

[J-15-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

PENNSYLVANIA STATE CORRECTIONS OFFICERS ASSOCIATION	:	No. 120 MAP 2006
	:	
v.	:	Appeal from the Order of the Commonwealth Court entered June 2, 2006 at No. 568 CD 2005 which reversed the State Civil Service Commission's Decision dated March 4, 2005 at No. 22765.
STATE CIVIL SERVICE COMMISSION (DEPARTMENT OF CORRECTIONS AND DENNIS N. JENKINS, SR.),	:	
	:	
APPEAL OF: STATE CIVIL SERVICE COMMISSION AND DENNIS N. JENKINS, SR.	:	900 A.2d 997 (Pa. Cmwlth. 2006)
	:	
	:	ARGUED: May 14, 2007

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: December 27, 2007

There is a conflict between the treatment of seniority in the CBA and in the statute. The statute is silent about the ability of the parties to negotiate a term different from those in the statute. Does that silence mean the parties can do so, or does it mean the parties are not permitted to do so? In one interpretation, the statute must expressly authorize negotiation of a different term; failure to do so precludes any such negotiation. In the other interpretation, the statute must expressly prohibit such negotiation in order to be seen as preclusive.

Pennsylvania Labor Relations Board v. State College Area School District, 337 A.2d 262 (Pa. 1975) provides “[§] 703 prohibits parties from collectively bargaining a term only where the other statute ‘explicitly and definitively prohibit[s] the public employer from making an agreement as to that specific term.’” Pennsylvania State Corrections Officers Association v. State Civil Service Commission, 900 A.2d 997, 1004

(Pa. Cmwlth. 2006) (quoting State College, at 270). As State College is controlling precedent,¹ the answer must be as found by the Commonwealth Court. There appears little advantage in universally prohibiting contracting parties from freely negotiating terms such as seniority; if both sides choose to adopt a different plan, it should be permitted absent a clear legislative directive to the contrary. As such, I dissent.

¹ Mifflinburg Area Education Association v. Mifflinburg Area School District, 724 A.2d 339 (Pa. 1999) does not hold to the contrary.