

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>FRATERNAL ORDER OF POLICE,</b>	)	
<b>PROBATION &amp; PAROLE, LODGE 10,</b>	)	
	)	
Charging Party	)	
	)	
	)	
v.	)	
	)	<b><u>ULP NO. 05-07-489</u></b>
	)	
<b>STATE OF DELAWARE, DEPARTMENT</b>	)	
<b>OF CORRECTION,</b>	)	
	)	
Respondent.	)	

**ORDER OF DISMISSAL**

1. The Delaware Department of Corrections, Bureau of Community Corrections, (“DOC”) is a public employer within the meaning of the Public Employment Relations Act, 19 Del. C. Section 1302(p).

2. Fraternal Order of Police, Probation and Parole, Lodge 10 (“FOP Lodge 10”) is an employee organization within the meaning of 16 Del. C. Section 1302(i), of the Police Officers’ and Firefighters’ Employment Relations Act, and the exclusive bargaining representative within the meaning of 19 Del.C. Section 1602(j), of Delaware Department of Corrections, Bureau of Community Correction employees, as defined by DOL Case 165.

3. On July 28, 2005, FOP Lodge 10 filed an Unfair Labor Practice Charge, alleging DOC violated 19 Del. C. Section 1307 (a)(5) and (a)(6).<sup>1</sup>

4. On or about August 18, 2005, DOC filed its Answer to the Unfair Labor Practice Charge and New Matter, denying all material allegations of the Charge, and requesting the Public Employment Relations Board (“PERB”) defer the dispute to the parties’ contractual arbitration procedures.

5. On or about August 18, 2005, the parties entered into a Joint Stipulation Requesting PERB deferral of Matter to Arbitration, which provided:

- 1) The parties are covered by a collective bargaining agreement containing a grievance procedure that culminates in final and binding arbitration.
- 2) The collective bargaining agreement – which has been in place for a number of years – specifically covers the dispute outlined in the Charge filed by the Lodge, i.e, whether the State violated provisions of Article 12.11.3 (Health and Safety Issues) and Article 18.1 and 18.2 (Management Rights) by promulgating a change to the dress code. The collective bargaining agreement is the product of a long-standing and well-established collective bargaining relationship.
- 3) The parties’ collective bargaining agreement provides for arbitration of a broad range of disputes.
- 4) The arbitration clause clearly encompasses the dispute at issue in this case, and the matter in dispute requires the interpretation of the contractual language in Articles 12.11.3, 18.1 and 18.2.
- 5) The State is willing to resolve this dispute through arbitration.
- 6) The dispute is well-suited to resolution through the arbitration process.

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<sup>1</sup> It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive bargaining representative of employees in an appropriate unit, except with respect to a discretionary subject.
- (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

- 7) The State has not attempted to preclude Lodge members from exercising their statutory rights under 19 Del.C. §1303, nor has such an allegation been made in this, or any other, proceeding.
- 8) Deferral to arbitration under these circumstances is the appropriate course of action.

6. As a result of an arbitration hearing on the underlying issue on May 18, 2006, an arbitration decision was rendered and dated September 18, 2006, wherein the arbitrator found:

The Division did not violate Article 12.11.3 of the Agreement by its issuance of an amended Dress Code, effective March 7, 2005.

The grievance is denied in its entirety.

**Consequently**, the matter having been appropriately decided through the parties' contractual grievance and arbitration process, the charge is hereby dismissed.

**IT IS SO ORDERED.**

DATE: 26 September 2006



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Charles D. Long, Jr.  
Executive Director  
Delaware PERB