

ATTACHMENT B



STATE OF CONNECTICUT JUDICIAL BRANCH

90 Washington Street
Hartford, CT 06106
Telephone: (860) 706-5280
Facsimile: (860) 706-5092

ADMINISTRATIVE SERVICES DIVISION

HUMAN RESOURCE MANAGEMENT

February 10, 2022

MEMO TO: Clerk, Connecticut State Senate
Clerk, Connecticut House of Representatives

FROM: Brian Hill, Director *BHill*

SUBJECT: Arbitration Award Filing

In accordance with Section 5-278 (b) of the Connecticut General Statutes, the Judicial Branch is filing with your offices, an Arbitration Award concerning the Judicial Branch and the Union of Professional Judicial Employees, for Fiscal Year 2022.

Attached are the Branch's and Division of Public Defender Services' estimates of the funds necessary to implement the award.

BH/vpm

Att.

Cc: Neil Ayers, Director, Office of Fiscal Analysis
Donald Chaffee, Office of Fiscal Analysis
Robert Wysock, Office of Fiscal Analysis
Phoenix Ronan, Office of Fiscal Analysis
Melissa McCaw, Secretary, Office of Policy and Management
Fae Brown-Brewton, Undersecretary of Labor Relations
Melissa Farley, Judicial Branch, Executive Director of External Affairs
Elizabeth K. Graham, Judicial Branch, Executive Director of Administrative Services
Joyce Santoro, Judicial Branch, Director of Financial Services
Lisa Hansen, Office of Probate Court Administrator
Diane Fitzpatrick, Division of Public Defender Services, Human Resources
Robert Moreau, President, Union of Professional Judicial Employees
Marshall Segar, Attorney, Union of Professional Judicial Employees

STATE OF CONNECTICUT
JUDICIAL BRANCH

In the Matter of the Interest Arbitration
by and between

STATE OF CONNECTICUT
JUDICIAL BRANCH

-and-

THE UNION OF PROFESSIONAL JUDICIAL
EMPLOYEES AFT/AFT-CT, AFL-CIO

RE: Wage Reopener 2021-2022

Before: Jeffrey M. Selchick, Esq.
Arbitrator

Appearances:

For the State of Connecticut Judicial Branch
Shipman & Goodwin, LLP
By Gabriel J. Jiran, Esq.

For the Union of Professional Judicial Employees
Marshall Law, LLC
By Marshall T. Segar, Esq.

DECISION

AND

AWARD

This case involves the impasse over the reopener negotiations between the State of Connecticut Judicial Branch ("the Branch") and the Union of Professional, Judicial Employees AFT/AFT-CT, AFL-CIO ("the Union"). The parties currently have a collective bargaining agreement in effect for the duration of July 1, 2016 through June 30, 2022. Pursuant to agreement between the parties, the undersigned was duly designated Arbitrator.

An evidentiary hearing was held in person on September 15 and 16, 2021 at the Judicial Branch offices in Glastonbury, Connecticut.

The parties were accorded a full and fair hearing including the opportunity to present evidence, examine witnesses, and make arguments in support of their respective positions. The parties filed post-hearing briefs, which were received on November 19, 2021 and reply briefs, which were received on December 6, 2021, at which time the record was declared closed. By mutual agreement, it was agreed that the Arbitrator's Decision and Award would be due no later than February 1, 2022.

BACKGROUND

The State of Connecticut Judicial Branch (the "State" or "Branch") and the Judicial Professional Employees Union (the "Union") are the parties in this proceeding. The Union is comprised of over 1300 members who occupy 80 different job classes and consists of three "bargaining units" ("BU"). (See Union Exhibit 2). The majority of the job classes in the Union are found in BU42. BU52 and BU58 comprise newly accreted job classes. (Id.). Union members provide both direct court services and support services, with approximately half of the bargaining unit members occupying what could be described as "hazardous duty" job classes. (Id.). A number of the Union's job classes also are public facing. (Id.).

The parties now have in place a Collective Bargaining Agreement (“Agreement”) for the period July 1, 2016 through June 30, 2022. (State Exhibit 1). Included in the Agreement is a wage reopener provision for 2021 to 2022, the final year of the Agreement. (Id.). The record shows that, in August 2021, the parties commenced negotiations for wages in this final year and, when the parties realized that their positions did not promise an agreement, the Union declared impasse, which eventually led to the Arbitrator’s appointment under Section 5-276a of the Connecticut General Statutes.

On September 15 and 16, 2021, the parties held full evidentiary hearings before the Arbitrator and, per their agreement, submitted their Last Best Offers (“LBOs”) to the Arbitrator on October 12, 2021. Thereafter, the parties agreed to submit initial briefs on November 19, 2021 and reply briefs on December 6, 2021. Such briefs have been timely filed by the parties. The parties also agreed that the Arbitrator’s Award would be due on or before February 1, 2022.

The parties’ presentations have been thorough and detailed and have enabled the Arbitrator to reach a full understanding of the issue to be decided. The Arbitrator has weighed all of the evidence and has considered the parties’ arguments as well as the statutory factors to reach the most reasonable determination on the issue in dispute at this Interest Arbitration.

**STATUTORY AUTHORITY AND
FACTORS FOR CONSIDERATION**

The Arbitrator's authority is derived from Connecticut General Statutes, Section 5-276a. The Arbitrator is required to decide each issue in dispute through an issue-by-issue last best offer procedure and directed to consider the factors set forth in Section 5-276a(e)(5). The specified factors are as follows:

- (1) the history of negotiations between the Parties including those leading to the instant proceeding;
- (2) the existing conditions of employment of similar groups of employees;
- (3) the wages, fringe benefits and working conditions prevailing in the labor market;
- (4) the overall compensation paid to the employees involved in the arbitration proceedings, including direct wages compensation, overtime and premium pay, vacations, holidays and other leave, insurance, pensions, medical and hospitalization benefits, food and apparel furnished, and all other benefits received by such employees;
- (5) the ability of the employer to pay;
- (6) changes in the cost of living;
- (7) the interest and welfare of the employees.

(Joint Exhibit 2)

Current contract language:

ARTICLE 17 (BU 42/52), ARTICLE 12 (BU 58), ¶(f)

Compensation

For contract year 2021-2022, increases in base annual salary effective July 1, 2021 shall be negotiated between the parties. Such negotiations shall commence no later than January 2, 2021. Such negotiations shall be limited to general wage increase only, unless the parties mutually agree to open discussions to include other sections of this agreement. Annual increments and top step lump sum payments will be paid in accordance with existing practice. (Joint Exhibit 1).

State's LBO

For current year 2021-2022, effective and retroactive to June 18, 2021, the base annual salary for bargaining unit employees shall be increased by two percent (2.0%).

Union's LBO

For contract year 2021-2022, effective July 1, 2021 (or the effective pay date for the period covering 7/1/2021, whichever is earlier) and paid with pay period covering 7/1/2021 the base annual salary for bargaining unit employees shall be increased by THREE (3) percent. Annual increments and top step lump sum payments will be paid in accordance with existing practice.

POSITION OF PARTIES

Position of the Union

As did the State, the Union tracks the statutory factors in setting forth its position. Concerning “history of negotiations,” the Union asserts that the only part of the parties’ past Agreements relevant to the instant dispute is the parties’ understandings concerning wages set forth in Article 17. Viewing the language of the Agreements, the Union notes that, for three of six years in the current Agreement, there was no general wage increase although in the third year there was a one-time cash payment. The Union observes that the parties’ Agreements for the years 2009-2012 called for general wage increases in 2010 and 2011 and that the parties’ Agreement for 2012-2015 saw a 3% wage increases in 2013 and 2014 as well as 2015.

Concerning existing conditions of employment of similar groups of employees, the Union observes that the Branch has relied only on “Branch-wide” data for non-union employees while the Union has introduced evidence concerning the Connecticut State Police and Judicial compensation. As to the State Police, the Union initially notes that “nearly half of the Union are ‘hazardous duty’ peace officers with powers of arrest” and “the State Police are State employees thus giving rise to arguable similarity” to the Union herein, “not to mention the only non-expired State employee CBA with a wage increase effective 7/1/2021.”

Both Agreements, the Union further observes, have the same expiration date of June 30, 2022 coupled with wage enhancements effective July 1, 2021. The 2.25% wage increase for the last year of the State Police contract, the Union observes, “was negotiated ... under what was a very different fiscal climate.” Economic factors when the State Police contract was negotiated, according to the Union, thus cannot be considered the same as “economic factors” of today. The Union focuses on its understanding that “current rates of inflation [are] climbing above 5.5%,” compared to “inflation rates at or about 1%” for 2020, which made the 2.25% general wage increase for the State Police reasonable. By the same token, the Union argues, given the current rate of inflation, its LBO of 3% is “very reasonable.” (Emphasis in original).

Turning to the report on judicial compensation, the Union notes that the Commission on Judicial Compensation recommended members of the Connecticut Judiciary receive a 4.5% pay increase in 2021, which was adopted by the General Assembly. The Commission’s report, the Union notes, was finalized in 2020 at a time when “economic predictions were bleak.” According to the Union, the predicated “downturn in the economy” did not occur and, instead, “there are record surpluses in the State coffers.” The Union opines that if the Branch can afford to pay raises for judges in “bad times, they can certainly afford the Union’s proposed 3% increase in good times.” (Emphasis in original).

As to non-unionized Branch employees, the Union observes that effective July 1, 2021, they received a 3.5% general wage increase and a \$2000 lump sum payment. It notes that the Chief Court Administrator offered praise to the non-unionized workforce for its efforts and dedication during the pandemic, which leads the Union to conclude that many Union “members were in court daily with public contact during the pandemic period.” The Union asserts that a 3% increase for its members “is proper and consistent with the economic trends.”

As to wages, fringe benefits, and working conditions that prevail in the labor market, the Union claims that the Branch offered no evidence that could remotely be described as relevant to this factor. The Union claims that, on the other hand, it provided expert testimony of Nicholas Rowe and his detailed report. The Union offers its summary of Mr. Rowe’s testimony and report:

- Probation Officers – the pay for these employees is “commensurate with the economic fundamentals of the State of Connecticut, its correction program, and the quality of its probation services program.”
- Information Technology Analysts – analyzing recent hiring practices “suggest that the general salary schedule is behind the market.”
- Mediators – a “cursory economic analysis suggests compensation for mediators is behind that of other states, conditional on their economic profile.”
- Lawyers – “pay for lawyers working as permanent and pool judicial law clerks is in line with their peer public sector lawyers in New York and slightly ahead of their peers in Massachusetts.” A consideration of private sector lawyers discloses that Branch “clerks are doing equally well/poorly in all three states [of comparison].” (Emphasis in original).

Regarding overall compensation paid to Union employees, the Union identifies the record evidence that addresses the details of compensation and fringes. In terms of “ability of the employer to pay,” the Union focuses on the testimony of Branch witness Graham, which it describes as containing the suggestion “that because of the wages for the sixth year of the CBA had not been appropriated, then no wage increase could be awarded or achieved.” The Union avers that Director Graham presented a misleading understanding of the process by which an increase in wages would be funded. If the Award is approved by the General Assembly, the Union asserts, then appropriation of funds is mandatory.

The Union claims that the State’s “fiscal health is great.” It identifies a September 15, 2021 report of the State Comptroller projecting a \$265.3 million dollar surplus for fiscal year 2022. The Union maintains that the “true test of fiscal health is how much the State has in savings” and the State’s “Rainy Day Fund” is projected, in the report, to “far exceed its statutory cap.” Further, the Union maintains that the Branch “has also netted rollover of unspent or ‘lapsed’ FY21 appropriations.” That is, according to the Union, the Comptroller reported in May 2021 that the Branch “had an unspent lapse of \$9.1 million.” Director Graham could not account for the Comptroller’s report, the Union claims, and the conclusion is in order that “as to FY22, Connecticut finds itself in good financial times.” The State therefore has the ability to fund the Union’s LBO, the Union contends.

Regarding changes in cost of living, the Union claims that members of the bargaining unit “saw on average a one and one and three-quarter percent (1.75%) wage increase annually for the years 2009-2020,” while, during the same period, “the Consumer Price Index (CPI) hovered around two and one-half (2.5) percent.” Further, the Union adds that, “[f]or the current year, and in particular the month of July, the CPI has skyrocketed to 5.4 percent.” The Union identifies the testimony of its Economic and Labor Market witness Rowe that “confirmed that at the time of the hearing on September 15th, the CPI was trending at around five percent.” The Union also asks the Arbitrator to take notice of economic trends arising after the hearing as follows: the CPI information set forth in the record excludes “volatile price categories such as food and energy”; the “current costs trends for weeks since the hearings, but also for the food and energy commodities is mercurial and increasing above 6.2 percent.” Thus, the Union posits, “all economic trends point upward and in particular the CPI which is a statutory factor.”

The Union turns to what it predicts will be the Branch’s argument that Branch’s LBO coupled with step increases in the final year of the Agreement “will equate or even surpass the current economic trends.” Such an argument is rejected by the Union on the ground that the wage increase must reflect economic trends during the same period as when the increase will be effective. In addition, the Union contends that “the all-items index rose 6.2 percent for the 12 months ending October, the largest 12-month increase since the period

ending November 1990.” The Union also asserts that the average pay increase in 2009 to 2020 was 1.5% and, during the same period, “the CPI trended in the neighborhood of 2.5%.”

As to interest and welfare of employees, the Union stresses that this “statutory factor is compelling and should not be discounted.” The Union turns to a job class survey, consisting of a member survey that sought to determine whether the members of the Union in their classes do “significantly more than what it enumerates on a job description.” What the survey underscores, the Union claims, is that its members “are performing more and increasingly complex tasks that require compensations level above their current pay rates.”

Position of the State

Regarding the statutory factor of history of negotiations, the State observes that there is not an extensive negotiation history connected to the reopener but adds that there are relevant facts that can be seen in the course of the current Collective Bargaining Agreement. Thus, the State points to the increases in compensation for the three years before the reopener year and the parties’ agreement that the annual increment and top step lump sum payments will apply to contract year 2021-2022. This latter observation is significant to the State because it pertains to the “aggregate effect of any additional wage increases that can be awarded as a result of this arbitration.” Thus, the State notes that employees eligible for the annual increment “experience an increase

commensurate with, or even greater, than the Union has proposed as to its last best offer before any general wage increase is applied.” (Emphasis in original).

The State also identifies other items negotiated during the duration of the current Agreement including on-call/standby pay to Juvenile Probation Officers and Juvenile Matters Supervisors that was agreed to on July 6, 2018, followed by an agreement a year later in 2019 to extend on-call/standby pay to other employees in the Court Support Services Division Information Technology Unit. Moreover, the parties agreed, the State observes, to compensate Adult Probation Officers and Chief Probation Officers with clients on GPS monitoring an additional \$75 for weekend work and extended the eligibility of these employees for compensation for time worked on holidays connected to the GPS monitoring of clients.

The State also observes that, on January 3, 2021, the parties agreed to increase the automobile availability fee by \$100 per year and also that that fee would increase with any future general wage increase. On September 3, 2021, the State notes, the parties agreed to provide additional compensation for Adult and Juvenile Probation Officers in the form of additional overtime for performing field work connected to community supervision. In the State’s estimation, the record thus shows that, “over the course of the collective bargaining agreement, the parties have negotiated various forms of increased compensation for bargaining unit members,” which should be considered along with the annual increments and top step payments.

As to existing conditions of employment of similar groups of employees, the State observes that there is a “diversity in classifications and functions” between and among bargaining unit members which makes a “direct comparison of employees in the bargaining unit to other similar groups ... difficult.” The State maintains, however, that because the only issue is the wage reopener it is useful to compare compensation paid to Union members with other State employees, including within the Branch itself. According to the State, the wage increases for the Union have been similar to increases negotiated by SEBAC for other bargaining units in the State. The State claims, therefore, that comparing Union members to other State employees regarding wages and benefits permits the conclusion that members of the Union have been treated the same as similar groups.

The SEBAC Agreement, the State notes, does not contain an agreement on wages for the current year but the State Police Union does have an agreement extending through 2022 under which the State Police received a general wage increase of 2.25% and an annual increment for the 2021-2022 fiscal year. This increase, the State contends, is “much closer” to its LBO than the Union’s LBO. Additionally, the State observes that the State Police’s total general wage increase from fiscal years 2018-2019 through 2021-2022 was 6.5% while, without even considering the wage reopener in this case, the Union has received a total general wage increase of 7.0% for the same period.

A “similar conclusion,” according to the State, is applicable based on the comparison of the Union with other employees and judges within the Branch. On this point, the State rejects any reliance on the Union that increases given to non-union employees and to judges for fiscal year 2021-2022 supports the Union’s LBO. As the State views it, “the reality is that both non-union employees and judges have lagged behind their Union colleagues historically with regard to wage increases.” The “overall wage history” of non-Union and Judicial personnel in the Branch, the State claims, supports the State’s LBO and not the Union’s LBO.

Regarding wages, fringe benefits, and work conditions prevailing in the labor market, the State again identifies the fact that the Union has “tracked” the same wages and benefits as other unionized State employees covered by SEBAC. “Given the breadth of the employees covered by the SEBAC agreements,” the State contends, “the terms of those agreements are a fair representation of the wages and fringe benefits prevailing in the labor market for State employees.” The State maintains that the Union members have thus experienced the same wage increases and benefits as the State labor market and there is no indication that “Union members require a market wage adjustment in order to equalize them with their peers.”

A consideration of the labor market outside of the SEBAC units, the State asserts, also shows that Union members are now being compensated appropriately. In fact, the State argues, the Union’s expert witness, Nicholas

Rowe, offered the conclusion that compensation for Probation Officers and attorneys working as permanent and pool judicial law clerks were consistent with the wider labor market. As to Information Technology Analysts, the State notes that the conclusions of Mr. Rowe cannot be accepted because he limited his analysis to reviewing six Information Technology hires in the period between September 1, 2020 and September 1, 2021 and, in doing so, incorrectly applied the salary steps in the Agreement. Moreover, the State argues, Mr. Rowe did not consider the experience or skills of the six employees cited. Mr. Rowe was also flawed in his analysis concerning Mediators, the State puts forth, given Mr. Rowe's own description of his analysis for this group of employees as "cursory" and his conclusion that he couched with the language "we cautiously suggest they may be underpaid."

What the record shows, the State claims, is that "the compensation of Union members is consistent with or better than the prevailing labor market before even considering a wage increase." The State stresses that the general wage increase that will emerge from this proceeding increases not only base compensation and overtime but also increases "extra compensation" received by Union members in the form of "vacation pay upon termination, sick leave pay upon retirement, holiday pay premiums, on call pay, standby pay, GPS monitoring pay, and automobile availability pay." These additional compensation items that will increase with the general wage increase, the State argues, underscore the merit of its LBO.

Turning to ability to pay, the State emphasizes that the Branch “is not the master of its own destiny when it comes to budgetary matters and is reliant on the appropriation afforded to it by the State.” The State notes that the Branch must submit a budget to the State after its budget is established and various “constraints apply regarding the expenditure of funds,” which include “constraints related to wage increases for employees.” According to the State, when the Branch has negotiated an increase through the collective bargaining process, the increases automatically build into the budget, but “in the absence of a defined anticipated increase in costs, the budget does not account for wage increases that might be negotiated after the budget is established.” The State asserts, therefore, that its budget now contains no provision for a general wage increase for Union members, and, when an increase is awarded, “the Branch will have to contact OPM and request an additional appropriation of fund from the General Assembly.” The State stresses that “neither OPM nor the General Assembly is obligated to approve the request and if it is denied, then the Branch will have to look at its personal services budget line item in order to determine how to cover the increase.”

It is also the State’s position that the State’s “financial health” in the current fiscal year is not relevant to the Branch’s ability to pay for the increase, because even if the State is projecting a surplus for fiscal year 2021-2022, the “Branch will not share in that surplus barring a special appropriation from the State.” Within the context of these constraints, the State puts forth, it sought to make a LBO

that is “fiscally responsible based on its current appropriation, yet still provides Union members with a wage increase.”

The State offers its calculation of the costs of a general wage increase under both LBOs in this proceeding. Its LBO, the State notes, produces a cost of \$2,692,823.08 whereas the Union’s LBO produces a cost of \$4,039,234.62. The Branch notes that the cost generated by its proposal shows that it is “committing to a significant increase in its payroll costs,” and, when combining the increase with the annual increment and top step lump sum payment, the cost increases to \$4,341,180.08. The Union’s proposal adds another \$1,346,411.54 to the cost factoring in increments and top step lump sum payments, the State notes.

As to the interest and welfare of employees, the State observes that “increasing wages is a benefit to the interests and welfare of Union members,” but adds that such a “benefit should not be considered in a vacuum, and the other statutory factors contribute to affect the interest and welfare of the employees.” The State argues that all comparisons between the Union members and other similar groups of employees establish that the Union has been treated fairly. It also maintains that there is no one statutory factor that should be “determinative in the analysis.” The State rejects any contention by the Union that employees have additional job responsibilities that would support the Union’s LBO. While it “does not minimize the importance or difficulty of its employees’ duties,” the State puts forth, “the evidence simply did not demonstrate a seismic change duties over the course of the collective bargaining agreement.” By

changing its initial offer of a 0% increase to a 2% wage increase, the State concludes, it has “recognized that the interests and welfare of its employees are furthered by a wage increase.”

Union’s Reply

According to the Union, the State seeks to conflate two features of the parties Agreement by claiming that annual increments are wage increases for employees who are eligible for step movement and that there is a lump sum payment of \$1,000 to compensate employees who are not eligible for step movement. The Union complains that the State offered no evidence to support such claims and it is not true that all employees will receive annual increments. In fact, the Union contends, the existence of a “top step” bonus reflects that some senior employees do not receive an annual increment, and for those who are at their top step, but for a salary increase, their will remain the same year after their salary year.

As to other forms of compensation, the Union asserts that the Branch has overemphasized the number of employees who receive such payments. As to “GPS/On Call,” the Union notes that “stipend is limited as payment must be authorized by managerial directive,” and “[c]ase or client caps also signify a finite number of employees [who] receive this payment.” Further, the Union observes that there is only a certain percentage of the bargaining unit that even qualifies for the stipend because it is limited to the job classes in the Adult and Juvenile

Probation series. As to "On Call" for juvenile, the Union responds that payment is limited "in scope and addresses the use of volunteers for this role" and "impacts only the Juvenile Probation series." Regarding IT "On Call/Standby," the Union observes that the Agreement is "specific to four employees." The "Auto Availability Fee," the Union observes, does not include all job classes. "Overtime Payments," the Union maintains, are also limited and "only encompasses the Adult and Juvenile Probation series and expires on 12/21/21." "Longevity Payments," according to the Union, have been eliminated for employees hired after July 1, 2011.

The Union opines "there is a huge difference between using the opposing party's exhibit or evidence in the furtherance of your case, then attempting to discredit the opposition's evidence in the absence of conflicting data." It accuses the Branch of engaged in this type of conduct because it did not complete or produce a labor market analysis and yet sought to discredit the finding of the Union's report. Nor, the Union adds, did the Branch complete or enter information on the work actually conducted by its employees but went on to question the Union's study. Additionally, the Union contends, the Branch produced no evidence relative to CPI. The Arbitrator is urged by the Union to "conclude that the Branch did not meet their burden of proof for failing to introduce evidence to support their claims."

The Union also adds that by submitting an LBO of 2%, the Branch has entirely discredited the suggestion in its brief concerning ability to pay and also has sought to create a misleading impression that if the General Assembly does not ratify an Award then there must be “belt-tightening” when, in fact, the matter is simply returned to arbitration.

The Union also notes that the parties agreed that Exhibit 22 would be the basis of cost projections but “it appears that the Branch has used a different basis number.” The Union claims that “the financial cost for the Branch is less than what were previously articulated” and that “the actual difference between 2 and 3 percent general wage increase is approximately \$1.35 million.” The State, the Union concludes, “clearly has the ability to pay.”

State’s Reply

The State addresses the cost-of-living arguments raised by the Union. It notes that in the past “two years” of the Agreement, wages increases were far in excess of the CPI, but argues that “[n]aturally, the Union focuses on the years when the parties agreed to no general wage increases when the CPI was a positive number.” Further, the State maintains that had it been the parties’ intent to follow the CPI annually, the wage history would look far different than it does, especially in the past two years. Even taking into account the first two years of the Agreement when employees did not receive wage increase, the fact remains, according to the State, that the “Union has not lagged behind the CPI.” When

compensation increases are also taken into account, according to the State, “the majority of employees have far exceeded the CPI in their wage increases over the course of the agreement,” to include “employees at the top step who did not receive lucrative annual increments.” In the State’s estimation, “employees are starting ahead of the cost of living before even getting to the present reopener.”

As to the time period of the reopener, the State claims that the CPI annual rate of 5.4% for July 2021 did not change from the same period ending in June 2021, meaning “that the CPI leveled off and did not increase at all from June to July 2021.” Moreover, the State claims the record shows that analysts have predicted that inflation has “peaked and will retreat within the next few months.” The State also notes that, over the years of the current Agreement, the CPI has averaged 1.64% each year, which the State claims, “may be a more reliable indicator of the cost of living instead of an unusual spike in inflation that is predicted to subside in the near future.”

On the question of wages and fringes prevailing in the labor market, the State notes that, as was expected, the Union has relied on the testimony of its expert witness, Nicholas Rowe. The State views Mr. Rowe’s testimony as supporting its arguments. According to the State, his testimony concerning probation officers and lawyers does not show that they are treated worse than similarly situated employees in those classifications. As to Information Technology Analysts, the State claims that Rowe made an error in his analysis of recent hiring practice because the Branch “did not hire any of the employees

reviewed by Mr. Rowe at advanced steps and hired them at the beginning steps of the schedule.” Accordingly, the State argues that the Union did not establish that the Information Technology Analysts were underpaid. Further, the State claims that Rowe did not establish based on any reliable evidence that Mediators are underpaid.

As to ability to pay, the Union is accused by the State of misconstruing the State Employee Relations Act. The statute is consistent, with Executive Director Graham’s testimony, the State claims, that “the appropriation of funds to implement the award is not automatic, and must be approved by the General Assembly.” As to lapsed funds, the State rejects the Union’s contention that the Branch’s \$9.1 millions of lapsed funds in fiscal year 2020-2021 is available for funding the Union’s LBO. A review of Public Act 21-2, the State contends, and its application to lapsed funds, leads to the conclusion that “only \$500,000 of the Branch’s \$9.1 million in lapsed funds were carried over, and this amount was designated specifically for using information technology consultants to complete system changes.”

Regarding interest and welfare of the employees, the State asserts that the Union job class survey simply was not representative of the duties of the bargaining unit and cannot be considered evidence of increased duties over the course of the parties’ Agreement. The Union’s reliance on a matter involving employee Burnham, based on a singular experience, the State argues, “is hardly reflective of the interests and welfare of the entire bargaining unit.” The Union’s

arguments connected to comments made by Chief Court Administrator Carroll in his testimony before the Legislative Appropriations Committee, the State contends, failed to recognize all of the topics he discussed.

DISCUSSION, ANALYSIS AND DECISION

As noted above, the Arbitrator has taken into account the entire record presented by the parties and has assessed that record in light of all statutory factors and the arguments raised by the parties in their briefs. The Arbitrator will not explicitly address all the statutory factors but will discuss those factors that have been the most influential in his analysis. When, as here, the issue under consideration is an economic one, then the State's ability to pay is always a central and paramount factor. Thus, the Arbitrator first will discuss ability to pay.

While one should not blink away the differences between the costs of the parties' LBOs, the fact remains that the parties are only one percent (1%) apart. Consistent with this somewhat small difference is the absence of any persuasive evidence in the record that the State would not be able to address and fund the Union's LBO if it is awarded. The Arbitrator is mindful of the State's position that at this time the Branch's budget contains no provision for a general wage increase for members of the Union, which in turn will require the Branch to contact the Office of Policy and Management and request an appropriation from the General Assembly. This process, however, is a regular one and was obviously anticipated by the parties when they negotiated a wage reopener for

the final year of the Agreement. The Arbitrator therefore does not find the process that the Branch will have to follow to be any evidence of any inability to pay.

The Arbitrator also observes that the State has afforded judicial personnel and non-Union employees in the Branch wage increases of 4.5% and 3.5% effective in 2021. These increases are indicators to the Arbitrator that the State is able to fund the Union's LBO. In addition, the Arbitrator notes that the State's fiscal health is sufficiently sound to fund the Union's LBO. For example, he notes a report of September 15, 2021 from the State Comptroller which projects a \$256.3 million dollar surplus for fiscal year 2022. (Union Exhibit 3). This report, it is also noted, reflects that the surplus projection is to some extent lower than the projection of the Office of Policy and Management. (Id.). Moreover, though the parties offer different interpretations of its significance, there is record evidence, again from the Comptroller's May 2021 report, that the Branch has an unspent lapse of \$9.1 million dollars. (Union Exhibit 4).

In sum, the Arbitrator finds, that the State has the ability to pay the Union's LBO. Needless to say, this finding does not necessarily resolve the issue under consideration. The Arbitrator must take into account all other statutory factors. Indeed, it is a well settled principle of interest arbitration that an employer's ability to pay, standing by itself, is never a sufficient condition to support an Award of economic benefits if a consideration of other statutory factors leads to a different conclusion.

The Arbitrator turns next to the history of negotiations between the parties. The parties' current Collective Bargaining Agreement runs from July 1, 2016 through June 30, 2022. (Branch Exhibit 3).¹ The parties' Agreement in Article 17 reflects wage increases as follows: 2016-2017 no increase and no top step lump sum payment or annual increment; 2017-2018 no increase in annual salary and no top step lump sum payment or annual increment; 2018-2019 no increase in base annual salary and no top step lump sum payment or annual increment; 2018, effective June 22, 2018 a onetime payment of \$2000 that was not added to the base salary of full-time members of the Union and a pro-rated amount for part-time members; 2019-2020 a 3.5% increase in base annual salary; 2020-2021 a 3.5% increase in base annual salary; 2021-2022 the wage reopener that forms the subject matter of this proceeding. Also noted is that, effective July 1, 2019, employees at the maximum step of the salary plan, who had ceased receiving annual increments, were eligible for a lump sum payment of \$1000 per year.

Prior to the parties' current Agreement, the parties 2009-2012 Agreement contained general wage increases of 2.5% in 2010 and 2011 with no increases in wages in 2009. (Branch Exhibit 1). For the period 2012-2015, salary increases were achieved through an agreement between the State and SEBAC. (Branch

¹ It is noted that the CBA between the Branch and the accreted classes runs from January 1, 2019 to June 30, 2022. (Branch Exhibit 6).

Exhibit 14, Attachment A). There were no wage increases in 2012, with 3% increases in 2013, 2014, and 2015.

The wage increases from 2009 to present, as the Union has noted, indicate that, over the 12-year period, wages for Union members increased 21%, or an annual average increase of 1.75%. The Arbitrator finds the negotiated wages over this 12-year period to be somewhat unremarkable in that they were within normal and customary range for that time period. Taking into account the Union's agreement to forego increases in 2016 to 2018, followed by two successive years at 3.5% increases, the Arbitrator finds that both parties' LBOs do not appear to be unreasonable or beyond the norm. The Arbitrator does note, however, that the Union has never received a wage increase of less than 3% since 2011 when increases were negotiated. (Id.).

The Arbitrator finds the history of negotiations regarding wage increases, coupled with the LBOs, to be relevant when wage increases achieved by the State Police, judicial personnel in the Branch, and non-Union employees of the Branch are considered. The statutory factor in which this analysis fits is the "existing conditions of employment of similar groups of employees." It cannot be gainsaid that judicial personnel and other non-Union employees in the Branch are sufficiently related in terms of "conditions of employment" with members of the Union. The Arbitrator also finds sufficient similarity between members of the Union and the State Police to consider the State Police as a similar group of employees. In support of this observation, the Arbitrator notes that a fair

understanding of job classes in the Union show that almost half are “hazardous duty” classes. (Union Exhibit 2, Branch Exhibit 25). Further, the Arbitrator observes that a number of bargaining unit members, as with the State Police, judicial personnel, and other non-Union employees of the Branch, were required to report to the workplace and interact with members of public during the pandemic.²

The State Police Agreement runs from 2018-2022 and has the same expiration date as the Union’s Agreement with the Branch. (Union Exhibit 16). The record shows wage increases for the State Police under its Agreement to be: 2018-2019 no general wage increase; 2019-2020 a 2% general wage increase; 2020-2021 a 2.25% wage increase; and another 2.25% general wage increase for the final year of the Agreement. (Id.). An obvious difference with the parties’ Agreement, of course, is that the 2021-2022 wage increase for the State Police was negotiated and the parties are involved in this proceeding because the last year of their Agreement had no negotiated increase but a wage reopener instead. The Arbitrator agrees with the Union that the last year of the State Police wage increase was negotiated at a time when there was essentially low inflation. (Union Exhibit 13). The record here, as set forth in the testimony of Union economic witness Rowe, shows that, at the time of his September 15,

² This observation, the Arbitrator adds, is also related to the statutory factor regarding “interest and welfare of the employees.” That is, it would be in the “interest and welfare” of members of the Union, the Arbitrator finds, to receive a wage increase that is akin to increases received by the State Police, judicial personnel, and other non-Union employees of the Branch.

2021 testimony, the CPI was trending at around 5%. The amount of the State Police 2021-2022 increase, negotiated at a time when the economic climate was different and inflation therefore less, and the rather high inflation rate as the parties enter the final year of their Agreement, lead the Arbitrator to find that a comparison with the State Police's wage increase favors the Union's LBO in this proceeding. The record, as noted, also shows the judicial personnel received a 4.5% wage increase for fiscal year 2022 (Union Exhibit 14) and other non-Union employees received a 3.5% increase in base salary July 1, 2021 as well as a \$2000 lump sum payment. (Branch Exhibit 16).³ The wage increases given to judicial personnel and other employees in the Branch, as with the State Police comparison, favor the Union's position in this proceeding.

The last statutory factor the Arbitrator finds to be appropriate for discussion is the factor that requires the Arbitrator to take into account overall compensation, including fringes. In this regard, the Arbitrator notes that the State has identified wage increases Union members will receive for the contract year at issue, even if there was no wage increase awarded, in the form of which benefits, such as On Call Pay, Standby Pay, Automobile Availability Pay, Holiday Pay Premiums, Sick Leave Paid Upon Retirement, and Vacation Leave paid upon retirement. The Arbitrator does not find that these so-called "extra" forms of

³ The analysis of the comparisons between the Union members and the State Police, judicial personnel, and other non-Union employees in the Branch have also taken into account, especially with the State Police, the statutory factor that requires the Arbitrator to consider "changes in the cost of living."

compensation detract from the Union's position in this proceeding. The parties knew that there would be at least some "extra" forms of compensation available to the Union members when they negotiated the wage reopener for the final year of the contract, and there is no indication that such forms of compensation present anything unusual or unexpected in the parties' Agreement that would be persuasive to the State's position, particularly in view of the wage increases, as noted above, received by similarly situated groups of employees.

CONCLUSION AND ARBITRATOR'S AWARD

The Union's Last Best Offer is awarded.

The resolution of the impasse herein has been accomplished through the selection and awarding of the more reasonable last best offer, as provided for by statute, Connecticut General Statutes Section 5-276a. The evidence and arguments have been carefully considered in light of the factors set forth in Section 5-276a(a)(5) in order to determine the last best offer awarded with respect to the issue presented.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

I, Jeffrey M. Selchick, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument, which is my Decision and Award.

Dated: January 27, 2022
Albany, New York


JEFFREY M. SELCHICK, ESQ.
ARBITRATOR

JUDICIAL BRANCH
FY 22 AFT COST

By Fund	BU 58	BU 52	BU 42	TOTAL
SID 10010 General	95,311.02	474,289.46	2,998,645.85	3,568,246.33
SID 35359 PTP			83,755.57	83,755.57
SID 12472 Banking			28,702.16	28,702.16
SID 29228 CFR Grant			-	-
SID 22985 OVS Grant			5,650.70	5,650.70
Probate Court		17,728.13		17,728.13
	95,311.02	492,017.59	3,116,754.28	3,704,082.89

