

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

SMYRNA POLICE EMPLOYEES ASSOCIATION,)	
)	PERB Review of the
Appellant,)	Executive Director's
)	Decision
v.)	
)	<u>ULP No. 06-04-516</u>
TOWN OF SMYRNA, DELAWARE,)	
)	
Appellee.)	

BACKGROUND

The appellant, Smyrna Police Employees Association (“SPEA”) is an employee organization which admits to membership Town of Smyrna (“Town”) employees and has as a purpose the representation of those employees in collective bargaining, pursuant to §1602(g) of the Delaware Police Officers’ and Firefighters’ Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16. SPEA is the exclusive representative of the bargaining unit of the Town’s full-time sworn police officers below the rank of Lieutenant. 19 Del.C. §1602(h).

The appellee, Town of Smyrna, Delaware is a public employer within the meaning of 19 Del.C. §1602(l).

SPEA and the Town are parties to a collective bargaining agreement which has a term extending from January 1, 2005 through December 31, 2007.

On April 26, 2006, SPEA filed a Petition for Declaratory Statement and Unfair Labor Practice Charge alleging the Town had granted a wage increase to non-sworn employees and

ignored the cost-of-living provision of the current collective bargaining agreement, in violation of its duty to bargain in good faith under 19 Del.C. §1607(a)(5).

The Town filed its Answer to the Charge on May 5, 2006, denying the material allegations and asserting under new matter that the charge should be dismissed because SPEA failed to state a claim upon which relief might be granted and that PERB lacked subject matter jurisdiction over the petition. SPEA responded by denying the Town's new matter.

The Executive Director issued a probable cause determination on May 31, 2006, wherein he found probable cause to believe a violation of 19 Del.C. §1607(a)(5) may have occurred.

A hearing was held on July 12, 2006. Written argument was received from the parties thereafter, and the Executive Director rendered his decision on October 5, 2006, which held:

The Town of Smyrna's failure to include the sworn employees in the \$1500 salary increase payable to non-sworn employees for calendar year 2006 did not violate 19 Del.C. §1607(a)(5) as alleged. *Smyrna Police Employees Assn. v. Town of Smyrna, Del.PERB, ULP 06-04-516, Executive Director's Decision, V PERB 3649, 3660 (2006).*

On October 13, 2006, SPEA requested review of the Executive Director's decision. The Town filed its Response to the Request for Review on November 2, 2006. A copy of the complete record created before the Executive Director in this matter was provided to each member of the Public Employment Relations Board ("Board").

The full Board convened in public session on November 8, 2006, to consider SPEA's Request for Review of the Executive Director's Decision. Following consideration of the record and the arguments of the parties on review, the Board unanimously reached the following decision.

DISCUSSION

The Board affirms the Executive Director's decision that the Town of Smyrna did not violate 19 Del.C. §1607(a)(5) by not providing its sworn police officers the \$1,500 salary

adjustment it granted to non-sworn employees for calendar year 2006.

The Board does not find merit in the SPEA's argument on appeal that the Executive Director's factual determinations were not based on substantial evidence and that they went against the weight of the documentary and testimonial evidence. The record does not support SPEA's conclusion the Town granted a Cost of Living Adjustment ("COLA") to its non-sworn employees but sought to avoid triggering the contractual COLA provision. The Town Manager is required by the Town's Personnel Policy¹ to provide information on cost of living factors. The coincidence of the discussion of that information and the Council's ultimate decision to grant a uniform \$1,500 increase across the board to its non-sworn employees is insufficient to support a conclusion that the Council's intended to thwart the intent of its collectively bargained agreement with the police officers. The testimonial evidence further supports the Town's position that the purpose of the across-the-board increase to non-sworn employees was to restore the competitiveness of their salaries, *vis-à-vis*, surrounding communities.

SPEA argued that the Executive Director failed to consider the bargaining history of the contractual language which is the root of this charge, namely:

Cost of Living Adjustment

The Town agrees to provide the same Cost of Living Adjustment under this contract as it does for other Town Employees. This section shall not be

¹ Section 3, Pay Plan, provides:

3.6 Cost of Living,

The "Cost of Living Index" shall mean an officially recognized Cost of Living relevant to the Town of Smyrna region, e.g., the United States Department of Labor Cost of Living Index for the Philadelphia region.

The "Cost of Living Index" for the previous year shall be reviewed by the Personnel Officer each November. The Personnel Officer shall then make recommendations to the Council for any changes in the Cost of Living Allowance (COLA) for Town employees.

All Town employees may be considered eligible for the COLA revision. The COLA will be computed as a stated percent of each employee's base wage and paid or deducted weekly with the regular pay check. The COLA shall be considered as a supplement to compensate employees for any changes in the buying power of their wages due to inflation or deflation. The COLA revision shall become effective on a date to be determined by the Mayor and Council.

construed to include occasional salary adjustments to individual positions. The Town shall not use individual salary adjustments to avoid a Cost of Living Adjustment.

A cost-of-living adjustment is a commonly understood economic concept whereby wages, in this case, are adjusted to maintain real dollar value. SPEA and the Town did not negotiate a general parity clause that guaranteed to the police officers any increase received by the non-sworn employees. The across-the-board increase to non-sworn employees was not linked to any economic index nor is there any indication on the record that it was intended to correct for loss of buying power. The language of the contract is specific, clear and unambiguous.

The Board further finds the Executive Director correctly concluded the Chancery Court's decision in *WFFA Local 1590 v. City of Wilmington*, C.A. 19035, Del.Ch., V.C. Strine, IV PERB 2525 (2002) does not control the instant matter. In that decision, Vice Chancellor Strine held:

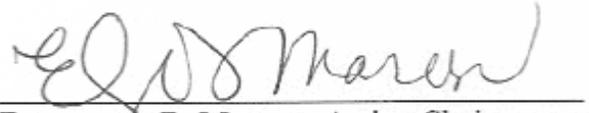
By its plain terms, the parity provision guaranteed that the WFFA would be provided the benefits of any greater wages offered by the City to other bargaining units, such as the FOP. The parity provision is a broad and unqualified protection. *WFFA*, p. 2529.

The WFFA parity provision provided, "If any other Union receives wages or benefits greater than what Local 1590 bargained for, Local 1590 will receive those greater wages and benefits." *WFFA*, p. 2527. The provision agreed to between the Town and SPEA is more specific and limits the triggering event to COLA increases.

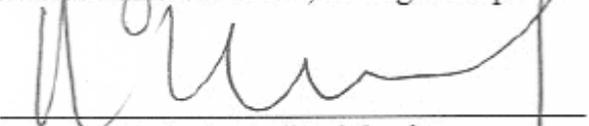
DECISION

Consistent with the foregoing discussion, this Board unanimously affirms the decision of the Executive Director finding the Town of Smyrna did not commit an unfair labor practice by failing to include its sworn police officers in the \$1,500 salary increase granted to non-sworn employees for the calendar year 2006. Having found no violation of 19 Del.C. §1607(a)(5), the charge is dismissed.

IT IS SO ORDERED.



ELIZABETH D. MARON, Acting Chairperson



R. ROBERT CURRIE, JR., Member



KATHI A. KARSNITZ, Member

Dated: 17 January 2007