

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF THE IMPASSE & INTEREST ARBITRATION

Between

**STATE OF NEW JERSEY -- DIVISION OF STATE POLICE
Employer**

-and-

**STATE POLICE SUPERIOR OFFICERS ASSOCIATION
Public Employee Organization**

**COMPULSORY INTEREST ARBITRATION DECISION & AWARD
LAWRENCE I. HAMMER, ARBITRATOR
PERC # IA 99 - 22**

On October 28, 1998, a petition was filed by the State Police Superior Officers' Association with the Public Employment Relations Commission seeking to initiate Compulsory Interest Arbitration pursuant to P.L. 1995, c.425.

Under date of December 11, 1998, pursuant to such petition, the undersigned was designated by the Public Employment Relations Commission of the State of New Jersey to serve as the interest arbitrator in an effort to resolve the continuing impasse involving the above indicated parties.

APPEARANCES ¹

FOR THE STATE OF NEW JERSEY – DIVISION OF STATE POLICE

Grotta, Glassman & Hoffman, P.A.	Counsel
(by) Beth Hinsdale, Esq.	
Philip Whitcomb	Director, Office of Employee Relations
David Collins	Deputy Director, OER
Bob Manney	Administrator, Office of the Supt.
Gayl Mazuco	Deputy Attorney General
Nancy Mason	Coordinator, OER

FOR THE STATE POLICE SUPERIOR OFFICERS' ASSOCIATION

Loccke & Correia, Esqs.	Counsel
(by) Richard D. Loccke, Esq.	
Joe Cannatella	President, SOA
Lt. Steve Flynn	Secretary, SOA
Lt. Drew Lieb	
Gary Cimorelli	Vice-President, SOA
Jon Hannigan	NJSP - NCO
Ed Lennon	NJSP - STFA
Thomas Iskrzycki	NJSP - STFA

Hearings under the subject impasse were held at the New Jersey State House located on State Street in the City of Trenton, State of New Jersey, on January 22, and February 24, 1999. At the conclusion of the February 24, 1999 session, the parties, in writing, submitted the following request, entered into evidence as Exhibit J-4:

“The parties mutually request that an expedited Interest Arbitration Award be issued in the above matter. It is understood that you will agree to issue an expedited award in a time frame consistent with the parties’ request. Upon receipt of the expedited award it is understood that either party may request supplementation or clarification of any portion of the award.”

¹ Not all individuals appeared at both Interest Arbitration hearings.

Likewise, at the conclusion of the hearings, the parties each waived their right to submit new briefs, agreeing instead to rely upon the briefs previously submitted in the Interest Arbitration involving the State and the State Troopers Fraternal Association [PERC # IA 97-7] heard before Arbitration James W. Mastriani.

During the course of the their presentations, the parties submitted into evidence each of the exhibits presented during and as part of their earlier STFA presentation, as well as the official verbatim transcripts of all seven (7) hearings therein.

The State had recognized the SOA as the sole and exclusive representative for "all enlisted Lieutenants in the Division of State Police ... for collective negotiations concerning wages, hours and conditions of employment." Specifically excluded were all troopers, non-commissioned officers, Captains and Majors. There are some 152 Lieutenants currently in the Division.

FINAL OFFERS OF THE PARTIES²

A. ECONOMIC ISSUES

FINAL POSITION OF THE SOA

1. SALARIES [Across the board salary increases as follows:

4.5% effective July 1, 1996	4.5% effective July 1, 1998
4.5% effective July 1, 1997	4.5% effective July 1, 1999

² The only position of which both parties were in total agreement involved the DURATION of the Agreement, both proposing a four year contract to cover (retroactively) July 1, 1996 through June 30, 2000.

2. TRAINING

- A. One hour per day, or equivalent pay at the overtime rate, for physical fitness training and conditioning.
- B. Availability of appropriate and well maintained exercise equipment for all employees, either at work or within a reasonable distance from the respective employee's residence.

3. EDUCATIONAL INCENTIVE

- A. Each member be paid at the annual rate of \$15.00 per credit earned on an annual basis through the Master's level achievement. This entitlement to said benefit would commence with the proof of successful completion of the course. Thereafter, the employee would receive \$15.00 per credit, times the number of credits earned for the balance of said employee's career.
- B. The phrase "subject to the availability of funds" should be removed from the current contract. Therefore tuition payment would be assured and paid promptly upon presentation of bills.

B. NON-ECONOMIC ISSUES

4. GRIEVANCE PROCEDURE

All grievances should be subject to binding arbitration. Any claim of management that a grievance should not go to binding arbitration would be dealt with on a case by case basis.

5. DISCIPLINE

- A. All Phase IV grievances be conducted before a Deputy Attorney General.
- B. The addition of disciplinary language to the current contract.

FINAL POSITION OF THE STATE ³

1. SALARIES - To be applied to base wages and maintenance

July 1, 1996	0.00%	July 1, 1999	3.50%
January 1, 1998	3.75%	January 1, 2000	1.50%
July 1, 1998	3.75%		

XXXXXX

Both the State of New Jersey and the SOA have offered extensive documentary evidence in support of their respective final offers. The State offered some seventy-four (74) exhibits, while the SOA submitted some sixty-six (66) exhibits, all of which were entered into evidence, in addition to four (4) joint exhibits. All seven transcripts (779 pages) covering the proceedings that involved the State and the STFA were also marked into evidence.

On January 10, 1996, Governor Whitman signed into law the Police and Fire Public Interest Arbitration Reform Act [P.L. 1995,c.425]. This law revised the interest arbitration law heretofore codified at N.J.S.A. 34:13A-16 et seq.

The act calls for the arbitrator to render his opinion and award within 120 days of his selection by the parties, or his assignment to same by the Public Employment

³ At the commencement of the January 22, 1999 session, the State had on the table the same "item-by-item" positions that it had advanced in its Interest Arbitration hearings involving the STFA.

At the hearing on February 24, 1999, the State modified its positions, wherein its monetary or salary offer was as appears above instead of its original position as taken in both the STFA hearing and this proceeding which comprised a lower monetary offer, and contained several other items, all of which were withdrawn.

Relations Commission. While the parties are permitted to seek and agree upon an extension thereto, same was not necessary herein.

Under the Statute, the parties are permitted to choose a mutually agreeable terminal procedure. In the absence of such an agreement, the terminal step shall be a decision by conventional arbitration. The parties herein could not agree upon any procedure except for conventional arbitration.

The arbitrator is required by N.J.S.A. 34:16 (2) to “separately determine whether the total net annual economic changes for each year of the agreement are reasonable... “ under the Statute’s enumerated criteria. The Statute requires that: “The arbitrator decide the dispute based on a reasonable determination of the issues, giving due weight to those factors that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator 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”.

The **eight statutory criteria** set forth in N.J.S.A. 34:13A-16G which are to guide the arbitrator are as follows:

- (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 [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, 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, salaries, 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. ⁴

(6) The final impact on both the governing unit and its residents 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 arbitrator 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, © initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

⁴ The revised Statute, under this section specifically states that "among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c68(C.40A:4-45. 1 et seq)" a.k.a. The CAP Law.

(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.

BACKGROUND

State Troopers, including those classified as Superior Officers, are employed by the New Jersey Division of State Police. The Division is the ultimate law enforcement authority in the State of New Jersey and is a division within the Department of Law and Public Safety. The Division is responsible for general policing services, general highway and traffic enforcement, statewide investigation and intelligence services, emergency management, support for state and local law enforcement, maintenance of criminal record and identification systems and regulation of certain commercial activities. The Superiors, those comprising the SOA, along with other non-commissioned officers as well as Majors and Captains, are the supervisors of the approximate 1,855 New Jersey State Troopers.

The Division has been widely recognized as being one of the foremost law enforcement agencies in the country.

In February, 1998, the New Jersey State Police Superintendent, Carl Williams ⁵

in a newsletter to each State Police family stated:

“The Citizens of New Jersey and other law enforcement agencies are our clients, and we must keep pace with the times and technology to provide them with the best possible services. There are high expectations of NJSP because Troopers always find a way to get the job done and get it done right, no matter what the obstacles. We are viewed as Troopers 24 hours a day, both at work and while off duty. People in your community know you are a Trooper and have high expectations of your conduct; don't disappoint them. Every good thing that we do, both as Troopers and as citizens, demonstrates our strong commitment to the public. Division members have always been active in their communities, volunteering many hours to a variety of worthwhile programs and activities. I appreciate your efforts and encourage you to stay involved”

The State Police, under the direct supervision of the 152 person SOA unit have seen the number of general investigations, as well as criminal investigations increase steadily over the years, with 1999 FY projections being 669,065 and 28,000 respectively.

The budget for the Division of State Police is included within the Department of Law and Public Safety. According to the FY 1999 budget, total funds available for law enforcement in FY 1997 were \$200,152,000 and of that sum \$192,212,000 was expended. The total FY 1998 appropriation for law enforcement was \$182,546,000 and the recommended appropriation for FY

⁵ Though State Police Superintendent, Carl Williams, has since been dismissed from his position by Governor Whitman, his comments cannot and should not be ignored. If accurate when made, and not subsequently repudiated by anyone, same is worthy of note.

1999 is 189,270,000 ⁶. The FY 1999 budget reflects that \$146,980,000 was expended on salaries and wages in FY 1997, plus \$15,795,000 for “cash in lieu of maintenance”. In FY 1998, the adjusted appropriation totals \$155,262,000 (\$139,247,000 for salaries and wages plus \$16,015,000 for “cash in lieu of maintenance”). A total of \$157,062,000 is budgeted for FY 1999, including \$139,913,000 for salaries and wages and \$17,140,000 for “cash in lieu of maintenance”.

Not everyone can become a New Jersey State Trooper. Those selected go through a rigorous selection process that takes a year or more before the applicant even gets to the Police Academy. The selection process does not end upon entering the Academy. It continues through the entire training period. In order to apply, in order to even be considered for appointment, the applicant must possess a Bachelor’s degree or two years of full time law enforcement or military experience and two years of college.

How many applicants pass muster and get to the Academy? During a very recent enrollment period (applicants for the 188th State Police Class) some 4,300 persons sat for the written test, while only 110 graduated from the Academy and became State Troopers. A new appointee is for all purposes a “probationer” for

⁶ These figures do not include funding for special law enforcement activities including election law enforcement, review and enforcement of ethical standards and regulation of alcoholic beverages and racing activities .

five years, as a State Police Officer can be let go for any reason without cause, until he or she concludes his/her fifth year of service.

A fact that cannot be overlooked or ignored, is that any Superior Officer must first go through being a Trooper for a number of years before he or she can be considered for promotion to a non-commissioned rank, and then more time before one can reach the rank of Lieutenant. Rarely does one become a Lieutenant with less than 15 years of service.

Training and expectations do not end on appointment. Lieutenants as well as the rank and file Trooper must maintain high physical and mental standards throughout their careers. Their physical examination alone, one that requires amongst other things, some 32-34 pushups and running a mile and a half in 13 minutes. This equates to a mile in less than 9 minutes.

GENERAL ECONOMIC DISCUSSION

While the Statute controlling Compulsory Interest Arbitrations sets forth some eight guide lines for the neutral arbitrator to examine, consider and weigh, the one heretofore given the greatest weight involved wage comparability. Such emphasis, until the law was amended in January, 1996, was subjected to much judicial criticism. Criticism that far too much weight was being given to comparability, while not enough consideration, in fact far too little weight, was

being given to the ability of a municipality and its citizens to pay the sums awarded through the Compulsory Interest Arbitration process.

Under such scenario, patterns would develop. Each award would grant increases financially similar to those awarded in earlier cases or similar to those instances where no award was involved, but where the parties were able to amicably resolve their differences and agree upon wage increases.

In the past if a municipality offering an economic package much below that representing earlier settlements defended its offering upon the financial restraints of its budget and the ability, or lack thereof, of its taxpayers to bear a bigger burden, it was rarely successful.

For many years when such an argument was made by the employing municipality, it may well have been a case of the governing body crying "wolf" needlessly. The 1980's evidenced an economic boom. Most governing bodies in the form of either local surpluses or in the form of ever increasing State aid, were able to fund the settlement awarded.

With the real estate markets hitting all time highs, with unemployment hitting new lows, the overall economic environment was such that the statutory criteria concerning the ability to pay became less and less crucial.

Leading up to the 1996 change in the law, vast economic changes developed in the country and the state. Unemployment had increased. Wage increases (except for police, fire and other public sector employees), where there were increases, were down. The spiraling real estate market all but collapsed. Real estate, an item representing a good portion of one's wealth, simply could not be sold at near past expectations. Employee benefits were and are being cut back by hard pressed employers. In short, the economic climate of the '90s is vastly different from that which prevailed during the '80s. The ability of a municipality to find a way to pay wage increases could no longer be accepted as a "given".

This was the climate under which the parties' most recently expired Collective Bargaining Agreement was negotiated. Said agreement expired on June 30, 1996, though the terms thereof continue to date.

The current economic conditions in the State have improved, credit for which to a large degree must be given to the budget reforms advocated by Governor Christine Whitman, coupled with the sacrifices made by other employees of the State during fiscal years 1995 and 1996.

That the financial health of the State has changed for the better, and that the State is currently enjoying a period of economic growth can best be shown by quoting from the budget address of the Governor in February, 1998:

"Fortunately for all our citizens we've steered the ship of State in a new direction and once again we are on familiar shores,

New Jersey is on sound financial footing. For example, we virtually wiped out the use of one shot revenues to balance the budget. We brought one shots down from more than a billion dollars five years ago to next to nothing today. And we balance the budget without relying on enormous structural deficit; difference between spending and revenues in any one year. Five years ago the structural deficit stood at 1.5 billion dollars, we have cut it by 75%. And because of that success I can make this pledge today, before my term is over, we will have fully eliminated the structural deficit.

Over the past four years we've cut taxes 17 times, these cuts range from our historic 30% tax cut, income tax cut to eliminating the yellow page sales tax. Altogether we will have saved the taxpayers more than 6 billion dollars, that is a record for which we can be proud. And let's not forget, we started cutting taxes when it wasn't easy, when it required tough decisions and really fiscal discipline. So now we can build on our already strong record, we can cut taxes for the eighteenth time.

Today, the budget surplus tops Five Hundred Fifty million dollars and because our economy is so strong we should add to that surplus, we should bring it up to Six Hundred Fifty million dollars which will give us the largest budget surplus in New Jersey history."

How was this turnaround put into place? An examination as to how the State concluded its collective bargaining negotiations with its sundry employee groups, and how such employees, without exception, cooperated and made both the present and the prospects for the future a reality.

All groups of employees, be they persons engaged in law enforcement or to non-police bargaining units were required to make financial sacrifices in order to enable the State to enjoy its current economic health. The State's Office of Employee Relations sought, even demanded and insisted upon "givebacks" and

“concessions” in both terms and conditions of employment as well as salary deferments or wage freezes during half the contractual 1995-1999 period.

The State’s original final offer herein was consistent, moneywise with the packages offered to and accepted by every other employee group so far as “wage freezes” were concerned.

In all of its proposals, be it to law enforcement personnel or non-law enforcement personnel, the State sought a “wage freeze” for a two year (July 1, 1995 through June 30, 1997) period. In its proposal to the STFA and SOA originally, it sought the same “freeze” except for the period of July 1, 1996 through June 30, 1998 instead.

Did the State’s insistence thereon bear fruit? Were “wage freezes” ultimately made a part of all negotiated contracts? The various law enforcement bargaining units, whose contracts have been concluded, received no wage increases (beyond normal increments where due) between July 1, 1995 and June 30, 1997. Non-law enforcement bargaining units agreed to wage freezes for the same period, with only a \$250.00 “bonus” being paid during the July 1, 1996 - June 30, 1997 contract year. Said sum was strictly a “bonus” as same was not added to the employee’s base wage and thus was not paid again in subsequent years.

Law enforcement personnel whose contractual negotiations have been completed, also received only increments, again if due, and a \$250.00 second contract year "bonus".

Base wage increases for non-police units stood at 3% and 3-1/4% for the July 1, 1997 to June 30, 1999 contractual years, while law enforcement personnel fared only slightly better, receiving 3.5% for July 1, 1997 to June 30, 1998 and then another 3.5% for the July 1, 1998 to June 30, 1999 period.

In addition, State employees made concessions or relinquished benefits pertaining to health insurances. Contributions toward premiums were instituted.

It should be noted that the State and the State Troopers Fraternal Association, (representing the 1,855 rank and file New Jersey State Troopers) went through a similar Interest Arbitration proceeding covering the July 1, 1996 to June 30, 2000 period, under which wages were frozen at June 30, 1996 rates until July 1, 1997. Said award, though it extended the "wage freeze" only until June 30, 1997 was accepted by both the State and the STFA, and is at this moment being implemented.⁷

⁷ The wage freezes implemented in Collective Bargaining Agreements made between the State and CWA, AFSCME, IEPTE, PBA and PBA-SOA units covered fiscal years 1996 and 1997. The wage freeze proposed for the State Police components would cover fiscal years 1997 and 1998, as the State Police units received a 4% increase to base in fiscal year 1996 as a part of a three year contract negotiated prior to the administration of Governor Whitman.

The STFA Award [PERC # IA 97-7] granted wage increases of 3.75% retroactive to July 1, 1997, 3.75% again retroactive to July 1, 1998, 3.5% on July 1, 1999 and a final 1.5% on the first day of the new millennium, January 1, 2000.

In short, until such time as the STFA Interest Arbitration Award was accepted, only sundry components of the New Jersey State Police were not amongst the State's 60,000+ employees who had contracted for, and agreed to wage increases and benefits in line with the State package.

An examination of the State Trooper SOA final position, set forth earlier herein, incorporates economic improvements far in excess of those given to any other class of State employees, and contained absolutely no offer of "givebacks".

POLICE AND FIRE INTEREST ARBITRATION
REFORM ACT --- P.L. 1995, c. 425

As indicated earlier, the Statute established eight points, criteria or guidelines for consideration by the neutral arbitrator in weighing the positions presented. The undersigned arbitrator has examined the data presented by both the State of New Jersey and the State Troopers Superior Officers Association, and has taken into consideration each of the eight criteria set forth by the Legislature and signed into law by the Governor of the State. Such a blanket statement is insufficient. Some comments relating to each of the enumerated criteria are worthy of note.

1. INTEREST AND WELFARE OF THE PUBLIC

The interest and welfare of the public demands a high caliber of police protection which must be considered along with the needs of those making up the law enforcement agency.

Each party argued that the testimony and data it submitted demonstrates and warrants an award endorsing its respective final positions.

While members of the State Police, be they rank and file Troopers, or Superior Officers (Lieutenants), evidence their interest and support for the community in which they are stationed, and to the people of the State as a whole, by putting forth their best efforts to protect the citizenry of the State; the State and its taxpayers have only a single way of exhibiting their support and their appreciation of their Troopers, namely by granting each and every one of them an equitable and reasonable annual wage, and perhaps an annual salary increase.

A very simplistic view of this "interest and welfare of the public" criteria of the Statute might well be that the public is always best served by the governmental body spending less. That, however, is not, and should not be inferred by the Statute or the intentions expressed by the Legislature. The public is best served by a professional and well functioning law enforcement body. Productive and well motivated employees best serve the public and their interests, not

employees who work for the cheapest rates possible. This, notwithstanding that too many contracts involving safety are awarded to the lowest bidder.

The State, as a public employer best serves the public interest and welfare by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of governmental services. While the State, like any municipality may have difficulty balancing these competing interests with budgetary financial restraints, it should not sacrifice fairness to its employees. By the same token, neither the State nor any municipality should reduce any aspect of essential governmental services merely to satisfy the economic demands of one particular group of government employees.

The State contended that its State Police are amongst the highest paid in the country. To support this contention, the State pointed to STFA witnesses who testified at the STFA hearings. Specifically, Retired Lieutenant Colonel Lanny Robertson [TR March 2, 1998, pg. 40], who believed that the Troopers in New Jersey were, based upon annual wages, “number five nationwide”, and Deputy Superintendent Joseph Brennan who testified [TR March 4, 1998, pg. 72] “as far as overall compensation, what I know is if we are not in the top three (nationwide), we are probably close to it”. Based thereon, the State contended that its final offer, including its proposed two year “freeze” would still maintain the Troopers and their Superiors “as the best compensated State Police organization in the country”.

While not disputing the testimony of either Lt. Col. Robertson or Dep. Supt. Brennan, the Association contended that when salary is examined in the context of all benefits, including maintenance allowances, longevity stipends, education incentives, the value of accumulated sick leave on retirement and other monetary benefits, the relative wage position of Troopers, including Superiors, is not as “rosy” as the Brannan and Robertson comments would appear.⁸

Lieutenants, for the period of July 1, 1995 through June 30, 1996, the date on which the last contract between the parties herein expired, worked under a nine (9) step salary guide with a range between \$56,615.91 to \$73,974.31.

As further evidence of serving the interest and welfare of the public, one must note that the State Police is the only law enforcement agency in the State having complete authority to enforce State, County and Municipal (local) law and is subject to call by the Governor to handle unique circumstances (i.e. riots or major storms) similar to the Federal Government calling out the National Guard. The State police is the primary law enforcement agency for some 74 municipalities in the State, while sharing such enforcement responsibilities with some 26 municipalities having part-time local police departments.

⁸ Maintenance allowances, longevity stipends, educational incentives and the value of accumulated sick leave on retirement will be discussed hereafter under the heading of “Comparison of Wages and Overall Compensation”.

The required physical examinations which State Police personnel must undergo, shows the concerns of the State as an employer for its residents and taxpayers. A Trooper must apparently be young and capable of fulfilling his/her duties. The law which prohibits terminating an employee for age, i.e. age discrimination statutes, does not apply to the State Police, who must retire at age 55.

There is no question, but that the welfare of the public, and their best interests are of prime concern to both the State as an employer and to the individuals in the Division of State Police.

2. COMPARISON OF WAGES AND OVERALL COMPENSATION AND CONDITIONS OF EMPLOYMENT

This portion of the Statute requires that an interest arbitrator consider a comparison of wages, salaries, hours and conditions of employment involved herein with the wages, salaries, hours and conditions of employment of other persons performing the same or similar services in public employment in comparable jurisdictions, as well as in comparable private employment, and in public and private employment in general.

The State adequately demonstrated that the State Police Superior Officers receive a higher base wage than non-police employees in comparable New Jersey State title ranges, though admittedly not receiving some of the monetary benefits other law enforcement personnel, as well as non-law enforcement personnel employed in the State itself and amongst those employed by counties and municipalities within the State.

The State in defense thereof, argued that the existence in the Collective Bargaining Agreement of a "maintenance allowance" in addition to base salary, more than offsets such lack of benefit (s).

Article 10, Sec. B5b of the most recently expired contract states:

"Effective June 14, 1995 the maintenance allowance for all employees shall be \$8,190, subject to a decrease in the Consumer Price Index as set forth in Side Letter of Agreement I, which is made a part of this Agreement."

The SOA, while acknowledging that a "maintenance allowance" is a rather unique contractual provision, contended that the value of its "maintenance" compensation is far less than the value of non-wage benefits received by most other law enforcement personnel within the State of New Jersey. The SOA pointed to the fact that "maintenance" pay is the only cash benefit it receives, while county and municipal police personnel usually receive other contractual benefits that translate into cash. Included in such benefits were (1) longevity stipends, (2) holiday pay, and (3) accrued sick leave.

Longevity payments, stipends over and above one's base pay, depending upon the individual's years of service, is usually expressed as a "percentage" of base pay, or even in some cases, a flat sum. Data presented by the STFA, and relied upon by the SOA, indicated that such stipends ranged from a low of \$1,000.00 in Hillsborough to a high of 21% (\$11,913.00) in Union City, averaging out to \$5,508.00.

Again, based upon STFA data, resubmitted and relied upon by the SOA, holidays throughout the State ranged between 12 and 16 days annually. Officers who work on a holiday, generally receive additional compensation in the form of an additional days pay or payment for a certain number of hours at straight or overtime rates. Personnel in the SOA received "time off" instead. While "time off" is a benefit, it is not "cash" and thus not one that can be used to raise one's standard of living.

Data submitted indicated that "holiday" pay, if given to STFA members (based upon the top pay rate) would amount to \$2,850.00. One must remember that the highest maximum wage paid to a STFA member is within dollars of the minimum paid to a Lieutenant.

The SOA contract does not contain a specific sick leave program. Most municipal employees receive 10 - 15 sick days annually, with unlimited rights of accumulation of unused days. Such days are paid for in whole or in part at retirement, usually at the rate of pay at the time of retirement rather than at the rate of pay when earned or accumulated.

Unit members are permitted to use unlimited sick leave as needed, but do not accrue any days, even if not out sick, even once during the year. Since they do not accrue sick leave, they do not have the ability to receive a cash payment for unused sick leave at retirement.

Again, adding the dollar value of paid holidays (\$2,856.00) to the average dollar value of longevity (\$5,508.00), the resulting \$8,364.00 is more than the \$8,190.00 called for under the 1995 contractual maintenance allowance, even without taking into account the possible value of one's accumulated sick leave.

When one looks at a police pay scale, it is generally found that most police departments have guides that allow its members to reach maximum after five (5j) years, though most recent negotiations find a fair number of departments adding steps for new hires. Members of the SOA unit do not reach maximum in five years. Their maximum comes in year nine, almost twice as long. The effect of this number is that a State Police Officer does not reach his maximum earning rate until he is 40% through an average 25 year career. When one recognizes that an SOA unit member does not enter the Division as a Lieutenant, but must spend a number of years (rarely less than 12 - 15) before qualifying for a promotion, maximum earnings are closer to the end of one's average 25 year career.

This area of the Statutory criteria of N.J.S.A. 34: 13 A-16G can be used to consider and discuss other police settlements. This can be done in two ways. First, those agreements reached via direct negotiations resulting in a purely voluntary contractual settlement, and second, those which result from the issuance of a Compulsory Interest Arbitration Award.

So far as reported "Voluntary Settlements" are concerned, there were 35 reported for 1996, resulting in an average salary increase of 4.19%; for 1997, there were 62 reported settlements averaging 3.95% wage increases; for 1998, there were 42 voluntary settlements reported, resulting in an average 3.77% wage increase.

For the same three year period (1996-1998) there were 99 Compulsory Interest Arbitration Awards issued (as opposed to 139 voluntary settlements referred to above). The 21 awards issued in 1996 resulted in an average increase of 4.24%. In 1997, 37 awards averaged 3.63% in wage increases. For 1998, the last year for which an interest arbitration compilation exists, there were 41 awards which produced an average wage increase of 3.87%.

Figures set forth in the last two paragraphs above represent a compilation as gleaned by the arbitrator from records maintained by the Public Employment Relations Commission. Such figures differ somewhat from the data presented into evidence by both the STFA and the SOA, wherein based upon 19 contracts covering 1996, settlements averaged 4.403%; based upon 25 contracts covering 1997, settlements averaged 4.242%, while 22 contracts for 1998 showed a 4.205% average settlement. Settlements for 1999, based on 16 contracts, averaged 4.223%.

By the same token, Interest Arbitration Awards submitted into evidence by both the STFA and SOA indicated 19 awards averaging 3.803% wage increases for 1996, 22 awards representing a 3.857% average wage increase for 1997, and 3.884% for 1998 based upon 18 awards. 1999 data covered 5 awards, representing a 3.925% wage increase.

No data, however, indicated a wage freeze for any of the four years involved. That the State and Governor Whitman could negotiate the freezes that it did is a "feather" in both the Governor's "cap" and the understanding and complete cooperation of all State employees. The employees too must be commended.

An examination of the sundry police contracts admitted into evidence in the STFA arbitration, and resubmitted as a part of these proceedings by the SOA, establishes that based upon total compensation (salaries and maintenance allowances), State Police personnel lag behind comparable law enforcement agencies. If base pay only is considered, the situation is even bleaker.

Notwithstanding the testimony of Deputy Superintendent Brennan and Lt. Col. Robertson, the Association argued, and data appears to substantiate, that Troopers are not anywhere near the top in compensation.

The wage comparison section of the Statute directs comparisons with public and private employment in general, as well as with public employment in the same or

similar comparable jurisdictions. No one can dispute the fact that there is a vast difference between the functions of law enforcement and non-law enforcement personnel. There can be no real comparison between the duties, obligations and expectations where a police officer is concerned and with what is expected by one in another line of work. Thus there is no real way to compare the base wages or contractual wage increases between law and non-law enforcement personnel. Aside, perhaps, from private security guards, there is no private sector police force, and thus no basis for comparison.

Thus, the weight given by this arbitrator to the standard of comparable private sector employment is very little as there exists no specific occupations against which to compare. The greatest weight must be given to the comparison of employees involved herein with employees performing the same or very similar tasks in other jurisdictions.

While comparing wages and benefits, it is interesting to note that the Associations, both the STFA and the SOA enjoy a "tuition assistance" contractual benefit, as do most all other employees of the State of New Jersey. What is most interesting is how the State treats these associations differently than it does all other employee units. How different? The State Troopers are the only class of State employees whose "tuition assistance" benefit is contingent upon the State making funds available for such purpose.

3. OVERALL COMPENSATION & FRINGE BENEFITS

The topics of wages as they currently exist, and wage increases have been discussed earlier herein. There is no need to repeat what has been set forth elsewhere herein.

The questions of the Troopers "maintenance allowance" a unique provision itself, has already been discussed and compared with other law enforcement agencies' benefits, including longevity, holidays, tuition assistance and sick leave accumulation. It is sufficient merely to state again, that the average value of these contractual benefits enjoyed by most other police personnel throughout the State, exceeds the all-inclusive sum received by the Trooper SOA as his/her "maintenance allowance".

Article 7 of the Collective Bargaining Agreement covers vacation entitlements. Depending upon one's length of service, vacations run "one day a month" during the first year of employment, to 12 days after one (1) year of service to (25) days after twenty (20) years of service, with intermediate amounts in between. Vacation entitlements compare favorably. They are neither over generous nor unreasonably low.

Likewise, the 13 holidays called for contractually. The fact, however, that these, if worked, are not paid for in cash, but by the Officer being given an alternate day off, has been discussed earlier. While the number of days compares favorably

with the number enjoyed in other jurisdictions, the method of compensation, days, rather than cash, is definitely in the minority.

Unit members do receive a fully paid for co-pay prescription drug plan, a dental care plan, an eye care plan, and medical health insurance. Other State employees do make a monetary contribution towards premium costs.

A mileage transportation allowance is received for the use of one's private vehicle in the performance of his/her job. Not a unique benefit.

A uniform or clothing allowance, a most common benefit in most all public employment contracts, especially police contracts is enjoyed by the bargaining unit. The amount is not excessive.

4. STIPULATIONS

The Parties stipulated that all of the provisions of the July 1, 1993 to June 30, 1996 Collective Bargaining Agreement, entered into evidence as Joint Exhibit # 1 shall continue in full force and effect, retroactive to July 1, 1996 and continue through and including June 30, 2000 EXCEPT as modified by the terms of the subject Compulsory Interest Arbitration Award.

5. THE LAWFUL AUTHORITY OF THE EMPLOYER TO GOVERN, RAISE TAXES, PASS ORDINANCES AND ENTER INTO CONTRACTS

The revised statute, under this section of N.J.S.A. 34:13A-16G specifically states that “among the items the arbitrator shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976,c.68 (C40A:4-45.1 et seq.)”. This is also known as the CAP Law.

A municipal employer’s lawful authority so far as the budget is concerned, was, and is restricted by the New Jersey CAP Law. The neutral interest arbitrator is statutorily and constitutionally required to consider CAP restraints imposed upon the governing body, and to reference same in his award. The CAP Law has been in existence for nearly 20 years in one form or another. Said law is aimed at limiting local governmental costs and at the same time limiting the tax burdens on the home owner.

The New Jersey CAP Law provides a formula for a limitation on spending by municipalities and counties. The formula is based on qualifying expenses in the preceding year multiplied by the 5% cap. Each year the Division of Local Government Services, a function of the State of New Jersey, provides an initial “index rate”. This index rate is a start point for municipal budget drafting. A public employer may draft a budget which provides for an application of the index rate or a rate as high as 5%. If a municipality adopts a budget which utilizes less than the allowable rate then the amount which is not utilized is carried forward into the succeeding year as a “cap bank” for a future year flexibility.

N.J.S.A. 34:131-16g (5) requires the interest arbitrator to consider the “lawful authority of the employer in determining a conventional award”. The Reform Act specifically requires the interest arbitrator to consider in evaluating this factor, “the limitations imposed upon the employer by ...” the New Jersey CAP Law.

The New Jersey Local Government CAP Law [N.J.S.A. 40A: 4-45.1 et seq.] restrains the lawful authority of the employer by limiting overall budget increases. By limiting such budget increases, the ability of the municipality to grant unlimited wage increases to its employees is restricted.

In enacting the CAP Law, the New Jersey State Legislature declared it to be “the policy of the State that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads”. The Legislature also recognized the fact that “local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents”.

The 1990 amendments to the CAP Law were intended to slow the rate of increase in local property taxes. These amendments eliminated certain heavy expenditures from heretofore exceptions when computing the possible tax increase.

While the CAP Law does not impose a line item by line item limitation, it places a limit on the overall budget to the extent that it is subject to the CAP Law. Because salary expenditures fall within the CAP, the Legislature in a not so round about way has attempted to limit the maximum amount the municipality may increase taxes for the purpose of covering salary expenditures.

An examination of the post-hearing brief submitted by the State [Exhibit E-73a] or its supplemental submission [Exhibit #-73b], fails to disclose any reference thereto except for the reference on Page 8 of E-73a setting forth the criteria for arbitrator adherence.

This particular section of the statute places a limitation upon townships, boroughs, villages, counties, and municipalities. The language itself does not appear to apply to the State of New Jersey. There is no statutory CAP on the State of New Jersey's budget.

6. FINANCIAL IMPACT ON THE GOVERNING BODY AND ITS TAXPAYERS

N.J.S.A. 34:13A-16g(6) requires the interest arbitrator to consider the economic offers financial impact on the governing unit, its residents and taxpayers in determining a conventional award. The considerations under this fact "do not equate with a municipality's ability to pay". Nor do the considerations therein require the municipality, the State herein, to prove a financial inability to meet the SOA's demands. The State herein is the governing body and the employer's

economic position is an endeavor to consider the financial impact an award would have on the residents and taxpayers of the State of New Jersey.

Again, as under the “lawful authority” criteria discussed above, we must determine whether this section of the statute applies to the State in the same manner as it would, and does, where other types of municipalities are concerned. The full text of this section specifically directs the arbitrator to consider “the financial impact on the governing units, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator ... shall take into account ...” (underlining added as emphasis by the arbitrator).

Again the data presented by the State does not take issue with the position of the SOA, namely that this section of the statute is a mandate “only when there is a public employer at the county or local municipal level”, and is not subject to interpretation. There is no question, however, that the opening sentence of criteria #6 “the financial impact on the governing unit, its residents and taxpayers”, does apply to the State and must be considered by the arbitrator.

At this point, we can again look to the February, 1998 comments of the Governor when she stated:

“Today, the budget surplus tops Five Hundred Fifty million dollars and because our economy is so strong, we should add to that surplus, we should bring it up to Six Hundred Fifty million dollars which will give us the largest budget surplus in New Jersey history.”

In examining the testimony of Elizabeth Pugh, Director of the State's Office of Management and Budget Control, offered in the STFA hearing, one without going into specific figures, can only conclude that the acceptance of the SOA package, or perhaps most of it, would not adversely produce any real "impact on the governing unit, its residents and taxpayers". Merely, however, because an acceptance of the SOA proposal would not create a financial hardship on the State, does not mean that their offer must be awarded, if it is under all considerations a less reasonable position.

7. THE COST OF LIVING

N.J.S.A. 34:13A-16g (7) requires the interest arbitrator to consider the consumer price index in determining reasonableness of the party's economic proposals. The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase which equals the CPI increase, the wage earner theoretically will be able to maintain his/her standard of living.

The Cost of Living Index or the Consumer Price Index has for many years been used in order to justify large wage increases. The effect of changes in the Cost of Living on one's purchasing power is of prime importance to any worker. Will the increase in wages keep pace with the increase in the Cost of Living so that he can continue to maintain the same standard of living?

The question and consideration of the Cost of Living, as same pertained to the parties involved in these proceedings, was most thoroughly discussed by Interest Arbitrator James Mastriani in his December 16, 1998 award involving the State and the STFA. There is no need for me to rehash figures as to CPI increases over the past 15 or so years and compare same with SOA raises over the same period. The increases achieved by the STFA were almost universally gained by the SOA as well, with only slight deviations. Arbitrator Mastriani's discussion on point can be considered as being set forth in-toto herein.

8. THE CONTINUITY AND STABILITY OF EMPLOYMENT

N.J.S.A. 34:13A-16g (8) requires the interest arbitrator to consider 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.

The State argued that the SOA demands, if awarded by the arbitrator, could have an adverse affect on the continuity and stability of employment of employees of the State aside from State Police personnel, as the funds necessary to meet such an award would have to be siphoned off from other departments and/or State programs. It is highly doubtful as to whether an award accepting the State's position [including a two year wage freeze] would have any

affect on the continuity and stability of the Division, not when one notes that the current starting wage attracts several thousand applicants for only a handful of openings.

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FURTHER COMMENTS AND CONSIDERATIONS

In spite of the testimony offered by Retired Lt. Col. Robertson and by Dep. Supt. Brennan referred to earlier herein, the wages of Troopers, including Lieutenants, are not amongst the highest in the country or even the State.

The Port Authority of New York and New Jersey, a bi-state employer, with the State of New Jersey being one of the employers, settled a seven year (1996-2003) contract with its PBA for an average wage increase of 3.57%.

As indicated earlier, voluntary settlements for 1996-1999 exceeded 4.00% only once, in 1996, and then only slightly, 4.1%; settlements resulting from an interest arbitration award, based upon the contracts submitted by the parties themselves exceeded 4.00% only once, in 1996 and then fell to 3.63% in 1997 and to 3.87% in 1998. There seems to be no indication that wage increases are exceeding the settlement reached by the STFA and/or offered herein by the State.

The difference between the wage proposal of the SOA and the position of the State, while not monumental, certainly is substantial. A five and one-half percent differential over 4 years, even without compounding, certainly is more than

minimal. A good part of the considerations herein must involve whether the Superior Officers, the Lieutenants, should receive larger wage increases, percentagewise, than did the Officers they supervise. It must be noted that the proposals of the SOA herein, were identical to, and contained each of the items that was sought by the STFA.

It is sufficient, without going into a detailed discussion, point for point, to merely reiterate the fact that the STFA did not prevail in their quest. There does not appear to be any just reason to deviate therefrom and grant benefits for the Lieutenants that were denied to the rank and file.

While the award that will issue herein will be slightly, only slightly above what the State is offering, it will be less, to a greater degree, than what was sought by the SOA. A careful review of all of the evidence submitted covering some 163 exhibits and transcripts covering 7 days of testimony, establishes that the State has the ability to absorb the costs of this award without producing an adverse impact on either the State's budget or its citizens and taxpayers.

One last point! While the data submitted failed to indicate any interest arbitration award (aside from that involving the STFA) containing a wage freeze, one cannot overlook the fact that some 60,000 State of New Jersey workers did accept not a one, but a two year freeze on wages. Their cooperation, as difficult as it was, in spite of the hardship it involved, constituted in part the resulting

State turn-around financially. While wage freezes are not common, there exists no valid reason for the SOA not to participate to some degree, as did all other employees of the State. With this in mind, my award will embrace a freeze on wages for 15 months, from July 1, 1996 through September 30, 1997.

NOW THEREFORE, as the duly selected arbitrator, having read all of the testimony offered in the STFA proceedings, and having considered after reviewing all of the documents and evidence submitted in the STFA and resubmitted in this proceeding, and after evaluating the positions and arguments of the parties, and after carefully considering and giving due weight to each of the statutory criteria set forth, I make the following:

AWARD

1. That all terms of the parties' most recently expired Collective Bargaining Agreement be carried forward and be made a part of the 1996-2000 Agreement **EXCEPT** as modified by the terms of this award.

2. That there shall be a four (4) year agreement, commencing retroactively to July 1, 1996 and continuing through June 30, 2000.


3. That the salary schedule shall be modified by the following increases:

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

4. That the Maintenance Allowance shall, retroactively, be adjusted by the same percentage increases applied above to base salaries.

5. That all 1997 and 1998 wage increases and Maintenance Allowances above, shall be retroactive to the first date on which they became due.

Dated: March 12, 1999
Jamesburg, N. J.

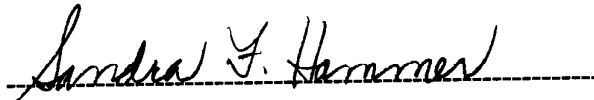

LAWRENCE I. HAMMER, Interest Arbitrator

State of New Jersey

SS:

County of Middlesex

On the 12th day of March, 1999, before me came LAWRENCE I. HAMMER, to me known and known to me to be the individual who acknowledged to me that he executed the foregoing award.



SANDRA F. HAMMER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires July 30, 2001