

2005-2007 NYS Police Investigators Interest Arbitration Award

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between:

STATE OF NEW YORK,

Employer,

NEW YORK STATE POLICE INVESTIGATORS ASSOCIATION,

Employee Organization.

FINAL AND BINDING AWARD
OF TRIPARTITE PANEL

IA 2004-30

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN:

Jeffrey M. Selchick, Esq.

PUBLIC EMPLOYEE ORGANIZATION PANEL MEMBER:

Jules L. Smith, Esq.
Blitman & King LLP

PUBLIC EMPLOYER PANEL MEMBER:

Walter J. Pellegrini, Esq.
General Counsel
Governor's Office of
Employee Relations

Appearances:

For the State of New York:

Governor's Office of
Employee Relations
Michael N. Volforte, Esq.,
of Counsel

For the NYS Police Investigators Association:

Blitman & King LLP
Bernard T. King, Esq., of
Counsel
Kenneth L. Wagner, Esq.,
of Counsel

Pursuant to the provisions of Section 209.4 of the Civil Service Law and in accordance with the rules of the Public Employment Relations Board, 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 NYS Police

Investigators Association ("Association") for the unit consisting of Investigators and Senior Investigators of the Division of New York State Police. Hearings were held on the following dates: March 15, 2005, April 25, 2005, April 28, 2005, September 27, 2005, January 12, 2006, February 23, 2006 and March 13 2006. Subsequent to the hearings the parties engaged in numerous Executive Sessions. At the hearings both parties were represented by the above appearances and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. A transcript of the hearings was taken and copies provided to the Public Arbitration Panel.

In arriving at this SUMMARY OF AWARD, the Panel considered the following statutory guidelines contained in Section 209.4(c) of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at its determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following: 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 employees generally in public and private employment in comparable communities; the interests and welfare of the public and the financial ability of the public employer to pay; comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards or employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills; 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

With respect to the instant case, the following provisions of section 209.4 (e) of the Civil Service Law limited the Panel:

With regard to members of any organized unit of troopers, investigators, senior investigators, investigator specialists, commissioned or non-commissioned officers of the division of state police, the provisions of this section shall not apply

to issues relating to disciplinary procedures and investigations or eligibility or assignment to details and positions which shall be governed by other provisions prescribed by law.

The Panel, consistent with the request of the parties, expedited the process by issuing a SUMMARY OF AWARD with an Opinion to be issued in the near future, The Panel has deliberated on each issue and has carefully and fully considered all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the SUMMARY OF AWARD that constitutes the Panel's best judgment as to a just and reasonable resolution of all issues raised in this Interest Arbitration proceeding. The language of this SUMMARY OF AWARD is not final contract language. Those issues presented by the parties that are not specifically dealt with in this SUMMARY OF AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. The status quo on those rejected items, if any, shall be maintained.

BCI SUMMARY OF AWARD

1. Effective April 1, 2005, a 3% across the board increase on basic annual salary and the following elements of compensation: premium in lieu of overtime, command pay, maintenance pay, expanded duty pay, location compensation, and supplemental location compensation. These increases shall be paid in a lump sum to each member. Holiday pay already paid in December 2005 shall be retroactively adjusted to reflect these increases and paid in the lump sum referenced herein. Overtime already paid will be adjusted for the period April 1, 2005 to March 31, 2006 by 3% to be paid separately to each member from any other lump sum amount.
2. Effective April 1, 2006, a 3% increase in the following elements of compensation: premium in lieu of overtime, command pay, maintenance pay, expanded duty pay, location compensation, and supplemental location compensation.
3. Effective April 1, 2006, the old longevity schedules shall be replaced with the following longevity schedule for service in the Division of State Police for all members of the BCI:

6 to 10 years of service = \$400 per year
11 to 15 years of service = \$450 per year
16 years to 25 years of service = \$500 per year

The longevity amount is capped at the 25 years of service level for those with 26 years of service and above. Longevity shall be annualized and paid in the member's regular bi-weekly paycheck. Longevity shall continue to be counted for

both overtime and retirement purposes. There shall be no other longevity for the members of this unit and the Rank Longevity is eliminated as of March 31, 2006.

4. Effective April 1, 2006, the \$200 for the permanent rank of sergeant benefit shall be eliminated.
5. Effective April 1, 2006, the basic annual salary shall be increased by an amount so that Investigators shall make approximately \$1,000 less than Sergeants (inclusive of all elements of compensation) and Senior Investigators shall make approximately \$1,000 less than First Sergeants (inclusive of all elements of compensation). The Panel Chair shall issue salary schedules and compensation amounts consistent with paragraphs 1 through 5 as soon as practicable.
6. The following changes to the health insurance plan shall take effect:
 - a. Effective January 1, 2007, the Empire Plan Hospital Emergency Room co-payment will increase to \$60.
 - b. Effective January 1, 2007, the Empire Plan participating provider office visit, office surgery, radiology and laboratory co-payments will increase to \$18.
 - c. Effective January 1, 2007, the Empire Plan Managed Mental Health and Substance Abuse co-payments for Mental Health services shall increase to \$18.
 - d. Effective January 1, 2006, the Empire Plan hearing aid benefit shall increase to \$1,500 per aid per ear every 4 years. Children with significant change in hearing will be eligible for \$1,500 per aid per ear every 2 years. This benefit shall be implemented as soon as practicable.
 - e. The State shall seek an appropriation to fund the Joint Committee on Health Benefits to be funded at \$3,680 for FY 2005-06 and \$3,680 for FY 2006-07.
7. For fiscal years 2005-2006 and 2006-2007, the employee benefit fund amount shall be \$49 per year per member. The number of members to be determined by same historical method. There shall be no continuation of the Fund or the payments unless expressly agreed to by the parties.
8. Effective on a date to be determined by the Division which shall be no sooner than 30 days from this SUMMARY OF AWARD, members of this unit working in

the back rooms shall have a regular schedule consisting of Friday-Saturday or Sunday-Monday pass days. For other members of the unit, the Division may schedule Friday-Saturday or Sunday-Monday pass days as operationally necessary.

9. Effective April 1, 2006, the January 30, 2001 letter from Deputy Superintendent Harry J. Corbitt to NYS PIA President Matthew Tynan regarding Implementation of the Investigator Pilot 207(k) Program shall be modified only in the manner indicated in the attachment hereto.
10. Effective April 1, 2006, the modified duty program shall be modified as set forth in the attached document. The parties shall meet in Joint Labor/Management to clarify Administrative Manual Section 8011 (b).
11. The Article 25 Professional Development and Quality of Working Life Committee for the period 4/1/05 through 3/31/07 shall be funded in the amount of \$81,900 annually from which tuition reimbursement, the Masters Program and EAP shall be funded.
12. No raise or increased compensation of any kind is due any Special Investigator.
13. The State shall seek an additional \$5,000 annual appropriation for the sole use of Division in administering the physical fitness program.
14. This Interest Arbitration Award covers the period commencing April 1, 2005 and to March 31, 2007.

	JEFFREY M. SELCHICK, ESQ.	3/23/06
	Public Panel Member and Chairman	Date
Concur	WALTER J. PELLEGRINI, ESQ.	3/23/06
	Employer Panel Member	Date
Concur	JULES L. SMITH, ESQ.	3/23/06
	Employee Organization Panel Member	Date

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

On the 23rd day of March 2006, before me personally came and appeared JEFFREY M. SELCHICK, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2008

/s/ Lynn Homes Vance

NOTARY PUBLIC

STATE OF NEW YORK)

COUNTY OF ALBANY) ss.:

On the 4th day of February 2005, before me personally came and appeared WALTER J. PELLEGRINI, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2008

/s/ Lynn Homes Vance

NOTARY PUBLIC

STATE OF NEW YORK)

COUNTY OF ALBANY) ss.:

On the 7th day of February 2005, before me personally came and appeared JULES L. SMITH, Esq., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 2008

/s/ Lynn Homes Vance

NOTARY PUBLIC

NEW YORK STATE POLICE
1220 WASHINGTON AVE.
ALBANY, NEW YORK 12226-2252

January 30, 2001

Mr. Matthew Tynan
President
New York State Police
Investigators' Association
507 Weatheridge Drive
Camillus, New York 13031

Re: Implementation of Investigator Pilot 207(k) Program

Dear Mr. Tynan:

This letter will serve to establish guidelines for the Implementation of Section 15 of the Interest Arbitration Award between the State of New York and the New York State Police Investigators' Association, entitled *Investigator Pilot 207(k) Program*. The pilot program will begin on April 1, 2001, for a period of two years in duration, and will be the subject of periodic labor/management meetings. A formal review will be conducted as required by the designated joint labor/management committee after six (6) months.

Member Guaranteed Overtime banks shall be frozen as of close of business March 28, 2001, and remain in place until the end of the pilot program, except for members who retire during the term of the pilot program where the current practice shall continue. Supervisors shall ensure that no member has a bank more than the maximum allowable 27 3/4 hours and that GOT usage remains consistent with existing guidance until March 28, 2001.

Consistent with the 207(k) exemption contained within the Fair Labor Standards Act (FLSA), this agency has adopted a 28-day schedule for overtime eligibility. Consequently, while Investigators will be scheduled for a total of 160 hours of work during the period (40 hours each week), there will be eleven (11) additional hours of work that each Investigator may be assigned by the Division in the furtherance of operational needs, without payment of additional compensation. For the purposes of this agreement, "hours worked will retain the definition previously employed under the terms of the contract."

Flex time may be utilized by the Division throughout the work period without providing notice to the member and will be accounted for on the Genl. 50 by the BCI supervisor on a daily basis.

Flex time may be used on a pass day without prior notice if operational needs require the work. Members required to work on a pass day shall not be scheduled for less than four (4) hours. ~~Members working more than four (4) hours on a pass day will have the pass day rescheduled. Pass days shall be rescheduled within 90 calendar days.~~¹ The Division recognizes that time off is a quality of life issue and, therefore, shall avoid routinely scheduling members to work when they would normally be off duty. A member

recalled to duty on a pass day who works four (4) hours or less shall be credited with having worked four hours flex time.

In a situation where the member is recalled to duty on flex time, the work period will commence when the member calls in service to his/her control point. In a situation where the member has been scheduled with 24-hours notice that he/she will work flex time on a pass day, the work time will start when the member reaches the assigned location if it is in the member's station area. If the assigned work location is outside the station area, work time will start when the member calls in service to his/her control point.

The Division agrees to schedule work beyond the initial 160-hour schedule only to advance operational needs, and not to simply take advantage of the additional non-compensatory time. However, the Division reserves the right to schedule members in the field or Division Headquarters for legitimate investigative or operational assignments outside their normal duties should a specific need or mission present itself. It is not expected that investigators will be **routinely or permanently** assigned to tasks outside their normal duties unless operational needs or exigent circumstances exist (i.e., civil disturbance, mass casualty event or natural disaster). BCI supervisors will be expected to take into consideration local scheduling needs when they allocate flex time. It is understood that investigators will be made aware that the Division expects that they will work the 11 hours in a meaningful way and know that those hours are being paid in their normal bi-weekly salary.

Issues arising from the implementation of the pilot program by either supervisors or investigators will be the subject of a labor/management meeting and not grievable in the first instance. The pilot program is viewed as having positive benefits for the Division and members alike and every effort shall be made to ensure a smooth transition from the Guaranteed Overtime Program.

Sincerely,

/s/Harry J. Corbitt
Deputy Superintendent

8011 Dispute Resolution Process

A Member who wishes to contest a modified duty determination based on the degree of disability may do so by utilizing the Dispute Resolution Process as outlined below. This process shall consist of a review of medical documentation submitted by all parties to an independent third party medical consultant retained by the Division for such purpose.

- a. **On-Duty Injuries or Illnesses:** A Member who wishes to contest a modified duty determination as described above must notify the First Deputy Superintendent by Memorandum through channels of his/her intent to appeal the modified duty determination within five (5) working days from the date that the Member is advised in writing of the modified duty determination. The Member must also provide an appeal form to the Member's attending physician. The Member's attending physician must complete the form and submit it to the third party consultant, along with any medical records deemed relevant in support of the attending physician's opinion with regard to the Member's degree of disability within fifteen (15) working days from the date that the Member is advised in writing of the modified duty determination.
- The Division and the State Insurance Fund shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within fifteen (15) working days of receipt of the Member's Memorandum contesting assignment to modified duty.
 - A Member who appeals a modified duty determination shall not be required to report for a modified duty assignment until completion of the Dispute Resolution Process. In such instance, the Member must use his/her accumulated accruals during his/her ensuing absence.
 - If the Member does not return to duty during the Dispute Resolution Process, and is subsequently found fit for such duty by the third party consultant, the Member shall begin modified duty as soon as practicable. In such instance, any accruals used by the Member while awaiting the results of the Dispute Resolution Process will not be restored.
 - If the Member does not return to duty during the Dispute Resolution Process, and is found incapable of working in a modified duty assignment by the third party consultant, the modified duty determination shall be rescinded. In such instance, any accruals used by the Member during the appeal period shall be restored and the Member shall be entitled to leave under Regulation 5.12 of the New York State Police Administrative Manual.
 - If the third party consultant finds that the Member does not have a disability, the Member will be ordered to return to full duty and no leave accruals will be restored.
- b. **Off-Duty Injuries or Illnesses:** A Member who wishes to contest a modified duty determination concerning an off-duty injury or illness shall also have the right to utilize the Dispute Resolution Process as outlined above. If a Member appeals a

modified duty determination, the Member shall not be entitled to report for duty until completion of the Dispute Resolution Process.

- The Division shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within fifteen (15) working days of receipt of the Member's Memorandum contesting assignment to modified duty.
- In the event that the third party consultant determines that the Member is 50% or less disabled, the Member will be assigned to modified duty as soon as practicable and any leave accruals that the Member utilized while awaiting a determination from the Dispute Resolution Process will be restored.
- If the third party consultant finds that the Member is incapable of performing modified duty, the Member shall remain on Sick Leave. After a minimum of thirty (30) days has elapsed from the Division Physician's determination or the third party consultant's determination, whichever is greater, the Member may submit additional medical documentation through Channels to the Division Physician and again request assignment to modified duty.

¹ The stricken text was initialed by "JLS," "WJP," and "JMS."