The State of Delaware ("State") is a public employer within the meaning of 19 Del. C. §1302(p) of the Public Employment Relations Act, 19 Del. C. Chapter 13 ("PERA").

The Unit 9 Bargaining Coalition ("Unit 9 Coalition") was at all times relevant to this charge a statutorily created coalition of exclusive bargaining representatives ("Unions") established for the purpose of bargaining compensation for represented State merit system employees holding positions defined as “law enforcement and investigative agents”. 19 Del. C. §1311A(b)(9). The Coalition was comprised of Fraternal Order of Police Lodges 3, 10 and 11, General Teamsters Local 326 and the American Federation of State, County and Municipal Employees ("AFSCME") Local 3384. These labor
organizations, through their affiliated locals, are exclusive bargaining representatives of bargaining units which are comprised in whole or in part of the employees who are State merit “agency police officers, natural resource and environmental control officers, probation and parole officers of the Department of Correction, alcohol beverage control officers, investigators and similar occupations,” as defined in §1311A(b)(9). The Coalition was certified to bargain compensation by the Public Employment Relations Board (“PERB”) in DOL Case 1009.

At the time of this charge, Unit 9 included approximately 450 employees in the following State Merit Classifications:

- Alcohol & Tobacco Enforcement Agents I, II, III
- Capitol Police Officers I, II, and III
- Capitol Police Sergeants
- DNREC Enforcement Officers I, II, III, IV, and V
- Constables I and II
- Probation and Parole Officers I and II
- Senior Probation and Parole Officers
- Deputy Fire Marshals I, II, and III

Fraternal Order of Police Lodge 10 (“FOP Lodge 10”) is the exclusive bargaining representative of Probation and Parole Officers I and II (“PPO”) and Senior Probation and Parole Officers (“SPO”) employed by the Department of Correction, Bureau of Community Corrections, Division of Probation and Parole. FOP Lodge 10 represents approximately 270 employees, all of whom are part of the Unit 9 Coalition which constitutes the majority of Unit 9 employees.

On November 19, 2019, the State filed an unfair labor practice charge alleging the Unit 9 Coalition violated 19 Del. C. §1307(b)(2) and (b)(4), which state:

(b) It is unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

(2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.
(4) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

Specifically, the State alleged the Unit 9 Coalition was attempting to insert new terms into the parties’ collectively bargained agreement and refusing to execute the negotiated agreement. The State requested the Coalition be directed to refrain from making unilateral changes to the negotiated agreement and that it be directed to execute the agreement which the parties had reached in negotiations.

On December 16, 2019, the Coalition filed its Answer to the Charge denying the State’s allegations. It also included new matter wherein it alleged the State had attempted to include terms in the draft collective bargaining agreement which had not been agreed to in negotiations. The State denied it had engaged in any unlawful conduct in its December 30, 2019 Response to the Coalition’s New Matter.

On December 16, 2019, FOP Lodge 10 filed an unfair labor practice charge against State, Department of Correction, Bureau of Community Corrections, alleging violations of 19 Del. C. §1307(a)(1), (a)(5) and (a)(7), which state:

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

(7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

Specifically, the Charge alleged the State made a unilateral change in a mandatory subject of bargaining when it unilaterally ceased paying the Probation and Parole Officers represented by FOP Lodge 10 hazardous duty pay. It also alleged the State violated its statutory obligations by insisting that FOP 10 sign a collective bargaining agreement which was inconsistent with the Memorandum of Agreement (“MOA”) the State and the
Coalition had negotiated. FOP Lodge 10 requested the State be enjoined from eliminating hazardous duty pay, that the payment of hazardous duty pay be reinstated, and that any bargaining unit employee who had been adversely impacted by the State’s unilateral denial of hazardous duty pay be made whole retroactive to July 7, 2019.1

On January 6, 2020, the State filed its Answer to the Charge, in which it denied the allegations made by FOP Lodge 10. In new matter included in its Answer the State asserted FOP Lodge 10 lacked standing to bring an unfair labor practice charge and that any claim alleging a unilateral change should be deferred to the parties negotiated grievance procedure. The State also moved to consolidate the two unfair labor practice charges.

On January 16, 2020, the FOP responded by denying the State’s new matter, but agreeing to the consolidation of the two charges.

Thereafter, the charges were consolidated by the PERB Executive Director, who noted:

It is clear that both charges arise out of a dispute between the parties concerning the wage scale for Probation and Parole Officers positions which are part of the Unit 9 bargaining coalition and for which FOP Lodge 10 is the certified collective bargaining representative. I understand that the disputed wage issue (specifically concerning the payment of hazardous duty pay for Probation and Parole Officers) has resulted in the 2019-2023 collective bargaining agreement between the State and Unit 9 remaining unexecuted.

Thereafter, a prehearing conference was convened, which was followed by a hearing on September 28, 2020. The record closed following receipt of responsive written argument submitted by the parties.

This decision is based upon consideration of the record created by the parties and consideration of their arguments and relevant case law.

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1 At the September 28, 2020 hearing in this matter, the Union withdrew its request that the payment of hazardous duty pay be reinstated.
FACTS

The facts included herein are derived from the documentary and testimonial evidence presented by the parties and are largely undisputed.

The State and FOP Lodge 10 are parties to a collective bargaining agreement which sets forth the terms and conditions of employment for PPOs and SPOs employed by the Department of Correction. The agreement collectively bargained between the State and certified exclusive bargaining representatives (like FOP 10 in this case) is commonly referred to as a “terms and conditions” agreement2, as opposed to the “merit compensation agreement” which was negotiated by the Unit 9 Coalition with the State, pursuant to 19 Del. C. §1311A. For purposes of this decision it will be referred as the “FOP 10 Agreement”.

The FOP 10 Agreement in existence and relevant to this matter was imposed through the binding interest arbitration process in 2007 and had a term of January 7, 2007 through December 31, 2009. 3 The agreement contains an “evergreen” clause, by which it “… automatically renewed from year to year thereafter”, unless and until one of the parties party gave written notice of its desire to terminate, modify or amend that agreement. No evidence was presented that FOP 10 and the State had negotiated and/or were negotiating a successor to the FOP 10 Agreement.

Section 5916(e) of Title 29 states, in relevant part,:  

(e) No employee of any department or agency shall receive hazardous duty pay, except those specifically included in the following paragraphs:

(1) Employees, otherwise qualified, who are employed by the Department of Correction (or its successor agency).

(4) Casual seasonal employees performing the same job duties as those

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2 It is also referred to in various documents in this record as a “non-compensation agreement” and as a “local union agreement.”

3 FOP Lodge 10 and State of Delaware, Department of Correction, BIA 07-02-552, VI PERB 3887, 3904 (2007).
eligible employees identified in paragraphs (e)(1), (2), (3) of this section, shall also be deemed eligible. The amount of the monthly hazardous duty pay supplement shall be prorated based on the actual hours worked.

Since at least July 1, 2018, DOC Probation and Parole (“P&P”) Officers received hazardous duty pay at Level A-1 totaling $4,620.00 annually, spread across twenty-six pay periods. The uniform payment of $4,620 was provided to each officer equally and was independent of the level of the officer’s base salary.

The Public Employment Relations Act was amended in August 2007, to expand the rights of State merit employees to collectively bargain for compensation as defined in 19 Del. C. §1311A. Section 1311A stated, in part:

(a) Notwithstanding any other provision of this Code, exclusive representatives of state merit employees, who are in the classified service and not working in higher education, shall collectively bargain in the units provided pursuant to subsection (b) of this section. The scope of bargaining shall include:

1. Compensation, which shall be defined as the payment of money in the form of hourly or annual salary, and any cash allowance or items in lieu of a cash allowance to a public employee by reason of said employee’s employment by a public employer, as defined in this chapter, whether the amount is fixed or determined by time, task or other basis of calculations. Position classification, health care and other benefit programs established pursuant to Chapter 52 and 96 of Title 29, workers compensation, disability programs and pension programs shall not be deemed to be compensation for purposes of this section; and

2. Any items negotiable for state merit employees pursuant to §5938 of Title 29.

To the extent or where any of these items are covered by existing collective bargaining agreements, the provisions negotiated pursuant to subsection (c) of this section shall supersede those agreements…

(c) The exclusive representatives of all of the employees in each individual bargaining unit identified above shall join together in a bargaining coalition to bargain collectively for that unit. Employee organizations that are part of the coalition shall exercise authority over decisions of the coalition proportional to the number of employees exclusively represented in the coalition by the employee organization. … Contracts shall be timed to become effective in accordance with the State’s fiscal year.
Section 1311A(b) descriptively identified twelve (12) bargaining units which are intended to ultimately include all Merit classifications. Unit 9 was one of the identified units.

The State and the Unit 9 Coalition negotiated their first merit unit agreement in 2018 ("Unit 9 Agreement"), which had a term of July 1, 2018 through June 30, 2019. The Unit 9 Agreement was limited in its scope, including just nine articles, namely:

- Article 1 Preamble
- Article 2 Purpose
- Article 3 Unit Recognition
- Article 4 Management Rights
- Article 5 Wages
- Article 6 Grievance Procedure
- Article 7 Existing Terms and Conditions
- Article 8 Alterations and Waivers of Agreement
- Article 9 Duration of Agreement

Article 7, Existing Terms and Conditions, relates the Unit 9 Agreement to the FOP 10 Agreement, and states:

All existing terms and conditions of employment of the employees covered under this Agreement, including any non-compensation agreements reached between the State and the Merit Unit #9 representatives, are incorporated into the Agreement and shall remain in full force or effect, unless otherwise modified by written agreement by the parties. All negotiations over compensation shall be exclusively conducted in successor negotiations for this Agreement. State Exhibit 1, p. 12.

The negotiated grievance procedure in the Unit 9 Agreement applied only to disputes over application or interpretation of that Agreement. Disputes which arose under the FOP 10 Agreement were “processed through the grievance procedure in [the] respective local union agreement.” State Exhibit 1, p. 7

The initial 2018-2019 Unit 9 Compensation Agreement provided a flat general wage increase to all positions covered by the Agreement, specifically a 2.0% across-the-board increase effective July 1, 2018, and a 0.5% increase effective January 1, 2019. State
Negotiations for a successor to the initial Unit 9 Agreement began on December 10, 2018. The State’s negotiating team was led by Scott Holt, Esq., supported by Khrishna Hawkins, Senior Labor Relations and Employment Practices Specialist, Delaware Department of Human Resources. The State’s negotiation team also included various representatives from State agencies which employed Unit 9 positions, including the Departments of Correction (“DOC”); Safety and Homeland Security (“DSHS”); Services for Children, Youth and Their Families (“DSCYF”); Natural Resources and Environmental Control (“DNREC”); the Office of the State Fire Marshal (“OSFM”); and the Justice of the Peace Court (“JPC”). The Unit 9 negotiating team was led by James W. Mets, Esq., and included representatives of the local unions which constituted the coalition. FOP Lodge 10 was represented in the coalition by its President, Senior Probation Officer (“SPO”) Todd Mumford, and Vice President, SPO Hedda Loose.

The first session was also attended by the Governor’s Chief of Staff who expressed his understanding of the Coalition’s desire to negotiate a salary matrix and shared the State’s commitment to reach a fair and mutually acceptable resolution of the Unit 9 Compensation negotiations. There were no proposals exchanged at this initial meeting.

Unit 9 was comprised of a diverse group of employees with a variety of work schedules, wage rates, and responsibilities. There were unique groups of employees identifiable by the hours worked and the agency by which they were employed. They were:

<table>
<thead>
<tr>
<th>Hours worked/ week</th>
<th>Agency</th>
<th>Job titles</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>DOC/Probation &amp; Parole</td>
<td>PPO I, PPO II, Sr. PPO</td>
</tr>
<tr>
<td>40</td>
<td>DSHS/Division of Alcohol &amp; Tobacco Enforcement (“DATE”)</td>
<td>Alcohol &amp; Tobacco Enforcement Officers I, II, and III</td>
</tr>
<tr>
<td>40</td>
<td>DSHS/Capitol Police</td>
<td>Capitol Police Officer I, II, III, Capitol</td>
</tr>
<tr>
<td>Hours</td>
<td>Department/Position</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>---------------------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>40</td>
<td>DNREC</td>
<td>Enforcement Officer I, II, III, IV, and V</td>
</tr>
<tr>
<td>40</td>
<td>DSHS, Office of State Fire Marshal</td>
<td>Deputy State Fire Marshals I, II, III, IV,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>and V</td>
</tr>
<tr>
<td>37.5</td>
<td>DSCYF/Youth Rehabilitation</td>
<td>PPO, Sr. PPO</td>
</tr>
<tr>
<td>37.5</td>
<td>Justice of the Peace Court</td>
<td>Constables</td>
</tr>
</tbody>
</table>

The DOC Probation and Parole Officers were the only employees in the Unit 9 Coalition who were receiving the annual hazardous duty stipend at the A-1 level of $4,620/year.⁴

Following the December 10, 2018 meeting, the parties exchanged information, including financial information provided by the State which was pertinent to the negotiations.

The Coalition made its first proposal in late January, 2019. The proposal included a salary matrix which advanced wages based on rank and longevity.

The State provided its first counterproposal on February 20, 2019.⁵ The State’s proposal followed the model established in negotiated compensation agreements with Unit 10 (correctional officers) and Unit 11 (correctional supervisors). In each of those agreements, the annual hazardous duty stipend had been “rolled in” to the base wage in each cell of the matrix. The State’s initial proposal included a wage matrix for DOC PPOs and SPOs which included the A-1 Hazardous Duty premium of $4,620 in the base wage rates. An asterisk at the bottom noted “Hazard Pay has been rolled in.” *State Exhibit 2.*

The State’s initial wage matrix included seven longevity steps of five year

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⁴ The DSCYF Youth Rehabilitation Officers were also receiving a hazardous duty stipend at the lesser level of $2,310/year but only worked a 37.5 hour workweek. Their receipt of the hazardous duty stipend was not modified by the 2019-2023 Unit 9 agreement.

⁵ State Exhibit 2
increments up to 30+ years\(^6\) with 3% increases between each step. It also included progression by rank for PPO I; PPO II (+5% above PPO I); SPO (+10% above PPO II); Skilled SPO (+2% above SPO); and Expert SPO (+2% above S/SPO).\(^7\) The legend of the State’s proposal noted, “Guaranteed 2% or Matrix, whichever is greater”. Consequently, as employees were placed on the matrix, an employee was guaranteed a minimum 2% increase, if longevity movement was less than 2% from the officer’s current wage rate. The State provided a matrix for each of three years, namely Fiscal Year (“FY”) 2019 (7/1/18 – 6/30/19); FY 2020 (7/1/19 – 6/30/20); and FY 2021 (7/1/20 – 6/30/21).

On or about March 25, 2019, the State provided a modified four-year wage proposal for the DOC P&P employees\(^8\) to the Unit 9 Coalition’s Chief Negotiator. The State’s revised proposal was for a four-year agreement. The State’s March proposal modified the first two longevity steps to increase the first step to six years, namely “≥0 < 6 yrs”\(^9\) and to change the second step to “≥6 -10 yrs”. The remaining longevity steps in the March proposal were labeled “≥11 – 15 yrs”; “≥16 – 20 yrs”; “≥21 – 25 yrs”; and “≥26 yrs.”. The State dropped the 30+ years step from its proposal. *State Exhibit 3.*

By modifying the step progression, the State was able to redistribute the costs of its offer in a manner designed to meet the Coalition’s desire to reward more senior and experienced P&P employees.

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\(^6\) The bands were 0-5 years, 5-10 years, 10-15 years, 15-20 years, 20-25 years, 25-30 years, and 30+ years.

\(^7\) S-SPO and E-SPO are new ranks which were negotiated and agreed to by the State and the Unit 9 Coalition.

\(^8\) Only the matrix proposals and counter-proposals which relate to employees represented by FOP 10 are included in the record in this matter.

\(^9\) The first step covers a six year increment, including Year 0 (i.e., the first 12 months of employment) and Years 1, 2, 3, 4 and 5. The second step begins in the seventh year (which begins at the conclusion of Year 5) of employment and covers the five year period of Years 6, 7, 8, 9 and 10. The next three steps include five year increments and the final step in the longevity progression begins at the beginning of the fiscal year following the year in which the employee hits his/her 26th anniversary of employment.
The Chief Negotiators continued to engage in discussions in an effort to resolve the terms of the agreement before the May 1, 2019 deadline.\(^\text{10}\) As a result of their on-going negotiations, the State prepared a third and final matrix, which State Negotiator Holt forwarded to Coalition Negotiator Mets on April 2, 2019. The revised proposal increased the starting salaries for PPOs and “accelerated the phase in increases between PG (from 5% to 6%) and Skill Level (from 2% - 3%)” over the four years of the proposed agreement. 

*State Exhibit 4.* Appended to this proposal was spreadsheet which estimated “where each P&P employee will be on the minimum pay scale for each year of the proposal.” The April 2 proposal had the same format as the March 25 proposal and continued to include the notation “*Hazard Pay has been rolled in.*” A spreadsheet was also appended to this offer which included each P&P employee and an estimate of their salary based on the pay scale in each of the four years of the proposed agreement.

On or about April 8, 2019, the State’s Chief Negotiator forwarded to the Unit 9 Coalition’s Chief Negotiator an email FOP 10 President Mumford sent to the State’s SLREP representative Khris Hawkins on April 4. In the email, President Mumford detailed

\(^\text{10}\) Senate Bill 235, Section 8. MERIT SYSTEM AND MERIT COMPARABLE SALARY SCHEDULES.

(a) All provisions of subsections (a) (1), (b), (c) and (i) through (l) of this section shall not apply to those Merit System employees who are covered by a final collective bargaining agreement under 19 Del. C. § 1311A. The effective dates of agreements pursuant to 19 Del. C. § 1311A shall occur simultaneously with the fiscal year following final agreement between the State of Delaware and ratification of that agreement by the respective certified bargaining unit, provided funds are appropriated in Section 1 of this Act for said agreements. All pay changes, in future agreements, shall become effective on the first day of a full pay cycle. Section 1 of this Act makes no appropriation, and no subsequent appropriation shall be made during the fiscal year, for any compensation items as defined in 19 Del. C. § 1311A reached as a result of negotiations, mediation or interest arbitration. Should a bargaining agreement not be finalized by December 1 or May 1 of each fiscal year, employees represented by the bargaining unit negotiating said agreement shall receive compensation pursuant to the provisions of this section until such time as an agreement takes effect. A final bargaining agreement shall be defined as an agreement between the State of Delaware and a certified bargaining unit, which is not retroactive and in which the agreement’s completion is achieved through ratification by the respective bargaining unit, mediation or binding interest arbitration 81 Laws of Delaware Chapter 280.
what he believed would be an acceptable pay scale, indicating he did not think that what
the State was considering a pay scale was similar to the simpler wage scale the Coalition
proposed. The alternative pay scale attached to President Mumford’s email included all
40-hour/week employees in Unit 9, with columns labeled A, B, C-1, C-2, and C-3. The
legend assigned each of the 40-hour workweek position titles to one of the five column
designations. The scale included longevity increases every other year. The key included on
the proposal stated “Salaries shown include Hazardous duty pay.” The proposal put forth
by President Mumford was for three years, with the scale increasing across the board by
2% in Year 2 and 2% in Year 3. It also included a spread sheet with the estimated salary
for each PPO and SPO on July 1 of 2019, 2020, and 2021. State Exhibit 5.

The parties met again on April 9, 2019. By letter dated April 10, 2019, Unit 9
Coalition Chief Negotiator Mets summarized and confirmed the Coalition’s proposal
which was made across the table included, in part, the following proposals relevant to PPOs
and SPOs:

- The Coalition accepted “the matrix and dollar amounts (for a 4 year
term)” for the Probation and Parole employees proposed by the State.
The Coalition proposed, “however… that the State also continues to pay
Hazard Pay outside the contract in addition to the dollar amounts
contained in the matrix…”
- The Coalition requested the parties verify the proper placement of
personnel on the applicable matrix.
- It sought clarification that each seniority band is 5 years, e.g., band one
is 0 through 5 years; band 2 is 6 through 10 years, etc.
- It also sought clarification as to how years of service would be
calculated. State Exhibit 6.

Following receipt of the April 10 email from the Coalition, State Negotiator Holt
testified he called Coalition Negotiator Mets to notify him that the State could not pay
hazardous duty pay on top of the base wage rates in the State’s proposed pay scale for P&P
Officers. Doing so would essentially double the cost of the State’s proposal. Transcript
The Coalition did not renew this proposal again during the course of the negotiations resulting in the MOA.

By email dated April 16, 2019, State Negotiator Holt forwarded to Coalition Negotiator Mets the State’s “final proposal for Unit 9”, including three four-year Pay Scale Tables: “Exhibit A” for DOC P&P Officers; “Exhibit B” for DATE, Capitol Police and DNREC Enforcement Officers (referred to by the parties as the “COPT” group); and “Exhibit C” which would apply to Fire Marshals once their regular workweek was converted by the Department of Human Resources from 37.5 to 40 hours. The transmission again included a list of Unit 9 employees and their years of service in their class series, requesting the unions which comprised the Coalition review and notify the State of any discrepancies. State Exhibit 7.

By email dated April 20, 2019, Coalition Negotiator Mets returned a modified draft MOA to State Negotiator Holt. The Coalition proposed longevity movements occur on each employee’s anniversary date, rather than on July 1 of each year. Mr. Mets also noted a mistake in the COPT pay scale and a typographical error in Section 1. He requested Mr. Holt respond on April 22, so that the MOA could be finalized, executed, and sent for ratification before Friday, May 3, 2019. State Exhibit 8.

State Negotiator Holt responded on Monday, April 22 and notified Coalition Negotiator Mets, “On the seniority movement date I know the State will not agree to change it from years in class series to the anniversary date of hire, since all of the State’s financials are based on the class series date which it has consistently used throughout its proposals.” State Exhibit 9.

The Chief Negotiators exchanged emails on April 22, 23 and 24, making minor tweaks and edits to the draft MOA. The revised pay plan Exhibits A-C were provided to the Coalition on April 24, 2019. This version of Exhibit A included the footnote about
Hazard Pay being rolled in only on the Fiscal Year 2020 (effective 7/1/19) and the Fiscal Year 2022 (effective 7/1/21) matrices. *State Exhibit 10.*

The parties also discussed and exchanged information concerning the placement of employees on the pay scales and how the Fire Marshals wage scale would be handled. *State Exhibits 11 and 12.* The State provided an updated spreadsheet which listed the years of service in class series for each Unit 9 employee as of June 30, 2019, for purposes of placing all 40 hour employees appropriately on the new pay scales. *State Exhibit 13.*

The State provided a final copy of the parties’ memorandum of understanding to the Coalition on the morning of April 30, 2019. *State Exhibit 14.* The substantive terms of the MOA provided:

A. Except as herein modified, the terms and conditions of the July 1, 2018 through June 30, 2019 Agreement shall remain in full force and effect.

B. **GENERAL**

   Adjust all dates in the Agreement to conform to the new term.

C. Term of Agreement: July 1, 2019 through June 30, 2023.

D. **40-Hour Work Week as of June 30, 2019:**

   1. All Unit 9 Classifications that are on a 40 hour standard work week as of June 30, 2019 (DOC P&P, DATE, Capitol Police, DNREC Enforcement Officers) will be placed on the minimum Pay Scale Tables as set forth below:

      a. DOC P&P (excluding Juvenile P&P): See Exhibit A.
      
      b. DATE, Capitol Police, DNREC Enforcement Officers: See Exhibit B.

   2. The attached pay scale tables shall be implemented and managed as follows:

      a. Established classification proficiency requirements shall be maintained.
      
      b. Movement to the next step of the Pay Scale Table requires the employee to achieve the required minimum number of whole years of full time qualified service in the classification series by June 30 of the effective year (there shall be rounding up to qualify for any increase). See below for examples of how to calculate eligibility for movement to a salary step based on length of service within the
classification series.

Example 1: Senior Probation and Parole Officer at PG 13 will have 11 years of qualified service as of June 15. Effective the following July 1 (that same calendar year) the employee will be eligible to move to the next step according to the Pay Scale Table and receive an increase, if any, to the established Pay Scale for DOC Senior P&P PG 13, 11-15 years of service.

Example 2: Senior Probation and Parole Officer at PG 13 will have 10 years of qualified service as of July 15. Effective the following July 1 (the next calendar year) the employee will not be eligible to move to the next step according to the Pay Scale Table and receive an increase, if any, to the established Pay Scale for DOC Senior P&P PG 13, 11-15 years of service.

Example 3: Senior Probation and Parole Officer at PG 13 will have 10.5 years of qualified service as of June 15th. Effective the following July 1st (that same calendar year) the employee will not be eligible to move to the next step according to the Pay Scale Table and receive an increase, if any, to the established Pay Scale for DOC Senior P&P PG 13, 11-15 years of service.

3. If an employee’s salary on June 30 of the effective year is over the established pay for the employee’s classification, pay grade and length of service, the employee will receive a 2.0% wage increase.

4. Employees are only eligible for advancement to the next salary increase according to the Pay Scale Table or a 2.0% wage increase, not both.

E. Deputy Fire Marshals (“DFMs”):

1. The State’s Classification and Compensation Unit shall take all steps necessary to approve the Office of the State Fire Marshal’s request to place all DFM Classifications on a 40-hour workweek, and effective July 1, 2019, the DFMs compensation rate shall be converted in accordance with the State’s standard conversion procedure.

2. Effective July 1, 2019, all DFMs shall be placed on the Minimum Pay Scale Table attached as Exhibit C.

3. Exhibit C shall be administered in the same manner as set forth in paragraph D.2 – 4 above.

F. 37.5-Hour Standard Work Week Employees

1. All Unit 9 Classifications that will continue to work a 37.5-hour standard work week as of July 1, 2019 shall receive an annual 2.0% wage increase on July 1, 2019, July 1, 2020, July 1, 2021, and on July 1, 2022.

G. The State has provided Unit 9 with a list of current bargaining unit employees with each employee’s length of service within the classification series. A representative of each union in Unit 9 may request the State to review the accuracy of the salary and designated
length of service within the classification series for each of the members of their individual bargaining units no later than June 30, 2019.

H. This Agreement is subject to ratification by the Unit 9 membership and the approval by the State.

I. All other proposals of the parties not contained herein are deemed withdrawn.

J. The parties agree to work in good faith to draft language of a new collective bargaining agreement necessary to reflect their intent regarding the foregoing terms.

Coalition Negotiator Mets responded by email at noon on April 30 noting “some errors in the Exhibits”. Specifically, he made the following requests for corrections in Exhibit A to the MOA:

Exhibit A (P&P) – All of the seniority references state “As of 7/1/19” for salary placement. Year 1 should say “As of 6/30/19,” year 2, “As of 6/30/20,” and so on. Also, when we draft the final CBA we should eliminate the reference to the Hazard Pay as the State did in the new CO11 CBA. State Exhibit 15, p. 2.

State Negotiator Holt forwarded the Coalition’s email to DHR Labor Relation Specialist Hawkins at 12:31 p.m. to make the “necessary corrections.” Ms. Hawkins returned the “updated exhibits” to Mr. Holt at 3:03 p.m. Per the Coalition’s request, all references to hazardous duty pay were removed from the DOC P&P pay scales. State Exhibit 15. A copy of the revised exhibits was provided to the Coalition at 3:28 p.m. on May 1, 2019. State Exhibit 17.

At 3:55 p.m. on Tuesday, April 30, 2019, Coalition Negotiator Mets returned a copy of the MOA signed by a representative of each of the unions in the Coalition to the State, as an email attachment. State Exhibit 16. The document was signed by a representative of FOP Lodge 3, FOP Lodge 10, FOP Lodge 11, Teamsters Local 326, and AFSCME Local 3384. FOP President Todd Mumford signed the MOA on behalf of the

11 “CO” refers to Correctional Officers, who are represented by the Correctional Officers Association of Delaware (“COAD”) and who constituted Unit 10 under 19 Del. C. §1311A(b)(10).
bargaining unit of DOC P&P Officers.

By email of 3:28 p.m. on May 1, 2019, the State provided a copy of the MOA signed by the Secretary of the Department of Human Resources. *State Exhibit 17.* The copies of Pay Scales A, B and C appended to the now dually signed MOA were simplified from prior versions, with notes indicating the percentage increases between ranks and the explanatory notes at the bottom of each page of the matrices removed.

Following the finalizing of the MOA, the State’s Chief Negotiator turned over the drafting and finalizing of the collective bargaining agreement to the State’s State Labor Relations Specialist, Khrishna Hawkins. By email of May 17, 2019, Ms. Hawkins sent the State’s draft collective bargaining agreement to the Coalition’s Chief Negotiator, requesting his review. The draft Unit 9 CBA was a mark-up of the 2018-2019 predecessor agreement, and clearly identified “agreed upon changes” in red. *State Exhibit 18.*

The Coalition provided its proposed edits in a letter dated June 24, 2019, noting some typographical and stylistic edits. It also requested the draft be corrected to conform to the executed MOA, noting:

**Article 5, Wages:**

a. Section 5.1: Has the movement of the DFMs to a 40-hour workweek been completed? If so, the footnote should be deleted.

   i. Subsection 5.1.1: This parenthetical should be included: “(excluding Juvenile P&P).” It is in the MOA.

   ii. Subsection 5.1.1.1: All references to “hazardous duty pay” were removed from the MOA. This subsection should be removed. This will also be consistent with the COAD contract which has no reference to hazardous duty pay.

   iii. Subsection 5.1.3: Correct the format (indent).

b. Section 5.2:

   i. Subsection 5.2.1: This subsection is not in the MOA or the previous agreement.

   ii. Subsection 5.2.2.: This subsection is listed twice. The first one is not in the MOA or the previous agreement.
iii. Subsection 5.2.2: The second sentence in this subsection is not in the MOA or the previous agreement.

iv. Subsection 5.2.3: While it is not in the MOA, based on our discussions at the table and clarifications by DHR’s representative, it is our opinion that it would be clearer for all parties to add, “and will be done according to DHR policy and merit rules in effect as of July 1, 2019,” after “classification series” and eliminate the Examples.

v. Subsection 5.2.4: This subsection should read: “Employees will receive a salary as established by the minimum pay table for the employee’s classification or 2.0%, whichever is greater.”

c. Section 5.3: This section is not in the MOA or the previous agreement.

d. Section 5.4:
   i. Add “#” before “9”
   ii. The MOA says “July 1, 2019” and the CBA says “June 30, 2019”.
   iii. The MOA says that the 2.0% raises will be implemented on July 1 of the relevant years.

Article 9, Duration of Agreement

While not in the MOA, we think it would be wise to clarify the negotiation obligations in this Article to include the changes made under the recently passed legislation.

Exhibits

The Exhibits should clearly indicate that the progressions are 5 year blocks. The way it is drafted, the step [sic] looks like a 6 year block. We suggest clarifying the Exhibits to read:

Step 1: 0 through 5 years
Step 2: more than 5 through 10 years
Step 3: more than 10 through 15 years
Step 4: more than 15 through 20 years
Step 5: more than 20 through 25 years
Step 6: more than 25 years.

State Exhibit 19

Labor Relations Representative Hawkins responded to the Coalition’s Chief Negotiator by email dated June 28, 2019. She stated:

Since we have been unable to speak by telephone, I have responded to the Unit #9’s June 24, 2019 questions/proposal by inserting “Comments” to the CBA Attached. Regarding the Exhibits, the longevity steps already state that the steps are in five whole year blocks on the Exhibits along with the shorter “equal to or greater than.” However, I agree that the conversion of DFMs from 37.5 to 40 [sic]
should be memorialized. I have made a footnote to the DFM Exhibit.

Please review and provide ETA of signed CBA; the State would like to have a signed CBA prior to the start of the fiscal year… State Exhibit 20.

The State agreed to the typographical corrections. In response to the substantive questions and proposals, it confirmed that the 40-hour workweek for DFM’s had been approved and would be effective on July 1, 2019. It also added a footnote to the DFM Minimum Pay Tables, “For FY20 Current DFM I, II, III incumbents as of June 30, 2019, will have their current salary converted to a 40-hour workweek prior to being placed on the above Minimum Pay Table.” The State was also agreeable to making Section 5.1.1 clear by specifically differentiating (and excluding) DSCYF Probation and Parole (which the Coalition had referred to as “Juvenile P&P”) from DOC Probation and Parole.

In response to the Coalition’s objection to the “roll-in” language in Section 5.1.1.1, the State responded, “Although not in the MOA, through negotiation discussions it was my understanding that hazard duty pay would be rolled-in. If so then this understanding needs to be memorialized in writing. If not, then P&P Minimum Pay Tables will need to be reduced by the amount of hazard duty pay.” State Exhibit 20, p. 8. The State also justified the language in its draft relating to Section 5.2.1 as reflecting the understanding of the parties as to the meaning of “years of service in the class series”. Ms. Hawkins explained the State’s proposed language of Section 5.2.2, “Although the Pay Tables go into effect July 1, 2019, etc., State employees are paid every two weeks. Therefore payroll must have direction to apply the new pay tables the first pay period after the effective date.” The State also responded that examples in Section 5.2.4 were included in the MOA, as were Sections 5.2.5, 5.3 and 5.4. State Exhibit 20.

Ms. Hawkins and Coalition Negotiator Mets spoke by phone a few weeks later. Hearing Transcript ("TR") p. 47. Their conversation focused on clarifying movement
through the longevity progression.

On July 1, 2019 the Unit 9 Agreement became effective with the negotiated Minimum Wage Scales for all 40-hour workweek employees and across the board wage increases for 37.5 hour workweek employees implemented on the first day of the first payroll period after July 1, 2019. There is no dispute that all Unit 9 employees received the negotiated increases in wages as set forth in the MOA.

Ms. Hawkins again reached out to Coalition Negotiator Mets by email on July 11, 2019, to check on the status of finalizing the draft collective bargaining agreement. State Exhibit 21. Mr. Mets responded to Ms. Hawkins by email dated July 15, 2019, which stated,

> Attached is a spreadsheet of how we think the contract should set forth the 5 year blocks. While we recognize that the blocks may be more than 5 years depending on your status as of 6/30 of a given year, the way it is drafted appears to set forth 6 year blocks. The description and examples in the contract of how people will move takes care of the 6/30 issue.

> I am available tomorrow to talk if you have time. State Exhibit 22.

Ms. Hawkins testified she did not respond to Mr. Mets’ July 15 email nor did she call to speak to him because she felt “we were going backwards.” TR p. 50. Thereafter, the State’s Director of Labor Relations contacted State Chief Negotiator Holt and requested he get back involved as the State was having difficulty getting the Unit 9 Coalition unions to sign off on the collective bargaining agreement. TR p. 27.

State Negotiator Holt testified he spoke to Coalition Negotiator Mets in late July, heard the Coalition’s concerns about longevity movement through the Pay Scales and agreed to follow up with the State Department of Human Resources in an effort to resolve the questions and concerns. The Chief Negotiators spoke again on August 5, 2019, when Mr. Holt reminded Mr. Mets that the State’s wage proposals were all based on the
negotiated progression, and urged Mr. Mets to have his team sign the agreement.  *TR. p. 27.*  Mr. Holt emailed Mr. Mets again on August 19, 2019 to again request a status update.  

*State Exhibit 24.*  Mr. Holt again attached a copy of what he referred to as the “final version of the CBA, including minimum pay tables in Exhibits A-C which reflect the progression steps agreed to by the parties.”  He reminded Mr. Mets that over a month had passed since the July 1, 2019 effective date of the CBA, and requested that the Unit 9 representatives execute the CBA “as soon as practicable.”

By email dated September 23, 2019, Coalition Negotiator Mets responded to both Mr. Holt and Ms. Hawkins by resending the Coalition’s June 24, 2019 initial response to the draft CBA, with highlighted areas which he asserted “… have not been corrected in the most recent draft and which have not been disputed by the State.”  *State Exhibit 25.*  The highlighted areas included Section 5.1.1.1 concerning removal of all references to hazardous duty pay, Section 5.2.1 defining years of service, and Sections 5.2.4, 5.3, and 5.4.

The State responded a final time on September 30, 2019 in an email from Mr. Holt to Mr. Mets:

> Per your email below, I have reviewed the highlighted portions of your attached June 24th letter to Khris Hawkins.  I’ve revised the CBA where indicated below and attached is a signature copy reflecting these changes.  I do not believe any further changes are necessary but feel free to contact me if you want to discuss.  Otherwise, please have Unit 9 execute and I’ll do the same with the State.

2. **Article 4, Management Rights.**
   
   In the footnote the word “in” should be “on”.

   **STATE RESPONSE:** Requested language is in the attached CBA.

3. **Article 5, Wages:**
   
   Subsection 5.1.1.1: All references to “hazardous duty pay” were removed from the MOA.  This subsection should be removed.  This will also be consistent with the COAD contract which has no reference to hazardous duty pay.
STATE RESPONSE: The parties agreed that the minimum salary pay table for the P&P included a roll up of their hazard duty pay, so this agreement should be reflected in the CBA. I reviewed the previous COAD CBA and it in fact contains similar language (See Art. 38.1.F of attached COAD CBA). Also, I spoke to Khris Hawkins and she said you and she spoke on July 16, 2019 (in follow up to her email dated 6/28/19 with responses to your 6/24/19 letter) and that you indicated Unit 9 was okay with this language.

b. Section 5.2
   i. Subsection 5.2.1: This subsection is not in the MOA or the previous agreement.

STATE RESPONSE: The language merely memorializes how the State calculates employee’s length of service within their classification series. As you know, per the MOA, the State provided Unit 9 with each employee’s length of service within the classification series, and allowed each of them [sic] the accuracy of the salary and designated length of service within the classification series. Again, Khris Hawkins [sic] and she said you and she spoke on July 16, 2019 (in follow up to her email dated 6/28/19 with responses to your 6/24/19 letter) and that you indicated Unit 9 was okay with this language.

v. Subsection 5.2.4: This subsection should read: “Employees will receive a salary as established by the minimum pay table for the employee’s classification or 2.0%, whichever is greater.”

STATE RESPONSE: The language referenced is actually in Subsection 5.3 of the CBA. The State agrees that the following language can be used: “Employees whose positions are covered by a Minimum Pay Table will receive a minimum salary as established by the attached pay tables or a 2.0% wage increase, whichever is greater.” The revised language is in the attached CBA.

c. Section 5.3: This section is not in the MOA or the previous agreement.

STATE RESPONSE: See above.

d. Section 5.4:
   i. Add “#” before “9”.

STATE RESPONSE: Requested language is in the attached CBA.

ii. The MOA says “July 1, 2019” and the CBA says “June 30, 2019.”

STATE RESPONSE: Requested language is in the attached CBA.

iii. The MOA says the 2.0% raises will be implemented on July 1 of the relevant years.
STATE RESPONSE: The previous CBA sent to you had this language, so no change necessary. See attached CBA. State Exhibit 26.

Mr. Holt testified this was the State’s last direct communication with the Coalition’s Chief Negotiator concerning the draft collective bargaining agreement.

Thereafter, on or about October 10, 2019, FOP Lodge 10 filed a Request for Declaratory Statement with PERB asserting the State has committed an unfair labor practice by eliminating the statutory right of P&P Officers to receive hazardous duty pay. By decision dated December 3, 2019, the petition was dismissed because it failed to establish a controversy existed which was subject to resolution by a declaratory statement. The decision noted, “An objection to an alleged unilateral change in terms and conditions of employment is properly filed as an unfair labor practice charge.”

ISSUES

**DOES FOP LODGE 10 HAVE STANDING TO BRING AN UNFAIR LABOR PRACTICE CHARGE AGAINST THE STATE FOR AN ALLEGED FAILURE TO BARGAIN THE TERMS OF THE UNIT 9 COLLECTIVE BARGAINING AGREEMENT?**

**DID THE UNIT 9 BARGAINING COALITION VIOLATED 19 DEL. C. §1307(B)(2) AND/OR (B)(4) BY INSERTING NEW TERMS INTO THE NEGOTIATED AGREEMENT AND/OR BY REFUSING TO SIGN A NEGOTIATED AGREEMENT?**

**DID THE STATE VIOLATE 19 DEL. C. §1307(A)(5) AND/OR (A)(7) BY INSERTING NEW TERMS INTO THE NEGOTIATED AGREEMENT AND/OR INSISTING THE UNIT 9 BARGAINING COALITION SIGN AN AGREEMENT CONTAINING TERMS TO WHICH IT DID NOT AGREE?**


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12 FOP Lodge 10 & State of Delaware, Dept. of Correction, D.S. 19-10-1207, IX PERB 8163, 8168 (2019).
UNILATERALLY CEASING TO PAY HAZARDOUS DUTY PAY TO PROBATION AND PAROLE OFFICERS REPRESENTED BY FOP LODGE 10?

DISCUSSION

The PERA, as it relates to the scope and process of collective bargaining for State merit employees, was modified after the terms of the Unit 9 Memorandum of Understanding (“MOA”) were reached and memorialized on or about May 1, 2019. Effective January 1, 2020, the compensation bargaining coalitions (including Unit 9) were deleted from §1311A of the PERA. Coalition bargaining for compensation was replaced with a new bargaining structure for represented State merit system employees:

(b) Each exclusive representative shall bargain for compensation for the members of its exclusive bargaining unit or units in a mutually agreed upon consolidated manner. The exclusive representative shall work with the Secretary of the Department of Human Resources to determine how its exclusive bargaining unit or units shall be consolidated. If the exclusive representative and the Secretary of the Department of Human Resources are unable to reach an agreement regarding the manner in which to consolidate the bargaining unit or units, negotiations will default to the individual bargaining units as certified by the Public Employment Relations Board… 19 Del. C. §1311A

This Charge arises out of circumstances which occurred prior to the abolition of the bargaining coalitions of State merit employees. The decision, therefore, has limited retrospective application going forward to the collective bargaining relationships between the State and the certified exclusive bargaining representatives of State merit employees who have chosen to be represented for purposes of collective bargaining.

I. FOP Lodge 10’s Standing

Under §1311A of the PERA (prior to the 2019 amendment), PERB was required to determine the proper assignment of job classifications to each of the twelve (12) identified “compensation” bargaining units, to determine the bargaining unit status of individual employees, and to provide for certified bargaining representatives to combine bargaining
units or portions of bargaining units of employees that they represented within each of the
twelve units. 19 Del. C. §1311A(b).

The Unit 9 compensation unit was defined by PERB and the exclusive bargaining
certified to bargain representatives of the employees in the defined compensation unit were
on behalf of those employees as part of a coalition. Those representatives included FOP
employees in the defined compensation unit were certified to bargain Lodges 3, 10, and 11, General Teamsters Local 326, and AFSCME Local 3384. Unit 9 is
those representatives included FOP defined as:

Law-enforcement and investigative agents which is composed of
government officers, natural resource and environmental control
colonies, parole and probation officers of the Department of Correction,
alcogocm beverage control officers, investigators and similar

occupations. 19 Del. C. §1311(b)(9).

The Unit 9 Coalition is not an exclusive bargaining representative within the
meaning of §1302(j) of the PERB, as it is not an employee organization:

“Employee organization” means an organization which admits to
membership employees of a public employer and which has as a purpose
the representation of such employees in collective bargaining, and
includes any person acting as an officer, representative, or agent of said
organization. 19 Del. C. §1302(i).

The Coalition neither admits employees to membership nor does it have officers or an
independent means to hire or designate representatives. It is a combination of exclusive
representatives, a statutorily created coalition to “join together in a bargaining coalition to
bargaining collectively for [the] unit” of similar positions. 19 Del. C. §1311A(c). The
predecessor §1311A further stated, “Employee organizations that are part of the coalition
shall exercise authority over decisions of the coalition proportional to the number of
employees exclusively represented by the employee organization.” Id.

In the negotiations which resulted in the Memorandum of Agreement (“MOA”) and


draft collective bargaining agreement at issue, the Unit 9 Coalition included the representative(s) of each of the five composite unions who jointly employed a single chief negotiator, Coalition Negotiator Mets. FOP 10 representatives on the team included President Senior Probation Officer (“SPO”) Todd Mumford and former Vice President SPO Hedda Loose.

The statute created a good faith obligation for the “exclusive bargaining representatives of all the employees in each individual bargaining unit identified above” (in this case Unit 9) to “join together in a bargaining coalition to bargain collectively for that unit.”14 As a member of the coalition, FOP 10 had an equal obligation with the other exclusive representatives (i.e., Unions) to bargain in good faith with the State. President Mumford’s April 30, 2019 signature on the MOA reflects that FOP Lodge 10 engaged in the negotiations and that it, as well as the other unions representing employees in the Unit 9 Coalition, agreed to the terms set forth therein.

For these reason, under the unique and now obsolete language of the former 19 Del. C. §1311 (which was replaced in whole effective January 1, 2020), FOP Lodge 10 has standing to bring a charge as the exclusive representative of a group of employees (indeed more than half of the employees) in Unit 9. The Coalition itself has no legal identity apart from its component parts. This finding is limited to the specific facts of this case, at the time the charge(s) were filed.

II. The duty to bargain and the obligation to reduce agreements reached to writing and to execute the collective bargaining agreement

Initially, it is noted that this decision does not reach the issue of the bargaining status of hazardous duty pay or any other issue in contention, because that determination

14 19 Del. C. §1311A (c).
is unnecessary to resolve this dispute. This case concerns the good faith obligation of both parties to “confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached.” 19 Del. C. §1302(e). Failure by either party to meet these obligations is a violation of the PERA. 19 Del. C. §1307(a)(5) and (a)(7); and 19 Del. C. §1307(b)(2) and (4).

The State asserts FOP Lodge 10 and the Coalition violated the statutory obligation to execute the draft collective bargaining agreement which incorporates the agreements of the parties. FOP Lodge 10 alleges the State has violated its statutory obligations by including in the draft collective bargaining agreement provisions which were not included in the MOA and which the State has not attempted to resolve in good faith.

There are three specific issues placed in issue by the parties in this Charge: 1) the longevity steps in the Minimum Pay Tables for DOC P&P employees; 2) the effective date of the Pay Scales; and 3) the manner in which hazardous duty pay is received and memorialized in the Unit 9 Agreement.

Turning to the merits, the FOP’s objection to the longevity increments in the Minimum Wage Scale is not based in fact. Since the State’s March 25, 2019 second wage proposal for the P&P employees (State Exhibit 3), the longevity increment has not changed. The State’s Chief Negotiator testified that moving to a longer initial period for an increase and decreasing the number of steps, met the Coalition’s goal to insure that more senior employees were rewarded for their tenure. TR p. 9, 14. The longevity increments of \( \geq 0 \) to 6, \( \geq 6 \) to 10, \( \geq 10 \) to 15, \( \geq 15 \) to 20, \( \geq 20 \) to 25, and \( \geq 26 \) years \(^{15}\) did not change between when the State initially proposed this structure in March, when the parties signed the MOA, and when it was appended to the draft collective bargaining agreement.

\[^{15}\text{It is noted that there is a skip in the sequence between 25 years and greater than 26 years; neither party, however, identified this inconsistency in its charge.}\]
Contrary to the Union’s argument, there is no language in the MOA which provides for five year longevity increments. The MOA specifically states that 40 hour standard workweek employees in Unit 9 will be placed on the appropriate minimum Salary Table appended to the MOA. There was no misunderstanding about the structure of the salary tables; they were agreed to when the MOA was signed by representatives of the unions in the Coalition and the DHR Secretary.

For this reason, the FOP’s charge that the State violated its duty to bargain in good faith by appending Exhibit A as the Salary Tables for DOC P&P in the draft collective bargaining agreement is denied and dismissed. The Coalition’s insistence that the longevity steps on the P&P Pay Scales be changed or renegotiated violates its good faith negotiating duty and its obligation to execute an agreement which includes the mutual agreements of the parties.

The FOP also objected to what it alleges was the State’s revision of the effective date of the negotiated Salary Tables from July 1 of each fiscal year (beginning on July 1, 2019) to “the first day of the first pay period following the Minimum Pay Tables effective dates.” State Exhibit 20, Section 5.2.2. The State’s witness made much of the fact that the effective day of the collective bargaining agreement was July 1, 2019 and that the employees would be “placed on the new scales effective July 1, 2019”, but that the “implementation” of the wage scale could not occur until the first day of the first pay period of the new fiscal year, for the convenience of the State’s payroll system.

This semantic twist was not made clear during negotiation of the salary scales nor at the time the MOA was reduced to writing and signed. The three scales attached as Exhibits A, B and C to the MOA are all entitled, “Minimum Pay Tables… Effective 7/1/” followed by 2019, 2020, 2021 and 2022, respectively. The record establishes that at no point prior to the forwarding of the draft collective bargaining agreement to the Coalition’s
Chief Negotiator on or about May 17, 2019 was the draft language of Section 5.2.2 discussed. It is also clear from the record that the parties were unable to reach a reasonable resolution over this dispute.

It was unnecessary, however, for the State to continue to insist upon the inclusion of Section 5.2.2 in the final agreement. The PERA provides at §1313, Collective bargaining agreements, subsection (e): “No collective bargaining agreement shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public employer’s funds, spending or budget, or would otherwise be contrary to law.”

The FY 2020 State Budget Act, HB 225, Section 8 (effective July 1, 2019), states:

… The effective dates of [collectively bargained] agreements pursuant to 19 Del. C. §1311A or 19 Del. C. c.16 shall occur simultaneously with the fiscal year following final agreement between the State of Delaware and ratification of that agreement by the representatives of the certified bargaining unit, provided funds are appropriated in Section 1 of this Act for said agreements. All pay changes, in future agreements, shall become effective on the first day of a full pay cycle.

Consequently, the pay scales for the first year of this agreement could not legally have been implemented prior to the first day of the first pay cycle of Fiscal Year 2020, i.e., July 7, 2019, regardless of whether that language was included in the agreement. 16 For as long as this language remains in Epilogue to the State Budget (as it did in FY 2021 and is proposed in the Governor’s Recommended Budget for FY 2022), negotiated wage tables for State merit employees must, by law, become effective on the first day of the first pay cycle in the fiscal year.

Although the proposed language of Section 5.2.2 is consistent with the statutory constraint of the Budget Epilogue, whether it was included in the agreement would not

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16 This Epilogue language was also in the State’s FY 2019 Budget (first pay period – July 8, 2018 through July 21, 2018) and the current FY 2021 Budget (first pay period July 4, 2020 through July 17, 2020).
impact how the pay changes had to be implemented. While this dispute should have been resolvable by these parties in their efforts to finalize the language in the collective bargaining agreement, it was not included in the MOA and should not have served as an impediment to finalizing the collective bargaining agreement. By continuing to include language in the draft agreement to which the parties had not agreed (and which was unnecessary), the State violated its good faith bargaining negotiations.

The FOP also objected to the State’s proposed language for Section 5.1.1.1:

Effective Fiscal Year 2020, employees in DOC Probation & Parole classifications shall have their Hazard Duty Pay rolled into their annual salary and shall no longer receive Hazard Duty Pay. *State Exhibit 20.*

It is undisputed that the Pay Scales negotiated for DOC P&P employees include the A-1 Hazard Pay of $4,620 in the base rates. FOP 10 President Mumford explained the Union’s concern with the State’s “roll-in” language:

We didn’t like the term “rolling in”. Rolling in would indicated that no matter what hazardous duty pay numbers would be in the future, we were rolled in, so if we were at $4,620 now, if something happened and the General Assembly would have increased that to $6,000, well, the language is rolled in. Well, that $6,000 is rolled in and we would no longer be eligible possibly to receive that. So, the term “rolled in” was problematic.

… [T]he language of the MOA itself did not specifically address how that was going to take place and the only language was that it said hazardous duty pay is rolled in. We asked that that language be removed from the exhibits, so that we could properly address it through language in the contract.

… [T]he section that dealt with [hazardous duty pay] never mentioned a dollar amount. It just said hazardous duty pay, again, is rolled in and officers will no longer receive it, which to me is a little bit redundant. Either it’s rolled in or you don’t receive it anymore. It can’t be both. And, again, I said the language “rolled in” was problematic. *TR p. 65-67.*

President Mumford testified that FOP Lodge 10 understood that the salaries included in the agreed upon Pay Scales for DOC P&P included the annual hazardous duty
stipend. The FOP was not asserting that it had a right to be paid the annual stipend for hazard pay on top of the negotiated wage scales.\textsuperscript{17}

The language which the State included in its draft collective bargaining agreement at Section 5.1.1.1 was not negotiated. In fact, in her comments in response to the Coalition’s suggestion that this language be dropped, Ms. Hawkins acknowledged that the language was not included in the MOA, but asserted her understanding that “through negotiation discussion… that the hazard duty pay would be rolled in. If so, then this understanding needs to be memorialized in writing. If not, then Probation and Parole Minimum Pay Tables will need to be reduced by the amount of the hazard duty pay...”\textsuperscript{18}

The State argued the language of Section 5.1.1.1 was necessary and that it was “consistent” with a provision included in Article 38.F of the 2017-2019 collective bargaining agreement between the State and the Unit 10 Coalition of correctional officers. Whether the drafted language is consistent is immaterial. The State negotiated Article 38.F with the Unit 10 Coalition, reached an agreement, reduced it to writing, and all parties executed the resulting collective bargaining agreement. That process was not followed in this case as no agreement was reached between the State and the Unit 9 Coalition on this issue. The implicit agreement between these parties which preceded the signing of the MOA was that all references to hazardous duty pay would be removed from the agreement.

This testimony reflects a lack of communication between the parties as to both the basis of FOP Lodge 10’s concern and the role of the drafter of the collective bargaining agreement \textit{vis-à-vis} capturing the agreements of the parties. The drafted Section 5.1.1.1 is not consistent with the simple language which the State alleges was “inadvertently” deleted from the DOC P&P Wage Scales. It simply stated, “*Hazard Pay has been rolled in.” FOP

\textsuperscript{17} TR p. 71.
\textsuperscript{18} TR p. 46-47
Lodge 10, directly and through the Coalition Negotiator, had consistently registered its objection to use of the term “rolled in”, since before the MOA was finalized.

By continuing to insist upon the inclusion of language which had not been negotiated and to which the parties had not agreed in the draft collective bargaining agreement, the State violated its good faith obligations under the PERA.

Finally, the FOP’s charge that the State unilaterally ceased paying hazardous duty pay to Probation and Parole Officers it represents is wholly without basis in fact and is dismissed. The history of these negotiations clearly demonstrates that the parties negotiated, understood and agreed that the DOC P&P base wage rates include the $4,620 which had formerly been paid as an annual stipend for hazardous duty. All DOC P&P officers were moved to the new wage scales and accepted the wage increases both in July 2019 and 2020 without objection. The fact that their pay stubs no longer have a separate line for Hazardous Duty Pay has no impact on the wages P&P Officers are receiving.

III. Conclusions

For the reasons set forth above, FOP Lodge 10 is found to have violated 19 Del. C. §1307(b)(2) and (b)(4)for failing and/or refusing to accept the language of the draft collective bargaining agreement provided by the State on the longevity progression steps in the negotiated Minimum Wage Scales for DOC Probation and Parole Officers.

The State is found to have violated 19 Del. C. §1307(a)(5) for failing and/or refusing to withdraw provisions of the draft collective bargaining agreement which related to the effective date of the wage scales and the manner in which hazardous duty pay would be addressed in the agreement and which were not included in the MOA executed by the parties on May 1, 2019, and which were not subsequently resolved by mutual agreement.
WHEREFORE, the State is directed to amend the draft Unit 9 collective bargaining agreement to delete Sections 5.1.1.1 and 5.2.2, as these provisions were not negotiated and mutually agreed to by the parties.

FOP Lodge 10 and the State are directed to sign the Unit 9 Bargaining Coalition Agreement, as modified above, to reflect the parties’ mutual agreements. The Agreement shall continue to have the full force and effect of law.

The parties are directed to notify the Public Employment Relations Board within thirty (30) days of the date of this decision of the steps taken to comply fully with this Order.

Finally, collective bargaining agreements are living documents which are regularly renegotiated. The agreement between the State and the former Unit 9 Coalition unions expires on June 30, 2023. There will be no more Unit 9 Agreements as this entity no longer exists under the PERA. Following expiration of the Unit 9 agreement, FOP Lodge 10 may seek to negotiate language on how future potential increases to hazardous duty pay by the General Assembly will be addressed. For the duration of the current agreement, however, the Minimum Pay Tables for its members are reflected in the attachments to the 2019-2023 Unit 9 collective bargaining agreement. The parties have agreed that the DOC P&P Officers shall not receive the annual hazardous duty stipend of $4,620 because it is included in the negotiated base wage rates in the collective bargaining agreement.

IT IS SO ORDERED.

DATE: April 14, 2021

DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.

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