

IN THE COURT OF CHANCERY OF THE STATE
IN AND FOR NEW CASTLE COUNTY

DEPARTMENT OF CORRECTIONS,)
STATE OF DELAWARE,)
Respondent below,)
Appellant,)

v.)

DELAWARE CORRECTIONAL)
OFFICERS ASSOCIATION,)
Charging Party Below,)
Appellee.)

C.A. No. 19115

On appeal from Decision of the
Public Employment Relations
Board, U.L.P. No. 00-07-286

ORDER OF REMAND

THIS 1st DAY OF APRIL, 2002, on consideration of the appellate briefs of Appellant State of Delaware, Department of Correction (State) and Appellee Delaware Correctional Officers Association (DCOA), and review of the record of the proceedings below before the Public Employment Relations Board (Board), it appears to the Court that:

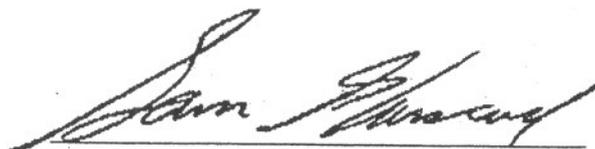
1. The argument below, and the decision of the Board below, focused on the State's contention that a 1998 decision of the Third Circuit interpreting the federal Freedom of Information Act constituted an intervening change in the law, which, according to the State, justified departure from the parties' 1996 Memorandum of Understanding.

2. On appeal, the State raises different arguments not fairly presented below, but, in my view, for the reasons stated on the record on March 26, 2002, deciding the issue on the merits is more appropriate than a finding of waiver. However, the Court does not wish to decide for the first time on appeal the new arguments raised by the State, as the Court wishes to benefit from the Board's expertise relating to agreements and unfair labor practices. Therefore, the Court remands the State's new arguments, for the Board to consider whether compliance with the Memorandum of Understanding is unlawful under this state's common law of privacy.

3. The unfair labor practice was initially filed on July 25, 2000. Particularly in light of reported efforts to decertify DCOA as exclusive representatives, the Board is hereby requested to expedite its consideration of this matter on remand.

This matter is hereby remanded to the Board for expedited additional proceedings. Jurisdiction is retained by this Court.

IT IS SO ORDERED.



Master in Chancery

oc: Register in Chancery
xc: Sherry V. Hoffman, Deputy Attorney General
David A. Boswell, Esquire