

In the Matter of the Interest Arbitration

between

STATE OF NEW JERSEY

DIVISION OF STATE POLICE

AND

STATE TROOPERS NCO ASSOCIATION

**Public Employment**

**Relations Commission**

Docket No. **IA-98-86**

OPINON AND AWARD

Before Barbara Zausner, Arbitrator

Award dated August 30, 1999

For the State  
Beth Hinsdale, Esq.

Grotta, Glassman and  
Hoffman

For the Association  
Richard D. Loccke, Esq.

Loccke and Correia

## PROCEDURAL HISTORY

The State and the Association are parties to a collective bargaining agreement that expired on June 30, 1996. Interest arbitration was initiated pursuant to N.J.S.A. 34:13A-16. I was appointed interest arbitrator by the Public Employment Relations Commission (P.E.R.C.) on May 7, 1998. Formal and informal discussions between the parties narrowed some of the issues. I met with the parties on September 10, 1998, January 28, April 27 and May 4, 1999. Documentary evidence and testimony were introduced at hearings on April 27 and May 4. I closed the record when I received the parties' post-hearing briefs. The parties agreed to extend the due date of the award.

In addition to new evidence and argument submitted in these hearings, all exhibits, testimony, and argument submitted in the proceedings before Arbitrator Mastriani, in State of NJ and STFA, IA-97-7, were received into the record before me. The arbitration procedure is conventional. I am to fashion an award that is the most reasonable determination of the issues in dispute. I have reviewed the entire record before me, including the many exhibits and statements not referenced or summarized herein. I have concluded that the most weight should be given to the decisions of Arbitrators Mastriani and Hammer. My discussion focuses on issues that are of significance to this unit in particular.

## FINAL OFFERS

### *Association's final offer*

A. Term of Contract: July 1, 1996 through June 30, 2000

B. Salary

- 1- Increase each step of Sergeant salary range by \$2000.
- 2- Increase base/maintenance by 4.5% per year.

C. Out of title work

Whenever a bargaining unit employee is directed to work in a position of higher rank, the employee shall be paid at the higher rate from the time the assignment is made

D. Overtime

Change overtime computation for Sergeants and Sergeants First Class to match the overtime computation used for STFA bargaining unit members.

*State's final offer*

A. Term of Contract: July 1, 1996 through June 30, 2000.

B. Salary: To Base and Maintenance

7/1/96	0%
1/1/98	3.75%
7/1/98	3.75%
7/1/99	3.50%
1/1/00	1.50%

## DISCUSSION AND OPINION

This decision is made in the context of two prior interest arbitration awards affecting the two state police ranks that supervise or are supervised by members of this bargaining unit. There is also an award in the State Law Enforcement Conference group. All of the arbitrators considered essentially the same evidence as that before me. Therefore, I have been influenced to a considerable degree by their expert findings and conclusions as to what is reasonable. The two State Police Division awards bind these same parties and neither award has been the subject of an appeal. As the State points out, "the facts in [these cases] are strikingly similar and, therefore, demand consistency in results." (Brief, p. 26). The Association also relies on those awards.

In IA 97-7, dated December 16, 1998, Arbitrator Mastriani awarded increases as follows, on July 1 of each year starting from 1996 through 1999 and on January 1, 2000: 0%, 3.75%, 3.75%, 3.5% and 1.5%. That is the same as the State's offer in this proceeding. Arbitrator Hammer, in a decision dated March 12, 1999, awarded increases of 0% on July 1, 1996; 3.75% on October 1, 1997; 3.75% and 3.50% on July 1, 1998 and July 1, 1999, respectively; and 1.5% on

January 1, 2000. Mr. Hammer's award follows that of Mr. Mastriani and is based, in part on the Mastriani record.

Although I have read all of the exhibits and transcripts in the Mastriani record, as well as the briefs submitted in both cases, I have not reiterated or summarized the same information already thoughtfully considered in the Mastriani, Hammer, and Pierson awards.

I have specifically adopted the reasoning quoted below from Arbitrator Mastriani's award.

One principle which is ordinarily and traditionally considered in determination of wages, hours and conditions of employment through the bargaining process is that a party seeking such change bears the burden of showing the need for such modification. (J-3, p. 80).

I have applied that principle to my analysis of each issue, specifically to the wage proposals and the proposed changes to overtime and out-of-title work provisions.

As to the base and maintenance increase, my conclusions are based primarily on the following considerations as enunciated by Arbitrator Mastriani,

Settlements with other State employees is an important factor in this award. However, the settlements with other State employees were achieved for a different duration and in a different economic environment. Most of the Agreements were reached in 1995 and 1996, before the budget reforms enacted by Governor Whitman and the improving economy nationally had a significant impact on New Jersey's economy. As such, they must be balanced with settlements achieved in the current period of economic well-being. Those settlements include county and municipal police agreements, as well as agreements covering other State police departments and bi-state police departments such as the Port Authority of New York and New Jersey.

This reasoning supports an award of no increase on July 1, 1996. That was the result of all the other negotiations with State employees, whether directly or through interest arbitration. The State modified its offer to this unit after the issuance of the awards in the other two State Police units.

Current Sergeant wage rates are set forth below for purposes of comparing the parties' offers. Although there are several component issues in the Association's offer, the underlying issue is the compensation package.

	Current rates <sup>1</sup>	+\$2000 (Sergeant salaries) <sup>2</sup>
Step 1	\$45449.09	\$47449.09
Step 2	\$47147.43	\$49147.43
Step 3	\$48845.77	\$50845.77
Step 4	\$50544.11	\$52544.11
Step 5	\$54242.45	\$56242.45
Step 6	\$53940.79	\$55940.79
Step 7	\$55639.13	\$55639.13
Step 8	\$57337.47	\$59337.47
Step 9	\$59035.81	\$61035.81

The salary schedules that would result from the respective offers are shown below. After the first year, only the differences at Steps 1 and 9 are shown. The existing increments between the steps are not affected by either offer.

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<sup>1</sup> See discussion in Association's position. In fact, only one rate is affected by the proposed changes.

<sup>2</sup> As proposed by the Association.



Current	+\$2000 <sup>3</sup>	<u>Assn Offer</u>	<u>State Offer</u>
		7/1/96 +4.5%	7/1/96 + 0%
Step 1 \$45449	\$47449	\$49584	\$45449
Step 2 \$47147	\$49147		
Step 3 \$48846	\$50846		
Step 4 \$50544	\$52544		
Step 5 \$54242	\$56242		
Step 6 \$53941	\$55941		
Step 7 \$55639	\$55639		
Step 8 \$57337	\$59337		
Step 9 \$59036	\$61036	\$63783	\$59035
		<u>Assn. Offer</u>	
		7/1/97 +4.5%	
Step 1		\$51815	
Step 9		\$66653	
			<u>State Offer</u>
			1/1/98 +3.75%
Step 1			\$47153
Step 9			\$61250

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<sup>3</sup> This represents about 4% at the first step and about 3% at Step 9.

	<u>Assn. Offer</u>	<u>State Offer</u>
	7/1/98 +4.5%	7/1/98 +3.75%
Step 1	54147	48921
Step 9	69652	63547

	<u>Assn. Offer</u>	<u>State Offer</u>
	7/1/99 +4.5%	7/1/99 +3.50%
Step 1	56583	50633
Step 9	69652	65771

	<u>State Offer</u>
	1/1/00 +1.50%
Step 1	51393
Step 9	66752

END OF CONTRACT	Assn Offer	State Offer
Step 1	56584	51392
Step 9	72786	66752
Percentage increase	\$2000 + 18% <sup>4</sup>	12.5%

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<sup>4</sup> See note 4.

The bargaining unit consists of approximately 465 Sergeants and 213 Sergeants First Class. Two other Division of State Police bargaining units, the STFA (troopers) and the SOA (lieutenants) have contracts for the period July 1, 1996 through June 30, 2000 resulting from interest arbitration awards. (Decisions in evidence as J-3 and J-4, respectively). The Association notes that these awards were "rendered by different arbitrators on virtually the same set of facts with respect to base wage/maintenance." (A. Brief, p. 3). Members of this unit are between the STFA unit and the SOA unit in the chain of command.

The State claims its "final offer to the NCOs is consistent with the package awarded to the STFA and the SOA." (S. Brief, p. 4). The Association points out that the "only distinguishing point in the employer's offer" from the awards to the two other state police units is a proposal to delay by six months, implementation of the first wage and maintenance increase. (A. Brief, p. 4). The Association notes that Arbitrator Hammer awarded the same percentage increases as did Arbitrator Mastriani except for a ninety-day delay in the first increase, from July 1 to October 1, 1997. (J-4).

The distinction between the Association's offer in this matter and its offer in the other two proceedings is the \$2000.00 additional increase sought for the rank of Sergeant. The Association's offer is based on the rate differential between the top step Trooper and the Sergeant's rate that the Trooper would receive on promotion. At 1996 rates, the top step Trooper rate is \$57,122. On promotion to Sergeant from that rate, a trooper would be paid \$59,053. That rate is the 9<sup>th</sup> step Sergeant's rate. The differential is less than \$2,000.

The Association points to evidence that highlights numerous duties performed by Sergeants beyond what is expected at the Trooper rank. (T-72, Testimony of Sergeant Hannigan, President of the Association). Sergeants have fewer overtime opportunities, a fact which further reduces the compensation differential between Sergeants and troopers. The Association concludes, "promotion to a supervisory position should not carry with it a pay cut." (A. Brief, p. 10). It emphasizes the importance of an appropriate career ladder.

As the Association observes, the rates from Step 1 through Step 8 "are really only 'paper rates' which exist in the contract" but are not actually paid. (A. Brief, p. 11). On promotion, a Trooper is transferred to

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the next higher pay rate on the Sergeants' guide. This inevitably results in payment at Step 9.

The Association argues that the "impact of any pay rate increase for this bargaining unit on the public employer in general is nominal and almost imperceptibly small. Most of the costs ... are ... paid on a reimbursed basis by various agencies ...." (A. Brief, p. 11, Exhibits T-12, T-13). The State was reimbursed in the amount of \$67,685,410 as shown in the 1998 spending plan. (T-24). The Employer also receives grant monies "earmarked for various types of law enforcement operations." (A. Brief, p. 13). (T-15).

The Association cites testimony of Director of the Office of Management and Budget, Betsy Pugh, who "established the ratio of State Trooper compensation to the State Budget" at .6%. (A. Brief, p. 14, citing J-2G, p.85).

The Association seeks a change in the out-of-title language based on claims that many bargaining unit members are "holding positions and performing functions which are of a higher rank." Exhibit T-73 in evidence "illustrates the State Police NCO Association bargaining unit members who are currently working" out of title. Exhibit T-78 shows acting positions. They

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are not being "properly compensated." (A. Brief, p. 17). The provisions of Article VIII (J-1, p. 5) have "no protections." It also contends the grievance procedure "is in fact a blind alley." It does not end in binding arbitration. (Brief, p. 18).

The Association argues that aspects of compensation are affected by assigning lower ranked individuals to the work of higher ranked jobs without paying at the higher rate. The Employer reaps obvious benefits but the resulting employee compensation adversely impacts pensions, for example.

Article V, "Hours of Work and Overtime", of the expired agreement speaks to overtime compensation. It provides, at C., Overtime and Overtime Compensation,

All hours worked beyond one hundred and sixty (160) hours compensated in a cycle or any adjusted extra hours beyond ten (10) shall be overtime hours. Overtime hours are paid at the premium rate of time and one-half.

The employee may select cash compensation or compensable time off for one-half of the overtime payable in a work cycle. The Division may select cash or compensable time off for the other half of the overtime payable in a work cycle. Compensable time off will be recorded in a 'bank' up to the maximum of four hundred and eighty (480) straight time hours. Any overtime earned by an employee with four

hundred and eighty (480) hours banked is payable only in cash.

The language proposed by the Association is found in Article V of the STFA contract (J-5), paragraph A. It provides:

1. All work performed in excess of forty (40) hours in a seven (7) consecutive calendar day work cycle shall be considered overtime.
2. The seven (7) consecutive day work cycle, for computation purposes, shall commence at 12:01 a.m. on Saturday and end at midnight on Friday.
3. Work, for purposes of this Article, shall be defined as any service performed which arises out of the employee's status as a law enforcement officer. Meal and break periods which occur during periods of work shall be computed as work time.
4. Any schedule change or shift change which is effective on less than forty-eight (48) hours notice to the employee shall cause the entire work obligation so changed to be paid at the overtime rate. Change shall be defined as an alteration from a regularly posted work schedule. Work schedule posting shall continue pursuant to past practice. The forty-eight (48) hour notice period shall be calculated from the time that the extra work, overtime work, is completed.
5. All overtime shall be compensated as paid compensation at the time and one-half (1-1/2) rate. (The overtime rate shall be base plus maintenance divided by 2,080 x 1.5) unless the compensatory time off (CTO) which shall accumulate in a CTO bank. Compensatory time compensation in the CTO bank shall accumulate

at time and one-half (one and one-half hours banked for each hour of overtime worked in quarter hour units).

6. CTO once banked in the CTO bank, shall remain and only be used at the request of the employee. Each request is subject to prior employer approval based on operational needs.

7. At no time shall any employee's accumulated time in the CTO bank exceed the total of twenty-four (24) hours.

8. Under no circumstances shall there be less than eight (8) hours of time off between consecutive shifts of work. Any violation of this provision shall result in paid overtime compensation for all time which violates the eight (8) hour provision.

9. The regularly scheduled work day shall consist of no less than eight (8) hours and shall not include split shifts.

The proposal would be effective prospectively.

The State argues that its final offer, the "state package", is the more reasonable in light of "the State's agreement with every other employee group." (S. Brief, p. 6). All of the other units, including the other State Police units, made cost saving contributions. The NCO's offer would cost an additional \$23,227 in base and maintenance costs over the life of the contract, compared to \$12,525 under the State's final offer. "No contract



reached with any other State group had a term increase over 12.5%." (S. Brief, p. 6, note 4).

The State points to evidence comparing this unit with other State employees, other State Police units, and wages and benefits in the public and private sectors. It concludes, "New Jersey State police Sergeants are far better compensated than any other State employee group, they are number one among comparable State police officers in the United States, and ... earn more than private and public sector employees in general." (Brief, p. 9). The evidence is that while Sergeants' salaries were comparable under the Haye System of wage ranges in the 1970s, Sergeants now receive substantially more than employees classified in higher ranges. State Police employees also receive a higher level of wages, allowances and benefits than other State employees.

The State details concessions made by other bargaining units. (S. Brief, pp. 10-12). It points out that "all previous interest arbitrators ... gave credence to the State's well-reasoned package and granted increases [above that] only when such increases were justified by contributions in other areas." (S. Brief, p. 12, Quoting from the Pierson award, IA 96-013; the Mastriani award, and the Hammer award).

The State summarizes comparative data that show that these employees are better compensated than those state police sergeants across the country. (S. Brief, p. 15). These statistics are part of the Mastriani record. (See graphic summary at State's brief, p. 16, E-74). The State also draws on evidence to show that New Jersey State Police Sergeants, who receive more total current compensation, "also receive greater pension benefits than almost all State police units." (Brief, p. 17, citing testimony of Robert Baus, STFA hearings). It concludes, "an increase of approximately 50% in the NCO payroll will serve only to make matters worse." (Brief, p. 21). These costs result in an "average per employee cost of New Jersey State government [which is] far greater than that of other states or in the private sector." This finding supports efforts "aimed at slowing the rate of increase ...." (Brief, p. 22). Even a rebound in the economy "cannot justify a deviation from the policy developed by the State in 1996...." (Brief, p. 22).

The State's offer will permit the unit members to keep up with increases in the cost of living. The State's offer amounts to 4.1% more than the rise in the cost of living. As to the public interest, "there can be no doubt but that it is in the best interest and welfare of the public to maintain equity among employees in State government in terms of

percentage wage increases as well as uniformity in employee contributions." (Brief, p. 25).

## CONCLUSIONS

### INCREASE TO BASE AND MAINTENANCE

I have concluded that the State's offer, slightly modified, is reasonable in light of the relevant statutory criteria. First, as Arbitrator Pierson pointed out in the State Law Enforcement Conference decision, "the State has taken affirmative steps in considering the interests and welfare of the public by drawing on a uniform economic proposal to develop consistency in results." (T-47). His observation applies not only to the first listed criterion but to several others, as well.

An award of the State's offer is supported by comparison with other State Police employees and with other law enforcement employees in the Northeast. The offer continues compensation at a competitive level and maintains the unit's leadership standing among other agencies.

The State package takes into account unit members' overall compensation. Contributions made by other units will also benefit the administration of this unit. The continuity and stability of employment is



furthered by an award not unlike that achieved by the other State Police units.

The criteria mentioned in these paragraphs are deemed most influential in this decision. None of the factors is irrelevant. However, the level of the cost of living is not given much weight in view of the attractiveness of the State's package. Also, the lawful authority of the Employer is presumed considered in the Employer's offer. There is no evidence that the State's offer exceeds its authority. There can be no claim that the State's offer is not better than wage increases in the private sector and among public employees in New Jersey. It is equal to the increases achieved by the other State Police ranks.

The current payroll for the entire NCO unit is \$40,706,505. The NCO's proposal would result in a 50% increase. The actual numbers are shown above. The impact on the governing unit, its residents and taxpayers, must be considered. An important underpinning of budgeting decisions affecting these contract years is reducing the cost of providing services without adversely affecting the level and quality of service. An award to this unit consistent with that budgeted for other State employees avoids adverse impact. Budget appropriations to the Department of Law and Public Safety have been reduced (by 44% over ten years) while State

Police salaries and benefits have increased. This is an important consideration.

The Association's concern for maintaining an attractive differential in promotion situations is an important one that is outweighed by the desirability of providing the same percentage increase package to the three State Police Units. This preserves the structure of the salary guide. There is no evidentiary showing to support a change in the internal structure of the guide.

As the State points out, if members of the NCO unit receive the same increases as were awarded to the Troopers, "the differential between ranks will grow every year under the contract due to compounding.... By 2000 this differential will increase to \$2163 – an increase of over 13% over the term of the contract." (S. Brief, p. 28). The record does not contain evidence sufficient to outweigh the benefits of awarding the same increases to this unit.

#### *OUT OF TITLE WORK*

The current contract language includes an agreement to avoid "the assignment of out-of-title work on a regular and continuing basis." It excepts "stand-in for limited periods for vacation, sick leave or other

leaves, or those assignments deemed necessary to maintain operational effectiveness ...." The procedure for protesting the assignments requires the Association "formally" to bring instances "to the attention of the Division [so that they may be] corrected immediately or by phasing out such assignments at the earliest time practicable ... no later than three (3) months from ... notification...." The Article makes specific reference to grievance procedures of Article XVI.

The Association's argument, that "substantial stakes at issue have a chilling effect on employees bringing grievances ....," is not supported in the record. This serious consequence must be demonstrated with concrete evidence before a reasonable inference can be drawn that a change is required. The shortcomings of the existing procedures can only be demonstrated by the experiences of the bargaining unit members who use them. The evidence is that no officer has used the current contractual mechanism to address out of title complaints.

Contrary to the Association's argument, there are several ways to raise issues of out-of-title work in the existing contract. There is no evidence that formal complaints have been made or that grievances have been pursued. Absent evidence that existing contractual mechanisms have failed to address the problems described in the Association's documents

and testimony, there is no justification for making the changes sought by the Association.

It is also important to note that out of title work occurs in all units. This situation should be addressed across the Division after further study.

### *OVERTIME*

There is no evidence that "Troopers earned a disproportionate share of the overtime compensation" as alleged by the NCO. (S. Brief, p. 31). The Association's proposal would change the overtime cycle to seven days among other changes in overtime factors. There is no documentation in the record to support the demand for change. The State points to evidence that in 1997, Sergeants earned 21% of the cash overtime and Troopers received 79% of the cash overtime. The units respective proportions are 25% and 75% of the "overtime earning population." (Brief, p. 32, citing E-79.) Similar data are presented for 1998.

This proposal has far-reaching ramifications without sufficient substantiation to dictate a change. This area is another one where study and discussion might lead to a more mutually agreeable solution.

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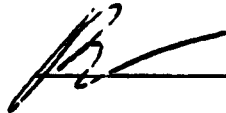
## AWARD

- 1- All terms not modified by this award shall be carried forward.
- 2- The term of the agreement shall be four years, from July 1, 1996 through June 30, 2000.
- 3- The salary schedule shall be modified as follows, retroactive to the effective dates:

July 1, 1996	0%
October 1, 1997	3.75%
July 1, 1998	3.75%
July 1, 1999	3.50%
January 1, 2000	1.50%

- 4- The maintenance allowance shall be adjusted by the same percentage.

By:



Barbara Zausner, Interest Arbitrator

August 30, 1999 **CORRECTED SEPTEMBER 3, 1999**

New York

Ulster

Sworn to and affirmed before me on August 30, 1999.

CORRECTED September 3, 1999

