



3. Respondent, Commonwealth of Pennsylvania, is the public employer of Petitioner's members as that term is contemplated under Act 195, 43 P.S. §1101.301(1), maintaining a principle place of business at Office of Administration, Bureau of Labor Relations, 404 Finance Building, Harrisburg, Pennsylvania 17120.

#### **ORDER OR OTHER DETERMINATION TO BE REVIEWED**

4. The Interest Arbitration Award of the Board of Arbitration dated September 12, 2008 (a copy of which is attached hereto as Exhibit "A").

#### **BACKGROUND AND PROCEDURAL HISTORY**

5. The parties hereto were party to a collective bargaining agreement, which, by its terms, was scheduled to expire on June 30, 2008.

6. In accordance with Act 195, the PSCOA notified the Commonwealth of its intent to commence collective bargaining to enter into a successor agreement prior to the expiration of the collective bargaining agreement.

7. The parties were unable to resolve their differences through bargaining and reached impasse as defined by Act 195. Thereafter, the matter was submitted to mediation in accordance with Section 805 of Act 195. When the efforts of the mediator were unsuccessful, the matter was referred to binding arbitration.

8. Pursuant to Section 805 of Act 195, a Board of Arbitration was empanelled by the Pennsylvania Labor Relations Board.

9. Hearings were held before the Board of Arbitration on February 14, 15, 21, 22 and 29, and April 3, 4, 10, and 17, 2008.

10. On September 12, 2008, the Board of Arbitration issued its interest arbitration award.

#### **SCOPE AND STANDARD OF REVIEW**

11. Review of an Act 195 Interest Arbitration Award is limited to *narrow certiorari* wherein the award may only be reviewed for (a) the jurisdiction of the arbitrator; (b) any irregularity in the proceedings; (c) an excess of the arbitrator's authority; or (d) any deprivation of constitutional rights. *Fraternal Order of Police, Lodge 5, ex rel. Costello v. City of Philadelphia*, 725 A.2d 206 (Pa. Cmwlth. 1999). The Court's standard of review with respect to these matters is plenary.

#### **STATEMENT OF OBJECTIONS**

##### ***Unconstitutional Diminishment of Retirement Benefits - Eligibility***

12. Under the prior collective bargaining agreement, members of the bargaining unit were enrolled in the Commonwealth Retired Employee Health Plan (REHP) and were entitled to receive retirement health insurance benefits upon "Retirement at or after superannuation age with

at least 15 years of credited service in the State and/or Public School Employees' Retirement Systems”.

13. To members of the bargaining unit who performed services under the prior collective bargaining agreement, the promise of retiree health insurance benefits upon retirement at or after superannuation age with at least 15 years of credited service constituted deferred compensation for services rendered by those members.

14. Item No. 4 of the Interest Arbitration Award increased eligibility requirements for receipt of retirement health insurance under the REHP from 15 years of credited state service to 20 years of credited state service effective September 1, 2008.

15. Item No. 4 of the Interest Arbitration Award constitutes a diminishment of a retirement benefit in violation of Article I, Section 17 of the Pennsylvania Constitution.

16. Item No. 4 of the Interest Arbitration Award was in excess of the Board of Arbitration's authority and effected a violation of bargaining unit members' constitutional rights.

***Unconstitutional Diminishment of Retirement Benefits - Benefits***

17. Under the prior collective bargaining agreement, members of the bargaining unit were enrolled in the Commonwealth Retired Employee Health Plan (REHP) and were entitled to receive retirement health insurance benefits upon payment of an amount equal to one percent (1.0%) of the employees' final annual gross salary at the time of retirement.

18. To members of the bargaining unit who performed services under the prior collective bargaining agreement, the promise of retiree health insurance benefits upon retirement upon payment of an amount equal to one percent (1.0%) of the employees' final annual gross salary at the time of retirement constituted deferred compensation for services rendered by those members.

19. Item No. 4 of the Interest Arbitration Award increased eligibility requirements for receipt of retirement health insurance under the REHP from payment of an amount equal to one percent (1.0%) of annual gross salary at the time of retirement to one and one-half (1.5%) percent effective July 1, 2008; two percent (2.0%) effective July 1, 2009; and three percent (3.0%) effective July 1, 2010.

20. Item No. 4 of the Interest Arbitration Award constitutes a diminishment of a retirement benefit in violation of Article I, Section 17 of the Pennsylvania Constitution.

21. Item No. 4 of the Interest Arbitration Award was in excess of the Board of Arbitration's authority and effected a violation of bargaining unit members' constitutional rights.

*Violation of Act 195 – Preclusion of Arbitration of Contract Disputes*

22. Pursuant to Section 903 of Act 195, arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. While the procedure to be adopted is a proper subject of bargaining under the Act, Section 903 requires that

the final step of any grievance dispute resolution proceeding provide for a binding decision by an arbitrator or a tri-partite board of arbitrators. 43 P.S. §1101.301(1),

23. Article 8, Section 1 of the collective bargaining agreement provides:

Food provided to the bargaining unit shall be fresh and edible,

24. Item No. 18 of the Interest Arbitration Award precludes the arbitration of any dispute arising out of the interpretation of this contractual provision by an arbitrator or tri-partite board of arbitrators as mandated by Section 903 of Act 195.

25. Item No. 18 of the Interest Arbitration Award was in excess of the Board of Arbitration's authority as it mandates an illegal act in violation of Section 903 of Act 195.

***Violation of Act 195 – Preclusion of Arbitration of Contract Disputes***

26. Pursuant to Section 903 of Act 195, arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. While the procedure to be adopted is a proper subject of bargaining under the Act, Section 903 requires that the final step of any grievance dispute resolution proceeding provide for a binding decision by an arbitrator or a tri-partite board of arbitrators. 43 P.S. §1101.301(1).

27. Article 33, Section 8 of the collective bargaining agreement provides that vacancies in permanent job assignments be posted for at least 15 days, except in an emergency, and filled with the most senior bidder unless the most senior bidder is not eligible.

28. Item No. 8 of the Interest Arbitration Award precludes the arbitration of any dispute arising out of the interpretation of this contractual provision by an arbitrator or tri-partite board of arbitrators as mandated by Section 903 of Act 195.

29. Item No. 8 of the Interest Arbitration Award was in excess of the Board of Arbitration's authority as it mandates an illegal act in violation of Section 903 of Act 195.

***Violation of Act 195 – Reclassification of Subjects of Bargaining***

30. Pursuant to Section 701 of Act 195, public employers are statutorily obligated to resolve disputes over mandatory subjects of bargaining through the collective bargaining process. Mandatory subjects of bargaining are defined by the law.

31. Pursuant to Section 702 of Act 195, public employers are exempt from collective bargaining over matters declared to be managerial prerogative under the law, but are required to meet and discuss the same prior to implementation. Matters of managerial prerogative are defined by the law.

32. Whether a matter is a mandatory subject of bargaining or a matter of managerial prerogative is within the exclusive jurisdiction of the Pennsylvania Labor Relations Board in the first instance.

33. Non-statutory, employee only tobacco use policies are defined as a mandatory subject of bargaining under Act 195. *Borough of Ellwood City v. Pennsylvania Labor Relations Board*, 941 A.2d 728 (Pa. Cmwlth. 2008).

34. Item No. 7 of the Interest Arbitration Award reclassifies non-statutory, employee only tobacco use policies from a mandatory subject of bargaining to a matter of managerial prerogative, relieving the Commonwealth of its duty to bargain under Section 701 of Act 195, and imposing instead a duty to meet and discuss as referred to in Section 702 of Act 195.

35. In doing so, the Board of Arbitration exceeded its authority in usurping the exclusive jurisdiction of the Pennsylvania Labor Relations Board to determine bargaining obligations in the first instance, and by contractually modifying the respective duties imposed by Sections 701 and 702 of Act 195.

***Deprivation of Constitutional Due Process Rights***

36. Constitutional due process guarantees require that the Award of a Board of Interest Arbitration empanelled under Act 195 constitute a resolution of the issues in dispute identified by the parties. *Fraternal Order of Police Lodge No. 5, ex rel. Costello v. City of Philadelphia*, 725 A.2d 206 (Pa. Cmwlth. 1999).

37. Item No. 21 of the Award dictates a change to Article 18, Section 2b(3) of the award to provide that the use of any combined leave once an employee has used non-scheduled combined leave in excess of three (3) occurrences in a calendar year shall not be considered time worked for the purposes of calculating overtime entitlement.

38. Neither party designated any change to Article 18, Section 2b(3) relative to use of combined leave as an issue in dispute prior to arbitration.



39. Neither party designated a change to Article 18, Section 2b(3) relative to use of combined leave as an issue in dispute during the arbitration proceeding.

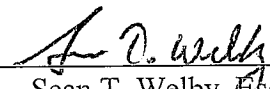
40. No testimony or evidence concerning the use of combined leave under Article 18, Section 2b(3) was entered into the record of the arbitration proceeding.

41. As a result, Petitioner had neither notice, nor an opportunity to be heard with respect to this issue. The inclusion of this item in the Interest Arbitration Award therefore violates the constitutional rights of the PSCOA.

WHEREFORE, Petitioner prays that the items identified herein and found in the Interest Arbitration Award of September 12, 2008, be VACATED, and that the Court provide all other relief as may be just and necessary.

Respectfully submitted:

LIGHTMAN, WELBY, STOLTENBERG and  
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Date: October 9, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **PETITION FOR REVIEW OF ACT 195 INTEREST ARBITRATION AWARD** was served upon the person(s) and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by depositing same in the United States mail, with first class postage, prepaid, from Harrisburg, Pennsylvania, as follows:

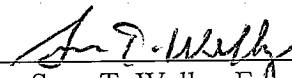
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Date: October 9, 2008