



The State agrees to the adoption of an Association check-off system, whereby Association dues and fair share fees established by the Association will be withheld from the Association member's pay, at a source in equal amounts from each pay, either weekly, bi-weekly, or otherwise, as the frequency of the pay periods may require. Such withholdings for Association dues are to be transmitted to the duly elected Treasurer of the Association for the previous month's earnings, not later than the 20th day of each month. The Association will notify the employee 30 days prior to any change in such dues.

House Bill 465, amended the Definitions section of the PERA, §1302, by adding the following terms:

(k) 'Fair share fee' means a fee that a nonmember shall be required to pay to his or her exclusive representative to offset his or her pro-rata share of the exclusive representative's expenditures. Such fee shall be equal in amount to regular membership dues that a member of the exclusive representative's affiliated organizations, provided that the exclusive representative establishes and maintains a procedure by which any nonmember fee payer may obtain a rebate.

(n) 'Nonmember' means an employee who is not a member of the exclusive representative, but whom the exclusive representative is required to represent pursuant to this Chapter.

In addition to amending Section 1302, House Bill 465 added a new Section, 19 Del.C., Section 1319, which provides, in relevant part:

(a) Where the provisions of a collective bargaining agreement so provide, a public employer shall deduct a fair share fee from each nonmember's salary or wages and promptly transmit this amount to the exclusive representative.

On January 3, 2003, Hoffman requested and received from DOC a copy of House Bill 465. On that same day Mr. Hoffman informed DOC that he disagreed with DOC's position that HB 465 entitled DOC to deduct monies from his paycheck without the written authorization required by Section 1304(c) of the Act which provides:

Upon the written the authorization of any employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues or service fee as certified by the secretary of the exclusive bargaining representative and shall deliver the same to the treasurer of the exclusive bargaining representative.

Notwithstanding Hoffman's objection, DOC remained steadfast in its position that the automatic deduction which was the subject of the December 30, 2002, memorandum would take effect as indicated therein.

On January 10, 2003, Hoffman filed a Declaratory Statement Petition with the Public Employment Relations Board requesting a determination of whether DOC violated §1304(c), of the Public Employment Relations Act by deducting a fair share fee from his paycheck without his prior written authorization.

### **ISSUE**

The parties stipulate the issue as:

Whether a signed authorization from an employee is required before the State can withhold fair share fees from the employee's paycheck and remit them to the exclusive bargaining representative pursuant to the Public Employment Relations Act?

### **PRINCIPAL POSITIONS OF THE PARTIES**

Hoffman: Hoffman argues that DOC has no right to deduct a fair share fee from an employee's paychecks without the employee's prior written authorization as required by 19 Del.C. Section 1304(c).

COAD: COAD argues that House Bill 465 amended Section 1302 of Title 19 by adding provisions that authorize a fair share deduction from paychecks of DOC employees.

COAD also argues that prior to House Bill 465 in cases where a collective bargaining agreement required the payment of a fair share fee as a condition of employment, a cumbersome procedure was required to effectuate the termination of an employee who refused to pay the designated fair share fee.

DOC: DOC argues that Section 5.1, of the collective bargaining agreement in concert with the amended Section 1302 and Section 1319, authorize the State to deduct a fair share fee from an employee's paycheck without requiring a prior written authorization.

Section 5.1 of the Addendum to the Interim Agreement January 14, 2003, provides:

All employees, upon completion of the probationary period, who do not become, or any permanent employees who do not remain Association members, shall as a condition of employment, during such period of non-membership, pay to the Association a fair share fee no greater than the dues uniformly required of its members per the DCOA Constitution.

Even if the language of House Bill 465 is considered ambiguous, the legislative history establishes that the intent of the legislation was to amend 19 Del.C. Chapter 13 to be consistent with the Public School Employment Relations Act, 14 Del.C. Chapter 40, specifically Section 4019 which, DOC claims, authorizes the deduction of fair share fees without the prior written authorization of the affected employee. Section 4019, Fair Share Fees, provides, in relevant part:

(a) If the provisions of a collective bargaining agreement so provide, each nonmember of a bargaining unit shall be required to pay the exclusive bargaining representative a fair share fee.

(b) To implement fair share fee agreements in accordance with subsection (a), the exclusive representative shall provide the public school employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that the nonmember is obligated to pay and a reasonable and lawful schedule for deducting said amount from the salary or wages of such nonmember. The public school employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

DOC further argues that principles of statutory construction require that where provisions of a statute conflict, the most recent provision is controlling. In this matter, Section 1319 is the later enacted provision.

### **OPINION**

This dispute centers upon the relationship between 19 Del.C. §1304(c) and 19 Del.C. §1319(a). Section 1304(c) was included in the PERA which was passed by the legislature and signed into law by the Governor in 1994. Section 1319, in its entirety, was amended into the law in July, 2002.

When interpreting statutory language, the initial step is to determine whether the language in question is clear and unambiguous. Hudson Farms, Inc. v. McGrellis, Del. Supr. 620 A. 2d 215 (1993). Language is ambiguous only when it is “reasonably susceptible to different conclusions or interpretations.” State v. Cooper, Del Supr. 575 A.2d 1074, 1076 (1990).

“It is axiomatic that where statutory language is clear and unambiguous on its face, it should be interpreted so as to fulfill the clear intent.” Christina Paraprofessional Association, DSEA/NEA et al. v. Colonial School District, Bd. of Ed. Del. PERB, D.S. Nos. 95-08-152 and 95-08-153, III Del.PERB 1499, 1506 (1996).

Where no ambiguity exists it is necessary “to ascertain and give effect to the intent of the legislature . . . . If there is no reasonable doubt as to the meaning of the words used, the statute is unambiguous and the Court’s role is limited to an application of the literal [or plain] meaning of the words . . . . In performing this analysis, the words in the statute [or rule] are given their common, ordinary meaning.” (citations omitted). McGrellis, supra, at 217. In this matter the language of both 19 Del.C. §1304(c) and 19 Del.C. 1319 is clear and unambiguous and the parties do not argue otherwise.

Whenever possible, a statute must be interpreted to give effect to all of the statutory provisions and to produce the most consistent and harmonious result. Nationwide Insurance Company v. Graham, Del. Supr., 451 A.2d 832, 834 (1982). Consequently, a court will not normally apply rules of statutory construction to amend or override one statutory provision with another. The court will choose between statutory provisions only if there is an “irreconcilable conflict between the statutes, in which case the later [enacted provision] supersedes the earlier [enacted] provision. Green v. County Council of Sussex County, Del. Ch., 415 A.2d 481, 484 (1980); aff’d, Del.Supr., 447 A.2d 1179 (1982). See also Department of Labor v. Minner, Del.Supr., 448 A.2d 227 (1982).

The application of statutory language should not result in an absurd or illogical result but should reflect and be consistent with the intent of the legislature. State of Delaware v. Cooper, Del.Supr., 575 A.2d 1074 (1990). See also Seaford Bd. of Ed. of the Seaford School District v. Seaford Ed. Assn., Del. Ch., C.A. 9491, Allen, Chancellor, (1988), I Del.PRB 243 (1988).

In Christina Education Association v. Delaware State Board of Education and Christina School District, 1994 WL 637000 (Del.Super.), the Delaware Superior Court cited the Synopsis of proposed legislation as a valid source to assist in the determination of the legislative intent. In this matter the Synopsis of House Bill 465 provides, in relevant part: “This Act provides public employers which have bargained fair share fees with an exclusive representative with the

authority to deduct such fees from salaries.” (Joint Hearing Exhibit 2). The language of the Synopsis is clear and unambiguous and does not condition the automatic deduction of a fair share fee upon the prior written authorization by the affected employees.

The intent of the legislature in adopting §1913 is readily discernable not only from the Synopsis of House Bill 465 but also the undisputed testimony of Michael Begatto, the Executive Director of AFSCME, District Council 81. Mr. Begatto testified that he initiated the effort to enact §1319 and testified before the appropriate legislative committees concerning the intended purpose of House Bill 465.

Mr. Begatto testified that prior to the enactment of §1319, the procedure for enforcing a contractual provision for requiring the payment of a fair share fee share fee as a condition of employment was cumbersome. This resulted from the employer’s inability to deduct the fair share fee without the prior written authorization from the employees. Mr. Begatto testified that the purpose of §1319(a) was to authorize the employer to deduct the fair share fee without requiring prior written authorization.

There is no conditional language appearing in either §1319(a) or in the Synopsis of House Bill 465 requiring that before a fair share fee is deducted the affected employees must first execute a written authorization for the deduction. To conclude otherwise would require the court to establish a condition not present in §1304(c) and in so doing modify the legislative intent, as testified to by Mr. Begatto.

Because §1304(c) or §1319(a) cannot be applied or enforced without effectively nullifying the unconditional application and impact of the other, the two sections present an irreconcilable conflict. Having determined that §1304(c) and §1319(c) conflict, §1319(a), the more recently enacted provision, prevails and takes precedence over §1304(c) insofar as it relates to the deduction of fair share fees.

**DECISION**

Based upon the foregoing discussion, the clear language of 19 Del.C. §1319(a) takes precedence over 19 Del.C. §1304(c). Only in this manner can the established intent of the legislature be fulfilled.

Dated: July 28, 2003

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