Before

ALVIN L. GOLDMAN

Arbitrator

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, AFL-CIO and **STATE PERSONNEL OFFICE OF THE STATE OF NEW MEXICO**	**FMCS Case 09-50667** **FY-2009 Pay Package Grievance**

Appearances:

For the Union- **SHANE C. YOUTZ,** Attorney at Law
For the State- **ROBERT P. TINNIN, JR.,** Attorney at Law
GLENN A. BEARD, Attorney at Law

OPINION AND AWARD

Proceedings and Issue

This case arises under the parties' collectively bargained agreement that became effective on September 13, 2005 and involves a grievance dated August 11, 2008. Being unable to resolve the dispute through the agreement's grievance process, the matter was submitted to arbitration. A hearing, which was transcribed, was conducted in Albuquerque, NM, on March 27, 2009, at which the arbitrator took an oath of office and witnesses swore or affirmed that their testimony was true. Witnesses were excluded from the hearing when not testifying with the exception of the State Personnel Director and the Executive Vice President of Counsel 18. The parties sent post-hearing briefs to the arbitrator on May 15, 2009.

At the hearing, the parties agreed that the issue to be decided is:

> Did the State of New Mexico violate the collective bargaining agreement between the parties by implementing the pay package for the State's fiscal year 2009 (July 1, 2008 – June 30, 2009) applicable to employees in the bargaining

unit, which was adopted by the State Personnel Board at its meeting of March 14, 2008? If so, what is the appropriate remedy?

Background Facts

The Public Employee Bargaining Act became law in March of 2003. Collective bargaining representation for the State is handled by the State Personnel Office (hereinafter "SPO" or "Office"). According to testimony received at the hearing, approximately 20,000 persons employed by the State are protected under the State Personnel Act and about half of these employees work in units in which a majority of the employees have selected an exclusive collective bargaining representative.

In February of 2004 the labor organization (hereinafter "Union") that is a party to this dispute negotiated a collectively bargained agreement with the State that became effective in September of 2005. It contains wage increase provisions for fiscal years 2007-2009 covering various State departments, commissions and offices. Article 12 § 1 (C) of that agreement reads:

> Fiscal Year 2009. In accordance with state statute, the Governor's Recommendation ***shall include a salary increase of 2% of the mid-point of an employee's pay band***, effective the first full pay period following July 1, 2008 subject to satisfactory performance. [Emphasis supplied.]

Paragraphs A and B of the same section have identical language for fiscal years 2007 and 2008 except for the differences in the respective dates.

The Legislature's allocation of salary funds for fiscal years 2007 and 2008 exceeded the amount necessary to comply with the increases provided in the collective agreement and the State Personnel Board adopted increases for those fiscal years in excess of those required by Article 12 of the agreement. It also gave the same increases to non bargaining unit personnel.

Although references to the Governor's 2009 fiscal year budget were made in testimony, the date, form, and text of the Governor's recommendation was not placed into the record and the arbitrator was unable to find it in an on-line search of the State's public records. Testimony from both sides, however, agreed that the Governor asked for a 2 percent pay band midpoint increase.

The Director of Compensation for the SPO testified respecting the initial bill proposed to the Legislature for fiscal 2009 salary funding and the Governor's proposed pay package. However, the latter appeared to be references to the commitments made in the collective agreement, not to a specific recommendation sent by the Governor to the Legislature for the

2009 fiscal year. In response to questions on direct examination, the Director asserted that "the Governor's package was for increases to all classified employers" but it is unclear whether this assertion was the Director's interpretation of the collective agreement, his interpretation of a submission made by the Governor to the Legislature, a quote from a communication by the Governor to the Legislature, or was based on interpretive guidance the Director received from others.

Section 2 (C) of Article 12 of the parties' collective agreement states:

> Subject to legislative appropriation, effective the first full pay period following January 1, 2009, bargaining unit members ***shall receive within band salary increases based on the following schedule*** subject to satisfactory performance:
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> | Compa-ratio less than 85% | 3.5% salary increase |
> | Compa-ratio of 85%-93.99% | 2.5% salary increase |
> | Compa ratio of 94% to 104.99% | 2.0% salary increase |
> | Compa-ratio of 105% or greater | 1.0% salary increase |
>
> [Emphasis supplied.]

Paragraphs A and B of the same section had identical language for fiscal years 2007 and 2008 except for differences in the effective dates and for different salary increase schedules for each year's set of compa-ratio groups. The collective agreement explains, at Art.12 § 2, that compa-ratios are determined by dividing the employee's rate of pay by the rate of pay of the mid-point of the employee's pay band.

Article 12 Section 3 of the parties' collective agreement reads:

> In the event the salary increases described in Section 1 and/or Section 2 of this Article are not implemented because the legislature fails to appropriate sufficient funds in any fiscal year, the Union has the right to reopen bargaining over general salary and within band pay increases that would be effective for the fiscal year following the fiscal year in which the legislature fails to appropriate sufficient funds to implement this agreement.

The Director of Compensation testified that the initial bill presented to the Legislature for fiscal year 2009 allocations included an appropriation of $12,833,000 for the compensation of all Personnel Act employees effective July 1, 2008 and he estimated this would constitute a 2.4% increase for classified employees. He also explained that if a 1% to 3.5% compa-ratio increase was to be given starting January 1, 2009, based on his calculations an additional $2,708,200 would have to be allocated (total of $15,541,200). His calculations were based on the assumption that all Personnel Act employees would receive the same schedule of benefits.

In 2008 the legislature appropriated a total of $19,144,500 to provide salary increases for various departments stating: "The salary increases shall be effective July 1, 2008 and shall be distributed as follows: . . . (5) twelve million eight hundred thirty-three thousand dollars ***($12,833,000) to provide incumbents in agencies governed by the Personnel Act***, other than commissioned officers of the department of public safety, ***with an average salary increase of two and four-tenths percent*** based on employee job performance as determined by the personnel board . . ." [Emphasis supplied.]

A separate adopted enactment, referred to as Senate Bill 165, stated: "***an additional average salary increase of one-half percent*** is authorized on July 1, 2008, based on employee job performance . . ." [emphasis supplied] and directed each agency, with the approval of the state board of finance, to use savings and other available funds to provide this increase and permitted the department of finance and administration to expend up to $500,000 of the appropriated contingency fund for distribution to agencies "for employees whose salaries are derived from the general fund."

I cannot find in the record the date when the fiscal 2009 appropriation budget was signed into law. Newspaper accounts report that the legislative session was scheduled to end at Noon on February 14, 2008.[1]

Section 1 of Article 19 of the collective agreement states, among other things, that if changes in State laws or State Personnel Board regulations "alter established terms and conditions of employment or conflict with or nullify terms of " the collective agreement, either party may, within thirty calendar days following the enactment or regulatory action, require negotiations over the change.

The Director of Compensation testified that different agencies have different pay plans. He also testified, without referencing any specific law, legislative history, or judicial authority, that the legislated appropriation did not permit the exclusion of any employees covered by the Personnel Act from receiving "any increase" if they had a satisfactory performance rating and did not permit the SPO to give the money to represented employees "and not give any of it to the other employees." Similarly, the State Personnel Director testified that it was her understanding that the legislative enactment would not permit any categories of personnel with

[1] D. Stallings, "State Budget Passed Without Tax Increase - For Now", Ruidoso News (New Mexico), February 11, 2008.

satisfactory performance to be excluded from the pay increase. She offered no reference to statutory language, legislative history, or judicial authority in support of that contention.

Representatives from the SPO met with Union representatives on February 29, 2008 and explained the pay plan that the Office proposed to submit to the State Personnel Board on March 14, 2008 based on the legislature's allocation. This would be a one percent rather than a two percent mid-point increase plus the compa-ratio increases provided in the collective agreement, all of which would start in July. The presentation also contended that because larger increases were given in the first two fiscal years covered by the collective agreement than were required by the agreement, the pay situation at the end of the contract was better than it would have been if only the contract increases were given for the three years. An Employer witness testified that no assertion was made at this meeting by Union representatives that the full amount called for by the collective agreement should be paid to bargaining unit employees because the Legislature had allocated sufficient funds to do this nor was any counter-proposal offered by the Union representatives. The meeting ended with the Union requesting the Employer to present its figures and explanation to the local leadership and the SPO representatives agreed to do so.

On March 10, 2008, SPO representatives met with Union local officials. According to Employer witnesses, they explained to the Union officials the pay proposal that would be recommended by the SPO to the State Personnel Board based on the legislative allocation of payroll funds for fiscal year 2009 increases. The document used in making the explanation had been previously sent to the Union officials. According to a Union representative who was present, the SPO representative characterized the schedule of increases as a "last offer".

The record shows that Union representatives expressed displeasure that the proposed mid-point increase was one percent and not the two percent specified in the collective agreement. The SPO representatives left the meeting room while Union representatives caucused. When the SPO representatives returned, the Unions asked for an opportunity to present a counter-proposal. This was rejected on the ground that there was insufficient time to examine such matters prior to the scheduled March 14 meeting of the State Personnel Board (which meets every six weeks) and that action would have to be taken at the up-coming March meeting in order to have adequate time to prepare the administrative machinery to handle the wage increases by July 1st. No particulars were offered into the record respecting the steps required to make such preparations.

After meeting with the Unions, the SPO Director submitted the proposal to unspecified persons, identified only as "legal counsel" and "the governor's office", who, according to the Director's testimony, challenged the inclusion of compa-ratio increases on the ground that the Personnel Act does not allow the State Personnel Board to adopt a plan that causes significant fiscal impact when there is no appropriation. The Director thereupon instructed her staff to re-write the submission to the State Personnel Board to follow the letter of the legislative appropriation. On that basis, the SPO submitted to the Board a recommendation, which it adopted, that provided, effective July 1, 2008, a salary increase, subject to satisfactory job performance, "of 2.4% of pay-band mid-point to incumbents in agencies governed by the Personnel Act . . . ." The SPO also recommended, and the Board adopted, effective July 1, 2008, subject to satisfactory job performance, "an additional 0.5% of pay-band mid-point salary increase for incumbent employees subject to the coverage of the Personnel Act."

No evidence was submitted to show the net salary difference for bargaining unit employees in each compa-ratio category between the minimum called for in Article 12 sections 1(A) and 2(C) and the increases actually paid as a result of the action taken by the State Personnel Board.

The State Personnel Board meeting of March 14, 2008 was open to the public and was attended by at least one Union representative. When this item was addressed on the agenda, no comment or alternative was offered to the Board by the Union.

The minutes of the State Personnel Board meeting contain the report of the SPO Director that quoted the Board's "existing compensation philosophy" which includes statements such as the goal of rewarding personnel for their specific contributions and consistent administration throughout the State's classified service. No mention is made in this statement of any statutory requirements respecting compliance with collective agreements nor of a requirement that increases be across-the-board.

Although the fiscal year 2007 and 2008 appropriations statutes have not been placed in the record, they were characterized in testimony as providing for stated average increases that were large enough to provide both a mid-point increase equal to or in excess of the collectively bargained amount and also pay for the negotiated compa-ratio increases.

New Mexico Statutues § 10-7E-15 provides:

Exclusive representation

A. A labor organization that has been certified by the board or local board as representing the public employees in the appropriate bargaining unit shall be the exclusive representa-

tive of all public employees in the appropriate bargaining unit. The exclusive representative shall act for all public employees in the appropriate bargaining unit and negotiate a collective bargaining agreement covering all public employees in the appropriate bargaining unit. The exclusive representative shall represent the interests of all public employees in the appropriate bargaining unit without discrimination or regard to membership in the labor organization.

New Mexico Statutes § 10-7E-17 states:

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B. The obligation to bargain collectively imposed by the Public Employee Bargaining Act [10-7E-1 to 10-7E-26 NMSA 1978] shall not be construed as authorizing a public employer and an exclusive representative to enter into an agreement that is in conflict with the provisions of any other statute of this state. In the event of conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

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E. An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. . . . An arbitration decision shall not require the reappropriation of funds.

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In delegating authority to the State Personnel Board, § 10-9-13 of the New Mexico statutes states:

Rules promulgated by the board shall be effective when filed as required by law. The rules shall provide, among other things, for:

A. a classification plan for all positions in the service;

B. a pay plan for all positions in the service;

* * *

The grievance submitted for arbitration is dated August 11, 2008 and asserts, among other things, that the State violated the collective agreement, that the funds allocation by the Legislature did not require all employees to receive the same percentage raises, that the wage increase requirements of the collective agreement are exclusive to bargaining unit employees and not the right of all employees, that the funding allocated was sufficient to comply with the collective agreement, that the pay plan adopted by the State Personnel Board gave bargaining unit employees less than they were entitled to receive under the collective agreement, and that the raises were distributed in a manner that did not comply with the collective agreement.

Discussion

The State Personnel Office argues that the State's contractual obligation respecting a two percent increase in the pay band mid-point was satisfied once the Governor made that rec-

ommendation to the Legislature. If the language in Article 12 Section 1(C) is read in isolation, that contention would be correct. However, a well-established rule of contract interpretation is that language must be read in the context of the entire document.[2] Section 3 of Article 12 provides for the reopening of bargaining if the legislature fails to appropriate sufficient funds to implement "the salary increases described in Section 1 and or Section 2 ...." This paragraph makes it clear that the parties understood that the mid-point increase in the pay bands would be given so long as the Legislature appropriated sufficient funds to pay for it. Because the Legislature provided sufficient funds to meet the contractually specified pay band mid-point increase, payment of that increase was required by the collective agreement. That requirement, however, was not violated by the pay plan adopted by the State Personnel Board inasmuch as it provided a July 1st mid-point pay band increase of a total of 2.9 percent—well in excess of the two percent pay band mid-point called for by the collective agreement.

Rather, the dispute at issue results from the failure to provide any compa-ratio increases. The compa-ratio increases were designed to provide an additional pay increase for employees and to alter the amount received by the various sub-strata of pay levels within each pay band. Although the increases received under the adopted pay plan exceeded the increases that bargaining unit employees would have received if the increase in the pay band mid-points was the only increase required by the collective agreement, because the across-the-board percentage increase was less than the composite of the pay band mid-point increase plus the compa-ratio group increases provided in the collective agreement, the received wage increases for bargaining unit employees were less than would have been received had the pay plan conformed with the requirements of Article 12 of the collective agreement. In addition, the schedule of pay increases did not accomplish the contractual design of narrowing the spread of pay among those within the same pay band. It is irrelevant that over the three years of the collective agreement the overall gains of the bargaining unit employees may have been comparable to what they would have received had the minimum increases been given in the first two fiscal years of the contract.[3] The wage increase provisions covering fiscal year 2009 were not couched in terms of the cumulative gains under the contract; rather, each paragraph addressed a particular fiscal year alone. Thus, there was a contractual right to receive the in-

[2] C. Snow, "Contract Interpretation" in THE COMMON LAW OF THE WORKPLACE, 2D ED., § 2.10 (T. St. Antoine, ed., 2005).

[3] It should be noted that the assertion by SPO witnesses that the employees were as well off were offered as a broad observation and was not demonstrated with specificity. It is accepted here not as a finding of fact but rather for the sake of analysis of the Board's arguments.

creases so long as funds were available regardless of what adjustments had been made in previous years.

A fundamental principle governing the resolution of this dispute is that a state government must honor its contractual obligations.[4] The State's contractual pay obligations to the bargaining unit employees for Fiscal Year 2009 were contingent on sufficient funds being allocated by the Legislature. Although the Board asserts that that contingency was not satisfied in this case, its justification for reaching that conclusion is not supported by the language of the Legislature's budget allocation or by any other cited state legal authority.

The Board's position is based on its assertion that the legislated allocation required an across-the-board mid-point increase of 2.9 percent. However, nothing in the enacted bills imposed such a requirement on the distribution of the allocated funds. The only constraints in the adopted bills were that the effective date of the salary increases was to be July 1, 2008, the total amount available for the increases was $12,833,000, the increases were to be based on job performance, and the average salary increases respectively were to be 2.4 and 0.5 percent. Nothing in the language of the allocation enactment said anything about how this money was to be distributed among the different categories of classified employees, whether in bargaining units or not in bargaining units, and nothing in the language said anything about distributing the money based in whole or in part on increasing the pay band mid-points.

According to the SPO estimates, a total of $15,541,200 was needed to fund the increases provided in the collective agreement if given to all Personnel Act employees other than commissioned public safety employees. Testimony established that about half of those employees were not covered by collective agreements. Accordingly, somewhere in the vicinity of $8 million was required to fully fund the increases to those who had a contractual right to receive them under the collective agreements. The allocated $12.5 million was more than enough to meet this obligation and still permit smaller increases for non bargaining unit personnel. Thus, the plain meaning of the allocation legislation permitted the Board to adopt a pay plan complying with the State's contractual obligation to bargaining unit employees and there is no evidence in the record to show that the legislative intent or any other existing legislation was at variance with or altered that plain meaning of the adopted bills.

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[4] N.M Const. Art.2 Sec. 19: "No ex post facto law, bill of attainder, nor law impairing the obligation of contracts shall be enacted by the legislature." Also, Article I Section 10 Paragraph 1 of the Constitution of the United States.

Moreover, contrary to the Board's contention that its action was necessary because the Personnel Act does not allow the State Personnel Board to adopt a plan that causes significant fiscal impact when there is no appropriation, in fact there was a sufficient appropriation to fund compliance with the contractual obligation. Hence, a pay plan that adhered to the contractual requirements would not have had an adverse fiscal impact.

The Board's contention that it had to give non bargaining unit employees the same increases as those in the bargaining units ignored a second basic principle, adopted by N.M. Stat. § 10-7E-15(A), which is the requirement that a labor organization negotiate on behalf of all employees "***in the appropriate bargaining unit*** and ***negotiate a collective bargaining agreement covering*** all public employees in ***the appropriate bargaining unit***", without discrimination. [Emphasis supplied.] Pursuant to § 10-7E-17(A)(1), the scope of that bargaining includes "***wages***, hours and all other ***terms and conditions of employment***." [Emphasis supplied.] The Legislature did not give labor organizations authority to negotiate on behalf of employees not in the represented bargaining units. Yet, that would be the effect of accepting the Board's contention that wage increases for all employees must be the same regardless of whether they are in a represented bargaining unit.

To the contrary, the language that establishes the right to collective representation in the negotiation of wages for bargaining unit employees, by specifying that the negotiated agreement is to cover those in the appropriate bargaining unit, clearly anticipates that the resulting wages for bargaining unit employees will not necessarily be identical to those of unrepresented employees. Accordingly, the Board's insistence on across-the-board adjustments ignores the significance of recognizing collective bargaining rights on behalf of the appropriate bargaining units, with the likely resulting differences in the terms and conditions of employment between those working in bargaining units that have elected to avail themselves of collective bargaining and those working in units that have not made that selection. Therefore, I find that the Board had a contractual duty to provide bargaining unit personnel with the wage increases under Article 12 to the extent it could do so without violating the appropriation statute. Because the record shows that the appropriate funds were sufficient for this purpose, the failure to provide a pay plan that complied with the requirements of Article 12 of the collective agreement was a violation of the State's obligations.

Although the appropriation statute required the implementation of the raises at an earlier date than the contract specified respecting the compa-ratio increases, the allocated funds appear to have been sufficient to fulfill the contractual requirement of a 2 percent increase in the

salary base mid-points plus the percentage wage increases for the compa-ratio categories beginning at the earlier date.[5] It is true that for the bargaining units this would have resulted in average increases in excess of the benchmark set by the Legislature. However, that would have been offset by the resulting reduced increases for non bargaining unit personnel so that nothing in the record shows why the composite distribution of allocated funds could not have complied with the average percentage increase specified by the Legislature. Therefore, I conclude that the State violated the collective bargaining agreement by implementing the pay package adopted by the State Personnel Board at its March 14, 2008 meeting.

Arguments have been raised in the parties' briefs as to whether the Board breached the duty to bargain in good faith. However, the issue submitted for the arbitrator's decision reads:

> Did the State of New Mexico violate the collective bargaining agreement between the parties by implementing the pay package for the State's fiscal year 2009 (July 1, 2008 – June 30, 2009) applicable to employees in the bargaining unit, which was adopted by the State Personnel Board at its meeting of March 14, 2008? If so, what is the appropriate remedy?

Under the parties' grievance and arbitration procedure set forth in Article 14 Section 1 of the collectively bargained agreement, the scope of matters to be submitted to arbitration involves violation, application and interpretation of the collective agreement. Thus, the duty to bargain can come within the scope of arbitral oversight only to the extent that the collective agreement specifies a duty to bargain. Article 12 Section 3 the collective agreement does give the Union a right to reopen bargaining when the Legislature fails to allocate sufficient funds for contractual wage increases. As explained above, my finding is that the legislated allocation was sufficient to implement the funding of the contractual commitment. Therefore, a contractual duty to bargain did not exist respecting the amount of the wage increases.

The budget appropriation law did impose an earlier date for implementing all raises than the date specified for compa-ratio increases in the collective agreement. Pursuant to Section 1 of Article 19, therefore, within 30 days of the budget enactment, either side could have reopened negotiations respecting the affect of that change on the other aspects of the pay increase obligations. The SPO never sought bargaining with the Union respecting this question and insisted in its testimony and arguments that its meetings with Union officials could not be

[5] As noted below, under Article 19 of the collective agreement the SPO could have required renegotiation of the compa-ratio increases in light of the fact that the legislation required that they be implemented six months earlier than specified in the collective agreement. However, it did not make that proposal to the Unions.

characterized as bargaining. Although testimony established that at the March 10th meeting (apparently within 30 calendar days of the legislative enactment) the Unions expressed a desire to offer counter-proposals to the SPO's pay plan, there is nothing to suggest that the request was directed at the statutory change in the comp-ratio increase implementation date. Rather, the testimony shows that the requested opportunity for counter-proposals concerned the amount of the raises to be given to bargaining unit personnel, not the timing of the raises. Accordingly, a bargaining request was not made respecting the legislative change and, therefore, I find that the request to submit counter-proposals did not trigger the duty to bargain under Article 19 Section 1.

Finally, the State Personnel Board's adoption of its pay plan on March 14th was the promulgation of a rule or regulation that altered contractually established terms and conditions of employment inasmuch as it ignored the required compa-ratio increases provided by the collective agreement. However, there is nothing in the record that shows that within thirty calendar days following that action, the Union, as provided in Article 19 Section 1, requested the Board to negotiate over that matter. Hence, it did not trigger the bargaining obligation under the contract and, therefore, I do not have authority to address the question of whether the duty to bargain was violated.

As explained above, I have resolved the first part of the submitted issue by finding that the State violated its contractual obligation to give bargaining unit personnel the compa-ratio raises required by Article 12 of the collective agreement. That leaves the second question to be resolved---what is the appropriate remedy?

There are two possible consequences of the Board's violation of employee rights to the contractual increases. The first is that bargaining unit employees received a smaller wage increase than they were entitled to receive under the collective agreement. However, the record does not reveal the amount of pay deficiencies suffered by bargaining unit employees. That, of course, can be rectified by ordering current payment of any shortfalls and requiring a further showing respecting the amounts in question subject to the arbitrator's reservation of jurisdiction to resolve any discrepancies as to those amounts. But there is another difficulty and that is that N.M. Stat. § 10-7E-17(E) states: "An arbitration decision shall not require the reappropriation of funds." This poses the practical problem that by the time such calculations can be completed, all of the funds for salary increases allocated for fiscal year 2009 most likely will have been spent. As noted below, however, a less immediate remedy is possible.

Another consequence of the Board's violation of employee rights to the compa-ratio increases is that the current pay level that forms the basis for a bargaining unit employee's future wage increases may be different from what the pay level would have been had pay been adjusted for fiscal year 2009 by raising pay band mid-points by two percent and had there been the added increases based on the compa-ratio percentages set forth in Article 12 Section 2(C). Depending on the wording of the 2010 fiscal year budget, it may be possible to make the needed adjustments and provide bargaining unit employees with the backpay for their fiscal 2009 deficiency, if any, effective for fiscal 2010. (Possibly, the parties have already negotiated that adjustment in their new collective agreement.) If that is not possible, then it should be possible to make the pay level adjustments starting with fiscal year 2011 and provide bargaining unit employees with the backpay for their fiscal 2009 deficiencies, if any, during that fiscal year.

AWARD

For the above stated reasons, the SPO shall calculate what the salary levels would have been for bargaining unit employees had their pay been adjusted for fiscal year 2009 by raising pay band mid-points by two percent and had they been given the additional increases based on the compa-ratio percentages set forth in Article 12 Section 2(C) of the collective agreement that became effective on September 13, 2005. If permitted by the wording of the 2010 fiscal year budget allocation legislation, the SPO shall adjust the 2010 salary base mid-points of bargaining unit personnel to the level they would be at had they been raised two percent in fiscal year 2009. In addition, the fiscal year 2010 pay levels of bargaining unit personnel shall be adjusted to reflect what they would be if they had received in fiscal year 2009 the compa-ratio percentages set forth in Article 12 Section 2(C) of the collective agreement that became effective on September 13, 2005. If it is not possible in fiscal year 2010 to make the above described salary base mid-point adjustment and compa-ratio adjustments, then they shall be made starting with fiscal year 2011.

Further, during the 2010 fiscal year if legally possible, and if not, at the beginning of the 2011 fiscal year, bargaining unit employees shall be paid the difference between what they were paid in fiscal year 2009 and what they would have been paid had their pay been raised by increasing by two percent the salary base mid-points and had their pay levels been adjusted

by increases based on the compa-ratio percentages set forth in Article 12 Section 2(C) of the collective agreement that became effective on September 13, 2005.

The arbitrator retains jurisdiction in order to clarify the Award in the event of any dispute concerning its interpretation or implementation either based on its language or based on the impact of legislated actions or the parties' negotiated changes for fiscal year 2010.

Issued this 15th day of June, 2009.

Alvin L. Goldman