

P.E.R.C. NO. 2016-69

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DIVISION OF STATE POLICE),

Respondent/Cross-Appellant,

-and-

Docket No. IA-2016-003

STATE TROOPERS FRATERNAL  
ASSOCIATION OF NEW JERSEY,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for reconsideration and issuance of a new award establishing the terms of a successor agreement between the State and STFA. The Commission finds that the arbitrator did not follow the New Milford standard for compliance with the statutory salary cap because he relied on the State's calculations without placing the calculations in the body of the decision. Therefore, the award is remanded for the arbitrator to demonstrate how the base year and salary increase calculations meet the requirements of N.J.S.A. 34:13A-16.7. The Commission also finds that on remand the arbitrator should clarify where he addressed the statutory 16g(9) factor with respect to the transportation allowance and education incentive proposals. The Commission determines that the arbitrator was correct in deciding to include maintenance pay as part of base salary, to exclude retroactive payments from the base year salary calculation, and to include acting sergeant's pay in the base year salary calculation.

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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Appellant.

Appearances:

For the Petitioner, Ballard Spahr, attorneys (Steven W. Suflas, of counsel; Bradley J. Betack, on the brief)

For the Respondent, Loccke, Correia & Bukosky, attorneys (Michael A. Bukosky, of counsel)

DECISION

This case comes to us by way of an appeal and cross-appeal<sup>1/</sup> from an interest arbitration award pertaining to the State Troopers Fraternal Association Of New Jersey ("STFA") and the State of New Jersey, Division of State Police ("State" or "Division"). The award involves a negotiations unit of approximately 1643 troopers.<sup>2/3/</sup>

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1/ The STFA filed its appeal on February 16, 2016, the State filed its cross-appeal and opposition brief to the STFA's appeal (after an extension was granted) on March 8, and the STFA filed its brief in opposition to the City's cross-appeal on March 11.

2/ The STFA contended that there were 1650 unit members; the  
(continued...)

The arbitrator conducted one mediation session and four days of hearings. On February 1, 2016, he issued a 54 page decision and award. The award was conventional as required by P.L. 2014, c. 11 (amending N.J.S.A. 34:13A-16d). A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. The parties' final offers are set forth on pages three to eight of the arbitrator's decision.

As pertinent to the appeal and cross-appeal, the award consisted of the following:

Wages

There will be a 1.25% increase across the board for all ranks and steps, commencing with the first pay period after July 1, 2016. Increments will be frozen as of Pay Period 21 in 2015. As of July 1, 2016 the maintenance allowance shall be \$13,819.64.

Term

The CNA shall have a term of July 1, 2012 to June 30, 2017.

Transportation Allowance

Commencing with the Academy class of 2017, the transportation allowance shall be eliminated except in situations where the trooper is required to drive to an emergency muster point or to some assignment other than his or her regular assignment in excess of twenty miles from his or her permanent

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2/ (...continued)  
State maintained that there were 1636 members.

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

residence. In those cases, the trooper will be entitled to the transportation allowance.

Education Incentive

Commencing with the Academy class of 2017, the education incentive of \$500 for employees who have sixty credits or an associate's degree shall be eliminated.

Other Proposals

All proposals by the STFA and the State not awarded herein are denied and dismissed. All provisions of the existing CNA shall be carried forward except for those which have been modified by the terms of the Award and any prior agreements between the parties.

The STFA appealed the following issues, as set forth in its brief:

The Arbitrator's Award Should Be Vacated as Violative of N.J.S.A. 34:13a-16(g) and Controlling Case Law

The Arbitrator Failed to Properly Calculate Base Salary for the Final Twelve (12) Months of the Expired Contract

The Arbitrator Failed to Calculate and Provide an Analysis in Any of the Years of the Award

The Arbitrator Failed to Show His Methodology as to How He Calculated Base Salary or the Aggregate Cost for the Base Year

The Arbitrator Failed to Establish Information and Base Salary Calculations in an Acceptable and Legible Format

The Arbitrator Failed to Make a Final Calculation of the Total Economic Award

The Arbitrator Improperly Included Maintenance in Base Salary

The Arbitrator Incorrectly Excluded Base Salary Amounts Expended by the Employer in Fiscal Year 2012 Which Were Paid as a Result of the [Previous Interest] Arbitration [Award]

The Complete Lack of Opportunity for the STFA to Respond and Address the Calculations Submitted by the Employer

The Arbitrator Improperly Eliminated Transportation Allowance and Education Incentive Without the Proper Discussion of the Factors

The Arbitrator Improperly Included Promotions Based upon Acting Assignments into His Base Salary Calculations.

The State cross-appealed the following issues, as set forth in its brief:<sup>4/</sup>

The Arbitrator's Award of a Five-year Term Did Not Comport with the 2% Cap Limitations of the Act

The Arbitrator's Award of a Five-year Term Results in a Wage Award That Does Not Meet the 2% Cap

The Only Option to Comply with the 2% Cap Is to Apply the Division's Wage Proposal to a Six-year Award

The Arbitrator's Justification for the Five-year Term Is Inadequate.

We remand the award to the arbitrator for reconsideration because he did not show the methodology as to how "base salary"

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<sup>4/</sup> The State also opposed the STFA's appeal, asserting among other things, that the arbitrator "accurately identified the base year salary" and "properly found the division's cost out of a six-year contract as trustworthy."

was calculated or cost out his award.<sup>5/</sup> We will provide the arbitrator guidance with respect to the remand, including how to address maintenance payments, retroactive payments made during the "base year" based on the previous CNA, and "acting status" pay as part of the base salary calculation and on the last day of the base year (in this case, June 30, 2012).

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 in the arbitration proceeding 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 . .  
.;

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<sup>5/</sup> Costing out the award may impact other aspects of the award appealed by the STFA (the transportation allowance and the education incentive). Subject to the arbitrator's judgment, discretion, and expertise, he may modify those aspects of the initial award as a result of his cost analysis.

- (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. In re State and New Jersey Law Enforcement Supervisors Association, 443 N.J. Super. 380, 385 (App. Div. 2016) (citing

Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994)); Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 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, 25 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).

As set forth in In re Hunterdon County Bd. of Chosen Freeholders, 116 N.J. 322 (1989), we are charged with interpreting the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq.:

PERC is empowered to "make policy and establish rules and regulations concerning employer-employee relations in public employment relating to dispute settlement, grievance procedures and administration including . . . to implement fully all the provisions of [the] act." N.J.S.A. 34:13A-5.2. These manifestations of legislative intent indicate not only the responsibility and trust accorded to PERC, but also a high degree of confidence in the ability of PERC to use expertise and



knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector.

[Id. at 328.]

P.L. 2010, c. 105 amended the police and fire interest arbitration act by, among other things, imposing a 2% "Hard Cap" on annual base salary increases in an interest arbitration award. P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration act and extended the 2% salary cap, along with other changes, to December 31, 2017.

The 2% cap language of P.L. 2014, c. 11, codified at 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.

#### Costing Out of the Award

The arbitrator awarded a five-year contract effective July 1, 2012 through June 30, 2017. On page 25 of his decision, the arbitrator explained his award with regard to salary and the contract term as follows:

Having reviewed the competing economic proposals, I have decided to accept as correct the data provided by the Division. Accordingly, I conclude that the total base salary for the STFA unit as of June 30,

2013<sup>6/</sup> is one hundred and fifty million, eight hundred and two thousand, four hundred and eight dollars and fifty-four cents (\$150,802,408.54). I base this conclusion on the fact that the Division has properly included maintenance in its calculation of the base salary number. I also conclude that the Division's census is more trustworthy than the material relied upon by the STFA. In addition, I find that the Division is correct and that the retroactive payments made pursuant to the [prior] Award should not be added to base salary, because those payments are already reflected in the salary guide.

Having determined the base salary, and having reviewed the testimony and record evidence, I conclude that I am compelled by the exigencies of the Police and Fire Public Interest Arbitration Reform Act to award the Division's economic proposal. However, as will be discussed below, I will award the STFA's proposal regarding the termination of this agreement.

The State had proposed a six-year contract terminating June 30, 2018. The figures provided by the State to the arbitrator regarding the cost out to comply with the 2% Hard Cap were based on its proposed six-year contract.

As noted above, the STFA disputes the arbitrator's determination of the base year salary and maintains that he failed to make a final calculation of the total economic award.

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<sup>6/</sup> It appears from other parts of the arbitrator's decision where he discusses base salary, for example, on page 20 of the decision, that rather than "June 30, 2013," he meant to say in the quote above "June 30, 2012," which was the end date of the base year.

The State asserts that the arbitrator-awarded five-year term violates the 2% Hard Cap.

In New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we addressed what an arbitrator was required to show in his or her opinion regarding the calculation of the base year and the cost out of the total economic award:

[W]e must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for

base salary by more than 2% per contract year or 6% in the aggregate.<sup>7/</sup>

Thus, the determination of compliance with N.J.S.A. 34:13A-16.7 involves two distinct calculations. The first calculation uses the "base year salary" from the employer's aggregate expenditures in the 12 months preceding the new award to derive the 2% cap number. That base year salary figure uses raw, actual salary expenditure numbers, so it would include, for example, the partial salaries for unit members who retired or were hired at some point during the base year. The second calculation looks at the salary guide level, or scattergram<sup>8/</sup> placement, of unit members on the last day before the new award, and determines whether the projected increases to those unit members' base salary items exceed the 2% cap.

The arbitrator did not comply with the approach set forth in New Milford, but merely relied on the State's calculations; those calculations were based on a six-year term, but he awarded a

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<sup>7/</sup> The 2014 amendment to the interest arbitration act changed the allowable aggregate base salary increase. Now, the total economic award in such a case must not be greater than the compounded value of a 2% increase per year over the corresponding length of the contract.

<sup>8/</sup> A "scattergram" is simply a chart showing where employees are currently situated on the salary guide, thus providing a snapshot of the current total cost of the unit. For police and fire units, a scattergram would typically show how many employees are at each step/increment of the guide, and might also include a column indicating their placement on any applicable longevity pay guide.

five-year contract. It is incumbent on arbitrators to place the appropriate calculations, as set forth in New Milford, in the body of the decision. As we stated in Point Pleasant Bor., P.E.R.C. No. 2013-28, 39 NJPER 203 (¶65 2012), a case where the award was vacated:

There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation demonstrating how the award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7.

Accordingly, this case must be remanded to the arbitrator to comply with New Milford.

#### Maintenance

As set forth above, the arbitrator adopted the State's position and included "maintenance" payments as part of the base salary. The arbitrator referenced the maintenance issue at pages 19 to 20 of his decision:

In addition to their salaries and commencing with the third year of employment, each member of the Division, including the Superintendent, receives a "maintenance" payment of thirteen thousand six hundred and forty-nine dollars and three cents (\$13,649.03) annually. This maintenance payment is phased-in. Troopers in their first year of employment receive a third of the maintenance amount. Troopers in their second year receive two thirds of the maintenance amount. Troopers in their third year receive the full amount. The Division contends that this sum should be included in the base pay calculations. The Division notes that

maintenance is used for the calculation of overtime pay, and the payments are included in calculating a pension. (Division Brief at 22-24). The STFA contends that maintenance is not included in base pay. The STFA characterizes maintenance as "a separate calculation of a common benefit paid to all sworn members of the Division."

The STFA cites Paterson Police PBA Local 1 v. City of Paterson, 433 N.J. Super. 416 (App. Div. 2013) for the proposition that base salary should be based on "pensionable salary," and it claims that the New Jersey State Treasury, Division of Pensions and Benefits, does not include maintenance as part of base salary for pension contribution purposes. Paterson was a case that determined what base salary is with respect to employee contributions for health insurance coverage under P.L. 2010, c. 2, and not under P.L. 2014, c. 11, regarding limits on interest arbitration awards. Moreover, maintenance is included in determining a trooper's final compensation for pension purposes pursuant to N.J.S.A. 53:5A-3 and N.J.A.C. 17:5-1A.1.

In addition, the record indicates (Pa215, Pa219) that under the prior CNA, overtime rates and other premium pay for STFA members was based on a member's salary "plus maintenance." It also reflects that for at least 30 years, base salary and maintenance payments have been included when calculating percentage increases. We find it clear from the negotiated compensation system that maintenance was understood by the

parties to be part of a trooper's salary and that the arbitrator was correct in including it as part of base salary.

Retroactive Payments Made in the Base Year

The arbitrator adopted the State's position and did not include in the base year salary calculation retroactive payments made that year pursuant to the prior interest arbitration award. The State argued that retroactive payments "should not be added to base salary, because those payments are already reflected in the salary guide." (Decision at 25). The STFA argues that based on a plain reading of N.J.S.A. 34:13A-16.7, retroactive payments should be included in "[T]he 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." Under our interpretation of the Act, we find that the arbitrator was correct in excluding the retroactive payments from the base salary. Those payments were based on earnings from prior years and would have artificially increased the base salary; the inclusion of the retroactive pay would have improperly skewed the projections for the remaining years of the CNA when calculating the 2% Hard Cap and the rest of the award.



Acting Status Pay as Part of the Base Salary Calculation

The arbitrator adopted the State's position and included acting sergeant's pay in the base salary calculation. He stated on page 19 of the decision, "Senior members of the STFA unit are occasionally asked to serve as Acting Sergeants. After eight pay periods, Acting Sergeants are paid at the higher Sergeant rate. However, until they are promoted, Acting Sergeants remain in the STFA unit."

The record on appeal includes the parties' CNA that was in effect from July 1, 2008 through June 30, 2012. Article XXII, Out-of-title-work provides in pertinent part:

This Article governs out-of-title work issues and compensation for time served in a formally designated acting assignment at a higher rank for greater than eight (8) bi-weekly pay periods and is applicable to all enlisted members of the Division of State Police. When the Superintendent initiates a 369A or otherwise designates in writing that a member will be assigned to serve in an acting assignment at a higher rank, the member will be eligible to receive the rate of pay of the higher rank upon completion of eight (8) bi-weekly pay periods of continuous service. The rate of pay of the higher rank will be effective and payable to the member for service in the higher rank subsequent to the completion of the eight (8) bi-weekly pay periods. Following completion of the eight (8) bi-weekly pay periods, the member shall receive the rate of pay of the higher rank until either promoted according to the procedures adopted by the Superintendent or the acting assignment is terminated.

As set forth above, N.J.S.A. 34:13A-16.7 states, “‘Base salary’ means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment . . . .” Based upon the prior award, which included the STFA and the units for sergeants and other superior officers, we understand that employees in all three units are paid pursuant to salary schedules. The members serving as acting sergeants during the base year were, after (8) bi-weekly pay periods, compensated pursuant to a salary guide, albeit that applicable to sergeants. Therefore, and given the prolonged nature of the assignments, we find that the arbitrator was correct in including those payments as part of the base salary. On remand, as part of the requisite cost-out calculation, STFA members who were being compensated at the acting sergeant pay rate as of the last day of the previous CNA (June 30, 2012) will be moved forward through the newly awarded salary guides or raises from that pay rate.

#### Other Guidance

As noted above, an arbitrator is required to address all nine N.J.S.A. 34:13A-16g factors and “shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor... .” N.J.S.A. 34:13A-16g; See e.g., Hillsdale, 137 N.J. at 84; In re State, 443 N.J. Super. 380, 385 (App. Div. 2016); Burlington County Prosecutor’s Office and PBA

Local 320, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012), rem'd 40 NJPER 41 (¶17 2013), certif. den. 217 N.J. 287 (2014). On remand, the arbitrator should clarify where in his initial decision he addressed subsection 16g(9), statutory restrictions upon the employer, or otherwise supplement his analysis in that regard. Likewise, he must provide this information with respect to his award on the transportation allowance and education incentive proposals, whether or not he modifies his award as to them.

Lastly, we find that the STFA was not denied the opportunity to address the State's calculations. Although the parties agreed at the outset of proceedings that they could change their final offers at any time before the close of the record, the STFA waited until the end of the last day of the hearing, after the last witness had testified, to modify its final offer, which it did not cost out.<sup>9/</sup> The information the State provided to the arbitrator after the hearing was partially in response to the

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<sup>9/</sup> In light of what occurred here, we remind the arbitrator and the parties what we said in Atlantic City, P.E.R.C. No. 2014-3, 40 NJPER 140 (¶53 2013): "At the outset of being assigned to a case, the interest arbitrator should set a schedule for the public employer to provide the required base salary information and calculations, and another date for the union to respond to that information. The arbitrator should have the parties' positions regarding the base salary information and calculations prior to the arbitration hearing date. The arbitration hearing is the proper forum to address any dispute and/or confusion over the base salary information and calculations."

STFA's new offer and an attempt to reconcile the parties' differences over the roster of troopers serving as acting sergeants. The STFA had also waited until the final day of the hearing to provide the State with the STFA's base year roster even though the arbitrator had urged the parties to meet before the hearing to discuss the base year roster. As reflected in the hearing transcript, the new information and the State's revised wage proposal were submitted to the arbitrator after the hearing with the arbitrator's permission and on notice to the STFA.

Nevertheless, since we are remanding the award to the arbitrator, the parties may request the arbitrator's permission to supplement the record with additional information and/or argument regarding the calculations to be made pursuant to this decision.

ORDER

The Award is remanded to the arbitrator for reconsideration and issuance of a new award within 90 days that complies with the guidance set forth in this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Boudreau was not present. Commissioner Jones was recused.

ISSUED: April 14, 2016

Trenton, New Jersey