STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

THE STATE OF NEW YORK

Employer,

-and-

NEW YORK STATE CORRECTIONAL OFFICERS AND POLICE BENEVOLENT ASSOCIATION, INC.

Employee Organization.

PERB Case No. 1A2004-009; M2004-010

OPINION

AND

AWARD

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interest and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazards, educational qualifications, training and skills; and the terms of collective agreements negotiated between the Parties in the past providing for compensation and fringe benefits.

As memorialized in a March 22, 2006, letter Agreement, the Parties agreed and expressly gave their consent and authorization for a four year award for the period covering April 1, 2003 to March 31, 2007. The Parties' last Collective Bargaining Agreement was for the period April 1, 1999 to March 31, 2003.

It is also noted that, at the request of the Parties, a Final and Binding Award was issued on March 26, 2006, with the understanding that the Opinion and Award herein would follow. A copy of said Final and Binding Award is attached and made a part of this award. The positions originally taken by both Parties are adequately set forth in the petition and the response, the numerous hearing exhibits, and in the Parties' post-hearing briefs, all of which are incorporated by reference into this decision. Such positions will simply be summarized for purposes of this Opinion and Award.

The Panel also observes that its jurisdiction, under Section 209.4 of the Civil Service Law, is limited "to the terms of collective bargaining agreement directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not allow to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues related to eligibility for overtime compensation ..."

PROPOSALS OF THE PARTIES

UNION'S PROPOSALS ATTACHED TO ITS PETITION FOR INTEREST ARBITRATION

Terms and Conditions of Employment Not Agreed Upon

1. Salary Increases

(a) Salary Increase for Fiscal Year 2003-2004

Effective April 1, 2003, the basic annual salary of employees in full-time annual salaried employment status on March 31, 2003 will be increased by 4 percent. The salary schedule for employees shall be amended to reflect the increase provided therein.

Effective October 1, 2003, the basic annual salary of employees in full-time annual salaried employment status on September 30, 2003 will be increased by 4 percent. The salary schedule for employees shall be amended to reflect the increase provided therein.

(b) Salary Increase for Fiscal Year 2004-2005

Effective April 1, 2004, the basic annual salary of employees in full-time annual salaried employment status on March 31, 2004 will be increased by 4 percent. The salary schedule for employees shall be amended to reflect the increase provided therein.

Effective October 1, 2004, the basic annual salary of employees in full-time annual salaried. employment status on September 30, 2004 will be increased by 4 percent. The salary schedule for employees shall be amended to reflect the increase provided therein.

(c) Other Than Annual Salary Employees

The above provisions shall apply on a prorated basis to employees paid on an hourly or per diem basis or on any basis other than at an annual salary rate or to an employee serving on a part-time basis.

(d) The salary rate for Correction Officer Trainee will be increased

consistent with subsections (a) and (b).

2. Advancement within a Salary Grade

(a) An employee whose salary is below the job rate is eligible to be considered for a performance advancement payment. Such employee is eligible to receive a performance advancement payment effective April 1 provided the employee had actual service in grade during the preceding fiscal year. An employee may not exceed the job rate as a result of adding the performance advancement payment.

(b) Employees will advance to the job rate of the salary grade based on periodic evaluations of work performance. These evaluations will be conducted at least annually.

(c) Employees are to be advanced in salary annually based on a performance evaluation of "needs improvement" or better in an amount equivalent to the dollar difference between two consecutive advancement rates. This amount of money is hereafter called the performance advancement payment and is added to basic annual salary..

(d) A performance advancement payment shall be withheld from an employee who is evaluated "unsatisfactory." An individual employee may not be assigned an "unsatisfactory" rating more than twice in a row for the purpose of withholding a performance advancement payment in the employee's current salary grade.

(e) An employee shall reach the Job Rate in three years. All employees who are currently below the Job Rate with three or more years of service as of April 1, 2003 shall be placed at the Job Rate effective April 1, 2003. Employees with less than three years of service as of April 1, 2003 shall be placed at the Job Rate upon completion of three years of service. The salary schedule shall be amended to reflect the subject provision.

3. Longevity Payments

(a) The 10-year, 15-year, and 20-year longevity steps for all salary grades shall be increased by ten (10%) percent.

(b) Longevity steps for five (5) years and twenty-five (25) years of service shall be added.

(c) There shall be annual longevity steps between the five-year steps, each one equaling twenty (20%) percent of the difference between those steps.

4. Locational Compensation and Geographic Pay Differential

(a) Employees in Monroe county who were on the payroll on May 23, 1985, will continue to receive $203 locational compensation.

Effective April 1, 2003, the locational compensation will be increased to $2,700 for employees in full-time annual salaried employment status on March 31, 2003 in New York City, Nassau, Suffolk, Westchester and Rockland counties.

Effective April 1, 2003, the locational compensation for employees in full-time annual salaried employment status on March 31, 2003 in Dutchess, Putnam or Orange counties shall be $1,350.

Effective April 1, 2004, the locational compensation will be increased to $2,950 for employees in full-time annual salaried employment status on March 31, 2003 in New York City, Nassau, Suffolk, Westchester and Rockland counties.

Effective April 1, 2004, the locational compensation for employees in full-time annual salaried employment status on March 31, 2003 in Dutchess, Putnam or Orange counties shall be $1,475.

(b) Effective April 1, 2003, employees in full-time annual salaried employment status on March 31, 2003 in New York City, Westchester and Rockland counties shall receive geographic pay differential in the amount of $3,650 per year.

Effective April 1, 2003, employees in full-time annual salaried employment status on March 31, 2003 in Nassau and Suffolk counties shall receive a geographic pay differential in the amount of $4,800 per year.

5. Inconvenience Pay

Effective April 1, 2003, employees who work hours between 6:00 p.m. and 6:00 a.m. during the regular work week (Monday through Friday) and/or weekend hours (Saturday/Sunday) shall receive $2.00 per

hour inconvenience pay for each hour worked within the stated times.

6. Pre-Shift Briefings

(a) Payroll adjustments for pre-shift briefing pay shall be performed on a bi-weekly

(b) Employees who work holidays or weekends shall receive pre-shift briefing pay at the double time rate for the said days worked.

7. Security Enforcement Differential

The employer shall provide a security and law enforcement differential to all full-time annual salaried employees in recognition of their enhanced security and law enforcement responsibilities inherent in the positions covered by this Agreement. Said differential shall be added to base salary. Effective April 1, 2003, the differential shall be $2,500 per year. Effective April 1, 2004, the differential shall be $3,.000 per year.

8. Holiday Pay and Accumulation

(a) Option

An employee who is entitled to time off with pay on days observed as holidays by the State who is scheduled or required to work on a holiday shall receive at his option either (a) additional compensation for each holiday worked at the rate of two-tenths of his biweekly rate of compensation or (b) two compensatory days off in lieu of such holiday worked. Compensation for less than a full day of holiday work will be prorated and will include geographic, location, inconvenience and shift pay as may be appropriate to the place or hours worked.

(b) Accumulation

An employee who separates from service shall be entitled to cash payment for all earned and accrued holiday compensatory time whether included as vacation accrual or not.

9. Uniform Allowance

(a) Effective April 1, 2003, unit employees shall receive an annual uniform allowance for uniform cleaning, maintenance and sundry items in the amount of $1,000 payable by separate check in two equal payments of $500 on June 1 and December 1, respectively.

(b) Permanent, part-time employees will also be eligible for the uniform allowance at a pro-rated amount based on regular part-time hours worked.

(c) CERT members and Shock Incarceration Camp employees shall receive an additional subsidy in the amount of $150 payable by separate check in two equal payments of $75 on June 1 and December 1, respectively.

10. Physical Fitness Program

a) A committee, consisting of representatives of the State and representatives of NYSCOPBA, will set fitness standards and establish testing dates and methods for a new Physical Fitness Program. Participation in this program shall be completely voluntary. Members must meet specific fitness standards, to be set by the committee, based on age. Members up to the age of 39 shall be required to meet one set of standards as established by the committee in order to qualify for a stipend. Members between the ages of 40 and 54 shall be require to meet a different set of standards, and members aged 55 and older shall be required to meet a third set of standards. Funding in the amount of $5 million annually shall be available for this program. Any funds not expended in a contract year shall be rolled over and added to the funding for the next year.

(b) For contract year 2003-04, all members who elect to participate in the Physical Fitness Program will receive a stipend in the amount of $150, which shall be counted for both overtime and retirement computation purposes.

(c) Beginning with contract year 2004-05, members who meet the various levels of the fitness standards established by the committee will receive a stipend to be paid biweekly and added to base salary. In the event that the annual cost of the program would exceed the available annual funding, the stipend amounts shall be proportionally readjusted so that the cost is no higher than the amount funded.

11. Professional Development, Education and Training

(a) Both the State and NYSCOPBA recognize the importance of professional development, continuing education and training in various aspects of a member's employment with the State. Therefore, in order to maintain a high standard of excellence in correctional services, security and security treatment, the State and NYSCOPBA will prepare, introduce and recommend passage by the Legislature of an appropriation of funds sufficient for the administration of this program by the Joint Committee on Professional Development, Education, and Training established in Article 13.2 of this Agreement. The unexpended portion of each annual appropriation shall be carried over into the succeeding year, and added to the appropriation for that year.

(b) This fund shall be used for, but not limited to, the following:

1. The establishment of a Professional Development Program which will provide tuition reimbursement to a member upon successful completion of an, approved academic course or program taken during off-duty time, which is related to the member's duties and which will improve the member's ability to perform his or her duties.

2. A member shall make a written request for reimbursement for a course or program of study at an accredited academic institution prior to enrollment. Upon successful completion of an approved course or program, the member shall be reimbursed by the State in an amount equal to 100% of the applicable tuition cost, including the cost of books and fees. Tuition support will be considered for a maximum of either four courses or sixteen credit hours per term or semester, limited to three terms. or semesters per academic year.

3. The Joint Committee shall annually set aside, in an interest-bearing account, the amount from that year's appropriation necessary to implement the reimbursement program in subsection 2 above.

4. Any Security Services Unit member who obtains a recognized degree from an accredited and recognized college or university during any year of this Agreement will receive a one-time lump sum payment according to the following schedule:

Associate's degree - $500
Bachelor's degree - $1,000
Master's degree or equivalent - $1,500
PhD - $1,500

This payment shall be made from the unexpended annual funding, other than that set aside pursuant to paragraph C above, for the program as of March 31 of the appropriate contract year. In the event that an insufficient balance is available, the payments will be recalculated based on the available balance, in proportion to the schedule above.

12. Health and Safety Training

In order to provide proper health and safety training, the Employer will implement a health and safety training program. Such training will be conducted during an officer's non-regular work hours. Officers shall be compensated at their overtime rate of pay for such training.

13. Labor Management Committee

The Employer and the Union will review the manner in which quality of work life efforts should be provided in this unit. Funding will be appropriated each year for a statewide labor management committee as follows: April 1, 2004, $261,767, with six (6%) percent additional funding each year thereafter.

14. Employment Benefit Fund

(a) The State of New York as the Employer and the Union agree that they shall hereinafter enter into a contract to provide for the implementation of an employee benefit fund, in accordance with such terms as shall be jointly agreed upon by the parties and subject to the approval of the Comptroller, to be administered by the Union to provide certain benefits for full-time annual salaried employees in the Security Services Unit.

(b) For each full-time annual salaried unit employee, the Employer shall on April 1 deposit $220 in the employee benefit fund. For the purposes of determining the amount to be deposited in accordance with this section, the number of employees shall be determined to be the number of full-time annual salaried-unit employees on the payroll each preceding March 1.

15. Sunset Provisions

All Articles and Sections containing a purported sunset provision shall be continued and amended so that no sunsetting occurs on the expiration date of any collective bargaining agreement.

16. Productivity Gain-Pro ram

(a) Make the pilot Productivity Gain Program contractual and amend as follows:

# of SL Days Used During Fiscal Year	Shall be paid
0-3	$1,500
Up to 4	850
Up to 5	700
Up to 6	550
Up to 7	400
Up to 8	250
Up to 9	100

(b) Provide that pre-approved sick leave shall not be counted against employees for purposes of Productivity Gain Program.

17. Vacation Credits

Additional vacation credits for completed years of continuous service - Current schedule deleted and replaced with:

Years	Credits	Total
7 to 10	1 day	21 days
11 to 15	2 days	22 days
16 to 20	3 days	23 days
21 to 24	4 days	24 days
25 to 29	5 days	25 days
30 to 34	6 days	26 days
35 or more	7 days	27 days

18. Inclusions in Base Salary

Effective April 1, 2003, all existing and proposed elements of compensation, including but not limited to the Uniform Allowance, the Security and Law Enforcement Differential, and payments under the Productivity Gain Program, shall be added to base salary and included in the calculation of the overtime rate.

19. Sick Leave Accumulation

(a) The number of days of sick leave credits that may be accumulated is unlimited; up to 300 days may be used for retirement service credit or to pay for health insurance in retirement.

(b) After seven completed years of continuous service, employees shall earn sick leave at a rate of six hours per pay period.

(c) An employee who retires or otherwise leaves State service shall be compensated in cash for any sick leave accumulated above 300 days. This lump sum payment shall be considered as part of the employee's final average salary for retirement purposes.

(d) The surviving spouse and/or children of an employee who dies while still employed in a title in the Security Services Unit shall be compensated in cash for any sick leave accumulated by the employee above 300 days.

20. Indemnification

The annual employer contribution to the legal defense fund shall be increased to $500,000 per year. Such increased contributions shall commence April 1, 2003.

After the Union filed the above proposals, the State filed an Improper Practice Charge against the Union regarding various of the Union's proposals, which resulted in a Stipulation of Settlement dated April, 2005. The Stipulation of Settlement provides:

WHEREAS, the Charging Party filed this improper practice charge

alleging violations of Civil Service Law, §209-a-2(b); and

WHEREAS, the Respondent filed an answer denying that it committed any improper practices; and

WHEREAS, both parties wish to resolve this matter without further proceedings;

NOW, THEREFORE, the parties do hereby stipulate and agree, in full settlement of the improper practice charge listed above, as follows:

1. Improper Practice Charge U25721 shall, and hereby is, withdrawn.

2. Respondent agrees that, pursuant to Civil Service Law § 209.4, interest arbitration only applies to those members of the Security Services Unit who are peace officers employed in the Department of Correctional Services, and Respondent seeks interest arbitration only for employees eligible under the statute.

3. Respondent agrees that its Proposal 3 concerning longevity payments should reflect the negotiating proposal made by NYSCOPBA to the State on May 8, 2003: that the new 5 and 25 year longevity payments be $1000 and $5000 respectively for all longevity steps on the salary schedule.

4. Respondent agrees that its Proposal 4 on location pay should be the one previously submitted and attached hereto as Exhibit "A" and the parties agree that Proposal 4 be, and hereby is, amended to substitute the terms contained in Exhibit "A".

5. The Charging Party agrees to withdraw its objection to Proposal 8 on holiday compensation.

6. Respondent agrees that Proposal 10 on the physical fitness program cannot be effectuated retroactively because of the requirement that members would have to participate in the program in order to qualify for the benefit. The parties agree, therefore, that Proposal 10 be, and hereby is, amended to be prospective only.

7. The parties agree that Respondent's Proposal 16 (a), relating to the Productivity Gain Program, be, and hereby is, amended so as to remove the demand that the language concerning the program be added to Article 17 of the collective bargaining agreement.

8. Respondent agrees to withdraw from the petition for arbitration the following proposals:

a. Proposal 6 (a)- Pre-shift briefing payroll adjustments
b. Proposal 12- Safety and Health Training
c. Proposal 13- Labor/Management Committee
d. Proposal 15 - Sunset Provisions
e. Proposal 16 (b)- Pre- approved sick leave
f. Proposal 17- Vacation credits
g. Proposal 19- Sick leave credits

9. This Stipulation shall not serve as precedent for any future grievance, applications, petitions, charges, or cases in any administrative, state, federal, or other forum. However, nothing herein shall bar either. party's right to enforce the terms of this stipulation of settlement.

GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS

By: /s/ Maureen Seidel
Maureen Seidel, Esq.
Associate Counsel
Governor's Office of Employee Relations

Dated: 4/13/05

HINMAN STRAUB P.C.
Attorneys for Respondent

By: /s/ Nancy L. Burritt
Nancy L. Burritt, of Counsel

Dated: 4/11/05

As set forth in paragraph "4", the Parties attached Exhibit A to the Stipulation of Settlement. This exhibit reads:

NYSCOPBA'S LOCATION COMPENSATION PROPOSAL
September 16, 2003

NYSCOPBA seeks location compensation for its members that is equal in amount to that provided to members of the New York State Police. (NYSCOPBA negotiating proposals dated February 11, 2003, Article 11, item "E" (page 8)).

Members of-the New York State Police receive additional compensation based on location as follows:

A. Geographic Pay Differentials. These payments are determined and authorized by the Superintendent of State Police, subject to Division of Budget approval, pursuant to the provisions of Section 215.(5) of the Executive Law, as added by Chapter 174 of the Laws of 1993.

We understand that the current amounts paid under this provision are as follows:

Nassau and Suffolk Counties	-	$4,800
New York City, Rockland and Westchester Counties -		$3,650

B. Location Pay. State Troopers and other bargaining units of State employees receive $1,200 in "Locational Compensation" as of April. 1, 2002. For State Troopers, this amount is paid pursuant to the provisions of the most recent interest arbitration award for ,the Trooper Unit, dated November, 2002 (Jeffrey Selchick, Panel Chairman). For NYSCOPBA, the provision is set forth at Article 11.7 of the collective bargaining agreement.

C. Supplemental Location Pay. Supplemental Location Pay was established pursuant to an interest arbitration award for the Trooper Unit (Joel Douglas, Panel Chairman) dated November, 2000; effective March 30, 2000, in the following amounts:

Nassau and Suffolk Counties	$1,750
New York City, Westchester and Rockland Counties	$1,500
Putnam, Dutchess and Orange Counties	$1,000

These payments continue pursuant to the provisions of Chapter 22 or the Laws of 2003, Section 12.

SUMMARY

The combination of payment sources results in the following total location compensation package for members of the Division of State Police:

	Nassau and Suffolk	New York City, Westchester & Rockland	Putnam, Dutchess and Orange
Geographic Pay:	$4,800	$3,650	
Location Pay:	$1,200	$1,200	
Supplemental Location Pay:	$1,750	$1,500	$1,000
TOTAL:	$7,750	$6,350	$1,000

CONCEPTUAL PROPOSALS
STATE OF NEW YORK TO NYSCOPBA
SECURITY SERVICES UNIT
STATE PROPOSALS FEBRUARY 11, 2003

Preamble

Present contract language is satisfactory to the State of New York.

Bill of Rights

The State proposes a change in (D) so that recording devices may be used by either party, at their option and a copy of the recording shall be given to the other party upon written request.

Term of Agreement

The State proposes an effective date of April 1, 2003. The term of agreement is open for discussion and greatly dependent upon the overall economic terms agreed upon.

Article 2

Recognition

Present contract language is satisfactory to the State of New York.

Article 3

Nondiscrimination

The State proposes no change in Article 3.

Article 4

Check-Off

Present contract language is satisfactory to the State of New York.

Article 5

Union Rights

At the discretionary approval of GOER, the Union agrees to reimburse the State for all expenditures made to the employee while on Union Leave, including any allowances, bonuses or any other payments made, including those made consistent with the negotiated agreement.

A review of the amount of EOL available in Article 5.3 (a) shall be made by the parties in order to determine a potential reduction in the amount available.

It is expected that all EOL will be used only for appropriate purposes, which may be specified in advance as required by the State.

Article 6

Management Rights

Present contract language is satisfactory to the State of New York.

Article 7

Grievances and Arbitration

Present contract language is satisfactory to the State of New York.

Article 8

Discipline

The State and NYSCOPBA have had discussions on this issue during the intervening period since the signing of the existing negotiated agreement. The State proposes that those issues, which were discussed in that Task Force, as well as others, be addressed during these negotiations. For example, the State shall propose that: 1.) Only arbitrators who have been trained on issues of patient abuse shall be allowed to hear such cases; 2.) When a matter has been settled and a late cancellation fee is incurred, payment for the late cancellation fee shall be made by the employee or the union; 3.) If the arbitrator determines that the employee is guilty of any of the charges made, the employee or the union will be liable for the arbitrator's fees and expenses; if the employee is exonerated of all charges, the Employer shall pay the arbitrator's fees and expenses; 4.) Employees suspended without pay may draw upon previously accrued annual, personal or holiday leave only after a period of five days of leave without pay; 5.) Article 8.6 (Limitation) shall be increased from nine to twelve months.

Article 9

Out of Title Work

Employees may be assigned out of title duties while on light duty.

The State will propose a change in this Article to reflect the Employer's need to assign other duties to employees while on light duty.

Article 10

Review of Personal History Folder

Present contract language is satisfactory to the State of New York.

Article 11

Compensation

The State will propose a compensation package that reviews all of the elements of compensation and reflects the ability to pay within the context of the severe limitations of the State's present projected fiscal situation. Additionally, the language of the Article needs to be addressed to reflect the composition of the bargaining unit.

Article 12
Health Insurance

Labor and management have strived over the past several years to provide State employees and their families with access to quality healthcare that is necessary, appropriate and affordable for all payers.

From 1995 to 1999, we benefited from annual health insurance premium increases that averaged 5 percent. However, over the past 4 years a variety of factors have caused our healthcare spending to increase at rates of 10 to 14 percent a year resulting in an additional premium cost to the New York State Health Insurance Program (NYSHIP) of $1.312 billion. The estimated NYSHIP premium for 2003 is $3.92 billion.

Under the Empire Plan, cost increases have been shared, in part, by employees whose annual premium contributions have gone from $257 for individual coverage and $1065 for family coverage in 1999 to $405 and $1682 respectively in 2003. It is the State, however, that has born the greatest proportion of healthcare cost inflation, paying on average 83.2 percent of the premium or $3645 for each individual coverage and $7475 for each family coverage under the Empire Plan for 2003.

In order to continue to fulfill our mutual goal of quality, cost effective healthcare for State employees, we must be more aggressive in addressing the areas of greatest liability in our plans.

The State therefore proposes:

- To continue rational cost sharing through premium contributions at levels that reflect the ever increasing cost of the New York State Health Insurance Program;

- To review the effectiveness of user copayments, deductibles and coinsurance and implement cost sharing opportunities at levels that more accurately represent the cost of the actual services and/or supplies

provided;

- To explore changes in the NYSHIP benefit design necessary to respond to new technology, varying physician practice patterns, innovative treatments and shifting consumer paradigms;

- To prepare for a changing workforce by examining the State's obligation to employees who leave through retirement or vesting...

Article 13

Education and Training

The State proposes that the parties review this article to determine which sections may be appropriate to continue. The State believes that some of the language in the contract needs to be adjusted due to the change in the bargaining unit. Funding, if any, would be considered in the context of the overall economic package.

The State will also propose language requiring that employees who are presently scheduled for mandatory training must report to training as scheduled. Employees who fail to report to mandatory training may be subject to disciplinary actions. It is expected that an employee shall provide written permission from facility management, or acceptable documentation from the employee's personal physician, if he or she fails to report for mandatory scheduled training.

Article 14
Attendance and Leave

The State proposes a review of the present provision of leave credits. During the course of negotiations we will review the amount of annual, personal and sick leave provided to employees hired on or after April 1, 2003.

The State proposes that doctors' notes shall be provided for all pre-approved doctors visits. Employees must notify security staff at the facility each day they are to be absent, and when they expect to return. If they have been absent for one full shift or more due to illness or injury, employees must notify the facility when they will return to work, at least eight hours in advance.

Additionally, if medical verification appears in the final agreement, it must be clarified that this section does not apply to cases of Workers' Compensation or Section 72.

Article 15

Overtime, Recall and Scheduling

The State shall have specific proposals in this area. In particular, the State will propose that 1.) Time during which an employee is excused from work while charging leave credits of any kind shall not be considered as time worked for the purpose of computing overtime; 2.) That there shall be a modification of the recall provision in the agreement; 3.) In light of the State's fiscal situation, the State proposes the elimination of overtime meal allowance; and 4.) For purpose of safety, no employee shall be allowed to work double shifts on two consecutive calendar days.

Article 16

Holiday Pay

Present contract language is satisfactory to the State of New York.

Article 17

Travel Allowances

The State proposes the elimination of the elimination of the Triborough bridge toll language.

Article 18

Payroll Computation

Present contract language is satisfactory to the State of New York.

Article 19

Credit Union Deductions

Present contract language is satisfactory to the State of New York.

Article 20

Uniforms

The State proposes that the parties discuss the continuation of any uniform allowance in relation to the overall economic package to determine whether this is an appropriate use of the limited resources available.

Article 21

Indemnification

The State believes that much of this Article as it is written is unnecessary and does not provide any benefit to the employee. Employees have rights under the sections of law identified in the contract article. The State in no way proposes a reduction of those rights. However, given the present economic situation, the State proposes that the continuation of the present funding level be reconsidered.

Article 22

Safe Working Conditions

The State will propose that in order to maintain safe working conditions, the Employer may require annual physical exams to determine appropriate fitness levels.

Article 23

Reimbursement for Property Damage

The State proposes no change in the present contract language.

Article 24

Seniority

Present contract language is satisfactory to the State of New York.

Article 25

Labor/Management Committees

Continued funding in this Article is dependent upon an agreement to an overall package acceptable to the State of New York.

Article 26

No Strike Clause

Present contract language is satisfactory to the State of New York.

Article 27

Preservation of Benefits

Present contract language is satisfactory to the State of New York.

Article 28

Savings Clause

Present contract language is satisfactory to the State of New York.

Article 29

Printing of Agreement

Present contract language is satisfactory to the State of New York.

Article 30

Approval of Legislature

Present contract language is satisfactory to the State of New York.

Article 31

Conclusion of Collective Negotiations

Present contract language is satisfactory to the State of New York.

All Appendices and Side Letters should be reconsidered by the parties to determine appropriateness, necessity and accuracy.

The State proposes new side letters to effect:

1. That Shock Incarceration Drill Instructors shall work forty hour weeks with no guarantee of overtime;

2. That light duty be allowed only in cases of Workers' Compensation.,It should be noted that many grievances and complaints have been received alleging that facility management has shown favoritism in utilizing light duty in cases other than Workers' Compensation.

SUPPLEMENTAL PROPOSALS
DATED MARCH 13, 2003
STATE OF NEW YORK TO NYSCOPBA
SECURITY SERVICES UNIT

Introduction

Some of the proposals presented herein by the State of New York are conceptual or descriptive in nature, while others are intended to be proposed contract language.

All proposals are made subject to the course of negotiations and final agreement. Subject to our agreed upon ground rules, the State reserves the right to amend, withdraw and alter its proposals during the bargaining period.

A number of the proposals made by the State are in the nature of clarification of the existing manners and methods of the parties, or to address issues that had been settled during the long history of the bargaining unit but continue to be raised in grievances. These proposals should in no way be inferred as an admission that management does not currently hold those rights or a waiver of the rights currently held by management.

ARTICLE 5

Union Rights

5.1 Bulletin Boards

(a) The Employer agrees to furnish and maintain suitable locking glass enclosed bulletin boards in convenient places in each working area to be used exclusively by the Union.

(b) The Union agrees to limit its postings of notices and bulletins to such bulletin boards.

(c) The Union agrees that it will not post material which may be profane, derogatory to any individual, or constitute election campaign material for or against any person, organization or faction thereof except that election material relating to internal Union elections may be posted on such bulletin boards. During the period in which the Union has the exclusive right to bulletin boards, no other employee organization, or affiliate thereof, except employee organizations which have been certified or recognized as the representative for collective negotiations of other State employees employed at such locations shall have the right to post material on State bulletin boards or distribute literature at work locations of Security Services Unit employees. All bulletins or notices shall be signed by the NYSCOPBA President, Chief Sector Steward or their designee.

(d) Any material which the Employer alleges to be in violation of this Agreement shall be promptly removed by the Union. The matter will then immediately be referred to Step 3 of the grievance procedure for resolution.

(e) In institutions or facilities which have repeated violations, the Director of the Governor's Office of Employee Relations may require advance approval of all future material which is to be posted.

5.2 Access to Employees and Meeting Space

(a) Department or agency heads may reach understandings with the Union for reasonable and appropriate arrangements whereby the Union may advise employees of the availability of the Union representatives for consultations during non-working hours concerning Union membership, services and programs.

(b) The Union representatives shall, on an exclusive basis for employees covered by this Agreement, have access to employees during working hours to explain the Union membership, services and programs under mutually developed arrangements with department heads wherein such access shall not interfere with work duties or work performance. Such consultations shall be no more than 15 minutes per employee per month, not to exceed an average of fifteen percent per month of the employees in the agency or institution.

(c) The departments or agencies shall provide meeting space to the Union upon written notice from the ~~president of the local or unit chairman of the Union~~ **Chief Sector Steward** in buildings owned or leased by the State. Meeting space shall be provided under the following circumstances:

(1) suitable space is not reasonably available elsewhere in the area;

(2) the Union agrees to reimburse the Employer for any additional expenses incurred by the Employer including furnishing janitorial services, and any other expense which would not have been incurred had the space not been available;

(3) a request for the use of such space is made in advance pursuant to the rules of the department or agency concerned;

(4) the purpose of the meeting is made known to and is approved by the Employer.

5.3 Employee Organization Leave

~~(a) The Union shall be provided collectively with a total of not more than 740 days of non cumulative employee Organization leave during each year of this Agreement to attend meetings for internal administrative functions and policy committees.~~

~~(b) The allocation of employee Organization leave provided in paragraph 5.3(a) to individual employees shall be the sole prerogative of the Union and shall be allocated in units of not less than one day per instance per employee. Requests for use of this leave shall solely be made by NYSCOPBA. As used in~~

~~this Article, the phrase "one day" shall be defined as "one duty tour."~~

~~(c)~~ **(a)** There will be no change in the present method of approving applications for attendance at meetings of the Executive Assembly.

~~(d)~~ **(b)** Under special circumstances and upon advance request, ~~additional~~ employee organization leave for ~~additional~~ meetings may be granted by the Director of the Governor's Office of Employee Relations.

~~(e)~~ **(c)** For the purpose of entering into collective negotiations for a successor agreement to this Agreement, ~~the Employer agrees to grant employee organization leave to a reasonable number of employees for the Union Negotiating Committee with the understanding that thee shall be no more than one Union committee member from any one facility or region eligible to receive such leave for this purpose, except that this restriction shall not apply to Chairs of Standing Committees.~~ The Union shall provide the State with a list of names and work locations of all such committee members prior to the commencement of any ~~such~~ negotiations.

~~(f)~~ **(d)** Employee organization leave shall be release time without charge to leave credits accrued by individual employees. Such release time shall be granted subject to the provision that the resulting absence from work will not interfere with the proper conduct of governmental functions. ~~Employee organization leave provided pursuant to paragraph 5.3(a) of this Article is not required to be granted unless the Union provides the Director of the Governor's Office of Employee Relations or his designee with 14 days advance notice of the purpose and date for which such leave is requested and the names and work stations of the employees for whom such leave is requested.~~

~~(g) The Director of the Governor's Office of Employee Relations or his designee shall send the Union a statement at the end of each quarter showing the total employee organization leave used to date in each Agreement year pursuant to paragraph 5.3(a) above. This statement shall be presumed correct unless the Union within 30 days of receipt of the statement advises the Director of the Governor's Office of Employee Relations or his designee of any claimed errors.~~

~~(h)~~**(e)** Employee organization leave provided pursuant to this Article shall be in addition to that provided elsewhere in this Agreement for Union representation in processing of grievances and labor/management meetings.

~~(i)~~**(f)** The Union shall supply **(and keep current)** to the Director of the Governor's Office of Employee Relations 30 days after the execution of this

Agreement and quarterly thereafter a list of Union officers, executive board members, grievance representatives, members of policy committees and other employees eligible for leave under this Agreement together with the official work stations, departments and agencies of such employees. **All such leave shall be used only for appropriate purposes, only as specifically requested by the Union and granted by the State.**

(j) Travel time as used in this Article shall mean actual and necessary travel time not to exceed ~~eight (8)~~ **four (4)** hours each way.

5.4 Unchallenged Representation

The Employer and the Union agree pursuant to Section 208 of the Civil Service Law that the Union shall have unchallenged representation status for the maximum period permitted by law on the date of execution of this Agreement.

5.5 Agency Shop

Mandatory agency shop fee deductions shall be continued for the period required by law.

5.6 Membership Packets

The Employer agrees to provide each new employee in the Security Services Unit with a membership packet furnished by the Union within one workweek following his first day of work and to the extent possible on the first day of work. The materials which may be included in such packet shall be subject to the restrictions set forth in paragraphs 5.1 (c) and 5.1 (d) of this Article.

5.7 Union Leave

A permanent employee or employees nominated by the Union may be granted by the Employer a leave or leaves of absence with full salary from their regular position for the purpose of serving with the employee organization subject to the conditions of this paragraph. Each such leave, its term and renewal, shall be subject to the discretionary approval of the Director of the Governor's Office of Employee Relations. The Union shall periodically, as specified by the Director of the Governor's Office of Employee Relations, reimburse the State for the salary or wages paid to each employee by the Employer during such leave of absence **including all allowances, bonuses and any other payments made, including those made consistent with this negotiated Agreement** together with the cost

of fringe benefits at the percentage of salary or wages as determined by the Comptroller. The Union shall purchase an insurance policy in the form and amount satisfactory to the Director of the Governor's Office of Employee Relations to protect the State in the event the State is held liable for any damages or suffers any loss by reason of any act or omission by such employee during the period of such leave of absence with full salary.

5.8 Exclusivity

The Employer will not meet or confer with any other employee organization or affiliate thereof with reference to terms and conditions of employment of employees. If such organizations request meetings, they will be advised by the Employer to transmit their requests concerning terms and conditions of employment to the Union and arrangements will be made by the Union to fulfill its obligation as a collective negotiating agent to represent these employees and groups of employees.

ARTICLE 7

Grievance and Arbitration

7.1 Definitions

For the purposes of this Agreement, all disputes shall be subject to the grievance procedure as outlined below:

(a) A dispute concerning the application and/or interpretation of this Agreement is subject to all steps of the grievance procedure including arbitration, except those provisions which are specifically excluded.

(b) Any other dispute or grievance concerning .a term or condition of employment which may arise between the parties or which may arise out of an action within the scope of authority of a department or agency head and which is not covered by this Agreement shall be processed up to and including the conference phase of the Alternate Dispute Resolution Process, and not beyond, except those issues for which there is a review procedure established by law or by or pursuant to rules or regulations filed with the Secretary of State.

(c) A claim of improper or unjust discipline against an employee shall be processed in accordance with Article 8 of this Agreement.

7.2 Procedure

The purpose of this Article is to provide a prompt, equitable, peaceful and efficient procedure to review and resolve grievances, and to further the purpose of this Agreement to promote harmonious employee relations. Both the Employer and the Union recognize the importance of, among other aspects of the procedure, the timely issuance of decisions to filed grievances and the responsible use of this procedure. Upon failure of the Employer to provide a decision within the time limits provided in this Article, the Union may appeal to the next step of the grievance procedure. The grievance will not revert back to the previous step where it was originally untimely unless mutually agreed to by both parties.

Prior to initiating a formal written grievance pursuant to this Article, the employee or the Union is encouraged to resolve disputes subject to this Article informally by reviewing them with the appropriate immediate supervisor, local administration or agency or department.

(a) Grievances

Step 1. The employee and/or the Union shall present the grievance in writing to the facility head, institution head, divisional head or regional head within 20 days of the act or omission giving rise to the grievance or within 20 days of the date on which the employee first knew of such act or omission. The facility head, institution head, divisional head or regional head, shall each designate a regular representative, who shall meet with the Union and the grievant during the employee's regular work shift within ten days of receipt of the grievance and shall render a decision in writing within ten days from the day of such meeting.

Step 2. In the event that the grievance has not been satisfactorily resolved at Step 1, an appeal may be taken by the Union in writing to the Department or Agency head, as appropriate, within 15 days from receipt of the Step 1 decision. The written appeal shall contain a description of the relevant facts from which the grievance derives and specific references to all sections **and subsections** of the Agreement, if any, which the Union claims have been violated. In cases in which both parties agree that a meeting is necessary, the Department or Agency Head, or designee, shall meet with the Union to review the grievance within ten days from receipt of the Step 2 written appeal and shall render a written decision which shall include a brief statement of the relevant facts on which the decision is based to the Union within ten days from the day of the Step 2 meeting. Upon receipt by the Employer of notice that no meeting will be held, a written decision will be issued within ten days of receipt of said notice. Communications concerning

appeals and decisions at this Step shall be made by personal service or by registered or certified mail.

Step 3. In the event that the grievance has not been satisfactorily resolved at Step 2, an appeal to the Director of the Governor's Office of Employee Relations may be taken by the Union in writing within 15 days from the day on which the Union received the Step 2 decision. Such appeal shall contain a copy of the Step 2 decision. All communications concerning appeals and decisions at this Step shall be made by personal service, registered or certified mail. **No articles, subsections or predicate law, rule or regulation in a claimed violation of the Preservation of Benefits provision different from those alleged at Step 2 shall be added to the grievance without mutual agreement of the parties**.

Every other week (on a designated day), representatives from the Union and the Governor's Office of Employee Relations will meet and review all grievances that have been appealed to the Step 3 level during the previous two week period. If warranted, an agency representative may be in attendance at these meetings. At these meetings, the grievance will be read, reviewed and tactically distributed for processing in one of the following ways:

1. Expedited Decision. For grievances with respect to which either side believes that the decision is going to be traditional, and involves issues which cannot be resolved by the grievance process, the Governor's Office of Employee Relations shall provide, within ten days, a written Step 3 response in the form of a brief answer.

2. On-site Review. If both representatives believe that a Step 3 hearing review is necessary, the parties will agree to schedule such a review on the next trip to the work location in question. Trips to regions or work locations will be scheduled in advance on a "circuit" basis to ensure that each work location can be visited at least once every four months, if necessary.

3. Safety Issues. Issues which are, in fact, safety and health concerns (not to include staffing issues) may be referred to an Agency Level Statewide Safety and Health Committee. A safety specialist from the employing agency and the Union can review the issues and determine if there may be methodologies available for resolution of the issues. Resolutions will be reduced to writing. In the event the issues cannot be resolved, either party may refer them to the conference phase of the Alternate Dispute Resolution Process where applicable.

4. Hold Status. The grievance may be put on hold for two weeks so that

either or both sides can gather more information or make local contacts. Those grievances placed in hold status will become the first to be discussed at the next meeting between representatives from the Union and the Governor's Office of Employee Relations.

Automatic Progression. If the Employer fails to meet with the Union on a timely basis or render a timely decision, the Union may treat the grievances as having been denied at the level at which the delay occurred and may then appeal the grievance to the next level.

(b) Alternate Dispute Resolution Process (ADR)

(1) In the event that the grievance has not been resolved satisfactorily at Step 3, a demand for arbitration may be brought only by the Union, through the President or his designee within 15 days from the day the Union receives the Step 3 decision by mailing or personally serving the demand to the Director of the Governor's Office of Employee Relations and simultaneously filing the demand with the master arbitrator. The demand will identify the Article(s) and subsections sought to be arbitrated, the names of the Department or Agency, and employee(s) involved, copies of the original grievance, appeals documents and the written decisions rendered at the lower steps. **No articles, subsections or predicate law, rule or regulation in a claimed violation of the Preservation of Benefits provision different from those alleged at Step 3 shall be added to the grievance without mutual agreement of the parties**.

(2) Resolution conferences and arbitrations under the ADR process shall be held before the master arbitrator appointed by agreement of the parties. The parties may review the appointment at any time, by mutual agreement.

(3) Resolution Conference

Within 30 days after the demand for arbitration, the parties shall meet with the master arbitrator who shall attempt to have the parties reach a settlement and narrow the issue(s) for hearing, including stipulating to facts, relevant documents and exhibits. The grievant may be permitted to participate in the conference by telephone.

(4) Expedited Arbitration

After the resolution conference, either party may require a hearing before the master arbitrator on an expedited basis. Grievance hearings shall,

absent extraordinary circumstances, be limited to one day.[1] Both parties should be prepared to fully present their positions and any testimony on the day of the hearing. No briefs shall be submitted by either party.

(5) The parties agree to meet for a total of four days per month at a mutually agreed upon site in Albany to conduct the resolution conferences and/or expedited arbitrations.

(6) Where no hearing is held and the case is submitted on papers the parties may submit their positions in writing to the arbitrator on a mutually agreed upon date no later than thirty (30) days after the mailing of the papers to the arbitrator. Such written position papers may not exceed five double-spaced pages.

(7) The master arbitrator's decision and award is to be rendered within seven (7) days of the completion of the hearing and shall include only a finding or findings and remedy, as appropriate, on a form provided by the parties. The master arbitrator shall have the authority to issue bench decisions when appropriate.

(8) The decision or award of the master arbitrator shall be consistent with applicable law and the Agreement and final and binding upon the parties (NYSCOPBA and the State) with respect to the determination of the grievant's claims. Such decisions are non-precedential and shall not be submitted in any other case unless the parties mutually agree otherwise.

(9) The parties may meet periodically to insure that in practice the ADR process is in keeping with their intent and to take what steps are necessary to conform such practice with their intent.

(c) Full Arbitration

(1) After the resolution conference, if the Employer and the Union mutually determine that an individual grievance warrants a decision that will be precedential for future matters, the parties may refer the matter to traditional

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1 The parties shall prepare a recommended schedule for the conduct of a one day hearing to be presented to the master arbitrator. Such schedule is to serve merely as a guide to assist in insuring that cases are ordinarily presented and concluded in one day.

arbitration. If the parties cannot agree as to whether the matter should be referred to full arbitration, the master arbitrator shall have the authority to make such determination as to whether full arbitration is warranted.

(2) The parties shall mutually select an arbitrator. If the parties are unable to agree, the matter will be referred to the Public Employment Relations Board for selection.

The arbitrator shall hold a hearing at a time and place convenient to the parties within 20 days of the acceptance to act as arbitrator. The arbitrator shall issue a written decision within 30 days after completion of the hearing. The arbitrator shall be bound by the rules of the American Arbitration Association which are applicable to labor relations arbitrations which are in effect at the time of arbitration. In the event a disagreement exists regarding arbitrability of an issue, the arbitrator shall make a preliminary determination whether the issue is arbitrable under the express terms of this Agreement. Once a determination is made that such a dispute is arbitrable, the arbitrator shall then proceed to determine the merits of the dispute.

(3) Miscellaneous Provisions

Neither the master arbitrator nor arbitrator shall have any power to add to, subtract from, or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine the decision solely to the application and interpretation of the Agreement.

All fees and expenses of the arbitration shall be divided equally between the parties except that each party shall bear the cost of preparing and presenting its own case. Cost for the cancellation of a hearing date shall be borne by the party seeking cancellation.

7.3 Representation

(a) The Employer shall recognize the following grievance representatives at each step of the grievance procedure and shall release such representatives from normal duties to process grievances and conduct necessary relevant investigations providing that such absence from work will not interfere with proper conduct of governmental functions: steward and chief sector steward.

On the Union's prior written request at least 48 hours in advance, the Employer will make every effort to reschedule shift assignments so that meetings fall during working hours of Union representatives.

The Union shall furnish the Employer with a list of all employee representatives, Union Vice Presidents and Union staff authorized to represent the Union in the grievance process pursuant to this Article 60 days from the date of execution of the Agreement.

(b) Statewide elected union officers and Union staff may be present at each step of the grievance procedure.

7.4 General Provisions

(a) As used in this Article, all references to days shall mean calendar days. All of the time limits contained in this Article may be extended by mutual agreement of the parties and shall be confirmed in writing.

(b) Grievances resolved at Step 1 shall not constitute a precedent for any other facility, institution, division, or region, or at Step 2 for any other agency unless a specific agreement to that effect is made by the Director of the Governor's Office of Employee Relations and the President of the Union.

(c) The parties, GOER and NYSCOPBA, may mutually agree to waive Steps 1 and 2 of the grievance procedure. In order to better review grievances at the second step, the Employer will conduct review meetings. However, a meeting will not be held if there is mutual agreement that the file sufficiently clarifies the issue, that there is no new evidence to consider or the matter has been previously reviewed and/or resolved.

(d) Aggrieved employees, their Union representatives and necessary witnesses shall not suffer any loss of earnings, or be required to charge leave credits as a result of processing or investigating grievances during such employees' scheduled working hours. Reasonable and necessary time spent in processing and investigating grievances, including travel time, during such employees' scheduled working hours shall be considered as time worked provided, however, that when such activities extend beyond such employees' scheduled working hours, such time shall not be considered as time worked.

(e) Travel time, as used in paragraph 7.4(d) above, shall mean actual and necessary travel time, not to exceed eight hours each way.

(f) Grievances involving employees in more than one agency, upon agreement of the Director of the Governor's Office of Employee Relations and the President of the Union may be initiated at Step 3.

ARTICLE 9

Out-of-Title Work

9.1 (a) No employee shall be employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during light duty or the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted, transferred or reinstated to such position in accordance with the provisions of the Civil Service Law, Rules and Regulations.

(b) The term "temporary emergency" as used in this Article shall mean an unscheduled or non-periodic situation or circumstance which is expected to be of limited duration and either (a) presents a clear and imminent danger to person or property, or (b) is likely to interfere with the conduct of the agency's or institution's statutory mandates or programs.

9.2(a) Grievances alleging violation of this Article shall be processed pursuant to Article 7, paragraph 7.1(b), and shall be filed utilizing an out-of-title grievance form.

(b) If appealed to Step 3, the Director of the Governor's Office of Employee Relations shall seek an opinion from the Director of Classification and Compensation concerning whether or not the assigned duties which are the subject of the grievance are substantially different from those appropriate to the title to which the employee is certified. The Union shall be given the opportunity to present to the Director of Classification and Compensation, a written brief of the facts surrounding the grievance. The Director of Classification and Compensation shall, within 60 calendar days of the filing of the appeal, forward his opinion to the Director of the Governor's Office of Employee Relations, and the Union, for implementation.

(c) If it is the opinion of the Director of Classification and Compensation that the assigned duties which are the subject of the grievance are substantially different from those appropriate to the title to which the employee is certified, the Director of the Governor's Office of Employee Relations, or his designee, shall direct the appointing authority forthwith to discontinue such assigned duties.

(1) If such substantially different duties are found to be appropriate to a lower salary grade or to the same salary grade as that held by the affected employee, no monetary award may be issued.

(2) If, however, such substantially different duties are found to be appropriate to a higher salary grade than that held by the affected employee, the Director of the Governor's Office of Employee Relations shall issue an award of monetary relief. The amount of monetary relief shall be the difference between what the affected employee was earning at the time he performed such duties and what he would have earned at that time in the entry level of the higher salary grade title, but in no event shall such monetary award be retroactive to a date earlier than 15 calendar days prior to the date the grievance was filed in accordance with this Agreement.

ARTICLE 11

Compensation

11.1 Legislation - No change in present contract language.

11.2 General Salary Increase -Any salary increase agreed upon by the parties must reflect the State's ability to pay within the context of the severe limitations of the State's present and projected fiscal situation.

11.3 Advancement within a Salary Grade -For all employees hired or promoted on or after the date of ratification of this Agreement, a new hiring rate shall be established below the present hiring rate, resulting in an increase of one step in the present salary schedule.

11.4 Promotions -No change in present contract language.

11.5 Movement to a Lower Salary Grade -No change in present contract language.

11.6 Longevity Payments -All employees hired on or after April 1, 2003, there shall no longer be a 20 year longevity payment. There shall be no change in the dollar amount of longevity payments made during the term of this agreement.

11.7 Locational Compensation and Inconvenience Pay -

(a) There shall be no change in the locational compensation benefit presently paid to employees in New York City, Nassau, Suffolk, Westchester, Rockland, and Monroe counties.

11.8 Premium Pay - Eliminate section.

11.9 Pre-Shift Briefings -Only employees, who are required, authorized and actually assemble for pre-shift briefing or line up before the commencement of their regular tour of duty shall be paid for pre-shift briefing. There should be no payment of pre-shift briefing for employees not actually reporting to work.

11.10 Security Enforcement Differential -The continuation of Security Enforcement Differential shall be considered only within the context of the severe limitations of the State's present and projected fiscal situation.

ARTICLE 12

HEALTH, DENTAL AND PRESCRIPTION DRUG INSURANCE

12.3 Benefits Management

(f) Effective on a date to be determined, any hospital day deemed inappropriate for an inpatient setting and/or not medically necessary shall be excluded from coverage under the Empire Plan.

(g) Effective on a date to be determined, the Prospective Procedure Review Program will be expanded to include additional diagnostic procedures as determined by the Empire Plan hospital/medical component carrier.

12.4 Hospital Services

(a) Effective on a date to be determined, the Hospital Emergency Room and Outpatient copayments will increase.

(b) Effective on a date to be determined, paid-in-full inpatient hospital benefits will be limited to participating network hospitals only. Inpatient hospital services received at a non-network hospital will be subject to a $1000 copayment per confinement.

12.5 Medical Services

(c) Effective on a date to be determined, the office visit copayment will increase.

(d) Effective on a date to be determined, the office surgery copayment will increase.

(e) Effective on a date to be determined, the office radiology copayment will increase.

(f) Effective on a date to be determined, the office laboratory copayment will increase.

(g) Effective on a date to be determined, office visit, office surgery, office radiology and laboratory copayment amounts will be excluded from the basic medical co-insurance maximum determination.

12.6 Premium Contribution

(a) Effective on a date to be determined, the State will pay 85 percent of the premium cost of Individual Empire Plan coverage and 70 percent of the premium cost of Dependent Empire Plan coverage.

(b) Effective on a date to be determined, the State will pay 85 percent of the premium cost of Individual coverage and 70 percent of the premium cost of Dependent coverage toward the hospital/medical/mental health and substance abuse components of each HMO, not to exceed 100 percent of its dollar contribution for those components under the Empire Plan. The State will pay 85 percent of the premium cost of Individual HMO Prescription Drug Coverage and 70 percent of the premium cost of Dependent HMO Prescription Drug Coverage.

(c) The State's percent premium contribution toward health insurance coverage on behalf of employees retiring on or after a date to be determined shall be modified to reflect the employee's length of service as follows:

10 years = 50% of Individual/35% of Dependent
15 years = 58.75% of Individual/43.75% of Dependent
20 years = 67.5% of Individual/52.5% of Dependent
25 years = 76.25% of Individual/61.25% of Dependent
30 years = 85% of Individual/70% of Dependent

This is the equivalent of an additional 1 3% percent of premium for each year of service in excess of 10 years up to a maximum of 85%/70%.

12.7 NYSCOPBA Enhancements

(b) Effective on a date to be determined, the basic medical component will pay 70 percent reimbursement of reasonable and customary charges.

(b) (1)Effective on a date to be determined, the reasonable and customary reimbursement will be based on the 75th percentile of the PHCS

(b) (2)Effective on a date to be determined, the maximum out-of-pocket expense will be separately calculated for the enrollee, the enrolled spouse and all dependent children combined.

(I) Effective on a date to be determined, the Empire Plan Prescription Drug Program will be modified as follows:

1. A third tier of prescription drugs and prescription drug copayment will be created to differentiate between formulary and non-formulary brand-name drugs.

2. The maximum days supply of a formulary brand name, non-formulary brand name and/or generic drug available at a community pharmacy will be 30 days.

3. Prescription drugs dispensed at a community pharmacy will be limited to the original prescription and one refill.

4. The maximum days supply of a formulary brand name, non-formulary brand name and/or generic drug available at the mail service pharmacy will be 90 days.

5. The copayment for a generic drug obtained at a community pharmacy will increase.

6. The copayment for a brand-name drug (formulary and non-formulary) obtained at a community pharmacy will increase.

7. The copayment for a 31 to 90 days supply of a generic, formulary brand-name, and/or non-formulary brand-name drug obtained at the mail service pharmacy will be double the copayment for the same category of drug obtained at a community pharmacy.

8. Prescription drugs that are available in a non-prescription or over-the-counter form will be excluded from coverage under the

Plan.

12.11 Joint Committee on Health and Dental Benefits

(a) The following subsections of 12.11 will be eliminated or modified: (h) (1); (h) (3); (h) (4); (h) (6); (h) (8); (h) (10); (h) (13) (j); (k).

12.12 Vision Care

(b) Effective on a date to be determined, the Contact Lens benefit will be modified to eliminate the dollar value of the allowance. The new benefit will provide coverage for an eye examination and a supply of appropriate lenses.

(h) Effective on a date to be determined, a copayment of $30 will be required for eyeglasses or contact lenses obtained from a participating Plan provider.

12.14 Election of Insurance Carrier

(a) This section of Article 12 will be eliminated.

ARTICLE 14

Attendance and Leave

14.1 Vacation Credits - Present contract language for all present employees. For employees hired on or after April 1, 2003, no additional vacation credits per Articles 14.1 (a) and (b).

14.2 Personal Leave - Present contract language for all present employees. For employees hired on or after April 1, 2003 and who are entitled to be credited with personal leave shall be credited with three days per year; for the third and fourth years of service, they shall be credited with four days per year.

14.3 Bereavement Leave - Present contract language for all present employees.

14.4 Sick Leave Accumulation - Present contract language becomes subsection (a). New subsection (b): All employees must produce physicians' notes as proper documentation for all pre-approved doctors visits. Additionally, employees must notify supervisory security staff at the facility each day they are to be absent, and

when they are expected to return. Employees absent for one full shift or more due to illness or injury must notify their facility when they will return to work at least eight hours prior to said return.

14.5 Leave-Probationary Employees - No change in present contract language.

14.6 Alternate Examination Dates - No change in present contract language.

14.8 Jury Duty- No change in present contract language.

14.9 Workers' Compensation Leave -No change in present contract language.

14.10 Unauthorized Absence - No change in present contract language.

14.11 Medical Verification -Change to clarify that this section shall not apply to Section 72/73 or Workers' Compensation situations.

ARTICLE 15

Overtime, Recall and Scheduling

15.1 Overtime

(a) Overtime eligible employees shall receive overtime compensation for authorized time worked beyond 40 hours in the scheduled workweek consistent with applicable law and the overtime compensation rules and regulations of the Director of the Budget.

Overtime work shall be offered to employees on the basis of seniority and shall be equitably distributed among employees who normally perform such work. Each employee shall be selected in turn according to his place on the seniority list by rotation provided, however, that the employee whose turn it is to work possesses the qualifications and ability to perform the work required.

(b) An employee requesting to be skipped when it becomes his turn to work overtime shall not be rescheduled for overtime work until his name is reached again in orderly sequence and an appropriate notation shall be made in the overtime roster.

(c) In the event no employee wishes to perform the required overtime work, the Employer shall by inverse order of this seniority list assign the

necessary employees required to perform the work in question.

(d) The Union recognizes that work in progress shall be completed by the employee performing the work at the time the determination was made that overtime was necessary.

(e) An overtime roster shall be available for inspection by representatives of the Union at each institution or facility.

(f) If an employee is skipped or denied an opportunity to work overtime in violation of this Agreement, he shall be rescheduled for overtime work the next time overtime work is required, in accordance with paragraph 15.1 (a) above. However, at such skipped or denied employee's option he may await the next available comparable shift and work assignment. Instances of repeated occurrences shall be brought to the attention of management at the Step 1 level of the grievance procedure.

(g) Time during which an employee is excused from work because of vacation, holidays, personal leave, sick leave at full pay, compensatory time off or other leave at full pay shall **not** be considered as time worked for the purpose of computing overtime.

(h) Training programs conducted during other than regular working hours shall be scheduled for a minimum ~~two-hour~~ **one-hour** period.

(i) Nothing in paragraphs 15.1(a), 15.1 (b) and 15.1 (c) above shall prevent the establishment of mutually agreed to local arrangements regarding the method by which overtime is offered to employees.

(i) No employee will work double shifts on two consecutive calendar days, except in cases of declared emergency by management.

15.2 Recall

Any employee who is recalled to work unscheduled overtime including court appearances after having completed his scheduled work period and left the facility grounds shall be guaranteed a minimum of ~~one half day's~~ **one hour of** overtime compensation. If an employee lives on the facility grounds and is recalled from their residence to work unscheduled overtime including court appearances after having completed his/her scheduled work period he/she shall be guaranteed a minimum of ~~one half day's~~ **one hour of** overtime compensation. Employees called back as a result of riot, prison break, fire or escape and not put to work shall be guaranteed one ~~quarter day's~~ **hour of** overtime compensation.

15.3 Shift Changes

(a) No employee shall have his shift schedule changed for the purposes of avoiding the payment of overtime, unless he has been notified of such change one week in advance of the time in which the changed work period is to begin provided, however, that the circumstances necessitating such change are foreseeable prior to such one-week period.

(b) In the event that circumstances necessitating such shift changes are not foreseeable, then such notice shall be given as soon as possible.

(c) In the event such notice of shift change is not given at least 48 hours prior to the starting time of the scheduled shift which the employee is directed to work such employee shall not be deprived of the opportunity to work his normal shift and to be paid overtime for the hours worked in excess of 40 hours in the workweek.

(d) Employees who compete in New York State Civil Service examinations and whose shift ends less than eight hours before the starting time of such an examination shall not be required to work that shift and such absence shall not be charged to accrued leave credits.

(e) Regularly scheduled days off shall not be changed for the purpose of avoiding the payment of overtime.

(f) Prior to the making of a final decision with respect to instituting a change in shift system from fixed to rotating shifts or rotating to fixed shifts the Employer shall inform the Union of such contemplated change and provide the Union with an adequate opportunity to review the impact of such change with the Employer at the appropriate level.

~~15.4 Overtime Meal Allowance~~

~~An overtime meal allowance of $5.00 shall be paid, subject to rules and regulations of the Comptroller, to employees who work at least three hours overtime on a regular working day or at least six hours overtime on other than a regular working day. When an employee is required to work nine hours or more on other than a regular scheduled working day, two meal allowances will be allowed.~~

ARTICLE 18

Payroll Computation

18.1 -18.3 - No change in present contract language.

18.4 (new) - The employer reserves the right to require the implementation of mandatory direct deposit upon the express written request of the Office of the State Comptroller.

ARTICLE 20

Uniforms

The State reserves the right to provide a specific proposal on the elimination or continuation of the Uniform Allowance and article in coordination with its subsequent proposals on other compensation issues.

ARTICLE 21

Indemnification

The State believes that much of this Article as it is written is unnecessary and does not provide any benefit to the employee. Employees have rights under the sections of law identified in the contract article. The State in no way proposes a reduction of those rights. However, given the present economic situation, the State proposes that the continuation of the present funding level be reconsidered. Therefore, the State proposes the elimination of the indemnification article.

ARTICLE 25

Labor/Management Committees

Continued funding of Article 25.6 is dependent upon an agreement to an overall economic package acceptable to the State of New York.

The State proposes the elimination of Article 25.9.

APPENDICES

APPENDIX A - The State proposes no change.

APPENDIX B - The State proposes no change.

APPENDIX C - The State proposes no change. Eliminate references to titles no longer in the bargaining unit.

APPENDIX E - The State proposes to eliminate this from the contract since it is updated so frequently and replace it with language indicating that such rates shall be updated in accordance with the negotiated agreement.

SIDE LETTERS

1. Outside Police Agreement - No change in present contract language.
2. Correction Officer Training Rate - No change in present contract language.
3. Temporary Retirement Benefit - Eliminate, as unnecessary.
4. Travel - No change in present contract language.
5. Jones Beach - No change in present contract language.
6. TB - No change in present contract language.
7. Pilot Productivity Program - Eliminate language.
8. SONY - No change in present contract language.
9. Downstate Adjustment Study - Eliminate language.
10. Health Insurance Premium Reduction Program - Eliminate language.
11. Article 8 Task Force - Eliminate language. (It is expected that these issues will be discussed during the current negotiations).
12. Physical Fitness - Eliminate language.
13. Standby-On Call Rosters - Eliminate language.

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ARTICLE 12: HEALTH, DENTAL AND PRESCRIPTION DRUG INSURANCE

12.3 Benefits Management

(f) Effective January 1, 2004 or as soon as practicable thereafter, any hospital day deemed inappropriate for an inpatient setting and/or not medically necessary shall be excluded from coverage under the Empire Plan.

(g) Effective January 1, 2004 or as soon as practicable thereafter, the Prospective Procedure Review Program will be expanded to include additional diagnostic procedures as determined by the Empire Plan hospital/medical component carrier.

12.4 Hospital Services

(a) Effective January 1, 2004 or as soon as practicable thereafter, the Hospital Emergency Room copayment will increase to $50 and the outpatient copayment will increase to $30. Effective January 1, 2005 the Hospital Emergency Room copayment will increase to $75 and the outpatient copayment will increase to $40.

(b) Effective January 1, 2004 or as soon as practicable thereafter, paid-in-full inpatient hospital benefits will be limited to participating network hospitals only. Inpatient hospital services received at a non-network hospital will be subject to a $1000 copayment per confinement.

12.5 Medical Services

(c) Effective January 1, 2004 or as soon as practicable thereafter, the office visit copayment will increase to $15. Effective January 1, 2005, the office visit copayment will increase to $25.

(d) Effective January 1, 2004 or as soon as practicable thereafter, the office surgery copayment will increase to $15. Effective January 1, 2005, the office surgery copayment will increase to $25.

(e) Effective January 1, 2004 or as soon as practicable thereafter, the radiology copayment will increase to $15. Effective January 1, 2005, the radiology copayment will increase to $25.

(f) Effective January 1, 2004 or as soon as practicable thereafter, the laboratory copayment will increase to $15. Effective January 1, 2005, the laboratory copayment will increase to $25.

(g) Effective January 1, 2004 or as soon as practicable thereafter,

office visit, office surgery, outpatient radiology and laboratory copayment amounts will be excluded from the basic medical co-insurance maximum determination.

12.6 Premium Contribution

(a) Effective January 1, 2004 or as soon as practicable thereafter, the State will pay 85 percent of the premium cost of Individual Empire Plan coverage and 70 percent of the premium cost of Dependent Empire Plan coverage.

(b) Effective January 1, 2004 or as soon as practicable thereafter, the State will pay 85 percent of the premium cost of Individual coverage and 70 percent of the premium cost of Dependent coverage toward the hospital/medical/mental health and substance abuse components of each HMO, not to exceed 100% of its dollar contribution for those components under the Empire Plan. The State will pay 85 percent of the premium cost of Individual HMO Prescription Drug Coverage and 70 percent of the premium cost of Dependent HMO Prescription Drug Coverage.

(c) The State's percent premium contribution toward health insurance coverage on behalf of employees retiring on or after January 1, 2004 shall be modified to reflect the employee's length of service as follows:

10 years = 50% of Individual/35% of Dependent
15 years = 58.75% of Individual/43.75% of Dependent
20 years = 67.5% of Individual/52.5% of Dependent
25 years = 76.25% of Individual/61.25% of Dependent
30 years = 85% of Individual/70% of Dependent

This is the equivalent of an additional 1 & 3% percent of premium for each year of service in excess of 10 years up to a maximum of 85%/70%.

12.7 NYSCOPBA Enhancements

(b) Effective January 1, 2004 or as soon as practicable thereafter, the basic medical component will pay 70 percent reimbursement of reasonable and customary charges.

(b) (1) Effective January 1, 2004 or as soon as practicable thereafter, the

reasonable and customary reimbursement will be based on the 75th percentile of the PHCS

(b) (2) Effective January 1, 2004 or as soon as practicable thereafter, the maximum out-of-pocket expense will be separately calculated for the enrollee, the enrolled spouse and all dependent children combined.

(I) Effective January 1, 2004 or as soon as practicable thereafter, the Empire Plan Prescription Drug Program will be modified as follows:

1. A third tier of prescription drugs and prescription drug copayment will be created to differentiate between preferred (formulary) and nonpreferred (non-formulary) brand-name drugs.

2. The copayment for prescription drugs purchased at a retail pharmacy shall be $5 for a generic drug, $20 for a preferred brand-name drug and $40 for a non-preferred brand-name drug for up to a 30-day supply. When a brand-name, multi-source drug is dispensed, the enrollee will be responsible for the cost difference between the brandname drug and its generic equivalent plus the non-preferred brandname copayment ($40). Prescriptions dispensed at a retail pharmacy will be limited to 30 day-supplies.

3. The copayment for prescription drugs purchased at the mail service pharmacy shall be $5 for a generic drug, $20 for a preferred brandname drug and $40 for a non-preferred brand-name drug for up to a 30-day supply. When a brand-name, multi-source drug is dispensed, the enrollee will be responsible for the cost difference between the brand-name drug and its generic equivalent plus the non-preferred brand-name copayment ($40).

4. The copayment for prescription drugs purchased at the mail service pharmacy shall be $10 for a generic drug, $40 for a preferred brandname drug and $80 for a non-preferred brand-name drug for a 31 to 90 day supply. When a brand-name, multi-source drug is dispensed, the enrollee will be responsible for the cost difference between the

brandname drug and its generic equivalent plus the non-preferred brandname copayment ($80).

5. Prescription drugs that are available in a non-prescription or over-the-counter form will be excluded from coverage under the Plan.

12.11 Joint Committee on Health and Dental Benefits

(a) The following subsections of 12.11 will be eliminated or modified: (h) (1); (h) (3); (h) (4); (h) (6); (h) (8); (h) (10); (h) (13) (j); (k).

12.12 Vision Care

(b) Effective January 1, 2004 or as soon as practicable thereafter, the Contact Lens benefit will be modified to eliminate the dollar value of the allowance. The new benefit will provide coverage for an eye examination and a supply of appropriate lenses.

(h) Effective January 1, 2004 or as soon as practicable thereafter, a copayment of $30 will be required for eyeglasses or contact lenses obtained from a participating Plan provider.

12.14 Selection of Insurance Carrier

(a) Effective January 1, 2004 or as soon as practicable thereafter, this section of Article 12 will be eliminated.

12.15 Mental Health and Substance Abuse Program

(b)(2) Effective January 1, 2005 the copayment for Mental Health services will increase to $25.

Empire Plan Hospital Network

Effective January 1, 2005, the Hospital component (inpatient and outpatient services) of the Empire Plan will be modified as follows:

- The Hospital Carrier will establish a network of hospitals (acute care general hospitals, skilled nursing facilities and hospices) throughout the United States.

- Any hospital that does not enter into a participating agreement with the hospital Carrier will be considered to be a non-network facility.

- Covered inpatient services received at a network hospital will be paid-in-full. Covered outpatient services (outpatient lab, x-ray, etc. and emergency room) received at a network hospital will be subject to the appropriate copayment.

- Covered inpatient services received at a non-network hospital will be reimbursed at 90% of charges. There will be a separate $1500 annual Hospital coinsurance maximum per enrollee, enrolled spouse/domestic partner and all dependent children combined established for non-network hospital out-of-pocket expenses.

- The $1500 Hospital coinsurance maximum is for non-network hospital expenses only and cannot be combined with any coinsurance maximums for other Empire Plan components.

- Covered outpatient services received at a non-network hospital will be reimbursed at 90% of charges or a $75 copayment whichever is greater. The non-network outpatient coinsurance will be applied toward the $1500 annual coinsurance maximum.

- Once the enrollee, enrolled spouse/domestic partner or all dependent children combined have incurred $500 in non-network expenses, a claim may be filed with the medical Carrier for reimbursement of out-of-pocket non-network expenses incurred above the $500 and up to the balance of the coinsurance maximum.

- Services received at a non-network hospital will be reimbursed at the network level of benefits under the following situations:

  - Emergency outpatient/inpatient treatment;
  - Inpatient/outpatient treatment only offered by a non-network hospital; and
  - Inpatient/outpatient treatment in a geographic area where reasonable access to a network hospital does not exist.

- Anesthesiology, pathology and radiology services received at a network hospital will be paid-in-full less any appropriate copayment even if the provider is not participating in the Empire Plan participating provider network under the medical component.

POSITION OF THE UNION

According to the Union, the appropriate salary comparisons for Correction Officers are New York State Troopers and Correction Officers in the contiguous states of New Jersey, Pennsylvania, Connecticut, and Massachusetts. The passage of the bill that extended interest arbitration to State Correction Officers, the Union maintains, shifted the focus of the wage comparisons from what other employees in the State are receiving to what is received by similarly situated Correction Officers or other law enforcement officers. The Union claims this shift in focus resembles the one that occurred in 1995 when New York State Troopers became eligible for interest arbitration.

In defense of its choice of states for compensation analysis, the Union relies on the testimony of Dr. Amy McCarthy and the "compensation analysis" she prepared regarding Correction Officers in Massachusetts, New Jersey, Connecticut, and Pennsylvania. These four states, the Union asserts, clearly represent the most closely related jurisdictions to New York in terms of what Correction Officers do and the conditions under which said Officers work. In justifying its selection, the Union also sets forth reasons for excluding Vermont from any salary comparison, and, in doing so, directs the Panel's attention to the consideration of this issue by Arbitrator Jeffrey Selchick in an Interest Arbitration Award between the State and the New York State Troopers. The same jurisdictions selected by the Selchick Panel, the Union urges, also should be accepted by this Panel.

The Union also sets forth its reasons for rejecting the State's salary comparisons. Insofar as the State includes County Correction Departments, the Union notes the Selchick Panel's

INTRODUCTION

The New York State Public Employment Relations Board, pursuant to the New York Civil Service Law, Section 209.4, designated the Chairperson and other above Panel Members by notice dated May 4, 2005.

Hearings were held on July 28 October 3 and 4, November 8 and 9, November 29 and 30, and December 7 and 8, 2005, in Albany, New York. After receipt of the transcripts and post-hearing briefs, the Panel met in executive session on January 11, February 6, February 21, and February 22, 2006.

Appearing on behalf of the New York State Correctional Officers & Police Benevolent Association, Inc., ("PBA") was the law firm of Sheehan, Greene, Carraway, Golderman, & Jacques, LLP by William F. Sheehan, Esq., and Nancy L. Burritt, Esq. of Counsel, and the Law Office of W. James Schwan, by W. James Schwan, Esq.,and on behalf of the State of New York ("State") was the Governor's Office of Employee Relations by Maureen Seidel, Esq. and Gary Simpson, Esq., of Counsel.

At the hearings, the Parties were given a full opportunity to produce witnesses and present documentary, video, and other evidence in support of their respective positions, as well as the opportunity to question witnesses appearing on behalf of both Parties. This Opinion and Award constitutes the results of the Panel's consideration of the evidence presented within the context of the criteria set forth in Section 209.4 of the Civil Service Law, including, but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the

rejection of a comparison of New York State Trooper salaries to those received by Police Officers in local municipal police agencies in the State. The reasons advanced by the Selchick Panel, according to the Union, are even stronger in the instant proceeding given the substantial differences between State correctional facilities and county jails. These differences, the Union notes, include the make up of inmate population, the percentage of inmates who are violent or felony offenders, the size of the facilities, the existence or lack thereof of gang activity in the facilities, the prevalence of communicable diseases, and the fact that county Corrections Officers, unlike State Correction Officers, are not entitled to interest arbitration.

The Union also rejects the states that the State has used insofar as they extend to states not selected by the Union. Included among the states not selected by the Union, the Union notes, are California, Wisconsin, Ohio, Michigan, and Illinois. The geographical distance of these states from New York, the Union argues, renders these states not as reliable for comparability purposes as the states selected by the Union, all of which are contiguous to the State of New York.

Focusing on the states it has selected as comparable, the Union observes that State Correction Officers earn less in direct compensation than Officers in the states selected for comparison. Again, the Union refers to the compensation analysis prepared by Dr. McCarthy, and notes the following: State Correction Officers are paid at rates substantially below the average of the four contiguous states; State Correction Officers have lost significant ground in the "historical ratio" between their salaries and New York State Troopers; and State Correction Officers "have not kept pace," with either the Employment Cost Index or the Consumer Price

Index as measured against the base year of 1987. On balance, the Union argues, its salary analysis completely supports its proposal that the Union be granted 4% increases to the basic annual salary on April 1, and October 1, 2003, and also on April 1 and October 1, 2004. The Union notes the "salary comparability" analysis prepared by the State and observes that the State selected March 31, 2003, as the date for comparing salaries. The State's approach, the Union maintains, suffers for two reasons. One such reason, according to the Union, is that the effectiveness of the State's study is limited because it does not include increases that have gone into effect since March 31, 2003. Further, the Union contends, the March 31, 2003, date cannot be considered as reliable as the fiscal year approach that Dr. McCarthy followed.

Returning to the comparison with New York State Troopers, the Union asserts its belief that the Panel needs to begin to return unit members "to their appropriate and historical relationship to the State Troopers in terms of compensation." While acknowledging the excellent reputation of the New York State Troopers, the Union also invites the Panel's attention to the praise it has received from the Commissioner of Corrections and the Governor for the professionalism shown by the Correction Officers in the context of the perilous duties performed by Correction Officers on a daily basis.

As to ability to pay, the Union claims that controlling decisional law grants the Panel the discretion "to determine that increases in compensation should take precedence over claimed inability to pay or unwillingness to pay." Further, the Union notes that "ability to pay" or "financial ability of the public employer to pay" is not defined in the statute. It turns to the written summary of its financial expert, Kevin Decker, and the "broader approach" urged by Mr.

Decker, an approach "that considers the availability of tax and other revenue sources." The Union argues that the Panel should accept Mr. Decker's conclusion that, in fact, the State has the ability to fund any significant pay increase. It notes that Mr. Decker relied upon the State's documents, which include Division of Budget reports, Comptroller Reports, Surveys, and various parts of the State's Executive Budget for 2005-06. The Union identifies a host of factors that it contends demonstrates the State's ability to pay. It observes that the State Budget Division has opined that the State economy is "gaining momentum." It notes further the evidence concerning "growth and variable compensation in employment" and the rise in "variable income" in the State.

The Union also identifies the September, 2005 Report of the State Division of Budget, and claims that it contains a number of statements showing the improvement in the State's fiscal health. Similarly, fiscal health is reflected, the Union argues, in the October 30, 2005, mid-year Financial Plan Update of the Division of the Budget. The 2005 Report of the State Comptroller, according to the Union, also indicates the "financial strength" of the State. Included in the Comptroller's Report, the Union notes, is information that the "financial markets have recovered." The Union also claims that the Comptroller's Report references a disturbing situation whereby Correction Officers, who have not received an increase in wages, find more of their earnings being spent on taxes, which results in Correction Officers having "generally less net income than at any point in their careers."

The Union also notes that the State Department of Labor in October, 2005 issued a news release in which it was announced that the private sector job count in the State had increased for

the 13th consecutive month and the 23rd time in the previous 25 months. Further, this news release indicated, the Union observes, that the "seasonally adjusted unemployment rate was at its lowest September level since 2000." The Union also notes that in October, 2005 the Federal Reserve Bank's Index of Coincident Economic Indicators reflected that in September 2005 the State's Index of Coincident Economic Indicators "grew at an annual rate of 4.2%" which "was the largest single monthly gain since 2003." The Union also identifies the Federal Reserve Bank's Empire State Manufacturing Survey in October 2005 that, the Union asserts, reflected the fact that conditions in New York for manufacturers continued to improve in October 2005. The Union also urges the Panel to take into account the fact that the State has the ability to "foster economic growth." According to the Union, the record is replete with evidence showing positive economic development in the State. In the Union's estimation, the November 2, 2005 Annual Information Statement Update of the State Department of Budget demonstrates the "State's belief that the State economy is on a solid expansionary path."

The Union maintains, therefore, that "State clearly has the ability to pay a fair and equitable Award." It again emphasizes Mr. Decker's conclusions concerning the State's ability to pay. The Union argues that the State's presentation in this proceeding does not set forth any real disagreement on the State's part concerning its ability to pay. The testimony of Robert Megna, the Chief of the Economic and Revenue Unit in the Department of Budget, according to the Union, supports the conclusion that the State is projecting revenue growth and economic growth each year through 2010-11. Mr. Megna's forecast that spending will increase at a faster rate than the generation of revenue, the Union maintains, consists of assumptions that, in fact,

have not held true during the past several years. The Panel also can take into account, the Union observes, that the State must, as a constitutional requirement, pass a valid budget and projected gaps in the future will therefore be closed when budgets are enacted. In sum, the Union concludes, "there is no articulated reason why the State does not currently have or will not in the future have the ability to pay a fair and equitable wage increase."

The Union also takes note of the risk and dangers that Correction Officers and Sergeants face on an ongoing basis, and claims that these risks and dangers are substantially different from the risks and dangers in other professions. In setting forth its position, the Union identifies the evidence regarding occupational stress, inmate assaults and contraband, infectious disease, gang related activity, and hostage situations. Further, the Union claims that there is significant evidence in the record establishing that there has been substantial changes in the duties and responsibilities of Correction Officers. It notes that under Civil Service Law §118, the Division of Classification and Compensation of the Department of Civil Service can award an upward reallocation based on an application filed under Civil Service Law §120 based on changes of the duties of a position. It notes the last time the Civil Service Division approved a one grade upward salary reallocation for Correction Officers and Correction Sergeants occurred in 1972 and that applications in 1990 and 1998 were denied. Nevertheless, the Union argues, these applications establish the substantial changes in the duties and responsibilities of Correction Officers as seen in the complexity of the rules and regulations concerning all aspects of the position, mandatory training, homeland security, and, for Correction Sergeants, the requirement that they supervise Correction Officers in a number of significant and demanding ways.

According to the Union, its negotiating proposals were all "designed to create a law enforcement contract that fairly compensates Correction Officers and Sergeants." The proposed salary increases of 4% base annual salary on April 1, 2003, October 1, 2003, April 1, 2004, and October 1, 2004, the Union proffers, are supported by the evidence provided by Dr. McCarthy and Kevin Decker. In addition, the Union argues that advancement within the salary grade proposals that would allow employees to reach the job rate in three years rather than seven and receive performance advance payments provided the employee had actual service and grade in the preceding fiscal year rather than 100 workdays in the fiscal year, should be awarded by the Panel. The Union notes that New York State Troopers begin to receive longevity payments after six years of service and obviously reach the job rate in less than seven years. If these proposals are awarded, the Union contends, the Panel in effect would be returning Correction Officers "to more historic levels of job rate progression by decreasing the number of years required to reach the job rate." The Union observes that this could be "phased in over time."

The Union, as to its proposal on longevity payments, states that the present system "is grossly inferior, both in structure and amount, to the State troopers' system." According to the Union, there is no reasonable basis for the difference between Correction Officers and New York State Troopers concerning longevity and, because the Correction Officer's base salary historically was about 90% of the New York State Trooper's salary, longevity payments, the Union argues, should generally follow the same ratio.

As to its proposal on location pay, the Union indicates that its proposal is one seeking to increase location pay along the lines of location pay received by New York State Troopers. The

Union acknowledges that it is not seeking an Award of geographical pay under the statutory scheme that is applicable to New York State Troopers but asserts that the total amount of location pay that the Panel awards should be equal to that received by New York State Troopers. The Union notes that the federal government has "locality pay areas" and that the New York metropolitan counties falling within the "locality pay areas" of the federal government are those for which the Union seeks location pay. Further, the Union maintains that location pay "is not novel" in this State and that there are a number of Civil Service titles setting forth "geographic pay differentials." As to the "geographic pay differentials," the Union also notes that not all of them are in the health care area. The Union contends that its proposal for location pay is consistent with the reality that the cost of living is higher in larger metropolitan areas, which the State itself must address to avoid problems in staffing.

Regarding its proposal for inconvenience pay, the Union claims that the current payment of $500 must be considered "unrealistically low." The Union notes that under the Civil Service Law the Director of Classification and Compensation is authorized to allow a "shift pay differential" to employees who are regularly assigned to work on a shift that is other than a normal day shift. The "shift pay differentials" paid under the Civil Service Law, the Union claims, are often substantially in excess of the $500 that is currently paid to Correction Officers. Further justification for its proposal, the Union argues, is seen by reference to the four contiguous states set forth in Dr. McCarthy's analysis. The Union also asserts that a "good reason" for paying a competitive shift differential is to ensure that a sufficient numbers of senior officers remain on all shifts, which is not easy to accomplish, the Union notes, where officers bid

on the basis of seniority.

As to its proposal for pre-shift briefing, the Union claims that its proposal that the double time rate for holidays or weekends be paid employees who work holidays or weekends must be considered justified by the loss of quality of life and inconvenience said officers experience when working during these times.

Its security and law enforcement differential proposal is justified, the Union claims, because the increase sought is "much more in line with the purpose of the differential, which is to recognize the duties correction officers perform that in the outside world would be performed by other professions." The Union notes that its proposal includes rolling the differential into base salary "because it is compensation for duties that are inherent aspects of the job of correction officer or correction sergeant."

The Union argues that its holiday pay and accumulation proposal should be awarded under a quality of life justification. Moreover, the Union contends, there "should not be any question" that when a Correction Officer or Sergeant leaves the State's employ "they should be paid for any earned and unused holiday compensatory time, without limitation."

Concerning its uniform allowance proposal, the Union notes that the uniforms worn by Correction Officer and Sergeants are important to the State, which has issued a 14-page directive concerning uniforms. It notes that the most recent payment of uniform allowance in December 2005 was $550, representing an increase of only $300 since the uniform allowance was first paid in December 1982, with only a $50 increase in uniform allowance from December 1990.

As to its productivity proposal, the Union claims that this proposal must be considered

within the context of its proposal to roll various items of compensation into base pay. Regarding its Employment Benefit Fund proposal, the Union notes that its proposal seeks to utilize increased funding to establish programs such "a wellness program, a catastrophic fund, a sunglasses program, supplemental accident insurance and/or legal plan." The Union notes that the Employee Benefit Fund for New York State Troopers has more then tripled in size under the New York State Trooper's agreement.

As to its inclusions in base salary proposal, the Union notes that it seeks, effective April 1, 2003, that "all existing and proposed elements of compensation be added to base salary and included in the calculation of the overtime rate." The Union notes further that this would include "the uniform allowance, the security and law enforcement differential, and the payments under the productivity gain program." According to the Union, the last two year award for the New York State Troopers discontinued various compensation provisions but the dollar amounts of the provisions were "rolled into base pay."

The Union claims that the State's health insurance proposal should not be imposed on the Union without the Union receiving the same enhancements that have been accepted by other bargaining units in the State. It notes that the State's proposed plan substantially increases co-payments for hospital and medical services and that the drug co-payments also could substantially increase with the three tier formulary to be added. Further, the Union observes that the State's proposal on health insurance seeks to cut costs by refusing payment on hospital days that are determined not to be medically necessary, which could significantly increase the cost for individual employees.

The Union acknowledges that the State's health insurance proposal has been accepted by other bargaining units in the State. Its reminds the Panel, however, that the Award herein should not include increases in co-pays without also including enhancements received by the other bargaining units. These same enhancements, the Union argues, should likewise be received by the Union.

Furthermore, the Union maintains that the terms of the agreements negotiated in the past for the security services unit must be understood in the context in which they were reached. Specifically, the Union points to "a clear pattern of late agreements" and contends that this pattern is "indicative of strong disagreements that can only be resolved over time."

POSITION OF THE STATE

On the question of comparable jurisdictions, the State claims that the jurisdictions it has offered to the Panel "represented a legitimate and rationale basis for comparison." It notes the testimony of Nicholas Vaginalis, Director of Classification and Compensation for the State Department of Civil Service, compared the job description of Correction Officers and Correction Sergeants to the jurisdictions offered by the State. It also relies upon the testimony of Richard Ahl, Assistant Director of Research in the Governor's Office of Employer Relations, regarding the manner utilized by the State to select the proposed comparables. The State observes that its comparables consist of five states contiguous to New York and five additional states "having either collective bargaining statutes or a population in excess of five (5) million."

It also notes that the counties selected in the State have Department of Correctional Facility Services located therein. The State maintains that the data utilized in making its comparisons were accurate and that the date fixed for the comparisons, March 31, 2003, "provides this Panel with a snapshot of such information to compare COs and Sgts against other jurisdictions' COs and the first line correctional supervisors." The State also observes that it took into account reported salary increases for the jurisdictions which it selected as comparables. The State also identifies the evidence that reflects that the salaries for Correction Officers, between the period 1980 to 2005, increased at a greater rate than consumer prices. Specifically, the State notes, that "the rate of growth for this title's job rate was 31.2 percentage points higher than the rate of growth for consumer prices between 1980 and 2005." At the top step, the State observes, the rate of growth was 57.3%. Additionally, the State notes that an individual who had been hired as a Correction Officer trainee in March 1980 "who was at the title's top longevity step in 2005 would have realized a 351% increase in salary over that 25-year period." A similar "picture" the State contends, can be seen for Correction Sergeants. The State thus concludes that, over time, salaries have increased for the Union "at a rate sufficient to generate substantial real wage growth." Moreover, the State contends, the record reflects that the salaries for unit members are basically competitive with salaries paid by relevant municipal and state employers.

Turning to the testimony of Union witness, Dr. Amy McCarthy, the State identifies the Union's proposed universe of comparables of the New York State Troopers and Correction Officers in four contiguous states. The State claims that Dr. McCarthy made no real effort for this Panel to conclude that any rational basis existed for the comparisons she offered.

Additionally, according to the State, Dr. McCarthy did not compare the New York State Trooper and Correction Officers salaries at any "consistent point in time" and thus "fails to place Trooper salaries in any context." Dr. McCarthy's comparison with the four of five contiguous states, the State argues, must be considered "flawed" because of "her failure to compare salaries at a single point in time." Nor, the State alleges, did Dr. McCarthy offer the Panel a legitimate reason for excluding Vermont from the comparables. The State contrasts the approach used by Dr. McCarthy with the approach it utilized, as seen in the testimony of Richard Ahl, and urges the Panel to accept its comparisons. Noting its county comparisons, the State claims that such comparisons "control for many factors such as local economic conditions, that simple inter-state comparisons cannot hold constant without considerable statistical manipulation." The State also notes that, while OER was given the selection of comparable jurisdictions, the OER relied upon Mr. Vaginalis to identify those titles within the jurisdictions that were comparable to those under the Panel's consideration for the bargaining unit herein.

Turning to its proposed universe of comparables, the State claims that it demonstrates that "New York's base salary plus longevity as of March 31, 2003, was behind those of Massachusetts and New Jersey at all years of service examined" but "exceed those comparable titles in Connecticut and Vermont at all years of service and exceed Pennsylvania's compensation levels at all but 25 years of completed service." The same holds true, the State contends, for the Correction Sergeant title. Additionally, the State claims that the evidence indicates that the "direct compensation per hour work for New York State COs exceeds that of comparable employees in Connecticut and Vermont at all years of service and exceeds

Pennsylvania's levels at all but 25 years of completed service" and "is behind Massachusetts and New Jersey at all years of service." The Correction Sergeant title, the State indicates, "per hours worked is behind Massachusetts and New Jersey but ahead of Connecticut, Pennsylvania, and Vermont at all years of service." New York, the State argues, cannot therefore be considered "at the bottom of the pack in terms of compensation for these titles as the union would have the Panel believe." Moreover, the State claims that its position is even stronger when New York is compared to the five non-contiguous states the State has offered for its comparables. As to these states, the State observes, only California can be considered regularly ahead of New York. As to all states in its proffered universe of comparables, the State claims that, "when compared to the ten states included in the State's analysis, New York is ahead of seven of those ten at almost every year of service" and "[t]hree of the ten states are consistently ahead of New York." New York, the Union asserts, "is solidly within the top-third of a range paid by other relevant states for these same titles."

As to local Correction Officers, the State also claims that its position is "very favorable" in most instances. It notes that the State's salary is ahead of 21 of 29 local jurisdictions at all years of service, ahead of five of the remaining jurisdictions at various points of service, and behind on a consistent basis in only three of the 29 local jurisdictions. As to the Correction Sergeant title, the State notes that its salary exceeds 21 of the 27 local jurisdictions included in the analysis at all years of service and is ahead of the three remaining jurisdictions at various years of service. The State notes that, for the Correction Sergeant title, only three of the 27 jurisdictions can be considered consistently ahead of the State. Accordingly, the State claims

that the salary received by unit members, in fact, supports the Union's contention that State COs "are the best correctional employees in the State."

The State also claims that the record evidence clearly establishes that the salaries paid to unit members are "very competitive" when seen in comparison with the wage rates received in the general economy. The State notes that, at 15 years of service, COs, in terms of salary plus longevity, exceed wages in the North Country Region, the Central New York Region, the Capital District Region, the Mohawk Valley Region, the Western New York Region, and Hudson Valley Region.

The State rejects the Union's attempt to compare itself to New York State Troopers. It relies on the testimony of Lieutenant Colonel James L. Schepperly concerning training, jurisdiction, and duties of the New York State Troopers. His testimony, according to the State, establishes that New York State Troopers have higher entry educational requirements, higher physical standards and undergo an extensive background check, have a greater period and more extensive basis for training, and undergo field-training that Correction Officers do not receive.

The State also focuses on Lieutenant Colonel Schepperly's testimony that New York State Troopers possess police powers with the authority to engage in law enforcement on a state-wide basis and, on occasion, enforce federal laws whereas Correction Officers are not authorized to utilize the full range of laws that are utilized by the New York State Troopers. Thus, the State observes that a Peace Officer's authority is limited to those situations where the officer is acting within his or her special designation and specific area of employment. Further, the State observes that New York State Troopers have special assignments that are permanent and that

they are not compensated for their training time or periods of training that are related to speciality assignment, nor are they compensated for training while "off duty." Moreover, the State offers the observation that, for New York State Troopers, the best interest of the division is the primary factor when job assignments are considered whereas seniority typically comes into play as the primary factor when job assignment are made among members of the Union. Additionally, the State makes a distinction between New York State Troopers receiving overtime pay only when they work more than 168 hours in a 28 day schedule while Correction Officers receive overtime after working more than 40 hours in a scheduled work week.

The State cautions the Panel from making any Award which might "endanger the State's recent and continued economic recovery or push spending on the State workforce above levels for which it has already been budgeted." According to the State, the salaries of unit members have grown at a rate exceeding consumer spending and members of the bargaining unit receive salaries that "consistently exceed those in three out of four contiguous states." The State points to the testimony of Mr. Ahl that the Union's demands, if accepted, would lead to a 700 million dollar liability for the State over the two year period of an Agreement, which the State labels as "beyond any definition of reasonable." Such an Award, the State argues, would be contrary to the "interest and welfare of the public" criterion set forth in the statute.

The State also relies on the testimony of Robert Megna, Chief Budget Examiner for the Fiscal and Revenue Unit at the State Division of Budget, concerning the State's financial condition. Of significance in Mr. Megna's testimony, the State claims, is his assertion that there is a strong reliance by the State on revenue and the financial sector, which causes the State to be

significantly affected by interest rate changes. Mr. Megna testified, the State asserts, that no other state has as strong a reliance on the financial sector as New York. Another concern raised by Mr. Megna, the State notes, is the "potential housing bubble" that could cause difficulty in New York where housing prices have "peaked out." Further, Mr. Megna testified, the State observes, that the economic growth in the State is "slowing."

The State also claims that in 2006 the expiration of the 2005 fiscal year tax surcharge will adversely affect the State's financial situation because the State will lose almost 2 billion dollars in tax revenues in 2006 and 2007. Mr. Megna's testimony, the State maintains, also reveals that the largest economic obstacle that will likely impact the State's ability to pay the Union's demands in 2006 and 2007 is "increased state spending." Mr. Megna's testimony also established, the State argues, that the one billion dollar surplus identified by the Union as a possible source of funding for its contract demands is "in actuality the reserve fund and that while revenue growth is projected at an optimistic $2.2 billion (6 percent), annual spending is projected to grow at an even higher $4.7 billion (10 percent)." This one billion dollar surplus, the State notes, has thus "already been targeted as a partial offset of the anticipated $2.5 billion budget gap."

Focusing on comparisons to "other trades or professions," the State relies on the testimony of Civil Service Director Vaginalis concerning classification and allocation of jobs in the State's workforce. In addition, the State points to the testimony of Lieutenant Commissioner Lucien LeClair that "recent innovations" have made the job of unit members "easier." Moreover, the State notes that the State's classification and compensation system recognizes the

"uniqueness" of the unit member's duties by virtue of the differential payment of $575. It is the State's position that the record evidence clearly establishes that the Union "historically has enjoyed wage growth that both outpaces inflation and is better than its neighbors in upstate communities." The State concludes, therefore, that increases that have been accepted by other bargaining units in the State "would yield an equitable wage package if applied to this bargaining unit." The State argues that is "compensation offer is not only within the statutory criteria but is dictated by it."

According to the State, its health insurance proposal should be accepted. It notes the testimony of Director of Employee Benefit Management Feinberg that the proposal, though containing cost saving measures, also contains enhancements. Further, the State identifies the testimony of Ms. Feinberg that other units, with small modifications, have accepted the State health care plan.

As to its salary proposal, the State claims that Correction Officers and Sergeants "are already appropriate in comparison to other titles in State service ... and will continue to be so with the salary increases proposed by the State." The State contends no recruitment or retention problems exist for Sergeant and Correction Officers. Both Correction Officers and Sergeants, the State claims, "are near the top of the range when viewed in comparison to those received by other comparable employees."

Regarding the salary schedule proposal, the State claims the record establishes that, in past negotiations, when the Parties negotiated salary increases, they would apply the negotiated percentage to the hiring rate and the job rate found at each grade of the salary schedule. The

Parties, the State claims, then determined a temporary range for each grade on the salary schedule, and the resulting number would then be divided by the number of increments in the salary schedule, which was rounded up so as to produce a new increment amount. The State claims that the number would then "repeatedly" be added to the hiring rate for the number of increments until a new job rate was achieved. The State also notes it proposes to provide a $800 lump sum payment to all employee on the payroll on April 1, 2004, which would not be added to base and, a 2.5% increase effective April 1, 2004, which would be added to base. In addition, the State observes that it proposes to add an additional step to the salary schedule "to save money that could be used elsewhere in the overall agreement." In the State's estimation, its proposed reduction in increment would be applied only to new and promoted employees who have received reduced amounts in the remaining steps of the schedule.

As to its location pay proposal, the State notes that it proposes to increase the present downstate differential and also introduce a mid-Hudson adjustment in the amount of 50% of the downstate differential. According to the State, its proposal to eliminate the $4.80 payment to Correction Officers on paid leave for pre-shift would be to rid the Agreement of "an anachronism ... [that] is difficult to justify to taxpayers." The State notes that any saving then achieved could be used to fund other parts of the Agreement.

Regarding security enforcement differential, the State observes that Correction Officers received an award of $125 annual payment to be increased in later fiscal years to a maximum of $575 of April 1, 2002. The current differential, the State contends, must be discussed as an overall economic package. The State also claims that its proposal to reduce recall to a one-hour

minimum would lessen unjustifiable expenditures. The State notes, regarding the uniform allowance, that it has left the matter open for discussion. The State also observes that it proposes to eliminate the legal defense fund, which has been in existence since 1985, on the ground that it has not been used by the Union.

Turning to the Union's proposals, the State argues that the Union's justification of the costs of its proposals, to wit, that the approximate cost of $700 million dollars is less than one percent of the State's budget must be considered "a faulty comparison" and one "taken out of context." Specifically, the State claims that the $700 million dollars in fact represents 31% of the Union's payroll and then jumps to 45% of the current payroll in the second year. Thus, the State observes that the two year cost of the Union's proposal is 76% of the current payroll. As to salary increases, the State notes that the Union's proposals amount to an increase of $257 million dollars over the two year period and that the advancement with salary grade proposal results in an increase of $20 million dollars over the two year period.

The State notes it opposes the Union's longevity demand, observing that only one contiguous state has stacked longevity and no other State bargaining unit save for the State Police has stacked longevity. The State also notes it opposition to the Union's proposal regarding location and convenience pay, claiming that it would amount to an increase, if accepted, of more than 104 million dollars over the two year period of an Agreement. Similarly, the State identifies its opposition to the pre-shift briefing proposal of the Union which, the State contends, would double the cost of pre-shift briefing for weekend and holidays. The costs of the Union's proposals for security enforcement differential and holiday pay and accumulation, the

State contends, are also excessive. The State opposes the Union's uniform allowance proposal, arguing that no showing has been made "that the present benefit for the cleaning and maintenance of uniforms is insufficient to clean and maintain the uniforms that the State provides." Regarding pilot productivity gain, the State notes its proposal to keep the benefit sunset "because there simply was essentially no change in the sick leave usage" and that the "program did not produce any offsetting savings in overtime to the State as was intended."

AWARD

Preliminary Observations & Background

The record shows that the bargaining unit members eligible for this interest arbitration fall into the following title and salary grades:

Title and Salary Grade	Number of Employees
Correction Officer (SG-14)	18,223
Correction Sergeant (SG-17)	1,345
Community Correction Center Assistant (SG-15)	30
Institution Safety Officer (SG-9)	3

The Union's first opportunity to petition for interest arbitration did not occur until the passage of Chapter 586 of the Laws of 2001 and Chapter 220 of the Laws of 2002. Accordingly, this interest arbitration proceeding is the first occasion for the Parties to meet in this forum. The Panel Chairperson finds it appropriate to state that both Parties and particularly their representatives have done a commendable and professional job in bringing to a conclusion a

complex, and, at times, highly emotional process. The Parties and their representatives effectively served both the interests of their constituencies, the general public, and the expectations of their professional roles. The Parties' efforts in approaching this difficult and laborious process has been both effective and professional as can be seen in the Parties' willingness to extend the Award herein by two years. The Parties understood that a two year agreement would serve no one's interest because the Parties would have to return to the bargaining table to begin the negotiating process even before the ink dried on this Award. The Parties, in other words, have allowed themselves to live with this Award, given its four year term, before returning to the bargaining table and the always distinct possibility of mediation and interest arbitration. The Chairperson wishes specifically to extend his thanks to the other two Panel Members, both of whom managed in executive session to advocate zealously their client's interests and yet always partake in rational and productive communications. Their forward thinking attributed significantly to bring this process to a conclusion that in the Chairperson's opinion served the Parties best interest.

This Award will first set forth the Panel's finding regarding the universe of comparables. The Award will then track the paragraphs of the Award, which is annexed hereto as an Exhibit, issued by the Panel on March 21, 2006, as follows:

1. General Salary Increase
2. Uniforms
3. Longevity
4. Security Enforcement Differential
5. Location Pay
6. Health Insurance
7. Inconvenience Pay
8. Employee Benefit Fund

9. Documentation Regarding Approved Medical Absences
10. Addition of Subparagraph (f) to Article 14.11
11. Language Added to Article 14.4 Regarding Return from Sick Leave.

Term of Award

As noted, the Parties have agreed specifically to extend this Award beyond its two year statutory limit. Thus, the Award herein covers the four year period commencing April 1, 2003 and ending on March 31, 2007.

Comparability

The Union observes that the acts of the legislative and executive branch in implementing the amendments to the Civil Service Law that bestowed the right to binding interest arbitration on the members of the Union must be considered of some significance. The comments of Arbitrator Martin Scheinman in the first interest arbitration award issued for New York State Troopers recognized that the time had come to go beyond the relationship between the New York State Troopers and other State labor organizations and to begin a "fundamental alteration in the economic terms and conditions of employment of New York State troopers." As Arbitrator Scheinman noted, a need existed to place "more weight" on "the wages and economic benefits of police personnel in comparable jurisdictions." Similarly, Arbitrator Joel Douglas, in the first award for State Police BCI members, noted:

> What is more significant than insulated comparability is that this award dramatically changes BCI compensation. As noted by Arbitrator Scheinman in the Trooper award ..., the instant award follows that thinking in that the BCI is now on a path whereby they will be compensated more in line with other police, rather than State personnel. The Legislature and the Governor, by signing the

> interest arbitration legislation, agree with that philosophy. This panel can do no less. The bargaining relationship between the parties has been predominately recast and it is hoped that this award will establish the basis for successor agreements based upon employment relationships found in equivalent police agencies.

While the above observations of Arbitrators Scheinman and Douglas distance the Union from the historical relationship with other State employee labor organizations, their comments do not, the Panel finds, require the Panel to utilize New York State Troopers as a significant member of the community of comparables. In the final analysis, New York State Troopers and Correction Officers and Correction Sergeants, while performing important missions in a context of danger and challenge, are in significantly different employment settings to justify the Panel's conclusion that New York State Troopers are not a proper object of any substantial comparison. It is noted that the entry requirements for New York State Troopers and Correction Officers are significantly different, initial training periods and courses of instruction differ considerably, and the work environments of New York State Troopers and Correction Officers are substantially different. For example, New York State Troopers, in addressing the protection of public safety, enforce the full complement of state laws whereas Correction Officers and Sergeant have a different basic mission.

It can be said, however, that the members of the unit eligible for this Award work under very challenging and at times dangerous circumstances, which the Panel notes, triggered the legislation that authorizes this proceeding. Indeed, the services performed by unit members are unique and as already noted very demanding. As the Union has observed, a Correction Officer, working as he or she does in a paramilitary organization, is bound to follow any number of

regulations and policies to their "letter" but, in doing so, must be flexible and creative with an inmate population that often poses not only threats to the safety and welfare of Correction Officers and Sergeants, but also poses manipulative and other irrational demands. Accordingly, the Panel does not believe that it is profitable to compare the Union members eligible for interest arbitration with other State labor organizations. The need to find a basis of comparison that extends beyond other State employee labor organizations is also seen in the fact that Correction Officers and Sergeants work schedules that, at least for many, take them away from their families during periods of time that most of us have the freedom to spend with our families and loved ones. Most state offices are closed on national holidays, by way of example, but the New York State Correctional facilities must run at full speed and strength on all weekends and holidays.

The Panel finds, consistent with its perception of the Scheinman Award for New York State Troopers, that the universe of comparables should include other state correctional officers in essentially the same geographical region as Union members. Accordingly, the Panel selects as the most relevant universe of comparables State Correction Officers in the contiguous states of Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont. The Panel finds no basis to accept the State's argument that other states, not connected geographically to New York, should enter into the universe of comparables. The Panel also rejects the Union's contention that Vermont should be excluded from the contiguous state comparables. The Panel nevertheless believes 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 the New York State and the four other contiguous states. The Panel finds no basis to include

local, correctional officers within New York in the universe of comparables. The Panel would note, however, that it finds 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. Nevertheless, the Panel's focus in setting forth the terms of the Award herein is primarily based on the Correctional Officers in the five contiguous states.

General Salary Increases

The Union has proposed a general salary increase of 4% effective April 1, 2003, a 4% general increase effective October 1, 2003, a 4% increase effective April 1, 2004, and a 4% increase effective October 1, 2004.

The State proposes a $800 lump sum payment to all employees on the payroll on April 1, 2004, which would not be added to base pay, and, effective April 1, 2004, a 2.5% general wage increase for all employees in the bargaining unit, which would be added to base pay.

Regarding comparables, the Union, through testimony and analysis of its witness, Dr. Amy McCarthy, established for the four contiguous states of Connecticut, Massachusetts, New Jersey, and Pennsylvania that Union members were paid at rates that were below the average of these four contiguous states. For fiscal year 2004, for example, based on a 25 year average, State Correction Officers earned 11.2% below the average salary of Correction Officers in these four contiguous states; for fiscal year 2005, New York was 11.3% below the average salary of these four contiguous states; and for fiscal year 2006, the Correction Officers were 11.8% below the average salary of the other four states.

Including Vermont in the contiguous states and looking at base salary plus longevity as of March 31, 2003, for Correction Officers at 15 years of service, New York Correction Officers were compensated more than Officers in Connecticut, with a variance of 6.26%; Massachusetts Correction Officers received greater compensation than New York Correction Officers, with a variance of 18%; New Jersey Correction Officers earned more than New York State Correction Officers, with a variance of 26.07%; Pennsylvania Officers earned slightly less than New York State Officers, with a variance of .47%; and New York State Officers were compensated more than Officers in Vermont, with a variance of 26.10%. For Correction Sergeants, the record demonstrates that, at 15 years of service as of March 31, 2003, in terms of base salary plus longevity, Sergeants in New York State earned more than those in Connecticut, with a variance of 12.56%; Sergeants in New York State earned less than those in Massachusetts, with a 9.51% variance; New Jersey Sergeants earned more than their counterparts in New York, with a 24.51% variance; New York Sergeants earned more than those in Pennsylvania, with a 7.99% variance, and New York State Sergeants were compensated greater than those in Vermont, with a variance of 30.12%.

The Panel refers to the above comparisons for the sake of illustration; both Parties have placed detailed information in the record, all of which was considered by the Panel. The Panel notes that the above illustrations, however, serve to support the conclusion that, in terms of comparables, there is a need to make an upward adjustment for State Correction Officers to place them more on par with those officers in the five contiguous states. This finding, needless to say, does not end the inquiry, because there is a need to consider the State's ability to pay.

As is typically the case in interest arbitration proceedings, the Parties offer significantly different portrayals of the fiscal condition of the governmental unit when they present their positions regarding ability to pay. The Panel expresses its gratitude to the Parties in this case for their efforts in developing detailed evidence bearing on this subject matter rather than offering conclusory allegations in support of their positions. Each Party, in its own way, has been candid in its assessment of the State's ability to pay such that the Union recognizes limitations on the State's ability and the State acknowledges that it does have some ability to address wage increases. Again, the Panel attaches some significance to the legislative and executive decisions that saw the passage of the laws allowing for the instant proceeding. On this point, the Panel would find that the implementation of the relevant legislation constituted a recognition on the State's part that, it would have to, from a compensation point of view, recognize the unique status of Correction Officers vis-á-vis other state employee labor organizations.

Centering on the notion of the State's ability to pay, the State's position, relying on part on the testimony of Robert Megna, Chief Budget Examiner for the Fiscal and Revenue Unit, and the exhibits associated therewith, demonstrated that the State for fiscal year 2006-07 will experience a 10% growth in spending over fiscal year 2005-06, with a claimed 2.5 million dollar budget gap. The record of course also indicates, as Mr. Megna acknowledged in his testimony, that the State's economic condition has fortunately been improving, as the Union also pointed out with its references to the record evidence, including the testimony of its financial expert, Kevin Decker. Mr. Decker concluded, in part, that the State's ability to pay, as seen in the anticipated General Fund Surplus for the 2005-06 fiscal year, would extend to any Award that

could be deemed "fair and reasonable." The Union also takes note of the decision of the Court of Appeals in ***City of Buffalo v. Rinaldo***, 41 N.Y.2d 764 (1977), that grants the Panel a fair amount of discretion concerning what weight should be placed on ability to pay when considering wage increases.

The Panel finds that the State does posses the ability to address fair and equitable increases in compensation that, overall, will put the Union more on par with correction officers in the five contiguous states. A significant part of the compensation increase is the following Award in general wage increases:

> The Panel's Award on General Salary Increases for each of the period of this Award is:
>
> Effective April 1, 2003, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2003, will be increased by 2.25 percent.
>
> Effective April 1, 2004, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2004, will be increased by 2.75 percent.
>
> Effective April 1, 2005, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2005, will be increased by 3 percent.
>
> Effective April 1, 2006, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2006, will be increased by 3 percent.

Uniforms

The Union seeks a uniform allowance payment to $1000, $500 to be paid on June 1, and $550 on December 1 of each year by separate check. Additionally, it seeks an increase to $150, payable in two $75 installments, along with the general uniform allowance checks, for the shock

incarceration facility subsidy. As noted, the Union argues that the increase in uniform allowance is long overdue, since there has only been a $50 increase in uniform allowance in the past 15 years. The Union takes note of how important to the State the uniforms are considered. The State's position on this proposal by the Union was one reflecting some flexibility, since the State left the matter open for discussion.

There is an anachronistic quality to uniform allowances. While it is fair to conclude, as the Parties have done in their collective negotiations, that there is a need for Union members to maintain their uniforms in an appropriate manner and in a manner consistent with all relevant regulations, one could argue that in the final analysis this obligation should be addressed by an Officer from his or her resources provided the Officer receives fair compensation in wages. It is not a cynical observation for the Panel to note that the payment of uniform allowance, in the interest arbitration context, is often viewed as simply another way of providing greater compensation to members of the Union. In any event, the Panel determines that, in the short run, the uniform allowance should be increased in view of the fact that it has not appreciably increased in a number of years. The Award, however, ultimately folds uniform allowance into the basic compensation package. The Panel's Award on uniform allowance is:

The language of Article 20 remains unchanged with the following exceptions:

The amounts to be paid set forth in Article 20.2 are changed to:

December 1, 2003	-	$575
December 1, 2004	-	$625
December 1, 2005	-	$725
December 1, 2006	-	$875

Such amounts shall be offset by payments already received as uniform allowance in each year and the remainder shall be calculated as part of a retroactive payment.

Effective March 31, 2007, the uniform allowance of $875 shall be increased for arbitration eligible employees covered by Article 20 to $1,075 and shall be added to the basic annual salary of those employees in payroll status on March 30, 2007. Effective March 31, 2007, Article 20 shall be deleted from the collective bargaining agreement and uniform allowance shall no longer exist.

Longevity

Under the Parties' current Agreement, Officers receive longevity steps at 10, 15, and 20 years of service as follows:

10 years	-	$2,069.00
15 years	-	$4,138.00
20 years	-	$7,278.00

The Union seeks to add longevity payments of $1000 at 5 years of service and $5000 at 25 years of service and increase the current longevity steps by 10%. Moreover, the Union seeks, between 10 and 20 years of service, to create annual longevity payments in amounts equal to 20% of the difference between steps 10 and 15 and steps 15 and 20.

The State opposes the Union's longevity demand. It calls the Union's demand one for "stacked longevity." The State observes that only one contiguous state has "stacked longevity" and no other State bargaining unit except for the Division of State Police bargaining units have such a benefit.

The Panel notes the analysis and observations made above regarding the record evidence concerning compensation and the State's ability to pay. It is evident to the Panel that the need for greater compensation for the Union members, when seen in the universe of comparables,

extends to longevity pay. Increases, therefore, are in order. Also in order is a fourth longevity step at 25 years to extend a compensation increase at the higher end of the seniority range. The Panel, however, finds no basis for "stacked longevity," primarily based on its finding above that the New York State Troopers are not an apt source of essential comparison.

The Panel's Award is:

> The longevity payment provisions of Article 11.6 shall continue however, effective April 1, 2003, for arbitration eligible employees a new 25 year payment is established and the increased longevity amounts are summarized as follows:

	10 yr	15 yr	20 yr	25 yr
Salary Grade 9	$2,007	$3,773	$6,447	$7,070
Salary Grade 14	$2,500	$4,700	$7,750	$8,500
Salary Grade 15	$2,604	$4,895	$8,025	$8,801
Salary Grade 17	$2,864	$5,384	$8,712	$9,555

> In subsequent years covered by this award the amounts cited shall be increased by the salary increases provided in paragraph 1. Payment of such amounts, as part of a retroactive payment, shall be offset by any longevity monies already received by arbitration eligible employees.

Security Enforcement Differential

The Parties' current Agreement contains, in Article 11.10, for the first time, a security and law enforcement differential "in recognition" of the Union members' "security and law enforcement responsibilities." The amount of the differential was $500 for 2000-01, $550 for 2002-02; and $575 for 2002-03.

The Union seeks an increase, effective April 1, 2003, to $2,500 and second increase, effective April 1, 2004 to $3,000.

It is the State's position that any change to the differential must be resolved in the context

of the overall economic package.

The Panel agrees with the State that the reasoning to be brought to bear on this proposal of the Union must be in accord with the earlier observations and findings regarding compensation and comparables. In addition, the Panel takes note of its comments above regarding uniform allowance and the ultimate need to fold that allowance into the general compensation package. Specifically, the Panel finds that, for the reasons set forth in support of an increase in compensation to the Union members, and for the justification of folding the uniform allowance into general compensation, that there should be an increase in the differential and the same process should be followed to fold the differential into base salary. It is noted that the increases provided are not at the level sought, which is in keeping with the Panel's finding that the New York State Troopers should not be in the universe of comparables and the Panel's recognition of limitations faced by the State in its ability to pay. The Panel's Award on the security enforcement differential is:

> Effective April 1, 2004 the security enforcement differential for arbitration eligible employees shall be increased by $50 to $625; effective April 1, 2005 the differential shall be increased by $225 to $850; effective April 1, 2006 the differential shall be increased by $250 to $1100.
>
> Effective March 31, 2007 the differential shall be increased by $450 to $1550. Such amount shall be added on that date to the basic annual salary of those arbitration eligible employees. Also, on March 31, 2007, Article 11.10 shall be deleted from the collective bargaining agreement and the security enforcement differential shall no longer exist.
>
> Such amounts cited herein shall be offset by payments already received as security enforcement differential in each year and the remainder shall be calculated as part of a retroactive payment.

Location Pay

At present, employee working in New York City, Nassau, Suffolk, Westchester, and Rockland Counties receive location pay of $1,200. The Panel notes that currently no State Correctional Facilities can be found in Nassau, Suffolk, or Rockland Counties. Approximately 1,650 employees are currently receiving location pay.

The Union proposes location pay in a manner to resemble the New York State Troopers as follows:

	Putnam, Dutchess & Orange	NYC, Rockland & Westchester	Nassau & Suffolk
Location Pay	-	$1,351	$1,351
Supplemental Location Pay	$1,126	$1,688	$1,970
Geographic Pay	-	$3,650	$4,800
Total	$1,126	$6,689	$8,121

The State has proposed an increase in the downstate differential and a Mid-Hudson adjustment, as follows:

		Downstate	Mid-Hudson
Effective	4/1/04	$1230	$615
	4/1/05	$1264	$632
	4/1/06	$1302	$651

Mid-Hudson shall be defined as Orange, Dutchess, and Putnam Counties.

The Panel notes the Parties' conceptual agreement to the extent that there needs to be an increase in location pay and an extension of geographical areas covered by the pay. The Panel

finds, in view of the record evidence, that there is indeed a need to make a modest increase of location pay and to immediately bring Rockland County into the geographical region, with Orange, Putnam, and Dutchess Counties to be added. Moreover, while the Panel has 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 sum, the Panel finds that its Award properly increases the amount of location pay and reasonably adds regions to be included in location pay. The Panel's Award is:

> Effective on April 1, 2003, the location compensation of $1200 shall be increased by 2.25 percent for arbitration eligible employees who are in employment status on March 31, 2003 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland.
>
> Effective on April 1, 2004, the location compensation shall be increased by 2.75 percent for arbitration eligible employees who are in employment status on March 31, 2004 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland. To this amount will be added a supplemental location payment of $1591.
>
> Effective on April 1, 2005, the new location compensation established on April 1, 2004 shall be increased by 3 percent for arbitration eligible employees who are in employment status on March 31, 2005 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland.
>
> Effective April 1, 2006, the location compensation shall be increased by 3 percent for arbitration eligible employees who are in employment status on March 31, 2006 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland.
>
> Effective April 1, 2004, a new location compensation of $1061 shall be paid to arbitration eligible employees who are in employment status on March 31, 2004, in the counties of Orange, Putnam and Dutchess. Effective April 1, 2005 and April 1, 2006 such location pay shall be increased by the applicable general salary increase percentages.

The amounts so awarded shall be paid as part of a retroactive payment which shall be offset by payments already received, where applicable, as location compensation.

Health Insurance

As noted above, the State's proposal is, save for several minor variations, the same proposal that has been accepted by agreement or in interest arbitration for other State labor organizations. The State urges the acceptance of its proposal in its entirety. The Union acknowledges that the State's proposal has been accepted by other State bargaining units that have contracts. The Union's position regarding the State's health insurance proposal is one that basically resists the increases in co-pays without the Union receiving enhancements.

The Panel is convinced of the need for the State to achieve changes in health insurance. There is no need for the Panel to belabor the need for cost efficiencies to be incorporated in a health insurance plan if the State is going to be able to stem the tide of rising health insurance costs. Further, the Panel notes the wide acceptance by other unions and in interest arbitration awards of the State's proposal. In addition, the Panel observes that the Union has made significant gains in compensation in this Award which, the Panel finds, works to offset the increased co-pays found in the health insurance plan. Hence, the Panel issues the following Award:

> The Health Insurance modifications contained in the Award will be implemented on the first of the month no sooner than 60 days after the date of the Award unless otherwise noted.
>
> 1. Effective on a date to be determined the Hospital Emergency Room copayment will increase to $50. Effective January 1, 2007, the Hospital Emergency Room copayment will increase to $60.
> 2. Effective on a date to be determined the Hospital Outpatient

copayment will increase to $35. Coincident with the increase in the hospital outpatient copayment, services provided in a hospital owned or operated extension clinic will be paid by the hospital carrier.

3. Effective on a date to be determined no payment will be made for inpatient hospital days determined to be non-medically necessary by the hospital carrier.

4. Effective on a date to be determined, the Hospital component (inpatient and outpatient services) of the Empire Plan will be modified as follows:

- The Hospital carrier will establish a network of hospitals (acute care general hospitals, skilled nursing facilities and hospices) throughout the United States.

- Any hospital that does not enter into a participating agreement with the hospital carrier will be considered to be a non-network facility.

- Covered inpatient services received at a network hospital will be paid in-full. Covered outpatient services (outpatient lab, x-ray, etc. and emergency room) received at a network hospital will be subject to the appropriate copayment.

- Covered inpatient services received at a non-network hospital will be reimbursed at 90% of charges. There will be a separate $1500 annual Hospital coinsurance maximum per enrollee, enrolled spouse/domestic partner and all dependent children combined established for non-network hospital out-of-pocket expenses.

- The $1500 Hospital coinsurance maximum is for non-network hospital expenses only and cannot be combined with any coinsurance maximums for other Empire Plan components.

- Covered outpatient services received at a non-network hospital will be reimbursed at 90% of charges. The enrollee will be responsible for 10% of charges(coinsurance) or a $75 copayment whichever is greater. The non-network

outpatient coinsurance/copayment will be applied toward the $1500 annual coinsurance maximum.

- Once the enrollee, enrolled spouse/domestic partner or all dependent children combined have incurred $500 in non-network expenses, a claim may be filed with the medical carrier for reimbursement of out-of-pocket non-network expenses incurred above the $500 and up to the balance of the coinsurance maximum.

- Services received at a non-network hospital will be reimbursed at the network level of benefits under the following situations:

  - Emergency outpatient/inpatient treatment;
  - Inpatient/outpatient treatment only offered by a non-network hospital;
  - Inpatient/outpatient treatment received outside of the US; and
  - Inpatient/outpatient treatment in geographic areas where reasonable access to a network hospital does not exist.

- Anesthesiology, pathology and radiology services received at a network hospital will be paid-in-full less any appropriate copayment even if the provider is not participating in the Empire Plan participating provider network under the medical component.

5. Effective on a date to be determined the participating provider office visit, office surgery, radiology and laboratory copayments will increase to $15. Effective January 1, 2007, the participating provider office visit, office surgery, radiology and laboratory copayments will increase to $18.

6. Effective January 1, 2007, the Managed Mental Health and Substance Abuse Program participating provider copayment for outpatient mental health services will increase to $18.

7. Effective on a date to be determined the Empire Plan Prescription Drug Program will be modified as follows:

i. A third tier of prescription drugs and prescription drug copayment will be created to differentiate between preferred and non-preferred brand-name drugs.

ii. The copayment will be $5 for generic drugs, $15 for preferred brand name drugs and $30 for non-preferred brand name drugs for up to a 30-day supply at either a retail pharmacy or the mail service pharmacy.

1. When a brand-name prescription drug is dispensed and an FDA-approved generic equivalent is available, the member will be responsible for the difference in cost between the generic drug and the non-preferred brand-name drug, plus the non-preferred brand-name copayment ($30).

iii. The copayment will be $10 for generic drugs, $30 for preferred brand name drugs and $60 for non-preferred brand name drugs for a 31 to 90 day supply at a retail pharmacy.

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

iv. The copayment will be $5 for generic drugs, $20 for preferred brand name drugs and $55 for non-preferred brand name drugs for a 31 to 90 day supply at the mail service pharmacy.

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

8. Effective on a date to be determined, the Empire Plan Centers of Excellence Programs will expand to include Cancer Resource

Services. The Cancer Resource Program will provide:

- Direct telephonic nurse consultations;
- Information and assistance in locating appropriate care centers;
- Connection with cancer experts at Cancer Resource Services network facilities;
- A travel allowance up to $10,000; and
- Paid-in-full reimbursement for all services provided at a Cancer Resource Services network facility when the care is pre-certified.

9. Effective on a date to be determined a Prosthetic and Orthotic network will be available to Empire Plan enrollees. Devices purchased through an approved network provider will be paid-in-full under the participating provider component of the Empire Plan.

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

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

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

11. Effective on a date to be determined the EP infertility lifetime maximum benefit will increase to $50,000 per covered individual.

12. Effective on a date to be determined the EP hearing aid allowance will be $1,200 per hearing aid per ear. Effective January 1, 2006 the hearing aid allowance will increase to $1,500 per hearing aid per ear.

13. Effective on a date to be determined EP mastectomy prosthetics will be a paid-in-full benefit.

14. Effective on a date to be determined, the EP maximum lifetime benefit for non-network substance abuse services shall be increased to $250,000

15. Effective on a date to be determined the State and the NYSCOPBA Joint Committee on Health Benefits will develop and implement two additional EP disease management programs.

16. The NYSCOPBA Joint Committee on Health Benefits will work with the State to implement a direct debit vehicle to be utilized under the Medical Flexible Spending Account.

17. Effective on a date to be determined, the maximum annual Dental Care benefit per person shall be increased to $2,300.

18. Effective on a date to be determined, the maximum lifetime benefit for orthodontic treatment will increase to $2,300.

19. Effective on a date to be determined, eligible expenses under the Medical Flexible Spending Account will be expanded to include over-the-counter medications according to guidelines developed by the Medical Flexible Spending Account Administrator.

20. The State shall seek the appropriation of funds by the Legislature to support the NYSCOPBA Joint Committee on Health Benefits initiatives and to carry out the administrative responsibilities of the Committee in the amount of $136,500 for the period April 1, 2003 to March 31, 2004; April 1, 2004 to March 31, 2005; April 1, 2005 to March 31, 2006 and April 1, 2006 to March 31, 2007.

21. Effective on a date to be determined a program that will allow enrollees to obtain Laser Vision Correction services at discounted enrollee-pay-all fees through a network of providers will be implemented.

Inconvenience Pay

Inconvenience pay, or shift differential, currently is paid in the amount of $500 per year for employees who work four or more hours between 6:00 p.m. and 6:00 a.m. The Union seeks an increase in inconvenience pay and a different set of criteria. Thus, the Union proposes an additional amount of $2.00 per hour for each hour worked between 6:00 p.m. and 6:00 a.m. The State resists inconvenience pay on the ground that the shifts in question are typically bid on by more senior employees because that they will then be on duty while inmates are asleep.

The Panel notes the record evidence, set forth in Dr. McCarthy's analysis, that shift differential for State Correction Officers is 71% below the median of the four contiguous states relied upon by the Union. It also notes that, intra-state, shift differentials have been authorized for a number of titles in State service that far exceed the $500 currently paid to Union members. The record evidence is less than clear as to whether the shifts that would give rise to differential pay are attractive or not attractive to more senior employees, who have bid rights to the shifts. Thus, the Panel is not altogether certain that an increase in shift pay would truly serve as an incentive to keep senior officers on the shifts. Nevertheless, the comparative data in the record establishes that the current payment is insufficient and the Panel finds therefore, based on the comparison and the State's ability to pay, that an increase and a change in the calculation of differential pay is mandated. Thus, the Panel's Award is:

Effective April 1, 2006, 11.7(b) shall be modified to reflect that arbitration

eligible employees working on the night shift, as defined by the facility, shall be paid 50 cents per hour while working those hours.

Also effective April 1, 2006, employees working the evening shift, as defined by the facility, shall be paid $1.00 per hour for hours worked during that shift.

Members on paid leave for line-of-duty injuries shall continue to receive inconvenience payments as provided above.

As this is a new method of payment for this benefit, the State will implement such as soon as practical after enabling legislation is passed. However, the calculations for such shall begin on April 1, 2006.

Employee Benefit Fund

The Parties' current Agreement contains an Employee Benefit Fund. For the 1999-03 Contract, the funding level was $20 per employee per year. Record evidence indicates that the fund has been utilized to provide life insurance and hostage insurance programs for members of the Union. The Union seeks an increase to $220 of the amount the State will contribute annually to the benefit fund. According to the Union, the increased funding would allow for additional benefits to be funded as well as address the rising costs of the insurance programs falling within the fund. The State has shown flexibility in addressing the Union's proposal.

The Panel notes the beneficial purposes of the fund but also must state what it considers to be the realistic appraisal that the State's ability to pay limits the amount of the increase that can be provided, particularly in view of the gains in compensation set forth in this Award. Based on these observations, the Panel's Award is:

Article 25.9 (Employee Benefit Fund) shall be modified effective April 1, 2003. The amount shall increase to $25; effective April 1, 2006, it shall be increased to $30.

Addition To Article 14.4 (Adequate Documentation for Medical Provider)

Article 14.4, entitled Sick Leave Accumulation, the Parties agree, should be modified to add the following language. Accordingly, the Panel's Award is:

> Effective July 1, 2006, employees shall be required consistent with current medical documentation policy, to provide adequate documentation from the medical provider for all pre-approved medical absences including those of four hours or less. Upon the second instance of failure to provide adequate documentation, the employee shall be subject to discipline. However, this in no way is intended to otherwise alter present medical documentation requirements.

Modification of Article 14.11 (Add Sub-paragraph [f])

Article 14.11, entitled Medical Verification, the Parties agree, should be modified by adding subparagraph (f). Thus, the Panel's Award is:

> 14.11 (f) Section 14.11 of this agreement shall not apply to Workers' Compensation, or Section 72 or 73 of the Civil Service Law.

Modification of Article 14.4 (Sick Leave Notification)

The Parties have agreed that Article 14.4, entitled sick leave accumulation, should be amended to add additional language. Thus, the Panel's Award is:

> Effective July 1, 2006, for all sick leave absences of a full shift of more, returning employees shall provide at least eight hours advance notice of their intended return to work. However, this in no way is intended to otherwise alter present notification procedures.

RETROACTIVE PAYMENTS PURSUANT TO THIS AWARD

Given that the date of this award occurs over three years after the expiration of the Agreement between the parties, and given that the terms of this award provide increases for that

three-year period, a retroactive payment will be due to eligible members of the union. Such retroactive payment will necessarily cover, as indicated, the general salary increase, location pay, security enforcement differential, uniform allowance, and longevity payments for the periods preceding implementation of this award in 2006. It is the intent and direction of the Panel that such retroactive payments to any individual not negatively impact on the final average salary considerations for retirement purposes

AWARD ON REMAINING ISSUES

Any items other those specifically addressed by this Award remain "status quo" as they existed under the 1999-2003 Collective Bargaining Agreement.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

THE STATE OF NEW YORK

Employer,

-and-

NEW YORK STATE CORRECTIONAL OFFICERS AND POLICE BENEVOLENT ASSOCIATION, INC.

Employee Organization.

FINAL AND BINDING AWARD OF TRIPARTITE PANEL

1A 2004 - 009

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN: Thomas N. Rinaldo, Esq.

PUBLIC EMPLOYEE PANEL MEMBER: Michael C. Axelrod, Esq.
Certilman Balin Adler & Hyman, LLP

PUBLIC EMPLOYER PANEL MEMBER: Walter J. Pellegrini, Esq.
Governor's Office of Employee Relations

Appearances:

For the State of New York: Governor's Office of Employee Relations
Maureen Seidel, Esq. Of Counsel
Gary Simpson, Esq. Of Counsel

For the New York State Correctional Officers and Police Benevolent Association, Inc.: William F. Sheehan, Esq.
Nancy L. Burritt, Esq.
Sheehan, Greene, Carroway, Golderman & Jacques LLP

W. James Schwan, Esq.

Having been granted an extension of authority by the parties herein, the State of New York and the New York State Correction Officers Police Benevolent Association, Inc, and in compliance with section 209 of the Taylor Law, issues the following award covering four years commencing with 2003-2004 and ending 2006-2007. A full opinion setting forth the reason and rationale of said panel shall follow the issuance of this final and binding award.

1) General Salary Increase

Effective April 1, 2003, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2003, will be increased by 2.25 percent.

Effective April 1, 2004, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2004, will be increased by 2.75 percent.

Effective April 1, 2005, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2005, will be increased by 3 percent.

Effective April 1, 2006, the basic annual salary of arbitration eligible employees in full-time status annual salaried employment status on March 31, 2006, will be increased by 3 percent.

2) Uniforms

The language of Article 20 remains unchanged with the following exceptions:

The amounts to be paid set forth in Article 20.2 are changed to:

December 1, 2003	- $575
December 1, 2004	- $625
December 1, 2005	- $725
December 1, 2006	- $875

Such amounts shall be offset by payments already received as uniform allowance in each year and the remainder shall be calculated as part of a retroactive payment.

Effective March 31, 2007, the uniform allowance of $875 shall be increased for arbitration eligible employees covered by Article 20 to $1,075 and shall be added to the basic annual salary of those employees in payroll status on March 30, 2007. Effective March 31, 2007, Article 20 shall be deleted from the collective bargaining agreement and uniform allowance shall no longer exist.

3) Longevity

The longevity payment provisions of Article 11.6 shall continue however, effective April 1, 2003, for arbitration eligible employees a new 25 year payment is established and the increased longevity amounts are summarized as follows:

	10 yr	15 yr	20yr	25 yr
Salary Grade 9	$2,007	$3,773	$6,447	$7,070
Salary Grade 14	$2,500	$4,700	$7,750	$8,500
Salary Grade 15	$2,604	$4,895	$8,025	$8,801
Salary Grade 17	$2,864	$5,384	$8,712	$9,555

In subsequent years covered by this award the amounts cited shall be increased by the salary increases provided in paragraph 1. Payment of such amounts shall be offset by any longevity monies already received by arbitration eligible employees.

4) Security Enforcement Differential

Effective April 1, 2004 the security enforcement differential for arbitration eligible employees shall be increased by $50 to $625; effective April 1, 2005 the differential shall be increased by $225 to $850; effective April 1, 2006 the differential shall be increased by $250 to $1100.

Effective March 31, 2007 the differential shall be increased by $450 to $1550. Such amount shall be added on that date to the basic annual salary of those arbitration eligible employees. Also, on March 31, 2007, Article 11.10 shall be deleted from the collective bargaining agreement and the security enforcement differential shall no longer exist.

Such amounts cited herein shall be offset by payments already received as security enforcement differential in each year and the remainder shall be calculated as part of a retroactive payment.

5) Location

Effective on April 1, 2003, the location compensation of $1200 shall be increased by 2.25 percent for arbitration eligible employees who are in employment status on March 31, 2003 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland.

Effective on April 1, 2004, the location compensation shall be increased by 2.75 percent for arbitration eligible employees who are in employment status on March 31, 2004 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland. To this amount will be added a supplemental location payment of $1591.

Effective on April 1, 2005, the new location compensation established on April 1, 2004 shall be increased by 3 percent for arbitration eligible employees who are in employment status on March 31, 2005 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland.

Effective on April 1, 2006, the location compensation shall be increased by 3 percent for arbitration eligible employees who are in employment status on March 31, 2006 in the counties of New York City, Nassau, Suffolk, Westchester and Rockland.

Effective April 1, 2004, a new location compensation of $1061 shall be paid to arbitration eligible employees who are in employment status on March 31, 2004, in the counties of Orange, Putnam and Dutchess. Effective April 1, 2005 and April 1, 2006 such location pay shall be increased by the applicable general salary increase percentages.

6) Health Insurance

The Health Insurance modifications contained in the Award will be implemented on the first of the month no sooner than 60 days after the date of the Award unless otherwise noted.

1. Effective on a date to be determined the Hospital Emergency Room copayment will increase to $50. Effective January 1, 2007, the Hospital Emergency Room copayment will increase to $60.
2. Effective on a date to be determined the Hospital Outpatient copayment will increase to $35. Coincident with the increase in the hospital outpatient

copayment, services provided in a hospital owned or operated extension clinic will be paid by the hospital carrier.

3. Effective on a date to be determined no payment will be made for inpatient hospital days determined to be non-medically necessary by the hospital carrier.
4. Effective on a date to be determined, the Hospital component (inpatient and outpatient services) of the Empire Plan will be modified as follows:
   - The Hospital carrier will establish a network of hospitals (acute care general hospitals, skilled nursing facilities and hospices) throughout the United States.
   - Any hospital that does not enter into a participating agreement with the hospital carrier will be considered to be a non-network facility.
   - Covered inpatient services received at a network hospital will be paid-in-full. Covered outpatient services (outpatient lab, x-ray, etc. and emergency room) received at a network hospital will be subject to the appropriate copayment.
   - Covered inpatient services received at a non-network hospital will be reimbursed at 90% of charges. There will be a separate $1500 annual Hospital coinsurance maximum per enrollee, enrolled spouse/domestic partner and all dependent children combined established for non-network hospital out-of-pocket expenses.
   - The $1500 Hospital coinsurance maximum is for non-network hospital expenses only and cannot be combined with any coinsurance maximums for other Empire Plan components.
   - Covered outpatient services received at a non-network hospital will be reimbursed at 90% of charges. The enrollee will be responsible for 10% of charges(coinsurance) or a $75 copayment whichever is greater. The non-network outpatient coinsurance/copayment will be applied toward the $1500 annual coinsurance maximum.
   - Once the enrollee, enrolled spouse/domestic partner or all dependent children combined have incurred $500 in non-network expenses, a

claim may be filed with the medical carrier for reimbursement of out-of-pocket non-network expenses incurred above the $500 and up to the balance of the coinsurance maximum.

- Services received at a non-network hospital will be reimbursed at the network level of benefits under the following situations:
  - Emergency outpatient/inpatient treatment;
  - Inpatient/outpatient treatment only offered by a non-network hospital;
  - Inpatient/outpatient treatment received outside of the US; and
  - Inpatient/outpatient treatment in geographic areas where reasonable access to a network hospital does not exist.
- Anesthesiology, pathology and radiology services received at a network hospital will be paid-in-full less any appropriate copayment even if the provider is not participating in the Empire Plan participating provider network under the medical component.

5. Effective on a date to be determined the participating provider office visit, office surgery, radiology and laboratory copayments will increase to $15. Effective January 1, 2007, the participating provider office visit, office surgery, radiology and laboratory copayments will increase to $18.
6. Effective January 1, 2007, the Managed Mental Health and Substance Abuse Program participating provider copayment for outpatient mental health services will increase to $18.
7. Effective on a date to be determined the Empire Plan Prescription Drug Program will be modified as follows:
   i. A third tier of prescription drugs and prescription drug copayment will be created to differentiate between preferred and non-preferred brand-name drugs.
   ii. The copayment will be $5 for generic drugs, $15 for preferred brand name drugs and $30 for non-preferred brand name drugs for up to a 30-day supply at either a retail pharmacy or the mail service pharmacy.

1. When a brand-name prescription drug is dispensed and an FDA-approved generic equivalent is available, the member will be responsible for the difference in cost between the generic drug and the non-preferred brand-name drug, plus the non-preferred brand-name copayment ($30).

iii. The copayment will be $10 for generic drugs, $30 for preferred brand name drugs and $60 for non-preferred brand name drugs for a 31 to 90 day supply at a retail pharmacy.

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

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- Direct telephonic nurse consultations;
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- Connection with cancer experts at Cancer Resource Services network facilities;
- A travel allowance up to $10,000; and
- Paid-in-full reimbursement for all services provided at a Cancer Resource Services network facility when the care is pre-certified.

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10. Effective on a date to be determined the Empire Plan Basic Medical component will include the Basic Medical Provider Discount Program. This program offers discounts from certain physicians and other providers who are not part of the Empire Plan participating provider network but are an Empire Plan Multiplan provider. To be eligible to receive the Basic Medical Provider Discount Program the following conditions must be met:
    - The Empire Plan is the primary coverage;
    - Basic Medical services were received from a non-participating provider ;
    - The non-participation provider is in the Multiplan network;
    - The Multiplan provider discounted fee is lower than the Basic Medical reasonable and customary allowance; and
    - The annual Basic Medical deductible has been met.

    This benefit will sunset on or about December 31, 2006, unless extended by agreement of both parties.
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14. Effective on a date to be determined, the EP maximum lifetime benefit for non-network substance abuse services shall be increased to $250,000
15. Effective on a date to be determined the State and the NYSCOPBA Joint Committee on Health Benefits will develop and implement two additional EP disease management programs.
16. The NYSCOPBA Joint Committee on Health Benefits will work with the State to implement a direct debit vehicle to be utilized under the Medical Flexible Spending Account.
17. Effective on a date to be determined, the maximum annual Dental Care benefit per person shall be increased to $2,300.
18. Effective on a date to be determined, the maximum lifetime benefit for orthodontic treatment will increase to $2,300.
19. Effective on a date to be determined, eligible expenses under the Medical Flexible Spending Account will be expanded to include over-the-counter medications according to guidelines developed by the Medical Flexible Spending Account Administrator.
20. The State shall seek the appropriation of funds by the Legislature to support the NYSCOPBA Joint Committee on Health Benefits initiatives and to carry out the administrative responsibilities of the Committee in the amount of $136,500 for the period April 1, 2003 to March 31, 2004; April1, 2004 to March 31, 2005; April 1, 2005 to March 31, 2006 and April 1, 2006 to March 31, 2007.
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Also effective April 1, 2006, employees working the evening shift, as defined by the facility, shall be paid $1.00 per hour for hours worked during that shift.

Members on paid leave for line-of-duty injuries shall continue to receive inconvenience payments as provided above.

8) Article 25.9 (Employee Benefit Fund) shall be modified effective April 1, 2003. The amount shall increase to $25; effective April 1, 2006, it shall be increased to $30.

9) [Added to Article 14.4] Effective July 1, 2006, employees shall be required consistent with current medical documentation policy, to provide adequate documentation from the medical provider for all pre-approved medical absences including those of four hours or less. Upon the second instance of failure to provide adequate documentation, the employee shall be subject to discipline. However, this in no way is intended to otherwise alter present medical documentation requirements.

10) [Added at the end of Article 14.11] 14.11 (f) Section 14.11 of this agreement shall not apply to Workers' Compensation, or Sections 72 or 73 of the Civil Service Law.

11) [Added to Article 14.4] Effective July 1, 2006, for all sick leave absences of a full shift or more, returning employees shall provide at least eight hours advance notice of their intended return to work. However, this in no way is intended to otherwise alter present notification procedures.

Thomas N. Rinaldo, Esq. _____
Neutral Panel Member and Chair

Michael Axelrod, Esq. _____
NYSCOPBA Panel Member

Walter J. Pellegrini, Esq _____
State Panel Member

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the 21st day of March 2006, before me personally came and appeared THOMAS N. RINALDO, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the 21st day of March 2006, before me personally came and appeared MICHAEL C. AXELROD, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

On the 21st day of March 2006, before me personally came and appeared WALTER J. PELLEGRINI, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

NOTARY PUBLIC

REBECCA L. CAUDLE
Notary Public, State Of New York
No. 4846008
Qualified In Rensselaer County
Commission Expires Oct. 31, 2009