

In the Matter of Interest Arbitration
Between

THE STATE OF DELAWARE
and
AMERICAN FEDERATION OF STATE, COUNTY
and MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 81
("Unit 11")

Ralph H. Colflesh, Jr., Esq.
Interest Arbitrator

Appearances:

For the State:

Kenneth M. Jarin Esq.

William K Kennedy, Esq.

Ballard Spahr, LLP

Philadelphia, Pennsylvania

For AFSCME DC 81

Curt Ostrander

National Staff Representative

Washington, D.C.

AWARD

Procedural History:

Pursuant to 19 Del. C. Section 1315 *et seq*, the undersigned arbitrator was appointed to render an interest arbitration award resolving a bargaining impasse between the parties hereto, the State of Delaware ("the State") and the American Federation of State, County, and Municipal Employees, District Council 81 ("the Union"). The award concerns terms and conditions of employment for employees in what is known as "Unit 11," a collective bargaining unit of State employees composed of Correctional Officer ("C/O") Lieutenants, C/O Staff Lieutenants, C/O Captains, and other related positions.¹

After an unsuccessful informal attempt to mediate the impasse on August 26, 2011, the undersigned directed the parties to submit what are redundantly termed "last, best, final offers" ("LBO's"), in conformance with 19 Del. C. Section 1315 (d). The parties complied, and evidentiary hearings followed on September 6, October 4 and October 7, 2011 in the Carvel State Building, Wilmington, Delaware. At those times both parties had an opportunity to call and confront witnesses, introduce documentary and other non-testimonial evidence, and present arguments in support of their

¹ The other related positions are C/O Laundry Manager, C/O Physical Plant Maintenance Supervisor, C/O Physical Plant Maintenance Trade Foreman, Correctional Operations manager, Correctional Counselor Supervisor, Recreation Program Specialist, Recreation Program Supervisor, C/O Stores Warehouse Supervisor, C/O YRS Food Service Supervisor, C/O YRS Food Service Director I & II.

respective positions. At the conclusion of the October 7 hearing, the undersigned requested that the parties submit expedited post-hearing briefs within 48 hours to assist him in his decision-making. The briefs were submitted, and pursuant to the statute made and provided for this matter is now ready for decision.

Arbitral Restrictions and Statutory Criteria:

Under 19 Del. C. 1315 (d) that decision is restricted to a choice between the LBO of the State and the LBO of the Union. Moreover, the decision must be made after consideration of the following statutory factors:

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the 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 in comparable communities.
3. The overall compensation presently received by the employees inclusive of direct wages, salary, vacation, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
4. Stipulations 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 settlement; 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 arbitrator.
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 arbitration or otherwise between the parties, in the public service or in private employment. 19 Del. C. Section 1315 (d) (1)-(7).

In addition to the seven factors, the law requires that:

In making determinations, the arbitrator shall give due weight to each relevant factor. All of the above factors shall be presumed relevant. If any factor is found not to be relevant, the arbitrator shall detail in the arbitrator's findings the specific reason why that factor is not judged relevant in arriving at the arbitrator's determination. With the exception of paragraph (d) (6) of this section, no single factor in this subsection shall be dispositive. 19 Del. C. Section 1315 (d) (7).

The LBO's

Prior to the commencement of the interest arbitration proceedings, the parties had engaged in negotiations that produced agreement on virtually every subject in the new collective bargaining contract, save those discussed below. The LBO's the parties submitted to the arbitrator consisted of their drafts of the entire new contract, which, except for three issues discussed herein, were materially the same. For that reason, the LBO's are considered as to only the three impasse issues. They have been proposed by the parties as follows:

Union LBO

Wages:

On the effective date of this agreement, employees covered under this Agreement shall receive an across-the-board increase to base pay in an amount equal to the corresponding percentage increase of a general fund revenue estimate for the current fiscal year as adopted by the Delaware Economic and Financial Advisory Council (DEFAC) at their most recent meeting prior to the effective date of this agreement with their corresponding general fund revenue estimate for the next fiscal year referenced in the DEFAC's most recent report, not to exceed 3.75%. For example, if at the DEFAC's most recent meeting prior to the effective date of this agreement DEFAC adopted a general fund revenue estimate of \$3233.0M for the current fiscal year and a general fund revenue estimate for the next fiscal year of \$3300.2M, which represents a 2.1% increase in general fund revenues over the current fiscal year. Employees covered under this agreement would receive a 2.1% across-the-board increase in base pay on the effective date of this Agreement.

On the first anniversary of the effective date of this agreement, employees covered under this Agreement shall receive an across-the-board wage increase to base pay in an amount equal to the corresponding percentage increase of a general fund revenue estimate for the current fiscal year as adopted by the Delaware Economic and Financial Advisory Council (DEFAC) at their most recent

meeting prior to the first anniversary of the effective date of this agreement with their corresponding general fund revenue estimate for the next fiscal year referenced in the DEFAC's most recent report, not to exceed 3.75%. For example, if at the DEFAC's most recent meeting prior to the first anniversary of the effective date of this agreement DEFAC adopted a general fund revenue estimate of \$3233.0M for the current fiscal year and a general fund revenue estimate for the next fiscal year of \$3300.2M, which represents a 2.1% increase in general fund revenues over the current fiscal year. Employees covered under this agreement would receive a 2.1% across-the-board increase in base pay on the effective date of this Agreement. The uniform pay schedules of the State's pay plan for employees covered under this agreement shall be adjusted upward each July 1 of this Agreement in accordance with [the foregoing].

State LBO

1. Wages:

Base wages will be increased 1.5 % effective January 1, 2013; an additional 1.0% effective July 1, 2013; and, an additional 1.0% effective January 1, 2014.

2. Physical Performance Standards:

The parties recognize that employees may be required to maintain levels of accomplishments in the areas of physical training, CPR, and firearms usage.

Any employee hired into or promoted into a Correctional Officer series position in Unit 11 on or after [the effective date of the Award] will be required to pass the Department's PT Test.

The elements of the test will be identical to the CEIT PT Test.

The test will be offered on an annual basis (in a month to be specified by the parties) for the employees in Unit 11, with the exception of employees excused from the test by the employer because of disability, sickness, or other extenuating circumstances.

Employees will be required to pass the test in order to receive any annual contractual pay increase.

Employees who do not pass the test will be permitted to take one re-test within six months after taking the initial test. Employees who pass the re-test will receive the annual contractual pay increase, pro-rated to the date of the re-test.

Employees in DOC Unit 11 before [the effective date of the Award] will not be required to pass the PT test.

3. "Termination, Change or Amendment of Agreement"

Through a stipulation with the Union after the parties' last best and final offers were submitted in writing, the State proposes the following language:

This Agreement shall become effective July 1, 2012 and shall remain in full force and effect until June 30, 2014. It shall automatically be renewed from year to year thereafter, with the exception of any wage or other compensation standard, unless either party gives the other party written notice of its desire to terminate, modify, or amend ("reopen") this Agreement. Such notice shall be given to the other party in writing by certified mail at least 60 days prior to March 31 of the year it desires to reopen the Agreement. Any such notice by the Union shall be sent to the State's director of Labor Relations and Employment Practices and the State's Director of Human Resource Management. There shall be no retroactivity of any provision of this Agreement prior to July 1, 2012.

Discussion:

Delaware law restricts an interest arbitrator in two ways: (1) the arbitrator must choose between the parties LBO's, and (2) the arbitrator is not authorized to mix issues by awarding some items from one party's LBO and some items from the other. In the words of the statute, the arbitrator's "decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted *in its entirety*. (Emphasis supplied). 19 Del. C. Section 1315 (d). For that reason I am not free to reject or modify any part of any issue proposed by

either party. Instead, the statutory criteria must be applied to each party's proposal in its entirety, with one of the entire proposals being awarded over the other entire proposal.

Those restrictions present significant challenges to an arbitrator. Parties in collective bargaining often become so entwined in their adversarial embrace that they cannot see beyond their struggle. Instead of being allowed the advantage of a neutral perspective that might yield a more equitable solution, an interest arbitrator under the statute must choose a winner from among two unsuccessful negotiators. In this case, for reasons explained below, that restriction is especially painful. Nevertheless, as a creature of the legislation, I must make a choice, led by the criteria imposed by law.

With that consideration, I turn first to the wage proposal of each of the parties.

Union's Wage Proposal

The Union's wage proposal appears at first glance to be the more rational. As set forth above, that proposal would link wages over the course of the new contract to projected increases (assuming any) in State revenue. The projections would be made by the Delaware Economic and Financial Advisory Council ("DEFAC"). That group, which is appointed by the governor from non-partisan businesspersons, economists, financial experts and others with knowledge and skill at revenue and expense projections, meets six times each year, including June of each year to provide guidance for State budgeting. At each meeting DEFAC makes a projection of revenues and expenses for the next following fiscal year ("FY"), which runs from July 1 of one year through June 30 of the next. The final projections for any upcoming fiscal year are made in June of the calendar year just preceding that FY. Under the Union's proposal, wages would be increased by the June DEFAC projection of revenue.

While this has the advantage of a rationalized process undertaken by a nationally respected non-partisan expert coterie, it has significant disadvantages as well. For one thing, the June DEFAC revenue number is projected well after the State has finalized its budget for the ensuing FY. In the event the budgeted costs for relevant line items did not meet the DEFAC revenue number, the budget would have to immediately be revised with money moved between accounts to cover the Unit 11 wage increase, up to the union's proposed maximum increase of 3.75%. Similarly, if the budgeted costs for Unit 11 wage costs exceeded the June DEFAC revenue projection, the budget would be instantly in error to the positive side. In short,

a DEFAC revenue projection in June would not allow the State to adopt the most accurate budget it could because the salary figure for this bargaining unit, small as it is in State employment, would almost certainly be wrong.

Even more, the DEFAC revenue number in any month is only that—a projection of *revenue* without regard to expenses. True to its mission, DEFAC also projects State expenses, and these numbers are also used in the State’s budgetary process. Because increases in expenses could surpass increases in revenues, the Union’s proposal would force wage increases despite a projected State operating deficit. In effect, the Union’s proposal sets up a process that only considers one side of the expense-revenue relationship and forces the State to provide wage increases up to 3.75% regardless of the expense side of the budgetary picture.

The Union responds that the State’s proposals, modest as they are, also lock the State into increases even in the face of deficits. But the State’s proposal has the advantage of certainty so the State’s budget experts and political leadership know what wage cost they must accommodate for Unit 11.

The Union also argues that the law gives great weight to the State’s revenues through the language of 19 Del. C. Section 1315 (d) (6). That subsection requires an interest arbitrator to consider “[t]he financial ability of the public employer, based on existing revenues, to meet the costs of any proposed settlements...”. The Union maintains that 19 Del. C. 1315 (d) (7) makes the “financial ability” factor “dispositive.”

The Union, however, misreads this portion of the law. First, the “financial ability” factor is not “dispositive” in the sense that it *must* control the arbitrator’s decision-making. Were that the case the other factors would be unnecessary. A prime principle of statutory construction is that legislation should not be interpreted in a manner that would make any part superfluous. Indeed, the statute itself dispels this by declaring “[a]ll of the above factors shall be presumed relevant.” 19 Del. C. 1315 (7). Rather than creating a general hegemony over the remaining factors, the statute makes the “financial ability” factor the only one that *may* itself control an interest arbitrator’s decision-making. Thus, if a combination of factors tilts the arbitrator in one direction or another, the “financial ability” factor, although considered and contributing to the decision, is not necessarily controlling. If the other factors lead to a “tie,” the “financial ability” factor can break the tie.

The Union’s extreme emphasis on the revenue aspect of the “financial ability” factor also overlooks the remaining portion of 19 Del. C. 1315 (d) (6), which requires revenue to be

weighed with the employer's ability to meet "the costs of any proposed settlements." This latter language cannot refer to an interest award, since such awards are not "settlements." The only explanation is that the legislature intended the arbitrator to judge parties' proposals against their cost and the employer's financial ability, based on revenues, to meet the costs of other proposed contract settlements, if any. In a real sense, then, the "financial ability" factor is not myopically focused exclusively on revenues but on certain potential expenses as well.

For those reasons, the Union's DEFAC-driven wage proposal is not in the best interests of the public, as required by 19 Del C. 1315 (d) (1). The citizens deserve labor agreements that harmonize with many factors, including their government's expenses as well as anticipated revenues. Further, being driven as it is by the DEFAC aspect of the budgeting process, the Union's proposal ignores a comparison of wages among similarly situated workers, as mandated by 19 Del. C. 1315 (d) (2) and would totally override consideration of "overall compensation," required for consideration under 19 Del C. 1315 (d) (3) by simply driving wages blindly through the DEFAC revenue projection process.²

Examination of the other statutory factors reveals no stipulations of record as to wages 19 Del C. 1315 (d) (4); no impingement by the union's proposal on the State's lawful ability to set wages, 19 Del C. 1315 (d) (5); and, no impingement on other factors not considered above that pertain to the determination of terms and conditions of employment in either the private or public sectors, 19 Del C. 1315 (d) (7).

State's Wage Proposal

The State's wage proposal is traditional in that it would establish a set amount of increases—modest as they are—regardless of projected revenues or expenses. In support of that proposal, the State presented testimony regarding its ability to pay including testimony from Brian Maxwell, its Director of Development, Planning, and Administration; David Gregor, its Deputy Director of Finance; and Mike Nadol, an outside expert in governmental finance. From their testimony, I am convinced the State can likely absorb the small increases it has

² In regard to those factors, the undersigned notes that, as recited below in reference to the state's wage offer, evidence presented by both parties indicates, including the Union's presentation of data for employer's within a 60-mile radius clearly shows that lieutenants, who are by far the biggest portion of the bargaining unit are in the middle of relevant comparator groups both in and beyond the State's boundaries, and are neither poorly compensated in cash and benefits or in danger of losing employment.

proposed, despite indications of slow, or possibly no, economic growth. At the same time, the State's evidence strongly indicates it could afford no more, even were there to be growth in revenues³, because in FY 13 and beyond the State will lose federal "stimulus" money it received in FY 11 and FY 12. "Stimulus" for those years was a combined \$362M. Further offsetting any revenue growth are anticipated increases in Medicaid and unemployment compensation⁴, with approximately 22% of the State's population qualifying for Medicaid assistance in FY 12.

Despite these cautions, the undersigned is convinced the State's wage proposal, because of its modesty, is supportable even within the context of the State's anticipated expenditures. For that reason, the undersigned is reasonably certain the interests and welfare of the public, 19 Del C. Section 1315 (d) (1), will be better served by the State's proposal than the Union's. Further, the State's wage offer will not unduly tax the "financial ability" of the State, based on existing revenues, to meet the costs of other settlements which may be proposed. 19 Del C. Section 1315 (d) (6).

The undersigned is also of the opinion, given the evidence of both parties as to comparable employees inside and outside of State employment and particularly evidence presented by Mr. Nadol that the lieutenants, who make up the bulk of the Unit 11 bargaining unit, are competitively compensated in wages and benefits among similarly situated employees performing a corrections supervisory service and with "other employees generally in the same community and in comparable communities." 19 Del C. 1315 (d) (2). A wage increase, even one as small as the State is offering, will most likely maintain the bulk of the unit in its position relative to the comparator groups.⁵ At the same time, the State's offer will increase, albeit marginally, the unit's "overall compensation [that is] presently received, inclusive of direct wages" and benefits, while not jeopardizing "the continuity and stability of the unit's employment." 19 Del. C. 1315 (d) (3).

None of the other statutory criteria are adversely impacted by the State's wage proposal. Certainly no stipulations of the parties are affected by the proposal, 19 Del C. 1315

³ Mr. Gregor testified that current DEFAC revenue expectations are down \$190M over what DEFAC had anticipated in June 2011

⁴ Mr. Maxwell testified that the State's unemployment trust fund owes the federal government a \$62.5M loan and has a balance of \$31M.

⁵ In particular, the State's wage offer will likely keep the unit favorably ranked in terms of cash compensation with Delaware residents 25 years and over. The unit's annual median cash compensation is \$53,163 compared to \$36,707 for non-unit Delaware wage earners.

(d) (4); the State's wage proposal leaves the lawful authority of the employer intact, 19 Del C. 1315 (d) (5); and, the proposal is not inconsistent with any other factors that might be considered in public or private employment, 19 Del C. 1315 (d) (7).

State's Physical Performance Proposal

This proposal was supported by the testimony of Warden Perry Phelps of the James T. Vaughn Correctional Center in Smyrna. The Warden focused on a particular responsibility of lieutenants in the unit to lead what are known as Quick Response Teams ("QRT's"). These are groups of officers who respond to emergencies at their respective institutions. The correctional facilities are large complexes covering many acres with buildings and units that may be widely dispersed. Responding to emergencies in different parts of the facilities requires physical stamina, which the Warden said requires some level of fitness. The Warden also testified that the lieutenants, as supervisors, are expected to lead by example. It follows that an out of shape lieutenant is hardly a model for his officers. Moreover, aside from QRT leadership, lieutenants have to assist their subordinates in day-to-day situations requiring physical exertion. Warden Phelps said he was concerned that lieutenants who are not physically capable may endanger their subordinates by being unable or less than optimally able to assist in emergencies.

There is no doubt that the interest and welfare of the public 19 Del. C. 1315 (d) (1) are better served by officers who are physically fit for contingencies that may arise on duty. Fitness is required of the correctional officers the lieutenants lead, since all those officers must pass physical performance standards to be hired and to graduate with certification from the corrections officers' academy, 19 Del. C. 1315 (d) (2). The testing is certainly within the lawful authority of the State, 19 Del C. 1315 (d) (5). Finally, the proposal does not implicate compensation, except where a lieutenant fails to meet the standard (19 Del. C. 1315 (D) (3), and does not affect any stipulation, authority of the State, the State's financial ability, or other factors "normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment...in the public service or in private employment." 19 Del. C. 1315 (d) (7).

The State's "Termination, Change or Amendment" Proposal:

This proposal is procedural in nature, governing the term of the new contract which is in little or no dispute, and the protocol to be observed when modification, termination or amendment to the contract is sought.⁶ The parties have agreed to the two-year duration, thus a stipulation of the parties has been met, 19 Del. C. 1315 (d) (4) and no other stipulations apply to the proposal. Inasmuch as defined protocols for collective bargaining are helpful to public policy, this proposal meets the "interests and welfare of the public," 19 Del C. (d) (1). The proposal does not affect compensation, stipulations of the parties, and is consistent with contractual relationships generally in both the public and private sectors. 19 Del. C. 1315 (d) (2), (3), (5), (7). It does not trammel the lawful authority of the State, 19 Del. C. 1315 (d) (4) nor interfere with the financial ability of the state based on existing revenues to meet costs of proposed settlements, 19 Del. C. 1315 (d) (6).

Decision:

After applying the statutory factors to each component of the State's proposal and to the Union's proposal as required by 19 Del. C. 1315 (d), the law requires me to choose either the State's proposal in its entirety or the Union's proposal in its entirety. Had I the freedom to do so, I would have modified the State's proposal by raising the wage component to a more generous 2 % or 2.5% per year, eliminating the physical performance component as non-essential, and awarding the perfunctory "Change, Termination, or Modification" proposal. Alternatively I may have chosen to include consideration of the DEFACT expense projections in the Union's proposal and awarded it.

The statute does not give me that option. Instead, it forces me to choose between a State proposal that I see as offering too little money and an unnecessary physical fitness test, and a union proposal that imposes wages on anticipated revenues with a reckless disregard of expenses.

⁶ Under the State's proposal, the contract would renew on an annual basis after June 30, 2014 except as to "any wage or other compensation standard" unless there is 60 days writing notice to terminate, modify, or reopen the contract.

Of the two I am narrowly persuaded that the State's is, if not the better, at least the less bad. In particular, I am concerned that the Union's DEPAC-driven proposal compromises the "interests and welfare of the public," 19 Del. C. 1315 (d) (1), because it would force wage increases up to 3.75% as long as the State had increases in revenue up that percentage. The Union's proposal would force such increases entirely without regard to the State's expenses which might rise even faster than income. Such an event would affect the State's "financial ability...based on existing revenues, to meet the costs of any proposed settlements," 19 Del. C. 1315 (d) (6), because in these penurious times when budgets are balanced on the edge of a dime an excess increase even for this small unit might usurp funds necessary to settle another contract.

Moreover, as detailed above, I am of the opinion that a comparison of "wages...benefits, hours and conditions of employment" with similarly situated employees and "with other employees generally in the same community and in comparable communities," 19 Del. C. 1315 (d) 2 proves that even the State's small proposed increases will keep Unit 11 employees in their same relative rank vis a vis the statutory comparators. I also do not see the State's wage offer as inappropriate given "[t]he overall compensation presently received by the employees" or as materially impacting the continuity and stability of their employment and other benefits. 19 Del. C. 1315 (d) (3).

The Union's proposal, on the contrary, could lead to wage increases of up to 3.75% annually, which is far more than similarly situated employees in Delaware or elsewhere can anticipate in these times. I stress again that such increases would be without regard to the State's expenses, and given the economic circumstances in which we now live they could destabilize this unit's continuity of employment expectations. 19 Del. C. 1315 (d) (3).

Lastly, nothing in the State's wage proposal impacts negatively on any stipulation of the parties, 19 Del. C. 1315 (d) (4), or the "lawful authority of the employer." 19 Del. C. 1315 (d) (5) or "other factors...normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment...in the public service or in private employment." 19 Del. C. 1315 (d) (7).

My conclusion is not altered by additional State proposals for language on "Termination, Change, or Amendments" to the new contract, as they are more procedural than substantive and merely memorialize commonly accepted collective bargaining protocols. As for the State's Physical Performance Standards, I find them in the interest and benefiting the

welfare of the public. 19 Del. C. 1315 (d) (1). Application of the other factors to the Standards does not persuade me they deserve such negative weight as to sink the State's entire proposal below the status of the Union's. In fact, the only factors that could adversely be affected by the Standards are those associated with wages and wage comparisons because a repeated failure to meet the Standards could result in withholding of a wage increase. Even this measure would only apply to new members of the unit. In summary, despite my misgivings about the necessity of such testing and its likelihood to produce fitter employees, an application of the factors does not so negatively affect the proposal that the State's entire proposal would be worse than the Union's proposal with its one-eye blind generation of salary increases.

For all the foregoing reasons and in careful consideration of the statutory criteria, I award the State's proposal, as attached hereto, over that of the Union.

10/10/11

Date



Ralph H. Colflesh, Jr., Esq./ Arbitrator

MEMORANDUM

TO Ralph H. Colflesh, Jr., Esquire

FROM Kenneth M. Jarin, Esquire
William K. Kennedy, Esquire

DATE September 1, 2011

RE State of Delaware and Unit 11 --
State's Last, Best, Final Offer for 2011 Interest Arbitration

The State of Delaware submits the following last, best, final offer to the Arbitrator in advance of the September 6, 2011 interest arbitration hearing. The following provisions, in addition to the attached tentative agreements, which were reached by the parties in negotiations, will constitute the complete collective bargaining agreement between the State of Delaware and Unit 11.

I. Term of Agreement:

Two (2) years, effective 7/1/12 through 6/30/14.

II. Wages:¹

- A. Effective January 1, 2013: 1.5%
- B. Effective July 1, 2013: 1.0%
- C. Effective January 1, 2014: 1.0%

III. Performance Standards:

- A. The parties recognize that employees may be required to maintain levels of accomplishments in the areas of physical training, CPR, and firearms usage.
- B. Any employee hired into or promoted into a Correctional Officer series position in Unit 11 on or after [the effective date of the Award] will be required to pass the Department's PT Test.

¹ The "Wages" and "Performance Standards" provisions will be assigned Article numbers when the parties create a consolidated collective bargaining agreement.

1. The elements of the test will be identical to the CETT PF Test.
2. The test will be offered on an annual basis (in a month to be specified by the parties) for the employees in Unit 11, with the exception of employees excused from the test by the employer because of disability, sickness, or other extenuating circumstances.
3. Employees will be required to pass the test in order to receive any annual contractual pay increase.
4. Employees who do not pass the test will be permitted to take one re-test within six months after taking the initial test. Employees who pass the re-test will receive the annual contractual pay increase, pro-rated to the date of the re-test.
5. Employees in DOC Unit 11 before [the effective date of the Award] will not be required to pass the PF test.

IV. Tentative Agreements

Incorporate the tentative agreements reached by the parties in negotiations, dated 3/12/08 through 12/8/09.

V. Termination, Change, or Amendment (Article 36)

Amend the Tentative Agreement (dated October 7, 2008, Article 36 in the Attached Exhibit) to include dates corresponding to the term of this Award, as follows:

This Agreement shall become effective on July 1, **2012** and shall remain in full force and effect until June 30, **2014**. It shall automatically be renewed from year to year thereafter, with the exception of any wage or other compensation standard, unless either party gives the other party written notice of its desire to terminate, modify, or amend ("reopen") this Agreement. Such notice shall be given to the other party in writing by certified mail at least 60 days prior to March 31 of the year it desires to reopen the Agreement. Any such notice by the Union shall be sent to **the State's Director of Labor Relations and Employment Practices and** the State's Director of Human Resource Management. There shall be no retroactivity of any provision of this Agreement prior to **July 1, 2012**.

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Unit 11 Tentative Agreements 03.12.08

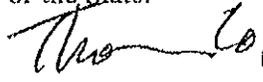
Preamble

The State of Delaware ("State") and the Delaware Public Employee Council No. 81 of the American Federation of State, County and Municipal Employees affiliated with the AFL-CIO ("Union"), shall constitute the parties to this Agreement.

For the Union:

 3-12-08

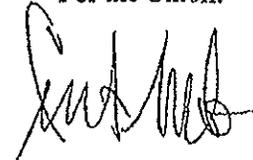
For the State:

 03.12.08

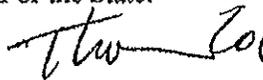
Article 20: Strikes and Work Stoppages

During the life of this Agreement, there shall be no direct or indirect strikes or work stoppages. There shall be no lockout during the life of this Agreement.

For the Union:


3-12-08

For the State:

 03-12-08

Unit 11 Tentative Agreement 02.20.08

Article __: Part Time Public Office

~~1 Employees elected to part-time public office shall not suffer any economic loss or other rights under this contract providing such office does not conflict with their hours of work.~~

For the Union:

For the State:



3-12-08



Unit 11 Tentative Agreements: May 28, 2008

Article 2: Union Recognition

2.1 The State recognizes the Union as the sole and exclusive collective bargaining agent for the employees covered by this Agreement for the purpose of collective bargaining with respect to compensation, hours of employment and other conditions of employment to the extent permitted by law.

2.2 The term "employee" as used herein shall mean employees in the following position classifications made part of the bargaining unit by virtue of the Public Employment Relations Board certification set forth in Rep Pet. 07-08-58B, November 9, 2007, as set forth below:

C/O Laundry Manager
C/O Physical Plant Maintenance Supervisor
C/O Physical Plant Maintenance Trade Foreman
Correction Staff Lieutenant
Correctional Lieutenant
Correctional Captain
Correctional Operations Manager
Correctional Counselor Supervisor

Recreation Program Specialist
Recreational Program Supervisor
C/O Stores Warehouse Supervisor
C/O YRS Food Service Supervisor
C/O YRS Food Service Director I & II

Article 4: Non-Discrimination

4.1 The State shall not interfere with or discriminate with respect to any term or condition of employment against any employee due to membership in, or legitimate activity as described in this Agreement on behalf of the Union.

4.2 The Union recognizes its responsibility as the exclusive bargaining agent and agrees to represent all employees without discrimination, interference, restraint or coercion.

4.3 The provisions of this Agreement shall be applied to all employees without discrimination based on age, sex, marital status, race, color, creed, national origin or political affiliation.

Article 6: Bulletin Boards

6.1 The State agrees to provide locked enclosed bulletin boards, labeled with the Union's name where notices of official Union matters may be posted by the Union. These bulletin boards will be centrally located within each institution/facility. Both parties will have keys to the bulletin boards.

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AWD

05.28.08 Unit II Tentative Agreements
Page 2

6.2 The Union may post any appropriate notice pertaining to Union matters such as appointments, meeting announcements, social events and Union election results, but excluding any election or partisan campaign material, as long as none of the above matters contain

~~05.28.08 Unit II Tentative Agreements~~ *TLS*
~~Page 2~~ *Old*

anything critical of any individual or the State; furthermore, any material which may be detrimental to the labor-management relationship may not be posted.

Article 11: Performance Review

11.1 The purpose of the employee Performance Review shall be primarily to inform employees of the acceptability of their work performance and how they can improve their work performance. It is not to be construed as a disciplinary action.

11.2 Only Performance Review ratings of less than "Meets Expectations" may be grieved, starting at Step 1. Other Reviews may be grieved if they are not done in compliance with the system's procedural requirements. Minor procedural violations shall not be a basis for overturning any Review.

11.3 The standard to be applied in Performance Review grievances is whether the evaluator's rating is arbitrary or capricious. Arbitrators shall not substitute their judgment for that of the evaluator.

11.4 Employees may add or attach written comments to their Performance Review, and they will not be altered after signed by employees.

Article ___: Visitation

___1 Accredited representatives of Council 81 of the American Federation of State, County and Municipal Employees, AFL-CIO, upon request, shall be admitted to any bargaining unit facility during working hours upon advance notice to the State's designated representative, to investigate specific grievances and to ascertain whether or not this Agreement is being observed by the parties. The Union agrees that such right of visitation will not be abused.

For the Union:

[Signature]
5/28/08

For the State:

[Signature]
05.28.08

TENTATIVE AGREEMENT

Article 22 DISCIPLINARY ACTION AND EMPLOYEE RIGHTS ¹

22.1. Any disciplinary action must be for just cause.

22.2. Monetary fines shall not be imposed as a disciplinary measure.

22.3. Employee suspensions shall not exceed 30 days except under the following circumstances: a court action is pending in the matter which led to the suspension; as a result of an arbitration award; or as a result of a grievance settlement involving a dismissal action where arbitration is pending.

22.4. Employees shall be entitled to Union representation at each stage of a disciplinary proceeding. An employee who is a suspect or target of an investigation shall have the right to Union representation.

22.5. If disciplinary action is taken, the Union shall be provided a copy of all documents, or portions thereof, used as a basis for the disciplinary action. This information shall be provided at least 24 hours in advance of the disciplinary contact meeting.

22.6. The parties agree that progressive discipline shall be utilized where appropriate. Furthermore, it is understood that major disciplinary action, up to and including dismissal, may be imposed for a first offense, depending on the severity of that offense.

22.7. Disciplinary documentation shall not be cited by the State in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.

22.8. Prior to the implementation of a dismissal, suspension or disciplinary demotion action, employees shall be notified in writing that such adverse action is being considered and provided the reasons for the proposed action. When employees continued presence on the job poses a threat to the safety or security of staff, inmates, the public or operations, they may be suspended immediately with or without pay pending completion of an investigation and issuance of the above reference notice letter.

22.9. Employees shall be entitled to a pre-decision meeting, provided they submit a written request for such hearing to the State's designated representative within 7 days of the date of the proposed decision letter. The failure to request such meeting in compliance with this provision shall be treated as a waiver of this right.

22.10. Pre-decision meetings shall be informal meetings to provide employees with an opportunity to respond to the proposed action and offer any reasons why the proposed action may not be justified, or would be too severe a penalty.

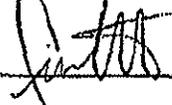
¹ The parties agree that the Union's agreement to delete current 22.10 of the current Department of Correction contract in no way alters the State's burden of proof obligation in conjunction with any disciplinary action.

22.11. Employees shall not be requested to sign a statement of an admission of guilt to be used in a disciplinary proceeding without having Union representation if they request such representation.

22.12. Employees shall not be coerced or intimidated or suffer any reprisal either directly or indirectly that may adversely affect their hours, wages or working conditions as the result of the exercise of their rights under this Agreement.

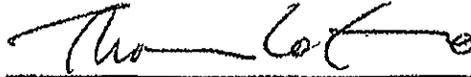
22.13. The "Code of Conduct" now existing will not be cited as a basis for disciplinary action.

FOR THE UNION



Date: 6/12/08

FOR THE STATE



Date: 06.12.08

TENTATIVE AGREEMENT

Article 29 DRUG FREE WORKPLACE

29.1. The parties agree that the workplace should be free from the risks posed by the use of controlled substances to protect the safety of employees and the public. The unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in the workplace. An employee assistance program is available to employees with personal problems including those associated with controlled substance use.

29.2. All employees covered under this Agreement shall be subject to drug testing including Random, Incident Triggered, Reasonable Suspicion and Return-To-Duty Drug Testing.

29.3. Initial probationary employees who test positive or refuse to submit to a test shall be dismissed without recourse to the grievance procedure. Promotional probationary employees who test positive or refuse to submit to a test shall start their probationary period from the beginning, upon their return to work under section ~~18.29.15~~ *29.15 TLF CIO*

29.4. The State may conduct drug tests under the following circumstances:

29.41. "Random Testing" means tests based upon an appropriate random sampling technique, with significant samples of employees in security sensitive positions being tested on a periodic basis with all such employees having a reasonably equal chance of being tested.

29.42. "Incident Triggered Testing" means any incident involving death or serious physical injury to an employee, loss or significant damage to State property, escape of an inmate, juvenile or detentioner where the security sensitive employee was directly involved in the incident.

29.43. "Reasonable Suspicion" means when the State, acting through its supervisory or management personnel, has reasonable suspicion that the appearance or conduct of employees in a security sensitive position is indicative of their having been impaired by an illegal drug.

29.44. Return-to-duty: Conducted before an employee who has tested positive may return to work.

29.45. Employees who test positive may be tested at the State's discretion at any time during the one year period after their return to duty.

29.5. Drug testing methods:

A. Enzyme Multiplied Immunoassay (EMIT) testing is to be used for the initial drug screening procedures. The cutoff levels for screening tests are listed below and are expressed in nanograms per milliliter (ng/ml) or billionths of a gram per thousandth of a liter:

Marijuana Metabolites	50 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	2000 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1000 ng/ml

B. Gas Chromatography/Mass Spectrometry Testing method shall be used to confirm all positive results of the initial drug screening procedures.

C. If a newer more reliable and efficient procedure becomes available it may be used after being submitted to the Union for its approval, unless the EMIT and GC/MS are no longer used. *TUF CAD*

29.6. The State will have a Federally certified medical contractor who will be responsible for conducting all urinalyses and transporting the samples to the laboratory. The State shall provide the Union with the name of the medical contractor selected and a copy of the written agreement between the State and the medical contractor. *TUF CAD*

29.7. The contracted representative and the employee shall be responsible for ensuring that all related forms and documents have been thoroughly and accurately completed. Prior to the submission of the sample, both the contracted representative and the employee will inspect the specimen bottle packet for indications of pre-void tampering.

29.8. The employee shall provide a urine specimen in a location that affords privacy. The employee observes the contracted representative seal and label the specimen. The contracted representative completes a chain of custody document and prepares the specimen and accompanying paperwork for transmission to the certified drug testing laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised.

29.9. Urine samples shall be processed in accordance with accepted Federal Department of Transportation Drug Testing guidelines law-enforcement evidence chain of custody procedures. *TUF*

29.10. Test Results - Employees shall have the right to representation by the Union at any meeting concerning the results of a test or State action relating

(
CUE
SPACE)
thereto, and can only waive this right in writing. At such meeting, they will be allowed to make a statement on the record.

29.11. If the sample to be tested shows a negative result after completion of the tests, the sample shall be destroyed.

29.12. If the test result is positive, the laboratory shall automatically conduct a confirmation test. ~~The State shall assume the costs of these tests. The test to be used for the purpose of this Article is set forth in Section 29.5.~~

29.13. The confirmation test results are reviewed and interpreted by a Medical Review Officer (MRO) before they are reported to the State. If the laboratory reports a positive result to the MRO, the MRO contacts the employee and conducts an interview to determine if there is an alternative explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the State.

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29.14. For the purpose of this Article, no employee shall be removed from work without a positive result of the Gas Chromatography/Mass Spectrometry test that has been reviewed and the test certified as an accurate report by certified scientists and also satisfies the requirements of the Federal standards by the Department of Health and Human Services.

29.15. Employees who refuse to submit to a test, or who are finally determined to have tested positive after exhaustion of all tests, shall be removed from work. Once employees make contact with an accredited drug rehabilitation program, and provide documentation of same, they will be allowed to use Annual Leave, rescheduled holidays or compensatory time previously earned. Such employees may not return to work unless and until they:

A. Successfully complete rehabilitation in an accredited drug rehabilitation program and/or provide a written recommendation from a substance abuse professional associated with an employee assistance program, and pass a Return-to-duty test.

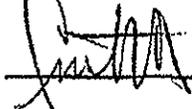
29.16. If employees seek assistance prior to being randomly selected for testing, they may use sick leave, if appropriate, once enrolled in a certified treatment program.

29.17. Employees who, within 5 years of the return-to-duty date, refuse to submit to a test or test positive, shall be dismissed.

29.18. The severity of this specified penalty may not be challenged through the grievance procedure. The only issues which may be grieved are those alleging a violation of the procedures set forth in this article.

29.19. Notwithstanding any other provision of this article, employees who test positive after an incident triggered test may be disciplined, up to and including dismissal, as a result of the incident giving rise to the test. A positive test result may be considered an aggravating factor in determining the level of discipline imposed as result of the incident.

FOR THE UNION



Date: 6/12/08

FOR THE STATE

Date: _____

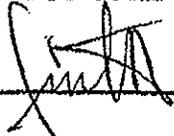
TENTATIVE AGREEMENT

Article 5 UNION REPRESENTATIVES

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- 9.1 The State recognizes and shall deal with all of the accredited Union Stewards, the Grievance Chairperson and the Union President in all matters relating to grievances and interpretations of this Agreement.
- 9.2 A written list of the Union President, Grievance Chairpersons and all stewards, outlining area to be represented by each, shall be furnished to the State immediately after their designation and the Union shall notify the State promptly of any changes. Copies of this list will be provided to the DOC Director of Human Resources and Development/DSCYF Manager of Human Resources, as appropriate, by the Union President. The Union President will provide any changes to the list in writing to the above referenced applicable State representative. No employees will be granted time off for Union business until written notification of their status is received by the above referenced applicable State representative.
- 9.3 Union Stewards, the Grievance Chairperson and the Union President shall be granted reasonable time off during working hours to investigate and settle grievances, negotiations, Labor-Management meetings, and as indicated in any other provision of this Agreement. Furthermore, the Union President shall be given release time as needed to attend the regular monthly and quarterly Union meetings provided overtime is not needed to cover any such absence. Employees under this section shall give as much notice as possible to the State. Union officials granted time off under this Article shall return to their duty assignment immediately afterward.
- 9.4 In order for a Union official to be granted time off during working hours, proper notification must be provided to the applicable States' representative referenced in 9.2 no later than 72 hours before the beginning of the period of time off, unless the Union official received less than 72 hours notice. Proper notification must include the date of the time off requested, and the beginning of the period of the time off, the reason the time off is necessary, the time of estimated duration of the period of time off must be submitted on the State's designated Leave Request Form. Time off may be granted for the reasons cited in 9.3 provided proper notification is received and provided relief or other accommodation is available under the provisions of the applicable State procedures. The final decision on approval for time off rests with the applicable State representative referenced in 9.2. If disapproved, the reasons for the

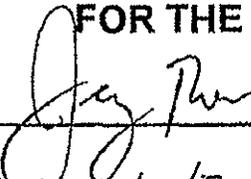
decision will be provided in writing to the Union official requesting the time off.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

TENTATIVE AGREEMENT

Article 6 GRIEVANCE AND ARBITRATION PROCEDURE

- 6.1. A grievance is defined as a dispute between the parties about the application, meaning or interpretation of this Agreement, except that complaints which allege a violation of a controlling State Merit Rule may be processed through Step 2. Grievances shall be processed in the following manner and shall be in writing. The grievance shall state the facts which gave rise to the grievance, supporting documents and the specific relief requested.
- 6.2. All grievance hearings at Step 1 will be held during or contiguous to the grievant's regular hours of work and at the facility where the grievant works.
- 6.3. Grievants may use a representative of their choice provided Article 9 has been complied with and the number of Union officials specified at each step of the grievance procedure does not increase, except that the Union President and/or Executive Vice President may attend all hearings from Step 2 forward.
- 6.4. Time limits as set forth herein may be extended in writing, with an explanation for the extension, by agreement of both parties. Should the time limits expire without an answer or an extension, the grievance may be appealed to the next step. Alternatively, if a response is not received by twice the response time allowed for that step and no extension has been agreed to in writing, the grievance will automatically be upheld in favor of the grievant.
- 6.5. Step 1
- 6.51. Employee grievances shall be filed within 14 days of the date of the grievance or within 14 days of the date the employee could reasonably be expected to have knowledge of the grievance. The grievance shall be presented to the Warden/Section Administrator/Superintendent who shall, within 7 days of receipt of the grievance, meet and discuss the grievance with the employee, the Union Representative, the Grievance Chairperson and the Union President. Other State representatives may attend at the request of the Warden/Section Administrator/Superintendent, however, grievants may require that their supervisor leave the meeting after providing the information requested. A decision shall be issued by the above referenced applicable State representative within 7 days following the meeting. JR O/D

6.6. Step 2

6.61. If the decision is not satisfactory, the grievance may be appealed within 7 days, in writing, to the DOC Commissioner/DSCYF Secretary, or designee, who must be an individual not previously involved in the same grievance, who shall hold the meeting within 14 days, and issue a written decision within 14 days following the meeting.

6.62. If the grievance is of such a nature that it is apparent to either party that the representative at any of the first 2 steps would not have the authority to grant the requested action, the parties, by mutual consent, may advance the grievance to any higher step where the required authority exists.

6.63. A response may be served by hand delivery, by electronic transmission, or by mail, in which case it shall be based upon the postmark. If State mail is used, it will be presumed that the answer was served 3 days before it was received by the Union.

6.64. At this and the following Steps, the meeting shall be attended by the aggrieved employee, the Statewide Grievance Chairperson, the Vice-President (when necessary as deemed by the Union President, shall also attend) and a representative of AFSCME Council 81.

6.7. Step 3 Pre-Arbitration and Arbitration

6.71. If the Step 2 decision is unsatisfactory, such grievance may be submitted to the State's Director of Human Resource Management ("Director"). Such appeal shall be made in writing within 21 days of the Step 2 response, and a meeting shall be scheduled with the Union within 14 days of the Director's receipt of the grievance. If the Grievance is not resolved at that meeting, the Union may request arbitration. Notice of an intent to appeal to arbitration shall be filed with the Director within 21 days after this meeting.

6.72. The Arbitrator shall be selected by the Director and the Union in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association.

6.73. The decision of the Arbitrator shall be final and binding upon both parties, and the Arbitrator is requested to issue the decision within 45 days after the conclusion of testimony and argument.

6.74. The arbitration award shall be in-writing and shall set forth the Arbitrator's opinion and conclusions on the issue(s) submitted.

- 6.75. The Arbitrator shall limit decisions strictly to the application and interpretation of the provisions of this Agreement.
- 6.76. The Arbitrator shall be without power to make any decision contrary to or inconsistent with, or modifying or varying in any way, the terms of this Agreement. The Arbitrator shall have no power to establish or change any individual wage rate, wage schedule or the job content of any position classification.
-

6.77. The fee for the Arbitrator's services and expenses, the administration of the American Arbitration Association and the cost of the proceedings shall be shared equally by the State and the Union. If either party desires a verbatim record be made, it shall pay for the record and make copies available to the other party and the Arbitrator, without charge.

6.78. The State shall require all persons pertinent to the grievance, and including those requested by the grievant, to be given time off from duty, without loss of pay, to appear at the hearing. Any employee attending such hearings or conferences outside of regularly scheduled working hours shall not be eligible for compensation for attendance of such hearings or conferences.

6.8. Alternative

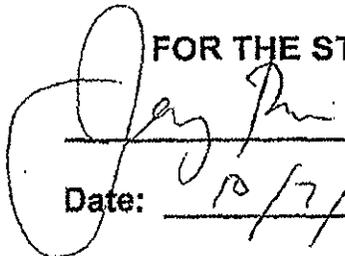
6.81. If the grievance involves a subject controlled by the Merit Rules and is appealed, it shall be appealed to the Director pursuant to Merit Rule 18.8.

FOR THE UNION



Date: 10/07/08

FOR THE STATE



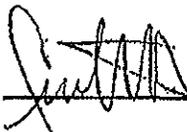
Date: 10/7/08

TENTATIVE AGREEMENT

Article 2 LABOR-MANAGEMENT MEETING

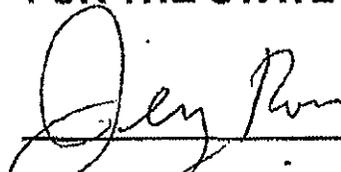
- 2.1. A labor-management meeting shall be scheduled once a month on a mutually agreeable date to discuss all those matters which are of concern to the Union and the State.
- 2.2. An agenda of subjects to be discussed shall be provided by each party to the other no later than one week prior to the meeting.
- 2.3. Modifications to the agenda may be made no later than 24 hours prior to the meeting. If no agenda is presented as provided in 8.1, the meeting will not be held.
- 2.4. The parties shall consist of:
- 2.41. State: DOC: Commissioner and any other persons that the Commissioner believes can provide information on agenda items; DSCYF: Secretary and any other persons that the Secretary believes can provide information on agenda items.
- 2.42. Union: Union President, Vice-President, Secretary-Treasurer, Executive Board Members, Council 81 Representative and any other person(s) that the agenda dictates would be pertinent to the subject(s) to be discussed.

FOR THE UNION



Date: 10/7/08

FOR THE STATE



Date: 10/7/08

TENTATIVE AGREEMENT

Article 4 UNION SECURITY AND DUES DEDUCTION

- 4.1 All employees who are not, who do not become or do not remain members of the Union, shall during any such period of non-membership, as a condition of continued employment, pay to the Union a service fee no greater than the dues uniformly required of its members.
- 4.2 The State agrees to the adoption of a Union check-off system, whereby Union dues or services fees established by the Union will be withheld from employees' pay at source in equal amounts from each pay, either weekly, bi-weekly, or otherwise, as the frequency of the pay period may require. Such deductions will be made upon the completion of an authorization card signed by the employee and received by the Department's business office.
- 4.3 Such withholdings for Union dues or service fees are to be transmitted to the duly elected treasurer of the Union for the previous month's earnings not later than the 20th day of each month. The Union will notify the employee at least 30 days prior to any change in such dues or service fees.
- 4.4 The Union will discuss membership with new employees and will forward cards to the Departments' business office with the employee's signature. No dues will be deducted until a signed card is received by the Departments' business office.
- 4.5 Copies of the Monthly Activity Report will be sent to the Union President and Treasurer.
- 4.6 Dues or fee deductions for employees returning from leaves of absence will be reinstated immediately.
- 4.7 The Union shall indemnify and hold the State harmless against any and all claims, demands, suits, and other forms of liability that may arise out of or by reason of action taken or not taken by the State for the purpose of complying with any of the provisions of this Article.

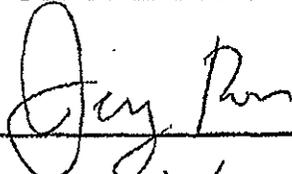
- 4.8. One Union official from the same facility as the new bargaining unit member will be given reasonable time off to sign up the new member. The Union agrees not to abuse this provision.
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FOR THE UNION



Date: 10/07/08

FOR THE STATE



Date: 10/07/08

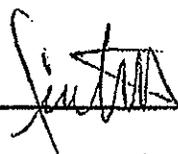
TENTATIVE AGREEMENT

Article 7 SPECIAL RIGHTS OF THE PARTIES

- ~~7.1. The Union has the right to initiate an institutional/facility grievance at Step 1 within 14 days of the event which gave rise to the grievance or within 14 days of the date the Union could reasonably be expected to have knowledge of the event giving rise to the grievance. An institutional/facility grievance is one that affects more than one employee of a State institution/facility.~~
- 7.2. The Union has the right to initiate a system-wide grievance at Step 2. A system-wide grievance is one that affects more than one employee at more than one institution/facility. Such grievances shall be filed within 14 days of the event which gave rise to the grievance or within 14 days of the date the Union could have reasonably be expected to have knowledge of the event giving rise to the grievance.
- 7.3. System-wide and Institutional grievances shall be filed in writing by the Union President, Vice President or the Regional Vice President of the Union.
- 7.4. Institutional and facility designations shall be: JTVCC, HRYCI, SCI, BWCI, NC Community Corrections, Kent Community Corrections, Sussex Community Corrections, Sussex Boot Camp; C & T, Maintenance, Food Services, Correctional Industries, EDC, Stevenson House, New Castle County Detention Center, Ferris School-Secure Care Program, Elwyn Institute, Cleave White Building, Georgetown State Service Center, Millford Service Center and Dover Probation office in the Barrett Building. To the extent there are additions or reductions in institutions/facilities, or changes in institutional/facility designations that impact contractual rights of employees, the State agrees to negotiate such changes with the Union. JR
CND
- 7.5. Employees shall have 7 days to appeal disciplinary actions. The State shall arrange to hear the appeal within 14 days after receipt of the appeal. Suspensions shall be implemented within 30 days after the employee is notified unless staffing shortages exist or security requirements cannot be met or the suspension is appealed, in which case the suspension shall be imposed as soon as possible but in no event beyond 4 months from the time the employee is notified or, if the employee appeals, from the rendering of the Step 2 decision.

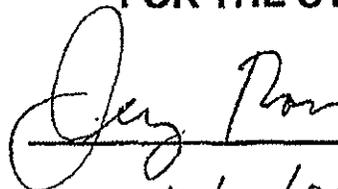
- 7.6. Appeals of suspensions and dismissals shall start at Step 2.
- 7.7. If the employee appeals such suspension or dismissal, the suspension or dismissal shall be delayed pending the State's determination. If it is determined that the employee's continued presence on the job presents a potential danger to persons or property, or would severely interfere with the operations, said delay will be voided.
-
- 7.8. All grievance/appeals must be signed by the employee and/or union representative except as indicated herein.
- 7.9. The Union reserves the right to submit directly to arbitration those issues which are alleged to be a violation of this Agreement. In such instances, the grievance shall be initiated at Pre-Arbitration within 21 days of the event giving rise to the grievance, or within 21 days of the date the employee could reasonably be expected to have knowledge of the event giving rise to the grievance. It is understood that no grievance under this Section may involve an individual employee grievance that can be handled through the grievance procedure, but must constitute an outright violation of the contract.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

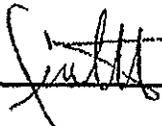
TENTATIVE AGREEMENT

Article 9 MISCELLANEOUS

- 9.1. Upon request, one copy of the Merit Rules will be provided to any employee who does not have access to a computer.
- 9.2. If an item which is presently covered by the Merit Rules becomes a negotiable item during the term of this Agreement, the parties shall meet within 30 days to negotiate over such item. The Merit Rule provision will remain in effect until a new provision is agreed to.
- 9.3. Title 11, Chapter 59, Section 5919 Delaware Code governs legal representation for employees.
- 9.4. The State agrees to offer a course on Stress Awareness and Coping Techniques to all DOC bargaining unit members and to conduct annual refresher training.
- 9.5. DOC employees expect and are entitled to receive^a lunch and/or meal when required to remain on duty because of no relief or emergency situations that may arise while on duty that requires extended tours of duty or in emergency call back situations that last longer than 4 hours, subject to the following conditions: JR CD
- 9.6. The State shall supply a lunch within 4 hours to any DOC employees required to work 4 hours longer beyond their regular quitting time as a result of no relief available and every 4 hours thereafter.
- 9.7. In emergency call back situations a lunch/or meal will be provided as needed to DOC employees if that situation is longer than 4 hours duration and every 4 hours thereafter.
- 9.8. DOC Lunches and/or meals will be provided by the facility kitchens when the kitchen is in operation.
- 9.9. Lunches can be purchased by DOC employees during the period when the kitchen is not in operation not to exceed \$5.00 per employee, at a local restaurant. Reimbursement will be made provided a receipt signed by their supervisor is turned into the business office. Employees will receive a check through the mail for their reimbursement. The shift supervisor will provide a means of picking up of food for the employee.

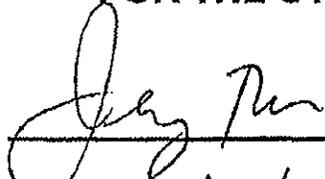
- ✓ 9.10. The State agrees to make every effort to provide and equip gymnasium facilities for DOC employees in each county.
-

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

TENTATIVE AGREEMENT

Article 12 WORKING CONDITIONS

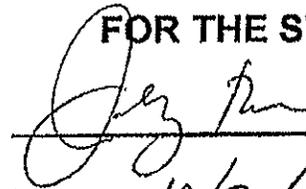
- 12.1. ~~The State shall provide a safe and healthful work place for all employees.~~
The Union agrees to urge employees to cooperate with the State in the enforcement of safety. If employees feel that serious, unsafe or unhealthy situations exist, they shall notify their supervisor immediately. The designated State representative shall investigate the situation immediately and take any necessary corrective action. If the matter is not adjusted satisfactorily, it may be grieved.
- 12.2. Notwithstanding other provisions of this Agreement, the Labor-Management meeting shall be the proper forum to discuss the safety objectives and responsibilities of the State and to eliminate unsafe or unhealthy work situations as well as to educate employees in safe work habits.
- 12.3. The State shall inform the Union in writing of actions taken in regard to Labor-Management meetings and supply the Union with copies of applicable documents as evidence that such action has been taken. If the unsafe or unhealthy situation is not remedied promptly, it may be grieved at Step 2.
- 12.4. If an unsafe or unhealthy situation exists about a contagious disease, the State shall notify the Union President in writing of the name and location of any person for whom precautions must be taken, and provide employees necessary safety equipment and sterilization procedures to assure their safety.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

TENTATIVE AGREEMENT

Article 13 UNIFORMS

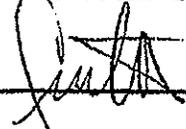
~~13.1. The State shall provide uniforms for all Correctional Lieutenant, Staff Lieutenant, Captain and Correctional Officer/Series positions.~~

13.2. The parties agree that uniforms or the cost of uniforms shall be priority items for each succeeding fiscal budget.

13.3. The parties will meet and determine appropriate maintenance and replacement provisions.

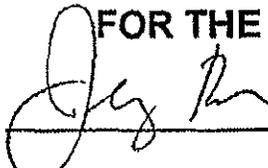
13.4. Dress uniforms for employees whose duties require the wearing of the dress uniform instead of the work uniform, may be cleaned with the following limits: 1 jacket and 2 pair of pants or 2 skirts or any combination of 2 per week. Uniform dry cleaning or reimbursements shall be handled on an institution by institution basis. Where applicable, institutions shall post the contracted cleaning price for each uniform item. Employees who elect to do so may have their uniforms dry cleaned by a dry cleaner of their own choosing and shall be reimbursed within a responsible period after presentation of receipts to the facility or institution business office in amounts not exceed the posted prices.

FOR THE UNION



Date 10/07/08

FOR THE STATE



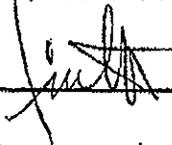
Date 10/17/08

TENTATIVE AGREEMENT

Article 15 WORK RULES AND REGULATIONS

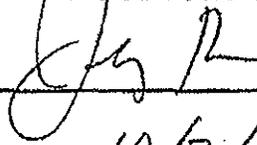
- 15.1. ~~The State may establish work rules, policies and regulations not in conflict with any provision of this Agreement.~~
- 15.2. The State agrees that the Departments' rules and regulations shall not be administered in an arbitrary and capricious manner.
- 15.3. Weapons recertifications and employee Performance Review discussions with the State's designated representative and the giving of disciplinary contacts will be handled during employees' regular working hours, unless directed by the State to meet the requirement outside the employee's regular working hours (which shall be treated as time worked).
- 15.4. The State agrees to provide the Union access to all Standard Operation Procedures, Rules and Regulations, as well as all updates, deletions and modifications on an ongoing basis. If these documents are not available on the State's web page, the State agrees to provide the Union with copies.
- 15.5. The State agrees that the Union can have input into any proposed changes to the Administrative Regulations on Internal Affairs which deal with employees rights in disciplinary matters.
- 15.6. If the State requires physical examinations, it agrees to negotiate with the Union a procedure on required DOC physical exams. The negotiations will be conducted in the Labor-Management meeting to begin upon completion of the new or extension of the existing contract for health services. ;

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

TENTATIVE AGREEMENT

Article 18 SCOPE, WAIVER AND ALTERATION OF AGREEMENT

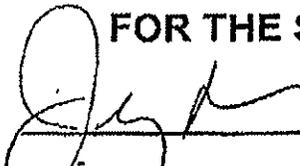
- 18.1. ~~No agreement, alteration, understanding, variation~~^{or} ~~of~~ modification of any JR. AD of the terms or conditions or covenants contained herein shall be made by any employee or group of employees with the State, and in no case shall it be binding upon the parties hereto unless agreement is made and executed in writing between the State's Labor Relations and Employment Practices Office and the Union, and has been ratified by the Union.
- 18.2. The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of the terms and conditions herein.
- 18.3. It is understood and agreed that if any part of this Agreement is in conflict with mandatory Federal or State laws, such part shall be suspended and the parties will meet promptly to negotiate a substitute provision. The remainder of this Agreement shall not be affected thereby.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

TENTATIVE AGREEMENT

Article 23 SENIORITY

23.1. DOC

23.11. Seniority shall consist of the accumulated service within the Department of Correction including federally-funded programs. Service with the Division of Adult Correction and/or the Board of Correction is included. Bureau of Juvenile Correction and/or Division of Juvenile Correction service is included only for employees who, prior to February 1, 1987 became employees of the Bureau of Adult Correction. The supervisor's earned seniority shall not be lost because of absence due to illness, authorized leaves of absence, or temporary layoff, unless it continues for more than 2 years. The seniority lists shall be brought up-to-date each year on January 1. A copy of the seniority list shall be sent by mail to the Secretary of Local 247.

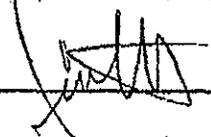
23.12. Seniority within classification shall be defined as accumulated service within a classification.

23.13. Seniority within classification shall be used for vacation preference and for selecting shifts and days off. For all other purposes when seniority is a factor, it shall be used as defined in Section 18.1 above.

23.2. DSCYF

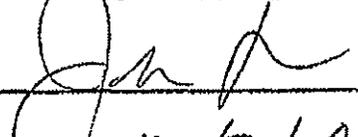
23.21. Seniority shall defined as length of continuous service with the State of Delaware.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/17/08

TENTATIVE AGREEMENT

Article 25 PROBATION PERIOD

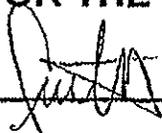
25.1. ~~New employees shall be considered probationary employees for a period~~
of one year from the date of hire. Upon completing of this period, the employee shall be placed on the seniority roster and the effective date of this seniority shall be the date of hire. During this period such employees may be dismissed without the same causing a breach of this Agreement or constituting grounds for a grievance.

25.2. Merit employees who are promoted shall be considered probationary employees in the higher classification for a period of one year from the date of promotion. During this period, such employees may be demoted for unsatisfactory service to their previous classification without the same causing a breach of this Agreement or constituting a grievance. Employees may voluntarily request to return to their former position.

25.3. If, during the probationary period, an employee is absent from work due to illness, injury or other approved leave for a period in excess of 90 days, the probationary period will be extended for a period equal to the duration of such absence.

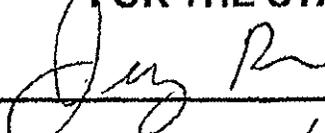
25.4. The appropriate DOC Bureau Chief/DSCYF Manager of Human Resources will review and approve all employee unsatisfactory Performance Reviews that result in a recommendation for demotion for an unsatisfactory probationary period. The employee will have 7 days after receipt of the Review to submit information to that State representative for review.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/17/08

TENTATIVE AGREEMENT

Article 28 TRANSFERS AND FILLING OF VACANCIES

28.1. Transfers within Institutions/Facilities

28.11. Vacancies at each institution/facility shall be posted by shift and days off. Applicants for transfer to such posted shift and days off shall be selected in order of seniority of those employees eligible to bid. To be eligible, an employee must have an overall satisfactory rating on the most current performance appraisal, and must not within the last year have an AWOL in which the employee did not call in.

28.12. Only when transfer applications processed in accordance with 28.11 have been exhausted, vacancies may be filled in accordance with 28.21 – 28.23.

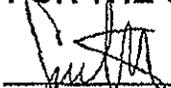
28.2. Transfers Between Institutions/Facilities and Filling of Vacancies

- 28.21. Employees who wish to be considered for voluntary transfer to another institution/facility shall submit a written request to the DOC Director of Human Resources and Development/DSCYF Manager of Human Resources, with the desired institution(s)/facility(ies) specified, for placement on a voluntary transfer list. Transfer requests may only be submitted when that classification is opened by the Human Resources Office.
- 28.22. In filling Lieutenant position vacancies, the State will review the transfer list assigning employees in a specified work location. Initial consideration shall be given to employees on the voluntary transfer list before filling the vacancy by other means. If employee applicants from the transfer list are judged relative equally qualified based on the factors listed below, then seniority shall control. Valid reasons for not selecting an employee from the following factors: performance review, attendance, results of interview, job conduct (prior disciplinary action) or selective requirements.
- 28.23. In filling vacancies for all other bargaining unit positions, the State will consider transfer requests together with any other applicants. The selection decision shall include consideration of the following criteria: qualifications, performance review, seniority, job conduct (prior disciplinary actions), and where applicable, the results of competitive examinations and interviews.

- 28.3. In making selection decisions, the State shall not act in an arbitrary and capricious manner.
- 28.4. The Union may request information necessary to the processing of grievances. Criteria used by the State in determining whether to grant such requests shall include, but not limited to: relevance, necessity, cost, and privacy implications.
-
- 28.5. Employees shall not be involuntarily transferred from one institution/facility to another or from their shift and days off (L.T.) or (S/L.T.) except under one or more of the following conditions:
- 28.51. Closing of an institution/facility or part of an institution/facility.
- 28.52. Relocation of a program.
- 28.53. Where there is documented evidence that the present assignment causes safety and/or security problems. In such instances the employee would not be transferred until the grievance procedure has been exhausted, if the employee grieves. However, if determined by the DOC ranking officer/DSCYF Superintendent that the employee's continued presence at the institution/facility presents a real danger to persons or property, the transfer will be effective immediately.
- 28.54. For other reasons by mutual consent of the parties.
- 28.55. In emergency situations where safety and security are involved the State may make temporary changes in the shift and days off of employees, not to exceed 30 days. Any temporary changes must be approved by the DOC Bureau Chief or Commissioner/Director, Division of Youth Rehabilitation Services, as appropriate. The reasons for the change will be reviewed with the Executive Board of the Union within 48 hours. An emergency under this section shall not include routine staff shortages caused by leaves, vacations, vacancies or the failure of the State to adequately staff an institution/facility.
- 28.56. As a result of an arbitration award.
- 28.57. Any employee transferred or promoted to positions outside the bargaining unit for more than 30 days, shall not lose the seniority rights accumulated from the date of employment to the date the employee was transferred or promoted; but, during the employee's absence from the bargaining unit, seniority rights shall not accumulate while the employee is outside of the

bargaining unit. Such employees returning to the bargaining unit shall pick up seniority credited to supervisor at the time they left the bargaining unit and thereafter, shall be entitled to the same seniority rights as any other employee.

FOR THE UNION



Date: 10/07/08

FOR THE STATE



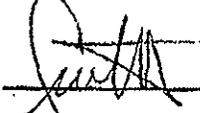
Date: 10/7/08

TENTATIVE AGREEMENT

Article 36 TERMINATION, CHANGE or AMENDMENT

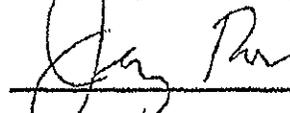
36.1 This Agreement shall become effective on July 1, ²⁰¹⁰2008, and remain in full force and effect until June 30, ~~2011~~²⁰¹⁰. It shall be automatically renewed from year to year thereafter, unless either party gives the other party written notice of its desire to terminate, modify or amend ("reopen") this Agreement. Such notice shall be given to the other party in writing by certified mail at least 60 days prior to March 31 of the year it desires to reopen the Agreement. Any such notice by the Union shall be sent to the State's Director of Human Resource Management. There shall be no retroactivity of any provision of this Agreement prior to July 1, ~~2008~~²⁰¹⁰.

FOR THE UNION



Date 10/07/08

FOR THE STATE



Date 10/7/08

TENTATIVE AGREEMENT

Article 30 LAYOFF AND RECALL

30.1. Whenever layoffs, as a result of job abolishment or lack of funds or work becomes necessary, affected employees will be notified at least 30 days in advance.

30.11. No employee will be laid off while another person is employed on a probationary basis in the same classification.

30.12. Employees will be notified of the positions they may bump into. Employees must respond, in writing, within 10 days indicating which position they want to bump into.

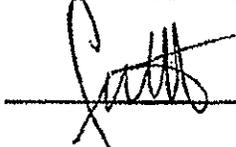
30.13. Bumping shall be based upon total seniority as defined in Section 23.11. and 23.21, as appropriate.

30.14. Affected employees may, provided they are qualified for the position, bump any employee in the bargaining unit in the same or lower pay grade with less seniority. Employees who have no one to bump or who choose not to exercise their bumping rights shall be laid off. Under no circumstances shall bumping up be permitted.

30.2. Any employee transferred and/or assigned to an unfamiliar job shall be entitled to an adequate training period on such job.

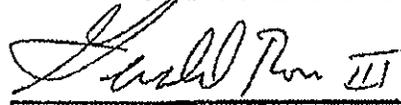
30.3. Employees subject to recall shall be notified by the DOC Director of Human Resources and Development/DSCYF Manager of Human Resources by certified mail-return receipt requested. A copy of such recall letter shall be given to the Local Secretary. Employees shall have 7 days subsequent to the date of signature on return receipt in which to notify the State that they will return to work. Such letter shall be mailed to the employee(s) last known address.

FOR THE UNION



Date: 9-24-09

FOR THE STATE



Date: 9/24/09

TENTATIVE AGREEMENT

Article 24 VACATION SCHEDULING

~~24.1. Vacation shall be scheduled by seniority within classification.~~

24.2. Seniority within classification shall be defined as accumulated service within a classification.

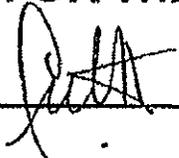
24.3. Vacation shall be scheduled by institution/facility as defined by this contract. Each institution/facility may develop its own scheduling process.

24.4. Preference for annual vacation scheduling of up to 2 weeks shall be determined in the order of seniority within classifications at each institution/facility. Employees shall be provided information about the dates selected by more senior employees.

24.5. After all employees have made their first selection or waived their turn, all further selections will be on a first come first serve basis.

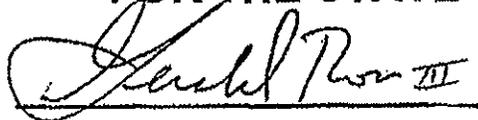
24.6. If employees elect to waive their turn for selection, they may select vacation at a later date, except that they may not bump another employee who has selected vacation in accordance with this Article.

FOR THE UNION



Date: 9-24-09

FOR THE STATE



Date: 9/24/09

TENTATIVE AGREEMENT

Article 27 WORK SCHEDULES

27.1. DOC:

27.11. A notice shall include shift and days off for Lieutenants. This notice will be posted within the budget section only.

27.12. Captains may develop a flexible schedule to assure adequate coverage, as approved by their institution. Schedule for Captains shall remain as currently established except if:

27.12.1. Captains at a given institution desire an alternative work schedule; or

27.12.2. The Warden at a given institution determines that changing operational needs require a revision to the Captain(s) schedule.

27.2. If the circumstances described in 27.12.1 or 27.12.2 arise, the Union shall propose an alternative work schedule to the Warden. The Warden shall have 30 days to approve or disapprove the proposal. During this 30 day period, the parties may meet to resolve any operational problems in the proposal. If, pursuant to 27.12.2, the Union proposal does not adequately address the changing operational needs, the Warden may set the work schedule, which shall remain in effect until the Union develops an acceptable alternative proposal.

27.3. Staff Lieutenants may develop a flexible schedule to assure adequate coverage, as approved by their institution. Schedules for Staff Lieutenants shall remain as currently established except if:

27.3.1 Staff Lieutenants at a given institution desire an alternative work schedule,
or

27.3.2 The Warden at a given institution determines that changing operational needs require a revision to the Staff Lieutenants schedule.

27.4. If the circumstances described in 27.3.1 or 27.3.2 arise, the parties shall follow the process described 27.2.

27.5. The parties recognize that there may be times when the scheduled Captains are unavailable for work. Accordingly, the parties agree to meet

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to develop alternative methods of providing the requisite coverage in the event of staffing shortages.

DSCYF

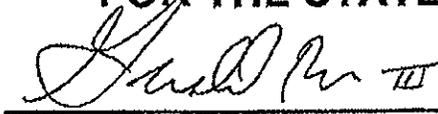
27.61. Employees desiring to change their work schedules may request such changes from their immediate supervisor who, upon assessing the impact of the change on operations, may approve or deny the request.

FOR THE UNION



Date: 9-24-09

FOR THE STATE



Date: 9/29/09

TENTATIVE AGREEMENT

Article 10 HOURS OF WORK

10.1. Department of Correction

Standard Work Week

10.2. The standard work week for full-time employees shall be 37 and ½ hours per week, from Monday to Friday (some staff work weeks may commence on days other than Monday). However, the standard work week for Correctional Lieutenant through Correctional Captain positions, shall be 40 hours per week.

10.21. Employees whose primary duties are to relieve other staff (excluding days off relief) shall be assigned the shift and days off of the employee whom they are relieving if the employee being relieved is on leave for 40 or more hours.

10.3. The following shifts do not apply to Staff Lieutenants or Captains.

10.31. James T. Vaughn Correctional Center:

Correctional Staff 7:30 a.m. – 3:30 p.m.
 3:30 p.m. – 11:30
 11:30 p.m. – 7:30 a.m.

Non-Correctional Staff 8:00 a.m. – 4:00 p.m.
 (1/2 hour lunch)

10.32. Delores J. Baylor Correctional Institution:

Correctional Staff 8:00 a.m. – 4:00 p.m.
 4:00 p.m. – 12:00 midnight
 12:00 midnight – 8:00 a.m.

10.33 Sussex Correctional Institution:

Correctional Staff 8:00 a.m. – 4:00 p.m.
 and (Rotating)
 4:00 p.m. – 12:00 midnight
 12:00 midnight – 8:00 a.m.
 (Permanent)

Non-Correctional Staff 8:00 a.m. – 4:00 p.m.
 ½ hour lunch

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10.34. New Castle Community Corrections:

Correctional Staff	8:00 a.m. – 4:00 p.m. 4:00 p.m. – 12:00 p.m. 12:00 p.m. – 8:00 a.m.
Non-Correctional Staff	8:00 a.m. – 4:00 p.m. ½ hour lunch

10.35. Sussex Community Corrections:

Correctional Staff	8:00 a.m. – 4:00 p.m. 4:00 p.m. – 12:00 midnight 12:00 midnight – 8:00 a.m.
Non-Correctional Staff	8:00 a.m. – 4:00 p.m. ½ hour lunch

10.36. Kent Community Corrections:

Correctional Staff	8:00 a.m. – 4:00 p.m. 4:00 p.m. – 12:00 midnight 12:00 midnight – 8:00 a.m.
Non-Correctional Staff	8:00 a.m. – 4:00 p.m. ½ hour lunch

10.37. Howard R. Young Correctional Institution:

Correctional Staff	7:30 a.m. – 3:30 p.m. 3:30 p.m. – 11:30 p.m. 11:30 p.m. – 7:30 a.m.
Non-Correctional Staff	8:00 a.m. – 4:00 p.m. ½ hour lunch

10.38. Boot Camp

Correctional Staff	8:00 a.m. – 4:00 p.m. 4:00 p.m. – 12:00 midnight 12:00 midnight – 8:00 a.m.
Non-Correctional Staff	8:00 a.m. – 4:00 p.m. ½ hour lunch

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10.4. Recreation Program Supervisors will work fixed or flexible schedules as approved by their supervisors.

10.5. Correctional Lieutenants assigned to the Employee Development Center will work schedules as appropriate to meet the training needs of their operations. When not engaged in the training activities their schedules will be in accordance with 10.3.

10.6. Employees attending training shall work the schedule established by the Employee Development Center.

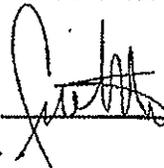
10.7. Shift trades, by classification, may be made as long as both parties to the trade sign an agreement and comply with Department policy concerning shift trades. It is understood that the employee signing the agreement who agrees to work a shift will be held accountable for that shift. Either the Union or the State reserves the right to discontinue shift trades on 10 days notice to the other party.

10.8. Department of Services for Children, Youth and their Families (DSCYF)

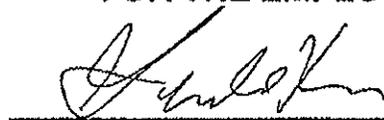
10.81. The standard work week for all full-time employees shall begin at 12:00 am Sunday and end at 12 midnight the following Saturday and shall consist of 37 1/2 hours of work.

10.82. Employees shall be scheduled to work five days each work week, with each day consisting of seven and one-half (7 1/2) hours of work exclusive of an unpaid lunch period. No employee will be required to work more than five (5) consecutive days without a day off. In each twenty-eight day cycle, the employee will receive a total of eight (8) days off, of which there will be a minimum of 1 week-end (Saturday and Sunday) and two consecutive days other than a week-end off.

FOR THE UNION


_____ 10/30/09

FOR THE EMPLOYER



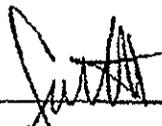
TENTATIVE AGREEMENT

Article 1 : Purpose

- 1.1 It is the purpose of this Agreement to promote and ensure harmonious relations, cooperation, and understanding between the State and its employees covered by this Agreement which establish agreed upon standards consistent with 19 Del.C 13, et. seq. ~~of hours, working conditions, and other conditions of employment.~~
- 1.2 To facilitate the efficient administration of this Agreement, it is understood that wherever a Union or State representative is specified herein, a designee may be substituted.
- 1.3 Any specific Department reference in this Agreement shall be Department of Correction ("DOC") or Department of Services for Children, Youth & Their Families ("DSCYF").
- 1.4 The term "day" shall refer to calendar day.

FOR THE UNION

FOR THE EMPLOYER



Date: 12/10/09



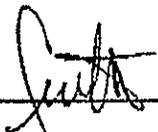
Date: 12/8/09

TENTATIVE AGREEMENT

Article 5: Management Rights

- 5.1 The State retains the exclusive right to manage and direct employees and its operations except as modified by the specific provisions of this Agreement.

FOR THE UNION



Date: 12/10/09

FOR THE EMPLOYER



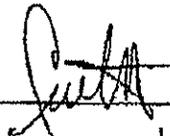
Date: 12/8/09

TENTATIVE AGREEMENT

Article 21: Distribution of Overtime

- 21.1 Overtime shall be divided and rotated equally as possible among those employee qualified to perform the work and assigned to the institution or facility.
- 21.2 For training and orientation to be Shift Commander, a Staff Lieutenant and/or Lieutenant certified and on the Captains' promotional list, may be utilized as Shift Commander at the approval of the Warden.

FOR THE UNION



Date: 12/10/09

FOR THE EMPLOYER



Date: 12/8/09