

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

CITY OF WILMINGTON, :
Petitioner : PERB Review of the
and : Executive Director’s
Decision

FRATERNAL ORDER OF POLICE LODGE NO.1, : Declaratory Statement
IAFF LOCAL 1590, AFSCME LOCAL 1102, : No. 02-10-369
and AFSCME LOCAL 320, :
Respondents. :

Appearances

Martin C. Meltzer, Esq, Assistant City Solicitor, for the City
Jeffrey M. Weiner, Esq., for FOP Lodge 1
Ronald Stoner, Esq., for IAFF Local 1590
Perry F. Goldlust, Esq., Aber, Goldlust, Baker & Over, for AFSCME Locals 1102 and 320

BACKGROUND

The City of Wilmington (“City”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”).

Fraternal Order of Police Lodge 1 (“FOP Lodge 1”) and International Association of Firefighters Local 1590 (“IAFF Local 1590”) are employee organizations within the meaning of §1602(g) of the Police Officers’ and Firefighters’ Employment Relations Act. 19 Del.C. Chapter 16. FOP Lodge 1 is the exclusive bargaining representative of two bargaining units of City of Wilmington Police Officers. IAFF Local 1590 is the exclusive bargaining representative of a unit of City of Wilmington firefighters within the meaning of 19 Del.C. §1602(h).

AFSCME Council 81, Locals 320 and 1102 are employee organizations within the meaning of §1302(i) of the Public Employment Relations Act, 19 Del.C. Chapter 13. Local 320 is the exclusive bargaining representative of a unit of City employees commonly referred to by the parties

as the “blue collar unit”. Local 1102 is the exclusive bargaining representative of a unit of City employees referred to by the parties as the “white collar unit.” 19 Del.C. §1302(j).

On October 18, 2002, the City filed a Petition requesting a Declaratory Statement addressing the following issues:

- (a) Do parity provisions of the contracts for 1999, 2000, 2001 presently exist even though the contracts have expired?
- (b) Is a parity provision in collective bargaining contracts an unfair labor practice charge?
- (c) Are parity provisions in public employment collective bargaining contracts mandatory or permissive subjects for negotiations?

The Executive Director issued his decision following a hearing and receipt of post-hearing memorandum from the City and the unions. In his July 25, 2003, decision, the Executive Director held:

Wages and salaries are mandatory subjects of bargaining. Parity clauses are not *per se* illegal topics of bargaining and represent permissive bargaining positions to the extent that they do not interfere with the rights of other bargaining units to engage in bargaining under the PERA and the POFFERA.

Negotiated parity provisions are unenforceable and contrary to law to the extent that they trespass on the negotiation rights of a third party exclusive representative which is not a party to the parity agreement. Whether the provisions of a particular parity agreement violate an employer’s and/or an exclusive representative’s statutory obligations will be determined on a case by case basis.

A party’s willingness to engage in good faith negotiations concerning a permissive subject of bargaining does not prevent that party from later withdrawing that matter from the scope of negotiations prior to or during impasse resolution procedures. Inclusion of a permissive subject of bargaining in an agreement does not convert that issue to a mandatory subject of bargaining in successive negotiations.

An employer is not obligated under its duty to bargain in good faith to maintain the status quo as it relates to permissive subjects of bargaining after the expiration of a collective bargaining agreement where the parties have not

entered into a successor agreement. The wage rates at the expiration of the agreement constitute the status quo at that time, and parity clauses are not applicable to triggers which occur after the expiration of the agreement, unless explicitly extended by agreement of the parties. Wilmington v. FOP Lodge 1, et al., Decision of the Executive Director, DS 02-10-369, IV PERB 2859, 2878 (2003).

On August 4, 2003, AFSCME Local 320 and Local 1102 requested that PERB review the Executive Director's decision, asserting it was unsupported by the law, arbitrary and capricious.

The full Public Employment Relations Board conducted a public hearing on September 10, 2003. Counsel for the parties were afforded the opportunity to present oral argument and each Board member received and reviewed the record created before the Executive Director. By unanimous vote, the Board affirmed the Executive Director's decision. This is the decision resulting from that meeting.

### **DECISION**

The request for review filed by AFSCME Locals 320 and 1102 urges this Board to reverse the Executive Director's decision and find that "parity clauses as they appear in the AFSCME Collective Bargaining Agreements are mandatory subjects of bargaining."

Pages 2859 through 2868 of the Executive Director's decision set forth the background and facts underlying this case and are incorporated herein by reference. City of Wilmington v. FOP Lodge 1, et al., Del. PERB, DS 02-10-369, IV PERB 2859 (2003).

The Public Employment Relations Board was established by 14 Del.C. §4006, wherein its role, authority and responsibilities are expressly set forth. This statutory provision was specifically incorporated by reference into both the Public Employment Relations Act and the Police Officers' and Firefighters' Employment Relations Act, which later became law and under which this petition was filed. PERB has authority and is responsible:

- (4) To provide by rule a procedure for the filing and prompt disposition of petitions for declaratory statement as to the applicability of any provision of this chapter or any rule or order of the Board. Such procedures shall provide for, but not be limited to, an expeditious determination of questions relating to potential unfair labor practices and to questions

relating to whether a matter in dispute is within the scope of collective bargaining. 14 Del.C. §4006(h)(4).

There can be no question but that this petition raises both a question relating to a potential unfair labor practice and a question relating to whether parity is within the scope of collective bargaining.

Upon review of the complete record in this matter, we find the Executive Director's decision that parity provisions are not *per se* illegal subjects of bargaining is sound, and not arbitrary, capricious, or contrary to law. A specific contractual parity provision may, however, be unenforceable and contrary to law if that parity provision would interfere with the negotiation rights of a third party who is not party to the parity agreement. This decision is consistent both with Delaware PERB precedent and with decisions in the federal and other state courts and labor boards.

Finally, the Board adopts the Executive Director's finding that parity provisions do not survive the expiration of a collective bargaining agreement. The Executive Director opined:

It has been determined in this decision that parity provisions are permissive subjects of bargaining. Consequently, there is no obligation for a public employer to maintain a parity provision beyond the expiration of the agreement. This does not, however, mean that an employer can revoke an increase which was provided during the term of the agreement pursuant to a parity clause. The wage rates at the contract's expiration constitute the status quo of that mandatory subject of bargaining.

To find otherwise would be contrary to the express purposes of Delaware's public sector collective bargaining statutes. If the parity provisions existing in the expired AFSCME Locals 320, 1102 and IAFF 1590 agreements were found to survive the expiration of those agreements, and given that wage parity has been herein found to be a permissive subject of bargaining, there would be a clear incentive for these units to forestall negotiations, with the assurance that their members would receive whatever FOP Lodge 1 negotiated. These new "parity" wage rates would become the floor for the negotiations. There would be a clear disincentive to enter into negotiations, and that result would obviously improperly interfere with, coerce and restrain the negotiations between FOP 1 and the City. City of Wilmington (Supra.), pgs. 2876 - 2877.

The Executive Director's reasoning is sound and consistent with statutory policy promoting and supporting collective bargaining between public employers and the certified exclusive representatives of their employees .

**WHEREFORE**, the decision of the Executive Director in this matter is affirmed. Consistent with this ruling, the parties are hereby directed to again enter into negotiations to resolve their long-standing impasses and to advise the Executive Director within thirty (30) days of the date of this decision of progress made therein.

*/s/Henry E. Kressman*

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HENRY E. KRESSMAN, CHAIRMAN  
Delaware Public Employment Relations Board

*/s/R. Robert Currie, Jr.*

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R. ROBERT CURRIE, JR., MEMBER  
Delaware Public Employment Relations Board

*/s/Elizabeth D. Maron, Esquire*

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ELIZABETH D. MARON, ESQ., MEMBER  
Delaware Public Employment Relations Board

Dated: 21 October 2003