

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration
between

THE STATE OF NEW YORK

Public Employer,

-and-

NEW YORK STATE LAW ENFORCEMENT OFFICERS
UNION, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,
Employee Organization,

PERB Case No. IA2004-029

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

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

Richard Lesniak, Council 82 Staff Representative
Employee Organization Panel Member

APPEARANCES:

For the State of New York

Michael N. Volforte, Esq., Associate Director, GOER

For Council 82, Law Enforcement Officers Union

Ennio J. Corsi, Esq., General Counsel, Council 82
Kevin S. Casey, Esq., Of Counsel

OPINION

AND

AWARD

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
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CONCILIATION

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board ("PERB"), to make a just and reasonable determination of a dispute between the State of New York ("State") and the New York State Law Enforcement Officers Union, District Council 82 ("Union" or "Council 82) regarding Council 82's Agency Law Enforcement Services Bargaining Unit ("ALES").

The ALES bargaining unit is a recently created bargaining unit and has not negotiated a collective bargaining unit with the State. The instant interest arbitration proceeding is the end result of an impasse in the first round of negotiations between the parties to attempt to achieve a collective bargaining agreement. The titles in this unit were previously covered by collective bargaining agreements between the State and either the Security Services bargaining unit or the Security Supervisors bargaining unit.

The ALES unit was created as a result of a certification order issued by the Public Employment Relations Board ("PERB") on August 19, 2002 (Joint Exhibit 9). The certification order implemented a PERB decision that fragmented certain law enforcement titles from the existing Security Services bargaining unit under the premise that employees in the fragmented titles primarily perform police law enforcement duties whereas Security Services bargaining unit members primarily supervise and are responsible for the custody of inmates.

The Union is the certified bargaining agent for employees in titles including but not limited to Park Patrol Officer, University Police Officer 1, Environmental Conservation Officer, University Police Investigator, Environmental Conservation Investigator 1, University Police Officer 2, Supervising Environmental Conservation Officer, University Police Investigator 2 and Environmental Conservation Investigator 2. The Union represents nearly 1,000 individuals in the titles described above, approximately half of whom serve as either Park Patrol Officers or in the title of University Police Officer 1.

All of the ALES titles described above are eligible for interest arbitration for the first time. Section 209.4(f) of the Civil Service Law limits interest arbitration to those ALES unit members who are defined as police officers pursuant to subdivision 34 of Section 1.20 of the Criminal Procedure Law. Section 209.4(f) further limits this interest arbitration to those items "directly related to compensation" while excluding "non-compensatory issues."

The last collective bargaining agreements (CBA) which addressed the terms and conditions of employment for the titles in the ALES unit were the 1999-2003 CBA's between the State and the Security Services and Security Supervisors bargaining units. The State and ALES began negotiations for what would have been the first CBA between the parties in January 2003, but such negotiations were unsuccessful. ALES declared impasse in December 2003 and a mediator was assigned to assist the parties in their negotiations dispute. Mediation was unsuccessful and on March 3, 2005, the Union filed a Petition for Interest Arbitration (Joint Exhibit 2) pursuant to Section 209.4 of the Civil Service Law.

The State filed a response to said Petition on March 18, 2005. Thereafter, the undersigned Public Arbitration Panel (Joint Exhibit 1) was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were conducted before the undersigned Panel on July 7, 2005, August 24, 2005, September 19, 2005, October 5, 2005, October 31, 2005, November 21, 2005, December 5, 2005, December 20, 2005, December 21, 2005 and January 12, 2006. At all hearings, both parties were represented by counsel. Both parties submitted numerous and extensive exhibits and documentation, including written closing arguments, and both parties presented extensive arguments on their respective positions.

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

At the request of the parties, a Summary of Award was issued on June 9, 2006, with the understanding that the Opinion would follow. That Opinion is set out herein, along with the Final Award.

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

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

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

- a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interests and welfare of the public and the financial ability of the public employer to pay;
- c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;
- d) the terms of the collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

COMPARABILITY

Position of the Union

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

The Union contends that its members should be compared on a primary basis with the New York State Police (NYSP). It maintains that its unit members have the same statewide jurisdiction of the NYSP, enforce the same laws, receive similar training, have similar educational and physical requirements, and use similar equipment and techniques. The Union has presented extensive information regarding the training, requirements, activities, salaries and benefits for positions in each of the three agencies it represents in this proceeding (e.g. Park Police Officer) and has compared each of the positions with the NYSP. Additionally, in an attempt to provide a broader perspective, the Union has presented information from contiguous states with similar titles to ALES, although the Union argues that the comparable titles in contiguous states should be used as secondary comparables, with the primary comparable to ALES being the NYSP.

The Union initially addresses employees in the Environmental Conservation Officer (ECO) job series. It notes that an ECO has the highest educational requirement among ALES titles and that its educational requirements are higher

than the requirements for Correction Officers and for Troopers in the NYSP. It also points out that an ECO is defined as a Police Officer within the meaning of Section 120 of the Criminal Procedure Law and that ECO's may be assigned anywhere in the State and have statewide jurisdiction.

The Union argues that all ECO trainees attend a 26 week police academy that provides approximately 120 more hours of instructional time than the NYSP Academy. According to the Union, both the ECO Academy and the NYSP Academy cover all basic police instruction such as criminal procedure law, penal law, vehicle and traffic law, firearms, etc. The Union asserts that the curriculum of both training schools is essentially interchangeable, except that ECO's also are trained extensively in environmental law and regulations. Along these lines, the Union notes that NYSP Superintendent Wayne Bennett acknowledged that ECO academy training is in fact similar and clearly comparable to the basic training at the NYSP Academy.

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

The Union insists that ECO's have a broad array of police enforcement responsibilities. ECO's enforce all the laws of NYS and the Federal government, and not just the Environmental Conservation laws. They patrol in uniform, in marked vehicles. They are armed and they enforce the NYS Penal Law in matters such as frauds, forgeries, assaults and even homicides. They also inspect residential, retail, commercial and industrial sites and enforce marine laws and regulations. According to the Union, ECO's routinely encounter dangerous chemicals and are regularly exposed to medical waste.

The Union insists that ECO's regularly engage in more traditional police work. It states that employees in the ECO job series regularly write traffic tickets, arrest people for drunk driving, assist the NYSP and other Police Officers in domestic violence matters, and make drug enforcement arrests. Their activities also include high speed pursuits and undercover investigations regarding landfills, fish markets and mines. The Union also notes that employees in the higher ECO job titles such as ECI 1's handle long term investigations regarding fish and wildlife activities and that Supervising ECO's are known as Lieutenants. Supervising ECO's supervise between five and twelve uniformed officers in a zone and are responsible for a myriad of administrative tasks such as scheduling and coordinating raids and investigations.

The Union asserts that the evidence establishes that employees in the ECO job series perform similar activities to Troopers in the NYSP. For example, NYSP Troopers patrol areas to detect and deter crimes, enforce the Penal Law and Vehicle and Traffic Laws. Similarly, NYSP Sergeants work on scheduling and other

administrative tasks. Moreover, ECO officers often work together with the NYSP on deer-jackings, burglaries and hazardous waste spills on highways. Finally, the Union maintains that the annual reports of the NYSP and ENCON further shows just how similar ECO's are to members of the NYSP. These reports show that both agencies dispose of thousands of appearance tickets each year, conduct numerous criminal investigations and perform counter-terrorism training among other things.

The Union avers that ECO's are "grossly underpaid" and that the gap between NYSP Troopers' pay and the amount paid to ECO's has dramatically increased over the past ten years or so. For example, in 1995 a State Trooper had a hiring rate that was \$2,994 more than an ECO, which is a 10.5% difference. In 2005, the State Trooper hiring rate of \$57,158 was \$22,416 higher than the ECO hiring rate, which is difference of 64.5%. Similarly the difference between the NYSP Trooper job rate has increased from a difference of \$2,596 (7%) in 1995 to \$26,972 (59.4%) in 2005. The gap in pay has been similarly problematic for higher ranked ENCON officers. According to the Union, NYSP Zone Sergeants earned \$30,813 (57.6%) more than Supervising ECO's in 2003.

The substantial differences in longevity pay between ECO's and NYSP Troopers further exacerbates the ECO pay differential problem, in the estimation of the Union. For example, the Union states that total longevity earned for NYSP Troopers and Sergeants over a 25 year career is \$147,750 compared to ECO's total longevity pay of \$77,541 and Supervising ECO's total longevity pay of \$88,668.

The Union asserts that the State failed to demonstrate that titles similar to ALES titles in similar states are appropriate to compare to ALES titles. Nonetheless, the Union notes that ECO's in Connecticut, Massachusetts and New Jersey all pay more than the minimum paid to ALES members and that the average minimum among these three states is \$46,034, which is \$11,292 more than New York's ECO's. Similarly, the average maximum salary among those three states is \$64,683, which is \$19,260 than New York's maximum. This 42.4% shortfall is outrageous according to the Union and must be remedied by this Interest Arbitration Panel. Finally, ALES submits that its ECO's have suffered inordinately unfair treatment because in New Jersey, Connecticut and Massachusetts, ECO's earn comparable wages to State Troopers in their respective states. For example, in Connecticut, the minimum ECO salary is 14% higher than a Connecticut State Trooper's starting salary. In Massachusetts, a State Trooper earns \$133 more annually at the maximum level than an ECO.

The Union argues that its members' low salaries have caused a severe recruitment and retention problem. The Union cites a steady decline in the number of people taking the ECO Civil Service examination over the years. It also points out that many of its members leave their agencies to work in local police jurisdictions because the local police agencies pay more to their officers than ECO's approximately 80% of the time.

Finally, the Union notes that the September 11 terrorist attacks made it abundantly clear just how at risk its members are. The unit members' post-September 11 activity shows the contributions they made and continue to make to

safeguard the citizens of New York. Along these lines, the Union points out that 40 of ENCON officers were at the site of the attacks from September 11, 2001 and remained for up to 75 days. They provided security, had officers at the landfill and had officers on boats providing security on the Hudson River. Since that time, ECO's have been deployed to high threat facilities such as bridges, tunnels and nuclear power plants. In the Union's estimation, the September 11 attacks have forever added duties and responsibilities for its officers.

Turning to Park Patrol Officers (PPO's), the Union notes that to become a PPO, the qualifications are that same as those which apply to NYSP officers, namely, the completion of sixty (60) college credits, thirty (30) of which could be substituted for by an honorable discharge two (2) years of military service, or completion of a specific police training course. The police academy all PPO's must complete is a 26 week residential training academy that is modeled after the NYSP academy. The PPO academy uses NYSP instructors and the NYSP lesson plans for topics such as Vehicle and Traffic Law enforcement, accident investigation, breath test operator, etc.

In fact, the Union contends that the PPO academy exceeds the NYSP academy as it provides training in areas such as marine law enforcement that is not provided at the NYSP academy. In the Union's view, an analysis of the curriculum of both the PPO academy and the NYSP academy would show that they are substantially the same in almost all other respects. In addition, the PPO field-training program is modeled after the NYSP, according to the Union.

The Union asserts that PPO's receive comprehensive training throughout their employment. Their annual in-service training is markedly similar to the annual training required by the NYSP. Additionally, PPO's must qualify with firearms twice a year, the same as the NYSP. Beyond that, there is a wide variety of specialized training provided to PPO's that ranges from topics such as gang intelligence and hazardous materials to training with mounted patrols.

The Union points out that PPO's are required to travel from one state property within their patrol zone to another state property within their patrol zone. This requires PPO's to cross many local jurisdictions during which time they may be assigned law enforcement activities. In the Union's view, even though the primary duty of a PPO is to enforce the law on NYS owned parklands, facilities and properties, they also enforce the law off all state properties. In addition, the Union notes that many areas within the State practice the "closest car concept" which means that the closest police patrol car to the point where services are needed responds to the call. Beyond that, PPO's monitor 911 radio frequencies and often assist local law enforcement in resolving bar fights, domestic violence incidents, etc. The Union notes that a very serious incident occurred a few years ago after a call came over the radio requesting police assistance to a Bay Constable on Long Island dealing with a domestic violence incident. Since the NYSP did not have vehicles available in the area, several PPO's responded to the call. When they arrived the subject had killed the Bay Constable and raised a shotgun at the PPO's. The PPO's were required to return fire and killed the individual. PPO's have also been known to engage in all other types of typical police work off park property running the

gamut from traffic control to searching for missing persons, to DWI enforcement, to responding to bomb threats.

The Union urges the Panel to take notice of the fact that the activities that Police Officers perform off NYS park property are the same as the activities PPO's perform on NYS park property. The Union insists that the record establishes that PPO's deal with very serious police matters on state park property such as robberies, burglaries, rapes, child abuse, lewdness and homicides. They must interview suspects, execute search warrants, secure crime scenes and appear in court. They carry weapons and patrol in cars, on foot, by boat, snowmobiles and bicycles. They also engage in dignitary protection on park property. In the Union's estimation, the PPO's work activities are so similar to NYSP Troopers that Troopers are the most comparable title for comparison purposes under the review conducted by this Pane.

The formal integration, sharing and coordination agreement between the NYSP and the Park Police further supports ALES' position that NYSP Troopers are the most appropriate to compare to PPO's. In support of this contention, the Union maintains that PPO's became almost identical to NYSP Troopers between 1998 and 2003. During that time, the Parks Director of Law Enforcement, the highest ranking officer in the agency, was a high ranking member of the NYSP. Many changes were instituted with the Park Police during those years. Educational standards were increased, an age limitation for qualifying to become a PPO was instituted as well as a polygraph examination. In addition, candidates were deployed statewide based on the needs of the State and agency, just like the NYSP Trooper.

The Union asserts that the only real difference between PPO's and NYSP Troopers is that PPO's earn far less salary than members of the NYSP. For example, in 2005, a starting PPO earned \$22,415 less than NYSP Trooper which is a 64.5% difference. The spread at the job rate is even worse in the Union's view. In 2005, PPO's earned \$29,361 less than Troopers or 68.2% less.

The difference in the amount of longevity earned further exacerbates the inequity, according to the Union. Total longevity earned by a PPO over a 25 year career is \$74,703 whereas total longevity for a Trooper is \$147,750.

PPO's also earn less than the average minimum and maximum salary of matched titles in contiguous states, even though they have a higher educational requirement. They earn 3.3% less than the average minimum and 16.8% less than the maximum salary when compared to similar titles in neighboring states. For example, in New Jersey the difference in the hiring rate between a State Trooper and a Park Police Officer is \$5,735 or 13.1% compared to New York's difference of 64.5%. Even in Pennsylvania, where a PPO has no college credit requirement, the PPO's only earn \$14,584 less than Pennsylvania State Troopers compared to New York's differential of more than \$29,000. Finally, studies in the record show that PPO's earn less than the amount paid to officers in jurisdictions throughout the State. One such study shows that PPO's earned less than \$3,841 than Police Officers in Niagara County to more than \$39,000 less than Officers in Nassau County. The Union maintains that this data shows that PPO's are grossly underpaid and that their work is equivalent to that performed by NYSP Troopers.

Just as is the case with ENCON officers, the Union argues that its members' low salaries have caused a severe recruitment and retention problem. The Union cites a steady decline in the number of people taking the PPO Civil Service examination over the years. It also points out that many of its members leave to work in local police jurisdictions because those agencies pay more to their officers than PPO's almost all of the time.

Finally, the Union notes that the September 11 terrorist attacks made it abundantly clear just how at risk its members are and that its members continue to take serious risks as they safeguard the citizens of New York. Along these lines, the Union points out that several of its officers were at the site of the attacks from September 11, 2001 and that they were exposed to a variety of health risks. They provided security and provided marine transportation to rescue workers. Since that time, PPO's have been deployed to protect bridges, water supplies and nuclear power plants. Patrols have increased at certain cities in state parks and Canine and Sniper Units have been instituted. In conclusion, the Union argues that PPO's make up a sophisticated and full service police force and they should receive compensation that matches their skills and activities.

Turning to the University Police Officers (UPO's), the Union notes that officers in all four titles within this series have, for many years, been required to have sixty (60) college credit hours and a year of experience as a Police Officer or Peace Officer. They must meet a variety of physical and medical standards. They enforce both the NYS Penal Law, Vehicle and Traffic Laws, and other NYS laws, as well as the SUNY Statewide and Local Student Codes of Conduct.

Upon hire, all UPO's must complete a twenty (20) week residential police academy. In the Union's view, the training provided at the academies that UPO's attend is substantially similar to the training provided at the NYSP academy. UPO's also complete between ten (10) weeks and three (3) months of field training, which is also similar to the NYSP field training program. In addition, many campuses require their UPO's to complete a course in successful interaction with students. This helps officers learn how to best deal with their population, with a age variation of diverse yearst and many of whom are experiencing independence for the first time while completing the maturation process. While often not criminal in nature, behaviors of college students require infinite patience and maturity on the part of the UPO's in handling situations on and off the SUNY campuses. Finally, the Union asserts that the UPO in-service training program is similar to the NYSP in all respects. They have annual training in a variety of topics such as firearms, crime prevention, alcohol and drug recognition, sex offenses, CPR, etc.

The Union notes that even though a substantial amount of a UPO's police enforcement activities occurs on campus grounds, UPO's regularly perform enforcement activities off school grounds. SUNY serves well over 400,000 students and its campuses are not self-contained units removed from every day life. As a result, UPO's often deal with non-students who walk onto campuses and engage in criminal behavior and also deal with students engaged in criminal conduct off-campus. Consequently, the Union maintains that UPO's, both on and off campus, provide a full range of police services. They attempt to prevent crime, are alert to detect crime, they patrol in marked cars, on bicycle and on foot. They are armed.

They engage in incident investigations, deal with walk-in complaints, alarms, elevator entrapments, and are responsible for safety and security at special events on campus such as speaking engagements and sporting events. They also take fingerprints, manage sexual crimes and participate in a number of interagency task forces with other agencies.

According to the Union, UPO's interaction with other law enforcement agencies is sometimes driven by design and sometimes driven out of necessity. For example, at SUNY Buffalo, the University Police and the Town of Amherst have a formal agreement whereby either party may request the assistance of the other party. UPO's at SUNY Buffalo have assisted the Town of Amherst Police with domestic disputes and auto accidents. They also assist Amherst Police and the Buffalo Police when those departments have a vehicle pulled over. Moreover, in the City of Buffalo, the Buffalo Police Department regularly asks UPO's to respond to calls off campus near the university area.

In the Union's estimation the evidence in the record establishes substantial interaction throughout the State between UPO's and Police Officers in the jurisdictions where the campuses are located. UPO's frequently make arrests in these areas and constantly collaborate with these departments on a myriad of police activities. They work with other Police Departments on missing persons' investigations, hostage situations, undercover drug investigations, rape investigations and traffic control. As such, the Union argues that UPO's are as complete law enforcement officers as NYSP Troopers or any other Officers in the State.

The Union posits that UPO's deal with as many serious crimes, otherwise known as index crimes, as the NYSP does. For example, in 2002, there were 289 index crimes at SUNY Albany whereas the State Police in Albany County dealt with 289 index crimes. Similarly, at SUNY Stony Brook, UPO's reported 625 index crime in 2004 compared to the 44 index crimes reported by the State Police in Suffolk County that same year.

The Union contends that the breadth of police work performed by UPO's has not been reflected in their compensation, especially when UPO's are compared to NYSP Troopers. For example, in 2005 a UPO starting salary was \$34,742 whereas a NYSP Trooper starting salary was \$57,158, a 64.5% difference. At the job rate the inequity is even more substantial, with Troopers earning \$29,361 more than UPO's, a difference of 68.2% in 2005. The comparisons are equally compelling for the higher ranked titles. For example, in 2003 a UPO II (equivalent to a NYSP Sergeant) had a job rate of \$50,655 compared to the NYSP Sergeant pay of \$80,405, for a difference of 58.7%. Just as is the case with the other ALES titles, the inequities in longevity only exacerbates the problem as 25 year Trooper longevity total \$147,750 whereas UPO total longevity are \$74,703.

The Union notes that if the Panel is going to consider UPO's from neighboring states, it should be aware that neither New Jersey, Connecticut and Massachusetts requires college credits as a minimum qualification nor is there any evidence that any of the neighboring states has similar training or provides similar services as New York's UPO's. In spite of these facts, New York's UPO's lag behind their counterparts in contiguous states. For example, the starting New York UPO salary

is \$4,038 lower than the average minimum in the contiguous states and the \$11,056 lower than the average maximum of the contiguous states.

Just as is the case with the other ALES titles, the Union argues that its members' low salaries have caused a severe recruitment and retention problem. The Union cites the fact that a study in the record reveals that almost 25% of the entire SUNY police force has turned over in the past five years. It also points out that many of its members leave to work in local police jurisdictions because those agencies pay much more to their officers than UPO's almost all of the time. The Union also claims that the other departments usually provide better benefits.

Finally, the Union notes that the September 11 terrorist attacks demonstrated the grave risk its members are subjected to. The Union argues that its members continue to safeguard the citizens of New York and remain at great risk in doing so. Along these lines, the Union points out that a large contingent of its officers responded to the September 11 attacks. Since that time, they have been trained on dealing with weapons of mass destruction, including biological and chemical weapons. The Union asserts that its members will be expected to work side by side with their better-paid colleagues in the NYSP if there is an attack in the future. This is inequitable and unfair, in the view of the Union.

Position of the State

The State disagrees with the Union's contention that its unit members are most comparable to NYSP Troopers. It agrees that members of the ALES unit are Police Officers and that they sometimes perform duties that are identical to those performed by members of the State Police. However, the State maintains that the State Police mission, size and total scope of responsibilities distinguish it from ALES unit members and the agencies that employ them.

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

The State does not wish to demean the members of ALES in asserting that the ALES members should not be compared to the State Police. The State recognizes the important role they play in the prevention and detection of crime. Instead, it is the State's view that members of ALES perform duties that are more limited because the agencies they work for do not have the primary function of serving as a police agency. Along these lines, the State notes that the mission of the Office of Parks, Recreation and Historic Preservation is to provide safe and enjoyable recreational opportunities for State residents. The mission of the State University of New York is to provide the people of New York educational services of the highest

quality, with the broadest possible access. Finally, the mission of the Department of Environmental Conservation is to conserve, improve and protect the environment. Since these agencies are the stewards of the parks, post-secondary education and the environment, the law enforcement duties of ALES members in the first instance is geared toward supporting the mission of these agencies.

The State asserts that the individual police forces within the ALES unit are much smaller than that of the NYSP. Whereas the State Police has 5,781 employees, 4,693 of whom are sworn members, the Department of Environmental Conservation employed 3,361 employees, 328 of whom are sworn members. The Parks Department has 1,538 employees, 300 of whom are sworn officers and the State University of New York employs more than 53,000 people, 558 of whom are sworn officers. Hence, whereas 80% of the State Police work force consists of sworn officers, 9.76%, 19.51%, and 1.04% of the employees of DEC, Parks and SUNY, respectively, are Police Officers primarily devoted to law enforcement. In the State's estimation, this underscores its argument that the State Police are different from police in the ALES unit because it is the only agency of the four that has its primary mission as a police function.

The State notes that the State Police are broken down into ten troops divided by geographical areas and that every part of the State is covered. Each troop has a Troop Commander. Under each Troop Commander are one Captain and two Lieutenants who lead the investigative side of the troop. The uniform side is broken down into regional areas with a zone commander who has the rank of Captain. Zone Sergeants assist the zone commander. Line Sergeants are in charge of the

work of Troopers under their command. The Department also has a department of Internal Affairs, Administration, Field Command and Employee Relations.

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

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

The State contends that its field training program and ongoing training is rigorous and extensive. It states that Troopers receive twelve (12) weeks of field training and that they have an ongoing training requirement of 120 hours every three years.

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

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

The State argues that another difference between NYSP Troopers and ALES members is that NYSP Troopers do not have the right to arbitral review of disciplinary matters whereas ALES members have such a right. In addition, whereas a small portion of ALES members are engaged in investigative duties, a large portion of the NYSP is devoted to investigatory activities. The State notes that more than 1,100 sworn officers are devoted full time to investigatory activities. The NYSP has a Forensic Identification Unit whose primary responsibility is to provide crime scene investigation expertise in murders, burglaries, rapes, assaults and vehicular accidents. Other investigators have expertise as polygraphists, hostage negotiation, terrorism investigation, gaming and narcotics. The gaming unit is responsible for enforcing all gaming operations in the State and the narcotics unit performs a variety of narcotics investigations that include street-level dealings, wiretapping and money-laundering investigations. The NYSP also has a cyber crimes unit which is responsible for cyber crimes investigations and technology infrastructure intrusions. It also has a unit that tracks the vilest crimes, including assessing trends and similarities in violent crimes and rapes.

Scheduling for the investigative side of the NYSP is wholly dependent on the individual's assignment. Investigators are on-call for investigations that must occur over night. They can also be mandated to work an extra 11 hours beyond their regular hours in each 28 day cycle, which is built into their current compensation.

The State maintains that in response to the September 11, 2001 terrorist attack, the NYSP created an entire division comprised of more than 200 employees that is fully devoted to counter-terrorism activities. Terrorist activities are monitored and several of the officers in this department have top-secret clearance with the FBI. This special security clearance allows the State to have access to highly sensitive information the moment it is available. When there is an elevated security alert, the NYSP provides guidance and input to the Office of Homeland Security. Members of the NYSP Joint Terrorism Task Forces have been sent overseas for case investigations. Finally, the State now has four Weapons of Mass Destruction teams which consist of teams of trained Troopers who can enter a contaminated environment, collect evidence and assist the FBI.

Hence, the State maintains that based on the sizes of the forces, the missions of the agencies, the differences in job duties and responsibilities, that ALES unit members are not comparable to the NYSP and are not entitled to receive similar compensation as members of the NYSP receive.

The State argues that there is no legitimate rationale for using NYS Troopers as a comparable title. However, in the event the Panel considers such a comparison, the State insists that the economic comparisons should be based on 2003 salaries. This is the case because the Troopers received raises in 2004 and 2005 whereas

ALES members have not yet received increases for those years. The State claims that the ALES' comparisons of like titles in contiguous states also should be given no weight because they are not "apples to apples" comparisons. In the State's view, ALES used 2005 salaries of like titles in contiguous states except for Massachusetts, while ALES has not had a raise pursuant to a collective bargaining agreement since 2002. In the State's view, this calls into question the validity of ALES' statistics. In addition, the State requests that the Panel be mindful that the 2003-07 agreement between the State and the NYSP included operational changes proposed by the State, which resulted in economic benefit to the State which served to offset costs of the compensation agreements.

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

The State concedes that its comparison shows a mixed picture in terms of the competitiveness of ALES salaries vis-à-vis salaries of comparable titles in contiguous states. For example, for the ECO and PPO titles, the State salaries are behind Connecticut and New Jersey but ahead of Pennsylvania. In Massachusetts, there is no comparable PPO title but the ECO starts out behind the comparable title in Massachusetts only to catch up at 20 years of service. For the UPO salaries, the State contends that at the minimum salary level, upstate UPO's are behind Connecticut and Massachusetts and ahead of Vermont and Pennsylvania. However, downstate UPO salaries are ahead of Massachusetts at the minimum level and, at the maximum level, ahead of New Jersey and only slightly behind Connecticut.

The State sorts out all of its data in the record by concluding that New York lines up in the middle of the pack. It argues that New Jersey and Connecticut are typically ahead of New York and that the other states are mostly behind New York. However, it asserts that UPO 1's, which constitute nearly half of the unit members eligible for interest arbitration, are just ahead of their comparables in the other states for most years of service. In the State's estimation, there is no statutory requirement that the salaries of these employees be equal to or ahead of similarly situated employees. The State argues that a conservative salary increase is most appropriate and that the Union's salary proposal must be rejected.

The State strongly opposes the Union's argument that it should be provided with comparability to the State Police on an immediate basis. The State argues that the Union's position ignores the historical fact that a monetary disparity has always existed between the amount paid to titles represented by the Union and those of the

State Police. It suggests that this monetary disparity is a function of time and operational changes. It notes that whereas this is the first time that ALES unit members are eligible for interest arbitration, the State Police has had interest arbitration since 1995. Hence, it is unreasonable for the Union to expect to “catch-up” in such a short period of time. Additionally, the State asserts that the increases in State Police pay were predicated upon significant operational changes that greatly benefited the State. Among other things, the State has a Fair Labor Standards Act 207K overtime pay exemption and the State receives more work from Troopers than the State receives from ALES unit members before overtime begins. It also has greater flexibility with scheduling and the monetary penalties associated with scheduling changes due to emergencies. In the State's view, members of ALES are not entitled to equivalent compensation without equivalent operational concessions. It asserts that unlike the State Police, members of ALES do not work 168 hours in a 28 day cycle, they do not work 12 hour days, they do not have discipline without resort to arbitral review, they do not have the size of the State Police and they do not have random drug testing as the State Police have. For all of these reasons, the State contends that members of the ALES unit are not comparable to members of the State Police.

PANEL DETERMINATION

The issue of comparability is of utmost importance in this matter as this is the first time that ALES members have had the opportunity to argue this issue in the final and binding interest arbitration forum. Accordingly, this Panel has given serious consideration as to the most appropriate way to resolve this issue because its determination has real economic consequences for both parties today and in the foreseeable future. The primary question for the Panel is which bargaining units are comparable to ALES unit members. The Union argues that its members are most comparable to the New York State Police. On the other hand, the State disputes this comparison, emphasizing that ALES members are more similar to like titles in contiguous states. The State also argues that the historically similar economic treatment ALES members have received vis-à-vis NYS Corrections Officers is relevant and supports its position that ALES members should not receive compensation that is similar to that provided to the State Police.

After carefully considering the evidence in the record and the arguments of the parties, the Panel is persuaded that the NYS Police are distinguishable from members of this ALES unit. That being said, there is no doubt that ALES unit members are Police Officers in every sense of the term. Thus, the Panel concludes that proper salary placement for ALES members is above corrections unit members in New York with movement toward the salaries of the State Police.

In reaching the conclusion that the NYS Police are appropriately treated differently than members of ALES, the Panel finds that the State Police's sheer size, depth, expertise and comprehensive statewide jurisdiction distinguish it from other

Police Departments and Police Officers in the State. The fact is, unlike the agencies that ALES members serve, the State Police agency's central mission is to serve as the State's flagship statewide jurisdiction police force. They are the State's first line of protection and have a cadre of members with expertise in every conceivable area of law enforcement. The record establishes that the State Police has numerous department members with expertise in all of the critical police functions including accident investigation, bomb detection, anti-terrorist activities, gaming, homicide investigations and protection of the Governor. They have comprehensive statewide jurisdiction and may be assigned anywhere in the State to meet Departmental needs. The State Police exercises such primary jurisdiction over statewide law enforcement that its Superintendent has the authority to assign Police Officers from any jurisdiction in the State to assist the State Police with important police business.

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

The Panel also cannot overlook the historical differences between the State Police and members of ALES, as well as the Legislature's obvious intent to maintain those historical differences. Salaries for members of the State Police have always exceeded salaries of employees in the titles represented by ALES. Notably, the Legislature granted the State Police the right to interest arbitration since 1995 and its right in this regard is comprehensive. The State Police has the right to pursue issues at arbitration that are directly related to compensation and may also bring to

interest arbitration all matters related to terms and conditions of employment. Unlike the State Police, the Legislature limited what matters the ALES unit could submit to interest arbitration. Section 209.4 (f) expressly limits this arbitration to matters directly related to compensation.

Thus, in light of the fact that the State Police has had the right to interest arbitration for a longer period of time than ALES, as well as the fact that ALES members have a more limited right to interest arbitration, the only logical conclusion for the Panel to reach is that the Legislature intended that ALES occupy a different place than that of the State Police insofar as salaries are concerned. If the Legislature intended for ALES members to occupy the same top salary levels as members of the State Police, it seems obvious to the Panel that the Legislature would have granted ALES the exact same right to interest arbitration as is enjoyed by the State Police. In light of these clear distinctions, the Panel concludes that ALES should not be placed at the same level of salary as the NYS Police through the interest procedure granted to ALES by the Legislature.

However, the Panel concludes that ALES members should receive higher salaries than NYS Correction Officers. The Panel reaches this conclusion because the historical pattern of treating individuals in the titles now represented by ALES on an equal basis with Correction Officers for comparability purposes is flawed and must be discontinued. The record is replete with evidence establishing that ALES members are fully functioning Police Officers. They have higher educational requirements than Correction Officers. They receive sophisticated and comprehensive police training at residential academies for no less than twenty (20)

weeks. During the police academies, ALES members are immersed in all aspects of law enforcement. After the police academy ALES members are assigned to field training programs that are comparable to those provided to the State Police. Police Officers in this unit also receive specialized training (e.g., environmental law for DEC officers) that is far more sophisticated and unique than what is required for an individual to be a Correction Officer.

Once ALES members are out in the field, they are expected to be full fledged Police Officers in every sense of the way the term is commonly understood. They make arrests for violations of NYS Laws ranging from DWIs to rapes and homicides. They use marked and unmarked patrol cars. They engage in short-term and long-term investigations. They have units with specialized expertise in areas such as bomb detection and marine enforcement. They regularly provide assistance to officers from other law enforcement agencies. They deal with frauds, assaults, in high speed pursuits and are trained and able to perform virtually any other Police Officer functions.

The record shows that all of the members of this unit who have been granted Police Officer status pursuant to the New York Criminal Procedure Law perform traditional Police Officer duties on a regular and consistent basis. Their work is quite distinguishable from the work performed by Corrections Officers whose primary function is the care and custody of inmates. Accordingly, the Panel concludes that, for salary purposes, ALES members should be recognized as no longer linked with the Corrections Officers.

ABILITY TO PAY

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

Position of the Union

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

The Union states that it is no surprise that Mr. Fox concluded that the State could pay for its proposal in light of all of the strong financial data. The Union asserts that the total cost of its proposals (\$97,500,707) is approximately \$6.5 million more than the amount the State exceeded its financial plan for the month of October 2005 alone. In the Union's estimation, since revenues have increased at a faster rate than expenditures and since the Legislature extended interest arbitration to this unit, there is no reasonable basis to conclude that the State cannot pay for its proposal. Finally, it argues that the State's financial expert witness, Robert Megna, essentially echoed the testimony of Mr. Fox and did not deny the accuracy of his analysis.

Position of the State

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

The State also expresses serious concern about projected State budget deficits. For example, it notes that that State was facing a \$2.5 billion budget gap for 2006-07 at the time its arguments were submitted to the Panel and that even larger gaps are projected for 2007-08 and 2008-09. Additionally, State spending toward health care, Medicaid and school aid continues to rise each year. Along these lines, the

State notes that the Campaign for Fiscal Equity lawsuit dealing with State funding for New York City schools remains unresolved and is likely to result in additional expenditures by the State toward education.

The State avers that its ability to pay is not the sole part of this criterion that must be considered. It states that the initial part of the criterion includes the interest and welfare of the public in addition to the State's ability to pay. In the State's view, the 934 unit members covered by this Award should not receive such a high share of salary increases given the diverse number of constituents the State serves. The State argues that if all 19 million State residents shared equally in its \$1 billion surplus, it would amount to \$52.63 per citizen. However, if the Union's demands were granted, 934 people would share \$60 million of the surplus, which is one thousand times more than an equal distribution of the surplus. The State maintains that such an excessive raise is not reasonable when the State needs to use the surplus to reduce debt, fund education and care for the sick and poor, among other things. Hence, the State concludes that the Union's proposal must be rejected and it is in the interest and welfare of the public to grant the raises offered by the State in this proceeding.

PANEL DETERMINATION

Notwithstanding the fact that the Panel spent considerable time reviewing the financial testimony and documentation regarding the State's finances, and considered the analysis of both the State's and the Union's financial experts, a full discussion of the State's financial situation is not warranted herein due to the overall agreement on this Award. While it can certainly be argued that the State has the

ability to pay for all of the salary increases proposed by the Union, the Panel determines that it would not be in the interest and welfare of the public to do so at this time. The number of constituents and services the State must provide resources for is simply too enormous. In addition, the State's projected future budget gaps coupled with the cooling housing market renders the Union's proposal untenable at this time based upon an analysis of the State's ability to pay. That being said, there is no doubt that the record establishes that the State has the ability to pay for those items provided in this Award. The State has enjoyed far greater revenues than projected for a variety of reasons, including record profits in the financial sector. Incomes in New York continue to grow above the rate of inflation and the State's economy remains healthy overall.

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

SALARY

Union Position

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

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

The Union argues that its members must be treated differently than Correction Officers even though it has a prior history of being in the same bargaining unit as Correction Officers and Correction Supervisors. If anything, in the Union's view, the evidence establishes that its unit members' concerns received little attention in the past because they were outnumbered by 22,000 Correction Officers to 1,000 Police Officers. As a result, the Police Officers who now comprise the ALES unit received little or no attention to the nature of their duties. The Union maintains that the former union had an institutional bias against Police Officers. The Union asserts that this is one of the reasons why Police Officer salaries in ALES lag behind Police

Officer salaries for NYSP and throughout the State generally. The Union asserts that the ALES unit is finally a Police unit specifically designed to address the needs of Police Officers. Since its unit members' salaries are not competitive or comparable to other Police Officer salaries either in the NYSP or within the State generally, the Union maintains that the Panel should increase ALES salaries in a manner that is comparable to other Police Officers with statewide jurisdiction in New York. The Union also argues that PERB's determination that its members should not be in the same bargaining unit as Correction Officers' also lends credence to its contention that the terms of agreements between the State and members of ALES in the past should be disregarded as they are simply not comparable.

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

POSITION OF THE STATE

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

Contrary to the Union's claims, the State asserts that ALES salaries have increased in excess of inflation over the past 23 years. The State argues that its comparison of unit members' salary increases with consumer price index increases over the past 23 years shows that Real Income Growth increased from between 20% to 38%, depending on job titles. In other words, the State maintains that unit members' actual purchasing power increased by these percentages over the past 23 years. Furthermore, the State estimates that unit members' purchasing power increased even more when longevity increases are factored in. The State insists that this data proves that the State's current pay plan is fair and effective in that it more than adequately keeps up with inflation.

The State also maintains that the Union's proposal is excessive and not justified. It asserts that the cost of the Union's proposed salary schedule with longevities constitutes a 134% increase. In the State's view, these expenditures are not in the best interest of the citizens of New York. The State has limited resources and a multitude of other priorities including, but not limited to caring for the poor, sick, elderly, as well as funding education. Finally, the State insists that the Union's proposal must be rejected because ALES unit members should not be compared

to the State Police for the reasons described in the Comparability section herein. It also states that there is a historical justification for providing NYSP members with higher wages than ALES members. Notably, the NYSP has had the right to interest arbitration since 1995, whereas this Aard is the first opportunity for ALES members to utilize the compulsory interest arbitration procedures.

PANEL DETERMINATION

The Panel's determination regarding comparability shapes much of its determination regarding salary. As indicated *supra*, the evidence supports the conclusion that members of this unit should receive salaries at a level above Correction Officers but below those of the State Police, with positive movement toward the State Police salary structure. The Panel is also of the opinion that the historical distinctions of providing the State Police with higher wages than ALES members cannot be ignored in that it represents a reasonable placement on the continuum of where ALES members should be placed vis-à-vis the State Police. However, as stated above, the historical connection of linking titles in ALES with Corrections Officers must also change in that ALES Police Officers should be placed higher than Corrections unit members on the salary continuum.

The economic improvements awarded by the Panel herein are just, reasonable and fair. The evidence establishes that ALES members' salaries need more than an average "going rate" salary increase in order to become more competitive with other Police Officers. Consequently, the Panel concludes that economic improvements beyond strict base wage adjustments are appropriate in order to make ALES salaries more competitive and as a way to provide some distance between the

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

The Panel takes note of the fact that the record establishes that ALES unit members are highly trained, full service Police Officers who protect the public throughout the State. Compensation improvements are warranted so that compensation paid to ALES members starts to comport with the qualifications and skills they are required to possess and utilize. Moreover, even though the Panel has determined that the State Police are not equally comparable to members of ALES, the differences between ALES and the State Police in terms of training, mission, and expertise are not so vast that ALES members should be as under-compensated as they are when currently compared to the State Police. Consequently, the Panel determines that the compensation increases it is awarding are warranted so that ALES members can receive genuine economic improvements compared to State Correction Officers and so they can continue to narrow the current gap between their compensation and that paid to the NYS Police.

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

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

In reaching a final Award herein, the Panel also considered the third statutory criterion, which involves a comparison of the peculiarities of the profession, such as the hazards of the job. The Panel acknowledges the important and dangerous work performed by ALES members. Their sacrifices and dangers are real. They place

themselves in harms way on behalf of all of the citizens and visitors to New York State. Their unique work serves to ensure the safety of the public overall and, more specifically, at State parks and universities throughout the State. Moreover, ENCON officers routinely protect citizens throughout the State from a variety of environmental risks that can be dangerous and potentially deadly. The Panel also notes that in the current post-September 11, 2001 environment, there are increased demands on unit members that are clear from the record. Accordingly, the Panel finds strong support in the record for its decision to award ALES Police Officers with expanded duty pay in the amount of \$1,545 for the period April 1, 2003 to March 31, 2004, followed by an increase to \$2,575 for annual expanded duty pay beginning in the period April 1, 2004 to March 31, 2005.

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

\$1,500 annual hazardous material payment to all ENCON police officers commencing April 1, 2003.

Finally, the Panel takes notice of the fact that certain ALES members have enjoyed the benefit of a standby/on call provision in the 1999-2003 CBA between the State and Security Supervisors. After careful consideration, the Panel concludes that all ALES members should enjoy this benefit. If Security Supervisors receive certain benefits for the burden of remaining on call for work, there is no legitimate reason why ALES members should not receive this benefit for undertaking the exact same burden. This is fair and equitable.

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

AWARD ON SALARY AND OTHER ECONOMIC ITEMS

Salary – Effective April 1, 2003, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and who are full-time annual salaried employees shall receive a general salary increase of 3%. Effective April 1, 2004, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and who are full-time annual salaried employees shall receive a general salary increase of 3%. New salary schedules reflecting these increases are attached hereto as Appendix A.

Agency Law Enforcement Adjustment Differential (ALEAD) – Article 11.10 – Effective for the period April 1, 2004 to March 31, 2005, the State shall provide an Agency Law Enforcement Adjustment Differential (ALEAD) to all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and are full-time annual salaried employees in recognition of their police officer status in the amount of \$2,500. This payment will be equally divided over the 26 payroll periods in that fiscal year and shall count as compensation for overtime and retirement purposes. On March 31, 2005, \$2,500 will be added to the base salary for eligible unit members. There shall be no separate payment after that date for ALEAD. A new salary schedule, effective March 31, 2005, reflecting this addition to base salary is included in Appendix A.

Expanded Duty Pay – In recognition of the additional duties and responsibilities performed by police officers in this unit as a result of the September 11th terrorist attacks, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and are full-time annual salaried employees will receive expanded duty pay in the amount of \$1,545 for the period April 1, 2003 to March 31, 2004. Effective April 1, 2004, the expanded duty pay will be increased to \$2,575 annually. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Marine/Off Road Enforcement Pay – Effective April 1, 2003, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, full-time annual salaried employees and are employed by the Office of Parks, Recreation & Historic Preservation or the Department of Environmental Conservation, Division of Law Enforcement will receive \$1,500 annually in recognition of their expertise in Marine and Off-Road Enforcement. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Hazardous Material Pay - Effective April 1, 2003, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, full-time annual salaried employees and are employed by the Department of Environmental Conservation, Division of Law Enforcement will receive \$1,500 annually in recognition of their expertise and handling of Hazardous. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Standby/On Call Pay Supervisor Agreement Article 15.5 – Effective March 31, 2005, this provision of the Security Supervisors Agreement shall apply to all members of the Agency Law Enforcement Service Unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law.

LONGEVITY PAYMENTS

Discussion on Longevity Payments

On behalf of ALES unit members, the Union seeks to clarify that time served in either the Security Services or Security Supervisors bargaining unit will be counted as service time toward the calculation of longevity in this unit. Its proposal also seeks to have all time while in the employment of the State of New York credited regardless of job title or bargaining unit affiliation. The last aspect of the Union's longevity proposal is to create a new 25 year longevity that is 4% above step 20, consistent with the value of the other longevity steps. The Union asserts that a 25 year longevity is appropriate in this unit because its members cannot retire after 20 years of service. Instead, all members have either a 25 or 30 year retirement plan. The State objects to the Union's proposal, arguing that its limited resources would be better used toward the general wage adjustment than toward longevity.

Upon review, the Panel finds that longevity payments are an integral part of compensation for Police Officers generally. Establishing a 25 year longevity is fair and appropriate in light of the fact that unit members must work at least 25 years in order to receive retirement benefits. The Panel also finds that it is reasonable for the new 25 year longevity to bear some relationship to the other longevities currently provided to unit members. Thus, it is the determination of the Panel that the new 25 year longevity shall be equal to the difference between the 10 year and 15 year step within each grade level. The Panel also finds that time spent in titles in the Security Services unit and/or Security Supervisors unit and/or the ALES unit should count be credited as time worked for longevity purposes.

This determination is reasonable in view of the fact that much of the work performed by members of this unit who were formerly in either the Security Service unit or the Security Supervisors unit was either actual police work or was at least related to police work. Any other work performed by ALES unit members in the State employ shall not count toward longevity as it was not primarily law enforcement work.

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

AWARD ON LONGEVITY PAYMENTS

Effective April 1, 2003, a twenty-five (25) year longevity will be added to the salary schedule for all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and are full-time annual salaried employees. This longevity will be equal to the 10-year and 15-year step within each grade level. Time spent in titles in the Security Services Unit and/or Security Supervisors Unit and/or Agency Law Enforcement Services Unit shall count toward satisfaction of the continuous service requirement that already exists for eligibility for longevity. All other requirements for longevity remain in place.

CLOTHING MAINTENANCE ALLOWANCE (ARTICLE 20.2)Discussion on Clothing Maintenance Allowance

Most ALES unit members who originated from the Security Services bargaining unit have been receiving a \$550 annual clothing maintenance allowance that has been fixed at \$550 since the mid-1990's according to the Union. The Union proposes that this allowance be increased to \$1,250 effective December 1, 2003 and to \$1,400 effective December 1, 2004. The Union argues that this increase is appropriate because unit members are subject to grooming regulations and because the \$550 annual payment has remained unchanged for so many years. The Union also proposes that a \$200 annual shoe allowance be established. It insists that this is appropriate as virtually all unit members are outdoors at all times of the year. The State rejects this proposal arguing that there is no funding available for the kinds of increases proposed by the Union.

Upon review, the Panel finds that some increase in the clothing maintenance allowance is warranted at this time, although not nearly to the extent proposed by the Union. In the Panel's view, it is more critical that some of the other economic items proposed by the Union be more substantially addressed than the clothing maintenance allowance at this time.¹ Since the State's resources are not unlimited, the Panel awards an annual increase of \$25 for 2003-04 for a total of \$575 annually and an additional annual increase of \$50 for 2004-05 for a total of \$625 annually.

¹ The Panel notes that it is providing more significant increases toward the clothing allowances for investigators and detectives in this unit.

AWARD ON CLOTHING MAINTENACE ALLOWANCE (ARTICLE 20.2)

Effective April 1, 2003, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and are full-time annual salaried employees will receive a \$575 clothing maintenance allowance to be paid on or about December 1st of each year. This allowance will be increased to \$625 on April 1, 2004. Any eligible unit member who receives this payment cannot receive the Clothing Allowance referenced in the next section of this Award. An eligible unit member must satisfy all other contractual requirements for this allowance.

CLOTHING ALLOWANCE

Discussion on Clothing Allowance

The Union proposes that all unit members who are not required to wear a uniform (typically detectives and investigators) receive an annual clothing allowance of \$1,800.00 per year. The Union asserts that its proposal is fair and appropriate because it would provide money for unit members who are required to purchase and maintain suits required for the job. The State argues that there is no funding available for this proposal.

Upon review, the Panel finds merit in the Union's request to the extent that Police Officers who do not typically wear a uniform should receive a clothing allowance that is more generous than the allowance provided to Police Officers. The Panel reaches this conclusion because these unit members are responsible to maintain and care for a greater number of articles of clothing than Police Officers wearing regular

police uniforms. Damage to street clothes while performing police duties is also quite common and results in increased expenses for officers so assigned. An increased allowance for unit members in these positions will help defray some of the increased costs they incur.

AWARD CLOTHING ALLOWANCE

Effective April 1, 2003, all Investigators or Detectives who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and who are full-time annual salaried employees will receive \$1,000 annually for a clothing allowance for the purchase of appropriate dress clothing. This allowance shall be payable to all Investigators or Detectives who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law and are full-time annual salaried employees in this unit on the payroll on the last day of the payroll period in which November 1 of each year falls. Such allowance shall be payable by separate check on or about December 1 of each year. Any eligible unit member who receives this payment cannot receive the Clothing Maintenance Allowance set forth above.

LOCATION PAY/SUPPLEMENTAL LOCATION PAY

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

ALES unit members working in Dutchess, Orange and Putnam counties do not currently receive location pay or supplemental location pay. On behalf of ALES unit members, the Union proposes to not only expand location pay for its members working in Dutchess, Orange and Putnam counties, but to also establish location pay for unit members working in Albany, Erie and Monroe counties due to the high cost of living in all of those counties. The Union asserts that in 2000 Arbitrator Joel Douglas recognized the higher cost of living in Putnam, Dutchess and Orange counties when he expanded location pay to include those counties for the NYSP. The Union argues that the greater cost of living encountered by NYSP members working in those counties is no different than what ALES members must contend with. In the Union's estimation, it is logical and fair for its members to receive at least the same location pay as enjoyed by the NYSP.

The Union proposes that location pay be increased to \$2,000 in the first year of the Award and to \$2,500 in the second year of the Award. It submits that the record strongly establishes that ALES members assigned to these high cost areas have suffered economic hardships. This is the case because new officers working for

ENCON and Parks typically are assigned to the New York metropolitan area at the beginning of their employment, at a time when they are earning the least amount of money.

The State maintains that it does not have money available to fund the Union's proposal. Instead, it proposes that location pay expanded to unit members working in Dutchess, Orange and Putnam counties in the second year of the Award at the amount of \$615 annually. It also proposes to increase the location pay provided to unit members working in the counties of Nassau, Suffolk, Westchester, Rockland and New York City to \$1,230 annually, but not to establish supplemental location pay for this unit for economic reasons.

Upon review, the Panel finds that the current location pay being provided to unit members is not adequate. The Panel concludes that the evidence supports increases toward location pay and supplemental location pay. Members of this unit should receive location payments that are competitive when compared with those received by the NYSP. The Panel's decision to increase location pay to \$1,236 effective April 1, 2003 and to \$1,273 effective April 1, 2004 to those unit members working in the counties of Nassau, Suffolk, Westchester, Rockland and New York City, will essentially put them on par with the amount received by NYSP in those counties. The Panel notes that ALES unit members will achieve absolute parity with NYSP members working in these counties if they receive an additional \$38 effective April 1, 2005, a time period that is not covered by this Award.

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

The Panel also determines that some supplemental location pay must be established for unit members working in Putnam, Dutchess and Orange counties. The record establishes that the cost of living is higher in these counties than a vast majority of the State. However, even though the Panel concludes that supplemental location pay should be established, the Panel determines that it should not be provided at the rate paid to unit members working in and right around New York City because the cost of living in and around New York City exceeds the cost of living in Dutchess, Putnam and Orange counties. Finally, the Panel also finds that the evidence does not establish that the cost of living is so high in Erie, Monroe or Albany counties that location pay is appropriate.

AWARD REGARDING LOCATION PAY AND SUPPLEMENTAL LOCATION PAY

Location Pay (Article 11.7) – Effective April 1, 2003, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, who are full-time annual salaried employees and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the state comptroller, is located in the city of New York, or in the counties of Rockland, Westchester, Nassau or Suffolk shall receive location pay in the amount of \$1,236 annually. Effective April 1, 2004, the payment will be increased to \$1273 annually. This payment will be equally divided over the 26 payroll periods in each fiscal year and shall count as compensation for overtime and retirement purposes.

Supplemental Location Pay - Effective April 1, 2003, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, who are full-time annual salaried employees and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the state comptroller, is located in the city of New York, or in the counties of Putnam, Orange, Dutchess, Rockland, Westchester, Nassau or Suffolk shall receive supplemental location pay in the following annual amounts:

Orange, Putnam, Dutchess	NYC, Rockland, Westchester	Nassau, Suffolk
\$1,030	\$1,545	\$1,803

Effective April 1, 2004, all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, who are full-time annual salaried employees and whose principal place of employment, or in the case of a field employee, whose official station as determined in accordance with the regulations of the state comptroller, is located in the city of New York, or in the counties of Putnam, Orange, Dutchess, Rockland, Westchester, Nassau or Suffolk shall receive supplemental location pay in the following annual amounts:

Orange, Putnam, Dutchess	NYC, Rockland, Westchester	Nassau, Suffolk
\$1,061	\$1,591	\$1,857

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

HEALTH INSURANCE AND EMPLOYEE BENEFIT FUND (ARTICLE 25.9)

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

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

The Union recognizes that it must make some changes to the health plan. However, the Union contends that certain benefits must be offered in order for the proposed changes to be fairer and more palatable for its unit members. As an example, ALES proposes a LASIK vision care benefit. The Union states that vision is critical to the performance of its unit members' duties. It notes that the State

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

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

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

AWARD ON HEALTH INSURANCE AND EMPLOYEE BENEFIT FUND (ARTICLE 25.9)

For all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law, Appendix B attached to this award, summarizes all changes to health insurance.

Effective for the period April 1, 2003 to March 31, 2004, there shall be a payment to the employee benefit fund of \$28 for each member of the unit who is a police officer pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law. Effective for the period April 1, 2004 to March 31, 2005, the benefit fund will be increased to \$30 for each member of the unit who is a police officer pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law.

PRE-SHIFT BRIEFING (ARTICLE 11.9)

The State's proposed change to this provision would eliminate any payment for pre-shift briefing on those days when unit members actually do not work. The State contends that this benefit has outlived its usefulness. It suggests that the benefit was initially agreed to in 1988 as a way to allow the State to be in compliance with the Fair Labor Standards Act and that it was subsequently expanded to allow employees to be paid for the pre-shift briefing when they were charging leave time. In the State's estimation, employees should only be paid for pre-shift briefings on days they are actually working.

The Union objects to the State's proposal. It asserts that this proposal constitutes a reduction in overall compensation because the pre-shift briefing pay was established as a way to guarantee certain minimum compensation to its unit members. The Union maintains that this proposal should be rejected by the Panel in light of its unit members' increased responsibilities as well as their relatively poor compensation in relation to like titles within and without New York State.

Upon review, the Panel finds that unit members should only receive pay for pre-shift briefings on days they actually appear for work. Although this benefit has been in place for many years, there is no doubt that in these economic times the public will only support providing pay to public employees for work they actually perform. Accordingly, the Panel concludes that commencing March 31, 2005, pre-shift briefing pay will be provided only on days when unit members are actually working.

AWARD ON PRE-SHIFT BRIEFING (ARTICLE 11.9)

Effective March 31, 2005, for all members of this unit who are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law 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. However, employees of the Department of Environmental Conservation covered by this award who do not physically line up shall be paid the equivalent of pre-shift compensation for vehicle, equipment, office maintenance, and the handling of all phone calls and home visitations received and instigated outside of the regular workday. This also supplants any payments made to employees for equipment storage. There shall be no payment of pre-shift briefing for any day in which the employee is not physically reporting to work. The State shall cease any and all payments to employees for days when an employee is not physically reporting to work as soon as practicable.

REMAINING ISSUES

Discussion on Remaining Issues

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

AWARD

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

DURATION OF AWARD

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

 6/25/07
JEFFREY M. SELCHICK, ESQ. Date
Public Panel Member and Chairman

Concur
[Concur]
[Dissent]

 6/25/07
WALTER J. PELLEGRINI, ESQ. Date
Employer Panel Member

Concur
[Concur]
[Dissent]

 6/25/07
RICHARD LESNIAK Date
Employee Organization Panel Member

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

On this *25th* day of *June* 2007 before me personally came and appeared Jeffrey M. Selchick, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

EMMO J. CORBI
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION NUMBER 02C0888847
COMMISSIONED IN ALBANY COUNTY
QUALIFIED IN SCHENECTADY COUNTY
COMMISSION EXPIRES APRIL 4, 2012

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

On this *25th* day of *June* 2007 before me personally came and appeared Walter J. Pellegrini, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

TERESA A. PRESCOTT
Notary Public State of
New York
No. 02PR6046131
Qualified in ~~Albany County~~ *Rens. Co.*
Commission Expires August 7, 2010

STATE OF NEW YORK)
COUNTY OF) ss. :

On this *25th* day of *June* 2007 before me personally came and appeared Richard Lesniak, to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

EMMO J. CORBI
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION NUMBER 02C0888847
COMMISSIONED IN ALBANY COUNTY
QUALIFIED IN SCHENECTADY COUNTY
COMMISSION EXPIRES APRIL 4, 2012