

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Appellant,

-and-

Docket No. IA-2016-003

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY,

Respondent/Cross-Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms in part, and modifies in part, an interest arbitration award on remand establishing the terms of a successor collective negotiations agreement between the State of New Jersey, Division of State Police (State), and the State Troopers Fraternal Association of New Jersey (STFA). The State appealed and the STFA cross-appealed. The State argued that the arbitrator's award of step movement on the last day of the successor contract (June 30, 2017) as though increment movement had not been frozen in 2015 did not comply with the 2% cap, was not calculated for compliance with the 2% cap, and attempts to side-step the limitations of the compulsory interest arbitration law. The STFA responded that the resumption of step movement on the last day of the successor contract did not violate the law. The STFA also argued that the arbitrator did not consider all of the 16g statutory factors in analyzing the transportation allowance and education incentive proposals.

The Commission finds that the resumption of salary increments on the last day of the award circumvents the legislative purpose of the 2% cap by allowing a significant salary increment that is not accounted for in this award or in the next contract. The Commission holds that the arbitrator's grant of increments on the last day of the award violates the Act because it handicaps the next round of negotiations, undermines the legislative intent to control costs, and disregards the financial impact of the step movement on the taxpayer. Accordingly, the Commission modifies the arbitrator's remand award to remove the granting of increments on the last day. With respect to the transportation allowance and education incentive, the Commission finds that the arbitrator appropriately considered each of the 16g statutory factors and based his award on substantial credible evidence in the record.

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 Petitioner, Ballard Spahr, attorneys (Steven W. Suflas, of counsel; William K. Kennedy II, on the briefs)

For the Respondent, Loccke, Correia & Bukosky, attorneys (Richard D. Loccke, of counsel)

DECISION

This case comes to us by way of an appeal and cross-appeal^{1/} from a remand interest arbitration award pertaining to the State of New Jersey, Division of State Police ("State" or "Division") and the State Troopers Fraternal Association Of New Jersey

^{1/} The State filed its appeal on July 27, 2016, the STFA filed its cross-appeal and opposition brief to the State's appeal (after an extension was granted) on August 10, and the STFA filed its response brief in opposition to the City's cross-appeal on August 15.

("STFA").^{2/} The award involves a negotiations unit of approximately 1633 troopers.

The arbitrator issued an initial opinion and award on February 1, 2016. After an appeal by the STFA and cross-appeal by the State, the Commission remanded the award to the arbitrator on April 14, 2016 with guidance for reconsideration as set forth in that decision. State of New Jersey (Division of State Police), P.E.R.C. No. 2016-69, 42 NJPER 505 (¶141 2016). In order to comply with New Milford Boro., P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we stated:

We remand the award to the arbitrator for reconsideration because he did not show the methodology as to how "base salary" was calculated or cost out his award. 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).

[Footnote omitted.]

Additionally, under "Other Guidance" we stated:

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

^{2/} We deny the STFA's request for oral argument. The issues have been fully briefed.

education incentive proposals, whether or not he modifies his award as to them.

Following remand, the arbitrator conducted a mediation session on April 28, 2016 and a hearing on June 14. The arbitrator issued a 45-page remand award on July 12, which the parties received on July 14.

The remand 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 for the remand award are set forth on pages 10 and 11 of the arbitrator's remand decision.

As pertinent to the initial appeal and cross-appeal, the initial 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

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 remand award consisted of the following:

Wages

There will be a 1.25% increase in the annual maintenance payments effective the first full pay period after July 1, 2016. Maintenance payments will be increased to \$13,819.64. All increments will be suspended from pay period 21 of 2015 through June 29, 2017. After June 29, 2017, Troopers will be placed at the Step and Range they would have been eligible for as if there had been no suspension after pay period 20 in 2015. (There will be no retroactive pay as a result). Effective June 30, 2017, Troopers will resume their normal progression pending the parties' negotiation of a successor CNA. I make no finding regarding the legal requirements governing step movement at the end of the CNA.

Term

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

Transportation Allowance

For Troopers entering the Academy after January 1, 2017, the transportation allowance provided for at Article X § B (7) of the CNA 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 residence. In those cases, the Trooper will be entitled to the transportation allowance.

Education Incentive

For Troopers entering the Academy after January 1, 2017, the education incentive of five hundred dollars (\$500) for employees who have sixty credits or an associate's degree provided for at Article X § I (1) shall be eliminated.

Other Terms

All proposals by the State Troopers Fraternal Association of New Jersey, Inc. and the State of New Jersey Division of State Police not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Remand Award, my Initial Award dated January 31, 2016 and any prior agreements between the parties. Except as modified by the terms of this Remand Award, my Initial Award dated January 31, 2016 remains in effect.

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

- A. THE ARBITRATOR FAILED TO MAKE A FINAL CALCULATION OF THE ECONOMIC AWARD TO ENSURE COMPLIANCE WITH THE 2% CAP STATUTE
- B. THE ARBITRATOR'S REINSTITUTION OF AUTOMATIC INCREMENTS RESULTS IN A WAGE AWARD THAT DOES NOT COMPLY WITH THE 2% CAP
 1. THE ARBITRATOR'S AWARD OF THE DIVISION'S PROPOSAL COMPRISED THE MAXIMUM ALLOWED UNDER THE CAP
 - A. THE DIVISION'S CALCULATION OF BASE YEAR SALARY
 - B. THE DIVISION'S CALCULATION OF THE EXPENDITURE RATE

C. THE DIVISION'S PROPOSAL COMPLIED WITH THE CAP

2. THE IMPLEMENTATION OF AUTOMATIC INCREMENTS ON JUNE 30, 2017 RESULTS IN AN ECONOMIC AWARD EXCEEDING THE 2% CAP

C. THE ARBITRATOR'S ATTEMPT TO SIDE-STEP THE LIMITATIONS OF THE ACT SETS A DANGEROUS PRECEDENT

D. THE DIVISION REQUESTS THAT PERC ISSUE A MODIFIED AWARD

The STFA opposed the State's appeal and cross-appealed the following issues, as set forth in its brief:

THE ARBITRATOR DID NOT CONSIDER ALL OF THE 16G FACTORS AS REQUIRED BY THE REMAND DECISION CONCERNING THE TRANSPORTATION ALLOWANCE OR THE EDUCATION INCENTIVE

THE TRANSPORTATION ALLOWANCE WAS NOT PROPERLY ANALYZED BY THE ARBITRATOR

EDUCATIONAL INCENTIVE WAS NOT PROPERLY ANALYZED BY THE ARBITRATOR

THE RESUMPTION OF STEP MOVEMENT ON THE LAST CONTRACT DAY DID NOT VIOLATE THE TWO PERCENT (2%) HARD CAP AND DID NOT VIOLATE THE STATUTE AS THE EMPLOYER HAS ASSERTED IN ITS APPEAL

THE ARBITRATOR AND THE COMMISSION ARE STATUTORILY REQUIRED TO PROVIDE STEP MOVEMENT TO STEP TROOPERS PURSUANT TO *TITLE 53*

THE ARBITRATOR AND THE COMMISSION ARE STATUTORILY REQUIRED TO PROVIDE STEP MOVEMENT TO STEP TROOPERS PURSUANT TO *TITLE 52 AND TITLE 11*

THE SALARY STEP INCREASES MANDATED BY *TITLE 53* ARE PRE-EMPTIVE OF ANY LAW TO THE CONTRARY

THE ARBITRATORS METHODOLOGY IN AWARDING A *DE MINIMIS* COST WAS A PROPER EXERCISE OF HIS DISCRETION

THE ARBITRATOR'S AWARD OF STEP MOVEMENT ON THE LAST DAY OF THE CONTRACT INCURS ZERO COST TO THE 2% SALARY CAP BASED UPON CIVIL SERVICE PAYROLL REGULATIONS AND POLICY

AN ARBITRATOR MAY PROPERLY PROVIDE FOR STEP MOVEMENT UPON THE EXPIRATION OF A CONTRACT

MODIFICATION IS NOT AN AVAILABLE REMEDY WHERE THE ISSUE IN QUESTION IS SALARY INCREASES

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
...;
 - (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)).

Arriving at an economic award is not a precise mathematical process. Given that N.J.S.A. 34:13A-16g sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. 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; Lodi.

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.

Implementation of Automatic Increments on June 30, 2017

We begin by addressing the State's appeal regarding the arbitrator's award of increments on June 30, 2017, the last day of the CNA. The arbitrator stated the reason he was awarding the increments at pages 31 to 32 of his decision:

However, I am modifying my earlier award in which I froze increments as of pay period 21 in 2015. The STFA proposed that there be a nine-month delay in step movement, and that Troopers would move to the next step at the conclusion of the nine-month period. (Tr. 6-14-16 at 153-154 (Labruno)). As I noted above, this proposal cannot be accommodated under the 2% Hard Cap. However, I am amending my previous award to provide that all increments will be suspended from pay period 21 of 2015 through June 29, 2017. Troopers will unfortunately have a delay in their step movement until June 29, 2017. After June 29, 2017, Troopers will be placed at the Step and Range they would have been eligible for as if there had been no suspension after pay period 20 in 2015. (There will be no retroactive pay as a result of this change). Troopers will then resume their normal progression on the Step and Range Chart pending the negotiation of a successor CNA. I make no finding regarding the legal requirements governing step movement or the state of the law as of June 30, 2017, the date the CNA will expire. The STFA has argued that the effect of my Initial Award, were it to be implemented, would be to permanently freeze all step movement indefinitely. While the STFA notes that it could possibly negotiate the resumption of step movement going forward, at the present time there is no clear "career path for compensation." (STFA brief at 45). This would be an unjust result. In addition, especially as a result of the Appellate Division's decision in In the Matter of Atlantic County, 445 N.J. Super. 1 (App. Div.

2016) pet. for cert. pending,^{3/} which restored the concept of the dynamic status quo to collective negotiations, the freeze in step movement may persist well after this five year CNA expires. Accordingly, it would be unjust to permit such an indefinite freeze. In addition, because the suspension will end the day before the last day of the contract's expiration the cost to the Division if any will be de minimis. Any additional costs will not occur during the term of this CNA. The parties will be free to negotiate changes to the compensation package especially step movement at the conclusion of this agreement.

The State argues that although the arbitrator was correct in complying with the 2% salary cap or "Hard Cap" under N.J.S.A. 34:13A-16.7 with respect to the five year CNA that was awarded, the arbitrator violated the statute by not costing out the effect of awarding the increments on the last day of the CNA and by only stating that the cost to the [State] if any will be "de minimis." The STFA asserts that the increment award was a proper exercise of his discretion and does comply with the 2% Hard Cap because employees will not receive pay increases resulting from the step movement on June 30, 2017 "until the next pay period following the pay adjustment."

In Borough of Tenafly and PBA Local 376, P.E.R.C. No. 2013-87, 40 NJPER 90 (¶34 2013), aff'd 41 NJPER 257 (¶84 App. Div.

^{3/} The New Jersey Supreme Court granted the petition for certification In re County of Atlantic, ___ N.J. ___ (2016), 2016 N.J. LEXIS 870, on August 3, 2016 (filed on August 5, 2016), after the remand award was issued.

2015), another case that concerned the 2% Hard Cap, the Appellate Division set forth the legislative intent regarding the statute:

In 2010, legislation was passed directed at terminating abuses of the pension systems and controlling the cost of providing public employee retirement, health care, and other benefits. See Paterson Police PBA Local 1 v. City of Paterson, 433 N.J. Super. 416, 419-21, 80 A.3d 1152 (App. Div. 2013) (describing history of bills and provisions of Special Session Joint Legislative Committee on Public Employee Benefits Reform, Final Report (N.J. 2006)).

As a result, N.J.S.A. 34:13A-16 was amended to prohibit an interest arbitration award from increasing public employer "base salary" costs by more than two percent per contract year. See N.J.S.A. 34:13A-16.7(b) (codifying L. 2010, c. 105, § 2). Base salary is a statutory term of art, defined as "salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity[.]" N.J.S.A. 34:13A-16.7(a).

In County of Warren and Warren County Corrections FOP Lodge 71, P.E.R.C. No. 2014-23, 40 NJPER 225 (¶86 2013), app. disp. (7/22/14), we addressed an appeal asserting that the arbitrator erred by not awarding salary step movement at the expiration of the contract. We affirmed the award and stated: "The arbitrator adequately explained her rationale for freezing step movement upon the expiration of the contract - - mainly to avoid handicapping negotiations for the next contract since it will be subject to the two percent base salary cap." Here, as will be discussed below, the State is charged with a sizable double

increment for a contract term that was not part of the interest arbitration, was not negotiated, and is not charged to either contract term.

The last day of this contract will be critical for determining how the Troopers advance through the salary guide in their next contract.^{4/5/} Essentially, due to the award's double increment bump on the last day, the next contract's raises would be applied using that higher salary guide level as a starting point but the significant cost of that double increment would not be accounted for. For those 84 Troopers highlighted in the State's brief who were at Range T-17, Step 4 in 2015, their

4/ As we stated in our initial decision referring to New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012):

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 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.

5/ We note that the next CNA between the parties will be subject to the 2% Hard Cap if they proceed to interest arbitration since the expiration date is June 30, 2017 and the Legislature extended the 2% Hard Cap to December 31, 2017.

double increment up to Step 6 on the last day of the contract would result in a salary increase of \$5,792.04 as they jump from \$66,438.00 to \$72,334.02. That \$5,792.04 represents a salary increase of 8.72%. However, only 1 day of that increase is charged to this contract because the double increment was awarded for the last day. Thus, only \$15.87 of the significant 8.72% increase was charged to this contract,^{6/} while the remaining \$5,776.17, or a raise of 8.69%, carries over into the next contract term that was not part of this interest arbitration and the opportunity to negotiate the salary for the next contract has been extinguished. Because those Troopers would already be at the higher salary guide level when negotiations and/or interest arbitration are being conducted for the next contract, that 8.69% of the double increment bump will not be accounted for as a new salary increase in the next contract. Thus, the bulk of the significant salary increment is not charged to either this contract or the next, effectively escaping the 2% Hard Cap. While the parties may mutually agree to salary increases in excess of the 2% Hard Cap if their negotiations are successful and interest arbitration is avoided for the next contract, the arbitrator's award of the double bump on the last day of this

^{6/} 1 out of 365 days equals 0.274% of the year. So the \$5,792.04 raise was only applicable to the contract for 0.274% of the year, yielding \$15.87 chargeable to this contract and accounted for.

contract hamstrings the employer and union by baking in a carried over 8.69% raise, effectively taking those salary negotiations out of the parties' hands. Such an accounting maneuver in the interest arbitration process circumvents the legislative purpose of the 2% Hard Cap by permitting extreme, unaccountable raises in the transition between contracts. Accordingly, we find that the arbitrator's grant of double increments on the last day of the award handicaps the next round of negotiations, undermines the legislative intent to control costs, and disregards the financial impact of the step movement on the taxpayer. See N.J.S.A. 34:13A-16g(1) and -(6) and N.J.S.A. 34:13A-16. We therefore modify the arbitrator's remand award to remove the granting of increments on the last day of the CNA.

Although not appealed by the parties, we find that the arbitrator otherwise complied with our guidance (aside from the granting of increments on the last day of the CNA) regarding showing the methodology as to how base salary was calculated and to cost out his award. The arbitrator adopted the State's proposal for a five-year CNA and determined that the cost of the award was 10.24% over the five years, which is in compliance with the Hard Cap.^{7/} The arbitrator addressed his methodology and cost out of the award on pages 26 to 31 of his decision.

^{7/} The STFA had proposed a five and one-half year CNA. The arbitrator determined that the STFA's proposal for that length of time exceeded the 2% Hard Cap. Award at 30 to 31.

Transportation Allowance and Educational Incentive

The STFA's cross-appeal asserts that the arbitrator did not consider all of the N.J.S.A. 34:13A-16g factors when rendering his remand award and did not cost out or make an economic analysis of these two items based on the speculative nature of new hires. We first note that the arbitrator discussed his analysis of the Transportation Allowance at pages 33 to 37 of his decision and discussed the Education Incentive at pages 38 to 42 of his decision. In both cases, the arbitrator set forth all nine of the N.J.S.A. 34:13A-16g factors and appropriately considered each factor in order. Regarding the Transportation Allowance the arbitrator stated at pages 35 to 36:

With a slight modification, I reiterate my award. I am eliminating the transportation allowance only for Troopers who enter the Academy after January 1, 2017. If there is no Academy class in 2017, the award will not take effect until a new Academy class is admitted. The award maintains the transportation allowance for Troopers if they are required to drive to an emergency muster point, or to some assignment other than their regular assignments in excess of twenty miles from their permanent place of residence.

The arbitrator continued with his analysis of the statutory factors (footnote omitted):

The Commission directed me to justify this aspect of my award by analyzing the nine subsections contained in N.J.S.A. 34:13-16(g).

The first factor is the interest and welfare of the public §16(g) (1). Other than a slight

reduction in the costs to the Division, this award has only a limited impact on the public interest.

The second factor is a comparison of this benefit in the public and private sectors §16(g)(2). The Division has established that transportation allowances, such as the one at issue in this proceeding, are extremely rare. There are few, if any, private sector employers that pay its employees to commute. The Division has also established that the State of New Jersey has successfully eliminated this benefit where it previously existed or that it never existed in the vast majority of public sector bargaining units. Most importantly, the benefit has been eliminated for the NCOA unit. Therefore, this factor strongly supports the elimination of the benefit. However, Troopers will still be entitled to receive this benefit if they are asked to travel to an assignment other than their regular assignment. The entitlement to this benefit would be consistent with practices in the private sector.

The third factor is the overall compensation of the employees §16(g)(3). The elimination of this benefit would have a limited impact on the Troopers' compensation. Since the affected Troopers have not been called to service the effect of the elimination of this benefit is reduced.

The fourth factor is any stipulations of the parties §16(g)(4). There are no stipulations concerning this issue.

The fifth factor is the lawful authority of the employer §16(g)(5). This factor is not relevant to my analysis.

The sixth factor is the financial impact on the governing unit §16(g)(6). As the STFA points out, at this point, it is hard to quantify the precise financial impact the elimination of this benefit would produce.

However, as time goes on, it will reduce costs for the Division.

The seventh factor is the cost of living §16(g)(7). This factor will have an impact on the Troopers who will face increased commuting costs and who will not be compensated as a result of the elimination of the transportation allowance. New Jersey is a state with a high cost of living.

The eighth factor is the continuing stability of employment §16(g)(8). This factor will have an impact on the Troopers. Creating a two-tier system, even with respect to this minor benefit is not conducive to maintaining employee morale.

The ninth factor is statutory restrictions imposed on the employer §16(g)(9). There are no statutory restrictions which would affect this benefit.

In sum, and balancing the factors mandated by N.J.S.A. 34:13-16(g), I conclude that the elimination of the transportation allowance is appropriate.

Similarly, with respect to the Education Incentive the arbitrator stated at page 40:

With a slight modification, I reiterate my award. I am eliminating the \$500 educational incentive only for Troopers who enter the Academy after January 1, 2017. If there is no academy class in 2017, the award will not take effect until a new academy class is admitted. The Division originally sought to eliminate this benefit for all Troopers who have an associate's degree. The Division only expended \$108,500 in FY2015 on this benefit. In the overall context of the Division's budget this is a small sum. In light of the fact that there will be no wage increase, I conclude that it would be unjust to take this benefit away from Troopers already in service who have relied upon this stipend. On the

other hand, the Division has established that, in order to enter the Academy, an associate's degree by itself is no longer sufficient. Accordingly, Troopers entering the Academy after January 1, 2017 will no longer be entitled to the five hundred dollar (\$500) stipend for achieving an associate's degree.

The arbitrator again continued with his analysis of the statutory factors (footnote omitted):

The Commission directed me to justify this aspect of my award by analyzing the nine subsections contained in N.J.S.A. 34:13-16(g).

The first factor is the interest and welfare of the public §16(g)(1). Other than a slight reduction in the cost to the Division, this benefit has only a limited impact on the public interest. There is, of course, the important benefit to the state in having a well-trained educated police force. However, the Division has established that the vast majority of new hires enter service with at least a bachelor's degree. I conclude that the elimination of this benefit will not negatively impact the public welfare.

The second factor is a comparison of this benefit in the public and private sectors §16(g)(2). As the Division has established there is little if any compensation for holders of Associate's degrees for employees of the State of New Jersey. There are is no evidence in the record concerning private sector employers and the provision of an incentive for an associates' degree. However, the Division has also established that within the State of New Jersey only one other bargaining unit has an education incentive, but that bargaining unit does not provide an incentive to employees with associate's degrees. Most importantly, the benefit has been eliminated for the NCOA

unit. Therefore, this factor strongly supports the elimination of this benefit.

The third factor is the overall compensation of the employees §16(g)(3). While some Troopers may be adversely affected by the elimination of this benefit, there will be a limited effect on overall compensation. As Director Dee testified, most Troopers enter service with at least a bachelor's degree. In addition, the award provides that Troopers who currently receive the education incentive will not lose it.

The fourth factor is any stipulations of the parties §16(g)(4). There are no stipulations of the parties concerning this issue.

The fifth factor is the lawful authority of the employer §16(g)(5). This factor is not relevant to my analysis.

The sixth factor is the financial impact on the governing unit §16(g)(6). As the STFA points out, at this point it is hard to quantify the precise financial impact the elimination of this benefit would produce. However, as time goes on, it will certainly reduce costs for the Division.

The seventh factor is the cost of living §16(g)(7). This factor will have an impact on the Troopers who will not be compensated as a result of the benefit's elimination. New Jersey is a state with a high cost of living.

The eighth factor is the continuing stability of employment §16(g)(8). This factor will have an impact on the Troopers. Creating a two-tier system, even for this minor benefit, is not conducive to morale. However, so few Troopers are eligible for this benefit, it will only have a de minimis effect on morale.

The ninth factor is statutory restrictions imposed on the employer §16(g)(9). There are no statutory restrictions which would affect this benefit.

In sum and balancing the factors mandated by N.J.S.A. 34:13-16(g), I conclude that the elimination of the \$500 Education Incentive for Troopers entering the Academy, after January 1, 2017, is appropriate.

Regarding the STFA's argument that the arbitrator did not cost out or make an economic analysis of these two items, the Appellate Division in Tenaflly, supra, citing Ramsey Bor., P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), discussed the speculative costs relating to new hires:

PERC next addressed the statutory cap in Borough of Ramsey, which held that speculative costs relating to new hires "should not affect the costing out of the award [because] 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 [CBA]."

We find that the arbitrator's decision and award was based on substantial credible evidence in the record and that he appropriately addressed all of the N.J.S.A. 34:13A-16g factors. Hillsdale, supra, 137 N.J. at 82.

STFA Cross-Appeal Arguments Regarding Statutory Preemption

The STFA asserts in its cross-appeal that the arbitrator's award of the automatic increments on the last day of the CNA must be upheld as a matter of law. This argument was not raised before the arbitrator or the Commission in the initial decision.

The STFA cites four New Jersey statues, N.J.S.A. 53:1-6;^{8/}
N.J.S.A. 53:1-7;^{9/} N.J.S.A. 52:14-15.28;^{10/} and N.J.S.A. 11A:3-

8/ N.J.S.A. 53:1-6, Salaries of officers and troopers;
increase for detective work provides:

"The personnel enumerated in section 53:1-5 of this Title shall receive salaries which shall be fixed by the superintendent according to salary ranges for the various positions designated in said section, from time to time established, by the Civil Service Commission.

Any person assigned to detective work in the department shall receive, while on such duty, an increase in salary in an amount to be fixed by the superintendent, subject to the approval of the head of the Department of Law and Public Safety, sufficient to defray the expenses for civilian clothing necessarily required in said assignment.

All of said salaries shall be payable semimonthly."

9/ N.J.S.A. 53:1-7, Salary increases for personnel provides:

"All persons holding positions enumerated in section 53:1-5 of this Title shall receive such increases in salaries, based upon length of service as the Civil Service Commission shall, from time to time, establish within the salary ranges."

10/ N.J.S.A. 52:14-15.28, Statutory increases in salaries abolished; Civil Service Commission to establish automatic salary increases provides:

"In every case in which specific statutory increases in the amount of any salary of the holder of any office, position or employment are provided, such specific statutory increases hereby are abolished and abrogated; provided, the Civil Service Commission shall establish automatic increases in such salary, based upon length of service, within the salary ranges established from time to time therefor, and such salary shall thereafter automatically be increased accordingly, unless the head of the department and the Civil Service Commission shall agree that the service record of the holder of such office, position or employment does not warrant any such increase in salary."

1(a).^{11/} We do not find these new arguments persuasive. The Legislature was well aware of these statutes when P.L. 2014, c. 11 was enacted. The Legislature could have chosen to exempt STFA members and other State Police personnel, but it did not. We are charged with interpreting the Act and find, as set forth above, that the arbitrator's award of automatic increments on the final day of the CNA was improper. Hunterdon County, supra.

Additionally, we note that in support of its argument, the STFA also improperly relies on Matter of Boyan, 246 N.J. Super. 300 (App. Div. 1991), a case that concerned the granting of salary increases for workers' compensation judges. The New Jersey Supreme Court reversed the Appellate Division decision in In re Boyan, 127 N.J. 266 (1992). See Tenaflly, supra, at footnote 2, where the appellant similarly relied on a case that was reversed, and the Court deemed such reliance to be improper given the reversal.

Modification of Awards Involving Salary Increases

In its final argument in support of its cross-appeal, the STFA cites Bogota Bor., P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998) for the proposition that modification of an award is not

^{11/} N.J.S.A. 11A:3-1(a), Classification provides:

"a. Establish, administer, amend and continuously review a State classification plan governing all positions in State service and similar plans for political subdivisions."

appropriate if it concerns salary increases awarded by an arbitrator. We stated (footnote omitted):

While N.J.S.A. 34:13A-16f(5) (a) provides that the Commission "may" modify or correct an award, we decline to exercise that authority to change this award on the only disputed issue: the salary increases to be awarded. Determining salaries requires an analysis and weighing of all the evidence submitted on all the statutory factors and should be made in the first instance by an arbitrator.

We reject the STFA's argument; Bogota involved the potential modification of a remand award regarding across the board salary increases. The instant matter only concerns the arbitrator's award of automatic increments on the last day of the CNA and our rationale for modifying the remand award is set forth above.

ORDER

The remand award is modified to exclude the automatic increments awarded on the last day of the collective negotiation agreement, effective June 30, 2017. All other aspects of the remand award are affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: September 22, 2016

Trenton, New Jersey