NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION
Case No: IA-2016-003

In the Matter of the Interest Arbitration between:

STATE OF NEW JERSEY – DIVISION OF STATE POLICE,

PUBLIC EMPLOYER

and

STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY, Inc.,

EMPLOYEE ORGANIZATION

REMAND AWARD

Before: Ira Cure, Esq.
Interest Arbitrator

APPEARANCES

For the Employee Organization:
Richard D. Loccke, Esq.
Loccke, Correia & Bukosky

For the Public Employer:
William K. Kennedy II, Esq.
Bradley J. Betack, Esq.
Ballard Spahr, LLP

I. PROCEDURAL BACKGROUND

On January 31, 2016, I issued an interest arbitration award ("Initial Award") for a collective negotiations agreement ("CNA") between the State of New Jersey Division of State Police ("Division") and the State Troopers Fraternal Association of New Jersey, Inc. ("STFA"). On February 16, 2016, the STFA appealed the award on numerous grounds, including my application of the statutory criteria governing the 2% arbitration cap or "2% Hard Cap". N.J.S.A. 34:13A-16.7(b). On March 8, 2016, the Division cross appealed. On April 14, 2016, the Public Employment Relations Commission ("Commission") issued a decision on remand finding that I did not comply with its decision in *New Milford,* P.E.R.C No. 2012-53, 38 NJPER 340 (¶ 116 – 2012) governing the application of N.J.S.A. 34:13A-16g. ("Remand Decision"). In addition, in its Remand Decision the Commission found that I did not apply the N.J.S.A. 34:13A-16g factors in my Initial Award concerning proposals governing a transportation allowance and an education incentive. In its Remand Decision, the Commission directed that I revise my initial award and issue the award on remand within 90 days of the Commission's decision, or by July 13, 2016.

At the time I issued the Initial Award in this proceeding, I also issued an interest arbitration award concerning non-commissioned officers employed by the Division in a case entitled: *In the Matter of the Interest Arbitration between State of New Jersey Division of State Police and the State Troopers Non-Commissioned Officers Association of New Jersey, Inc.,* IA-2016-007 (January 31, 2016) ("NCOA proceeding"). Although the two proceedings were heard simultaneously and despite the fact that there was a great deal of overlap of issues to be considered in both cases, the proceedings were not consolidated. There was no appeal of my award in the NCOA proceeding.

On April 28, 2016, following the issuance of the Remand Decision, I met with the parties to attempt to mediate a settlement. No settlement was reached. Thereafter, I conducted a hearing on June 14, 2016 ("Remand Hearing"). The Remand Hearing was held at the School of Management and Labor Relations at Rutgers University, 50 Labor Center Way, New Brunswick, New Jersey. The Division and the STFA submitted documentary evidence and testimony. Michelle LaBruno ("LaBruno), CPA of the firm of O'Connor Davies, and Trooper Michael Zanyor ("Zanyor"), STFA First Vice President, testified on behalf of the STFA. Michael Dee ("Dee"), Director of the Governor's Office of Employee Relations, testified on behalf of the Division. The proceedings were transcribed[1]. Post-hearing briefs were filed on June 28, 2016.

Richard D. Loccke, Esq. of the firm of Loccke, Correia & Bukosky represented the Union. William K. Kennedy II, Esq, and Bradley J. Betack, Esq. represented the Division.

Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in preparation and issuance of this Remand Award.

[1] References to the transcripts in this proceeding will include the date of the hearing. Exhibits introduced in the Remand Hearing will include an "R" for remand. Otherwise, exhibits introduced at the previous hearings will maintain the exhibit numbers used in the initial hearing. References made to exhibits introduced in the NCOA proceeding as (N #).

II. SUMMARY OF INITIAL AWARD

The Initial Award covered the period July 1, 2012 to June 30, 2017 and encompassed fiscal years ("FY") 2013 – 2017. The Commission remanded the award to me for consideration of the following issues: Wages Paragraph A below; Term Paragraph B below; Transportation Allowance Paragraph C below; and Education Incentive Paragraph D below. The Initial Award provided:

A. Wages

There will be a 1.25% increase across the board for all ranks and steps, commencing with the first pay period after July 1, 2016. Increments will be frozen as of Pay Period 21 in 2015. As of July 1, 2016, the maintenance allowance shall be thirteen thousand eight hundred and nineteen dollars and sixty-four cents ($13,819.64).

B. Term

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

C. Transportation Allowance

Commencing with the Academy class of 2017, the transportation allowance provided for at Article X § B (7) of the CNA shall be eliminated except in situations where the Trooper is required to drive to an emergency muster point or to some assignment other than his or her regular assignment in excess of twenty miles from his or her permanent residence. In those cases, the Trooper will be entitled to the transportation allowance.

D. Education Incentive

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

E. Holidays

Article VI (B) (1) shall be amended to provide for the following holidays:

A. All employees of this negotiating unit shall be entitled to the following holidays as additional days off without loss of pay or if worked, shall be compensated by compensatory time off:

(1) New Year's Day
(2) Martin Luther King's Birthday (3rd Monday in January)
(3) President's Day (3rd Monday in February)
(4) Good Friday
(5) Memorial Day (Last Monday in May)
(6) Independence Day
(7) Labor Day
(8) Columbus Day (2nd Monday in October)
(9) Election Day
(10) Veterans' Day (November 11)
(11) Thanksgiving Day
(12) Christmas Day

F. Expedited Grievance Procedure

Article XII (G) (3) shall be amended to read in pertinent part:

> The Superintendent shall respond within forty-eight hours of receipt of a request for expedited grievance handling with a determination regarding the expedited procedure should be invoked. If the Superintendent denies the request, the Association within seven days may appeal the decision to a special arbitrator . . .

G. Eye Care

Article X (G) shall be amended to read:

> 1. Full-time employees and eligible dependents shall be eligible for the State-administered Eye Care Program. The Program shall provide for each eligible

employee and dependent to receive a $40 payment for prescription eye glasses with regular lenses and a $45 payment for such glasses with bi-focal lenses. Each eligible employee and dependent may receive only one (1) payment during the two (2) year period ending June 30, 2014 and only one (1) payment during the two (2) year period commencing July 1, 2014, and only one (1) payment during the two (2) year period commencing July 1, 2016. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

2. Eligible dependents of full-time employees shall be eligible for a maximum payment of $35 or the non-reimbursed cost whichever is less, of an eye examination by an Ophthalmologist or Optometrist, during the two (2) year period ending June 30, 2014, ~~and~~ only one payment during the two (2) year period commencing July 1, 2014 and only one (1) payment during the two (2) year period commencing July 1, 2016. Proper affidavits and submissions of receipts are required of the member in order to receive payment. 1. Full-time employees and eligible dependents shall be eligible for the State-administered Eye Care Program. The Program shall provide for each eligible employee and dependent to receive a $40 payment for prescription eye glasses with regular lenses and a $45 payment for such glasses with bi-focal lenses. Each eligible employee and dependent may receive only one (1) payment during the two (2) year period ending June 30, 2014, only one (1) payment during the two (2) year period commencing July 1, 2014, and only one (1) payment during the two (2) year period commencing July 1, 2016. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

H. Other Proposals

All proposals by the State Troopers Fraternal Association of New Jersey, Inc. and the State of New Jersey Division of State Police not awarded herein are denied and dismissed. All provisions of the existing Collectively Negotiated

Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

III. THE COMMISSION'S REMAND DECISION

This proceeding is governed by N.J.S.A. 34:13a-16.7 (b), as amended on June 24, 2014, which sets forth the 2% Hard Cap limiting salary increases that may be awarded to covered employees and provides in pertinent part:

> An Arbitrator shall not render any award . . . which in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on **base salary** items for members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, **base salary** items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on **base salary** items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

(Emphasis supplied).

Finding that I did not adequately explain the methodology as to how base salary was calculated and that I did not adequately cost out the award in order to show that I complied with the requirements of the 2% Hard Cap. P.E.R.C. No. 2016-69 at 4-5, the Commission remanded the award to me for reconsideration. The Commission stated that its decision in *New Milford,* P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 – 2012) set forth directions that arbitrators were required to follow in calculating the base year and in determining the cost out of the total economic award. In *New Milford,* the Commission held that in reviewing an arbitrators award:

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

The Commission further stated that:

> compliance with N.J.S.A. 34:13a-16.7 involves two distinct calculations. The first calculation uses the "base year salary" from the employer's aggregate expenditures in the 12 months preceding the new award to derive the 2% cap number. The base year salary figure uses raw, actual salary expenditure numbers, so it would include, for example the partial salaries for unit members who retired or were hired at some point during the base year. The second calculation looks at salary grade level, or scattergram[3]

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[2] *New Milford* predated the 2014 amendment to the Interest Arbitration Act that allows aggregate base salary to increase at a compounded rate.

[3] In its Decision the Commission defined a scattergram as:

> a chart showing where employees are currently situated on the salary guide, thus providing a snapshot of the current total cost of the unit. For police and fire units a scattergram would typically

> placement, of unit members on the last day before the new award, and determines whether the projected increases to those unit members' base salary items exceed the 2% cap.

In my Initial Award, I relied on the Division's calculations to determine the appropriate salaries. Those calculations were based on the six-year agreement proposed by the Division. However, I awarded a five-year contract. The Commission remanded the award to me and directed me to comply with the *New Milford* decision and provide a more detailed analysis of the costs of my Initial Award and ordered that I provide specifics demonstrating that my Initial Award complies with the 2% Hard Cap requirements.

The Commission also directed me to consider the effect that Acting Sergeants' pay will have on the base salary calculation. As I noted in my Initial Award:

> Senior members of the STFA unit are occasionally asked to serve as Acting Sergeants. After eight pay periods, Acting Sergeants are paid at the higher Sergeant rate. However, until they are promoted, Acting Sergeants remain in the STFA unit.

At the first hearing in this matter, the parties vigorously disputed the method to be used to calculate the payments made to Acting Sergeants. The Commission stated that I correctly included the higher sergeant salaries paid to Acting Sergeants as part of the base salary calculations[4]. On remand, the Commission directed that

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> show how many employees are at each step/increment of the guide, and might also include a column indicating their placement on any longevity pay guide.

[4] The Commission also stated that I correctly found that the "maintenance" payments of $13,649.03 paid to each Division employee was properly included in the base salary calculation. Similarly, the Commission stated that I properly excluded certain retroactive payments from the base salary calculation.

"STFA members who were being compensated at the Acting Sergeant pay rate as of the last day of the previous CNA (June 30, 2012) will be moved forward through the newly awarded salary guides or raises from that pay rate."

The Commission also directed me to more fully address N.J.S.A. 34:13A-16g(9) concerning the statutory restrictions upon the Division governing the calculation of base salary. In addition, I was directed to more fully address the statutory requirements governing my Initial Award concerning the transportation allowance and education incentive proposals.

The Commission allowed the parties to request my permission to supplement the record with additional information and argument. Permission was granted and has resulted in a narrowing of the issues between the STFA and the Division[5].

IV. THE POSITIONS OF THE PARTIES ON REMAND

Both the Division and the STFA significantly changed their positions at the commencement of the Remand Hearing.

A. Final Position of the Division

At the Remand Hearing, the Division proposed the following:

1. Term of the Award – 7/1/2012 – 6/30/2017[6]

2. 1.25% increase to maintenance only, effective the first full pay period after July 1, 2016. Troopers shall receive normal increments through Pay Period 20, 2015 only.

3. All other provisions of the February 2, 2016 Interest Arbitration Award, issued by Arbitrator Ira Cure, shall

[5] Those aspects of my Initial Award that are not discussed herein were not disturbed by the Commission's decision.

[6] This represents a significant change in the Division's position, as it had previously proposed a six-year contract.

remain in place and enforced, as confirmed by the New Jersey Public Employment Relations Commission in a decision dated April 14, 2016.

B. Final position of the STFA

The STFA proposed the following at the Remand Hearing:

1. Term of Contract – The STFA proposes a five and one-half (5.5)[7] year contract to commence July 1, 2012 and have a term through December 31, 2017.

2. The STFA proposes a nine (9) month individual step delay for next step due after 2015 Pay Period 20 (September 5, 2015). This singular proposal is the core subject in the STFA presentation. For reasons explained both on the record and in this Brief the concept of reimplementation of Steps internal for the contract period cannot be overly stressed. The fundamental change proposed is to re-implement the Step System, *albeit* after the Employer has achieved significant savings as is reflected in the proofs. Sometime during this contact term Steps must be re-implemented .

3. Effective July 1, 2016 the annual maintenance allowance shall be Thirteen Thousand Eight Hundred Nineteen Dollars and Sixty-Four Cents ($13,819.64).

4. The STFA proposes a 1.25% increase across-the board for all ranks and steps effective July 1, 2016.

5. The STFA proposes a 1.25% increase on only Range 19 Step 9 effective July 1, 2017 (FY18).

V. SALARY and TERM

On remand, the parties have proffered different positions concerning the issues of salary and term of the proposed CNA. I will briefly describe the collective

[7] This represents a significant change in the STFA's proposals since it had previously proposed a five-year contract.

negotiation unit (the "Unit"). I will next discuss each parties' contentions concerning the issues of salary and term. I will follow that discussion with the arguments put forth by each party with respect to each issue. I will then set forth the reasons for my award upon remand.

A. Background

There are 1633[8] State Troopers in the Unit. There are three job titles in the Unit: Trooper, Trooper I and Trooper II. As of June 30, 2012, (the last day of the expired CNA), Troopers were paid according to the following salary range:

Range	Increment	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
17	$2,896.02	$57,853.92	$60,749.94	$63,645.96	$66,541.98	$69,438.00	$72,334.02	$75,230.04	$78,126.06	$81,022.08
18	$3,036.42	$66,658.08	$69,694.50	$72,730.92	$75,767.34	$78,803.76	$81,840.18	$84,876.60	$87,913.02	$90,949.44
19	$3,187.95	$69,694.50	$72,882.45	$76,070.40	$79,258.35	$82,446.30	$85,634.25	$88,822.20	$92,010.15	$95,198.10

[Division Ex. 3, at 27].

As evidenced in the above chart, there are three salary ranges: 17, 18 and 19. Within each range, there are incremental steps. As the Step and Range Chart set forth below shows, Troopers move diagonally across the various ranges.

[8] At the initial hearing, there was a dispute concerning the number of State Troopers on the Division's roster. Although, the parties were not completely in agreement, representatives of the Division and the STFA met prior to the Remand Hearing and have concluded that 1633 is a more or less accurate number. (Compare Tr. 6-14-16 at 27(Dee Testimony) with Tr. 6-14-14 at 84 (Zanyor Testimony)).

Completed Years of Service	Step	Range
0	1	T17
1	2	T17
2	3	T17
3	4	T17
4	5	T17
5	6	T17
6	7	T17
7	6	T18
8	7	T18
9	8	T18
9.5	7	T19
10.5	8	T19
12 +	9	T19

(Division Ex. 3 at 28).

A Trooper reaches the top step, at range 19, after twelve years of service. As of June 30, 2012, there were 82 Acting Sergeants. Acting Sergeants are deemed to be a part of the STFA Unit. After working “out-of-title” for eight pay periods, Acting Sergeants receive the same pay as regularly appointed Sergeants, but they remain in the STFA Unit.

In September 2015, the Division halted all step movement following the 20th pay period. Except for promotions or other assignments, such as an assignment to the Acting Sergeant position, no Trooper has received an increase in salary since that time.

Under the Remand Award, I am required to "determine the projected increases of unit members on the last day of the new award" by calculating the base salary of the [U]nit members, in this case, on June 30, 2012. The positions of the Division and the STFA reveal they are close to an agreement concerning the projected base salary for the Unit as of June 30, 2012. The Division calculates the projected base salary[9] as of that date as $152,400,522.30 (Division Ex. 2R), and the STFA calculates the projected base salary for the Unit as $152,593,536. As such there is a difference of only $193,013.70 which, as Vice-President Zanyor testified, is less than 1%. (Tr. 6-14-16 at 127).

In addition to his or her regular salary, each sworn employee of the Division, including the Superintendent, receives a maintenance payment. As of June 30, 2016, except for junior Troopers (Troopers with less than three years of service), members of the Unit receive $13,649.03 annually[10]. As noted above, the Commission has determined that maintenance payments are part of the base salary. In the separate NCOA proceeding, I awarded members of the NCOA Unit an additional $171.61 annually for a total annual maintenance payment of $13,819.64. Subsequently, the State Troopers Superior Officers Association

[9] The Division refers to this as the expenditure rate.
[10] First year Troopers receive one third of $13,649.03 annually; second year Troopers received two thirds of this sum, and third year Troopers received the full $13,649.03.

("STSOA"), which represents Lieutenants and Captains, voluntarily agreed to an identical increase of $171.61 in their maintenance payments. (Tr. 6-14-16 at 18-19).

B. The Division's Proposals

i. The *Division's Arguments in Support of its Proposals*

The Division notes that the Commission has stated that "an arbitrator is required to address all nine N.J.S.A. 34:13A-16g factors." On remand, I was specifically directed to clarify my Initial Award concerning §16(g)(9) governing statutory restrictions on the employer. (Division Brief at 10, citing Commission Decision at 18). The Division asserts that there are no statutory restrictions that would prevent the Employer from implementing its final wage offer.

The Division described the methodology it used in calculating its final offer. It notes that both the STFA and the Division essentially agree that there were 1633 Troopers employed as of June 30, 2012.

The Division submitted an economic cost-out scattergram for members of the Unit. (Division Ex. 6R). The Division notes that, under the Commission's decision, it was required to make two calculations. The first calculation must establish the actual salary expenditures paid to members of the Unit during the base year. Actual salary expenditures include payments to Troopers who left the Unit by way of promotion, retirement, or other form of separation. Actual salary expenditures also include payments made to Troopers who joined the Unit at any time during the base year. The Division calculated actual salary expenditures for the year July 1, 2011 to June 30, 2012 as $146,344,799.76.

In addition, the Division states that under the Commission's decision, I am required to calculate an "expenditure rate." In order to calculate the expenditure rate, the parties must take a snap shot of the Unit as of the last day of the contract – June 30, 2012 – and annualize each Trooper's salary and project the salary forward including increments, without regard to how much money any Trooper actually earned during the base year. Thus, Troopers who left the Division before June 30, 2012, are not included in the calculation of the expenditure rate. On the other hand, the salaries of Troopers who joined the Division shortly before June 30, 2012 would have their salaries included in the calculation of the expenditure rate. The Division notes that under the Remand Decision, Acting Sergeants were to be projected forward as if they were permanently in that position. After eight pay periods Acting Sergeants are placed on the pay scale of the NCO Unit. Therefore, the Division included Acting Sergeants in its calculations, and projected those in Acting Sergeant status along the NCOA salary guide[11] as part of the calculation of the expenditure rate. By annualizing the salaries of Troopers on the Division roster, including Acting Sergeants, as of June 30, 2012 the Division calculated the expenditure rate to be $152,400,522.30 (Division Ex. 2R).

The Division posits that its salary proposal, which for the period July 1, 2012 to June 30, 2017, only provides for a 1.25% wage increase - applicable to maintenance only - is consistent with the 2% Hard Cap because, under a five-year agreement, wage increases may not exceed 10.41% compounded. The Division's

[11] The Division asserts that it conformed to the requirements of the decision in *New Milford,* because it did not take into account any personnel actions, such as promotion or demotion, which may have occurred after June 30, 2012.

proposal calls for an increase of 10.24% and therefore is within the 2% Hard Cap. (Division Brief at 14).

The Division described how it performed its calculations. The Division notes that the State's Office of Information Technology created a software program to enable the Division to determine whether or not a wage proposal was consistent with the 2% Hard Cap. The Division states that it "determined the projected increase to the expenditure rate by progressing the base year roster through the proposed term of the award." (Division Brief at 14). For this remand proceeding, the Division revised the scattergram that it had introduced in the earlier proceeding in order to show how automatic step increases affected salary expenditures. The Division calculated that, under its proposal on remand, the expenditure rate would increase from $152,400,522.30 on June 30, 2012 to $167, 386,635.26 on June 30, 2017 resulting in a difference of $14,986,112.96.

The Division summarized its calculations as follows:

- The expenditure rate was calculated as $152,400,522.30.
- For fiscal year 2013, each employee on the base year roster was progressed on the scattergram. The amount was calculated as $157,364,345.32. [Column J-174, Division Exhibit 6R].
- For fiscal year 2014, each employee on the base year roster was progressed on the scattergram. The amount was calculated as $161,589,764.70. [Column N-1974, Division Exhibit 6R].
- For fiscal year 2015, each employee on the base year roster was progressed on the scattergram. The amount was calculated as $164,728,933.72. [Column R-1974, Division Exhibit 6R].
- For fiscal year 2016, each employee on the base year roster was progressed on the scattergram through Pay Period 20. The amount was calculated as $167,108,959.94. [Column V-1974, Division Exhibit 6R].

- For fiscal year 2017, each employee remained at the same range and step for the entire fiscal year. A 1.25% increase to the maintenance allowance was projected the first pay period in Fiscal Year 2017, which total cost was calculated as $167,386,635.26. [Column Z-1974, Division Exhibit 6R].

According to the Division, under the Remand Decision the sum of $14,986,112.96 must be divided by the actual dollars spent in the base year ($14,986,112.96 ÷ $146,344,799.76). This calculation equals 10.24% and the Division maintains this percentage is within the parameters of the 2% Hard Cap. The Division set forth its calculations in the following chart:

Base Year Actual	Expenditure Rate	FY2013 Projected Salary	FY2014 Projected Salary	FY2015 Projected Salary	FY 2016 Projected Salary[12]	FY2017 Projected Salary
$146,344,799.76	$152,400,522.30	$157,364,345.32	$161,589,764.70	$164,728,933.72	$167,108,959.94	$167,386,635.26
		(+3.39%)	(+6,28%)	(+8.42%)	(+10.05%)	(+10.24%)

(Division Brief at 15).

The Division concedes that, in the Initial Hearing, it had offered a different base year calculation. The Division argues that it had proposed a base year calculation of $150,802,408.54 in the initial proceeding because of its interpretation of the Commission's decision in *State of New Jersey and Fraternal Order of Police, Lodge 91, (Lodge 91)* P.E.R.C. No. 2016-11 (2015) (Exhibit N-34b). The Division interpreted *Lodge 91* as requiring the calculation of the base year figure as solely dependent on the annualized salary of employees with no reference to actual expenditures[13]. (Trooper Ex. 1R). The Division contends that the Commission's

[12] The Division's proposal of 1.25% increase to maintenance only, would go into effect during the 2016 fiscal year.
[13] Also there was a dispute over the roster of the Trooper Unit, which was resolved prior to the hearing on the remand.

Remand Decision in this proceeding clarified matters by requiring that not just the projected rate, but also the actual dollars expended, be included in the calculation.

ii. The *STFA'S Response to the Division's Calculations*

The STFA vigorously disputes the Division's calculations. Throughout its brief, the STFA contends that it is inappropriate to annualize costs in the manner proposed by the Division. The STFA notes that Trooper movement along the salary range is not done annually but is rather based on a Trooper's class graduation date. The size of the graduating class may vary. In some years there is no graduating class and in some years there may be more than one graduating class. (STFA brief at 18, 31-32).

The STFA also argues that the Division improperly projected salaries going forward and should not have limited its analysis to a comparison of baseline expenditures the $152,400,522.30 going forward to the actual FY2012 expenditures. (STFA brief at 18-19). The STFA states that there should have been a percentage change calculation. In addition, the STFA asserts that the Division's analysis contained numerous errors because the Division either omitted certain Troopers or failed to incorporate certain Troopers in its analysis. (STFA brief at 19). The STFA contends that the Division's "actual expenditures" calculation of $146,344,799.76 misstates the true state of the Division's payroll by $3,817,655.00. (STFA brief at 21). According to the STFA, at the Initial Hearing, the Division posited that the base year salary was $150,802,408.54, and in the Remand Hearing the Division has reduced its calculation of the base year salary by $4,457,609. (STFA brief at 6-7).

In addition, the STFA notes that there has been no step movement since September 2015. The STFA maintains that this constitutes a windfall for the Division.

The STFA is critical of the Division for failing to take into account certain Troopers who are asked to act as Sergeants - not Acting Sergeants – perhaps as the result of an injury to a Sergeant - on an immediate if occasionally short-term basis. These Troopers are given a "Y" code and are immediately paid the higher Sergeant's salary.

C. The STFA'S Proposal

i. The STFA'S Arguments in Support of its Proposal

The STFA maintains that it meticulously created a system for checking and rechecking the Trooper roster as follows:

- A searchable PDF was created of the January 2012 NJSP numeric roster by digitally scanning a paper copy of the roster with optical character recognition (OCR) software. Text data was then extracted from the searchable PDF.

- The extracted text data was imported into MS Excel as a spreadsheet. Since the 151st State Police Class was NOT listed on the January 10, 2012 roster, they were added to the MS Excel spreadsheet.

- The data was compared by hand to the names listed on the biweekly dues deduction report for pay period 14. The dues deduction report is created by the NJ Treasury Department and sent to the STFA on a biweekly basis.

- Confirmed with OER Director Dee (+/-2) on April 26, 2016.

(Emphasis in the original).

Based on its analysis, the STFA accounted for discrepancies between its report and that of the Division. The STFA compared its Dues Deduction Report with the New Jersey State Police's (NJSP) Numeric Roster and reached the following conclusions:

- Sixteen (16) names were listed on the dues deduction report but correctly listed as NCO's on the numerical roster (they were not STFA members).
- Two (2) STFA members had changed last names; they were listed by the prior names on the NJSP roster but by their current names on the dues report.
- Nine (9) members were on no-pay status on June 30, 2012 (confirmed by dues reports and personnel orders).
- Two members had separated from NJSP during FY 2012 (confirmed by personnel orders).
- Fourteen (14) STFA members retired in FY12 (9 retired after the creation of January 2012 NJSP roster).
- One (1) member was not listed on the dues report since the State would mail a check (the member was on the NJSP roster).
- 121 members were promoted in FY12.
- 82 members were identified via NJSP personnel orders as Acting Sergeants receiving out of title pay.
- 27 members were identified via NJSP personnel orders as Acting Sergeants NOT receiving out of title pay.

(Emphasis in the original).

The STFA then created color coded exhibits (STFA Exhibit 7R). STFA Exhibit 7R has the following categories:

- **BLACK**: No special notations [the overwhelming majority of the unit].
- **RED:** Separated from NJSP in FY12 (retired, resigned, *etc.*).
- **PURPLE:** Promoted out of STFA in FY12.
- **ORANGE**: No pay status as of June 30, 2012 (leave of absence, maternity leave, suspension, *etc.*)
- **GREEN:** STFA members receiving out of title pay as Acting Sergeants as of June 30, 2012.
- **BLUE**: STFA members *NOT* receiving out-of-title pay as acing sergeants as of June 30, 2012.

Having color coded the members of the Division's roster, the STFA asserts that its calculations comply with the statutory definition of base salary found at N.J.S.A 34:13a-16.7 because the STFA contends that it properly aggregated base year costs. The STFA asserts that the in order to properly calculate base year salary, the Division should have accounted for: 1) 12 Troopers who retired or resigned from the Division during the base year (the Red category; 2) 9 Troopers on no-pay status who were on leave of absence or suspended during the base year (Orange category); and 3) 121 Troopers who were promoted out of the Unit for part of 2012 during the base year (Purple category).

As noted above, based upon the STFA's calculations as of June 30, 2012, the base salary for the Unit was $152,593,536. The STFA argues that adding the costs of Troopers in the Red, Orange and Purple categories would properly increase the base salary by $5,122,634 for a total base salary of $157,716,169[14]. (STFA Exhibit 15R). The STFA contends that its analysis increases the Trooper Roster to 1,770[15]. The STFA acknowledges that it agreed with the Division that there were 1633 active personnel in the Unit. However, for the purpose of determining the base year calculation, the STFA contends that the correct number is 1770. The number 1770 reflects all employees in the Unit during the base year, including retirees.

Under the STFA's proposal, there would be a nine-month delay of all step movement, and those Troopers would lose nine months of an increase.

Finally, the STFA urges the reimplementation of step movements that were frozen in September 2015. The STFA contends that the freeze of the step movements interferes with a Troopers "career path for compensation." (STFA brief at 45). The STFA states that the Division will get a windfall if step movement is not reinstated, and will have a deleterious impact on the Unit's morale.

ii. *The Division's Response to the STFA's Wage and Term Proposals*

The Division contends that the STFA's proposal for a five-and-one-half-year term is unsupported by any explanation. The Division notes that a CNA with a five-

[14] The STFA concedes that Troopers in the Orange category or no pay-status should not be included in the base salary calculations. (STFA brief at 13).

[15] This represents an increase of 137 over the parties agreed upon roster number of 1633 as of June 30, 2012.

and-one-half-year term, expiring on December 31, 2017, would represent a departure from the historical pattern, where the STFA CNA expired at the same time as the CNAs for the NCOA and the STSOA bargaining units.

The Division contends that the STFA wage proposal does not comport with the requirements of the 2% Hard Cap. The Division states that the STFA asserts that, over its proposed term of a five-and-one-half-year CNA, the STFA's proposal falls within the 2% Hard Cap. The Division maintains that the STFA has not complied with the directives of *New Milford* or the Remand Decision.

The Division states that the STFA's calculation of base salary as $157,716,169 does not meet statutory requirements. Instead of including only funds that were actually expended in the FY2012 base year, the STFA annualized salaries for all new hires. This method of calculating salaries, the Division maintains, has the effect of artificially inflating the amounts available to the Unit under the 2% Hard Cap. The Division asserts that the STFA not only annualized salaries of Troopers who were employed on June 30, 2012, but also added the salaries of all Troopers who worked at any time, during FY2012 into its calculation, including retirees. (Division brief at 21-22 citing Tr. 6-14-16 at 127-129)[16]. The

[16] Q. [Kennedy]: That number [$152,583,536] represents the annualized cost of the salary for employees on the roster on 6/30/12?
A. [Zanyor]: Correct…
Q. [Kennedy]: On top of that, you add in $5 million for, basically, employees who left?
A. [Zanyor]: Correct, that is the salary and maintenance they earned in Fiscal '12.
Q. [Kennedy]: So the 152 includes annualized salary, so it includes the money for the 84 people who didn't work the full year, it includes them as working a full year?
A. [Zanyor]: Yes.
Q. [Kennedy]: Employees that may have had an unpaid leave of absence, we don't subtract for their leave of absence?

Division contends that the STFA's methodology artificially inflated the sums actually expended by the Division in order to create more room for the Unit under the 2% Hard Cap.

The Division notes that the STFA's calculations show the expenditure rate as of June 30, 2012 as $152,593,536, yet under the STFA's proposed term salaries for the Unit would increase to $176,426,760. (Division brief at 24, citing STFA Ex. 15R). The Division contends that the STFA improperly prorated increases to salary and deflated the actual cost increase of the STFA proposal. Thus, asserts the Division, the STFA should have shown that, under the STFA's proposal, salaries would have increased by $23,833,224 ($176,426,760 - $152,593,536) or 15.1%. Instead the Division claims that the STFA only shows an increase of $18,433,516. The Division also argues that even the increase of $18,433,516 exceeds the 2% Hard Cap, which for a five-and-a half-year CNA is 11.3%. The Division notes that the increase of $18,433,516 over the base year of $152,593,536 results in an increase of 12% ($18,433,516 ÷ $152,593,536).

The Division also contends that, despite the Commission's direction in the Remand Decision, the STFA has failed to show how the 82 Troopers in Acting Sergeant status would receive salary increases. The Division argues that Acting Sergeants should be shown progressing on the NCOA salary guide. The Division

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A. [Zanyor]: Correct. Whatever June 30, 2012 is.
Q. [Kennedy]: And we also add in the monies, the salaries, for employees that left mid-year?
A. [Zanyor]: Not annualized though.
Q. [Kennedy]: But we are adding in salary for employees who left?
A. [Zanyor]: Yes.
Q. [Kennedy]: That's how you get to $157,716,169 correct?
Q. [Zanyor]: Correct.

states that the STFA calculations improperly freeze the Acting Sergeants at their June 30, 2012 salary for the full five-and-one-half-years of the STFA's proposal.

Finally, the Division contends that the STFA failed to properly include the full amount of proposed step increases in its calculations. The Division is particularly critical of the STFA's calculations, because they based on a nine-month delay in the step increases. The Division argues that the STFA did not include the full effect of the step movement or automatic increments in its proposed wage award. The Division asserts that "[r]egardless of when the increase is given, the effect of the step movement must be fully accounted for." (Division brief at 30).

D. The Award

With one exception discussed below, I award the Division's proposals of a five-year term for the period July 1, 2012 to June 30, 2017, and the Division's proposal of an increase in maintenance only of 1.25%, effective the first full pay period after July 1, 2016. The Commission found that I previously addressed eight of the nine statutory factors set forth in N.J.S.A. 34:13-16[17]. However, in its Remand Decision, the Commission specifically directed me to address the application of N.J.S.A. 34:13-16(g)(9) to the issues in this case. That provision provides:

> 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).

[17] Except where discussed in this Award, the analysis of the statutory factors set forth in the Initial Award remains unchanged. The dominant question is whether an award can be issued that complies with the 2% Hard Cap.

The statutory restriction overriding this proceeding is the 2% Hard Cap found at N.J.S.A. 34:13a-16.7 (b).

In the Remand Decision, the Commission provided extensive guidance concerning the application of the 2% Hard Cap. The Commission held that, in order to comply with N.J.S.A. 34:13a-16.7 (b), arbitrators had to perform two calculations. The Commission stated:

> The first calculation uses the 'base year salary' from the employer's aggregate expenditures in the 12 months preceding the new award to derive the 2% cap number. That base year salary uses raw, **actual salary expenditure** numbers, so it would include, for example, the **partial salaries for unit members who retired or were hired at some point during the base year.** The second calculation looks at the salary guide level, or scattergram placement of unit members on the last day before the new award, and determines whether the projected increases to those unit members' base salary items exceed the 2% cap.

(Remand Decision at 12) (Emphasis supplied).

As to the first calculation, the Division provided the data to establish that its actual expenditures during the base year, or FY2012, was $146,344,799.76. (Division Ex. 6R). Unlike the STFA's calculations, the Division's calculations did not include annualized salaries for Troopers who retired or who were hired during FY2012. The Division's calculations comport with the Commission's direction that only actual salary expenditures be included in the calculations. By annualizing the salaries of all Troopers employed during FY2012 in making this calculation, the STFA's calculation has the effect of improperly inflating the base year salaries.

Accordingly, I conclude that the Division properly calculated the base year salary[18] for the Unit.

As to the second calculation, there is some agreement between the parties. Both the STFA and the Division agree that there were approximately 1633 Troopers employed on June 30, 2012. The STFA and the Division also generally agree that the annualized salaries of these 1633 Troopers was between $152,400,522.30 (the Division calculation) and $152,593,536 (the STFA calculation). These two numbers differ by less than 1%. The 1633 Troopers were supposed to be placed on a scattergram in order to determine projected salary increases. Where the parties' positions diverge concerns whether salaries of employees other than the 1633 Troopers should be included in the calculation. The STFA vigorously maintains that in addition to the salaries of the 1633 Troopers on the Division payroll as of June 30, 2012, the annualized salaries of employees who did not work a full year, including retirees, should also be included in the calculation. Including the salaries of employees who were not on the payroll as of June 30, 2012 has the effect of increasing the base year salary by over $5,000,000 to $157,716,169. I find that the STFA's position does not comport with the Remand Decision which, as noted, is limited to "only unit members [on the payroll] on the last day before the new award, and determines whether the projected increases to those unit members' base salary items exceed the 2% cap." The STFA's calculations improperly include an additional 5 plus million dollars which cannot be included in the scattergram analysis. In addition, despite the clear direction of the

[18] This figure also includes maintenance and payments made to Troopers working as Acting Sergeants.

Commission, in making its calculation, the STFA did not progress the 82 Acting Sergeants through the contractual increments[19].

Having determined that the Division used the proper data for its scattergram analysis, I conclude that the Division's proposal is consistent with the requirements of the 2% Hard Cap. That is, the Division followed the directive of the Commission and compared projected increases with the Unit's total base salary.

The Division determined that, as of June 30, 2012, the 1633 Troopers on the payroll had a projected annual salary of $152,400,522.30. As a result of the application of the contractual step increases in FY2013, the projected salaries increased to $157,364,345.32. In FY 2014, the projected salaries increased to $161,589,764.70. In FY2015, the projected salaries increased to $164,728,923.72. In FY2016, the projected salaries increased to $167,108,959.94. In FY2016, as of September 5, 2015 or pay period 20, the Division halted all step movement for the Unit employees. As of July 1, 2016, the Division proposes to increase maintenance

[19] Q. [Kennedy]: You did not include the employees acting as Sergeants in the progressions?

A. [Zaynor]: We call it the green group, that's correct. They were on the Sergeants pay scale and whatever rate they are at, at the end of the Fiscal Year [sic], that's where they stayed, they were not projected forward on the Sergeants scale.

Q. [Kennedy]: They weren't projected forward on the Trooper scale either?

A. [Zaynor]: No. Whatever their pay rate was June 30, 2012 was what the amount was that was projected through. So if a member was range – N scale Step 9, they would stay at Step 9 for the entire progression. If they were Step 8, they would stay at Step 8.

(Tr. 6-14-16 at 118 -119).

modestly by 1.25% which would bring maintenance payments in line with payments made to other Division employees. As a result of this increase, in FY 2017, the Division projects the Unit's salaries to total $167,386,635.26. (Division EX. D-6R).

Under the Remand Decision, the sum of $152,400,522.30 (the base year projected salary) must be subtracted from the FY2017 projected salary of $167,386,635.26. This results in a difference of $14,986,112.96. In order to determine if the projected salary falls within the 2% Hard Cap, the difference (or $14,986,112.96) must be divided by the actual dollars spent in the base year ($146,344,799.76). This calculation equals 10.24%. As the Division argued, this 10.24% salary increase is within the parameters of the 2% Hard Cap.

The STFA's proposal, which projected salaries through December 31, 2017 - over a five-and-one-half year agreement – exceeds the 2% Hard Cap. In order to allow an award based upon the STFA's proposal the STFA would have to establish that its proposal would increase the costs to the Division by no more than 11.3%. However, the STFA's projected salary of $176,426,760 minus the STFA's calculation of $152,593,536 equals $23,833,224 and reveals that it's projected salary increase will be 15.6%. Even were I to accept the STFA's contention that it is appropriate to pro-rate projected salary increases and find, as the STFA contends is appropriate that projected growth as of December 31, 2017 would only increase salaries by $18,433,516[20], the STFA still seeks an increase that would be above the 2% Hard Cap The calculation is $18,433,516 ÷ $152,593,536 or 12%.

[20] This is because the STFA did not annualize but pro-rated its projected salary increases.

Because I find that the appropriate calculation is $23,883,224 ÷ $146,344,799.76[21], the STFA's proposal is actually 16.3% which is five percentage points greater than the amount of salary increase permitted under the 2% Hard Cap. Because the STFA's proposal does not fit within the 2% Hard Cap it is not necessary to reach the STFA's other contentions.

I am awarding the Division's proposal for a term of July 1, 2012 to June 30, 2017. This term of five years is consistent with the historic pattern in which all three units - the STFA, NCOA and the STSOA- negotiated their contracts at the same time. In addition, I am awarding an increase of 1.25% to maintenance payments alone effective the first full pay period after July 1, 2016. Maintenance will be increased to $13,819.64. This will also be consistent with the NCOA and STSOA units. This limited change in the maintenance calculation is all that is available as a wage increase because the CNA's provision for incremental increases subsumed any possible salary increase as of the 20th pay period in September 2015.

However, I am modifying my earlier award in which I froze increments as of pay period 21 in 2015. The STFA proposed that there be a nine-month delay in step movement, and that Troopers would move to the next step at the conclusion of the nine-month period. (Tr. 6-14-16 at 153-154 (Labruno)). As I noted above, this proposal cannot be accommodated under the 2% Hard Cap. However, I am amending my previous award to provide that all increments will be suspended from pay period 21 of 2015 through June 29, 2017. Troopers will unfortunately have a

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[21] This sum represents the actual expenditure.

delay in their step movement until June 29, 2017. After June 29, 2017, Troopers will be placed at the Step and Range they would have been eligible for as if there had been no suspension after pay period 20 in 2015. (There will be no retroactive pay as a result of this change). Troopers will then resume their normal progression on the Step and Range Chart pending the negotiation of a successor CNA. I make no finding regarding the legal requirements governing step movement or the state of the law as of June 30, 2017, the date the CNA will expire. The STFA has argued that the effect of my Initial Award, were it to be implemented, would be to permanently freeze all step movement indefinitely. While the STFA notes that it could possibly negotiate the resumption of step movement going forward, at the present time there is no clear "career path for compensation." (STFA brief at 45). This would be an unjust result. In addition, especially as a result of the Appellate Division's decision in *In the Matter of Atlantic County,* 445 N.J. Super. 1 (App. Div. 2016) *pet. for cert. pending,* which restored the concept of the dynamic status quo to collective negotiations, the freeze in step movement may persist well after this five year CNA expires. Accordingly, it would be unjust to permit such an indefinite freeze. In addition, because the suspension will end the day before the last day of the contract's expiration the cost to the Division if any will be *de minimis.* Any additional costs will not occur during the term of this CNA. The parties will be free to negotiate changes to the compensation package especially step movement at the conclusion of this agreement.

VI. TRANSPORTATION ALLOWANCE

The current expired CNA provides:

> All employees not provided transportation shall be compensated at the rate of twenty-seven (27) cents per mile for travel in their vehicle to and from their place of assignment and permanent place of residence in excess of twenty (20) highway miles each way. This mileage rate shall be adjusted on a cents per mile basis equal to adjustments made in paragraph 6 below.

(NCOA Ex. 2 Art. XIII (B) (5).

Concerning the issue of the transportation allowance, the Initial Award provided:

> Commencing with the Academy class of 2017, the transportation allowance provided for at Article X § B (7) of the CNA shall be eliminated except in situations where the Trooper is required to drive to an emergency muster point or to some assignment other than his or her regular assignment in excess of twenty miles from his or her permanent residence. In those cases, the Trooper will be entitled to the transportation allowance.

The above quoted language is contained in the NCOA CNA.

A. The Division's Proposal

The Division originally proposed eliminating this provision for Troopers entering the Academy on or after January 1, 2016. At present, all Troopers receive an allowance if they drive in excess of twenty miles to their place of work. The Division contends that employees should not be paid for commuting to work, and notes that the vast majority of State employees do not receive such an allowance. The Division characterizes the transportation allowance as excessive.

Under the CNA, Troopers receive 27 cents per mile for "travel in their personal vehicle to and from their place of assignment in excess of twenty (20) highway miles each way.” In FY 2015, this benefit resulted in a payout of $827,429.21. The Division maintains that, as a result of ongoing budgetary issues this benefit is excessive.

The Division rejects the STFA’s argument that the allowance is justified because Troopers are always on duty, and there is no reason why a Trooper who drives less that twenty miles to work is under any more or less of an obligation than a Trooper who drives in excess of twenty miles. The Division contends that this argument “relies on the rare scenario in which an officer responds to a law enforcement situation while driving to work in order to claim compensation for every commute.” (Division brief at 32). The Division asserts that its proposal reflects a broader State policy that employees should not be paid for commuting. At present, there are only two State bargaining units that receive this benefit. One is the New Jersey Law Enforcement Supervisors Association where the benefit was introduced into the parties CNA as a result of an interest arbitration award. The other unit is the New Jersey State Policeman’s Benevolent Association State Law Enforcement Unit. For that unit, the benefit was grandfathered in a manner consistent with the Division’s proposal in this case.

The Division also notes that my award in the NCOA proceeding in IA-2016-007 eliminated this benefit for classes entering the Academy after January 1, 2017. The Division contends that it would create difficulties if the Division was required to treat Troopers differently than Sergeants in administering this benefit.

Finally, the Division argues that N.J.S.A. 34:13a-16(g)(2) requires a comparison of benefits provided to “other employees performing the same or similar services" as bargaining unit members. Since the transportation allowance benefit has been eliminated for other bargaining unit members, sub-section g(2) supports my Initial Award.

B. The STFA's Position

The STFA vigorously opposes the elimination of the transportation allowance. The STFA takes the position that all Troopers are held to higher standards than other employees and are always on duty. The STFA notes that troopers in transit are bound to respond to any "public safety or criminal circumstance" that comes to their attention. (NCOA Exs. 38 & 39). The STFA also notes that Arbitrator Thomas Hartigan found that the Division violated Article XXVI.B of the STFA CNA when it eliminated toll free passage on toll roads for Troopers commuting to their assignments. (NCOA Ex. 51).

The STFA argues that the travel allowance is "an integral part of the economic program." (STFA brief at 38). It contends that since the Initial Award referred to a 2017 Academy class, the implementation of the award is impossible because state police classes are held at various times, and it is possible that no one will be hired in 2017. The STFA also argues that it is impossible to quantify the fiscal impact of this aspect of my award, because there is no way of quantifying the number of new hires, how far they will drive, and whether or not they will be using personal vehicles.

C. My Award

With a slight modification, I reiterate my award. I am eliminating the transportation allowance only for Troopers who enter the Academy after January 1, 2017[22]. If there is no Academy class in 2017, the award will not take effect until a new Academy class is admitted. The award maintains the transportation allowance for Troopers if they are required to drive to an emergency muster point, or to some assignment other than their regular assignments in excess of twenty miles from their permanent place of residence.

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

The first factor is the interest and welfare of the public §16(g)(1). Other than a slight reduction in the costs to the Division, this award has only a limited impact on the public interest.

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

[22] This apparently was not an issue in the NCOA proceeding.

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

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

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

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

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

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

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

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

VII. EDUCATION INCENTIVE

At present, Troopers who achieve a certain level of educational attainment are entitled to receive an annual education incentive payment. The CNA provides:

> In order to recognize the achievement of the employee's educational advancements the State shall provide an annual education incentive payment for employees who attain the following degrees:
>
> | | | |
> |---|---|---|
> | 60 credits or associates degree | = | $500 |
> | Bachelor's degree | = | $1000 |
> | Master's degree or above | = | $1500 |
>
> [Division Ex.-3, Article X(I), at 12].

The Division proposed the elimination of the education incentive for Troopers who have earned sixty (60) credits or an associate's degree.

My Initial Award granted the Division's proposal in part and provided:

> Commencing with the Academy class of 2017, the education incentive of five hundred dollars ($500) for employees who have sixty credits or an associate's degree provided for at Article X § I (1) shall be eliminated.

A. The Division's Position

The Division relies on the testimony of Director Dee, who characterized the benefit as an "outdated relic." In order to qualify for entry into the State Trooper Academy, a bachelor's degree is currently the "price of admission." (Tr. 11/30/15 at 107). At present, an applicant may gain admission to the Academy with an associate's degree if the applicant also has "at least twenty-four months of satisfactory employment or military service; or thirty college credits plus at least 24 months of active duty military service with honorable discharge." (Division Ex. 4).

The Division argues that the benefit paid to Troopers with associate's degrees cost the State $108,500 in FY 2015, and $109,000 in FY2016. The Division contends that the benefit is outdated and unnecessary. (Division brief at 35).

The Division notes that the only other State CNA that provides for an educational incentive is the CNA for the investigators employed by the Division of Criminal Justice. And those incentives are only given to investigators with bachelor's and master's degrees and not to those with associate's degrees.

Finally, the Division rejects the notion posited by the STFA that the elimination of the education incentive will have any bearing on promotions. The Division notes that while educational attainment results in "points" that could justify a promotion, whether a Trooper is paid for such attainment has no bearing on his or her promotion.

B. The STFA Position

The STFA opposes this proposal. The STFA characterizes the education incentive as a "non-date economic benefit" and asserts that it has no impact on base pay. The STFA reiterates the arguments it made in opposition to the elimination of the transportation allowance, and asserts that it is impossible to cost out the amount that elimination of this benefit would cost the Division, because it is unclear how many Troopers will be hired in 2017 and what their educational attainments will be.

The STFA also asserts that the elimination of the educational incentive will have a negative impact on a Troopers' career path. The STFA argues that

Troopers without an associate's degree prior to hire will have a reduced incentive to pursue such a degree because of the elimination of the benefit.

C. My Award

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

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

The first factor is the interest and welfare of the public §16(g)(1). Other than a slight reduction in the cost to the Division, this benefit has only a limited impact on the public interest. There is, of course, the important benefit to the state in having a well-trained educated police force. However, the Division has established that the vast majority of new hires enter service with at least a bachelor's degree.

I conclude that the elimination of this benefit will not negatively impact the public welfare.

The second factor is a comparison of this benefit in the public and private sectors §16(g)(2). As the Division has established there is little if any compensation for holders of Associate's degrees for employees of the State of New Jersey. There are is no evidence in the record concerning private sector employers and the provision of an incentive for an associates' degree. However, the Division has also established that within the State of New Jersey only one other bargaining unit has an education incentive[23], but that bargaining unit does not provide an incentive to employees with associate's degrees. Most importantly, the benefit has been eliminated for the NCOA unit. Therefore, this factor strongly supports the elimination of this benefit.

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

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

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

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[23] There may be other public sector bargaining units that provide this benefit for holders of Associate's degrees,

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

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

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

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

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

VIII. SUMMARY OF AWARD

A. WAGES

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

B. TERM

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

C. Transportation Allowance

For Troopers entering the Academy after January 1, 2017, the transportation allowance provided for at Article X § B (7) of the CNA shall be eliminated except in situations where the Trooper is required to drive to an emergency muster point or to some assignment other than his or her regular assignment in excess of twenty miles from his

or her permanent residence. In those cases, the Trooper will be entitled to the transportation allowance.

D. Education Incentive

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

E. Other Terms

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

XI. CERTIFICATION

I have given due weight to the statutory criteria set forth in *N.J.S.A.* 34:13A-16(g), and I conclude that the terms of this Remand Award represent a reasonable determination of the issues.

Dated: July 11, 2016
Brooklyn, New York

____
Ira Cure

State Of New York)
)
County of Kings)

On this 11th day of July, 2016 before me personally came and appeared Ira Cure to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me he executed the same.

____
Notary Public