

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>GENERAL TEAMSTERS LOCAL 326,</b>	:	
	:	
Charging Party,	:	
	:	<b><u>ULP No. 20-05-1228</u></b>
v.	:	
	:	
<b>DEPARTMENT OF SAFETY AND HOMELAND</b>	:	<b>DECISION ON THE MERITS</b>
<b>SECURITY, DIVISION OF ALCOHOL &amp; TOBACCO</b>	:	
<b>ENFORCEMENT,</b>	:	
	:	
Respondent.	:	

**Appearances**

*Jeffrey M. Weiner, Esq.*, for the General Teamsters Local 326

*Thomas J. Smith, State Labor Relations & Employment Practices, DHR*, for the State

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 Department of Safety and Homeland Security (“DSHS”) is an executive branch department of the State. The Division of Alcohol and Tobacco Enforcement (“DATE”) is an agency of DSHS.

General Teamsters Local 326 (“Teamsters Local 326”) is an employee organization within the meaning of 19 Del. C. §1302(i). It is the exclusive bargaining representative of a bargaining unit of all full-time sworn DATE Agents, as defined in DOL Case 91.

General Teamsters Local 326 and DSHS/DATE are parties to a collective bargaining agreement which has a nominal term of January 1, 2013 through December 31, 2015. This agreement has been automatically renewed year to year.

The bargaining unit of DATE Agents was also included in State Merit Bargaining

Unit #9, which was defined as “Law enforcement and investigative agents which is composed of agency police officers, natural resource and environmental control officers, deputy fire marshals I through V, investigators and similar occupation.”<sup>1</sup>

On May 4, 2020, Teamsters Local 326 filed an unfair labor practice charge alleging conduct by the State in violation of its obligations under the PERA. The Charge alleges violations of 19 Del. C. §1307(a) (5), which states:

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

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

Specifically, Teamsters Local 326 alleged the State violated the PERA by failing or refusing to negotiate with respect to working conditions unique to DATE Agents.

On May 18, 2020, the State filed its Answer to the Charge in which it admitted some facts, denied or qualified other asserted facts, and raised new matter in its defense. The State asserted that working conditions do not include compensation as defined in §1311A(a), and that compensation could only be negotiated in the Unit 9 compensation negotiations.

Teamsters Local 326 filed its Response to the Town’s New Matter on May 27, 2020 in which it denied the State’s legal conclusions.

A Probable Cause Determination was issued on October 27, 2020, finding the pleadings are sufficient to establish that the State may have violated 19 Del. C. §1307 (a)(5), as alleged. Thereafter, a hearing was held on February 23, 2021. The record closed following the receipt of written argument from the parties.

This decision is based upon the record created by the parties and consideration of

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<sup>1</sup> 19 Del. C. §1311A(b)(9); *PERB Exhibit 1*.

the arguments and relevant case law.

## FACTS

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

The State of Delaware, Department of Safety and Homeland Security, Division of Alcohol and Tobacco Enforcement is party to a collective bargaining agreement with the International Brotherhood of Teamsters Local 326<sup>2</sup> which has a nominal term of January 1, 2013 through December 31, 2015. *Union Exhibit 1*. The 2013-2015 Agreement covers the bargaining unit of Alcohol and Tobacco Enforcement Agents (excluding supervisory employees), which shall be referred to herein as “DATE Agents”. Article 20, Term of Agreement, states the Agreement,

... shall be automatically renewed from year to year thereafter, unless either party shall give the other party written notice of desire to terminate, modify or amend the Agreement. Such notice shall be given to the other party in writing by registered mail on or before September 1, 2015, or any subsequent year. Any such notice by the Union shall be sent to the State Director for Labor Relations and Employment Practices.

Article 15, Equipment, Use of Force, Rules/Polices and Clothing, of the 2013-2015 Agreement provides, in relevant part:

- 15.4 The State agrees to provide an annual clothing maintenance allowance to employees in the amount of \$600.00, payable quarterly.
- 15.5 The State shall reimburse employees for the loss of or damage to personal property suffered in the line of duty, not to exceed \$150.00...

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<sup>2</sup> The title page and the introductory paragraph of the 2013-2015 Agreement identify the Union as the “International Brotherhood of Teamsters Local 326”. On the face of the Charge and subsequent filings, as well as on the title page of the Unit 9 collective bargaining agreement, the Union is referred to as General Teamsters Local 326. It appears these titles are used interchangeably.

Effective August 2, 2007, the Public Employment Relations Act was amended to expand the scope of collective bargaining for represented State Merit employees (i.e., those holding positions in the State classified service and represented by unions) to include compensation for the first time. The new §1311A of the PERA provided:

§ 1311A. Collective bargaining in the state service.

(a) Notwithstanding any other provision in 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 Chapters 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.

(b) For purposes of bargaining pursuant to this section, employees shall be classified in the following bargaining units, each of which shall independently bargain compensation:

(1) Labor, maintenance, trade and service workers which is composed of generally recognized blue collar and service classes including mechanics, highway, building and natural resource maintenance, skilled craft, equipment operators, toll collectors, food service, custodial, laundry, laborers, security officers and similar classes;

(2) Nonprofessional patient care workers which is composed of institutional care classes including licensed practical nurses, nursing assistants, active treatment assistants, technicians, therapy aides and similar classes;

(3) Social services, human services, and counseling which is composed of social workers, social service specialists, family therapists, parole and probation officers, youth counselors, teacher

aides, activity aides, job service personnel, income maintenance personnel, eligibility specialists, vocational counselors, correctional counselors, child support enforcement personnel and similar classes;

(4) Administrative support, technical and clerical which is composed of administrative specialists, clerks, account technicians, computer operators, office service personnel, officer workers, paralegals and similar nonprofessional classes;

(5) Engineers, and administrative professionals which is composed of civil, environmental and other engineers, accountants, management analysts, fiscal officers, program managers, business professionals, auditors and similar professionals classes exempt from the Fair Labor Standards Act [29 U.S.C. § 201, et seq.];

(6) Professional patient care which is composed of registered nurses, public health nurses, psychiatric nurses, therapists, dietitians and similar professional classes;

(7) Professional education and library science which is composed of state agency teachers, counselors and librarians;

(8) Regulatory licensing and inspectors which is composed of employees empowered to review certain public and business activities including fire marshals, regulatory inspectors, field auditors, motor vehicle inspectors and similar classes;

(9) Law enforcement and investigative agents which is composed of agency police officers, natural resource and environmental control officers, alcoholic beverage control officers, investigators and similar occupations;

(10) Correctional officers and similar correctional occupations;

(11) Correctional supervisors which is composed of correctional lieutenants, staff lieutenants, correctional captains and similar occupations.

(12) Scientists and medical professionals which is composed of biologists, chemists, agricultural specialists, pharmacists, psychologists, psychiatrists, physicians, pathologists and similar occupations.

The Board shall determine the proper assignment of job classifications to bargaining units and the bargaining unit status of individual employees and shall provide for certified bargaining representatives to combine bargaining units or portions of bargaining units of employees they represent within the bargaining units defined in this section based upon the job classifications of the employees represented.

(c) The exclusive bargaining 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.

To the extent a finalized agreement on compensation items requires legislative approval or the appropriation of funds, the Governor shall recommend the same to the General Assembly for the ensuing fiscal years and the agreement provision requiring such appropriation shall be contingent on the specific appropriation of funds by the General Assembly. In the event the General Assembly fails to appropriate the funds necessary to implement the provision of an agreement, that provision shall be returned to the parties for negotiation or the provision may be implemented to the extent consistent with or limited by appropriations from the General Assembly, at the discretion of the General Assembly. Contracts shall be timed to become effective in accordance with the state's fiscal year.

(d) Coalition compensation agreements shall not constitute a bar to an election in accordance with § 1311(b) of this title. Such bar shall be established by the non-compensation agreement covering employees in an appropriate unit.

(e) Notwithstanding any other provision in this Code to the contrary, where no employee organization is certified to represent some or all of the employees in a bargaining unit defined in subsection (b) of this section, an employee organization desiring to be certified as the exclusive representative of the unrepresented employees in such unit shall file a petition with the Board, accompanied by a combination of the un-coerced signatures of at least 30% of the unrepresented State employees in a unit described in said subsection (b) of this section.

Alternatively, an employee organization may file a petition with the Board, accompanied by the un-coerced signatures of at least 30% of the combined total of unrepresented state employees and state employees currently represented by the petitioning employee organization in a unit described in said subsection (b) of this section. The Board or its designee shall act on such petition in accordance with §§ 1310 and 1311 of this title. Nothing contained herein shall be deemed to prevent a public employer from voluntarily recognizing an employee organization as the exclusive bargaining representative for a specified bargaining unit without an election so long as the following conditions have been met:

(1) A petition shall have been filed with the Board by an employee or group of employees or employee organization acting in their behalf alleging that a majority of employees in a unit identified in subsection (b) of this section above wish to be represented by an employee organization for such purposes; and

(2) The Board verifies that a majority of the employees in such unit have, within 12 months of the submission of the petition to the Board, signed authorizations designating the employee organization specified in the petition as their exclusive bargaining representative and that no other employee organization is currently certified or recognized as the exclusive bargaining representative of any of the employees in the unit; and

(3) The Board determines that notices have been posted, where notices to affected employees are normally posted, for a period of at least 10 calendar days, advising that exclusive recognition will be granted without an election to a named employee organization for such unit.

(f) Notwithstanding any provision in this Code to the contrary, collective bargaining pursuant to this section shall commence at least 150 days prior to the expiration date of any current collective bargaining agreement or in the case of a newly certified representative within a reasonable time after certification.

(g) Notwithstanding anything in this section to the contrary, a bargaining unit created pursuant to the provisions of subsection (b) of this section, shall not bargain for compensation as defined herein until all of the eligible employees in such unit are represented by an exclusive bargaining representative. Nothing contained in this subsection shall be interpreted to deny bargaining for any items negotiable for state merit employees pursuant to § 5938 of Title 29. (76 Del.Laws, c. 178, § 1.) *PERB Hearing Exhibit 1.*<sup>3</sup>

DATE Agents are “Law enforcement and investigative agents” under §1311A(b)(9), as defined above. Consistent with the requirements of §1311A(c), Teamsters Local 326 was obligated, as the certified exclusive bargaining representative of DATE Agents, to join together in a coalition to bargain collectively with other representatives of law enforcement and investigative agents pursuant to 19 Del. C. §1311A(c).

During the summer of 2016, the State and the bargaining coalition representing Merit Unit 9 (“Unit 9 Coalition”) entered into negotiations for a collective bargaining agreement which included compensation. On or about August 31, 2016, the Unit 9 Coalition presented the State with contact proposals for general wage increases, hours of work, uniform/clothing allowance, court pay, call-in and call-back pay, call-up pay, compensation for acting out of rank, vacation sell-back, special duty pay, and

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<sup>3</sup> This version of §1311A remained in effect through December 31, 2019.

compensation for working during inclement weather, among other proposals. *State Exhibit 1.*

At some point prior to July 1, 2018, the State and the Unit 9 Coalition executed a collective bargaining agreement for Unit 9 with a one-year term of July 1, 2018 – June 30, 2019. *Union Exhibit 2.* The Agreement was limited in scope; the only compensation<sup>4</sup> included in that agreement was included at Article 5, Wages:

Employees covered by this Agreement shall receive the following general wage increase for the amounts and on the dates specified below:

2.0% increase effective 07/01/2018

0.5% effective 01/01/2019

The 2018-2019 Unit 9 Agreement further provided:

#### **ARTICLE 7      EXISTING TERMS AND CONDITIONS**

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 and effect, unless otherwise modified by written agreement by the parties. All negotiations over compensation shall be exclusively conducted in successor negotiations for this Agreement.

#### **ARTICLE 8      ALTERATIONS      AND      WAIVERS      OF AGREEMENT**

8.3 The parties agree that this Agreement does not constitute a waiver of the parties' respective positions as to the scope and nature of future compensation agreements.

The 2018-2019 Unit 9 Agreement was signed by a representative of Teamsters Local 326, as well as the exclusive representatives of other employees in the Coalition.

The State and the Unit 9 Coalition entered into negotiations for a successor to the 2018-2019 Unit 9 Agreement in January of 2019. *Union Exhibit 11.* The negotiations

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<sup>4</sup> "... 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..." 19 Del. C. §1311A(a)(1)

resulted in the signing of a Memorandum of Agreement (“MOA”) dated April 30, 2019 which covers the term of July 1, 2019 through June 30, 2023. *Union Exhibit 6*. Again, the negotiated compensation provision is limited to wages for covered positions during the term of the agreement. The State and the Unit 9 Coalition negotiated wage scales for employees working 40 hour/week schedules and provided for a flat two percent (2%) annual wage increase for employees working 37.5 hours/week. The MOA was signed by a representative of Teamsters Local 326, as well as the exclusive representatives of other employees in the Coalition.

The MOA did not alter Article 8 of the 2018-2019 Unit 9 Agreement.<sup>5</sup>

By letters dated March 27, 2019, Teamsters Local 326 notified both the Division of Alcohol and Tobacco Enforcement and the Public Employment Relations Board of its intent to open negotiations for a successor to the 2013-2015 DATE and IBT Local 326 Agreement.

The statutory collective bargaining rights of State merit employees were again modified on May 30, 2019 when compensation bargaining coalitions were deleted from the law, effective January 1, 2020. Section 1311A was replaced and now provides:

**§ 1311A. Collective bargaining in the state service.**

- (a) Notwithstanding any other provision in this Code, exclusive representatives of the state merit employees, who are in the classified service and not working in higher education, shall collectively bargain in the units as determined 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

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<sup>5</sup> The MOA states in Section 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.” *See also Union Exhibit 8*.

time, task, or other basis of calculations. Position classification, health care and other benefit programs established pursuant to Chapters 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.
- (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...
- (c) To the extent a finalized agreement on compensation items requires legislative approval or the appropriation of funds, the Governor shall recommend the same to the General Assembly for the ensuing fiscal years and the agreement provision requiring such appropriation shall be contingent on the specific appropriation of funds by the General Assembly. In the event the General Assembly fails to appropriate the funds necessary to implement the provision of an agreement, that provision shall be returned to the parties for negotiation or the provision may be implemented to the extent consistent with or limited by appropriations from the General Assembly, at the discretion of the General Assembly. Contracts shall be timed to become effective in accordance with the State's fiscal year.
- (d) The parties may engage in collective bargaining for compensation simultaneously or separately from collective bargaining for terms and conditions.
- (e) The negotiation of collective bargaining agreements shall be staggered over a period of time. Such schedule shall be determined by mutual agreement of the Secretary of Human Resources and the exclusive representative of all bargaining units prior to March 1, 2020. Existing collective bargaining agreements regarding compensation will remain in effect until such time as they, by their terms, expire. The grouping of bargaining units in a consolidated manner as contemplated in subsection (b) of this section, above, shall be determined in advance of the expiration of the collective bargaining agreements existing as of May 30, 2019, that were originally authorized through 76 Del Laws c. 178.
- (f) Exclusive bargaining representatives may bargain for different pay rate increases for their individual bargaining units, provided, however, that the compensation for any given bargaining unit or units may not exceed the pay

ranges for the respective pay grades, as established in the annual appropriations act.

- (g) [Repealed.] [76 Del. Laws, c. 178, § 1](#); [77 Del. Laws, c. 347, §§ 1, 2](#); [80 Del. Laws, c. 352, § 1](#); [81 Del. Laws, c. 124, § 1](#); [82 Del. Laws, c. 26, § 2](#);

In September 2019 Teamsters Local 326 provided the State’s Negotiating Team with its proposals to modify the predecessor 2013-2015 Collective Bargaining Agreement. *Union Exhibit 9*. That proposal included modifications to the term of the Agreement (proposed for July 1, 2019 through July 1, 2023) and to increase the Clothing Allowance in §15.4. It also included new proposals for Standby Pay, Court Pay, Call Back Pay, and an annual stipend for Agents “attending a recognized gym or workout facility 150 times a year”, each of which involves the payment of money in some form to the employees.

Negotiations between DATE and Teamsters Local 326 for a successor to their 2013-2015 agreement were conducted on December 6, 2019. *Union Exhibit 11*. During this negotiation session, the State advised Teamsters Local 326 that it would not negotiate with respect to any proposals with a monetary impact, asserting those proposals should have been negotiated as part of the Unit 9 negotiations.<sup>6</sup>

Following that session, Teamsters Local 326 Vice President and Business Agent (and its Chief Negotiator) wrote to the State’s Chief Negotiator on January 23, 2020:

It has been over a week since we last spoke. I wanted to know if the State is going to resume negotiations with the Date [*sic*]? As you know I spoke with Scott Holt the State’s chief negotiator for the Unit 9 negotiations last week. I also spoke to the other union officials who were in negotiations for Unit 9. All have confirmed the Unit 9 negotiations were for wages. I need to know the state’s position. Are we going to negotiation or do I have to file a ULP? *Exhibit E to the Unfair Labor Practice Charge*.

The State’s Chief Negotiator responded by email on February 3, 2020:

We are not disputing that the State and the Unit 9 coalition negotiated

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<sup>6</sup> Testimony of Teamsters Local 326 Chief Negotiator Len McCartney, which was unrefuted. *Transcript p. 20*.

for employee wage increases, or that those negotiations produced an agreement increasing wages for all coalition members – to include the DATE officers.

As we have discussed, it is the State’s position that Unit 9 negotiations were the proper forum for compensation issues – which was not exclusive to wages. The Union’s current proposals for the DATE terms and conditions successor agreement contain demands for new premium payments for Court Pay, Call-Back Pay, pay for gym memberships, On-Call payments, increases to the clothing allowance, etc. All of these are all ‘compensation’ items, and should have been advanced in bargaining for the Unit 9 agreement.

We are always amenable to discussing negotiable issues with the union. However, as it relates to IBT potentially filing a ULP, the State has not refused to negotiate over a mandatory subject of bargaining by asserting that the compensation issues advanced here in terms and conditions negotiations should have been advanced in the appropriate forum – Unit 9 negotiations.

### **ISSUE**

DID THE STATE OF DELAWARE, DSHS/DATE VIOLATE SECTION 1307 (A)(5) OF THE PUBLIC EMPLOYMENT RELATIONS ACT (19 DEL. C. CHAPTER 13) BY FAILING OR REFUSING TO NEGOTIATE WITH GENERAL TEAMSTERS LOCAL 326 ON MATTERS INCLUDING COURT PAY, CALL-BACK PAY, INCREASES TO CLOTHING ALLOWANCE, ETC., DURING NEGOTIATIONS FOR A SUCCESSOR TO THE 2013-2015 COLLECTIVE BARGAINING AGREEMENT?

### **DISCUSSION**

This Charge arises during a unique period of statutory transition of the Public Employment Relations Act. Prior to January 1, 2020, compensation negotiations, could only be conducted through statutorily identified bargaining coalitions, including Unit 9.

Effective January 1, 2020, however, the law changed. The twelve statutorily created Merit Bargaining Units ceased to exist and each exclusive bargaining representative was obligated to “bargain for compensation for the members of its exclusive bargaining unit or units in a mutually agreed upon consolidated manner”. 19 Del. C.

§1311A(b). The modified statute further provides that where the Secretary of the Department of Human Resources and the exclusive bargaining representative 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.” *Ibid.*

The State argues that the premium payments Teamsters Local 326 is attempting to negotiate fall within the definition of “compensation” found in §1311A(1) of the PERA. That is true. It also argues all of the proposals, including clothing allowance, standby and/or call back compensation, involve the payment of money. Again, this is not in dispute.

The State argues that neither it, Teamsters Local 326, nor anyone else “had the legal authority to redefine the statutory requirement that compensation bargaining be accomplished in coalition negotiations and not within the unit’s local terms and conditions agreement with the various employing State agencies.” *State Answering Brief, p. 8.* The condition that compensation could only be bargained on behalf of State merit system employees in and by coalitions of statutorily defined similar classified employees was eliminated when the PERA was modified effective January 1, 2020. The modified statute explicitly states that the exclusive representative shall “...engage in collective bargaining for compensation simultaneously or separately from collective bargaining for terms and conditions.” 19 Del. C. §1311A(d).

The State is correct in its argument that the 2020 changes to the PERA have no impact on Merit Unit 9’s contractual obligations. The modified statute states, in relevant part:

Existing collective bargaining agreements regarding compensation will remain in effect until such time as they, by their terms, expire.

There is no assertion in this Charge that the State has failed or refused to abide by

the negotiated terms of the 2019-2023 Unit 9 Agreement or that Teamsters Local 326 has attempted to renegotiate the terms set forth in that Agreement. As noted above, wages were the only compensation issues addressed in the Unit 9 Agreement. Further, Article 8 of the Agreement (which was not modified from the 2018-2019 Unit 9 Agreement) reflects an explicit agreement between the parties that the Agreement "... does not constitute a waiver of the parties' respective positions as to the scope and nature of future compensation agreements."

There is a statutory mandate for public employers and exclusive bargaining representatives to collectively bargain:

"Collective bargaining" means the performance of the mutual obligation of a public employer through its designated representative and the exclusive bargaining representative 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. However, this obligation does not compel either party to agree to a proposal or require the making of a concession. *19 Del. C. §1302(e)*.

The 2013-2015 Agreement between the State and Teamsters Local 326 included both a clothing allowance (§15.4) and reimbursement for loss or damage to an employee's personal property (§15.5). *Union Exhibit 1*. Each of these provisions, on its face, involves the payment of money by the State to employees under the negotiated conditions. Neither is included in whole or in part in the Unit 9 Agreement. The statute does not prohibit, indeed it requires, the parties to negotiate with respect to compensation in §1311A(a) of the PERA.

It is unnecessary in this case to determine whether there was an effective waiver or concession by the State to defer certain compensation matters to direct negotiations between individual exclusive representatives and the agencies which employ State merit employees in the defined bargaining units. Because the law changed, that determination is

not relevant to resolving this Charge.

The State's Chief Negotiator for the successor to the 2013-2015 Agreement made the State's position clear in his February 3, 2020 email. The State declined to negotiate with respect to matters it concluded "should have been advanced in bargaining for the Unit 9 agreement", including "...new premium payments for Court Pay, Call-Back Pay, pay for gym memberships, On-Call payments, increases to the clothing allowance, etc." Until January 1, 2020, this may have been a tenable position; once the PERA was amended, however, it constituted a violation of the State's obligation to "... engage in collective bargaining for compensation simultaneously or separately from collective bargaining for terms and conditions." 19 Del. C. §1311A(d).

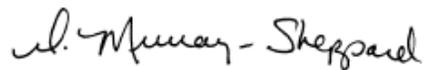
### **CONCLUSIONS OF LAW**

For the reasons discussed above, the State is found to have violated its duty to bargain in good faith when it failed or refused to engage in negotiations with Teamsters Local 326 concerning compensation issues (as defined in 19 Del. C. §1311A(a)(1)) for the bargaining unit of DATE Agents after January 1, 2020. By this act, the State has violated 19 Del. C. §1307(a)(5) as alleged.

WHEREFORE, the State is directed to engage in good faith negotiations with Teamsters Local 326 as to terms and conditions of employment, including compensation matters which are not covered by the 2019-2023 Merit Unit 9 Agreement.

**IT IS SO ORDERED.**

DATE: September 3, 2021



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