

130-3013

In the Matter of

**STATE OF NEW YORK (GOVERNOR'S
OFFICE OF EMPLOYEE RELATIONS),**

Charging Party,

and

**NEW YORK STATE POLICE
INVESTIGATORS ASSOCIATION,**

Respondent.

Case No. U-17851

Before PAULINE R. KINSELLA, Chairperson;
ERIC J. SCHMERTZ; February 27, 1997

INDEX NOS. 43.135, 43.139, 55.92

ALJ's decision was reversed insofar as
he found that union's proposals regarding
tuition waivers for dependents of unit mem-

bers and proposal to pay funeral expenses of unit members who died in the line of duty, were not directly related to compensation and, thus, inarbitrable. Demands essentially involved type of insurance and, therefore, were indistinguishable from "insurance, medical and hospitalization benefits" specifically designated as arbitrable under § 209.4(e) of Act. That demands concerned benefits of a contingent nature or that they did not specifically identify the beneficiary was immaterial given that conditional benefits payable to other than unit employees themselves, were included within arbitrable subjects specifically listed by the legislature. Accordingly, PERB found that demands seeking to effect change in state employer's payments on behalf of employees and their financially dependent immediate family members related directly to compensation and were arbitrable for purposes of compulsory arbitration under § 209.4(e) of Act. ALJ's decision, 29 PERB 4629 (PERB ALJ 1996), reversed in part.

INDEX NOS. 15.417, 43.124, 43.169, 55.92

ALJ properly concluded that union's proposals regarding organizational leave and compensation for travel time to attend and return from organizational leave and board and committee meetings, was nonarbitrable because they were not directly related to compensation as required by § 209.4(e) of Act. Demands were essentially time-off demands and as such primarily concerned hours of work, a subject distinct from compensation. ALJ's decision, 29 PERB 4629 (PERB ALJ 1996), reversed in part.

INDEX NOS. 43.445, 55.92

ALJ erred in designating as nonmandatory, proposals regarding eligibility for overtime compensation. Inasmuch as demands merely sought to determine how much overtime eligible employees would be paid and at which point entitlement to overtime would attach, demands covered issues relating solely to employees' personal compensation and, thus, were arbitrable for purposes of § 209.4(e). ALJ's decision, 29 PERB 4629 (PERB ALJ 1996), reversed in part.

Back reference: 29 PERB 4629

Walter J. Pellegrini, General Counsel (Richard W. McDowell of counsel), for Charging Party

Biltman & King LLP (Jules L. Smith and Kenneth L. Wagner of counsel), for Respondent

Board Decision and Order

This case comes to us on exceptions filed by the New York State Police Investigators Association (NYSPIA) to a decision by an Administrative Law Judge (ALJ) on a charge filed by the State of New York (Governor's Office of Employee Relations)(State). The State alleges that NYSPIA violated § 209-a.2(b) of the Public Employees' Fair Employment Act (Act) when it included demands in its petition for compulsory interest arbitration which are not arbitrable pursuant to § 209.4(e) of the Act.

Section 209.4(e) of the Act provides as follows:

With regard to members of any organized unit of investigators, senior investigators and investigator specialists of the division of state police, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed [sic] by law.

On a stipulated record, the ALJ held that none of the seventeen demands placed in issue under the charge as filed were arbitrable within the meaning of § 209.4(e) of the Act because they were either demands not "directly relating to compensation" or demands excluded from the scope of arbitration as "issues relating to eligibility for overtime compensation."

NYSPIA excepts to the ALJ's decision as to thirteen of the original seventeen demands.² NYSPIA argues that the demands subject to this

appeal are all arbitrable pursuant to § 209.4(e) of the Act and that the ALJ's decision to the contrary misinterprets that section. The State argues in response that the ALJ gave the correct interpretation to § 209.4(e) and his decision should be affirmed.

As the interpretation of § 209.4(e) is an issue of first impression, we granted the parties oral argument. Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision in part and reverse in part.

NYSPIA represents the investigators, senior investigators and investigator specialists in the Bureau of Criminal Investigation (BCI) of the Division of State Police. With the enactment of § 209.4(e) in August 1995,³ these BCI employees, along with troopers and commissioned and non-commissioned officers in the Division of State Police,⁴ were for the first time afforded a statutory right to have impasses concerning certain of their terms and conditions of employment resolved through the Act's interest arbitration processes. Prior thereto, impasses involving members of the State Police and all other covered State employees were resolved, as necessary, by imposition of terms by the State Legislature. Members of the State Police, however, have a different and a more limited scope of statutory interest arbitration than that afforded members of other police departments. Since 1974, local police officers and their employers may proceed to arbitration in an impasse which develops over any mandatory subject of negotiation. Pursuant to § 209.4(e), members of the State Police and the State may proceed to arbitration only in connection with those mandatory subjects of negotiations⁵ "directly relating to compensation." Impasses about subjects which are not arbitrable are still resolved, as necessary, by imposition of the State Legislature.

Before considering NYSPIA's several demands,⁶ we outline the general framework for our analysis of the scope of arbitration under § 209.4(e) of the Act.

We construe the reference in § 209.4(e) to "terms of collective bargaining agreements" to include both proposals pertaining to provisions contained in a current or expired collective bargaining agreement and proposals for new terms to be added to a successor collective bargaining

agreement for the first time. Therefore, § 209.4(e) applies to all of NYSPIA's demands, whether to delete or change terms in the parties' last contract or to add new terms.

The phrase "directly relating to compensation" does not and cannot mean, as the ALJ held, only "direct compensation" to unit employees from the State. First, that interpretation ignores the plain language of § 209.4(e), which does not refer to "direct compensation," but to proposals for contract terms "directly relating to compensation." In construing this part of § 209.4(e), the Legislature's use of the word "compensation" in other subsections of § 209 is relevant. Sections 209.4(c)(v) a and d and 209.5(d)(i), (ii) and (vi) reveal that although the Legislature intends "compensation" to cover a wide variety of subjects, it also considers there to be a substantive difference between "compensation" and "hours,"⁷ and between "compensation" and "direct compensation." Most relevant to our analysis is § 209.5(d)(ii) of the Act regarding compulsory interest arbitration for certain transit employees. In § 209.5(d)(ii), the Legislature requires the arbitration panel to consider, *inter alia*, the "overall compensation" paid to employees, which includes, as a subset, their "direct wage compensation." If, as the State urges and the ALJ held, the Legislature had intended to restrict the arbitration available to members of the State Police to their "direct compensation," it need only have used in § 209.4(e) the phrase already existing in another subsection of § 209 of the Act.

Second, and perhaps even more persuasive, the interpretation of the phrase "directly relating to compensation" urged by the State and adopted by the ALJ is in irreconcilable conflict with certain of the examples listed by the Legislature in § 209.4(e) as arbitrable subjects. Included specifically as subjects "directly relating to compensation" are "insurance, medical and hospitalization benefits." These several "benefits" most often do not involve payments of money by the State directly to an employee or from an employee to the State, and they are by nature conditional and usually payable to third parties on behalf of the employee.

Just as the State's and the ALJ's interpretation of the phrase "directly relating to compensation" is too narrow, NYSPIA's argument that

§ 209.4(e) makes arbitrable any subject involving pay or benefits given in return for a unit employee's services is too broad a reading of that controlling phrase. Indeed, NYSPIA argues that § 209.4(e) is properly read to incorporate the same broad scope of arbitrability available to municipal police officers, subject to a narrow exception for a few noncompensatory issues covering only those which concern departmental operations or control of the work force. NYSPIA's arguments in this respect are plainly at odds with the Legislature's intent.

The original version of the bill adding the new § 209.4(e) would have permitted arbitration regarding terms "relating to compensation." The word "directly" was added to the final version of the legislation, clearly manifesting the Legislature's intention to narrow the range of arbitrable subjects for members of the State Police to only some compensation issues, i.e., those *directly* relating to compensation. In 1995, for the first time, the Legislature extended to members of the State Police their own separate, unique and limited scope of arbitration, one not defined at all by reference to the broader scope of arbitration available to other police officers.

From our several observations to this point, we conclude that the correct interpretation of the phrase "directly relating to compensation" is one which makes a proposal arbitrable according to the degree of the relationship between the proposal and compensation. That is the only conclusion which can be drawn from the Legislature's use of the word "directly" in the phrase defining the subjects included within the scope of arbitration. All noncompensatory demands are excluded from compulsory arbitration under § 209.4(e) because they necessarily have no relationship to compensation. This does not mean, however, as NYSPIA argues, that all compensatory issues are arbitrable unless their relationship to compensation is as attenuated as the subjects which are specifically listed as examples of noncompensatory issues. That argument drains all significance from the word "directly." The subjects excluded from arbitration under § 209.4(e) do not define the subjects which are included because a subject must satisfy two conditions simultaneously to be arbitrable under § 209.4(e). It must fall within the included compensatory category and fall without the excluded

category of noncompensatory subjects. Even if a subject is not excluded from arbitration as noncompensatory, it is not necessarily arbitrable. A subject does not fit within the included category, even if it is compensatory in nature, unless it also "directly" relates to compensation.

The degree of a demand's relationship to compensation is measured by the characteristic of the demand. If the sole, predominant or primary characteristic of the demand is compensation, then it is arbitrable because the demand to that extent *directly* relates to compensation. A demand has compensation as its sole, predominant or primary characteristic only when it seeks to effect some change in amount or level of compensation by either payment from the State to or on behalf of an employee or the modification of an employee's financial obligation arising from the employment relationship (e.g., a change in an insurance co-payment). If the effect is otherwise, then the relationship of the demand to compensation becomes secondary and indirect and the subject is, therefore, excluded from the scope of compulsory arbitration under the language of § 209.4(e).

Having outlined this general framework for analysis, we turn to the specific demands in issue. NYSPIA's demands are logically and conveniently grouped into three categories for purposes of our discussion.

Demands 10.11 and 13.8(B) would have the State absorb some or all education costs respectively for dependents of NYSPIA unit employees or for dependents of unit members who die in the line of duty. Demand 13.8(A) would have the State pay the funeral expenses incurred by the family of a unit employee who dies in the line of duty.

The ALJ held these three demands nonarbitrable because they benefitted only the employees' dependents and they were contingent in nature. We reverse the ALJ's determination with respect to these three demands and conclude that they directly relate to compensation.

These three demands are for a type of insurance and they are indistinguishable from "insurance, medical and hospitalization benefits" which are specifically included in § 209.4(e) as arbitrable subjects. Neither the contingent nature

of these benefits nor the identity of these beneficiaries can render these subjects nonarbitrable because the Legislature's list of arbitrable subjects specifically includes conditional benefits payable to other than the unit employees themselves. Without holding that every demand for insurance of any type is arbitrable as one directly related to compensation, we do hold that these demands under which the beneficiaries are members of the unit employee's immediate family are arbitrable. As these demands effect a change in the State's payments on behalf of employees and the persons whom they support financially, they directly relate to compensation and they are arbitrable under § 209.4(e) of the Act.

Proposals 12.2(B), 12.3, 13.1, 13.2 and 13.4 concern demands for time off from work without loss of pay. The ALJ held that these several demands did not directly relate to compensation because they were by nature demands primarily relating to hours of work. For the reasons which follow, we affirm the ALJ's determination that these five demands are not arbitrable because they are not directly related to compensation.

The effect of each of the time-off demands on compensation is clear, but is, nevertheless, only indirect. These demands seek simply to maintain salary or wages at a negotiated rate or level by disallowing a reduction in salary or wages due to an employee's absence from work for certain reasons. As they would not effect any change in compensation, the predominant or at least primary characteristic of these time-off demands is hours of work, a subject distinct from compensation for purposes of the Act.

Our determination with respect to those five demands for paid time off from work has taken into account the legislative history of § 209.4(e). An earlier version of the legislation specifically included "paid time off" as an arbitrable subject. Section 209.4(e) as enacted is silent as to that particular subject. If there were no other evidence of legislative intent, we would conclude from these facts that the Legislature intended to exempt demands for paid time off from work from the scope of compulsory arbitration under § 209.4(e). It is extremely unlikely in our opinion that the Legislature would have deleted paid time off from the list of arbitrable subjects simply be-

cause it is arguably redundant of the phrase "directly relating to compensation" and yet retained a listing of several arbitrable subjects, all of which are equally susceptible to the same redundancy claim. However, a memorandum filed by a sponsor of the amended Assembly bill covering the troopers and supervisory officers, which was identical to the bill covering the BCI employees, states that "vacation pay" is an arbitrable subject, notwithstanding the deletion of "paid time off" from the list of arbitrable subjects. There being no reasonable way to distinguish paid time off from work due to a vacation from paid time off from work for other reasons, we can only conclude that there is an apparent inconsistency in the legislative history on the issue of the arbitrability of demands for paid time off from work. We, therefore, find that the legislative history is unclear on the issue of the arbitrability of demands for paid time off from work. Without benefit of dispositive legislative history, we conclude that NYSPIA's time-off demands are not arbitrable because they are demands of a type relating predominantly or primarily to hours of work and only indirectly relating to compensation.

The remaining proposals concern overtime compensation. Provisions in the parties' expired contract which deal with guaranteed overtime would be deleted and replaced with the language in proposed demands 12.1 and 12.10. Under proposal 12.1, the basic workday would be fixed at eight hours and the basic workweek at forty hours. Overtime pay, keyed to an hourly rate of pay as defined in the proposal, would be owed after eight hours of work in any day or forty hours in any week or for work on a "pass" day. Under proposal 12.10, the hours of overtime, which were guaranteed under the provisions of the expired contract, would be rolled into the employees' base pay and time worked in excess of the basic workweek as defined in proposal 12.1 would be paid at a rate of one and one-half times the normal hourly rate.

The ALJ held these demands were not arbitrable because they were excluded under the phrase "issues relating to eligibility for overtime compensation." We disagree and hold that all of these overtime proposals are arbitrable. The interpretation urged by the State and adopted by the ALJ with respect to these overtime demands

must be rejected as it is again in irreconcilable conflict with the wording of the statute and the relevant legislative history.

Just as the phrase "directly relating to compensation" cannot reasonably be interpreted to mean only "direct compensation," so, too, the phrase "issues relating to eligibility for overtime compensation" cannot be read to exclude from the scope of arbitration all proposals for "overtime compensation." If the Legislature had intended to exclude overtime compensation from the scope of arbitration, it never would have qualified "overtime compensation" appearing in § 209.4(e) with the words "issues relating to eligibility for." To reach the result urged by the State, we would have to ignore completely the introductory portion of the controlling phrase, which we may not do.

The words "eligibility for" plainly refer to who among the unit employees would be eligible for or entitled to overtime pay. Any particular unit employee's eligibility for overtime was an issue the Legislature wanted to be governed by the applicable law, just as were the other subjects listed as noncompensatory issues.¹

The issues which NYSPIA seeks to define through its overtime proposals deal only with how much those unit employees who are determined to be eligible for overtime compensation under applicable law will be paid and the point at which their entitlement to overtime compensation will attach. The proposals do not seek to define who among the unit employees are eligible for overtime compensation. As these several demands otherwise plainly cover issues relating solely to the unit employees, personal compensation received directly from the State, and as they do not fall within the range of subjects which are excluded from arbitration, they are arbitrable under § 209.4(e) as issues directly relating to compensation.

Our conclusion regarding NYSPIA's overtime compensation demands is supported by legislative history. "Overtime" was listed in an earlier version of the bill as an arbitrable subject, but it was deleted from the list of arbitrable subjects in the amended bill. Had "overtime" simply been deleted, and not otherwise addressed, an argument could have been made that the Legislature intended overtime compensation to be a

subject excluded from compulsory interest arbitration. However, by excluding from the list of noncompensatory issues only overtime "eligibility" issues, it must be concluded that the Legislature did not intend to exclude all overtime compensation issues from the scope of arbitration. Had it been the Legislature's intent to remove all overtime issues from arbitration, it would have simply deleted "overtime" from the list of arbitrable subjects and placed that word into the list of nonarbitrable subjects or, at the very least, it would not have addressed any aspect of overtime after it had deleted overtime from the list of arbitrable subjects. Moreover, the same Assembly sponsor's memorandum mentioned earlier, which addressed the version of the bill as enacted, specifically states that "overtime" is an arbitrable subject. The ALJ's decision regarding the arbitrability of the overtime demands simply cannot be reconciled with the sponsor's memorandum.

For the reasons set forth above, the ALJ's decision is affirmed as to demands 12.2(B), 12.3, 13.1, 13.2 and 13.4. These five demands are not arbitrable within the meaning of § 209.4(e) of the Act and NYSPIA is ordered to withdraw from arbitration those five enumerated demands. The ALJ's decision is reversed as to demands 10.11, 12.1, 12.10 (both), 12.10(A), 12.11, 13.8(A) and 13.8(B), and the charge in these respects must be, and it hereby is, dismissed.

¹ Should be "prescribed."

² NYSPIA took no exception to the ALJ's decision regarding its demands for union release time; travel in conjunction with union release time; use of State vehicles for commuting to and from negotiating sessions and certain union meetings; and outside employment.

³ 1995 N.Y. Laws ch. 447.

⁴ 1995 N.Y. Laws ch. 432. The troopers and the supervisors are in other negotiating units. They, too, are in interest arbitration proceedings, but no objections to arbitrability have been filed regarding their demands. We reject the State's argument that the nature of the demands presented on behalf of the troopers or supervisors is relevant to the interpretation of § 209.4(e). Even assuming their demands are only for increases in salary or wage rates, the representatives for the troopers and supervisors may have had many reasons

for limiting their demands, none reflecting an opinion about the meaning of § 209.4(e).

6 The thirteen issues presented to us on appeal are mandatory subjects of negotiation and the State does not argue to the contrary, only the arbitrability of NYSPIA's demands under § 209.4(e) is at issue in the case before us.

8 The demands in issue are set forth in the attached appendix to our decision.

7 Section 201.4 of the Act, defining the phrase "terms and conditions of employment," similarly recognizes a difference between "salaries or wages" and "hours."

9 The phrase "which shall be governed by other provisions proscribed (sic) by law" was present before "issues relating to eligibility for overtime compensation" was added. Therefore, the concluding part of that phrase applies to all of the subjects which precede it, not simply eligibility for overtime compensation.

Appendix

Article 10.11-Dependant's [sic] Educational Benefit

Dependents of members of this unit will be entitled to attend a school of the State University of New York (SUNY), tuition free for four years if accepted by the school.

Article 12.1 (Proposed)

The basic workweek for members of the Unit will be 40 hours, worked on five consecutive eight-hour tours or as otherwise agreed upon by the member and management. Members of this Unit eligible to earn overtime will be paid one and one half times the hourly rate for any time worked in excess of eight hours in a day or 40 hours in a week. Time during which a member is excused from work because of vacation, holidays, personal leave, sick leave at full pay, or any other leave at full pay will be considered as time worked for the purpose of computing overtime. Any work on a pass day will be at one and one half the normal hourly rate. Hourly rate will be computed by dividing base pay by 1992.

Article 12.10-Guaranteed Overtime

Delete all existing language in this section.

Effective at the beginning of the first scheduling period following May 20, 1993, a member of this Unit with the rank of Investigator shall be

eligible to earn a minimum of 8 1/2 hours overtime per twenty-nine (29) day work schedule, providing the member is eligible to earn overtime.

Members shall be paid at a rate of one and one-half times their normal hourly rate of pay for overtime worked over 41 1/2 hours per week, and such overtime earned during the 29-day work schedule shall be accrued and deducted from the 8 1/2 hour guaranteed minimum. At the conclusion of the first schedule, the remaining balance of earned but unused guaranteed hours shall be compiled and carried forward to the next work schedule. This process will continue through the third and subsequent work schedules, provided, however, upon conclusion of each succeeding 29-day work schedule, the remaining balance of guaranteed overtime hours in excess of 27 1/2 must be utilized during the current work schedule in which the excess occurs. This process shall be continued for each 29-day schedule.

Members of this Unit with the rank of Investigator may opt, at least ten days prior to each work schedule, whether or not they wish to participate in the Program. It shall be assumed that, upon implementation of the Program, all such members have opted to participate, unless they file a memorandum declining participation. Such declination shall remain in effect until a subsequent memorandum is submitted requesting inclusion in the Program, commencing with the next work schedule. If a member otherwise eligible to continue in the Program opts out of the Program, the member shall be afforded the opportunity to work the balance of overtime hours owed as a result of this Program.

Non-participation in this Program shall not affect in any way, nor prohibit, management's right to assign nonparticipating members to work, consistent with the operational needs of this Division as determined by the Troop or Detail Commander. Further, nothing in this provision shall be construed as to prohibit management's right to assign overtime at any time or apply guaranteed overtime, if applicable, at any time, consistent with this Agreement and the operational needs of the Division as determined by the Troop or Detail Commander.

Once implemented, the Guaranteed overtime Program will continue; provided, however, in the event upon appeal of the decision of the

United States District Judge in *Ahem v. State of New York, et al.*, *Long v. Thomas Constantine et al.*, *Moran v. State of New York*, and *Martin v. State of New York*, dated December 8, 1992, investigators are determined to be FLSA ineligible, or that the FLSA is inapplicable to the BCI, the Program will cease at the expiration of the Agreement, or if that is not possible, given the timing of the decision, as soon as practicable thereafter, and the 10.4 Compensation in Lieu of Overtime system will be reactivated [sic] and will govern overtime compensation, except as provided for in Article 12.8A. The amount of 10.4 Compensation in Lieu of Overtime shall be \$5,780 increased by the ATB percentage in 3A, 3B and 3C. Conversely, if some or all Senior Investigators are determined to be FLSA eligible, the 10.4 Compensation in Lieu of Overtime system will cease for those Senior Investigators, and a Guaranteed Overtime Program will commence (comparable to Investigators.)

Day-to-day problem areas involving the Guaranteed Overtime Program may be discussed in labor/management meetings. Further, six months after the program is implemented, a joint labor/management committee, consisting of two members appointed by the State and two members appointed by the PBA, shall be established to jointly evaluate the program to resolve problems with the program that might arise and to make recommendations to improve the program as needed. The parties agree that appropriate modifications, jointly agreed to, may be implemented during the term of this Agreement.

Article 12.10-Guaranteed Overtime (Proposed)

Effective April 1, 1995, the guaranteed overtime program is discontinued and the equivalent of the 9½ hours of guaranteed overtime per 29 day schedule will be rolled in to the base pay. Any time worked in excess of the basic work schedule as defined in 12.1 will be paid as overtime at the rate of one and one half times the normal hourly rate.

Article 12.10(A)

Delete all existing language in this section.

For Members overtime eligible—time worked on a pass day will not be deducted from

accrued overtime hours compiled under the guaranteed overtime program. However, a member who does not meet the 41½ hours per week criteria and who is recalled on a pass day will have the pass day rescheduled.

Article 12.11

Delete all existing language in this section.

Effective with the implementation of the 41½ hour basic workweek, overtime shall be calculated by dividing basic annual salary and other compensation elements, as appropriate, by 2,062½ rather than 2,000. Further, in the event upon appeal of the decision of the United States District Judge in *Ahem v. State of New York, et al.*, *Long v. Thomas Constantine, et al.*, *Moran v. State of New York* and *Martin v. State of New York*, dated December 8, 1992, investigators are determined to be FLSA ineligible, or that the FLSA is inapplicable to the BCI, the 41½ hour workweek and salary adjustment will cease at the expiration of the Agreement, and the 10.4 Compensation in Lieu of Overtime system will be reactivated as described in Article 12.10 and will govern overtime compensation except as provided for in Article 12.8A.

Conversely, if some or all Senior Investigators are determined to be FLSA eligible, the 41½ hour basic workweek with commensurate salary adjustment shall be implemented for those Senior Investigators covered by FLSA.

Article 12.2

B. Holidays are: New Years Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Flag Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day, Thanksgiving Day, Christmas day, Martin Luther King Jr. Day. Pass days will be increased to 120 days plus the 13 holidays. A member who works on a holiday will be given back another pass day or another day of compensation at straight time as requested by the member.

Article 12.3

Each member of this Unit will be entitled to one meal period in each regular tour of duty not to exceed one-half hour.

Article 13.1

(1) After 20 years of service, a member of this Unit will be credited with 40 vacation days.

Article 13.2-Sick Leave Accumulation

(1) Sick Leave will accrue at the rate of 26 days each year.

(2) Sick leave credits accrue to a maximum of 300 days.

Article 13.4 Bereavement Leave

Members will be granted a four-day bereavement leave with full pay and not charged to any other leave in the event of the death of the member's spouse, parent, sibling, child, father-in-law, mother-in-law, grandparent, step-child or stepparent. Similarly, a two-day uncharged leave for the death of a grand child, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepchild, foster child, half-brother, half-sister, nieces, nephews, uncles, aunts and cousins provided that in the case of the two-day leave, the member actually attends the funeral of the decedent.

Article 13.8(A) Death Benefits

The State will pay all funeral expenses incurred by the family of a Member who dies in the line of duty.

Article 13.8(B)

Dependents of a Member who dies in the line of duty, who are accepted to a New York State University for their undergraduate study will attend at the expense of the State. The expense will be limited to tuition, board, full meal plan and books. This benefit will continue for four years dependent on the student's successful completion of each semester as determined by SUNY. If the dependent decides to attend a different college or University, he will be compensated at the rate it would have cost for full time attendance at SUNY Albany.

¶30-3014

In the Matter of

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 106,

Petitioner,

and

TOWN OF INDIAN LAKE,

Employer.

Case No. C-4618

Before PAULINE R. KINSELLA, Chairperson; ERIC J. SCHMERTZ; March 26, 1997

INDEX NO. 32.81

Petition seeking certification as exclusive representative of certain highway employees was dismissed where results of secret ballot election indicated that majority of petitioned-for employees chose to have no exclusive representative for collective bargaining purposes.

Daniel J. McGraw, for Petitioner

Robert A. Lippman, Esq., for Employer

Board Decision and Order

On December 6, 1996, the International Union of operating Engineers, Local 106 (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Town of Indian Lake (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: Road Supervisor, Heavy Equipment Operator (HEO), Medium Equipment Operator (MEO), Mechanic, Laborer, Pesticide Applicator, Janitor, Wastewater Assistant.

Excluded: Highway Superintendent, and other managerial employees not listed above.