

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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**In the Matter of the Compulsory Interest  
Arbitration between**

**POLICE BENEVOLENT ASSOCIATION OF  
NEW YORK STATE, INC.,**

**FINAL AND BINDING  
AWARD OF  
TRIPARTITE PANEL**

**-and-**

**STATE OF NEW YORK**

**PERB Case Nos. IA2018-002; M2017-077**

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The Public Arbitration Panel Members are:

PUBLIC PANEL MEMBER & CHAIRMAN:

Thomas N. Rinaldo, Esq.

PUBLIC EMPLOYER PANEL MEMBER:

Joseph M. Bress, Esq.

PUBLIC EMPLOYEE ORGANIZATION  
PANEL MEMBER:

Ronald G. Dunn, Esq.

Appearances:

For the State of New York

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

For the Police Benevolent Association  
of New York State, Inc.

Gleason, Dunn, Walsh & O'Shea  
Lisa F. Joslin, Esq., and  
Christopher M. Silva, Esq.

## **BACKGROUND**

Pursuant to the provisions of Section 209.4 of the Civil Service Law (“209.4” and/or CSL”) and in accordance with the Rules of the Public Employment Relations Board, an Interest Arbitration Panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the State of New York (“State”) and the Police Benevolent Association of New York State, Inc. (“PBA” and “Union”). The PBA is the certified employee Organization representing State employees within the Agency Police Services bargaining unit (“APSU”) covering the period April 1, 2015 through March 31, 2019. All titles within the APSU are designated as Police Officers. The APSU represented titles’ cover three State Agencies: (1) The Office of Parks, Recreation, and Historic Preservation; (2) the Department of Environmental Conservation; and (3) the State University of New York. Police Officer titles in the Department of Environmental Conservation fall into two Divisions: (1) the Division of Law Enforcement; and (2) the Division of Forest Protection. Within the State University of New York, individual campuses have their own University Police Departments. Titles in the APSU fall within the State’s classified service in the competitive class.

The State and PBA are Parties to a Collective Bargaining Agreement that covered the period April 1, 2005 through March 31, 2015. Before the 2005-2015 Agreement, the terms and conditions of employment for APSU were governed by Interest Arbitration Awards for both the APSU and the Security Supervisors Unit, with each Award covering the period April

1, 2003 to March 31, 2005, two memoranda of understanding applicable to Forest Rangers I, II and III covering the period April 1, 2003 to March 31, 2005 since employees in these titles were peace officers at the time the 2003-2005 Awards were issued and expired Collective Bargaining Agreements for the Security Services unit and Security Supervisors Unit, each covering the period April 1, 1999 to March 31, 2003. At the time of the April 1, 2003 to March 31, 2005 Interest Arbitration Award, the bargaining unit was referred to as the Agency Law Enforcement Services Unit (“ALES”). The Interest Arbitration Award covering the period April 1, 2003 to March 31, 2005 was issued in June 2007 by a Public Interest Arbitration Panel that was Chaired by Jeffrey M. Selchick, Esq., (“Selchick Award” or “Selchick Panel”).

The Union petitioned for Interest Arbitration on May 16, 2018 and the State filed its answer to the petition on June 4, 2018. The State’s answer set forth its opposition to the PBA’s proposals and also set forth its own proposals. On June 25, 2018, the Public Employment Relations Board designated the Panel Chairman as the Public Panel Member and Chairperson for this proceeding.

The Interest Arbitration hearing was held in Albany, New York on October 24 and 25, 2018, November 13, 2018, April 15, 16 and 30, 2019, and May 1, 21, and 22, 2019. At the hearings, the Parties were represented by counsel and other representatives. Numerous and extensive exhibits and documentation was submitted by the Parties, and the Parties presented extensive arguments on their respective positions. Briefs have been filed by the Parties with

the Panel.

The Panel has fully reviewed all data, evidence, arguments, and issues submitted by both Parties. After significant discussion and deliberations at the executive sessions, the Parties achieved a consensus on the proposals at issue and the Panel members executed an Interim Award on December 18, 2019. The Interim Award is set out herein along with the Final Award.

The positions originally taken by the Parties are adequately specified in the Petition and the Response, the numerous hearing exhibits, and the Parties' post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the compensation proposals presented to the Panel for the period April 1, 2015 to March 31, 2019. In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 204(4)(c)(v) of the Civil Service Law:

- a) comparison of the wages, hours and conditions of employment of the employee involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interest and welfare of the public and the financial ability of the public employer to pay;

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

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

## **PARTIES' PROPOSALS**

### **Union Proposals**

The PBA seeks to advance the following items to interest arbitration:

- a) Wage increases as follows:
  - I. Effective April 1, 2015 - 2%
  - ii. Effective April 1, 2016 - 2%

The above wage increases shall apply to base salary, clothing allowance and inconvenience pay. Performance advances shall continue. The above wage increases shall be fully retroactive to the respective effective dates for all calculation purposes.

- b) Effective April 1, 2015, Expanded Duty Pay shall be increased to \$8,702.00.

The above increase in Expanded Duty Pay shall be fully retroactive to April 1, 2015 for all calculation purposes and continue to be counted for overtime and retirement purposes.

- c) Location Pay (Regular) shall be as follows:

- I. Effective April 1, 2015 

<u>Orange/Putnam/Dutchess</u>
\$1,280

ii. Effective April 1, 2016 \$1,306

The above Location Pay (Regular) increases shall be fully retroactive to the respective effective dates for all calculation purposes. Location Pay (Regular) shall continue to be counted for both overtime and retirement purposes.

d) Location Pay (Regular/Supplemental) shall be as follows:

	New York City, Rockland & <u>Westchester</u>	Nassau and <u>Suffolk</u>
I. Effective April 1,2015	\$3,452	\$3,775
ii. Effective April 1, 2016	\$3,521	\$3,851

The above Location Pay (Regular/Supplemental) increases shall be fully retroactive to the respective effective dates for all calculation purposes. Location Pay (Regular/Supplemental) shall continue to be counted for both overtime and retirement purposes.

e) Effective April 1, 2015, the Longevity Schedule shall be changed to the following:

- 6-10 years of service - \$540 per year of service
- 11-15 years of service - \$590 per year of service
- 16-25 years of service - \$640 per year of service

The longevity amount is capped at the twenty-five (25) years of service level for those employees with twenty-six (26) years of service and above. Employees with greater than twenty-five (25) years of service shall continue to receive longevity benefit at the twenty-five (25) year amount. No employee will have their longevity pay reduced as a result of this clause.

For purposes of longevity, the term “years of service” shall mean time in a title or combination of titles

which have existed or presently exist in the Security Services Unit, Security Supervisors Unit, Agency Law Enforcement Services Unit, or Agency Police Services Unit. In calculating an employee's longevity, all years of service are multiples by the yearly amount applicable to the range of years that the employee's years of service falls into.

Such payment shall be added to the base pay effective on the payroll period following the employee's anniversary date.

The Longevity increases shall be fully retroactive to April 1, 2015 for all calculation purposes. Longevity shall continue to be added to and considered to be part of base pay for all purposes except for determining an employee's change in salary upon movement to a different salary grade and/or potential for movement to the job rate for the new grade, after which, the determination for the appropriate longevity payments will be restored.

f) Employees Benefit Fund. The Employees Benefit Fund shall be funded at the following levels during the term of the contract:

- I. Effective April 1, 2015 - \$50.98
- ii. Effective April 1, 2016 - \$52

g) Contract Funding/Joint Contractual Programs.

Funding levels for all contract funding and joint contractual programs shall be increase as follows: 2% for fiscal year 2015-2016 and 2% for fiscal year 2016-2017.

h) Promotion.

Effective April 1, 2015, employees who are promoted, or appointed to a higher salary grade will be paid at the job rate of the higher grade upon being so promoted or appointed. Employees who were promoted or appointed to a higher salary grade prior to April 1, 2015 who are not

yet at the job rate will be brought to the job rate effective April 1, 2015.

## **State Proposals**

This document sets forth the conceptual proposals of the State of New York for a successor agreement to the 2009-2016 collective bargaining agreement between the State of New York and the Police Benevolent Association of New York State, Inc., for employees in the Agency Police Services Unit.

All proposals are made subject to the course of negotiations and final agreement. The State may withdraw or amend proposals or offer additional new proposals during the course of negotiations. All proposals are presented with the understanding that they may not necessarily represent final contract language.

In some instances, the State's proposals may represent a clarification of rights that the State already believes that it already has under existing contract language. Other necessary language changes such as date modifications and elimination of expired language are not included with these proposals and the State reserves the right to propose changes and/or eliminate the language where needed.

### **Bill of Rights**

- Modify D to reflect up to date terminology and use of technology
- Eliminate K

### **Article 1 - Term of Agreement**

- The term of the agreement will be discussed within the context of an overall agreement

### **Article 5 - Union Rights**

- Limit EOL use (not including negotiations) to maximum of 5% of employee's schedule



- All requests for leave, unless an emergency, shall be submitted no later 7 days in advance of the requested beginning date of such leave

### **Article 6 - Management Rights**

- Add provision clearly outlining the use of employee searches including what type of searches can be conducted, what can be searched, what can be brought into facility for personal use and in what type of container.
- Add provision that clarifies the right of management to remove employees from bid position/work location and reassign as deemed appropriate

### **Article 7 - Grievance and Arbitration**

- Modify Article 7 to reflect ability of parties to utilize modern methods of transmission of grievances, decisions and appeals.
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### **Article 8 - Discipline**

- Discipline process - cases of serious misconduct will be tried before a hearing officer chosen by the agency head who shall make a recommendation to the agency head or his/her designee. Serious misconduct to be defined by table of offenses which shall proscribe offenses and penalties.
- Expand the statute of limitations for non-criminal acts from 9 to 18 months
- Change arbitrator selection process to rotation based on geography issued by PERB
- Modify Article 8.2(a) to return article to intended meaning regarding reference to date, time and place so that it provides enough information for an employee to defend his or her self. Modify language so that Union must contact employer for specificity before arbitration proceeding so that no such motion shall be made before an arbitrator.
- Modify to specifically include preponderance of evidence standard as burden in disciplinary matters.

- Modify Article 8.2(d) to eliminate agency level hearing. Modify remainder of article to reflect revised process
- Modify Article 8.2(g) to reflect modern terminology and technology
- Modify Article 8.4(a)(1) - change 7 days to 30 days to serve Notice of Discipline
- Modify Article 8.4(a)(2) - change 7 days to serve a Notice of Discipline to 14 days
- Eliminate Article 8.4(a)(4) to reflect elimination of agency level meeting
- Modify Article 8 to provide for consolidation of disciplinary hearings arising from a single incident upon notice from the employer
- Modify Article 8 to provide for arbitration to proceed when grievant fails to appear for hearing due to absence or incarceration
- Modify Article 8 to provide for command discipline

### **Article 9 - Out of Title Work**

- Modify Article to provide time period for agency response to out of title work grievance, contents of recommended findings of fact and recommended remedy (if appropriate) and provide for processing of grievance in absence of decision at Step 2.

### **Article 11 - Compensation**

- All compensation, regardless of where it is contained (i.e. the agreement, an appendix or side letter) will be discussed in the context of an overall agreement.

### **Article 12 - Health, Dental and Prescription Insurance**

- See attached chart

### **Article 13 - Education and Training**

- All labor/management monies will be discussed in the context of an overall agreement

- The parties will discuss the specific education, training and services to which funding is directed to ensure that such education, training and services remain appropriate to fund.

#### **Article 14 - Attendance and Leave**

- The State seeks to negotiate changes to the Workers' Compensation contractual benefit (and related administrative procedures) including but not limited to:
  - ▶ Modify benefit to apply to only injuries sustained from assaults on staff
  - ▶ Mandatory medical documentation requirements in order to remain covered by the contractual benefit
  - ▶ Mandatory participation with administrative requirements such as attendance at evaluations, responding to telephone calls and written communications in order to remain covered by the contractual benefit
  - ▶ Modify article to require staff on leave to remain at residence during their regular shift, except to attend a doctor's appointment
  - ▶ Modify article to include payment for statutory amount in one check and contractual supplement in additional check
  - ▶ Discuss modification of light duty program to require additional opportunities for injured employees to work light duty
  - ▶ Provide for a mandatory preferred provider Organization
  - ▶ Limit applicability of supplemental insurance
  - ▶ Eliminate restoration of leave credits after six months leave at full pay is exhausted

Modify Article 14.11 to provide explicitly that the process in this article is the sole process that applies and that due process is thereby satisfied. Add the opportunity for an employee to request a meeting with management after management decides to hold an employee out of work based on a physician's evaluation. The employee shall be able to present arguments at this meeting as to why he/she is fit and should be allowed to return to work. Management will issue a final and binding written determination after this meeting that is not subject to appeal.

### **Article 15 - Overtime, Recall and Scheduling**

- Modify the first sentence of Article 15 (a) so that it reads “Overtime eligible employees shall receive overtime compensation for authorized time worked beyond 40 hours in the scheduled workweek consistent with applicable Federal law.”
- Eliminate Article 15.1(g)
- Eliminate Article 15.1(h)
- Modify Article 15.3(c) to 24 hours
- Eliminate 15.3(e) Regularly scheduled days off can be changed subject to same parameters as shift change.

### **Article 16 - Holiday Pay**

- Eliminate election day and Lincoln’s birthday as paid holidays.

### **Article 17 - Travel**

- Eliminate Article 17.1 and 17.2. Refer to Comptroller’s regulations and guidance.

### **Article 18 - Payroll Computation**

- Require mandatory direct deposit for all employees

### **Article 24 - Seniority**

- Modify language to provide for bidding of shift and pass days only
- Modify language to clarify ability of employer to rotate shifts based on operational need
- Modify language to provide that seniority shall only be a tie breaker when all other factors are equal so that assignments are made on skills and operational needs not seniority in the first instance

## **Article 25 - Labor/management Committees**

- All labor/management monies will be discussed in the context of an overall agreement.
- The parties will discuss the specific programs to which funding is directed to ensure that such programs remain appropriate to fund.

## **Side Letters**

- Revise and clarify Outside Police Agreement side letter. Clarify, revise and replace other existing side letters as needed.

## **POSITION OF THE UNION**

The Union identifies what it considers to be significant aspects of the 2003-2005 Interest Arbitration Award issued by the Selchick Panel. It focuses on what the PBA describes as the Panel's "important 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.' (Emphasis in original). The PBA focuses on the Panel's observations regarding the differences between work performed by unit members and Correction Officers. In making these distinctions and also making comparisons of similarity between the work performed by unit members and the State Police, the Panel, according to the PBA, "determined that the compensation increases awarded to the unit members were warranted 'so they can continue to narrow the current gap between their compensation and that paid to the NYS Police.'" Nevertheless, the PBA asserts, rather than

experiencing a narrowing of the gap, the compensation differential between PBA members and the State Police has “widened” and, as well, “the gap between PBA members and Correction Officers has narrowed.”

The PBA identifies the testimony of its Executive Director and Counsel, Daniel De Federicis, which it describes as setting forth the “legitimate justification” for the PBA’s proposals, “including the across-the-board wage increases, increases in Expanded Duty Pay and location pay, a change in the longevity schedule, and a change in pay upon promotion.” As to the total compensation increases sought, the PBA observes that it seeks across-the-board wage increases of 2%, effective April 1, 2015, and 2% effective April 1, 2016, which would be “applicable to base salary, clothing allowance and inconvenience pay, and fully retroactive to the respective effective dates for all calculation purposes.” The PBA describes these increases as “reasonable” in that they “match those provided to nearly every other State union for the relevant period ... and will just *begin* the process of returning PBA members to their proper place on the salary continuum.” (Emphasis in original).

The PBA notes its Exhibits 33, 34, and 35, which consist of spreadsheets and charts that the PBA avers set forth a comparison of the total compensation of PBA members and total compensation of State Police and Correction Officers. The PBA maintains that the State did not offer any refutation of the data and calculations set forth in the documents, and the data actually was provided to the PBA by Abigail Ferreira, the Assistant Director in GOER of the Research Unit. The “total compensation,” the PBA observes, includes base

salary, plus “soft categories unique to each title, such as Expanded Duty Pay.” The PBA notes that its Exhibits 33 and 34 set forth a comparison of the total compensation of the four PBA units to the State Police and to Corrections for a ten-year officer for three separate time periods in 2003, 2005, and 2015. These time period are “significant,” the PBA asserts, “because: 3/31/03 is just prior to the [Selchick] June 2007 Interest Arbitration Award ...; 3/31/05 is the end of the period of the Interest Arbitration Award, and shows movement was made in the right direction; and 3/31/15 is just prior to the period relevant to this proceeding, and shows that the positive movement achieved by 3/31/05 had been completely *negated* in the 10-year period since the award.” (Emphasis in original).

Union Exhibit 35, the PBA notes, contains four charts that “further illustrate these comparisons and the improper trajectory in PBA compensation from 2005 through 2015.” According to the Union, the exhibits show that “from 2003 through 2005, the gap in compensation between PBA members and the State Police properly narrowed, and the gap between PBA members and Correction Officers properly widened; yet, from 2005 through 2015, the reverse occurred - the compensation of PBA members moved further from the State Police and closer to Correction Officers.” Its proposals, the PBA contends, as set forth in the testimony of Mr. De Federicis, “will aid in the restoration of its members to their proper salaries relative to the State Police and Corrections Officers.”

Focusing on Expanded Duty Pay, the PBA noted that De Federicis offered extensive testimony establishing “the significant expansion of the training, skills, expertise, job duties

and responsibilities of PBA members since 2014,” and offered the justification that “[t]he ever-present threats posed by domestic and international terrorists and active shooters, coupled with changing elements to their roles, and new responsibilities and equipment, warrant a significant increase in Expanded Duty Pay to help restore PBA members to their proper compensation structure.” Hence, the PBA, notes it seeks an increase to \$8,702, effective April 1, 2015 to be fully retroactive for all calculation purposes, and counted for overtime and retirement purposes going forward.

The PBA identifies its Exhibit 36 that includes Expanded Duty amounts received by Correction Officers, Troopers, and PBA members for the period April 1, 2003 through April 1, 2017. A review of the relevant data as set forth in the Exhibit, the PBA observes, shows that “beginning in 2007, a gap in ... [the] Expanded Duty Pay [received by PBA members and Troopers] quickly emerged which essentially mirrored their differential in total compensation.” This disparity, the PBA notes, “has increased since 2007” while in the same period, the differential between Correction Officers and PBA members “has decreased.” These changes are also set forth in Union Exhibit 37, which, the PBA claims, “confirms the growing disparity in Expanded Duty Pay between PBA members and the State Police.” The PBA also emphasizes what it describes as the “clear, dramatic changes in policies, training, workload, responsibilities and risks associated with PBA member roles, [which] are fully commensurate with the State Police, and thus, justify the requested increase in Expanded Duty Pay.”



The PBA also identifies the Longevity Pay increases it seeks, which proposal, the PBA asserts, “is meant to replace current longevity pay program,” and which also “mirrors the State Police longevity pay schedule, and would allow PBA members to receive the benefit more quickly than they currently receive it - which is after 10 years of service.”

As to Location Pay, the PBA notes it seeks “increases in regular and supplemental Location Pay, effective 4/1/15 and 4/1/16, to be fully retroactive for all calculation purposes, and counted for both overtime and retirement purposes.” It identifies the testimony of De Federicis that the proposal “seeks to: properly account for higher standards of living in certain areas of the State; entice successful officers to stay in those locations rather than leave for other agencies offering higher pay; and retain successful officer, generally.” The PBA claims that it is not refutable “that SUNY, Parks and DEC all suffer from attrition in their numbers, as Officers continually seek to benefit themselves financially by transferring to other agencies.”

The PBA notes its proposals also include a change in compensation upon a promotion or appointment to a higher salary grade, “as follows: effective April 1, 2015, employees who are promoted or appointed to a higher salary grade shall be paid at the job rate of the higher grade; and employees who were promoted or appointed to a higher salary grade prior to April 1, 2015, but not yet at the job rate, shall be brought to the job rate effective April 1, 2015.” This proposal, the PBA maintains, eliminates “wage compression” that exists between titles, “resulting from the current situation where officers start toward the bottom grades of their

new titles.” The PBA notes that such wage decompression “disincentivizes promotion.” The PBA also asserts that this proposal will assist “in decreasing attrition and low morale within DEC, Parks and SUNY.”

On the question of ability to pay, the PBA relies on the report and testimony offered by Retired Chief Budget Examiner for the State Budget Service Unit, John E. Burke. The evidence brought forward through this witness, according to the PBA, established that there can be no legitimate dispute about the State’s ability to address the PBA’s proposal. The PBA also claims that there was no part of the testimony of the State’s witnesses, Christopher and Slane, or, in evidence brought through their testimony, that would require a contrary conclusion. Burke testified, the PBA notes, that the “two key factors for determining the financial impact of a prospective award on a large public employer, like ... New York State, include: (1) the underlying economic vitality of the state; and (2) the current and future availability of tax and other revenue sources to pay a reasonable award.”

The PBA notes that Burke testified that the United States and New York economies “are healthy and continue to show steady and gradual growth.” According to the PBA, the State offered no testimony to refute Burke’s testimony on these points, and was only able to offer “mere speculation” in an attempt to refute his testimony. Additionally, the PBA claims, the State “has available sources to pay a reasonable award,” as Burke was able to demonstrate by referencing the State’s Budget Financial Plan and quarterly updates and reports. Further, the PBA observes that Burke identified “additional resources for payment,”

including a “\$155M reserve for labor contracts,” and the fact that “the State’s financial reports document a reserve for ‘Extraordinary, Monetary Settlements, which hold monies the State receives for violations of State laws by major financial and other institutions ... and indicate this reserve currently has a balance of \$3.308 billion dollars.’” The PBA asserts that the total cost calculated by Burke of its financial proposals was approximately \$38.5 million over the course of a two-year award, and even just “[c]onsidering the amount available in the Extraordinary Monetary Settlement Fund alone, it is clear that the State has the ability to pay the PBA’s proposal.” As to any claim by the State that the extraordinary money settlements are fully committed, the PBA responds that such an argument “fails because, as Mr. Burke made clear to the Panel, the Extraordinary Monetary Settlement Fund is always replenished.” On this point, the PBA notes that “[a]pproximately six months following Mr. Burke’s testimony and report, the FY 2020 Enacted Budget Financial Plan revealed \$2.64 billion held in the Extraordinary Monetary Settlement Fund.”

On the question of comparability, the PBA asserts its “members should be compared on a primary basis with the New York State Police.” Like the State Police, the PBA contends, its members “have the same statewide jurisdiction ... and enforce the same laws.” Further, PBA members, like the State Police, the PBA notes, “must pass a civil service exam, physical exam and agility performance test, medical exam, psychological exam, mental health exam, and an extensive background investigation; and they receive significant specialized training beyond that which is required of members of the State Police.” In fact,

the PBA asserts, its members “are trained and able to perform virtually any police officer function.” The PBA claims that it offered “extensive irrefutable evidence demonstrating that the qualifications, educational requirements, physical requirements, training, skills, expertise and responsibilities of PBA members meet and exceed members of the State Police.”

The PBA focuses on the testimony of retired University Police Chief Gerald Schoenle and University Police Officer Peter Barry as to the qualifications, training, skills, expertise, and responsibilities of the University Police Officers. According to the PBA, and as summarized in Union Exhibits 13 and 14, the UPOs are required to meet any number of tests for initial qualifications, attend a six-month police academy, and participate in supervised field training as well as annual in-service training. The UPOs, the PBA observes, also have been trained on the use of Naxolone and have developed and implemented active shooter training programs and similar types of emergency response situations. The PBA focuses on various training and skills acquired by UPOs in addition to those mentioned. UPOs, the PBA further observes, have authorization to make arrests and execute arrest and search warrants throughout the State. In addition, the PBA states that UPOs are armed and are mandated to wear soft body armor. The UPOs engage in incident investigations and respond to any number of specific incidents, the PBA observes, and patrol in both marked and unmarked cars and on horseback, foot, and bicycles. Moreover, UPOs, the PBA observes, engage in “routine and substantial interaction” with “Police Officers in other law enforcement agencies in jurisdictions where the campuses are located.” It also identifies the testimony of Chief

Schoenle that “SUNY Buffalo lost many good Officers to other police agencies with higher pay scales, and that he had difficulty recruiting UPOs for the same reason.”

The PBA also focuses on the Department of Environmental Conservation, Division of Forest Protection (“DFP”). It notes that DFP “provides law enforcement services on five million acres of public land under the jurisdiction of DEC, including forest preserves, conservation easements, State forests, campgrounds, rivers and lakes, and New York City watershed lands.” The hiring requirements, qualifications, and training of Forest Rangers are identified and detailed by the PBA. Moreover, the responsibilities of Forest Rangers are identified, including the fact that they are “responsible for the enforcement of all NYS laws anywhere in the State, and are Federally Qualified Wildland Fire Fighters and Wilderness Medical Associates Qualified Wilderness First Responders.” Rangers, the PBA notes, “carry patrol rifles and shotguns, and they patrol by various methods, including by marked and unmarked vehicles, boat, ATV, snowmobile, aircraft (including a helicopter), bicycle, skis, snowshoes, or on foot.” Like UPO’s, Rangers, the PBA observes, are authorized to make misdemeanor and felony arrests and execute arrest and search warrants. Their responsibilities, according to the PBA, “have expanded rapidly since 2015 - in a number of rescues, type of rescues, and location of rescues.” Rangers, the PBA observes, are required to be experts “in the management of large-scale emergency response, they are often called on to work with other police agencies and fire departments to create, strategies, manage and run action plans for major incidents.” The PBA identifies the testimony of Retired Major

Charles Guess, former Commander of State Police Troop B, as to his “exceedingly positive experiences working with the Forest Rangers during his career, on search and rescue missions, underwater victim recoveries, live-saving aviation operations, and woodland firefighting efforts.”

The PBA also addresses Department of Environmental Conservation, Division of Law Enforcement (“DLE”). The PBA notes the record evidence that the mission of DLE “is to protect and enhance the environment and natural resources of the State, and to protect the health and safety of its people through law enforcement and public education.” All New York State laws, with a particular emphasis on the Environmental Conservation Law, navigation laws, snowmobile and ATV laws, the PBA notes, are enforced by DLE officers. The PBA identifies in detail the hiring requirements, qualifications, and training of Environmental Conservation Officers (“ECOs”). This training, the PBA observes, includes a number of areas that were not implemented until approximately 2014. The ECOs, the PBA observes, are responsible for enforcement of New York State laws anywhere in the State and, in doing so, “carry duty pistols, patrol rifles and shotguns, and they are required to wear soft body armor.” ECOs, as with UPOs and Forest Rangers, the PBA observes, “conduct investigations, make misdemeanor and felony arrests, and execute arrest and search warrants.” Further, ECOs investigate all hunting related shooting incidents and elevated hunting incidents in the State, the PBA observes, and enforce restrictions and regulations concerning environmental protections. There are a number of “specialized units and teams”

comprised of ECOs, according to the PBA, and, as with the other law enforcement officers in the unit, “ECOs are faced with significant risks inherent to their unique enforcement responsibilities.” It identifies the testimony of ECO Daniel Davey who was shot by a poacher who was hunting after dark in November 2016, whose “experience leaves little doubt that the nature and risks associated with the duties and responsibilities of an ECO match those of the State Police.”

As to the Office of Parks, Recreation and Historic Preservation, the PBA identifies the testimony of Park Police Officer Troy Caupain who identified the “qualifications, training, skills, expertise and responsibilities of members of the Division of Law Enforcement of the NYS Office of Parks, Recreation and Historic Preservation.” Park Police, Officers, the PBA observes, have a particular “focus on public safety and security in 215 State Parks and Historic Sites, which encompass 335,000 acres.” The PBA identifies in detail the hiring requirements, qualifications, and training of the Park Police Officers. Their responsibilities are also identified by the PBA and the fact that “[t]he preservation of safety and security in State parks is their primary mission; and they plan and conduct police and public safety operations for some of the largest public assemblies in the nation.” However, the PBA stresses, the jurisdiction of the Park Police Officers “is not limited to the parks” and they “are on the same radio and respond to the same emergent threats as the State Police, including active shooter situations.” As with the other officers, the Park Police Officers, the PBA notes, “carry duty pistols, patrol rifles and shotguns, as well as non-lethal weapons

(tasers); and they are required to wear soft body armor.” The role of Park Police Officers in Homeland Security, the PBA emphasizes, “has increased significantly in the last decade, as State parks, concert venues located within the parks, and other similar locations become targets for active shooters.” As with the other Officers, the Park Police Officers, according to the PBA, “work collaboratively with other police agencies in the performance of these functions.”

The PBA rejects the State’s claim that titles in contiguous States are comparable. It first emphasizes what it considers to be the compelling evidence that its members should be compared primarily with the New York State Police. In addition, the PBA states that the “State admittedly failed to identify any out-of-state positions which are comparable to the Forest Ranger titles, and made no argument regarding the same.” Regarding the remaining PBA titles, the PBA asserts that “the State failed entirely to demonstrate any legitimate comparison between the PBA members and the Contiguous State Titles,” and the State “proffered no evidence demonstrating that the Contiguous State Titles require similar trainings, skills and working conditions as PBA members; and the State did not even attempt to show how the contiguous states are ‘comparable communities’ to New York State.” Moreover, the PBA claims the State did not offer any testimony from any individual with first-hand knowledge about the “working conditions of the Contiguous State Titles; the relationships between the Contiguous State Titles and their respective State Police forces; or condition of the contiguous states’ respective economies.”



Turning to the State's comparability assertions, the PBA claims that neither of its witnesses, Jean-Pierre or Ferreira, "offered direct knowledge of any of the substance of their testimony; and the second-hand ... information was used to populate the State's exhibits." Thus, the PBA notes that Ferreira testified members of the Research Unit contacted contiguous state agencies and labor relations groups in an effort to identify titles that could be comparable, and upon receipt of information "from unidentified persons from unidentified contiguous state agencies [that] provided GOER with titles and compensation information, which those [unidentified] persons believed may be similar," the information was then used to "populate the charts in the State's exhibits." Ferreira acknowledged, the PBA maintains, that no independent analysis was performed by her office concerning the comparability issue. Further, Ferreira, the PBA complains, "[w]ithout consulting with Civil Service, ... determined that the New Jersey University Police Officers at Rutgers and the Pennsylvania University Police Officers at Penn State were *not* comparable, due to the size of their campuses, and elected not to send information regarding these titles to Civil Service for their examination." (Emphasis in original). Nevertheless, Ferreira, according to the PBA, when questioned by counsel for the PBA, was not able to identify the populations of the Rutgers and Penn State campuses, whether the populations might be divided among multiple campuses, "or if the ratio between officers and students was comparable with SUNY system schools." Nor, did Ferreira, the PBA claims, examine any training or other qualifications required for Officers at Rutgers or Penn State.

The PBA contends that Civil Service simply took the contiguous state titles that GOER had obtained, and “compared them to the PBA member titles.” His “comparability” testimony, the PBA argues, must therefore be seen as being exclusively based on contiguous state titles “despite that they are inappropriate to determine classification and allocation.” Included in the lack of evidence concerning the claimed comparability titles of the contiguous states, the PBA asserts, is whether the duties and responsibilities of those titles had expanded. In addition, the PBA claims that there no information about the “salary structure, classification, condition of the state’s economy, or the state’s ability to pay the Contiguous State Titles properly.” The PBA stresses the lack of any evidence concerning “the qualifications, training, skills, scope of duties, or community of the Contiguous State Titles.”

It is also significant to the PBA that, in the Selchick Award, although the State sought to compare unit titles to various positions in contiguous states, the Panel did not mention any such comparison in its Award, and its determination focused solely on comparisons with the State Police and Correction Officers, which the PBA argues makes “clear that PBA members must be compensated at a level which results in ‘positive movement towards the State Police salary structure.’” As to the ECOs, the PBA observes that the State did not find any comparable title in Vermont but “yet maintains there are matching titles in Connecticut, Massachusetts, New Jersey and Pennsylvania.” Nevertheless, the PBA avers, upon close inspection, “it is clear that the State makes this argument based entirely on job descriptions

either found on the internet, or provided by unknown persons within the neighboring state agencies, as described above.” The job descriptions relied upon by the State, the PBA maintains, offered no specificity about nature and level of training required before entry in the position. The job descriptions also, the PBA argues, failed to “adequately describe the scope of the duties for comparison purposes.” It is thus not clear, the PBA claims, if there is any “definitive similarity at all” between the ECO position and the positions in the contiguous states.

Regarding Park Police Officers, the PBA notes that the State asserts that comparable titles exist only in Connecticut, New Jersey and Pennsylvania. But as with ECO’s, the PBA claims, the State’s position is supported by job descriptions on the internet or from unidentified persons. The PBA emphasizes its position that there is a “lack of description of the duties of the Contiguous State Titles offered for comparison to the Park Police Officers.” Regarding UPOs, the PBA argues that “the State made assumptions about purported comparable titles at Rutgers and Penn State, without evidentiary support, or even an evaluation of their qualifications, training or duties.” Moreover, the State’s position on comparability on the UPO position, according to the PBA, “falls short for the same reasons noted for the ECOs and Park Police Officers.” As to the Forest Rangers, the PBA acknowledges that the State has admitted that there are no known comparable contiguous State titles.

## **POSITION OF THE STATE**

On the question of “comparability,” the State “submits that the Panel should utilize the similar job titles employed by the contiguous states as the appropriate comparable employees for this factor.” The State asserts that it provided detailed evidence to establish the basis “upon which these titles must guide the Panel’s analysis,” and maintains that the PBA “did not present evidence to establish to the Panel which employees, if any, it asserts are comparable to the unit’s titles or contest the State’s comparisons.”

In setting forth its position on comparability, the State identifies the testimony of Abner Jean-Pierre, the Director of the State Department of Civil Service’s Division of Classification and Compensation (“DCC”). According to the State, the testimony given by Jean-Pierre establishes that DCC used essentially the same analysis it “customarily deploys when it classifies and allocates a title across the New York State civil service titles.” The State notes that Jean-Pierre testified that it provided the Governors’ Office of Employee Relations (“GOER”) with the titles it had found to be comparable, which appears in the record as State Exhibit 24. The State notes the DCC’s determination that, for the APSU unit, the titles of Environmental Conservation Officer, Park Police Officer, and University Police Officers were “the listed titles in the contiguous states of Connecticut, Massachusetts, New Jersey and Pennsylvania were comparable in terms of qualifications and job duties.”

According to the State, for the UPO title, DCC determined that, in addition to Massachusetts, New Jersey, and Pennsylvania, Vermont had a comparable title of Police Officer. Further, the State notes that DCC determined that none of the contiguous states “had titles comparable to the ASPU Forest Ranger title,” which, in his testimony, Jean-Pierre described as an “unusual mix of duties and the fact that they have police powers, fire suppression responsibilities, and search and rescue, and no other jurisdiction is organized that way.” Moreover, the State observes that Jean-Pierre noted in his testimony that DCC “did not find all the titles provided by GOER to DCC to be comparable to the APSU titles,” and that “the analysis made by DCC establishes that the contiguous state titles listed in State Exhibit 24 are the appropriate titles ‘performing similar services or requiring similar skills under similar working conditions’ to which the Panel should apply the statutory ‘comparability’ factor.”

The State notes that, based on the list of titles DCC found comparable, the Panel was presented with evidence that displayed the wage and benefit information as to these titles along with the testimony of Abigail Ferreira, GOER’s Assistant Director in charge of its Research Unit. Ms. Ferreira, according to the State, noted that the “Research Unit conducted a detailed analysis of the salaries of the comparable titles in the contiguous states to the ECPO, PPO and UPO titles.” Because DCC did not determine any specific contiguous State title to be comparable to the Forest Ranger title, the State observes that the Research Unit’s analysis limited itself to showing that the title’s salary “has outpaced certain economic indicators over the previous 20-year period.” The State identifies State Exhibit 25, “Salary

Comparability Analysis,” and the fact that the Salary Comparability Analysis was made “as of March 31, 2015, which is the last date of the expired 2005-2015 Agreement.”

A review of State Exhibit 25, the State observes, reflects a historical comparison of salaries within the bargaining unit “against certain economic indicators, the Consumer Price Index for Urban Wages Earners and Clerical Workers for the Northeast Region ... and the Employee Cost Index ...”. The State observes that the comparisons were made from the years 1995 through April 2016 and reflected the State’s proposed salary increases. The State asserts that this analysis demonstrates “that the salaries of the selected titles exceeded the CPI from 1995 forward, across all titles used in the comparison.” Further, the State notes that the Research Unit analyzed income differential “with respect to inflation” for all the job titles over a period of 20 years. As to the ECPO and PPO, the State notes that the Research Unit “found that the maximum and longevity grew at thirteen and twenty percent above inflation from 1995 to 2015,” and “[w]ith the respect to the UPO and Forest Ranger, they found that the maximum and longevity outpaced inflation by over twenty-seven percent over that period.” Accordingly, the State maintains that this evidence shows “the effectiveness of the current pay plan to more than keep up with the rate of inflation for all titles within APSU.” The State also observes that, as to ECI (Employee Costs Index), comparisons made reflected “similar results.”

In addition, the State maintains that, when the salaries of unit members in ECPO, PPO, and UPO titles “were compared by the Research Unit to the salaries of individuals in

comparable titles in other jurisdictions, the picture becomes clear that New York's salaries are ahead of all other contiguous states at 72 out of 82 points of comparison throughout an employee's career." As to the ECPO title, the State notes that there is no comparable titles in Vermont, and for the four states where there are comparables, "New York trails Connecticut slightly at 10 and 15 years of service and trails New Jersey at 10, 15, and 20 years of service." New York, the State further observes, "exceeds Massachusetts at all points ... and significantly exceeds Pennsylvania at each and every point." Moreover, the ECPO salary, according to the State, when the total package of salary and benefits is considered, "exceeds each comparable title at every point of comparison."

For the PPO and UPO titles, the State notes, the salary comparability data "is more impressive." Thus, the State notes that, for the PPO position, there are comparable titles in Connecticut, New Jersey, and Pennsylvania, and when compared to those states, "the PPO only trails New Jersey's State Park Police Officers at 10 and 15 years of service," and, for the four states of comparability for UPO, "the UPO only trails New Jersey's Higher Education System's Campus Officer at 10 and 15 years of service." When the PPO and UPO titles are analyzed in the context of salary and benefits, the State notes, the titles "exceed each comparable state titles at every point of comparison."

Further, the State notes that the Research Unit analysis included taking into account salary increases for the comparable contiguous states titles for fiscal years 2015-2016 and 2016-2017. This analysis, according to the State, demonstrates that the State's "proposals

are wholly in line with the ATB salary increases received by the comparable titles for the period now reviewed by this Panel.” In the State’s estimation, the record evidence concerning what the State describes as the “extensive review” of the Research Unit “demonstrates that the State’s compensation package for this unit is highly competitive,” and, if implemented by this Panel, “will continue the pattern wherein APSU salaries are at the leading edge of compensation for comparable titles.” The State emphasizes that Civil Service Law Section 209.4(c)(v)(a) “does not require that the State employee salaries be equal to or ahead of similarly situated employees.”

The State also asserts that the Union did not present evidence that comparable employees support its wage demands. The PBA, according to the State, “only presented evidence with respect to wage increases for other State employees.” The State notes that the initial showing to the Panel by the PBA reflected a pattern of wage increases that were collectively negotiated between other employee bargaining units in the State for the period April 1, 2015 through March 31, 2017. According to the State, what this comparison reflected essentially was that “*the negotiated wage increases for all State employees during the pertinent period was limited to a 2% ATB wage increase beginning on April 1, 2015, and a 2% ATB wage increase beginning on April 1, 2016.*” (Emphasis in original). Hence, the comparison made by the PBA, according to the State, “conclusively established that if the Panel imposed any wage increase beyond a 2% ATB increase in April 2015 and April 2016, respectively, the Panel would be imposing a wage increase in excess of the wage increases



*collectively negotiated* between the State and all other State employee unions for that period.” (Emphasis in original). These observations permit the State to argue that the PBA is asking “the Panel to bestow upon it a windfall beyond the clear pattern of wage increases for State employees, including the wage increases negotiated by the Troopers bargaining unit for the relevant period.”

The State claims that after the PBA presented the two 2% ATB increases, it “shifted its argument to assert that the Panel must bestow upon the APSU wages equal to those negotiated by a different State employee bargaining unit that the Selchick Panel already determined, in a lengthy and detailed opinion, were not comparable to APSU represented employees for purposes of CSL §209.4(c)(v)(a).” That is, the State claims, the PBA is seeking salary increases to equal “certain payments negotiated by the unit consisting of Troopers within the New York State Division of State Police.” The State maintains that the testimony of the PBA’s Executive Director, Daniel De Federicis, “effectively confirmed that most of the PBANYS’s interest arbitration proposals beyond the pattern ATBs are simply demands to obtain wage benefits negotiated by the Troopers’ union.” Thus, the State argues that the PBA’s position in this interest arbitration can be seen to rest on “the assertion that this Panel must impose for the APSU, through the auspices of interest arbitration, wages for the period of 2015-2017 equal to the salary and benefits negotiated by the Troopers’ Union and in place during the 2005-2015 period.”

The State rejects what it perceives as the PBA's essential position because the PBA did not present evidence to establish comparables as required under CSL §209.4(c)(v)(a). Instead, the State argues, the PBA advances the argument that the Panel somehow is bound to tie its wage package to the "purported increases previously negotiated between the State and Troopers' Union during the 2005-2015 period." Lacking such evidence of comparables, the State argues, the PBA rests its position "solely upon one sentence taken from the Selchick Award, issued in 2007, that states that 'the proper placement for ALES members is above correction unit members in New York with movement toward the salaries of State Police.'" According to the State, the PBA "wrongly reads that sentence, without context, to be the Selchick chaired panel's pronouncement that APSU wages are legally linked to the Troopers unit in a manner that APSU wage increases must always track parallel with or exceed those negotiated by the other bargaining unit." However, the State asserts, the PBA has not submitted any evidence to establish that its unit titles are comparable to Troopers.

The State asserts the PBA case does not take into account "the facts enunciated by the Selchick chaired panel that supported that panel's determination that ASPU represented titles are not comparable to Troopers for purposes of CSL §209.4(c)(v)(a)." Thus, the State points to the language in the Selchick Award stating "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." Further, the Selchick Award, according to the State, stated that "[i]n 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." Further, the Selchick Award stated, the State notes, "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." The Selchick Award also stated, the State observes, that "APSU members 'should be recognized as no longer linked with Correction Officers' does not support the PBANYS's claim herein that APSU members' wage increases are inextricably linked to those negotiated by the Troopers union."

In addition, the PBA's reliance on the Selchick Award, according to the State, does not take into account that other bargaining units agreed to concessions, which were both operational and financial, to reach negotiated deals to support wage increases. In this regard, the State relies on its witness, GOER Director and Acting General Counsel Michael Volforte, and describes his testimony as informing the Panel "that as part of the agreements between the State and Troopers Union covering the periods 2007-2011 and 2011-2018, respectively, the State obtained significant concessions from the Troopers union." The State adds that the PBA not only did not take into account the Troopers' concessions but also indicated no "willingness to agree to any concessions" on its part. The State, therefore, insists the comparables should be based on the evidence it placed before the Panel regarding the contiguous states.

Turning to the criterion of the “interest and welfare of the public and the financial ability of the employer to pay,” the State identifies the testimony of Dr. Chris Christopher, Assistant Director for the Economics and Revenue Unit for the New York State Division of the Budget as to the economic element for both New York and the United States and the revenue outlook used in the executive budget process. The State identifies Dr. Christopher’s testimony as it related to “concerns of ongoing uncertainty at the global and national level and the deceleration of major economic indicators ... which will impact the financial well-being of the State.” Included in Dr. Christopher’s testimony, the State observes, is his observations that “**the anticipated national economic growth slowdown translate into a downward revised State economic outlook**, with downward pressure on private sector employment growth.” (Emphasis in original).

The State also identifies the testimony of Jennifer Slane, Deputy Director of the Department of Budget’s Expenditure/Debt Unit. Her testimony, the State notes, included a presentation to the Panel of the financial outlook set forth in the FY 2020 (2019-2020) Enacted Budget Financial Plan. Ms. Slane’s testimony, the State notes, stressed “the continuing imbalance between spending and revenues for the State, or ‘budget gaps,’ and the spending reductions needed to adhere to the 2 percent State Operating Funds spending benchmark.” According to Slane, the State notes, it will be necessary, in order to hold spending to two percent annually in the State Operating Funds over the next three years, to reduce spending by nearly \$16 billion. Further, the State observes, Slane “also explained to

the Panel the practical effect of wage increases upon the operating budgets of the agencies,” and she observed that “[the agencies are] paying their employees more money, but they’re not getting any more money; so they have to find other ways to meet the salary increases.” Significant wage increases, in other words, the State claims “would require further spending reductions” and, as Slane testified, “put a lot more pressure on agency operations if those spending increases happen in our budget.” Slane also testified, the State observes, “that the pre-existing reserve for potential labor settlements is no longer available” and the “labor reserve was calculated based upon the potential retroactivity in 2017 for a 2% ATB effective in April 2015 and a 2% ATB effective in April 2016.” The reserve was fully used, the State notes, two years after it was created. In addition, the State contends, Slane’s testimony “demonstrated to the Panel that the extraordinary monetary settlement monies received to date ‘have been fully committed.’” Hence, the State maintains, it is clear from Slane’s testimony “that any available financial resources to pay for the PBANYS’s proposals are very limited within the context of the overall State budget plan.” As a practical matter, the State claims, “any increased wage payments will need to be absorbed by the respective agencies within their existing budgets.” Even if the Panel were to conclude that the State could pay the wage increases sought by the PBA, the State argues that “the Panel should not make such an award as doing so would not be in the interest and welfare of the public at this time.”

As to the testimony of PBA witness John E. Burke, the State asserts that his testimony did not establish the State’s ability to pay the PBA’s wage demands “in the context of the

overall Executive budget or that the retroactive payment of such significant proposed wage increases would serve the interest and welfare of the public.” Burke’s cost analysis, the State claims, “was flawed as it only demonstrated to the Panel an amount that would be paid up and until March 31, 2017.” The “real costs” for the proposals, according to the State, was acknowledged on cross-examination by Burke to “greatly exceed the \$38.5 million PBANYS estimate ‘because [] this is the cumulative ongoing cost.’” Thus, according to the State, “Burke essentially confirmed that the State’s total costing of the PBANYS’s proposals ... is the correct total value for the Panel to consider when assessing the State’s ability to pay.” The Panel must assess ability, according to the State, on whether it can pay “the over \$89 million retroactive cost (through April 2019) of the proposals.”

Burke’s analysis is also flawed, according to the State because of its “reliance upon the now exhausted ‘labor reserve’ originally established within the FY 2018 enacted budget.” Further, the State argues, “Burke’s presentation failed to justify the basis upon which the PBANYS asserts that its staggeringly high proposed retroactive salary increases serve the interest and welfare of the public.” According to the State, there is nothing contained in the PBA’s presentation that would explain “how a wage increase applicable to one bargaining unit, which only amounts to a small fraction of the State workforce, should be so disproportionate to the increases already received by the State workforce.” The State also claims that the ability to pay presentation put forward by Burke “omitted the practical effect the significant wage increases would have on agency operations in the context of a

foundational premise of the Executive Budget that State agencies ‘are expected to continue to maintain flat agency operation budgets with limited expectations.’”

As to the factors set forth in CSL §209.4(c)(v)(a) regarding past terms of the Parties’ Collective Bargaining Agreements and a comparison of peculiarities in regard to other trades and professions, the State first observes that the Parties’ 2005-2015 Agreement contained multiple ATB increases “reaching back to April 1, 2005, with those ATBs being applied to many categories of compensation such as longevity, clothing maintenance and allowance, location pay, supplemental location pay, the security and law enforcement differential ..., and inconvenience pay.” Further, this Agreement, the State notes, “provided for an increase in the expanded duty pay benefit, and to significantly increase” the security and law enforcement differential and clothing maintenance payments “while then rolling those increases into base salary.” The health insurance plan, though modified, the State claims, remained in the 2005-20015 Agreement as one that was “a strong and vital component of compensation for APSU members.” The State relies on Ferreira’s testimony and State Exhibit 25 to support the conclusion that the PBA unit “is fairly compensated via the salary and benefits structure currently in place,” and, “in the context of an interest arbitration proceeding, the proposals of the State are reasonable and appropriate.”

Regarding the “peculiarities of the profession,” the State observes that “both the history of compensation of the unit titles and the State’s exhaustive efforts to present compensation of similarly situated employees in comparable job titles demonstrate that unit

members are adequately compensated without a need for this Panel to award the extraordinary increases proposed by the PBANYS.” The DCC, the State contends, has “historically reviewed for classification and allocation purposes the qualifications and unique responsibilities of the titles within this unit” and such factors “are accounted for when the DCC acted within its expertise and statutory authority to determine the appropriate salary grade allocations.” As opposed to the State’s review of titles in the bargaining unit, the State claims, the PBA “failed to engage in such a review but, rather, simply submitted charts showing the differences between the Troopers unit’s and the APSU’s negotiated agreements over the 2005-2015 time period,” which charts, the State argues, was “presented with absolutely no background or context, [and] have no probative value for the Panel’s ultimate responsibility.”

The State maintains that the PBA did not present competent evidence to justify its wage increases that it demanded in this proceeding and a review of its proposals “demonstrate that the two areas used by the PBANYS to ‘justify’ the significant increase in compensation are the proposals to (1) more than double the existing expanded duty pay benefits and (2) completely replace and increase the longevity benefit received by unit members.” The State maintains that the PBA sought to justify its demand as seen in the proposal to “more than double the existing expanded duty pay benefit” and, also, to “completely replace and increase the longevity benefit received by unit members.” The proposed increase in the expanded duty pay benefit, the State claims, would “amount to a



retroactive payment equal to approximately 13.37% of the existing payroll while the proposed increase in the longevity pay benefit would amount to a retroactive payment equal to approximately 7.59% of the existing payroll.” (Emphasis in original). The State observes that the basis used by the PBA to achieve these increases “is to have these two wage columns for APSU members to mirror the corresponding wage columns within the Troopers’ collective bargaining agreement.” Nevertheless, the State argues, the PBA’s reference to the Troopers’ agreement, as the State has claimed in the arguments previously detailed above, must be considered “flawed.”

Moreover, the State contends that, as to the expanded duty pay, the PBA did not present evidence to support any “claim that the duties of bargaining unit members were significantly expanded or altered during the April 2015 to March 2017 period.” The State observes that, in his testimony, De Federicis cited to the use of Narcan as a justification, but the State argues that it is confident that the Panel is aware “of the simplicity of the use of Narcan, its life saving effects and its ubiquitous use of by first responders and civilians alike at this point in time.” Regarding other duties described in the testimony of PBA representatives, the State responds that such duties “serve important police functions for the State and are indisputably performed at a high level of expertise and professionalism by unit members, [but] many of the duties described have been a long-term function of their respective jobs.” The State identifies the testimony of Park Police Officer Caupain who, the State maintains, “confirmed” that a number of operations that the Park Police have

participated in were in existence before the current period. To the same effect, the State contends, was the testimony of Park Police Chief Page. Further, the State identifies the testimony of University Police Officer Barry who, on cross-examination, the State asserts “confirmed that the Clery Act reporting requirement became mandatory for SUNY campuses in ‘1990’.” The testimony of Forest Ranger 3, Cavanagh, the State maintains, on cross-examination, “confirmed” that the Forest Rangers participation in incident management teams and serving as incident commanders was not a new duty in the Forest Ranger job. According to the State, the “evidence presented by the PBANYS failed to establish that the ongoing performance of these long-standing police officers’ duties justifies the significant expanded duty pay benefit increase demanded by the PBANYS.” Further, the State argues that the PBA did not present competent evidence to justify its longevity pay benefit proposal. It is significant to the State that the record lacks evidence to establish that the PBA unit and the “respective appointing agencies ... are experiencing an attrition issue that could be addressed by an enhanced longevity benefit.”

### **AWARD**

The Panel, after extensive discussion and in consideration of the entire record and the CSL criteria, reached a consensus regarding the terms of the Award herein, which is set forth in a “Public Arbitration Panel Interim Award” executed by all members of the Panel on December 18, 2019. The Panel’s Chair is appreciative of the considerable efforts expended

by the Employer and Employee Organization Panel members in reaching the consensus. The rationale for the Panel's Interim Award and the Final Award herein are set forth below.

### **Term of Award**

As set forth in the Panel's Interim Award, the Award herein covers the four-year period from April 1, 2015 through March 31, 2019. The four-year term, of course, is due to the consent of the Employer and Employee Organization Panel members. By extending the term of the Award by two years so that the Award is four years in length, the Panel has, it has hoped, set the stage for the Parties to negotiate a new Collective Bargaining Agreement under contemporaneous conditions rather than working with somewhat dated historical data and conditions.

### **Panel's Analysis on Comparability**

The Selchick Panel found comparability to be "of utmost importance" because it was "the first time that ALES members have had the opportunity to argue this issue in the final and binding interest arbitration forum." (Selchick Award, 28). A question before this Panel is whether the Selchick Award constitutes any type of precedent for the Panel's Award in this proceeding. Precedent, it can be said, is not particularly suited for the interest arbitration process, but, nevertheless, the ruling of an earlier Panel, particularly a Panel whose Award sets forth the terms and conditions of the immediate predecessor agreement, should be

closely considered during the analysis required to achieve, within the context of the statutory criteria, a fair and equitable Award. Abrupt departures from the rationale of an earlier Panel's Award do not appear to serve the Parties' interests. Further, any departures in reasoning would seem to be best made by an identification of "changed circumstances" to justify the departure.

Having expressed its need to consider carefully the Selchick Award, including on the issue of comparability, the Panel notes that the Selchick Award focused its attention on the PBA's assertion in that proceeding that, as the Selchick Panel put it, "its members are most comparable to the New York State Police." (Id., 28). The Selchick Panel observed that "the State disputes this comparison, emphasizing that ALES members are more similar to like titles in contiguous states." (Id.). The Selchick Panel then devoted its attention on the comparability question by considering whether the State Police could be viewed as a comparable and questioning whether New York State Correction Officers should be any longer considered a comparable. According to the Panel in that proceeding, "the NYS Police are distinguishable from members of the ALES Unit," but "there is no doubt that ALES unit members are Police Officers in every sense of the term." (Id.). Correction Officers, the Selchick Award stated, were not in any universe of comparability and it was time to end "the historical pattern of treating individuals in the titles now represented by ALES on an equal bases with Correction Officers for comparability purposes." (Id., 30).

The Selchick Panel states in its conclusion that “proper salary placement for ALES members is above corrections unit members in New York with movement toward the salaries of the State Police.” (Id., 28). The Panel, however, immediately followed that observation by stating “the conclusion that the NYS Police are appropriately treated differently than members of ALES” was justified because “the State Police’s sheer size, depth, expertise and comprehensive statewide jurisdiction distinguish it from other Police Departments and Police Officers.” (Id., 28-29). This Panel also notes that the Selchick Award, on the question of comparability, did not address in any explicit way the State’s contention in that proceeding, which the State advances in this proceeding, that law enforcement personnel in “like titles in contiguous states” also should also be considered as comparables.

The Selchick Award analysis on comparability, in the final analysis, gives this Panel but a small amount of guidance. This Panel states its agreement with the Selchick Award that the days of equating APSU members to Correction Officers for wage purposes are over. That observation, however, does not by any degree of logic require the conclusion that only New York Troopers fall within the universe of comparability, or that employees in “like titles” in the contiguous states should not be considered as comparables.

The question of comparables in this proceeding, is not unusual in interest arbitration proceedings, thus raises a number of possibly vexing problems. The Panel Chair, however, would offer his observation, based on a number of years of experience in presiding over interest arbitration proceedings, that some of the strongest arguments raised concerning the

question of comparables are those raised by a party in opposition to the comparables offered by the other party. Often, in the same proceeding, the opposing party offers equally strong arguments against the comparables offered by the first party. Stated differently, it may well be that it is easier to criticize a proffered list of comparables than make a cogent argument as to why another proffered universe of comparables should be accepted.

A saving grace might well be that, in a Panel's conscientious efforts to take into account comparables, one could identify a trend that the Panel Chairman in this proceeding has observed throughout the State by which Panels ascribe greater weight, lesser weight, or no weight at all to the comparables proffered by both parties in connection with a particular proposal under consideration. This approach favors inclusivity over exclusivity and allows for a consideration of the proposals before the Panel that is not as result-orientated of an approach that can occur if exclusivity were to prevail by rejecting comparables.

The Panel finds its approach on comparables to be well suited in this proceeding because, as the Selchick Panel noted, there is a significant distinction between ALES members and State Troopers. That distinction, the Panel finds, is no less today than it was when the Selchick Award was issued. Moreover, the PBA's presentation in this case, summarized above, has indicated why it would not be prudent for the Panel only to take into account employees "in like titles" in the contiguous states. On this point, the Panel further observes that there was no comparable even selected for the ALES position of Forest Ranger.

Finally, the Panel observes that a consideration of a comparable by no means requires a total acceptance of any range of comparables on any given issue. In addition to comparables, there are a wide variety of other factors that the Panel must take into account when issuing its Award. In this proceeding, the Panel would simply offer its determination that, on the question of comparables, it has not excluded the comparables offered by either Party and has taken into account the comparables offered by both Parties, though not necessarily giving the same weight to all comparables on any particular issue under consideration.

#### **Panel's Analysis on Ability to Pay**

The Selchick Panel, after setting forth the Parties' contentions on this factor, (Id., 32-34), observed that, "[n]otwithstanding 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." (Id., 34). Thus, the Selchick Award stated that, "[w]hile 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." (Id., 35). The Panel in the Selchick Award noted that the State faced "enormous" challenges given the "number of constituents and services the State must provide resources

for” and took note of the challenges in the State’s budget as well as possible downturns in the economic condition of the State and the country. (Id., 35). The consensus reached in December, 2019 by the Parties set forth in the Interim Award reflects that this Panel gave the same careful attention to the “ability to pay” factor, including resources available to the State and demands for the State to use those resources. The Panel’s Award, in the final analysis, reflects its finding that the State has the financial ability to pay for the increases and other compensation items that are provided in the Award.

The Panel, of course, has also taken into account “the interest and welfare of the public” criterion that is paired with “the financial ability of a public employer to pay” under CSL §209(4)(c)(v)(b). Thus, the Panel finds that the Award, including its financial provisions, will not be harmful to “[t]he interest and welfare of the public.” Indeed, the Panel finds that fair and equitable treatment of the members of the APSU unit, given the critically important services they delivered to the public, promotes “[t]he interest and welfare of the public.”

### **Other Statutory Factors**

Civil Service Law §209(4)(c)(v)(c)(d) requires various comparisons “in regard to other grades or professions” and requires the Panel to take into account the terms of “collective agreements negotiated between the parties in the past.” The Panel notes that its analysis and determinations in this proceeding have been influenced, as they should have



been, by the unique “hazards of employment” faced by APSU unit members as well as the entry level “qualifications” and the considerable amount of “job training and skills” required of unit members. The Panel finds that its Award herein reflects all such factors. In addition, the Panel notes it took into account past collectively negotiated agreements between the Parties. The Panel, as seen above, has also taken into account the provisions of the Selchick Award and the rationale set forth in that Award.

### **Award on Wage Increases**

As set forth in the Interim Award, and in keeping with the four-year period of this Award, the Panel has found that a fair and equitable Award would grant PBA members, for each of the four years of the Award, wage increases of 2% to be applied to both base salary and all compensation components in their Agreement with the State that are calculated based on base salary. Further, the Interim Award states that performance advances will continue. Finally, the matters covered by the “wage increases” portion of the Award are to be “fully retroactive to April 1, 2015 for all calculation purposes.”

As noted above, the Panel finds that the Award on wage increases takes into account all statutory factors, including the State’s ability to pay. The Panel also notes that its Award on health insurance changes, as reflected in the Interim Award and “Exhibit A” thereto, shows that the State has received some relief in the health insurance area by increased co-pays and deductibles in various areas.

### **Health Insurance**

As noted, the Panel members have agreed in the Interim Award on changes to health insurance, reflected in “Exhibit A” to the Interim Award. These changes are reflected in paragraphs 3 and 4 in the Interim Award and its “Exhibit A.” The Panel finds that the Award on health insurance has taken into account all of the statutory factors, including the State’s ability to pay.

### **Expanded Duty Pay**

The Panel has awarded an increase of \$750 per year to expanded duty pay. This portion of the Award is effective March 31, 2019 and does not impose a retroactive burden on the State. The Panel has taken into account all of the statutory factors in this part of the Award, including the expanded duties of the APSU unit members as set forth in the record of this proceeding as well as the State’s ability to pay.

### **Retroactive Payments**

The Panel’s Award on the payment of retroactive payments, set forth in paragraph 6 of the Interim Award, reflects all of the statutory factors, including the State’s ability to pay. In this regard, the Panel notes that the payment of the retroactive payments has been spread over two fiscal years and thus eases the burden of retroactivity on the State.

### **Employee Benefit Fund**

Paragraph 7 of the Award increases the employee benefit fund by 2% effective April of each of the four years of the Award. The Panel notes that in Article 25.9 of the 2005-2015 Agreement, the Parties agree that the State would deposit \$40 per employee, beginning in on April 1, 2011, annually to the employee benefit fund. The 2% increase each year, the Panel finds, is in keeping with the statutory factors and is in keeping with the State's ability to pay. The increase, the Panel notes, is modest.

### **Calculation of Overtime Pay**

Paragraph 8 of the Interim Award, for the pay period closest to March 31, 2019, calls for the denominator for purposes of calculating overtime to be 2080. This number provides for an accurate calculation of overtime. The Award set forth in this paragraph of the Interim Award is in keeping with the statutory factors, including the State's ability to pay.

### **Contract Funding/Joint Contractual Programs**

In paragraph 9 of the Interim Award, the Parties agree to increase the funding levels of all contract funding and joint contractual programs by 2% for each of the four fiscal years beginning with the 2015 to 2016 fiscal year. The Panel finds that this provision in the Award is in keeping with the statutory factors, including the State's ability to pay. As with the

increase in the employee benefit fund noted above, this increase does not impose any undue strain on the State's resources.

**Panel's Analysis on Remaining Issues**


The Panel has reviewed in great details all of the demands and proposals of both Parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In Interest Arbitration, as in collective bargaining, not all proposals are accepted and not all contentions are agreed with. The Panel, in reaching what it has determined to be 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: Except for those proposals and/or items previously set forth above, and as also set forth in the Interim Award, any proposals and/or items then those specifically set forth in this Award are hereby rejected.

*Thomas Rinaldo*  
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THOMAS N. RINALDO, ESQ.,  
PUBLIC PANEL MEMBER AND CHAIRMAN

March 24, 2020  
\_\_\_\_\_  
DATE

  
JOSEPH M. BRESS, ESQ.  
PUBLIC EMPLOYER PANEL MEMBER

March 24, 2020  
DATE

  
RONALD G. DUNN, ESQ.  
PUBLIC EMPLOYEE ORGANIZATION  
PANEL MEMBER

March 24, 2020  
DATE

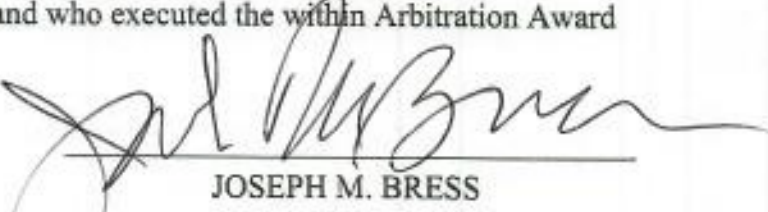
STATE OF NEW YORK )  
COUNTY OF ERIE ) ss:

I THOMAS N. RINALDO do hereby affirm upon my oath as a Arbitrator that  
I am he individual described herein and who executed the within Arbitration Award  
on March 24, 2020

Thomas Rinaldo  
THOMAS N. RINALDO

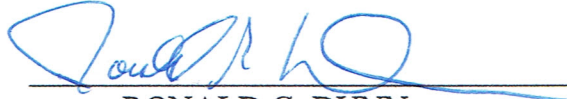
DISTRICT OF COLUMBIA )  
CITY OF WASHINGTON ) ss:

I JOSEPH M. BRESS do hereby affirm upon my oath as a Arbitrator that  
I am he individual described herein and who executed the within Arbitration Award  
on March 24, 2020

  
JOSEPH M. BRESS

STATE OF NEW YORK )  
COUNTY OF Albany ) ss:

I RONALD G. DUNN do hereby affirm upon my oath as a Arbitrator that  
I am he individual described herein and who executed the within Arbitration Award  
on March 24, 2020

  
\_\_\_\_\_  
RONALD G. DUNN