

certified as the exclusive bargaining representative (within the meaning of §1602(h) of the Act) of all Seaford Police Officers below the rank of Captain in September, 1996.

The City and FOP Lodge 9 were parties to a first collective bargaining agreement, which term extended July 1, 1997 through June 30, 2000. On May 16, 2000, the parties commenced collective bargaining over the terms of a successor to the collective bargaining agreement.²

On February 9, 2001, the City of Seaford informed the Public Employment Relations Board ("PERB") the parties were at impasse and requested the assistance of a PERB appointed mediator. Unable to bring the parties to settlement, the mediator, without objection from either party, referred the impasse to binding interest arbitration as provided for in §1615 of the POFERA.

A hearing was held before the PERB's Executive Director on October 11, 2001, at which time the parties presented testimony, documentary evidence and oral argument in support of their respective positions. The following discussion and decision result from the hearing record.

ISSUES AND POSITIONS OF THE PARTIES

The following issues are presented by the parties for resolution:

SALARY:

Seaford Police Officers are currently paid under a salary matrix which includes forty-one (41) steps and which covers the police ranks of Patrolman, Patrolman First Class, Corporal, Sergeant, and Lieutenant.

² By mutual agreement the parties extended the terms of the prior collective bargaining agreement until a successor agreement was finalized.

The steps in the matrix increase by 1.5% within each rank for Steps 2 through 20, and by 1% for Steps 21 through 41. The matrix design is identical to that used by the City for the pay scale of all other municipal employees. The FOP testified, without dispute, the step increase design has not been altered for at least twenty (20) years.

Police officers are advanced through the salary matrix based upon performance. An officer who receives an "Outstanding" evaluation advances two (2) steps, while an officer receiving a "Satisfactory" evaluation advances one step. Officers who are evaluated as "Unsatisfactory" do not receive a step increase.³ Currently step increases are effective annually on July 1, the first day of the fiscal year.

The City of Seaford proposes to maintain the existing salary matrix and to provide an annual, across-the-board increase in each of the four (4) years of a successor agreement, as follows:

- Year 1 (7/1/00 – 6/30/01): \$1,500 or 3% at each step (whichever is greater)
- Year 2 (7/1/01 – 6/30/02): 3%
- Year 3 (7/1/02 – 6/30/03): 3%
- Year 4 (7/1/03 – 6/30/04): 3%

The FOP proposes a three (3) year agreement which restructures the salary matrix by increasing the step increases to 2%, as follows:

- Year 1: Step 2 = 2%; Steps 3 – 20 = 1.5%; Steps 21 – 41 = 1%
- Year 2 Step 2 and 3 = 2%; Steps 4 – 20 = 1.5%; Steps 21 – 41 = 1%
- Year 3: Steps 2- 4 = 2%; Steps 5 – 20 = 1.5%; Steps 21 – 41 = 1%

³ Article 17.3, Seaford and FOP Lodge 9 1997 – 2000 collective bargaining agreement.

Additionally, the FOP proposes that step increases be granted on each officer's anniversary date, rather than on the first day of the fiscal year.

The FOP further proposes the salary matrix be generally increased, across-the-board, annually as follows:

Year 1 (7/1/00 - 6/30/01):	7 1/8 %
Year 2 (7/1/01 - 6/30/02):	3%
Year 3 (7/1/02 - 6/30/03):	3%

LONG-TERM DISABILITY BENEFIT:

Currently, the collective bargaining agreement provides no long-term disability coverage. Lodge 9 proposes to amend the existing pension plan by adding the following provision:

Whenever a member of the police department of the City shall have become disabled or incapacitated from injuries received while in the active performance of official duty or whenever a member of the police department, who has been credited with 9 Years of Service, shall have become permanently incapacitated from performing such regular active duty, he/she may be retired by the Police Chief from the regular active service and placed upon the retired list and shall receive a pension in the amount of one-half his/her salary at the time of his/her disability retirement.

Whenever a member of the police department shall become permanently disabled or incapacitated so as not to be able to be employed in any capacity, from a job-connected injury, he/she shall be entitled to receive from the pension herein established an amount equal to seventy-five (75%) of the amount of his/her salary at the time of his/her disability retirement.

The City is not opposed to providing a long-term disability benefit but proposes to do so in the form of a long-term disability insurance policy. The

City's proposal includes, inter alia, a 90-day waiting period; a monthly benefit of 60% of base pay not to exceed \$2,000.00; disability benefit payable to age 65; coordination of benefits; and a standard survivor benefit equal to three times the last monthly benefit paid to the employee.

RETIREE HEALTH CARE:

Currently, retirees who elect to purchase health insurance under the City's Group Plan receive a monthly check drawn on the Police Pension fund in the amount of \$250.00 to be applied toward the cost of health insurance under the City's group plan.

The Union proposes the following change to benefits for both current and future retirees:

The City shall pay the entire cost of the retirees' individual health insurance under the City's group plan. In addition to the City's payment, if the retiree elects to purchase family coverage for his/her family, the City shall disperse the amount of \$250.00 monthly from the Seaford Police Pension Plan to offset the additional cost of coverage. The retiree may elect to have the City pay the \$250.00 payment directly to the health insurance carrier.

The City's proposes to continue the current benefit except it agrees to make the \$250.00 monthly payment directly to the health insurance provider, rather than to the retiree.

SPECIAL-DUTY ASSIGNMENTS:

Currently the City receives 17% of the rate paid to police officers who perform special duty assignments (policing private affairs). The money the City receives is intended to compensate the City for expenses such as the use of police

cars, equipment, insurance and other employment costs (e.g., required employer contributions to FICA, Medicare and Workers' Compensation)

The FOP proposes the following change:

POLICE SPECIAL ASSIGNMENT DUTY POLICY

The F.O.P. and the City shall agree to establish a police special duty assignment policy as follows:

1. The F.O.P. will establish a fixed hourly rate of \$35.00 per hour for all special duty assignments. The hourly rate may be changed by the F.O.P. upon 30 days written notice to the City.
2. The City will receive 10% of the hourly pay rate, as compensation for use of City vehicles, equipment and the cost of insurance.
3. The City shall utilize off-duty police officers in lieu of on-duty or overtime police officers for special duty assignments whenever possible.

The City proposes no change to the current practice other than to increase the reimbursement to the City from 17% of the hourly rate (which the City maintains does not cover the cost of providing police cars, equipment and insurance) to 25%.

PHYSICAL FITNESS:

Currently, the collective bargaining agreement contains no provision concerning physical fitness. Lodge 9 proposes the following language:

The F.O.P. and the City shall agree to establish a police fitness program as follows:

POLICE FITNESS PROGRAM

1. All police officers will receive an annual physical examination by a qualified physician at City expense.
2. The City and the F.O.P. will establish fitness goals and objectives for police officers, to include cardiovascular fitness, flexibility and adoption of life-long good health habits. An annual physical evaluation will be conducted thereafter.

3. The City will provide adequate space at the Police Department Building for use by the F.O.P. members as a fitness room.
4. The City will pay to the F.O.P. the sum of \$3,000 on July 1, 2000, \$3,500 on July 1, 2001 and \$3,500 on July 1, 2002 towards purchase by the F.O.P. of fitness equipment to be placed in the Police Fitness Room.
5. Following the completion of 2 annual fitness evaluations, the City and the F.O.P. will meet to discuss the establishment of a fitness incentive program for police officers.

The City proposes the following language:

PHYSICAL FITNESS

1. The parties recognize the necessity for all employees to be physically fit. In an effort to assure such fitness is achieved, the City and the Union agree on a comprehensive medical and physical fitness program. As part of the annual physical, an employee shall take the following physical fitness test ("Physical Fitness Test"):
 - Exercise electrocardiogram evaluation
 - Percent body fat calibration
 - Grip Strength
 - Upper body endurance
 - Abdominal endurance
2. New hires shall take the Physical Fitness Test prior to graduation from the police academy, and thereafter on an annual basis.
3. Employees shall take the Physical Fitness Test on an annual basis.
4. After each employee who was in the bargaining unit as of June 30, 2000 has taken the fitness test twice, the City and the Union will confer and agree upon minimum standards and whether to impose progressive discipline in order to secure compliance with minimum standards.

GRIEVANCE PROCEDURE:

Currently, Article V of the collective bargaining agreement provides a three (3) step process for the resolution of grievances ending with a decision by the Mayor and Council, following a public hearing.

The FOP proposes:

. . . that a new Hearing (Step 4) be added to the current Collective Bargaining Agreement Article V grievance procedure. The Step 4 Hearing would be conducted by an impartial hearing officer selected by agreement of the parties and the decision of the hearing officer would be binding upon the parties. In the event that the parties cannot agree to an impartial hearing officer within 15 days of a request for a Step 4 Hearing, an impartial arbitrator shall be selected from the membership of the American Arbitration Association. Costs of the Step 4 Hearing would be borne equally by the parties.

The City proposes no change to the current language.

CONTRACT TERM:

The FOP proposes a three year agreement effective upon the expiration of the prior Agreement on June 30, 2000.

The City proposes a four year agreement retroactive to July 1, 2000.

DISCUSSION

The Police Officers and Firefighters' Employment Relations Act was modified in March, 2000, to include binding interest arbitration as the final step in the impasse resolution process. This is the first binding interest arbitration decision issued by the Delaware Public Employment Relations Board.

Under §1615 of the POFERA, the interest arbitrator is constrained to consider the last, best and final offers of each party in its entirety. In determining whether the City's offer or the FOP's offer should be accepted, this arbitrator must consider the criteria set forth in §1615, Binding Interest Arbitration, which provides, in relevant part:

(b) Pursuant to §4006(f) of Title 14, the Board shall appoint the Executive Director or his/her designee to act as binding interest arbitrator. Such delegation shall not limit a party's right to appeal to the Board.

(d) The binding interest arbitrator shall make written findings of facts and a decision for the resolution of the dispute; provided however, that the decision shall be limited to a determination of which of the parties last, best final offers shall be accepted in its entirety. In arriving at a determination the binding interest arbitrator shall specify the basis for the binding interest arbitrator's findings, taking into consideration, in addition to any of other relevant factors, the following:

- (1) The interests and welfare of the public.
- (2) Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the binding interest arbitration proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar services or requiring similar skills under similar working conditions in the same community and in comparable communities and with other employees generally in the same community and in comparable communities.
- (3) The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (4) Stipulation of the parties.
- (5) The lawful authority of the public employer.
- (6) The financial ability of the public employer, based on existing revenues, to meet the costs of any proposed settlements; provided that any enhancements to such financial ability derived from savings experienced by such public employer as the result of a strike shall not be considered by the binding interest arbitrator.
- (7) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation and binding

interest arbitration or otherwise between parties, in the public service or in private employment.

In making determinations, the binding interest arbitrator shall give due weight to each relevant factor. All of the above factors shall be presumed relevant. If any factor is found not to be relevant, the binding interest arbitrator shall detail in the binding interest arbitrator's findings the specific reason why the factor is not judged relevant in arriving at the binding interest arbitrator's determination. With exception of paragraph (6) of this subsection, no single factor in this subsection shall be dispositive.

In assessing the viability of the parties' offers, each proposal must be considered within the context of its underlying purpose or logic, and the issue or problem it seeks to address. It is the responsibility of the party making the proposal to clearly establish that purpose or issue and to justify the reasonableness of its proposal under the statutory criteria.

The arbitrator's final decision, however, must evaluate the overall reasonableness of the final offers and must do so within the framework of the ability of the public employer to meet the costs of those proposed settlements, based on existing revenues. 19 DeL.C. §1615(d).

I. Compensation and Comparables

Seaford bargaining unit officers currently receive, in addition to salary and wages, the following benefits, as set forth in the predecessor agreement:

- Health Insurance – the City pays 100% of the individual officer's benefit premium and 55% of the premium for dependent coverage. (Art. 14.2)
- Life Insurance – the City provides a basic term life insurance benefit equal to twice an officer's gross base wage, up to a maximum of \$100,000. (Art. 14.6)
- Liability Insurance – the City maintains professional liability insurance on all officers (Art. 14.6)

- Credit Union – officers have the option to become members of the Seaford Credit Union (Art. 14.9)
- Employee Contribution Plan – officers may choose to participate in the City’s deferred compensation plan (Art. 14.12)
- Educational Assistance – officers are eligible for City funded reimbursement of approved educational expenses. (Art. 14.13)
- Pension - Officers may retire at 25 years of service. The pension benefit is equal to 50% of the average of the retiree’s three highest years of salary and includes a monthly stipend of \$250 for purchasing health insurance through the City’s plan. (Art. 14.14)
- Clothing Allowance for Detectives - \$500 annually (Art. 14.15)
- Uniforms, Equipment and Shoes are provided to officers (Art. 14.16)
- Ten (10) paid holidays and one (1) personal day annually (Art. 7.1; 7.2)
- Accrued vacation leave ranging from ten to thirty (10 – 30) days annually (Art. 8.3)
- Up to ten (10) weeks of medical leave (Art. 9.3)
- Short term disability benefit for work related injuries (Art. 9.4)

Both parties identified and presented documentation on comparable police agencies. The City selected Rehoboth and Georgetown because they are located in Sussex County and have organized police forces. The City also evaluated Smyrna for comparative purposes. The City’s witness testified he believed these Delaware municipalities constituted appropriate comparables based on community and police force size.

The FOP provided data comparing Seaford’s salary and benefits to nine municipalities, including Rehoboth, Georgetown, Milford, Laurel, Selbyville, Bethany Beach, Smyrna, Ocean View, and Federalsburg, Md. Additionally the FOP provided population and calls for service information from calendar year 2000

for each of these municipalities. The FOP also included the Cities of Dover, Wilmington, and Newark, New Castle County, and the Delaware State Police for purposes of comparing the 25 year career salaries of Seaford police officers.

The FOP concluded the City of Milford is most similar in terms of community and police force size and composition. The City did not dispute this conclusion; however, the information available for purposes of comparison is limited and subject to change as Milford and its police officers are currently engaged in their first collective bargaining negotiations.

The comparison of salary and benefits is difficult because there is no easy way to compare the relative value of the benefit plans of different employers. Comparing individual components of plans does not take into account the totality of the plans or the needs and priorities of the parties which negotiated the specific plan. It is, therefore, somewhat deceiving, at best, to undertake a comparison process which isolates individual components.

Overall, based upon the totality of the benefits provided, the benefit package currently received by Seaford Police Officers is not unreasonable nor outside of the norm for other Delaware municipal police departments.

II. Relative Comparison of Parties' Last Best and Final Offers

Salary: The City estimated the FOP proposal would cost \$172,617 more than the City's proposal over the first three years of the agreement. This calculation is based on "gross wages", which includes an unidentified and unexplained "multiplier" (of approximately 11%) over the projected "base wage"

cost differential of \$140,612. The FOP estimates its proposal would cost \$79,351 more than the City's proposal.

The parties' cost calculations are markedly different. The City calculates costs based on the total police wages paid in FY 2000 (backing out non-bargaining unit salaries and wages) and then multiplying that number by a flat percentage (general increase plus 2% for FOP proposals and general increase plus 1.5% for City proposals). The FOP attempts to place each officer in the current matrix and then advance the officer through the proposed matrices for each year of the contract. Obviously both of these calculations assume the present work force continues through the life of the contract, and as such, constitute (in all likelihood) a maximum cost projection.

The City's calculations of FOP costs, by the admission of its witness, are inflated by at least .5% because the City calculated the cost based on continuing to award the step increase to all officers on July 1, rather than on the officers' employment anniversary dates as proposed by the FOP. The City also includes in its costing an approximate additional 19% cost for other employment related costs, whereas the FOP only bases its calculations on salary dollars.

Adjusting the FOP costs to include other employment costs, and the City's cost to reflect the FOP's variable step increase award throughout the year, the actual additional cost of the FOP proposal is most likely somewhere between the two estimates and closer to \$100,000. Neither the City nor the FOP made any cost comparisons for the City's proposed fourth year of the agreement, for obvious reasons.

At the salary rates effective on July 1, 1999, (the last year of the prior agreement), Seaford police salaries lag behind all other municipalities on which data was presented. The City's proposal does not place Seaford in the position of being a leading municipal employer in Sussex County. The City's salary proposal does, however, move Seaford salaries to a level comparable with other Sussex County municipalities and essentially meets the salary levels currently being paid in Milford.

The FOP's salary proposal does not differ significantly at the entry level and also does not serve to place Seaford at a significant competitive advantage relative to other municipal employers. The FOP's proposal does, however, provide greater dollar increases to the officers in upper steps of the matrix.

The FOP's proposal raises officers' salaries (including both general and step increases) by 9.3% in Year 1, and 5.1% in Years 2 and 3. The rate of increase under the City's proposal ranges from 5.0 to 7.6% in Year 1, and is 4.5% in both Years 2 and 3.

Considered within the context of the City's current economic environment, the City's proposal is determined to be more reasonable.

Long-Term Disability: The City's proposal includes specific limitations and terms and conditions of the benefit, and may be characterized as a "standard" long-term disability policy. It includes a 90-day waiting period for the benefit (which is covered by the City's existing short-term disability plan which provides 60% of base pay for 90 days); a monthly long-term benefit maximum of 60% of base pay, not to exceed \$2,000; a benefit payable only to age 65;

coordination of benefits with other subsidies received by the disabled officer; and a survivor benefit equal to three times the last monthly benefit paid to the disabled officer.

The FOP rejects the City's offer to provide long-term disability insurance at an estimated cost of \$6,000 annually. The FOP proposes to create a Long-Term Disability Pension, as an addition to the existing police pension plan. Its proposal places no limitations on the benefit in so far as a waiting period, maximum monthly benefit, age cap, or offsets by other benefits received. The FOP's Disability Pension would provide a benefit of 50% for any officer disabled from police work and 75% for any officer totally disabled, with no limitations or offsets for alternative income, social security or other benefits.

The FOP did not produce any documentation evidencing other Delaware police agencies which offered a Disability Pension of similar scale or comprehensiveness to that which it proposes. Although it named other police agencies which it alleges have Disability Pensions, its witness had no knowledge as to the terms and conditions of those plans. Further, the FOP also acknowledges there are police departments within Delaware who, like Seaford, do not currently have a long-term disability benefit.

The FOP estimates the cost of its proposed plan to be \$4,600 annually, \$1,400 below the estimated cost of the City's plan. Critically lacking, however, was substantiation by the FOP as to how this estimate was generated.

The FOP's plan would draw its funds directly from the Police Pension. The Police Pension is funded by a 3% contribution from officers' salaries and a State contribution which is customarily between \$40,000 and \$60,000 annually. The

Police Pension is analyzed annually by an actuary who then sets the rate for the City's contribution for the following year. The City anticipates its contribution level will be 5% in Fiscal Year ("FY") ⁴2001, 6% in FY 2002, and 6% in FY 2003, based on the current usage of this fund to cover only retiree pensions.

Although the parties acknowledge there has never been a disability claim by a police officer to date, the City is justifiably concerned the FOP's proposed Disability Pension Plan presents an uninsurable and unreasonable risk. In fact, because the FOP does not propose any change to the level of contribution by officers, and the State's contribution is not controlled by the City or the FOP, all of this risk would be borne by the City which would be responsible for making contributions sufficient to maintain the fund.

The City inquired into the possibility of joining the State's Police Pension Plan, but upon learning joining the plan would require the City to turn over the \$2.3M in the existing plan and an additional lump sum payment of close to \$1M, the City did not pursue this option further.

Based on the evidence and argument presented, the City's Long-Term Disability Insurance is the more reasonable response to the parties' concerns should an officer be disabled, and is consistent with general standards for protecting employees against such risk.

Retiree Health Care: The FOP has proposed that the health insurance premium supplement of current and future retirees be increased from the existing \$250 monthly benefit from the Police Pension fund. It proposes the City pay the

⁴ The City's fiscal year runs from July 1 through June 30.

entire monthly fee for individual health insurance coverage from its operating funds, and that the \$250/month pension money be available to retirees to offset the cost of increasing their coverage from individual to family or "plus spouse" coverage.

A "public employee" under the POFERA is defined as "any police officer or firefighter employed by a public employer..."⁵ Under the remaining provisions of the statute it is clear that only "employees" are eligible for inclusion in appropriate bargaining units. "Retirees" are not "employees"; consequently, there is no obligation by the City, nor right of the FOP, to bargain over benefits for current retirees.

It is undisputed that there are no police officers currently employed by the City of Seaford who will be eligible for retirement during the term of the collective bargaining agreement at issue here. There is therefore, no reasonable need nor benefit to the bargaining unit to create a retiree health benefit as proposed by the FOP.

Special Duty Assignments: There is no provision in the prior collective bargaining agreement addressing Special Duty Assignments. The parties do not dispute that the FOP established the current hourly rate of \$35/hour with a three-hour minimum which is charged to persons or organizations who wish to hire an off-duty officer to provide security at a function. It is also undisputed that the parties agreed to the current cost reimbursement rate of 17%, and that the purpose of the reimbursement was to cover the City's associated costs. Most of

⁵ 19 Del.C. §1302(l).

the special duty assignments involve athletic and social functions at the Seaford High School which is located in close proximity to the Police Department.

The parties do disagree on what constitutes "associated costs" and what the reasonable rate should be. The City provided documentation that 14.16% is required to cover the employer's portion of Social Security, Medicare and Workers' Compensation assessments. The City has not calculated a dollar or percentage cost associated with the use of equipment, insurance on the officers and equipment, or the administrative costs of billing and collection for special duty assignments. The City does estimate that it now requires 25% to cover all costs.

The FOP argues that the City is not assessed Workers' Compensation fees on the wages earned on special duty assignments. It also argues that there are no additional insurance premiums which are paid by the City for either officers or equipment used and that no additional employees were hired, nor are they required to work extra hours for the minimal amount of time required to bill, collect and process payment to officers for these assignments. Consequently, the FOP argues the City is actually making money on the extra duty assignments and the reimbursement rate should therefore be reduced to 10%

The record does not support the position of either party on this issue. It does appear that the current rate of 17% is closer to the actual costs incurred by the City. This is not, however, one of the options available for choice. Because neither proposal has been sufficiently documented as "reasonable" under the statutory criteria, this issue does not favor either party and is not, therefore, of

sufficient weight to affect the decision of which offer should be accepted in its entirety.

Physical Fitness: The public interest in having police officers maintain a level of physical fitness sufficient to meet their job requirements and to pass reasonable fitness tests is not disputed by the parties. The City and FOP proposals are similar in that each requires an annual physical examination and requires the officers to meet customary fitness standards. Both proposals require that the parties meet and discuss the results and subsequent actions following the completion of two annual tests.

The proposals differ, however, in the means by which officers would be required or encouraged to meet the fitness requirements. The City's proposal requires the parties to meet and confer after the second round of annual testing to "agree upon minimum standards and whether to impose progressive discipline in order to secure compliance with the minimum standards." The FOP proposes the parties would meet "to discuss the establishment of a fitness incentive program for police officers."

The FOP's proposal also requires the City to provide the FOP with \$10,000 over the three years of the agreement for the purpose of purchasing exercise and fitness equipment. The proposal does not include any specifics as to the type of equipment to be purchased, nor does it make clear to whom the equipment would belong after purchase. The selection and purchase of equipment is left to the exclusive control of the FOP under this proposal. There is nothing which ties the selection or purchase to specific goals or types of physical training.

Currently, there is an exercise room in the Police Department provided by the City and which is equipped with a treadmill and weights belonging to individual officers. The Seaford Police also have unlimited free access to the local hospital's health and fitness center. There is no allegation on the record that these facilities are unsatisfactory. Considering the officer's access to the existing fitness facilities at no cost to the officers, the FOP's proposal to have the City purchase \$10,000 of unspecified equipment constitutes an unjustified economic cost.

Otherwise, the parties' proposals are not significantly dissimilar insofar as collaboration on establishing a physical fitness-testing program. The City's proposal evidences its understanding that discipline is a mandatory subject of bargaining under the POFERA. Consequently, this issue does not rise to a level of importance in assessing the relative offers of the parties such as to affect the decision reached below.

Grievance Procedure: Under the prior agreement, the grievance procedure concludes with the third step hearing before and decision by the Mayor and Council. The FOP argues this process is inherently unfair and proposes that a fourth step be added to provide for binding arbitration before an impartial hearing officer either mutually selected by the parties or selected from a panel provided by the American Arbitration Association.

The FOP's perceived need for greater fairness in the process is unsupported by the record. It is undisputed that not only has the Step 3 process before the Mayor and Council not been tested, but there has not been a single grievance filed

since the inception of the parties' collective bargaining relationship in 1997. In fact, the FOP's Chief Spokesperson characterized the labor-management environment as good, a characterization which is supported by the grievance history.

Because there is no history to support the FOP's contention that the existing process is unfair or to support a finding that there is a problem with the existing grievance procedure, there is no factual basis supporting the FOP's proposal for modifying the process to include binding grievance arbitration.

Length of Contract: Neither the three-year term proposed by the FOP nor the four-year term proposed by the City is unreasonable on its face. The length of the contractual term does not rise to the relative level of importance of the primary unresolved issues and is, therefore, of insufficient weight to affect the decision reached below.

III. Financial Ability of the Public Employer

The City of Seaford had an annual budget of approximately \$17.5 million in FY 2001 and budgeted \$19 million in the current fiscal year, FY 2002, of which approximately \$6.2 million and \$5.2 million are General Fund Revenues (including transfers), respectively. General Fund Revenues in FY 2001 derived primarily from property taxes (19%), transfers from the electric, water, and sewer funds (37%), and intergovernmental transfers from the state and federal government (33%). The remaining 11% general fund revenues were generated

through fees, fines, interest and loan proceeds, and other miscellaneous income.⁶ General Fund Revenues constitute approximately 32% of the City's total annual revenue in FY 2001 and 27% of the budgeted revenues in FY 2002.⁷

The City expends approximately 32% of its General Fund revenues to support the police department, 15% for administration, 21% for highway and street expenses, 13% for economic development, and 9.5% on parks and recreation. The remaining 9.5% general fund revenues are expended for code enforcement, debt service, and pool, fire and executive costs.⁸

The City's current property tax rate is .45/\$100 of assessed property value. This rate was increased, effective July 1, 2000, from the former .39/\$100 of assessed value. The former rate was in effect since the early 1980's. The City supplements property tax revenue with income from the sale of municipal services, including electricity, water and sewer. Documents provided during the hearing evidence that the rates on electricity and sewer were raised within the last year. Testimony established the City benchmarks its customer rates for these services within 5% of its competitors in the market.

The City provided documentation from its FY 2001 Audit which reports revenues fell short of expenditures by \$365,152 in FY 2000. The FY 2001 year-end audited balance indicates a surplus of \$7,465. The audit reveals the City transferred monies in excess of net income generated by the sale of electricity, water and sewer in both FY 2000 (transfer of \$2,350,000 over net income) and in FY 2001 (transfer of \$2,300,000 over net income). The budgeted revenues for FY

⁶ Source: City Exhibit 12, p.3 of excerpt from the FY 2001 Audit Report from Pigg, Krahl, Stern Co.,P.A.

⁷ Source: City Exhibit 11

⁸ Source: City Exhibit 12, p. 4 of excerpt from the FY 2001 Audit Report from Pigg, Krahl, Stern Co.,P.A.

2002 indicate the City expects to again augment its revenues with \$2,595,302 transferred from the enterprise funds. While it may be argued that reserves are accumulated for funding future needs, it is axiomatic that where an economic pattern is established wherein there is a continuing need to use reserves, those reserves should not be used to fund on-going operating expenses. Once expended, reserves are no longer available for future opportunities or contingencies. The Mayor and Council members are elected by and have a fiduciary responsibility to the citizens of Seaford to exercise their best judgment in managing the City's financial resources. It is not the purpose of this process to supplant that judgment or responsibility.

The FOP presented evidence that the City has purchased numerous properties and has annexed land over the last few years. The City's contention that neither the purchases nor the annexations contributed significantly to the current property tax base or the general fund revenues was unrefuted. Whether these property purchases or annexations will provide a future economic benefit to the City is irrelevant to this decision, as the statute constrains the arbitrator's consideration to the employer's ability to afford the proposals based on existing revenues.

The City argues it is questionable whether it can fund its own proposal for salary increases and the addition of long-term disability insurance. It asserts the large additional costs of the FOP proposal, including funding a long-term disability pension benefit, providing the full cost of individual health care insurance for all police retirees, funding a physical fitness facility in the police department, and increasing salaries both by increasing the percentage of step

increases and by increasing the general increase by more than 4 1/8% in the first year, are not affordable in the City's current economic circumstances.

The record in this matter supports the City's conclusion.

DECISION

Based on the record created by the parties, the last, best and final offer of the City of Seaford is determined to be the more reasonable based on the statutory criteria set forth in 19 Del.C. §1615, each of which was considered in rendering this decision.

WHEREFORE, the parties are hereby ordered to implement the tentative agreements and proposals as set forth in the City's submission of June 15, 2001, and as clarified during the hearing. The parties must notify the Public Employment Relations Board of compliance with this order within thirty (30) days.

IT IS SO ORDERED.

Date: 18 December 2001

/s/ Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director/ Interest Arbitrator
Delaware Public Employment Relations Bd.