

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

WILMINGTON FRATERNAL ORDER OF POLICE	:	
LODGE No. 1,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>U.L.P. No. 93-08-088</u>
	:	
CITY OF WILMINGTON,	:	
	:	
Respondent.	:	

BACKGROUND

The City of Wilmington (hereinafter "City") is a public employer within the meaning of 19 Del.C. §1602(l) of the Police Officers' and Firefighters Employment Relations Act (1986), (hereinafter "Act"). The Wilmington Fraternal Order of Police, Lodge No. 1 (hereinafter "FOP") is the exclusive bargaining representative of the police officers employed by the City in the ranks of Patrolperson through Inspector.

The FOP filed the above-captioned unfair labor practice charge with the Public Employment Relations Board (hereinafter "PERB") on August 24, 1993. The charge alleges that by refusing to process specified grievances ¹ in accord with the grievance procedure provided for in the expired collective bargaining agreement ², the City has engaged in and is engaging in unfair labor practices in violation of 19 Del.C. §1607 (a)(1), (5) and/or (6). The Complaint requests the granting of injunctive

¹ The two grievances cited in counts I and II of the Complaint involve (I) a transfer order issued on July 30, 1993, to be effective August 9, 1993, allegedly violating §7(a) of the collective bargaining agreement because the City failed to provide two (2) weeks prior notice of the transfer; and (II) a notice of shift change issued August 4, 1993, to be effective August 9, 1993, allegedly violating §1 of the collective bargaining agreement because four (4) months prior notice was not provided.

² The collective bargaining agreement has a term of July 1, 1990 through June 30, 1993.

relief staying the disputed personnel changes until such time as the matter is finally resolved.

The City's Answer, filed on August 31, 1993, denies the charge, pleads New Matter and asserts a Counter-Charge alleging that by its continuing conduct, the FOP has demonstrated a history of bad faith bargaining in violation of §1607(b)(2) of the Act.

On September 8, 1993, the FOP filed its response to the New Matter contained in the City's Answer and denied the allegations set forth in the Counter-Charge.

DISCUSSION

It is well established through Delaware case law that the duty to bargain, as defined at 19 Del.C. §1602 (d) and (n), requires that neither party unilaterally alter the status quo as it relates to a mandatory subject of bargaining during collective bargaining of a successor agreement, at least to the point of impasse. In New Castle Co. Vo-Tech Education Assn. v. New Castle Co. Vo-Tech School District (Del.PERB, ULP No. 88-05-025 (8/19/88), the PERB held that this obligation exists at least through the conclusion of the statutory fact-finding process.

The prohibition against unilaterally altering mandatory subjects of bargaining does not require the mandatory extension of the entire collective bargaining agreement, as asserted by the Petitioner. The collective bargaining agreement itself is consensual in nature and, unless extended by the mutual agreement of the parties, expires at the conclusion of the specified term. Consequently, Chief Pratcher's position, as expressed in his letter of August 20, 1993, that "no contract exists" does not constitute an unfair labor practice and is literally accurate. The expiration of the agreement does not, however, relieve the City of its duty to maintain the status quo of mandatory subjects of bargaining, which the statute defines as "... matters concerning to related to wages, salaries, hours, *grievance procedures*, and working conditions". 19 Del.C. §1602(n), emphasis added.

In response to a direct request from the PERB Executive Director, Mr. William Yanonis, Deputy Director of Personnel for the City of Wilmington, clarified the City's Answer and confirmed its willingness to process grievances filed by the FOP.³

Based upon these facts, there is no probable cause to believe that an unfair labor practice has occurred by reason of the City's failure or alleged refusal to process grievances pursuant to the contractual grievance procedure.

The Board has previously held that the provisions of an existing or recently expired collective bargaining agreement can either establish or significantly impact the determination of the status quo of a mandatory subject of bargaining. The pleadings in this matter do not raise the issue of the bargaining status of the contractual provisions contested in the two grievances. Further, where an unfair labor practice charge centers upon the interpretation of contractual language, the PERB has adopted a limited deferral policy wherein the meaning of the disputed language is deferred to the contractual grievance and arbitration procedure. For these reasons, the issue presented here is not ripe for processing as an unfair labor practice charge.

The City alleges in its Counter-Charge that the FOP has engaged in a history of bad-faith bargaining as evidenced, in part, by its failure or refusal to take part in the grievance process. Police Chief Pratcher's August 20, 1993, reply to the FOP's request to process grievances differs materially from his initial response to receipt the FOP's request to process grievances, dated August 16, 1993. While Chief Pratcher's August 20 communication does not expressly condition the proposed meeting on the FOP's

³ The City was asked, "Is the City of Wilmington processing or willing to process Lodge No. 1's grievances in accordance with the procedures set forth in Article III of the collective bargaining agreement of 7/1/90 - 6/30/93"?

Mr. Yanonis replied on behalf of the City, "... [T]he Employer, as in the past, will continue to process grievances filed by F.O.P Lodge No. 1" He further verbally confirmed upon personal delivery of the written response that the City would continue to process grievances in accord with the procedures set forth in Article III of the agreement, subject to a reservation by the City of its right to "raise the issue of substantive arbitrability, with respect to any grievance pursued to arbitration while no Collective Bargaining Agreement is in effect".

acceptance of the City's characterization of the meeting "... as a matter of good labor relations only to discuss your concern", it does provide a reasonable basis for concern to the FOP President, Joseph Schiavi. The pleadings establish no explanation to President Schiavi for the City's apparent change in its position between August 16 and August 20. Under the circumstances present, the FOP's failure or alleged refusal to proceed does not rise to the level of a per se violation of the Act.

In response to the issue raised concerning the failure of either or both parties to schedule a grievance meeting, the PERB will not involve itself in making a determination of responsibility based upon the situation and circumstances presented. The parties are bound by the status quo as it relates to the grievance procedure and are certainly capable of resolving such a trivial dispute.

Finally, in the interest of encouraging the parties to move onto consideration of the merits of the grievances in question, they are hereby ordered to commence the grievance procedure within five (5) working days of their receipt of this decision, pursuant to the established time limits set forth in the grievance procedure. The City, as the convener of the hearings under the established procedure, must notify this office upon the scheduling of these grievances for hearing.

DECISION

Pursuant to Rule 5.1 of the Rules and Regulations of the Delaware Public Employment Relations Board, it is determined that there is no probable cause to believe that an unfair labor practice has occurred with respect to the unfair labor practices alleged in the either FOP's Complaint or the City's Counter-Charge.

The FOP's charge concerning the City's failure and/or refusal to process grievances is hereby dismissed.

The City's Counter-Charge concerning the FOP's failure and/or refusal to attend or schedule grievance meetings is hereby dismissed.

The FOP's Charge concerning the City's alleged unilateral alteration of the status quo as it pertains to employee transfers and changes in the permanent work schedule is hereby dismissed, without prejudice.

Having so dismissed all charges for lack of probable cause, the FOP's request for injunctive relief is also denied.

Dated: October 5, 1993

/s/ Charles D. Long, Jr.

CHARLES D. LONG, Jr.
Executive Director
Delaware PERB