P.E.R.C. NO. 2016-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and- Docket No. IA-2015-003

FOP LODGE 91,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part, and modifies in part, an interest arbitration award on remand establishing the terms of the first collective negotiations agreement between the State of New Jersey and FOP Lodge 91. The State and FOP cross-appealed. The Commission denies the FOP's requests to reconsider its decision in an earlier appeal from the arbitrator's initial award regarding the applicability of the statutory 2% Hard Cap (P.E.R.C. 2015-50), and to reconsider its negotiability determination on major discipline made as part of a scope of negotiations case decided when the parties were in negotiations (P.E.R.C. No. 2014-50).

With respect to the salary award and calculations, the State argued the award violated the statutory 2% Hard Cap. The Commission finds that the arbitrator's methodology complies with the interest arbitration statute and Commission precedent. The Commission makes no modification to the retiree health benefits clause because the award already contains the non-arbitrability clause sought by the State, even if some of the award's reasoning did not support it. The Commission denies the State's request to vacate the duty officer compensation clause, finding that the arbitrator's award is supported by the record. The Commission denies the State's request to vacate the clothing allowance clause, finding that the arbitrator's compromise award was supported by substantial credible evidence on the record including comparability to other units. The Commission denies the State's request to vacate the education incentive and continuing education reimbursement clauses, finding that the arbitrator's award was well supported by the record and that she adequately analyzed the N.J.S.A. 34:13A-16g statutory factors. The Commission finds that the minor discipline arbitrability

clause was supported by the Commission's previous negotiability determination (P.E.R.C. No. 2014-50).

The Commission modifies the eye care program clause to award the State's sunset language because the award's comparability analysis was factually flawed. The Commission removes the educational program information clause because it was not adequately supported. The Commission removes language allowing arbitration of disciplinary transfers, finding that the issue is non-negotiable and was effectively decided in a previous scope decision involving the parties (P.E.R.C. No. 2014-50).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Appellant, Jackson Lewis, attorneys (Jeffrey J. Corradino, of counsel)

For the Respondent, Pellettieri Rabstein & Altman, attorneys (Frank M. Crivelli, of counsel)

DECISION

On July 8, 2015, the State of New Jersey ("State") and FOP Lodge 91 ("FOP") both appealed from an interest arbitration award issued after a remand. The FOP represents approximately 136 State Investigators in various titles employed in the State's Division of Criminal Justice.[1/] On July 15, both parties filed response briefs. The Commission remanded the arbitrator's initial award in this matter for reconsideration and issuance of a new award that would comply with the salary cap imposed by

1/ We deny the FOP's request for oral argument. The issues have been fully briefed.

P.L.2014, c.11.[2/]. P.E.R.C. No. 2015-50, 41 NJPER 382 (¶120 2015).

On June 23, 2015, the arbitrator issued a 21-page remand award. The remand award retained scheduled increment payments but modified the initial award in order to comply with the statutory 2% average annual salary increase cap, primarily by reducing the amount of across-the-board raises. The remand award also rejected a previously awarded FOP proposal to require automatic advancement of Detective II's to the Detective I salary range after five years of service. The remand award retained all other items contained in the initial award. The initial award, issued on December 3, 2014, was a 314-page interest arbitration award setting the terms of a collective negotiations agreement (CNA) for the period from July 1, 2014 through June 30, 2019. The award and remand award will collectively be referred to as the "award" to reflect the combined award inclusive of modifications on remand and all previously awarded terms in the 314-page award not modified by the remand award. When referencing specific pages, the awards will be referred to as State/DCJI and State/DCJII. Our decision focuses only on those issues in the award raised in the State's and FOP's respective appeals.

2/ N.J.S.A. 34:13A-16.7.

I. Standard of Review

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the following factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

> (1) The interests and welfare of the public . . .;
>
> (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
>
> (a) in private employment in general . . .;
>
> (b) in public employment in general . . .;
>
> (c) in public employment in the same or comparable jurisdictions;
>
> (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
>
> (4) Stipulations of the parties;
>
> (5) The lawful authority of the employer . . .;
>
> (6) The financial impact on the governing unit, its residents and taxpayers . . .;
>
> (7) The cost of living;
>
> (8) The continuity and stability of employment including seniority rights . . .; and
>
> (9) Statutory restrictions imposed on the employer. . . .
>
> [N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

P.L.2010, c.105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through

April 1, 2014. P.L.2014, c.11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

> Definitions relative to police and fire arbitration; limitation on awards
>
> a. As used in this section:
>
> "Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> "Non-salary economic issues" means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.
>
> The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent

> increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap.

II. FOP's arguments on appeal

The FOP argues that the Commission's first decision on the arbitrator's initial award (P.E.R.C. No. 2015-50) improperly rejected the arbitrator's determination that the 2% Hard Cap was inapplicable to this matter because this interest arbitration involves a newly-certified unit.

Our prior ruling is the "law of the case" on the issue of application of the 2% Hard Cap. The law of the case doctrine is a non-binding rule intended to prevent relitigation of a previously resolved issue in the same case. State v. K.P.S., 221 N.J. 266, 276, 112 A.3d 579 (2015). Underlying the law of the case doctrine are principles similar to collateral estoppel, as both doctrines are guided by the fundamental legal principle that once an issue has been fully and fairly litigated, it ordinarily is not subject to relitigation between the same parties either in the same or in subsequent litigation. Id. at 277. However, whereas collateral estoppel may bar a party from relitigating an

issue decided against it in a later and different case, law of the case may bar a party from relitigating the same issue during the pendency of the same case before a court of equal jurisdiction. Ibid. Therefore, we will not allow another challenge to our ruling in P.E.R.C. No. 2015-50.

The FOP next argues that the Commission should reconsider its decision in State of N.J. and Division of Criminal Justice NCOA, SOA and FOP Lodge No. 91, P.E.R.C. No. 2014-50, 40 NJPER 346 (¶126 2014), aff'd 2015 N.J. Super. Unpub. LEXIS ____ (App. Div. Unpub. 2015), involving these same parties. That scope of negotiations decision arose while the parties were in negotiations prior to filing for the interest arbitration that is the subject of this appeal. The FOP seeks reversal of the Commission's determination that major discipline is not reviewable through binding arbitration for this unit.

Because the FOP appealed that scope of negotiations decision to the Appellate Division (App. Div. Dkt. No. A-2689-13T1), we lack jurisdiction to reconsider any issues decided in P.E.R.C. 2014-50 that are before the Appellate Division. See N.J.S.A. 34:13A-5.4(d); N.J. Court Rules R.2:2-3(a)(2); R.2:9-1.[3/]

3/ On August 28, 2015, the Appellate Division issued an unpublished decision affirming the Commission's decision in P.E.R.C. 2014-50.

III. Compliance with the 2% Hard Cap

The State asserts that the arbitrator's method for calculating the salary award violates the 2% Hard Cap and is contrary to N.J.S.A. 34:13A-16.7(b) and Commission precedent. Specifically, it argues that the arbitrator incorrectly calculated or misrepresented increment costs for the first year of the CNA; abused her discretion by excluding the State's "corrected" exhibits which were submitted three business days after the close of the arbitration hearing; and incorrectly calculated the cost increases to base salary items in the first year of the CNA by not including the "roll-up" costs of bringing new hires from the base year up to full annual salary levels.

The FOP responds that the State miscalculated increment costs for the first year, and that the arbitrator correctly calculated a salary award compliant with the 2% cap and New Milford. The FOP argues that the arbitrator properly excluded the State's "corrected" versions of Exhibits S-11 and S-12 because the record had already been closed and the FOP was not able to cross-examine or challenge the data submitted post-hearing. The FOP asserts that the State later opposed the FOP's request to supplement the record on remand, and that the arbitrator, consistent with her decision on the State's attempted supplementation, denied the FOP's request to reopen the record.

We decline to find that the arbitrator abused her discretion by choosing not to reopen the record to allow the State to submit its "corrected" versions of two of its previously submitted exhibits. The arbitrator held five days of hearing in 2014 on October 21, 28, 29, 30, and 31, and held the record open at the close of hearing until November 4. No further submissions were received during that period, and the parties were advised that the record had closed. State/DCJI at 3-4. Post-hearing briefs were due and submitted by November 14, which is when the State also tried to submit its "corrected" copy of updated exhibits. State/DCJI at 4; State/DCJII at 3, 8-9.[4/]

Contrary to the State's assertions, the Commission has consistently authorized the arbitrator's approach to calculating increases in base salary items for those unit members remaining in the unit after the base year. In New Milford, the Commission endorsed the following method for "costing out" an interest arbitration award within the parameters of the 2% Hard Cap:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too

4/ Even if we were to credit the State's assertion supported by an e-mail apparently indicating that it "forwarded the correct Exhibits on November 5, 2014," it is admittedly still beyond the November 4 close of the record. State's Appeal Brief at 9; State's Appendix II, Tab 2.

> speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.
>
> [New Milford at 344, emphasis added]

In Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union's assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award, finding:

> In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

[Ramsey at 20, emphasis added]

Subsequent Commission decisions similarly found that longevity savings from base year retirements should not be considered additional funds for the new contract. See, e.g., City of Camden, P.E.R.C. No. 2014-95, 41 NJPER 69 (¶22 2014); Township of Byram, P.E.R.C. No. 2013-72, 39 NJPER 477 (¶151 2013).

Applying New Milford and its progeny, it is clear that base year retirements should not be credited to the union as "breakage" savings from the base year permitting commensurate funds for raises in excess of the 2% cap, nor should "roll-up" costs from adjusting the partial salaries of base year new hires to full salaries in the first year of the contract be debited from the union's 2% annual allotment for raises. Not only does this method comply with N.J.S.A. 34:13A-16.7(b), but it makes logical sense by ensuring neither the employer nor the union reaps a windfall through subsequent salary savings or increases achieved from breakage or roll-up.

In this case, the composition of the unit due to sixteen new hires in the base year FY 2014 compared to only five retirements or resignations would have, based on the State's proposed calculation method, produced an aggregate unit-wide salary difference between the 1st year of the award and the base year of 5.88%. State/DCJII at 8, 11. By charging the union for roll-up costs of those new hires from partial prorated salaries in the

base year to full year salaries in year 1 of the award, the amount available for each officer's raise would actually average significantly less than the statutorily permitted 2% Hard Cap. Conversely, if roles were reversed and there were more retirements than new hires during the base year, simply adding 2% to the aggregate base year salary would effectively credit the FOP with retirement breakage savings and could actually produce average raises for the remaining/new officers which would significantly exceed the 2% Hard Cap. We cannot allow either party to have it both ways by proffering a formula that includes both breakage savings and salary roll-up costs when it is to that party's advantage depending on the salaries, timing, and numbers of retiring officers and new hires during the base year. We have thus adopted a consistent approach for how interest arbitrators are to cost-out terms of an award which apportions the statutorily permitted salary increases based on the full base salary level on the last day of the prior contract of those employees remaining in the unit at the start of the new award.

The arbitrator here, consistent with Commission precedent, applied the correct approach and properly rejected the State's projections and methodology as follows:

> [I]t appears that the State has miscalculated the cost of increments in the first year and misreported increments for the remaining years....[I]t appears that the Employer's method of calculating increment costs relied on a subtraction of the total amount spent in

> FY14 ($9,913,644.91) against the total amount projected to be spent in FY 2015 ($10,485,315.98); this method is inconsistent with the Commission's directives in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). First, it includes the savings of amounts that no longer will be paid to employees who retired or resigned in 2014 as negative amounts. This savings, commonly referred to as "breakage", totals $223,230.88, and is improperly included in the Employer's aggregate FY 15 increase of $571,671....
>
> Further, the State's asserted increment costs for FY 2015 includes (in addition to increment costs) the amount needed to bring employees who were paid for part of the year in FY 2014 to full salary in the subsequent year. This is not a true "increment cost."
>
> In New Milford, the Commission...stated that the best method to cost out would be to take the complement of employees on the employer's payroll on the last day before the new contract, and move them forward through the steps (where increments are being awarded) and any across-the-board increases. Thus, the appropriate starting point to track costs for contract year one is the total base salaries of unit employees on the last day before the new contract begins....
>
> It appears that the Employer's "increment costs" for FY 2015 includes not only the cost of advancing employees on their respective salary guides, but also includes the roll-up costs which result from pro-rating an employee's partial salary in the year they began their employment (FY 14) to bring them up to full salary in the first year of the contract (FY 15). The cost of bringing these employees up to full pay pursuant to the salary guides (roll-up costs) is significant. It is just as inappropriate and contrary to New Milford to charge off roll-up costs against the 2% cap as it is to credit breakage amounts to the Union's benefit.
>
> [State/DCJII at 8-11]

As the arbitrator's analysis applied the correct methodology to determine the projected costs of increases in base salary items for unit members through the duration of the award, and the State's methodology for determining first year salary costs was misguided, we find that the arbitrator's salary award complies with N.J.S.A. 34:13A-16.7(b) and Commission decisions interpreting it.

IV. Arbitrability of retiree health benefits clause

In awarding health benefits/contributions, dental care, and retiree health insurance language, the arbitrator also awarded the State's proposal that those sections not be subject to the grievance/arbitration provisions of the CNA. State/DCJI at 107-120. The arbitrator stated:

> Finally, the State proposes:
>
> > E. The provisions of Sections (A.1-3), (B), (C) and (G) of this Article are for informational purposes only and are not subject to the contractual grievance/arbitration provisions of Article ___.
>
> The State maintains that this provision appropriately excludes disputes concerning these fringe benefits from the grievance and arbitration procedure and is consistent with the language contained in the negotiated agreements between the State and its other negotiation units. The FOP asserts that there is no basis to exclude health benefits from the grievance procedure. I award the State's proposal as it is consistent with language contained in the State's other negotiations units' contracts.

Section G. of the health benefits section is entitled "Health Insurance in Retirement." The arbitrator awarded the FOP's proposed language for the section with the addition of a sub-clause regarding future legislative changes to post-retirement medical benefits. State/DCJI at 116-121. However, the State's proposal for section G. had included a subsection (f.) providing that "Violations of this Article are not subject to the grievance/arbitration procedures of this Agreement." In rejecting the State's section G. proposal, the arbitrator found that "[T]he State has not sustained its burden of justifying the exclusion of health benefits for retirees from the grievance arbitration clause." State/DCJI at 119-120.

The State asserts that the arbitrator's award concerning the arbitrability of retiree health benefits is inconsistent with her findings and conclusions. Review of awarded section E., which makes "Sections (A.1-3), (B), (C) and (G) of this Article" not arbitrable, alongside the arbitrator's reasoning for rejecting the State's proposed section G. including its non-arbitrability section, indicates that the award's reasoning is internally inconsistent on this issue. However, the State concedes that its rejected G.(f.) non-arbitrability proposal is redundant considering the awarded language of section E. which already makes the provisions of section G. not subject to the CNA's grievance/arbitration procedure. Therefore, we do not find that

this section of the award needs to be modified because the language actually awarded is not in dispute by either party. We must assume that the arbitrator's apparently conflicting reasoning for finding section G., "Health Insurance in Retirement," contractually arbitrable or non-arbitrable was due to an oversight. In any event, we are confident that the arbitrator's reasoning for awarding the State's section E. proposal, which is applicable to section G., is more specific and complies with statutory factor 16g(2)(c) because she found that "it is consistent with language contained in the State's other negotiations units' contracts." State/DCJI at 116. As argued by the State, all of the State's current agreements with other majority representatives are indeed comparable to this awarded language in that they too exclude the subject of retiree health insurance from the contractual grievance and arbitration procedure. State's Appeal Brief at 24-26; State's Appendix III.

V. Continuation or sunset of Eye Care Program

The arbitrator awarded neither party's Eye Care Program proposal in full. The State had proposed language specifying that the program would end on June 30, 2019, the last day of the proposed CNA. State/DCJI at 112. The arbitrator rejected the State's language, instead awarding the following language which would continue the program as the status quo until the parties agree otherwise in a successor contract: "It is agreed that the

State shall continue the Eye Care Program during the period of this Contract." State/DCJI at 115. She reasoned:

> Finally, I decline to include language that would sunset the clause upon the expiration of the contract. The State's proffered reason that it wants the option to terminate the program if it wishes flies in the face of collective negotiations, is inconsistent with the provisions of other State contracts, and is not in the public interest, which favors collective negotiation over unilateral action.
>
> [State/DCJI at 115; emphasis added]

The State asserts that the arbitrator's failure to award its proposal for the Eye Care Program to sunset upon expiration of the contract fails to give proper weight to statutory factor 16g(2)(c) because ten of the eleven current State agreements with other unions contain similar sunset clauses for the program. A review of the ten State contracts cited indicates that they do indeed sunset their Eye Care Program benefits on the final day of their respective contracts. State's Appeal Brief at 26-28; State's Appendix III. Because the arbitrator's determination on this issue was in part based on the factually incorrect premise that the State's proposal was inconsistent with provisions of other State contracts, we modify the award to include the State's proposed sunset language which accounts for 16g(2)(c) by bringing it into conformity with ten of eleven other State contracts. The first sentence of subsection 1. of the Eye Care Program clause regarding its continuity during the contract is therefore

replaced with the following language: "This Eye Care Program ends on June 30, 2019."

VI. Daily compensation for duty officer or unit phone monitor

The State objects to the arbitrator's award of the following provision:

> An [sic] detective who is assigned to be a duty officer or unit phone monitor shall be paid $35 per day for such assignment. Payment will be made within 30 days of completion of the period of continuous assignment.
>
> [State/DCJI at 133]

The State argues that this language should be vacated because it is not supported by substantial credible evidence and lacks any analysis of the required statutory criteria. It cites to the hearing testimony of Chief of Detectives Paul Morris that the duty officer phone averaged only two calls per week while the human trafficking unit cell phone averaged five calls per week. (5T137-139, 146-147). The FOP responds that the arbitrator adequately considered the evidence presented on the issue of compensation for various duty phone assignments, including the hearing testimony of Detective John Neggia regarding the on-call status of detectives assigned to 24/7 bias crimes and human trafficking phone hotlines. (3T149-150).

We find that the arbitrator's award of a $35 daily stipend for on-call phone assignments is supported by substantial credible evidence in the record. She reasoned:

> I award a modified version of the Union's proposal. There are three separate situations where DCJ employees are possibly "on call": duty officer, the human trafficking unit hotline, and possibly the bias crimes unit hotline. It is unclear from the record whether detectives are actually ever asked to assume the position of duty officer, as the SOP states that the responsibility is one assigned to lieutenants. It is also unclear whether they are assigned to monitor the bias crimes Unit hotline. But detectives definitely are assigned to the human trafficking phone. I agree with the Union that employees deserve some compensation for the intrusion into their personal lives when undertaking this assignment....If, as the State suggests, no detective is assigned as duty officer or assigned to monitor the bias crime hotline, then the State will have no cost to this unit associated with the assignment. The annual cost for monitoring each "hotline" would be $12,775.
>
> [State/DCJI at 132-133]

The arbitrator considered the FOP's argument and Neggia's testimony regarding how detectives assigned to these duties are subject to restrictions on their personal lives due to being on-call to answer a phone or respond to a call. The arbitrator also considered the State's argument and Morris' testimony that one of the hotlines in question - the duty officer cell phone - is actually monitored by lieutenants, but appropriately worded the provision such that no detectives will be paid for any hotline duties unless they are actually assigned to such duties.

VII. Annual clothing/equipment allowance

Upon hire, detectives are issued a "class B" uniform and two different jackets, and they are replaced when they are worn, damaged, or no longer fit. However, detectives do not have a formal dress code or uniform policy and normally wear dress pants, a polo or long-sleeve shirt, and occasionally jeans. State/DCJI at 178. The FOP proposed an annual clothing allowance of $1,000, arguing that it is necessary due to all the scenarios in which detectives' clothing may become damaged or destroyed on the job. The State proposed only replacing the detectives' class B uniform (worn about 5-8 times per year) as necessary, arguing that the detectives should not receive a clothing allowance because they are not required to wear uniforms. State/DCJI at 176-180. The arbitrator's compromise clause awarded the FOP an annual $300 clothing/equipment allowance per unit member, and no longer required the State to replace damaged or worn uniform components. The arbitrator reasoned:

> I intend to award sufficient compensation to partially defray the cost to detectives for purchasing replacement uniform components and other equipment necessary in the performance of their duties. Given their particular line of work, damage to clothing, shoes, and gear is not an incidental expense. Employees should not have to pay for the equipment needed to do their job no more than clerks should have to buy their own staplers.
>
> [State/DCJI at 180-181]

On appeal, the State asserts that the arbitrator's award is not based on any evidence - such as receipts - of the unit members' actual costs expended for clothing maintenance, and that fifteen of twenty-one County Prosecutors' offices pay no clothing allowance to detectives. The FOP responds that Neggia's testimony regarding how unit members have had to replace their own clothing and uniforms supports the award of some clothing allowance, and points out that the majority of the State's law enforcement units receive some sort of clothing allowance.

Each side has presented valid arguments supported by evidence justifying its respective position. The majority of State contracts provide clothing allowances, but the majority of County prosecutors' offices do not. State's Appendix II, Tab 5; State's Appendix III. Although many State law enforcement units only provide clothing allowances to unit members who are required to wear a uniform, the FOP detectives here are occasionally required to wear a uniform, and it is also worth noting that even some of the State's non-law enforcement units receive annual non-uniform clothing allowances of $550 depending on their job requirements (CWA, AFL-CIO and IFPTE, AFL-CIO, see State's Appendix III, Tabs 1 and 4).

We find that the arbitrator's award of a $300 annual clothing/equipment maintenance allowance is supported by substantial credible evidence in the record. She weighed the

testimony of Neggia for the FOP and Chief-of-Staff Miller for the State, and also arrived at an annual cost estimate of $40,500 for this benefit which is significantly less than the $540,000 annual cost the State estimated for the FOP's proposal. Ultimately, we must defer here to the arbitrator's discretion, adequately supported, to craft a compromise award which decreased uniform costs to the State by making unit members responsible for their uniforms, but also supplied a relatively modest allowance compared to other units to help unit members defray the costs of maintaining both their official uniforms and their much more frequently worn plain-clothes work attire.

VIII. Education/degree incentive payments

The State objects to the arbitrator's award of an Educational Incentive provision which would pay eligible unit members annual lumps sums of $1,000 for attainment of a Master's degree and $1,500 for attainment of a Ph.D./J.D. degree. The arbitrator's award was less than what the FOP proposed, and did not include any incentives for Associate's or Bachelor's degrees because she credited the State's arguments and reasoned that based on the job specifications, most detectives had already attained a BA as a prerequisite to qualify for the job. State/DCJI at 122-127. The arbitrator analyzed comparability to other units, noting that only one State law enforcement contract provides an educational incentive but that eight County

prosecutors' offices provide an incentive. State/DCJI at 123-124. She also considered other relevant 16g factors raised by the State regarding interests to the public and financial impact on taxpayers, and concluded that a better educated work group is beneficial to the State. State/DCJI at 125-126. Her cost-out of her awarded incentive resulted in $21,000 annually, as compared to the State's estimate of $121,000 annually for the FOP's proposal. State/DCJI at 125-127. For the foregoing reasons, we find that the arbitrator's educational incentive award was supported by substantial credible evidence on the record, she gave due weight to the arguments and evidence presented, and she adequately explained her reasoning in light of the 16g factors.

IX. Posting of educational programs

The State opposed the FOP's proposal which would have required the State to make "information on educational programs, if available, accessible to all employees in electronic format." State/DCJI at 265. To address the State's concerns that the proposal was too vague with no limitations regarding the scope of educational programs covered, the arbitrator awarded the following provision:

> A. To the extent information is available to the Division, it will provide such information concerning degree and certification programs offered through the State colleges and to which DCJ detectives might be eligible for tuition aid, to all employees in electronic format.

[State/DCJI at 266]

Despite the limitations to State college degree and certification programs for which tuition aid might be available for DCJ detectives, on appeal the State maintains its opposition that the clause is too vague, has no limitations, and is unsupported by substantial credible evidence. The State argues that even though it is limited to New Jersey State College educational programs, there are no restrictions limiting the information-gathering and electronic posting obligations of the State to educational programs relevant to detectives' job duties. The State asserts that the arbitrator failed to consider the cost of this imposed undertaking and financial impact on the State and its taxpayers (factor 16g(6)), and failed to consider the public interest (factor 16g(1)) in having the State perform a function which could be more efficiently accomplished by any detective interested in pursuing career opportunities. The FOP responds that, in consideration of the State's objections, the arbitrator crafted a balanced clause that included multiple qualifiers to limit the State's educational program posting obligations.

Though we acknowledge that the arbitrator specifically took note of the State's arguments and testimony regarding its objections to the educational program posting clause, we find that the award did not adequately explain the basis for this clause either through analysis of the 16g factors deemed relevant

or through reliance on other evidentiary support. There is no analysis of how the interests and welfare of the public are served by this requirement, the financial impact of the time and effort that must be spent to search for the relevant educational programs and electronically post them, or comparability to conditions of other units. FOP members who are interested in educational programs could probably more efficiently search where state colleges have already posted information electronically, and then make tuition aid inquiries to the State as necessary once they have identified a program/college of interest. Therefore, the award is modified to remove the educational program information clause.

X. Reimbursement/Compensation for continuing education

The arbitrator, after considering competing FOP and State proposals and arguments for a Training and Continuing Professional Education clause, provided the following reasoning and award:

> The Union's theory is that the Division benefits from having licensed professionals such as CPA's and attorneys on its staff. Since maintaining such license requires the licensee to periodically take continuing education courses as a condition of the license, I understand the Union's argument that the Division should contribute to the cost of obtaining the course credits. But my first problem with the FOP's proposal is that I am unable to even estimate the cost of this proposal to the Division. Second, the Division should be permitted to have input into the selection of the course so that it

> can ensure that the course is related to the employee's area of responsibility the [sic] extent possible. I award the following:
>
> 1. The State will allow Division of Criminal Justice detectives to attend and successfully complete the necessary continuing professional education credits, in a timely manner, so they may keep their professional status in good standing with the issuing agency or entity.
>
> 2. The State will permit Division of Criminal Justice detectives time off with pay to attend these training programs.
>
> 3. Continuing education courses related to required professional certification, which are a direct requirement of the employee's current job responsibilities, may be considered for reimbursement funds if available. Reimbursement amounts will be consistent with the established tuition policy.
>
> 4. Selection of the continuing professional programs shall be made as to comply with the required regulations of the issuing agency. Selection of the individual training course will be at the discretion of the license holder but subject to the approval of the Division. Any program selected under this section must earn the licensee continuing training hours/credits to be eligible for reimbursement or direct payment.
>
> [State/DCJI at 175-176; emphasis added]

We find that the arbitrator's continuing education reimbursement award is well supported by substantial credible evidence on the record, and that she gave due weight to the interests and welfare of the public, comparability to other State contracts, and the financial impact on the State. As emphasized

in the clause above, the arbitrator appropriately curtailed the award to continuing education related to employees' current job responsibilities, and also limited reimbursement to be in accordance with the established tuition policy and only when funds are available. Indeed, section 3. of the clause is identical to the language of the State DCJ's Tuition Reimbursement Program as memorialized in SOP 2-95, section IV(D) since 1995. State/DCJI at 175. She balanced the benefits of maintaining an appropriately licensed/certified workforce of detectives who possess higher levels of training and education with the State's cost containment concerns.

XI. Arbitrability of disciplinary transfers

The State appeals the underlined portion of the following Transfers clauses awarded by the arbitrator:

> A. No employee shall be transferred on less than ten (10) days' notice to the employee of the proposed transfer, but this specific requirement does not apply to emergency assignments.
>
> B. Arbitration of the provisions of this clause is limited to the procedural aspects only with the exception of when it is alleged that a transfer was made for disciplinary reasons.
>
> [State/DCJI at 257-258; emphasis added]

Transfer and reassignment of police officers may not be submitted to binding arbitration, even if the transfer is allegedly disciplinary. State of New Jersey (Division of State

Police), P.E.R.C. No. 2009-74, 35 NJPER 225 (¶80 2009); State of New Jersey (Division of State Police), P.E.R.C. No. 2002-78, 28 NJPER 265 (¶33102 2002); City of Trenton, P.E.R.C. No. 2005-59, 31 NJPER 58 (¶27 2005). The discipline amendment to section 5.3 of our Act, as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993) and amended in 1996, authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments or transfers of police officers. Hudson Cty., P.E.R.C. No. 2010-57, 36 NJPER 40 (¶18 2010); Union Cty. Sheriff, P.E.R.C. No. 2003-2, 28 NJPER 303 (¶33113 2002); Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30002 1998). N.J.S.A. 34:13A-25 is inapplicable because it prohibits disciplinary transfers of education employees, not police officers. Furthermore, although the FOP's Transfer clause proposals before us in P.E.R.C. No. 2014-50 differed from its final proposals to the interest arbitrator, our negotiability determination on the issue of involuntary transfers would have encompassed the FOP's proposed disciplinary transfer exception where we stated:

> [A]s part of its prerogative to match the best suited employees with particular assignments, an employer's decision to make involuntary transfers, and the basis it uses for doing so, are managerial prerogatives.
>
> [40 NJPER at 350]

We therefore reject the arbitrator's reasoning on this issue and modify the awarded language to exclude the disputed portion (i.e., "with the exception of when it is alleged that a transfer was made for disciplinary reasons").

XII. Arbitrability of minor discipline

The State argues that neither party proposed arbitration of minor discipline and that the award is not supported by substantial credible evidence on the record. The State also argues that the award permits grievants to proceed directly to binding arbitration without any internal review or hearing, which would result in greater expenditure of time and money due to no formalized opportunity for the parties to confer and attempt to settle the matter. The FOP responds that the arbitrator properly took notice of the Commission's scope decision regarding arbitrability of minor discipline, and awarded the provision based on that reasoning.

We find that the arbitrator's awarded clause allowing minor discipline to be challenged through binding grievance arbitration is supported by substantial credible evidence on the record and find no reason to disturb this portion of the award. The arbitrator conducted a thorough analysis of the parties' arguments and proposals for a Discipline clause. State/DCJI at 186-214. Consistent with the Commission's scope of negotiations decision in State of N.J. and Division of Criminal Justice NCOA,

SOA and FOP Lodge No. 91, P.E.R.C. No. 2014-50, 40 NJPER 346 (¶126 2014), aff'd 2015 N.J. Super. Unpub. LEXIS ____ (App. Div. Unpub. 2015), involving these same parties, the arbitrator awarded a disciplinary grievance procedure with a just cause standard and binding arbitration of minor discipline, and excluded major discipline from the grievance process. State/DCJI at 201-202, 210. She also noted comparability to other State contract language (State/DCJI at 196, 206) and explained how the State itself proposed its pre-existing just cause standard for minor discipline as contained in SOP "Discipline Procedures for Investigative Personnel." State/DCJI at 197, 202. Finally, we note that the FOP's proposed discipline clause, although extending into areas of major discipline which were not awarded, was comprehensive and included minor discipline. State/DCJI at 186; FOP's Appendix, Tab B.

ORDER

The interest arbitration award is affirmed, except for the following modifications:

1. Replace the first sentence of subsection 1. of the Eye Care Program clause with: "This Eye Care Program ends on June 30, 2019."

2. Remove the educational program information clause.

3. Remove the following language from section B. of the Transfers clause: "with the exception of when it is alleged that a transfer was made for disciplinary reasons."

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. Commissioners Jones and Wall voted against this decision.

ISSUED: September 3, 2015

Trenton, New Jersey