STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact Finding between

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY
SUPERIOR OFFICER BENEVOLENT ASSOCIATION,
Employee Organization

REPORT AND
RECOMMENDATIONS
PERB CASE M2019-088

-and-

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,
Employer Organization,

BEFORE: Jay M. Siegel, Esq., Impartial Fact Finder

APPEARANCES: For the Triborough Bridge and Tunnel Authority Superior Officer Benevolent Association
Davis & Ferber, LLP
By: David A. Davis, Esq., and Christopher S. Rothemich, Esq., Of Counsel

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BACKGROUND

This Fact Finding proceeding is between the Triborough Bridge and Tunnel Authority (TBTA) and the Triborough Bridge and Tunnel Authority Superior Officers Association (SOBA). TBTA is an affiliate of the Metropolitan Transportation Authority (MTA). This is relevant because the TBTA and its labor unions, including SOBA, have a history of mirroring the pattern set by agreements reached by the MTA and the Transport Workers Union (TWU), Local 100.
The TBTA operates nine toll bridges and tunnels in New York City. Its facilities are staffed by uniformed employees, including Chiefs, Inspectors, Captains, Lieutenants, Sergeants, and Bridge and Tunnel Officers (BTOs).

SOBA represents TBTA Sergeants and Lieutenants, who are first and second level supervisors. Some of their primary duties include supervising BTOs, traffic control/movement, protection of life and property, revenue recovery for toll violators, emergency response, and incident management.

Prior to electronic toll collection, many TBTA employees were engaged in hard currency revenue collection. Sergeants and Lieutenants were responsible for supervising tolling operations, determining lane configuration, staffing of booths, deposits of revenue, etc. While EZ Pass reduced the number of toll lanes for hard currency collections, a uniformed presence was still needed.

The implementation of open road tolling in 2017 led to the most significant shift from hard currency revenue collection to law enforcement and security work for BTOs because it meant that the TBTA needed less staff at pre-existing toll plazas. Specifically, TBTA needed fewer BTOs, who were mostly patrolling facilities and performing toll evasion enforcement. Sergeants and Lieutenants continued to supervise the smaller number of BTOs, which included ensuring BTOs were reporting to their assignments, getting relief, and performing their assigned work.

In 2019, the MTA created a Fare Evasion Task Force (Task Force). Subsequent legislation allowed BTOs to be assigned to all MTA facilities, not just bridges and tunnels. An agreement was reached between the TBTA and the Bridge and Tunnel Officers Benevolent Association (BTOBA), the union representing BTOs, to allow BTOs
to participate in the Task Force. BTOs assigned to the Task Force are not supervised by Sergeants and Lieutenants while performing law enforcement work on behalf of the Task Force.

As previously noted, the TWU sets the pattern through contracts it negotiates with the MTA, which sets the pattern for each round at the TBTA. TWU has three contracts with the MTA covering the relevant time period from 2012 to the present time while SOBA is without a contract since 2012.

The first round of the MTA/TWU settlements covers the period from January 16, 2012 through January 15, 2017. It includes annual wage increases of 1%, 1%, 2%, 2%, 2%, which are offset by increasing employee contributions to health benefits of 2.0% of gross wages (the contribution was formerly 1.5% and was increased to 2.0% in 2014). SOBA is the only unit in the MTA orbit without an agreement covering 2012 to 2017.

The second round covers the period from January 16, 2017 through May 15, 2019. The MTA and TWU agreed to wage increases of 2.5% for each of two years.

In June 2019, the BTOBA and the TBTA executed a Memorandum of Understanding (MOU) that combined both rounds of negotiations within this current pattern, i.e., it covered both the 2012-2017 round and the 2017-2019 round. The MOU provides the same salary increases for the BTOBA as were received by the TWU for all of the years and health care contributions of 2.0% of base wages for new hires.

In the 2012-2019 MOU, the BTOBA and TBTA also provided BTOBA members with a prospective wage adjustment of $6,033.00 in recognition of the law enforcement duties BTOBA members were now performing. Of this amount, $3,233.00 per BTO was credited by the MTA due to the increased law enforcement responsibilities and the parties
agreed that $2,800.00 per BTO member would be funded through work rule changes, namely, concessions from the BTOBA. While the BTOBA and TBTA agreed to other changes in the 2012 to 2019 MOU that save the TBTA money, (wage progression and health insurance contributions), they agreed to advance several proposed issues to arbitration to resolve the work rule changes that would add up to the monetary value of the concessions. That arbitration is ongoing, meaning that the work rule changes for BTOBA members have yet to occur.

As far as the negotiations between TBTA and SOBA are concerned, the current Collective Bargaining Agreement (CBA) expired on March 14, 2012. The parties met for the first time on August 24, 2016, when they distributed proposals. The parties conducted approximately 16 negotiating sessions. On August 9, 2019, the parties mutually declared impasse and requested that the Public Employment Relations Board (PERB) appoint a mediator.

After two mediation sessions failed to produce an agreement, the parties requested the appointment of a Fact Finder. On August 25, 2020, the undersigned was assigned as Fact Finder with the role of issuing findings and recommendations for how the dispute should be resolved.

Hearings were held on Zoom on July 27, 2021, July 28, 2021, and September 28, 2021, at which time both parties were given the opportunity to examine witnesses and present evidence. Briefs were then submitted to the Fact Finder on January 28, 2022.

The positions taken by both parties on the outstanding issues are quite adequately articulated in the briefs, exhibits, and written arguments of the parties, all of which are incorporated by reference in this Report. Their positions will be summarized for purposes
The parties submitted evidence and arguments on several issues, including but not limited to the following:

- Length of Agreement
- Wages
- Wages – Law Enforcement Differential
- Health Insurance Premium Contributions
- Retroactivity
- Wage Progression
- Other Concessions

POSITION OF THE SOBA

Length of Agreement

SOBA insists that the fact finding recommendation must cover the period from March 15, 2012 through July 14, 2019 and contain terms and conditions of employment that mirror the BTOBA agreement covering that period. Since SOBAs last agreement expired in 2012, the BTOBA and numerous other unions have negotiated agreements that are similar to SOBAs recommended proposal for settlement in this fact finding. SOBA is entitled to the same terms and conditions of employment as its comparators, especially the BTOBA, which has historically been its primary comparator. The proposal for a seven plus year agreement is consistent with the BTOBA settlement and follows the long-term principle of pattern bargaining that has been adopted across the MTA.
Wages

SOBA asserts that it is entitled to the same wage increases that the BTOBA received, namely:

1%, effective March 15, 2012
1%, effective March 15, 2013
2%, effective March 15, 2014
2%, effective March 15, 2015
2%, effective March 15, 2016
2.5%, effective March 15, 2017
2.5%, effective May 15, 2018

Like SOBA members, BTOBA members perform law enforcement duties. BTOBA represents employees who are subordinate to SOBA members. There is no evidence controverting SOBAs contention that BTOBA members are most comparable to SOBA.

The proposed increases must be recommended to relieve the current inequity in salary between SOBA members and the officers they supervise, who are currently earning more than SOBA members. As a result of not receiving a salary increase since 2012, a top step BTOBA member now earns $3,000.00 more per year than an entry level SOBA sergeant. This will thwart BTOBA members from seeking SOBA supervisory positions because nobody takes a promotion with a pay cut.

SOBA points out that on the third day of the hearing, Anita Miller, the TBTA chief employee relations and administrative officer, testified that the TBTA was not opposed to providing raises consistent with the pattern as long as they were offset by a contribution toward health insurance for all members. This is not surprising considering that the financial evidence demonstrates that the TBTA can accommodate the wage increases even without the health care contribution.
John Bernet, SOBAs financial expert, emphasized in his report that TBTA generates profit every year and that it had a $1.3 billion surplus in 2019. Record evidence demonstrated that the TBTA finances remained strong during the pandemic as it had $9.7 billion in assets and $507.3 million in unrestricted cash at the end of 2020. Since SOBAs proposed salary increases wholly comport with the pattern and the TBTA can clearly afford them, SOBA urges the Fact-Finder to recommend its salary proposal.

Wage Adjustment

SOBA insists that it is entitled to the same $6,033.00 wage adjustment received by BTOBA members because its members now principally perform law enforcement work. SOBA maintains that testimony from SOBA President Christine Lampropoulos, Chief Richard Hildebrand, and SOBA Vice-President Dennis Longergan makes it abundantly clear that SOBA members are performing the same law enforcement duties assigned to BTOBA members.

SOBA members supervise BTOs and maintenance workers. They are peace officers who enforce the law and can make warrantless arrests. Now when BTOs take law enforcement action, SOBA members approve the actions and serve as backup. Moreover, while BTOs were reassigned to enforce bus fares, SOBA supervisors were required to cover the law enforcement duties of the reassigned BTOs.

SOBA takes issue with the TBTAs claims that SOBA members have no responsibility over BTOs assigned to the Task Force. SOBA Vice-President Lonergan testified that this argument was preposterous. He testified that SOBA members perform roll calls, deployments, and supervise and approve all of their arrests.
Vice-President Lonergan testified that officers on the Task Force who are deployed elsewhere are even more work for SOBA members. This is the case because SOBA members have to make the schedules for this cohort and ensure they get breaks. They also administer their time and leave.

SOBA takes issue with the TBTA position that they are not entitled to the wage adjustment because they did not work on the Task Force. SOBA emphasizes that the $6,033.00 payment is for performance of law enforcement duties, not working on the Task Force. Moreover, all BTOBA members received the $6,033 wage adjustment, regardless of whether they worked on the Task Force.

To comport with the longstanding principle of pattern bargaining, SOBA members should receive the same $6,033.00 payment received by BTOs, with the same $2,800.00 per member of givebacks in work rule relief that was agreed to between the TBTA and the BTOBA.

Wage Progression

SOBA made the following proposal on wage progression:

The wage progressions shall be amended as follows: every new entrant into the bargaining unit after the final ratification shall be subject to a new wage progression which will require each new entrant to remain for two additional years in the progression by extending the “second year” step from twelve months to twenty-four months and extending the “fourth year” step from twelve months to twenty-four months.

SOBA proposes this concession because it is the same concession agreed to by the BTOBA and the TBTA in the 2012-2019 MOU. Since this concession comports with the pattern, it should be recommended.
Retroactivity on Wages

SOBA proposes that every active employee, and any employee who passed away or retired prior to final ratification, shall receive payment for service during the applicable years. SOBA suggests that statements by TBTA representatives indicate that the TBTA does not object to this proposal. There is no evidence that the TBTA lacks the ability to pay retroactivity and this issue is paramount for SOBA members. SOBA's proposal on retroactivity should be recommended.

Healthcare Contribution

SOBA proposes that healthcare contributions of 2% of base wages be limited to all employees promoted to sergeant after ratification who elect to receive healthcare coverage from the TBTA and who previously contributed to their healthcare coverage as a BTO. While the TBTA asks all SOBA members to pay 2% in base wages towards healthcare, SOBA insists that its proposal should be adopted because it is pattern conforming.

Notably, the 2012-2019 MOU between the TBTA and the BTOBA required healthcare contributions only for new hires, not existing employees. SOBA's proposal comports with the BTOBA settlement because newly promoted BTOBA members who are not paying for healthcare will not be penalized for their promotion. Only those BTOBA members who are already contributing will pay for health insurance when promoted.

The TBTAs claim that SOBA's proposal was not pattern conforming should be rejected. The TBTA claims that since TWU members agreed to a 2% of base wages premium contribution dating back to 2014 that SOBA's proposal is not pattern
conforming. SOBA points out that, in 2014, TWU Local 100 agreed to increase the contribution from 1.5% of base wages to 2.0% of base wages. This comparison is flawed because SOBA members do not currently contribute anything. In other words, a change from no contribution to 2% in one round of negotiations is far different than a change from a 1.5% contribution to a 2.0% contribution in one round of negotiations.

In the end analysis, just as the TBTA agreed that a 2% contribution was pattern conforming for new BTOs, a similar recommendation should follow for SOBA members. In other words, newly promoted SOBA members will only have to pay a contribution if they were already doing so as a BTO.

Surviving spouse

SOBA proposes that effective June 17, 2019, at no cost to the surviving spouse, surviving spouses of SOBA retirees receive the same medical benefits as active SOBA members up to the time the surviving spouse attains Medicare eligibility.

SOBA asserts that this proposal was agreed to in the 2012-2017 MOU between TWU Local 100 and the MTA. The TBTA acknowledged that the projected cost of this proposal was de-minimis. Since the cost is limited and other MTA units receive this benefit, it should be recommended.

Start Times

SOBA proposes the following:

The Operations Department will incorporate the 6:00 a.m. and the 6:00 p.m. schedules, along with other contractually permissible schedules.

TBTA proposes the following:

TBTA acknowledges the union's desire that 6:00 a.m. and 6:00 p.m. schedules again be implemented for Sergeants. Upon ratification of this agreement and upon the promulgation of bids, the Operations Department will incorporate the 6:00
a.m. and 6:00 p.m. schedules, along with other contractually permissible schedules, to the extent that such schedules meet the needs of the Department.

SOBA insists that its proposal should be recommended because it would reinstitute the 6:00 a.m. and 6:00 p.m. schedules without the superfluous language proposed by the TBTA. It contends that the TBTA can retain whatever management rights it already has but the additional rights proposed by the TBTA should be rejected.

Possible Concessions Proposed by SOBA

As noted above, SOBA has previously proposed agreeing to the equivalent of $2,800 per member in work rule relief as was agreed to in the MOU between the TBTA and the BTOBA. SOBA claims this comports with the pattern. SOBA then proposes four specific concessions it claims will surpass the $2,800 threshold. SOBA's proposal is intended to concede only $2,800 in work rule concessions. In doing so, SOBA stresses that there is no evidence that BTOBA members have actually given any tangible work rule relief to the TBTA, a fact that cannot be ignored.

Bid Concession

SOBA proposes a bid concession by adding a second full bid each year as requested by the TBTA. However, any bids beyond two in a year would have to be agreed to by SOBA, whereas the TBTA seeks to have the unilateral right to establish more than two bids per year as long as it notifies SOBA about the bid and permits it to comment on the additional bid(s).

SOBA stresses that its members need the certainty of solidifying their work location for the year. This is in jeopardy if more than two bids are permitted each year. While SOBA recognizes the justification of a second annual bid to address permanent
vacancies caused by retirements, promotions, etc., during the year, two bids per year strikes the appropriate balance.

**Deployments**

According to SOBA, both parties made virtually identical proposals on this issue. SOBA accepts the TBTA proposal as long as the commands are defined as Field Operations North (Henry Hudson, Throgs Neck, and Bronx Whitestone) Field Operations Central (Robert F. Kennedy and Queens Midtown Tunnel) and Field Operations South (Verrazano and Rockaway Beach Bridges and Hugh L. Carey Tunnel).

SOBA President Lampropoulos testified that SOBA members bid for permanent facility assignments. In the past, when TBTA wanted to re-deploy SOBA members, the redeployment was negotiated. The TBTA attempted redeployment without negotiations but such action was rejected in the McNeil Opinion and Award and other awards that restrict the TBTA's ability to cover absences with redeployments. SOBA is willing to concede on this issue as long as the appropriate economic credit is applied to it and if the commands are defined as above.

**Training Concession**

SOBA members currently attend training on their regular days off (RDOs) and are paid at the applicable overtime rate. Both parties propose a concession to change training to regularly scheduled tours at the straight time rate with the topics determined by management or as mandated by law. SOBA President Lampropoulos testified that since the training department is only open from 7am-11pm, Monday through Friday, SOBA needed to address how its members working overnight will complete training. If assigned the 2pm-2am tour, on the second day of their 2-day work schedule they would be
assigned to a 2pm-2am tour and then have eight hours off before their work tour and training tour. SOBA members working 10pm-10am should work from 4am-4pm or 6am-6pm on their second day of their 2-day work schedule.

SOBA insists that this is a massive concession that should pay for the $2,800 in concessions. Testimony from multiple SOBA leaders and Mr. Bernet established that SOBA members usually receive at least five hours of overtime, making this a tremendous giveback to the TBTA. While SOBA estimates this giveback to be approximately $3,500 to $4,000 per year, the TBTA's credit of $100 is preposterous and belies logic. In SOBA's view, the only way this concession makes sense is for it to cover the $2,800 work rule concession.

Mandatory Overtime

SOBA claims that an arbitration award rendered by Robert Douglas permits the TBTA to order mandatory overtime in an emergency. Here, SOBA is willing to agree to be required to work more than 12 hours in non-emergency situations with certain protections. Among other things, SOBA wants to avoid consecutive 16-hour mandated tours because its members work a three-day weekend of 36 hours every other weekend. If SOBA members could work consecutive 16-hour tours, they could end up working 48 hours over a three-day span. SOBA also wants mandated overtime based on reverse seniority, a common concept in labor relations. Finally, SOBA requests at least 8 hours off between tours and advance notice for holidays so that its members have the knowledge on a holiday that they are going home after 12 hours unless an emergency arises.
SOBA contends that these proposals give the TBTA greater flexibility and would reduce overtime costs. However, since quality of life is involved, SOBA requests this proposal be granted only if its proposed protections are incorporated.

**POSITION OF THE TBTA**

**Length of Agreement/Conformity to Pattern Bargaining**

The TBTA stresses that as an affiliate of the MTA, the TBTA and its labor unions practice pattern bargaining, following the pattern set between the MTA and TWU Local 100. Matching the TWU contract’s going out rate, i.e., the cost of the contract on its last day, is how the employers and units ensure that the various units of different size conform to the pattern each round.

The TBTA insists that resolution of the 2012-2017 round is straightforward and the most appropriate way for the Fact Finder to recommend resolution of the dispute. It involves SOBA receiving the same general wage increase as other bargaining units, with an offset of some savings from the establishment of a retroactive healthcare contribution for employees.

More specifically, TBTA proposes a five-year agreement based on the 2012-2017 round with wage increases effective each year on March 15 in the amount of 1%, 1%, 2%, 2%, and 2%. To be pattern conforming, this should be offset by creation of a 2% employee healthcare contribution effective September 2021, just like TWU did in increasing its contribution to 2%.
In contrast, a recommendation beyond 2017 would deprive the parties of the opportunity to negotiate over more complex proposals, including an above-pattern wage adjustment and several complex contract issues.

The TBTA asserts that the merit and importance of pattern bargaining are not disputed as SOBA has embraced this principle during both this proceeding and in the past. In order for the pattern to be adhered to, the pattern set by the TWU for the 2012-2017 round, which all others have followed, must be followed by SOBA. This is precisely why the TBTAs five-year settlement with wage adjustments of 1%, 1%, 2%, 2%, and 2%, offset by 0.55% in savings, which can be achieved by employee premium contributions, is the only proposal that should be recommended.

The TBTA asserts that its costing methodologies should be adopted because they are far more reliable than SOBAs. It relied on actual data rather than inaccurate assumptions. The TBTA data included pension costs from actual data. It also evaluated the cost of proposals based on accurate costing methodologies that account for the long term cost of the proposals. For all of the reasons above, the TBTA requests that its five-year proposal be recommended by the Fact Finder.

A recommendation beyond five years is not appropriate because it will interfere with the bargaining relationship of the parties. Anything beyond five years also should not be considered because the parties never exhausted their discussions over the 2017-2019 round. According to the TBTA, the parties discussed 2017-2019 round on the eve of fact-finding and the means through which SOBA could fund the above-pattern wage adjustment was a central focus of these discussions. SOBA did not propose concessions until the fact-finding proceeding commenced and the TBTA never had the opportunity to
review them or respond to them at the bargaining table. Since fact-finding is not a substitute for negotiations, SOBA should not be permitted to bypass its bargaining obligations and the Fact Finder should not recommend any resolution beyond 2017.

The TBTA urges the Fact Finder not to recommend beyond 2017 because there are a number of pending contractual disputes at the core of SOBAs proposals that make it very difficult to determine the exact value. The TBTA states that SOBAs proposal granting the TBTA the right for a second bid is a glaring example. The parties have four active cases on this issue that they have already spent extensive time and money on. The cost and value of these proposals cannot be accurately determined in this proceeding and should not be addressed here. If the parties cannot mutually agree to resolve these issues, then the arbitrators, PERB ALJs, and judges currently handling these cases should decide them rather than the Fact Finder.

Any Recommendation on 2017-2019 Must be Pattern Conforming

If the Fact Finder recommends resolution to include 2017-2019, it must be pattern conforming. Under pattern bargaining principles, this means that any wage increases must be offset by other savings or cost-avoiding items.

The TBTA states that the 2017-2019 pattern includes two annual wage increases of 2.5% with a savings offset of 0.32%, meaning that the savings offset for the two rounds is 0.87% (0.32% plus 0.55% for the 2012-2017 round). Consistent with longstanding principles of pattern bargaining adopted by the MTA and its entities, any additional non-pattern costs, like the $6,033.00 wage adjustment, must be fully funded. In other words, SOBA is not automatically entitled to the adjustment just because the BTOBA negotiated and funded their wage adjustment.
The TBTA stresses that the unequivocal evidence establishes that the $6,033 wage adjustment was fully funded. It was partially funded through the change in the BTO function and the remainder is to be funded through work rule changes that are the subject of a pending arbitration.

The TBTA maintains that the functions of sergeants and lieutenants has not materially changed. For this reason, the TBTA asserts that the cost of the wage adjustment should not be discounted in any way. It demands SOBA provide $6,033 in concessions in order to receive the wage adjustment.

The TBTA contends that SOBAs costing methodology to value the $6,033 wage adjustment cannot be relied on because it fails to adjust for the impact the wage adjustment would have on other wage sensitive rates, such as overtime and differentials. The cost also will be different depending on when the wage adjustment gets implemented, causing further uncertainty. To offset the general wage increases and to fully fund the wage adjustment, the TBTA proposes the following:

**Healthcare Contribution**

As stated previously, TBTA avers that contribution of 2% of base wages should be implemented for all SOBA members as an offset for the wage adjustments in the 2012-2017 round. This is pattern conforming as this is precisely what the MTA and TWU Local 100 agreed to in the 2012-2017 round of negotiations. For this reason, the TBTA urges the Fact Finder to adopt its proposal.

**Deployment Flexibility**

In the TBTAs estimation, any recommendation must include deployment flexibility concessions. These proposals set guidelines for the order of redeployment and
resolves pending litigation on these topics. The TBTA emphasizes that since BTOs are no longer required to work on toll plazas, there is no operational reason why sergeants and lieutenants cannot be deployed within their tour of duty locations to places where there is an actual need for them to work.

The TBTA asserts that its estimate on the value of these concessions must be credited over SOBAs. The TBTA maintains that its analysis looked at actual overtime in the preceding 12 months, which has been decreasing significantly, i.e., 50% reduction in overall overtime and 60% decrease in available overtime. It then estimated that it could save an additional 20% in the overtime budget. When this was added to the credit for litigation settlements, the TBTA fixed the value at a 25% reduction in overtime, resulting in a 3.29% credit rate. To the TBTA, this is far more realistic than SOBAs proposed credit of saving $1.9 million in overtime, an amount that exceeded the amount the TBTA actually paid for overtime in the 12 months during the proceeding.

Training on Straight Time

The TBTA contends that its proposal to send SOBA members to complete training during regular tours of duty must be recommended. This proposal would save the TBTA approximately 60% of the cost of training. According to the TBTA, the only difference in the estimated cost savings is that the TBTA estimate accounts for the cost of backfilling, while SOBAs does not. Since record evidence establishes that backfilling is operationally necessary, the TBTAs valuation should be credited and recommended.

Conclusion

As stated previously, the TBTA insists that a five-year recommendation is most appropriate. If the Fact Finder recommends a seven-year proposal, it should have a
going-out rate of 12.24%, comprised of 1%, 1%, 2%, 2%, 2%, 2.5%, and 2.5% annual wage increases offset by savings and/or cost avoidance items proposed by the TBTA so that any additional cost items exceeding 12.24% be fully funded by the TBTAs savings or cost avoidance proposals.

DISCUSSION/RECOMMENDATIONS

Length of Agreement/Salary

The Fact Finder must begin by directly addressing the parties' disagreement over the length of the recommended settlement. The Fact Finder determines that a 7-year, 4-month pattern conforming agreement is the appropriate length for the next agreement. This is the case because the best evidence of the TBTAs adherence to the pattern reached by the MTA and its various unions is demonstrated by the 2019 MOU between the TBTA and the BTOBA. Notably, in June 2019, the TBTA and BTOBA mutually agreed to a 7-year, 4-month agreement covering the period from May 18, 2012 through September 17, 2019. This is the best expression available of the TBTAs adherence to the pattern because the TBTA mutually agreed to this knowing full well that the MOU needed to conform to the pattern set by the MTA with TWU Local 100 and the various unions. At that time, even though the MTAs first agreement with TWU Local 100 covered the period from 2012 to 2017, the TBTA determined that pattern conformity included a pattern conforming agreement addressing the first two rounds in this iteration of collective bargaining, i.e., a MOU combining the 2012–2017 MTA/TWU Local 100 agreement with the 2017-2019 MTA/TWU Local 100 agreement. The TBTAs argument that a 5-year agreement should only be recommended for the SOBA unit when it mutually
accepted a 7-year, 4-month agreement with the BTOBA belies logic, is unpersuasive, and is not as pattern conforming as a 7-year, 4-month agreement under these specific circumstances.

It is hard to imagine a better set of facts mandating a 7-year, 4-month recommendation. BTOBA members are supervised by SOBA members. They work directly with one another and must be considered the most direct comparables. Moreover, when the TBTA reached its 7-year, 4-month MOU with the BTOBA, it had similar facts insofar as the pattern is concerned, as it possesses now, except that SOBA members are even further away from their last salary increase than BTOBA members were at the time the BTOBA and TBTA reached the 2012-2019 MOU. Moreover, now TBTA has a pattern-conforming agreement with one of its labor unions, making it even more evident that the best way to achieve pattern conformity is for the TBTA to reach a 7-year, 4-month agreement that is analogous with the TBTA/BTOBA agreement.

Of significant note, the MTA and TWU had two contract settlements (2012-2017 and 2017-2019) that had to be made pattern-conforming by the TBTA and the BTOBA. This is the exact situation the Fact Finder is faced with in this negotiations dispute, except that the parties now have a third MTA/TWU settlement covering the period from 2019 to 2023. The TBTA combined two terms of MTA/TWU contract settlements to reach a 2012-2019 pattern-conforming MOU. The Fact Finder finds it completely appropriate to follow this same structure as it is the best evidence of the TBTA's vision of pattern-conformity covering the 2012-2019 period. A 7-year, 4-month recommendation is also appropriate because SOBA members have not received a salary increase since 2012. Given this length of time, it is fairer and more logical to bring them as far up to date as
possible, which in this case is to have them with the pattern-conforming date that is wholly consistent with the BTOBA/TBTA 2012-2019 agreement. To do otherwise would keep SOBA members approximately five years behind the present time for salary increases, which is neither fair nor logical. This imbalance should not be perpetuated any further by having the Fact Finder recommend a length of agreement of five years when a 7-year, 4-month MOU was reached by the TBTA with the unit that is the most directly comparable with SOBA.

Turning to the actual salary recommendation, the evidence establishes that all of the relevant comparables received the same salary increases during this period, including the BTOBA and TWU Local 100 in its negotiations with the MTA. Indeed, the TBTA recognizes that the wage increases in this case should be consistent with the other units that have settled contracts as long as the other terms are pattern-conforming and the savings achieved in the rounds with the other units are consistent with those recommended in this negotiation. Since the Fact Finder’s recommendation includes pattern-conforming savings recommendations, the Fact Finder recommends salary increases that are in lock step with the pattern and the TBTA/BTOBA MOU, namely 1%, effective May 18, 2012; 1%, effective May 18, 2013; 2%, effective May 18, 2014; 2%, effective May 18, 2015; 2%, effective May 18, 2016; 2.5%, effective May 18, 2017; and 2.5%, effective July 18, 2018.

**Wage Adjustment for Law Enforcement Work**

In the 2012-2019 MOU, BTOBA members received an above-pattern $6,033 wage increase. The TBTA does not oppose this increase for SOBA members. However, it emphasizes that, consistent with longstanding pattern bargaining principles, any increases
above the pattern must be fully funded. The TBTA stresses that the BTOBA $6,033 increase was fully funded, i.e., partially through the change in the BTO work function, with the remaining $2,800 of funding to occur through other work rule changes that are subject to binding arbitration.

The Fact Finder determines that the additional wage increase of $6,033 should be recommended, just as the BTOBA and TBTA agreed to. SOBA members now supervise employees primarily engaged in law enforcement, which was not the case several years ago. They are peace officers under New York State law and, as supervisors of law enforcement officers, they are engaged in law enforcement themselves.

The Fact-Finder’s recommendation of the $6,033 increase is not at the heart of this dispute though. The dispute boils down to this. The TBTA agreed that the $6,033 increase was funded by the BTOBA change to a law enforcement job function. However, to partially fund the $6,033 increase, the parties agreed that no less than the equivalent of $2,800 in work rule concessions would be awarded through arbitration. In this case, the TBTA insists that SOBA members must fully fund the $6,033 increase through work rule concessions. TBTA asserts that SOBA member responsibilities have not materially changed in that they were not on the MTA Fare Evasion Task Force and do not primarily perform law enforcement work.

The evidence presented supports both parties’ positions. On the one hand, it is clear that BTOs were the group of employees directly engaged in law enforcement work when it was agreed that they could be assigned to the Task Force. There is certainly a period of time when BTOs were performing more law enforcement work than SOBA members.
At the same time, SOBA presented testimonial evidence from SOBA President Lampropoulos and SOBA Vice-President Lonergan asserting that its members have also had a significant change in responsibilities with more law enforcement functions. It pointed out that when BTOs were assigned to the Task Force, its members were required to perform law enforcement duties at the bridges and tunnels. It also noted that its supervisors still had obligations over those BTOs, which included scheduling, leave time, etc. SOBA members also must oversee arrests and other activities of BTOs.

After carefully considering the arguments of both parties, the Fact Finder determines that the TBTA’s demand that SOBA fund all $6,033 in concessions to pay for the increase in pay is excessive and unpersuasive. SOBA members currently supervise employees engaged in law enforcement and this has been the case for the past few years. This leads the Fact Finder to conclude that SOBA’s concessions should not exceed the BTOBA concessions to the extent proposed by the TBTA, i.e., SOBA funding all $6,033 per member in concessions while BTOBA is funding $2,800 per member in concessions. However, in recognition of the TBTA arguments showing that most BTOBA members had a greater amount of law enforcement work while working on the Fare Evasion Task Force, the Fact Finder recommends that SOBA fund $4,000 per member in concessions instead of the $2,800 per member it proposed. While this may not satisfy either party, it is a reasonable compromise that is necessary to achieve this settlement.

**Wage Progression, Retroactive Wages, and Health Benefit Contributions**

In addition to the salary and wage adjustment provisions, the 2012-2019 MOU between the TBTA and BTOBA only had three other items expressly agreed to, all of which are noted in the heading above. Two of the items benefited the TBTA, while one
of the items benefited the BTOBA. They are all recommended by the Fact Finder because this is the ideal way to conform to the pattern.

As for wage progression, the language proposed by SOBA to conform to the pattern is the same as the language reached between the BTOBA and the TBTA. Two years would be added into the existing wage progression so that it would take newly promoted SOBA members nine years to reach top pay instead of the current seven years it takes to reach top pay.

The Fact Finder determines that the language proposed by SOBA must be recommended because it wholly comports with the pattern. As such, the Fact Finder recommends the following language:

The wage progression shall be amended as follows: every new entrant into the bargaining unit after ratification shall be subject to a new wage progression which will require each new entrant to remain for two additional years in the progression by extending the “second year” step from twelve months to twenty-four months and extending the “fourth year” step from twelve months to twenty-four months.

The Fact Finder also recommends the retroactive wage agreement reached in the 2012-2019 TBTA/BTOBA MOU because it comports with the pattern in all respects. This provision expressly provides retroactive wage payments to all active employees and any employees who retired or passed away prior to ratification. It should read as follows:

Every active employee, and any who deceased or retired prior to final ratification, shall receive payment for service under the above schedule of general wage increases.

Finally, the agreement reached between the BTOBA and TBTA on health insurance contributions is also adopted by the Fact Finder as it is much more pattern-conforming than the health insurance contribution proposal made by the TBTA. In the 2012-2019 TBTA/BTOBA MOU, the parties agreed that new hires would start
contributing 2% of their base wages toward the cost of their health benefits. SOBA proposes that newly promoted unit members who are paying for their health insurance coverage (through the BTOBA contribution agreement described herein) would pay 2% of their base wages toward health insurance, while the TBTA insists that the 2% premium contribution must be imposed on all SOBA members to be pattern conforming.

The Fact Finder recommends SOBAs proposal because BTOBA members who are already paying for health insurance would continue paying after being promoted. If the TBTA proposal was implemented, BTOBA members who are not required to pay for their health insurance would be required to start contributing toward health insurance after being promoted. This is illogical and could have a detrimental effect on employees seeking supervisory positions. Most importantly, the SOBA proposal expressly conforms to the pattern, while the TBTA’s does not.

The Fact Finder rejects the TBTA’s claim that the 2% contribution for all SOBA members is pattern-conforming. As stated previously, the best evidence of pattern conformity is the TBTA/BTOBA MOU, which only has newly hired unit members contributing toward health insurance. Moreover, while the MTA/TWU Local 100 2012-2017 MOU increased its contribution from 1.5% to 2.0% in 2014, an increase from 1.5% to 2.0% is wholly different than an increase from no contribution to 2.0%. The TBTA itself determined that pattern conformity was a 2.0% contribution for newly hired BTOs and the Fact Finder sees no justification to deviate from this decision. As such, the Fact Finder recommends the following:

All employees promoted to sergeant after final ratification who become eligible for health coverage and elect coverage and who had to contribute towards the cost of their health benefits as a Bridge and Tunnel Officer (BTO) shall be required to
contribute 2% of their base wages towards the costs of their health benefits. Such contributions, to the extent permitted by law, shall be on a tax-preferred basis.

Additional Concessions

The Fact Finder agrees with the TBTA that since SOBA seeks a settlement that far exceeds the pattern (and the TBTA finds the $6,033 wage adjustment acceptable as long as it is paid for by appropriate concessions), the additional costs associated with SOBA’s request must be offset by other savings or cost-avoiding proposals. In other words, the proposed increases to base salary must be offset by pattern-conforming concessions, such as wage progression and health benefit contributions. Any additional concessions needed to make the agreement pattern-conforming must also be agreed to by SOBA. This includes SOBA funding through concessions an amount equal to $4,000 of the $6,033 wage adjustment, with the remainder funded through the change in SOBA members’ responsibilities.

Both parties have suggested multiple concessions that would go a long way toward achieving pattern-conformity. While the Fact Finder is recommending that some or all of these concessions be ultimately agreed to, he is not expressly recommending all of them because there are too many variables. For example, the parties disagree on the cost savings for virtually all of the concessions. While the TBTA economic analysis is given far greater credit by the Fact Finder than SOBAs because, among other things, it assesses the full picture of the costs, the Fact Finder is reticent to recommend specific concessions because the parties need to resolve their disagreements on the cost savings. More importantly, the savings associated with these concessions may differ wildly depending on when they are implemented or when the parties agree to implement the $6,033 wage adjustment. It is for this reason that the Fact Finder recommends that the
parties reach agreement on concessions including deployment flexibility and related settlements, training on straight time, bid concessions, litigation settlements, and mandatory overtime. It is not that all of these concessions must be agreed to. Rather, all salary increases in the current 7 year, 4 month pattern, including the $6,033 wage adjustment, must be offset by concessions and other cost savings measures consistent with this recommendation to achieve pattern conformity.
CONCLUSION

The Fact Finder is essentially recommending that the parties adopt an agreement that addresses all of the items addressed in the 2012-2019 TBTA/BTOBA MOU. The only differences are the Fact Finder recommends that the TBTA and SOBA mutually agree on $4,000 per SOBA member in work rule changes whereas the TBTA/BTOBA MOU requires an arbitrator to award at least $2,800 per BTOBA member in work rule changes.

The changes that have been recommended are warranted based on the evidence presented and the arguments of the parties. This negotiations dispute has been going on for nearly six years. SOBA members have not received a salary increase in nearly ten years and the TBTA has not achieved any changes in working conditions in nearly ten years. This is not beneficial to either SOBA members or the TBTA. I strongly urge the parties to adopt the recommendations and reach agreement on the recommended pattern-conforming concessions so they can reap some of the benefits of the recommended changes.

Dated: April 13, 2022
Cold Spring, New York

Jay M. Siegel, Esq.
Fact Finder

STATE OF NEW YORK)
COUNTY OF PUTNAM)

I, Jay M. Siegel, do hereby affirm that I am the individual described herein and who executed this Instrument, which is my Report and Recommendation.

Dated: April 13, 2022

Jay M. Siegel, Esq.
Fact Finder