

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 10,	:	PERB Review of the
Appellant,	:	Arbitrator’s Binding
	:	Interest Arbitration
and	:	Decision
	:	
STATE OF DELAWARE, DEPARTMENT OF CORRECTION,	:	<u>BIA 07-02-552</u>
Appellee.	:	

Appearances

Jeffrey M. Wiener, Esq., for FOP Lodge 10
Jerry M. Cutler, SLREP, for State of Delaware, Dept. of Correction

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).

Fraternal Order of Police Lodge No. 10 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1302(i), and is the exclusive bargaining representative of all Probation and Parole Officers, Senior Probation and Parole Officers and Investigative Service Officers employed by the Department of Correction, Bureau of Community Corrections. 19 Del.C. §1302(j).

The State and FOP Lodge 10 were parties to a collective bargaining agreement for the period of June 19, 2002 through June 18, 2005. They entered into negotiations for a successor agreement and when they were unable to reach agreement, they requested mediation services from the Public Employment Relations Board (“PERB”) in September, 2006. Mediation did not

resolve the outstanding issues and the initiation of binding interest arbitration was determined to be appropriate and in the public interest pursuant to 19 Del.C. §1315 on February 16, 2007.

A public interest arbitration hearing was conducted on May 16 and May 30, 2007, before the PERB Executive Director, who found:

Based upon the record created by the parties, the last, best and final offer of the State is determined to be more reasonable based upon the statutory criteria set forth in 19 Del.C. §1315(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.¹

On December 17, 2007, FOP Lodge 10 requested the full Public Employment Relations Board review the Executive Director's decision and filed a Motion to Stay the implementation of the Executive Director's decision.

The full Board convened a public hearing on February 27, 2008, to review the Arbitrator's decision. Prior to the hearing, the Board received written argument and the parties were afforded the opportunity to make oral argument during the hearing. By agreement of the parties the FOP's Motion to Stay and the merits of its request for review were heard and considered contemporaneously.

This decision results from the deliberations of the Board based on the record created by the parties.

DISCUSSION

The Executive Director, when serving as the Binding Interest Arbitrator pursuant to 19 Del.C. §1315, is statutorily constrained to make "...written findings of facts and decision for the

¹ The Executive Director's decision was dated December 11, 2007.

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.* . . . (19 Del.C. §1315(d), emphasis added.)

While the record reflects genuine and legitimate arguments against the State's last, best and final offer, it does not support the conclusion that the Arbitrator failed or improperly applied the statutory criteria. After reviewing the voluminous record and hearing the arguments of the parties, the Board concludes that the Executive Director's decision was not arbitrary, capricious, contrary to law, or unsupported by the record created by the parties. The decision makes findings of fact and addresses each of the statutory criteria set forth in 19 Del.C. §1315(d).

The Board further finds the Executive Director used reasonable judgment in evaluating the evidence presented based on criteria which are normally considered in binding interest arbitration proceedings.

The FOP did not present adequate legal authority to support its assertion that when the tentative agreements of the parties includes a severability clause², the last, best, final offer of one party can be resurrected or modified by operation of that clause if the offer includes provisions that are determined not be legitimate subjects of bargaining. The Board rejects the FOP's assertion that the Arbitrator erred by not reconsidering the FOP's offer to include a single recognition day for achieving Service Weapon Proficiency once he had determined that the FOP's three day proposal exceeded the single day per year recognition authority established by State Merit Rule 5.5.3.5.


² The parties agreed that all provisions of the prior agreement continued unless modified by the results tentative agreements reached during their negotiations or imposed by the binding interest arbitration decision. There was no dispute that the final sentence of Article 19.1 (which the FOP refers to as a "severability clause") will not be so changed: "It is understood and agreed that if any part of this Agreement is in conflict with the law, that such part shall be suspended and the appropriate mandatory provision shall prevail, and the remainder of this Agreement shall be affected thereby."

DECISION


For the reasons set forth above, following review of the complete record in this case, the Public Employment Relations Board unanimously affirms the Interest Arbitrator's decision accepting the State's last, best, and final offer. By so affirming that decision, the FOP's request to stay implementation is moot.

WHEREFORE, the parties are directed to implement their tentative agreements and the proposals set forth in the State's last, best and final offer as ordered by the Interest Arbitrator.

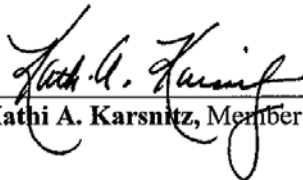
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATE: July 15, 2008