalent).**
2. Effective **March 31, 2009**, a permanent full-time employee who is removed from the payroll due to an assault, as described in Article 14.9, and is granted workers compensation for up to 24 months shall remain covered under the State Health Insurance Plan for the same duration and will be responsible for the employee share of premium.

Empire Plan Hospital Component

1. Reimbursement for non-network inpatient and outpatient hospital services basic medical component of the Plan will be reduced, then **discontinue - as follows:**

Effective March 31, 2009, the maximum \$1,000 reimbursement under the Basic Medical Program will be reduced to \$500.

Empire Plan Medical Component

1. Effective **March 31, 2009** the copayments for participating provider office visits and office surgery, and laboratory and X-ray services will increase from the current \$-1-8 per service to \$20 for office visits, office surgery, laboratory and x-ray services.
2. Effective March 31, 2009 the maximum annual co-insurance out-of-pocket under the basic medical component will be **\$800 per enrollee; \$800 per enrolled spouse or domestic partner; and \$800 per all dependent children.**

- 3.** Effective **March 31, 2009**, a more managed approach to radiological procedures will be implemented.

 - a. The Medical Component Insurer will improve the effectiveness of this benefit by re-enforcing credentialing requirements and "best practices" with Radiologists and other providers involved in providing radiological services to Empire Plan enrollees.
 - b. The current Prospective Procedure Review notification requirement for MRIs will expand to include CAT and PET scans, nuclear medicine and MRAs performed at the outpatient department of a hospital, a participating provider office or a freestanding facility.
- 4.** The Basic Medical Provider Discount Program will expire on December 31, **2011** unless extended by agreement of both parties (see side letter).
- 5.** Effective **March 31, 2009** language under the Home Care Advocacy Program for the purchase of Durable Medical Equipment will be modified as follows:

 - a. Benefits are available for the most cost-effective equipment as meets the patient's functional need.
 - b. Benefits are provided for a single unit of equipment and repair or replacement as necessary.
- 6.** Effective **March 31, 2009**, the copayment for surgery performed at facilities that are either certified under Article 28 or accredited by one or more of the recognized organization such as JCAHO (Joint Commission on Accreditations of Healthcare Organizations) will increase from the current \$15 to **\$30**

 - a. At such time as the modifications to Section 230-d of the State Health Law and/or Section 6530 of State Education Law regarding the certification of providers performing certain office-based surgeries are enacted this section will be modified as required by law.
- 7.** Effective **March 31, 2009** coverage for adult immunizations shall include **Meningococcal Meningitis and Herpes Zoster (Shingles)**, subject to appropriate protocols.

- 8.** Effective **January 1, 2009** an **annual diabetic shoe benefit** will be available through the Home Care Advocacy Program under the medical carrier.

Network Coverage: Benefits paid at 100% with no out of pocket cost up to \$500 maximum.

Non-network Coverage: For diabetic shoes obtained other than through the Home Care Advocacy Program, reimbursement will be made under the basic medical component of the Empire Plan, subject to deductible and the remainder paid at 75% of the network allowance, up to a maximum allowance of \$500.

- 9.** Effective **March 31, 2009**, **prosthetic wigs shall be a covered basic medical benefit and shall be reimbursed up to a lifetime maximum of \$1500, not subject to deductible or coinsurance.**
- 10.** Effective **March 31, 2009** or as soon as practicable thereafter, the Empire Plan medical carrier shall contract with **Diabetes Education Centers accredited by the American Diabetes Education Recognition Program.**
- 11.** The State and the NYSCOPBA Joint Committee on Health Benefits will explore the possible implementation of additional Disease Management and/or Wellness activities to support enrollees with chronic illnesses and employees seeking to improve their general health and well being.
- 12.** Effective **March 31, 2009** or as soon as practicable, a disease management program for chronic kidney disease will be implemented under the Empire Plan Medical Component.
- 13.** Effective **March 31, 2009**, the travel allowance for the Centers of Excellence Programs shall be modified to reimburse meals and lodging at the Federal Government rate.
- 14.** Effective **March 31, 2009**, the lifetime maximum for travel and lodging expenses for the Cancer Resource Services Program will be eliminated.

Empire Plan Managed Mental Health and Substance Abuse Treatment Program

1. Coincident with the increases in the participating provider copayments for office visits, office surgery, laboratory and x-ray service the copayment for mental health services from participating providers will increase to the same amount.
2. Coincident with the increase in the Basic Medical deductible and coinsurance, the basic medical deductible and coinsurance will increase accordingly.
3. Coincident with the change in reimbursement for non-network hospitals the reimbursement for non-network hospitals for mental health services (inpatient and outpatient) will change accordingly.
4. For any services not addressed in items 1 through 5, any changes in the hospital and medical components of the Plan that affect similar services provided under the Mental Health Treatment component of the Plan will change accordingly.
5. Under the Mental Health and Substance Abuse Program a disease management program for depression will be available. **Effective March 31, 2009 or** as soon as practicable, disease management programs for eating disorders, including appropriate nutritional services; and ADHD will be implemented.

Prescription Drug Component

1. Effective **March 31, 2009** the current copayments for prescription drugs obtained at a Retail Pharmacy or the Mail Service Pharmacy shall increase as follows:
 - a. Retail and Mail up to a 30 days supply
 - i. Generic = Current Benefit (\$5)
 - ii. Preferred Brand = Current Benefit (\$15)
 - iii. Non-Preferred Brand = **\$40**
 - b. Retail 31 - 90 days supply

- i. Generic = Current Benefit (\$10)
 - ii. Preferred Brand = Current Benefit (\$30)
 - iii. Non-Preferred Brand = **\$ 70**
 - c. Mail 31 - 90 days supply
 - i. Generic = Current Benefit (\$5)
 - ii. Preferred Brand = Current Benefit (\$20)
 - iii. Non-Preferred Brand = **\$65**
- 2. Effective on a date to be determined initial prescriptions for all drugs dispensed at retail and/or mail will be limited to a 30 days supply. After **one** 30 day prescription-has been filled, the 31 to 90 days supply option will be available.
- 3. Effective on **March 31, 2009**, Tier One, currently reserved for Generic Drugs only, may include Brand name medications that are determined by the Prescription Drug Insurer/Administrator to be a "best value". And/or Generic Drugs that are determined not to add value to the Plan or the enrollee may be placed in Tier 2 or Tier 3
 - a. The copayment for any brand name drug placed in Tier 1 will be the same as the Tier One copayment, similarly, any generic drug placed in Tiers 2 or 3 will have the same copayment of brand name drugs in that tier. (side letter)

Specialty Medication Component

Effective **March 31, 2009**, the Empire Plan Specialty Drug Program will be implemented. The Program will consist of a network of one or more Specialty Pharmacies. (side letter)

- 1. For purposes of this Program, Specialty Drugs that are eligible for inclusion are defined as:
 - orphan drugs";
 - drugs requiring special handling, special administration and/or intensive patient monitoring/testing;
 - biotech drugs developed from human cell proteins and DNA, targeted to treat disease at the cellular level; or,
 - other drugs identified by the Program as used to treat patients with chronic or life threatening diseases.

2. Enrollees currently using, and physicians currently prescribing drugs that will be included in the Specialty Program will be notified in writing at least 30 days in advance of the implementation date.
3. Following implementation, enrollees may fill no less than one prescription for a drug included in the Specialty Program at a Non-Specialty Network pharmacy, except for those drugs identified as being used for short-term therapy for which a delay in starting therapy would not affect clinical outcome.
4. Enrollees initially filling a prescription for a Specialty Drug at a Non-Specialty Network pharmacy will be contacted by the Program and advised that they must obtain all refills after the allowed fills) through the Specialty Drug Program. Thereafter, any additional claims for the same drug will be blocked at NonSpecialty Network pharmacies.
5. Beyond the initial fills) described in (3) above, enrollees must contact the Specialty Referral Line, accessible through the NYSHIP toll-free telephone line, prior to obtaining a drug included in the Specialty Program, in order to receive the maximum available benefit. Enrollee calls will be transferred directly to the participating specialty pharmacy that has agreed to provide the drug in question.
6. Once an enrollee contacts the Specialty Referral Line, subsequent fills and refills for the same drug should be requested directly from the Specialty Pharmacy.
7. Any and all prescription(s), initial or refill, beyond those provided for in paragraph (b), for designated Specialty Drugs will be limited to a 30-day supply, unless otherwise agreed to by the State and the Program administrator.
8. All Specialty Pharmacies that are participating in the Specialty Drug Program will provide enrollees with 24/7/365 access to a pharmacist.
9. Drugs meeting the above definition of a "Specialty Drug" will be excluded from coverage under the "standard" Empire Plan Prescription Drug benefit and will be provided through the Empire Plan Specialty Drug Program.

10. Drugs meeting the above definition of a "Specialty Drug" that are not included in the Empire Plan Specialty Drug benefit will continue to be covered under the "standard" Empire Plan Prescription Drug Program.
11. Drugs included in the Specialty Drug Program will be assigned to tiers and subject to the same copayments as drugs covered under the "standard" Empire Plan Prescription Drug benefit.
12. Other than the accommodation described in (3) above, drugs included in the Specialty Program that are purchased without contacting the Specialty Referral Line will be treated as a subscriber submitted claims and will be reimbursed in the same manner as subscriber submitted claims under the Empire Plan Prescription Drug Program: the enrollee will be reimbursed the lesser of the pharmacy charge or the amount the Program would have paid through the Specialty Drug Program less the appropriate copayment.

Vision Care Benefit

Effective on March 31, 2009 NYSCOPBA Vision Care Plan will be modified as follows:

1. Lasik and other corrective vision care procedures performed to correct nearsightedness and/or farsightedness and not covered by the Empire Plan or an HMO shall be a covered service for employees only.
2. Spouses/Domestic Partners and dependent children shall be eligible to participate in a "discount program" providing up to a 25 percent savings for the procedures identified in item #1 but will be responsible for any and all costs associated with such procedures.
3. Corrective Vision Care coverage shall only be available through a network of participating board eligible/board certified ophthalmologists trained in this field. The Vision Care Plan administrator shall be responsible for the network and will make every effort to recruit and retain providers throughout New York State.
4. Corrective Vision Care coverage shall include a preliminary exam, the actual procedure and up to two follow-up visits.

5. Employees receiving such services shall have a copayment equal to 10% of the discounted cost of the procedure up to an out-of-pocket maximum of \$200.
6. Employees shall be eligible for one Corrective Vision Care procedure every 5 years per eye.
7. The NYSCOPBA Joint Committee on Health Benefits shall review the Corrective Vision Care coverage component at regular intervals to monitor utilization, network adequacy and cost.
8. The five (5) year limit may be waived based on evidence of a significant v vision change due to injury or illness.