P.E.R.C. NO. 2022-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and- Docket No. IA-2022-005

NEW JERSEY SUPERIOR OFFICERS
LAW ENFORCEMENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award setting the terms of a four-year collective negotiations agreement between the State of New Jersey and the New Jersey Superior Officers Law Enforcement Association (Association), a unit consisting mostly of Lieutenants employed in State correction facilities, with the rest employed in other State agencies. The Commission finds that while the State timely filed its appeal, its arguments do not support modifying the award's wage term, or vacating or remanding the award. The Commission finds: (1) the award addresses all nine statutory factors under N.J.S.A. 34:13A-16(g); (2) those factors judged by the arbitrator as being relevant to the resolution of this dispute are discussed in detail; (3) the arbitrator fully and sufficiently acknowledged the existence of a prior pattern of settlement of across-the-board 2% wage increases for other units of State corrections officers and civilians; (4) the arbitrator gave a "reasoned explanation" for deviating from the pattern to award 3% increases in the final two years of the contract, including by crediting a significant increase in the cost of living, the influence of economic uncertainty caused by the COVID-19 pandemic on other units' acceptance of the 2% settlement pattern, a legislated wage increase affecting one of the comparison units, and the fact that State corrections officers, historically, have received significantly lower wages than County corrections officers; (5) the award thus gave due weight to the public interest factor, the comparison of wages factor, and the continuity and stability of employment factor.

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, Genova Burns, LLC (Joseph M. Hannon, of counsel and on the briefs; Christopher J. Manley, on the briefs)

For the Respondent, O'Brien, Belland & Bushinsky, LLC (Kevin D. Jarvis, of counsel and on the briefs, David F. Watkins, Jr., on the briefs)

DECISION

On May 3, 2022, the State of New Jersey (State), appealed an interest arbitration award (Award) covering a negotiations unit represented by the New Jersey Superior Officers Law Enforcement Association (Association). The Association is the majority representative of approximately 330 members,[1/] most of whom are

1/ The Association represents employees in the following titles: Conservation Officer 1, Correction Lieutenant, Correction Lieutenant JJC, District Parole Supervisor, Lieutenant Campus Police, Police Lieutenant Health Care Faculty, Police Lieutenant Palisades Interstate Parkway, State Park Police Lieutenant, Supervising Inspector Alcoholic Beverage Control, Supervising Special Agent, Supervisor of Enforcement Weights and Measures, Supervisor
(continued...)

Lieutenants employed in State correction facilities. (Award at 27.) The rest are employed in other State agencies. (Id.)

The State and the Association are parties to a collective negotiations agreement (CNA) effective from July 1, 2015 through June 30, 2019. On November 5, 2021, the Association filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16(b)(2) to resolve an impasse over the terms of a successor CNA. After the parties failed to resolve their impasse at a mediation session led by a PERC mediator, the interest arbitrator was appointed on January 18, 2022. The interest arbitrator conducted a further mediation session with the parties on February 4, 2022, at which it was determined that the impasse should proceed to interest arbitration. The parties transmitted final offers on March 7, and arbitration hearings were held on March 15 and 16, 2022. Except for a discussion of uniform allowances, the focus of the hearing before the interest arbitrator was on members of the negotiations unit employed in correction facilities. (Award at 27, n.6.) After the parties submitted post-hearing briefs by March 29, 2022, the record was closed.

1/ (...continued)
Lumber Inspections Weights and Measures, and Supervisor Technical Services Weights and Measures. (Award at 27.)

On April 17, 2022, the arbitrator issued a 73-page conventional Award setting the terms of a successor CNA for a term of four years, from July 1, 2019 through June 30, 2023.

The parties have filed briefs and exhibits.[2/] On appeal, the State argues:

> The Arbitrator Failed to Give Due Weight to the Statutory Factors Implicated by the State's Consistent Pattern of Settlement;
>
> The State Has Established a Consistent Pattern of Settlement that the Arbitrator Should Have Adopted In this Matter [3/];
>
> The Arbitrator's Analysis of the Pattern Was not in Accord with the Commission's Precedents;
>
> The Arbitrator Failed to Consider the Pattern's Effect on the Public Interest Factor;
>
> The Arbitrator Failed to Consider the Pattern's Effect on the Continuity and Stability of Employment;

2/ The State's appeal included a request for oral argument, which we deny. As we granted leave for the State to file a reply brief, and the Association a sur-reply, we find that the issues raised have been fully briefed by the parties.

3/ The State points to settlements with negotiations units representing State corrections law enforcement officers of other ranks, as well as with civilian public employee unions, each with two percent wage increases: the New Jersey Law Enforcement Commanding Officers Association (NJLECOA)(settled in November 2021); the New Jersey Law Enforcement Supervisors Association (NJLESA)(settled 9/29/21); PBA 105 (settled in April 2021); Communications Workers of America, AFL-CIO (CWA)(settled 3/4/19 & 6/22/20); American Federation of State, County and Municipal Employees New Jersey Council 63 (AFSCME)(settled 8/16/2019); and Local No. 195, International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE) (settled in February 2021).

> The Arbitrator's Consideration of the Comparison Factor was Severely Misguided and Did Not Give Due Weight to the Pattern;
>
> The Arbitrator Did Not Adequately Explain His Reasons for Deviating From the State Pattern; and
>
> The Commission Should Modify the Award to Comport with the State Pattern or, in the Alternative, Remand the Award to the Arbitrator To Properly Consider the State Pattern.

The Association counters as follows: the State's appeal is untimely (based on the State's mention, in its brief, that it received the Award on April 18, 2022); the Award gave due weight to the statutory factors and must not be modified or vacated; the arbitrator's consideration of pattern of settlement more than sufficiently complies with statutory requirements; and the State's remaining arguments are baseless.

In its reply brief, the State argues: the appeal was timely filed (based on the Award's April 20, 2022 service date as set by the Commission); the Commission should not consider the union's arguments regarding CNAs with the International Brotherhood of Electrical Workers, AFL-CIO, Local 33 (IBEW Local 33) and the State Troopers Fraternal Association (STFA)[4/]; and awarding the State's pattern of settlement will promote labor relations stability.

In its sur-reply, the Association responds that: it

4/ The State refers to CNAs cited by the Association in its opposition brief in arguing that the Award's consideration of pattern of settlement was statutorily compliant.

will defer to the full Commission with respect to the timeliness of the appeal; the CNAs with IBEW Local 33 and STFA were submitted into evidence without objection and the arbitrator adequately acknowledged them[5/]; and the State's pattern of settlement arguments remain unpersuasive.

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 16(g) 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). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

5/ Our decision does not consider the STFA agreement. The Award does not mention it, and we thus assume it was non-critical to the arbitrator's determinations on appeal. However, the Award does mention the IBEW agreement (Award at 29 and n.3, 40), and the Association's reliance on it is accepted.

Within this framework, an arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important in arriving at the award, and explain why they were given significant weight and how other evidence or factors were weighed and considered. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Union County, P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002).

As an initial matter, we find that the State's appeal was timely filed. N.J.S.A. 34:13A-19(f)(5)(a) requires that "[w]ithin 14 calendar days of receiving an award, an aggrieved party may file notice of an appeal ... ." The Commission's case management system indicates the following: The Commission received a copy of the Award on April 19, 2022 and, on the same date, the Commission's Director of Conciliation and Arbitration wrote to the parties, enclosing a copy of the Award and an invoice covering the cost of the arbitration. The Commission's case management system further indicates that the parties received the Award on April 20, 2022. Thus, the State had fourteen calendar days from April 20, 2022, or until May 4, 2022, in which to file its appeal, pursuant to N.J.S.A. 34:13A-19(f)(5)(a). The State delivered its appeal papers on May 2, 2022, and the Commission received the State's filing fee on May 3, 2022, as reflected in the following email communication to the State's counsel, dated May 3, 2022 and copied to the

Association's counsel, from the Secretary to the Commission's General Counsel:

> Please be advised that pursuant to my conversation with Joseph M. Hannon of yesterday, May 2, 2022, while the original filing and required copies were hand delivered yesterday, the required filing fee was not received until this morning. Thus explaining why the briefing schedule letter states that the filing date is today, May 3, 2022. More importantly, since the service date of the arbitrator's decision was April 20, 2022, the appeal deadline is actually tomorrow [May 4, 2022].

Accordingly, we find that the State's appeal was perfected by May 3, 2022, within the required fourteen-day filing period, and was not untimely.

We next address the State's contentions that through a faulty analysis of the pattern of settlement, the arbitrator failed to give due weight to the public interest factor, the comparison of wages factor, and the continuity and stability of employment factor. These factors are set forth, respectively, in subsections (1), (2) and (8) of N.J.S.A. 34:13A-16(g), which provides, in full:

> The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators 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; provided, however, that in every

interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factor set forth in paragraph (6) of this subsection in any award:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings 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; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator’s consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(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. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination

> of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
>
> (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).
>
> [N.J.S.A. 34:13A-16(g).]

Our regulations also set forth guidelines for interest arbitrators and parties, intended to be "instructive but not exhaustive," which arbitrators are required to apply "in addressing the comparability criterion." N.J.A.C. 19:16-5.14(b). Pertinent to the State's appeal, the guidelines include the following comparability considerations for negotiations units within the same jurisdiction:

> 1. Wages, salaries, hours and conditions of employment of law enforcement officers and firefighters;
>
> 2. Wages, salaries, hours and conditions of employment of non-uniformed employees in negotiations units;
>
> 3. Wages, salaries, hours and conditions of employment of employees not in negotiations units;
>
> 4. History of negotiations:
>
> > I. Relationships concerning wages, salaries, hours and conditions of employment of employees in police and fire units; and

> ii. History of differentials between uniformed and non-uniformed employees;
>
> 5. Pattern of salary and benefit changes; and
>
> 6. Any other considerations deemed relevant by the arbitrator.
>
> [N.J.A.C. 19:16-5.14(c).]

The guidelines list the following comparability considerations for similar comparable jurisdictions, in pertinent part:

> 4. Compensation and other conditions of employment:
>
> I. Relative rank within jurisdictions asserted to be comparable;
>
> ii. Wage and salary settlements of uniformed employees;
> . . .
>
> vi. Overall compensation:
>
> (1) Wage and salaries;
> . . .
>
> 5. Any other comparability considerations deemed relevant by the arbitrator.
>
> [N.J.A.C. 19:16-5.14(d).]

Here, we find that the Award at issue addresses all nine statutory factors under N.J.S.A. 34:13A-16(g); and those factors judged by the arbitrator as being relevant to the resolution of this dispute are discussed in detail. At pages 42-43, the Award addresses 16(g)(1), the interests and welfare of the public, specifying that this factor was applied in conjunction with the other subsections. Factor 16(g)(2), comparison of wages, was

found to be particularly relevant; the Award's extensive discussion as it bears on this factor is found at pages 27-28, 29-30, 41-42, 43, and 44-45. The Award applies factor 16(g)(3), overall compensation, at pages 41-42, and discusses matters and proposals affecting it at pages 45-46, 48, 50, 51, 52, 53, 56, and 57. The Award addresses factor 16(g)(4), the stipulations of the parties, incorporating them at pages 21-24, 46, and 69-72. The Award discusses factors 16(g)(5) and (6), the employer's lawful authority and the financial impact on the governing unit, at page 46. Factor 16(g)(7), the cost of living, is addressed, and given substantial weight, at pages 41 and 46. Factors 16(g)(8) and (9), the continuity and stability of employment, and statutory restrictions placed on the employer, are discussed at page 46.

Pertinent to the State's appeal, the arbitrator awarded, among other things, annual wage increases of 2% in the first two years of the contract, and 3% in the final two. In doing so, the arbitrator concluded that "neither the proposal of the Association[6/] nor of the State[7/] should be granted in its entirety." (Award at 40.) The State insists the arbitrator should have applied the 2% pattern for all years of the

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6/ The Association proposed 3% wage increases in years one and two, 4% in year three, and 5% in year 4. (Award at 30.)

7/ The State proposed 2% wage increases across the board. (Award at 35.)

agreement. In failing to do so, the State variously asserts, the arbitrator "fundamentally misunderstood" the concept of pattern of settlement, he only "vaguely acknowledged and dispensed with" the State's pattern argument, his analysis of the pattern was "haphazard," and that "critical omissions," requiring correction, were the arbitrator's failure to make findings as to whether the State's other settlements differed from its offer to the Association, the significance of any differences, and whether in fact there was a settlement pattern among the State's negotiations units.

We find that the State's arguments do not support modifying the Award's wage term, or vacating or remanding the Award. Regarding the issue of pattern of settlement, we have held:

> N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with "other employees generally" in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied on by both labor and management.
>
> In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and

> stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. . . .
>
> [An] arbitrator [must] carefully consider evidence of internal settlements and settlement patterns, together with the evidence on all of the other statutory factors, and articulate the reasons for adhering or not adhering to any proven settlement pattern.
>
> [Union County, P.E.R.C. No. 2003-33, 28 NJPER 459, 461-462 (¶33169 2002).]

Here, in determining the wage provision, we find that the arbitrator fully and sufficiently acknowledged the existence of a prior pattern of settlement of across-the-board 2% wage increases for other units of State corrections officers, and other State civilian units. (See, e.g., Award at 28-30,41,43-45.) As more fully discussed below, he also made "findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in fact there was a settlement pattern among the ... negotiations units." Union County, 28 NJPER at 462. Specifically, the arbitrator's discussion of the negotiation history includes the following:

> The negotiation of this successor Contract commenced before the onset of the COVID-19 pandemic. Initially, the State had offered a four-year agreement with a 2% wage increase . . . . With the onset of the pandemic, the

> negotiations were suspended. When negotiations resumed, the State modified its wage proposal and offered. . . [a] modified [2%] wage proposal . . . identical to the State's final offer in this proceeding.
>
> Seven bargaining units accepted this proposal and those units, also entitled to the benefits of the statute, did not seek interest arbitration. Those units included other uniformed employees of the Corrections Department [including PBA 105, NJLESA and NJLECOA.] . . . Other unions representing bargaining units in the State also accepted the wage package, [including CWA, IFTPE Local 195, IBEW Local 33, and AFSCME] . . . .
>
> [(Award at 28-29.)]

The arbitrator also gave a "reasoned explanation" for deviating from the pattern. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82 (1994).

Among other things, the arbitrator credited a significant increase in the cost of living since other negotiations units settled at 2%:

> While I acknowledge that the collective agreements reached by the State with other correction department bargaining units, and with other State employees supports the State's position concerning pattern of settlement, that is only one of the nine statutory factors that I am required to analyze in making my award. One other statutory factor that stands out and will be considered in analyzing the record before me is the increase in the cost of living. While inflation had been under control for many years, for a myriad of reasons some stemming from the COVID-19 pandemic and disruptions to the supply chain, that is no longer the case.

> While the State has argued that the recent spike in inflation may be transient, . . . unrebutted testimony shows that the inflation rate was 5.39% in 2021 and was running at a rate of 7.48% thus far in 2022. My award will only go part way in alleviating the increase in the cost of living.
>
> [(Award at 41.)]

The State, on appeal, reiterates an argument it made to the arbitrator: that other units agreed to the 2% pattern while inflation was "already significantly above average." The State relies on 12-month percentage changes in the national consumer price index (CPI), extant when various other units settled: 6.8% when NJLECOA settled in November 2021; 6.2% in October 2021; 5.2% when NJLESA settled in September 2021; and 4.2% when PBA 105 agreed to the pattern in April 2021. The State concedes that "we are still in a period of heightened inflation," but argues that this does not justify a deviation from the State's pattern. On the contrary, we find that the fact that other units settled when the inflation rate (although rising) was markedly lower supports neither a modification of the Award, nor a finding that the arbitrator gave undue weight to the cost of living factor.

The arbitrator further explained that "[e]ven under a pattern, each agreement has provisions specific to that agreement and tradeoffs within the agreement which may explain why a departure from the pattern is necessary." (Award at 44.) In this regard, the arbitrator noted that when other units settled

at 2%, different economic and bargaining conditions likely influenced parties' expectations and negotiating stances:

> For example, the CWA agreement was reached at a time when the economic impact of the COVID-19 pandemic was believed to be dire. The members of the CWA bargaining unit were facing layoffs, and in that context the acceptance of the State's offer made sense because the offer was accompanied by a no layoff pledge by the State. It should also be noted that the CWA bargaining unit is not afforded the right to engage in interest arbitration.
>
> The other Correction Officer bargaining units were similarly negotiating their agreements at a time when the State expected a major economic downturn, and it may have been reasonable for those units to agree to the terms offered by the State.
>
> [(Award at 44.)]

The State argues that because the Association's Lieutenants "were never in danger of suffering any layoffs," the fact that CWA settled at 2% in exchange for a "no layoff" pledge by the State is a "distinction without a difference." We do not agree. The State points to nothing in the record that would support a contrary assumption, i.e., that CWA (a civilian unit the State groups with its pattern of settlement) would have settled at 2% in the absence of a "no layoff" pledge by the State. We find it was not unreasonable for the arbitrator to have made or relied on such a distinction when considering whether the State's other settlements differed from its offer to the Association, and in comparing the wages, salaries, hours, and conditions of

employment of the employees involved in the arbitration proceedings with those of other employees. The State, citing statistics showing increases in gross domestic product and dropping unemployment rates towards the end of 2020 and throughout 2021, further argues that there is no factual basis for the arbitrator's suggestion that other units settled because they feared an impending economic crisis. Even so, we do not find it unreasonable for the arbitrator to have assumed that economic uncertainty at the time was an ongoing concern affecting the settlement pattern. The State's 2% pattern was initially established with CWA, in part to avoid COVID-19 pandemic-related layoffs, and the pandemic was still in full swing in 2021.

The arbitrator also relied, in part, on a legislated wage increase (affecting PBA 105, one of the comparison units discussed in the Award[8/]) to justify deviating from the 2% settlement pattern. The portions of his discussion addressing the legislated wage increase are as follows:

> [I]n at least one instance, the pattern has been disrupted. On March 17, 2022, Department of Corrections Acting Commissioner

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8/ With the passage of P.L. 2021, c.406, first introduced on April 26, 2021 as Senate Bill 3672, and enacted on January 18, 2022, the State Legislature approved wage increases for State correctional police officers. The law amended N.J.S.A. 11A:4-1.3 to require that the starting salary of a State correctional police officer shall be not less than $48,000; with adjustments to the remaining steps in the salary scale of such officers. The increase applied to subordinate officers in the PBA 105 bargaining unit. (Award at 30.)

> Victoria L. Kuhn ("Kuhn") informed the members of Policemen's Benevolent Association Local 105 that the State Legislature has approved wage increases for the correction officers. These officers are the subordinates of the members of the bargaining unit. Commissioner Kuhn informed the officers that as a result of P.L. 2021 C. 406, effective April 23, 2022, incoming correction officers will receive a wage increase from $40,000 per year to $48,000 per year. In addition, each member of the bargaining unit will receive "an 8% across the board increase for all steps." (Association Ex. 130). Other units employed in the Corrections Department, including the Lieutenants were not affected by this legislation.
>
> [(Award at 29-30.)]
>
> In addition, I also recognize that this Award is being issued during a pandemic, and I have taken this factor into account in whether the Award is issued in the interests and welfare of the public. I also recognize that the State by way of legislation as opposed to collective bargaining has implemented a significant wage increase for rank-and-file correction officers. I conclude that this Award is in the public interest.
>
> [(Award at 43.)]
>
> I would note again that the State has altered the pattern of settlement for the rank-and-file correction officers by legislatively imposing a wage increase. While the State has argued that I should disregard that legislation because it was not reached through collective bargaining, I conclude that is a distinction without a difference. . . .
>
> [I]n directing arbitrators to consider the wages and salaries of other employees, the Statute [N.J.S.A. 34:13A-16(g)(2)] makes no distinction between negotiated terms and

> conditions of employment and those that were imposed legislatively or by any other means. Therefore, the pattern was altered by the State itself and is not the predominant factor the State contends it should be.
>
> [(Award at 44-45.)]

The State concedes that a legislated increase in wages has relevance, generally, in comparing the wages of employees covered by the Award. But, the State argues, the legislation alters neither the pattern of settlement, nor the determination of whether the State established such a pattern. When analyzing evidence of a pattern, the State contends, what really matters are the negotiated settlements agreed to by both parties.

We find that the arbitrator did not rely on the legislated increase to conclude the State had failed to establish a pattern. As we note supra, the arbitrator readily acknowledged the pattern, discussed it at length in his Award, and explained in detail his reasons for deviating from it.[9/] And, although what happens in the State Legislature is not necessarily interchangeable with what the State, as an employer, does (or can do) at the bargaining table, we also find that it was not improper for the arbitrator to consider the legislated wage increase as one of several things justifying a deviation from the

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9/ We also note that the arbitrator adhered to a pattern of settlement with respect to health benefits, finding that, unlike the wage proposal, the Association offered no compelling reason to depart from an established pattern by which each of the other units adopted the State's health benefits proposal. (Award at 48.)

pattern. Neither the interest arbitration statute nor our regulations explicitly limit an arbitrator's consideration of the comparison of wages factor solely to wages that are established through negotiated settlements. The State cites no authority to the contrary.

On appeal, the State also argues that the legislated increase should not be considered because the PBA agreed to the pattern settlement nine months before the legislation was enacted in January 2022, and because it was the result of a policy decision by the Legislature and Governor. However, the legislation was first introduced, as Senate Bill 3672, in April of 2021, the same month that PBA 105 accepted the State's pattern offer. As enacted, the law also includes the following provision:

> This act shall take effect six months following enactment, except the Civil Service Commission may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.
>
> [P.L. 2021, c.406, Section 3.]

The State does not dispute Acting Commissioner Kuhn's representation, as noted by the arbitrator, that as a result of P.L. 2021 C. 406, the legislated increase for PBA 105 became effective April 23, 2022, which was during the life of their negotiated 2% agreement. Nor does the State dispute the accuracy of the arbitrator's statement that "each member of the [PBA 105]

bargaining unit [additionally] will receive 'an 8% across the board increase for all steps.'" We find that these were "changes" to the salary pattern that the arbitrator could properly consider. N.J.A.C. 19:16-5.14(b)(5).

Finally, the arbitrator's deviation from the wage pattern also took into account the fact that State corrections officers, historically, have received significantly lower wages than County corrections officers:

> When comparing the members of the bargaining unit to those of Lieutenants employed in other correction bargaining units, it is apparent that the Lieutenants employed by the State generally make significantly less than those employed in New Jersey counties which have correction facilities. As the Association notes, the members of the bargaining unit may make as little as $75,000 per year, while no County correction lieutenants earn a salary below $100,000. The State argues that recent collectively negotiated settlements for the County Lieutenants were in line with the 2% wage increases offered by the State. However, as the Association notes, the County salaries begin at a much higher level, and the State Lieutenants make less money than almost all of their comparators employed in County correction facilities.
>
> Based on the comparisons in the record, I believe my Award comports with the requirements of N.J.S.A. 34:13A-16(g)(2).
>
> [(Award at 45.)]

We find that, based on the above, it was not unreasonable for the arbitrator to conclude that the "Award will enhance morale and contribute to the continuity and stability of

employment," and that under the Award, "if anything, Sergeants will be more incentivized to seek promotion to Lieutenant." (Award at 42, 46.)

In sum, we find that, on the whole, the arbitrator's Award gave due weight to the public interest factor, the comparison of wages factor (including through a sufficient discussion and analysis of pattern of settlement and the bases for deviating from it), and the continuity and stability of employment factor.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford and Voos voted in favor of this decision. Commissioner Bonanni voted against this decision. Commissioner Papero was not present.

ISSUED: June 30, 2022

Trenton, New Jersey