

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>FRATERNAL ORDER OF POLICE,</b>	)	
<b>LODGE NO. 10,</b>	)	
	)	
<b>&amp;</b>	)	<b>Decision of the</b>
	)	<b>BINDING INTEREST</b>
<b>STATE OF DELAWARE,</b>	)	<b><u>ARBITRATOR</u></b>
<b>DEPARTMENT OF CORRECTION</b>	)	<b>(BIA No. 07-02-552)</b>

**BACKGROUND**

The State of Delaware, Department of Correction (“State”) is a public employer within the meaning §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1986).

The Fraternal Order of Police, Lodge 10 (“FOP 10”) is an employee organization within the meaning of §1302(i) of the PERA. Lodge 10 was certified on March 26, 1986, DOL Case No. 165, as the exclusive bargaining representative of all “Probation and Parole Officers, Senior Probation and Parole Officers and Investigative Services Officers.” 19 Del.C. §1302(j).

The State and FOP 10 have a long-standing collective bargaining relationship. The most recent agreement expired in June, 2005. During the course of the ongoing negotiations for a successor Agreement, the parties participated in mediation but did not reach agreement.

On February 4, 2007, FOP 10 informed the Public Employment Relations Board (“PERB”) that the parties were at impasse in their collective bargaining negotiations for a successor Agreement and requested that the matter be moved to binding interest arbitration. The State did not object to FOP’s request and the parties forwarded their last, best and final offers to the PERB.

The binding interest arbitration hearing was held before the Executive Director on May 16 and 30, 2007, at which time the parties presented testimony and documentary evidence in support of their respective positions. Closing argument was provided in the form of opening and responsive post-hearing briefs, the last of which was received on July 30, 2007, at which time the record closed. The following discussion and decision result from the record thus created.

**LAST, BEST AND FINAL OFFERS OF THE PARTIES**

**FOP:** (Submitted May 9, 2007)

**Clothing Allowance:**

12.11.2 In each year of the contract, the State agrees to provide\ Each employee a \$200.00 **\$500.00** clothing allowance from which employees may purchase clothing from an approved list and pay each employee a \$150.00 **\$500.00** clothing maintenance allowance in the first paycheck issued in September. Employees may, upon notice to the State, opt to use the full \$350.00 **\$1000.00** annual allotment to purchase clothing from the approved list.

**Service Weapon Proficiency Days:** (New Contract Provision)

The State of Delaware, Department of Correction and OMB/ Personnel, hereby establish the following Recognition Program pursuant to Rule 5.5.3.5 of the Merit Rules of the State of Delaware. Employees who successfully qualify with their service Weapon shall receive three (3) Service Weapon Proficiency days annually which employees may use for vacation and/or personal

days. Service Weapon Proficiency days may be carried over to the following year if an employee is denied leave to use a Service Weapon Proficiency day due to operational need

**Longevity:** (New Contract Provision)

Each Unit Employee who has been employed by the State for at least five (5) years as of July 1, shall receive additional compensation to be known as Service Award in an amount equal to two (2%) percent of the Unit Employee's monthly Base Salary multiplied by the Unit Employee's years of service. For example, a Unit Employee with five (5) years of service would receive ten (10%) percent based upon five years of service times 2%, and a Unit Employee with ten (10) years of service would receive twenty (20%) percent based upon ten years of service times 2%.

This provision shall become effective, retroactive to July 1, 2005, only upon the Lodge obtaining a non-appeal[able] declaratory judgment that implementation does not constitute a matter determined by Chapter 13 of Title 29 or any other law of the State of Delaware to be within the exclusive prerogative of the public employer. Should the Lodge file a Declaratory Judgment Complaint seeking such a determination, the State agrees to participate in resolution on the merits thereof. This provision shall be rendered null and void if prior to any such determination legislation is enacted amending Chapter 59 of Title 29 of the Delaware Code, including without limitation Section 5916(c) allowing this employer organization to negotiate wages and salaries outside of any State Uniform Pay Plan.<sup>1</sup>

**Position Class:** (Counter to State's Proposal)

**Request for Voluntary Position Class Change.** Any Employee assigned to one class (Level III and IV) or the other class (Level I, II and administrative assignments), wishing to change class, will provide written notification thereof to the Lodge President. The Lodge President will then provide written notification to \_\_\_\_\_ that an employee in the employee's class wishes to change class at his/her assigned office. The State may then notify by e-mail those in the requested class in the office and ascertain if any Employee in that class wishes to trade. If one or more employees in the office indicate a desire to switch, the State, based upon comparable bargaining unit seniority, shall be allowed to switch two Employees. If no employee in the office indicates a

---

<sup>1</sup> Page 9 of the FOP's opening brief provides, in pertinent part, that the proposal on "Longevity" would be rendered null and void if "legislation was enacted amending Chapter 59 of Title 29 of the Delaware Code to include, without limitation, Section 5916(a) allowing FOP 10 to negotiate wages and salaries outside of any State Uniform Pay Plan. Such legislation has been enacted in the form of Senate Bill 36. Therefore, FOP 10's Longevity proposal is void and withdrawn. For this reason, FOP 10's Longevity proposal was not considered in deciding this matter.

willingness to switch classes, the State may then solicit Employees in the requested class in the county in which the request for voluntary change in classes occurs, although the requesting employee may withdraw his/her request if it involves working at another office.

Absence of Vacancies. When there are not any vacancies in an office, and there is an imbalance in the case load assignments between one class at Level III and IV and the other class at Level I, II and administrative assignments, the State may submit a written request to the Lodge to adjust by increasing or decreasing the number of positions at one class and correspondingly the other. If the Lodge agrees, therewith, the State may adjust the number of Employees at each class with any change in assignments treated as involuntary transfers pursuant to 9.5.(2).

**Retroactivity:**

The term of the contract shall be for a two (2) year period commencing June 19, 2005 through June 18, 2007.

**STATE:** (Submitted May 9, 2007)

**Clothing Allowance:**

12.11.1 The State agrees to provide each employee in the first year of the contract or first year of employment the following:

- 4 pants
- 5 polo shirts
- 2 dress shirts
- 1 winter coat

12.11.2 In each succeeding year of the contract, the State agrees to provide each employee a (1) ~~\$200~~ **\$250.00** clothing allowance with which employees may purchase clothing from an approved list, and pay each employee a ~~\$150~~ (2) clothing maintenance allowance in the first paycheck issued in September, as set forth below and excepted as noted otherwise. Employees may, upon notice to the State, opt in any year to use (3) the full ~~\$350~~ annual allotment to purchase clothing from the approved list.

<b>(2) <u>Paycheck Issued</u></b>	<b>(3) <u>Full Allotment</u></b>
<b>January 1, 2007: (retroactive payment)</b>	<b>\$550</b>
<b>\$300</b>	
<b>September 1, 2007: \$350</b>	<b>\$600</b>
<b>September 1, 2008: \$400</b>	<b>\$650</b>
<b>September 1, 2009: \$450</b>	<b>\$700</b>

**Position Class:**

Article 9 **VACANCIES**

**9.1** TRANSFER, as used in this Article shall mean any ~~movement between position classes as defined in 9.2~~ **change in duties**, or any change of work location of more than 5 miles and/or movement in or out of the Wilmington city limits.

~~9.2 POSITION CLASS, as used in this Article shall mean either Level III and IV assignments as one class; or Level I, II and administrative assignments, e.g., Central Office, Pre Trial, Pre Sentence and Work Programs, as a second class.~~

**9.3**

**No employees in the bargaining unit on the effective date of this Agreement shall have the duties of the Position class they held under the prior collective bargaining agreement involuntarily changed.**

**9.4 Voluntary movement between positions is permissible upon mutual agreement between Management and employee. Management approval is based on operational need and a satisfactory review of the employee's work. Any employee that agrees to a voluntary movement between positions must stay in the position for a minimum of 6 months unless they transfer through a posting or promotion.**

**9.5 If the State wishes to create an assignment where no vacancy exists, it may do so by posting for volunteers among current employees.**

9.6 When the State determines that a vacancy is to be filled, the following procedures shall be used:

- (1) Voluntary Transfer – the State shall, prior to going to a certification list, post all vacancies in the bargaining unit for 10 days on the bulletin boards and send a copy to the Lodge President.
- (2) Involuntary Transfer – the filling of a vacancy by means of an involuntary transfer shall be done on the basis of inverse order of seniority among employees, **within the Manager's chain of command and County**, having the appropriate ability and fitness.

~~9.11 Any other section of the Article notwithstanding, the State may make temporary transfers, and reassignments between position classes, for a period not to exceed 6 months, with the following exception:~~

**9.12** All positions that are posted shall contain the following information: the specific unit, position functions (level or duties), the level **rank** of Officer title, days and hours, and location of duty assignment.<sup>2</sup>

---

<sup>2</sup> All other provisions of Article 9 remain unchanged.

**Retroactivity:**

The term of the contract shall be for a three (3) period commencing January 1, 2007 through December 31, 2009.

**PRINCIPAL POSITIONS OF THE PARTIES**

**Clothing Allowance:**

FOP 10 argues that the revised Dress Code unilaterally implemented by the State in 2005 was significantly more specific and strict than its predecessor. The State's clothing allowance proposal bears no relationship to the costs for an officer to maintain three (3) different types of work-related attire. Although the Dress Code requires an officer to wear Department issued clothing when carrying a firearm, there is no requirement that an officer cannot otherwise wear appropriate apparel which he/she has purchased independently at a store of their choosing. The Department does not provide compensatory time off for the officer to purchase clothing.

FOP 10 characterizes as "superficial" the State's contention that no other merit employees receive a clothing allowance comparable to that proposed by FOP 10 and its reliance on the Alcohol and Beverage Control Officers as a comparable unit.

FOP 10 maintains that the State's other comparables are equally flawed, specifically those comparisons to AFSCME Locals 879, 1443 and 10936. While the State characterizes the current annual clothing allowance as \$150 and the OSHA footwear allowance as \$100, it fails to note that in the same contract section almost all maintenance personnel receive sets of clothing and footwear that would cost \$1,250 to \$1,500 for comparable articles from the Probation and Parole clothing and footwear list.

The clothing allowance for ATU Local 842, also cited by the City, has a combined dollar value greater than that offered by the State to FOP, Local 10. The \$250 clothing allowance for DNREC employees also cited by the State is outdated in that it was provided for in an older contract covering 2000 to 2003.contract.

The State presented no empirical data concerning the number of various types of clothing the Rhode Island Probation and Parole Officers (cited by the State as comparable positions) are required to maintain and failed to disclose that the latter are not considered law enforcement officers, are not required to maintain firearm proficiency or to testify in court.

FOP 10 relied on current figures from police units in Dover, New Castle County, Wilmington and the State Police who, like the Probation and Parole Officers, are law enforcement officers.

In rebutting the arguments put forth by FOP 10, the State argues: 1) the introduction of the 2005 Dress Code essentially provided definitions of “casual business attire” and “professional business attire” without introducing different clothing requirements; 2) bargaining unit employees are not required to purchase clothing from the approved list but may purchase required items elsewhere at potentially a lesser cost; 3) the clothing worn by Probation and Parole Officers does not qualify as a uniform similar to those worn by police officers which have a work-related purpose, may not be worn during off-duty hours and must be dry-cleaned; 4) a departmental insignia on certain items of clothing does not convert the clothing worn by the Probation and Parole Officers into a uniform comparable to uniforms worn by police officers; 5) unlike the State’s comparators, which consist exclusively of either state merit employees

performing law enforcement work or non-state employees working as Probation and Parole Officers, the FOP relies on comparators which are entirely non-merit uniformed police officers. Clearly, the State' comparators are the more reliable and, therefore, the more relevant.

**Service Weapon Proficiency Days:**

The State argues that by application of 29 Del.C. § 5938 (c) and §5933, the State is precluded from bargaining over the FOP's proposal on Annual Leave for Service Weapon Proficiency because it is an unlawful proposal. The State argues that the unlawfulness of the proposal implicates at least two of the seven criteria which must be considered by the Arbitrator, The first statutory criterion is 'interests and welfare of the public,' and the second is the "lawful authority of the public employer."

29 Del. C. §5938, Collective Bargaining, provides, in pertinent part: "(c) The rules adopted or amended by the Board under the following sections shall apply to any employee in the classified service represented by an exclusive bargaining representative or covered by a collective bargaining agreement under Chapter 13 of Title 19: . . . ,§5933 . . . ."

29 Del.C. §5933, Leaves, provides, in pertinent part: "(a) The rules shall provide. for annual, sick and special leaves of absence, with pay or at reduced pay."

In support of its position that bargaining over additional leave beyond that provided by the State is illegal, the State cites the case of *Laborers' International Union of North America, Local 1029 v. State of Delaware, Department of Health and Social Services*, 310 A. 2d 664, *aff'd* 314 A. 2d 919 ((*Del. Supreme* 1974) involving the

bargaining status of a Union proposal during contract negotiation seeking Union leave for the purpose of conducting internal Union business.

The Court of Chancery of Delaware concluded:

. . . [Merit] Rule 6.0560 precludes collective bargaining on this Union proposal. Rule 6.0560 is adopted under Section 5933 since it is the only statute authorizing rules relating to leave with pay. Its language regarding “other similar job-related activities” would seem broad enough to include the Union’s leave proposal. **Bargaining for leave in addition to that set forth in the Rule is therefore barred by Section 1538 (c).** *LIUNA 1029 v. DHSS @ 668.* Emphasis added

The Union counters that rather than *Laborers’ International Union*, the decision in *Delaware Nurses Association v. State of Delaware, Department of Health and Social Services*, [1984 WL 484508 (Del. Super.)] is controlling in this matter.

The State rejects the FOP’s reliance on *Delaware Nurses Ass’n*, which, unlike the *Laborer’s* decision which involved a question of leave, decided a question concerning the unrelated issue of whether fringe benefits are outside the scope of bargaining because they are part of the uniform pay plan in 29 Del.C. §5916.

The FOP further argues that its proposal for three (3) additional leave days constitutes “recognition” of employees who pass the required weapon’s proficiency test.

As such, the proposal is valid under Merit Rule 5.5.3.5, which provides:

5.5.3 Employees may be excused from work with pay, at agency discretion, for the following reasons:

5.5.3.5. As part of a recognition program approved

by the Director, not to exceed 7.5 hours (37.5 hour weekly schedule) or 8 hours (40 hour weekly schedule) per award. Such leave must be used within 1 year of being awarded and is not subject to cash payments.

The State rejects this position for the reasons that the additional leave sought by the FOP does not qualify as “recognition” since it applies to all employees who qualify to carry a weapon, rather than to those who qualify with an exemplary score. The State also points out that approval of additional time off as a form of “recognition” rests exclusively with the Director of the Office of Management and Budget and is limited to one (1) day annually.

The State likewise rejects the FOP’s position that, pursuant to the severability provision included in both parties’ last, best final offer, if the binding interest arbitrator finds a proposal illegal he/she has the authority to sever that proposal from the proposing party’s last, best final offer.

**Longevity:**

In its opening argument submitted on July 17, 2007, FOP 10 withdrew its proposal concerning longevity pay for the reason that the proposal was conditioned upon it being determined that the proposal did not violate any provision of 19 Del.C. Chapter 13 or any other law of the state of Delaware and that if prior to such determination legislation was enacted amending 29 Del.C. Chapter 59, including, without limitation, Section 5916(c) permitting the negotiation of wages and salaries outside any State Uniform Pay Plan. Such legislation was passed in the form of Senate Bill 36 thereby voiding the FOP’s longevity proposal.

The State points out that the conditioning of FOP 10's longevity proposal upon two (2) contingencies contained in its last, best final offer occurred at the "last minute." At no time did the FOP 10 offer any justification as to why this particular group of merit employees, as opposed to any other group of merit employees, should receive longevity pay. This proposal was aggressively pursued by FOP 10 without the contingencies throughout the negotiations and just as aggressively resisted by the State. The State considers the passage of Senate Bill 36 irrelevant.

**Position Class:**

The State argues that, pursuant to the Delaware Sentencing Accountability Commission ("SENTAC"), offenders are assigned to one (1) of four (4) Levels of supervision by the Probation and Parole Officers. Article 9.2 of the collective bargaining agreement, establishes two (2) position classes. One (1) position class is responsible for supervising Level I and Level II offenders or hold an administrative position. The other position class supervises Level III and Level IV offenders. Offenders who move to a level of supervision beyond the position class of their supervising Officer are currently reassigned to a different Officer.

The State's last, best final offer is intended to provide improved continuity and effectiveness in supervising offenders who change to a different level of supervision, a goal unquestionably in the public interest. By making movement between levels voluntary the FOP's proposal places responsibility for staffing adjustment in the hands of the officers rather than within the authority of the Department to address legitimate staffing needs.

FOP 10 argues that its proposal permits officers to request a voluntary position change between Class Positions even when vacancies do not exist. Further, where there exists an imbalance between offenders assigned to levels II and III the State would have the ability to make the desired staffing adjustments. The FOP also contends that the minimum requirements for supervising Level II and Level III offenders could not be satisfied under the State's last, best and final offer.

**Retroactivity:**

The State blames FOP 10 for the delay in the commencement of the negotiations from September 6, 2004, when the FOP initially requested to open the negotiations, until early 2006. The first negotiation session scheduled for February 22, 2005, was cancelled by FOP 10 which initiated no further communication with the State concerning negotiations until December, 2005. The State contends that choosing the FOP's last, best final offer would subject the State to an financial penalty for the delay caused by FOP 10.

The State further argues that choosing the FOP's last, best final offer would result in a collective bargaining agreement which has already expired, a circumstance clearly not within the interest and welfare of the public.

Another reason cited by the State for not selecting the FOP's last, best final offer is the FOP's unilaterally ending negotiations after only four (4) bargaining sessions. The illogical justification for the FOP's decision was its dissatisfaction with what it perceived to be the unsatisfactory progress of the prior negotiations.

Not surprisingly, FOP 10 blames the State for the delay in commencing negotiations. In December, 2005, the FOP attempted on two (2) occasions to arrange for

a bargaining session in January, 2006. Only after three (3) months passed did the State schedule its first internal meeting on March 20, 2006. Thereafter, the parties conferred on March 24, 2006, and scheduled the first negotiating session for May 10, 2006. The meeting was held and a second negotiating session was scheduled for June 14, 2006. By that session FOP 10 had submitted all of its proposals. After the third session held on July 10, 2006, the State had yet to submit a proposal or any written counter proposals to the proposals submitted by FOP 10.

The State attempted to schedule a bargaining session for August 9, 2006, but did not inform FOP 10 until August 8, 2006, thereby providing less than twenty-four (24) hours notice. For this reason, the meeting was not held. The meeting was rescheduled for September 11, 2006, at which time the State again failed to present any formal proposals. Written counter proposals from the State were first presented at the meeting on June 14, 2006.

On September 19, 2006, FOP 10 requested that the PERB appoint a mediator. Little, if any substantive movement occurred during three (3) mediation sessions. The State submitted its last, best final offer on February 14, 2007, in which, for the first time, the State presented any counter proposals.

### **DISCUSSION**

Section 1315(d) of the PERA requires the binding interest arbitrator to consider the following factors, where applicable, in reaching his/her decision:

- 1) The interests and welfare of the public.
- 2) Comparison of 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 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 cost of any proposed settlements; provided that any enhancement to such financial ability derived from savings experienced by such public employer as a result of a strike shall not be considered by the binding interest arbitrator.<sup>3</sup>

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

The Binding Interest Arbitrator must select one of the parties' last, best and final offers, in its entirety.

**Clothing Allowance:**

The clothing worn by the employees in the FOP 10 bargaining unit: 1) need not be purchased from the Department (except in the case of limited items required when a

---

<sup>3</sup> The financial ability of the state to fund FOP 10's last, best and final offer was not considered in this decision in that the State does not claim inability to pay.

weapon is carried; 2) may be purchased at a variety of department or clothing stores for varying prices; 3) do not require dry cleaning; and 4) may, in most cases, be worn during off-duty hours.

A clothing allowance provision first appeared in the 2002-2005 collective bargaining agreement. The gross clothing allowance at the end of that Agreement was \$350. By the end of the term of the successor Agreement on December 31, 2009 (State's proposal), the gross clothing allowance would be \$700, an increase of 100%.

Except for its Police Department comparators, FOP Lodge 10 has provided no reliable evidence justifying an increase in the growth clothing allowance from \$350 to \$1000 (approximately 300%) during the two year term of the contract it proposes.

The comparators relied upon by FOP 10 are: Delaware State Police; New Castle County Police; Wilmington Police and the Dover Police. The statute requires that the comparators relied upon by the parties include, "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 comparable communities." The FOP's comparators do not satisfy this requirement.

The State's comparators include other law enforcement officers employed by the State and out-of-state Probation and Parole Offices who are not required to wear uniforms in the sense that Police are required to do so.

**Service Weapon Proficiency Days:**

The legality of the FOP 10's proposal for three (3) Service Weapon Proficiency days is a non-issue. Whether the *Laborers* decision or the *Nurses* decision is controlling

as to the question of whether FOP 10's proposal is an illegal subject of bargaining, as the State claims, need not be resolved in this proceeding.

The FOP's proposal does not qualify as a "recognition program" for a noteworthy accomplishment. There is nothing noteworthy or exemplary about a Probation and Parole Officer qualifying to carry a weapon. Doing so is a routine job requirement necessary for an Officer to carry a weapon. Under FOP 10's proposal, every employee who qualifies, even those who qualify with the minimum passing score of 80%, would be "recognized."

More importantly, the number of days off requested in the FOP's last, best final offer exceeds the one (1) day per year which can be authorized by the Director pursuant to Merit Rule 5.5.3.5, upon which FOP 10 relies as the authority for its proposal.

For these reasons, even if FOP 10's Service Weapon Proficiency Days proposal was determined to be legal subject of bargaining, it exceeds the statutory limits placed upon a recognition program.

**Longevity:**

FOP 10's proposal creating longevity pay was conditioned upon its being determined not to violate any provision of 19 Del.C. Chapter 13 or any other law of the State of Delaware and that if prior to such determination legislation was enacted amending 29 Del.C. Chapter 59, including, without limitation, Section 5916(c) permitting the negotiation of wages and salaries outside any State Uniform Pay Plan. Such legislation was, in fact, passed in the form of Senate Bill 36 thereby voiding the FOP's longevity proposal.

The State's position that the passage of Senate Bill 36 is irrelevant is unpersuasive. Even if the interest arbitration award adopts FOP 10's last, best final offer,

the establishment of longevity pay pursuant to FOP 10's proposal is negated by the literal language of the proposal, itself.

**Staffing:**

The proposal of each party reflects the uncompromising positions evident throughout the limited scope of these negotiations.

The State presented no historical evidence of a need to assign officers from one class to another based upon the distribution of parolees to the various treatment and monitoring levels. Its concern is prospective only. The State provided no evidence establishing that it has utilized its option to use temporary six-month assignment authorized by the prior collective bargaining agreement.

Further, based upon the various statutes, policies, and procedures cited by the FOP, the State failed to demonstrate that an individual Officer could accomplish the job requirements inherent in supervising various levels of parolees at the same time. That consideration, however, constitutes a performance issue to be addressed by management.

FOP 10's proposal limits the assignment of officers to the various levels to a voluntary basis. In the absence of volunteers, the assignments could not be made. Thus, under the FOP's proposal the officers would control their assignments regardless of the legitimacy of the underlying need.

The State's position directing the assignment of Officers on the distribution of parolees to the various treatment and monitoring levels cannot be considered either arbitrary or capricious and serves the public interest.

**Retroactivity:**

As yet unresolved is the issue of retroactivity. Neither party can escape responsibility for the failed state of the negotiations. Delay, the failure or inability to make meaningful proposals and counter-proposals, an unwillingness or inability to seek reasonable compromise abound on both side. Rewarding either party through their respective retroactivity proposals does a disservice to the concept of good-faith bargaining and the purpose of the statute.

However, to impose a contract term for a period commencing prior to the start of bargaining and ending before the issuance of this binding arbitration award would serve no useful purpose. To immediately return these parties to the bargaining table would force them into the same position they occupied throughout the course of these negotiations. The prior conduct of these parties does not support the conclusion that they are either prepared or willing to engage in meaningful negotiations. For this reason the State's proposed term of January 7, 2007 through December 31, 2009, must be considered the more reasonable proposal.

A foreseeable result of this decision will be satisfaction and vindication for one party and a sense of rejection and disappointment for the other. Successful negotiations result in a sense of equity and accomplishment for both parties. Unfortunately, here, there will be only sense of a "winner" and a "loser," which is the inevitable outcome when binding interest arbitration is substituted for meaningful collective bargaining.

All of the statutory criteria were considered to the extent they applied to the individual proposals. Factors (1), )2), (3), (5) and (7) were the most relevant. Factor four, "Stipulation of the parties" was considered to the extent that there was only one stipulation, i.e., that inability to pay (factor seven) was not argued by the State.

**DECISION**

Based on the record created by the parties, the last, best and final offer of the State is determined to be the more reasonable based on the statutory criteria set forth in 19 Del.C. §13159(d).

Wherefore, the parties are directed to implement the tentative agreements and proposals set forth in the State's last, best and final offer and as set forth, herein. The parties are to notify the Public Employment Relations Board of compliance with this Order within thirty (30) days of the date below.

**IT IS SO ORDERED.**

Date: December 11, 2007



---

Charles D. Long, Jr.  
Executive Director,  
Delaware PERB