

Under the Administration of the
PENNSYLVANIA LABOR RELATIONS BOARD

In the Matter of Arbitration Between:

**PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION**

**Case # PERA-A-10-380-E
(Act 195 Interest Arbitration)**

And

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CORRECTIONS**

Presenters

For the PSCOA:

Richardson Todd Eagan, Esquire
Christopher Cook, Esquire
Ian Blynn, Esquire
*LIGHTMAN WELBY STOLTENBERG
& CAPUTO*
Roy Pinto, President
*PA STATE CORRECTIONS
OFFICERS ASSOCIATION*

For the Commonwealth:

Brian A. Casal, Esquire
David J. Hackett, Esquire
James J. Sullivan, Jr., Esquire
*BUCHANAN INGERSOLL &
ROONEY, P.C.*
Bryan J. Oles
*COMMONWEALTH OF PA
BUREAU OF LABOR RELATIONS*

Arbitration Panel

Sean T. Welby, Esquire
LIGHTMAN WELBY STOLTENBERG & CAPUTO
PSCOA-Appointed Arbitrator

Alfred J. D'Angelo, Esquire
BUCHANAN INGERSOLL & ROONEY, P.C.
Commonwealth-appointed Arbitrator

Walt De Treux, Esquire
Neutral Arbitrator and Panel Chair

Date of Decision: June 29, 2011

Introduction

The undersigned Panel of Arbitrators was duly appointed pursuant to the provisions of the Act of July 23, 1970, P.L. 563, *as amended*, 43 P.S. §§ 1101.101-1101.2301 (Act 195) and the procedures of the Pennsylvania Labor Relations Board. This Panel was convened pursuant to the terms of the Act, and the parties agreed to waive time limits under the Act. Hearings were held on April 18-19, 27-29, May 9-10, 19-20, 2011 in Harrisburg, Pennsylvania, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The Panel held multiple Executive Sessions to reach an Award.

This interest arbitration occurs at a difficult financial time for the Commonwealth, its employees, and the taxpayers in Pennsylvania. In remarks to the Panel, newly-elected Governor Tom Corbett explained that he “inherited a fiscal nightmare”. He cited the loss of federal stimulus dollars and the exhaustion of State rainy day funds as reasons the Commonwealth faced a four billion dollar deficit. He concluded that the State was “worse than broke”, and he detailed the “arduous process” of reducing the budget, including his call to all public employees to freeze wages.

Against this background, the Panel was tasked with finding areas in the collective bargaining agreement in which costs could be controlled and/or reduced while recognizing the significant commitment and contributions made by corrections officers, who, as the Governor noted, “dedicate their careers” to the law enforcement system.

As in most collective bargaining relationships, health care costs have increased substantially over the previous decade. Corrections Officers, like most state employees,

participate in the Pennsylvania Employee Benefit Trust Fund (PEBTF). While PEBTF provides quality health insurance benefits to its participants, the evidence indicates that the current funding levels provided in the parties' collective bargaining agreement exceed what is necessary to provide those benefits. With the parties' assistance, the Panel has identified approximately \$40 million in savings by reducing current funding levels to contribution levels necessary to maintain the quality benefits enjoyed by the PEBTF participants.

Further, at hearing, the Commonwealth had identified a situation in which it was required to pay over \$3-4 million in a 4-year period for grievances related to the contract's overtime equalization provision. The evidence suggested that flaws in the system established to fill overtime slots prevented the parties from realizing the contract's goal of equalization and resulted in more than 2300 grievances and numerous payments for time not worked. The Panel has taken action to remedy that system, with the intent of meeting the equalization goal and reducing payments for time not worked while protecting employees who miss overtime opportunities in violation of the contract. The Commonwealth's concerns related to payment for non-productive time, which benefited a portion of the bargaining unit. In its presentation at hearing, the Commonwealth indicated the savings generated by any change on this issue would be used for general wage increases. The cumulative 2-year savings from the Panel's Award on this issue represents almost 1% of payroll, which has been returned in full to the entire bargaining unit in the April 2014 pay increase.

With these substantial savings and the expected improvement of the Commonwealth's fiscal standing in the coming years, the Panel was able to provide a

certain level of wage and benefit increases that reward the bargaining unit for their dedicated service and commitment to a demanding, stressful and potentially dangerous career.

The parties also focused the Panel's attention on several operational issues in which they sought changes to improve operational efficiency and/or improve the working conditions for the bargaining unit members. The Panel attempted to address those issues which would have the most immediate impact on the parties and the day-to-day working environment.

Arguably the most significant and controversial of these issues is the mandatory wearing of slash/stab resistant protective body armor (vests). The 2005 interest arbitration award mandated that corrections officers wear protective body armor, and a joint committee of Commonwealth and PSCOA representatives selected the appropriate vests.

During the term of that contract, bargaining unit members experienced discomfort and other issues with the vests, to the extent that the PSCOA proposed in the 2008 interest arbitration proceeding that vests be made optional. Instead, the Arbitration Panel included language requiring the Commonwealth to make "reasonable accommodations on an institution-by-institution basis" to alleviate the discomfort, including "mist rooms, air conditioning, relief, etc."

Nonetheless, in the current interest arbitration proceeding, the bargaining unit members have renewed their demand to make the wearing of the vests optional. The Panel is faced with a difficult decision. The corrections officers are in the best position to assess the wearability and workability of the vests, but the Commonwealth raises

legitimate safety concerns and the possibility of injury absent the vests. In the end, a majority of the Panel recognizes the sound judgment and discretion of the individual corrections officer to perform his/her job most effectively and, most importantly, in a safe manner.

Taking into consideration all positions and arguments of the parties, the Panel issues the following Award:

1. **Term:** The term of the agreement shall be three (3) years, commencing July 1, 2011 and continuing through June 30, 2014. All provisions set forth herein shall be effective July 1, 2011 unless specifically otherwise noted.

2. **Wages:** Effective on the dates indicated, all H-1 bargaining unit members shall receive the following across-the-board wage increases:

July 1, 2012.....1%

July 1, 2013.....1%

April 1, 2014.....2%

3. **Longevity:** There shall be no service increment or longevity payment during fiscal year 2011-12. Effective June 30, 2012, all H-1 bargaining unit members shall be placed on a service increment and/or longevity scale that corresponds to their actual years of service (i.e., a member with 15 years of completed service shall receive 15% of base).

Employees shall receive one (1) annual service increment and/or one (1) longevity increment, as appropriate, effective on the first day of the first full pay period in the employee's anniversary/longevity month in fiscal year 2012-13.

Employees shall receive one (1) annual service increment and/or one (1) longevity increment, as appropriate, effective on the first day of the first full pay period in the employee's anniversary/longevity month in fiscal year 2013-14.

The following portion of Article 17 Section 1 of the collective bargaining agreement shall be deleted:

Notwithstanding any other provisions of this Agreement, it is understood that employees will not be on the pay schedule at the longevity range which corresponds with their years of service.

4. Health Care Benefits:

- a. The Employer shall contribute to the Fund the amounts indicated below on behalf of each permanent full-time employee eligible for benefits and covered by this Agreement:
 - July 1, 2011 -- \$375 biweekly per employee
 - July 1, 2012 -- \$390 biweekly per employee
 - July 1, 2013 -- \$425 biweekly per employee
- b. It is the express intention of the Panel to set contribution levels at a rate at which the Plan Trustees can maintain plan benefits through June 30, 2014 in substantially the same configuration as currently exists. Accordingly, the Panel retains jurisdiction over the issue of all

employee plan benefits for the term of the collective bargaining agreement set forth herein. If during that term, the plan provider announces the intention to substantially alter existing benefits, the Panel shall be immediately reconvened to examine the issues of the modification of employer contributions and/or to address any proposed plan design changes.

- c. The present level of employee premium share contributions for both active and retired employees shall be maintained through June 30, 2014.

5. Retiree Health Care Benefits:

A majority of the Panel intended to award a premium contribution reduction to future retirees who participate in the "Get Healthy" program. Late in the Panel's deliberations, an issue arose as to the extent, if any, of retirees' current ability and/or eligibility to participate in the program. The Panel directs the parties to meet to discuss the issues raised by retirees' participation in the "Get Healthy" program and report back to the Panel by July 15, 2011. Based on that report, the Panel may reconvene, at the call of the Chair, to further consider this issue.

- (a) Effective no later than January 1, 2012, any H-1 bargaining unit member who (1) retires from service subsequent to the issuance of this Award and (2)

qualifies for benefits under the Retired Employees Health Plan (REHP) as such qualification rules existed as of January 1, 2011, shall share in the cost of such benefits based upon the existing premium share set forth in the collective bargaining agreement through June 30, 2014. The percentage shall be calculated upon final average salary used for pension purposes. The Commonwealth has indicated that it will do such recalculation for existing retirees.

(b) Effective no later than January 1, 2012, any H-1 bargaining unit member who (1) retires from service subsequent to the issuance of this Award and (2) qualifies for benefits under the Retired Employees Health Plan (REHP) as such qualification rules existed as of January 1, 2011, upon reaching Medicare eligibility, shall have their annual contribution reduced by half. The Commonwealth has indicated that it will do such recalculation for existing retirees.

6. Uniforms, Clothing and Equipment: Within 21 days of issuance of this Award, each H-1 bargaining unit member who elects to be provided with a stab/slash resistant vest shall be issued one by the employer. Such employees shall be required, as a term and condition of employment, to wear such a vest at all times while on duty for the period equal to the useful life of the vest as per manufacturer specifications. Those employees who do not choose to be

issued a vest, shall neither receive one, nor be required to wear a vest while on duty.

(At the time of signing of this Award, the Commonwealth Arbitrator has not consented or dissented to this provision of the Award. The Panel Chair has granted him leave to confer with the Commonwealth on matters related to the issue, and the Commonwealth Arbitrator will communicate his consent or dissent on this issue on or about 15 days from the issuance of this Award. A dissent, if any, shall be amended to this Award.)

7. Grievance Procedure (Article 35, Section 2):

Step 1. - Modify the first paragraph as follows;

“Grievances regarding “just cause” for discharge, involuntary demotion, suspension and reprimands must be submitted at least five (5) working days prior to the Step 1 meeting. This period may be modified by mutual agreement of the parties.”

“Grievances involving “contract interpretation” must be submitted at least fifteen (15) working days prior to the pre-scheduled Step 1 meeting. This period may be modified by mutual agreement of the parties.”

Paragraph 3. Add the following language:

“Step 1 settlements will not add to, subtract from nor modify the provisions of this Agreement.”

Step 2. Filing -

PSCOA will provide an electronic copy of a grievance summary to produce the monthly docket for each Area Committee. PSCOA will provide DOC, DPW and OA-BLR access to a secure site on the PSCOA website for reviewing grievance packets.

Step 2 Postponements –

The Committee will grant postponements at Step 2 for Discharge grievances and the parties will no longer have a management or union postponement.

Eliminate Step 2.a. process –

Grievances alleging a violation of Article 33, Section 22 or a denial of request for combined leave will be docketed on the appropriate Step 2. Joint Area Committee docket.

Arbitration –

Modify contract language reflecting the parties' current agreement with regard to selecting and scheduling arbitrations. The Agreement will reflect those provisions outlined in the attached document.

Add: Grievances requested for arbitration in accordance with Step 3. of the Agreement and not scheduled within three years from said date will be considered withdrawn.

8. Heart & Lung Procedure:

Parties will provide 30 days notice of what cases will be scheduling for hearings – OA-BLR will prepare a docket.

The number of arbitrators on the Panel will increase to three (3). Each arbitrator will provide 2 hearing days per month – should the arbitration caseload no longer require 6 hearing days per month, the parties will mutually agree on a new schedule necessary to handle pending cases in a timely manner.

Parties will continue to assign cases to the arbitration dates as agreed by current practice.

Continuances that result in a full day cancellation will be paid by the party making the request.

9. Classification Grievance Procedure (Article 25):

Eliminate Step 1- Grievances will be filed directly to Step 2 of the current process.

Grievances not scheduled for arbitration three years from the date arbitration is requested will be considered withdrawn.

10. Union Business Leave (Article 15, Section 3):

Local Union Meetings – up to (2) local union officials from DPW and up to (3) local union officials from DOC (President, VP, Secretary or Treasurer), but no more than (2) from any one shift, will be provided one shift of UB leave within a 24 hour period to conduct monthly local union meetings.

State Committee Meetings – Bid Post, Constitution/By laws, Election, Finance, Grievance, H&W, Judicial/Ethics, Legislative, Public Relations,

Transportation and Uniform. – No more than (10) employees per meeting and no more than (2) per institution.

President's Meeting – No more than 6 meetings annually and no more than two employees per institution.

State Board Committee – will be reduced from quarterly to biannual meetings.

Add Union Business leave without pay with seniority credit for PSCOA Pre-meetings that occurs immediately prior to Eastern Joint Committee and Western Joint Committee. One employee per institution provided they have cases to be heard.

11. DOC Drug Policy (Article 33, Section 29): The parties agree to make the contractual drug policy consistent with DHHS as it pertains to listed drugs and the testing cut-off levels. In addition, the Policy will include Forensic Security Employees with the Department of Public Welfare.

12. Vacation Leave Selection: Effective in the next general vacation leave selection period, members of the unit shall select vacation by classification at each work location.

13. Holiday Observance for Certain Employees: Those bargaining unit members assigned to a Monday through Friday schedule shall have all contractual holidays falling on a weekend observed on either the Friday before the holiday, or the Monday following the holiday.

14. Call In Requirements for DPW Employees: Those bargaining unit members employed by the Department of Public Welfare shall be required to notify the employer of the need to utilize an unscheduled leave day at least two (2) hours prior to the start of their regularly scheduled shift; provided that in a *bona fide* emergency, members shall call in as soon as practicable prior to their shift.

15. Seniority (Article 27): Article 27 shall be revised to provide for one type of seniority – “bargaining unit seniority”, and all references to classification and on-site seniority shall be deleted.

16. Combined Leave Status: The collective bargaining agreement shall be clarified to provide that, following four (4) unscheduled absences, a bargaining unit member shall be compensated for any time worked *in the pay period in which the fourth and subsequent such absences occur* at the straight time rate for all hours worked in that pay period.

17. Contract Reformation Committee: The Commonwealth shall prepare a new Collective Bargaining Agreement which accurately reflects the modifications this Award imposes on the pre-existing Collective Bargaining Agreement (including 2008 Zobrak Award) and shall distribute the same to the Association within thirty (30) days from the execution of this Award. The

new Collective Bargaining Agreement, in addition to implementing the provisions of this Award set forth, shall edit the current Collective Bargaining Agreement in order to eliminate inaccurate section references, incomplete material, incorrect grammar and outdated language. In the event that the parties are unable to agree on any specific provisions of the Collective Bargaining Agreement in conformance with this Award, any disputes between the parties over language shall be resolved by the Board of Arbitration. It is the specific intent of the Panel that no right or benefit to either party shall be added or diminished by the writing of the new Collective Bargaining Agreement as mandated by this paragraph. The Panel shall retain jurisdiction over this matter until both parties have executed a new agreement incorporating the terms and conditions of this Award.

18. Service Recognition for 10- and 20-year members: A majority of the Panel recognizes the merit of the Association's proposal to recognize corrections officers who have served for 10 and 20 years with a uniform insignia (e.g., a chevron) denoting their service level. As the Panel believes it is best left to the parties to determine the appropriate form and symbol of recognition, the Panel directs that this matter be submitted to the parties' Uniform Committee for deliberation and decision. The Committee's decision shall not be the subject of a grievance.

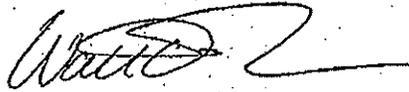
19. Overtime Equalization: The Commonwealth identified a situation related to the overtime equalization process provided for in Article 18, Section 5.a. in the contract, pursuant to which literally thousands of grievances have been filed and payments exceeding \$3 million for time not worked have been made. A majority of the Panel recognizes that Article 18, Section 5.a. has failed to provide a fair process for the equalization of overtime or to resolve the parties' mutual concern over the fair assignment of overtime. While the Impartial Chair of the Panel has recommendations for changes in the overtime system that were discussed at length in Executive Session, including a provision that a failure to respond to a call for overtime will result in credited time and the deletion of the provision for a measurement of equalization at a specific interval, a majority of the Panel expressed the need for the parties to first attempt to address the matter. Accordingly, the Panel directs the parties to meet as soon as practicable following the issuance of this Award to discuss changes to make the assignment of overtime fair and equitable. The Panel directs that the parties include in any such agreement a provision that an employee denied or passed over for an overtime opportunity in violation of this contract provision shall be awarded another similar overtime opportunity as remedy for the violation. The parties shall reach agreement on this issue no later than July 22, 2011. If the parties fail to do so, the Panel will issue a supplemental Award addressing this issue.

Rules for Arbitration and Review Process
Modifications to Article 35, Section 2 - ARBITRATION

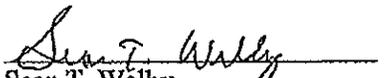
1. The Parties will mutually agree on a list of 8 impartial arbitrators.
2. The Arbitrators chosen by the parties shall serve on the panel for a term of two years. Subsequent terms will be determined by the parties.
3. If either side desires to remove an arbitrator from the panel they shall serve notice 30 days prior to the other side along with the name of the Arbitrator and specifics as to why they desire to remove said arbitrator from the panel. Upon receipt of this service the parties will attempt to mutually agree on a replacement Arbitrator within 15 days. If the parties are unable to mutually agree on a replacement Arbitrator, the receiving side shall furnish the names of (4) Impartial Arbitrators to the party initiating the removal of a panel Arbitrator. The replacement Arbitrator will be chosen from among those four names by the removing party.
4. The parties will conduct monthly grievance review/scheduling meetings of those grievances that Association as requested to be scheduled for arbitration.
5. The Association as the moving party shall furnish a list of grievances they desire to schedule for Arbitration to the Office of Administration no less than one calendar week prior to the review meeting.
6. The scheduling of cases into the arbitration calendar will be in the following order; Termination, Discipline and then Contract Interpretation unless mutually agreed otherwise.
7. The parties agree that due to geographical locations of institutions and arbitrators, the scheduling of cases may be altered from the order above.

All remaining terms and conditions of employment not modified by this Award shall remain "as is". All proposals of the parties not included in this Award shall be deemed denied.

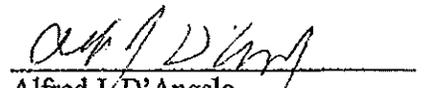
It is understood that the signatures of the arbitrators attest to the fact that the contractual changes represent the majority opinion award on each issue by the members of the arbitration panel.



Walt De Treux
Neutral Arbitrator and Panel Chair



Sean T. Welby
Association-appointed Arbitrator



Alfred J. D'Angelo
Commonwealth-appointed Arbitrator

**DECISION OF THE COMMONWEALTH ARBITRATOR
CONCURRING IN PART AND DISSENTING IN PART**

The Commonwealth Arbitrator has reviewed the neutral's opinion and as noted below concurs in part and dissents in part. I concur with the following numbered paragraphs of the Award:

1. Term
3. Longevity
4. Health Care Benefits
7. Grievance Procedure
8. Heart and Lung
9. Classification Grievance Procedure
10. Union Business Leave
11. DOL Drug Policy
12. Vacation Leave Selection
13. Holiday Observance
14. Call in requirements for DPW Employees
15. Seniority
17. Contract Reformation Committee
19. Overtime Equalization

I dissent in whole or in part for the reasons set forth herein to the following items:

2. Wages
5. Retiree Health
6. Vests

I dissent without comment to the following:

16. Combined Leave Status
18. Service Recognition

Vests: The issue of slash proof vests is a non-mandatory subject of bargaining which can only be altered with the express consent of the Commonwealth. Absent that consent, notwithstanding the majority's recommendations, the wearing of vests remains a requirement of the job.

As of the issuance of this decision, the Commonwealth does not consent to making the wearing of vests a decision left to the Officers. However, the neutral has reserved the issue for fifteen (15) days pending discussions between the parties. Should those discussions lead to an agreement on vests and/or related topics, the Commonwealth appointed Arbitrator will issue a supplementary decision.

Wages: As noted in the testimony, the Administration has inherited a fiscal nightmare from its predecessor. No provision was made for the expiration of approximately 4 Billion dollars of non-recurring federal funds, representing about 15% of the total funds expended in 2010-11. The Commonwealth Arbitrator agrees with the Neutral's decision to freeze all salaries at their 2010-11 levels and limiting the base wage increases to 1% in fiscal 2012-13.

The Commonwealth Arbitrator dissents from the Neutral's decision for 2013-14. The Commonwealth consents to the 1% increase effective 7/1/13 but dissents from the 2% increase effective 4/1/14. While normally 4% over three years, with one-half of it backloaded to the end of the contract would be acceptable, these are not normal times. Should the economy recover, then such a modification in April of 2014 would be responsible. However, the parties could have addressed this issue only three months later in June, 2014 when the contract expires. But, the Union must be made aware that it is highly improbable that a 2% increase in April, 2014 would be followed by any adjustment in July 2014. It must also be noted that the Commonwealth would not have objected to a 1% increase on April 15, 2014 (as opposed to 2%) in light of the significant savings achieved due to the changes in the Overtime Equalization procedure set forth in paragraph 19.

Retiree Health: Lastly, the Commonwealth Arbitrator dissents from portions of paragraph number 5, Retiree Health Care Benefits. The Commonwealth has repeatedly asserted its right not to bargain over benefits for retirees. It will not cede that right to the panel. Nevertheless, the Commonwealth has decided to alter the basis upon which retirees contribute towards health care. The contribution, beginning January 1, 2012 will be calculated based upon 3% of the retirees' base used to calculate their pension, as opposed to their last, highest year's salary. Also, once the retiree is Medicare eligible and purchases the Medicare Supplement policy, the contribution shall be reduced to 1.5%.

In paragraph 5, the majority suggests it may reconsider permitting retirees a reduction in contribution by enrolling in "Get Healthy." This will not be accepted by the Commonwealth. The Trustees have determined that there are too many logistical hurdles to such participation. Absent an endorsement by the Trustees, the Commonwealth will not alter its position.