

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,	:	
LOCAL 1590,	:	
	:	
Charging Party,	:	ULP 13-12-935
v.	:	
	:	PROBABLE CAUSE DETERMINATION
CITY OF WILMINGTON, DELAWARE	:	& ORDER OF DISMISSAL
	:	
Respondent.	:	

Appearances

Jeffrey M. Weiner, Esq., for IAFF Local 1590

Tara M. DiRocco, Esq., Assistant City Solicitor

The City of Wilmington, Delaware (City) is a public employer within the meaning of §1602(l) of the Police Officers’ and Firefighters’ Employee Relations Act, 19 Del.C. Ch. 16 (POFERA).

The International Association of Firefighters, Local 1590 (IAFF) is an employee organization within the meaning of §1602(g) of the POFERA and the exclusive bargaining representative of a bargaining unit which includes all firefighters employed by the City except for the ranks of Deputy Chief and Chief of Fire. 19 Del.C. §1602(h).

At all times material to this Charge, the IAFF and the City were parties to a collective bargaining agreement which expired on June 30, 2012.

Section 6.6 of that collective bargaining agreement, entitled “Vacation Holidays”, provided in relevant part:

(b) All bargaining unit employees will be eligible for the following:

(1) For Calendar Year 2011, each member will receive a cash payment of 8 hours of Vacation Holiday Pay.

(2) For Calendar Year 2012, each member will receive a cash payment of 24 hours of Vacation Holiday Pay.

On December 19, 2013, the IAFF filed an unfair labor practice charge (Charge) with the Public Employment Relations Board (PERB) alleging conduct by the City in violation of 19 Del.C. §1607(a)(1), (a)(5) and (a)(6):

§ 1607. Unfair labor practices, enumerated.

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.

(5) Refuse to bargain collectively in good faith with an Employee representative which is the exclusive representative of employees in an appropriate unit.

(6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

Specifically, the Charge alleges that the City failed to maintain the status quo of a mandatory subject of bargaining, i.e., Vacation Holiday Pay (VHP), by failing to pay 24 hours of Vacation Holiday pay to bargaining unit employees for calendar year 2013.

On January 6, 2014, the City filed its Answer denying the Charge. In a section of its Answer entitled New Matter, the City contends Vacation Holiday Pay is not a mandatory subject of bargaining and that it had no obligation to pay the VHP after the expiration of the CBA on June 30, 2012, in order to maintain the status quo.

On January 14, 2014, the IAFF filed its Response to New Matter denying both the City's contention that the VHP is not a mandatory subject of bargaining and that it had no obligation to pay the VHP in calendar year 2013.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

Charging Party's objection to the Respondent's incorporating the first nine counts of its Answer into the section of its Answer entitled New Matter is without merit. The City's document denies the material allegations of the Charge and raises two assertions of New Matter.

The City's Answer does not assert or contain a countercharge against the IAFF.

The City's contention that the VHP is not a mandatory subject of bargaining is in error. The POFERA defines terms and conditions of employment to mean "...matters concerning or related to wages, salaries, hours, grievance procedures and working conditions...". The PERB has held by using the phrase "matters concerning or related to", the General Assembly intended the POFERA include a broad and encompassing scope of negotiability. It is clear that the legislature intended all matters concerning or related to a term or condition of employment to be mandatorily bargainable..." *Appoquinimink Ed. Assn. v. Bd. of Ed.*, ULP No. 1-3-84-3-2A, I PERB 35, 42 (1984).

In considering what constitutes a matter concerning or related to wages and/or salaries, this Board held, "It cannot be seriously disputed that benefits constitute a portion of the consideration for work performed and are a condition of the individual's employment.. It is not the relative significance of 'peripherals' in comparison to the total benefit package which determines their negotiability, but rather the economic benefit to the employee." *IAFF Local 1590 & FOP Lodge 1 v. City of Wilmington*, ULP 89-09-041, I PERB 457,469 (1990). PERB has found pay periods, reimbursement of travel expenses when an employee is called back to work while on stand-by, benefit enhancements and overtime compensation to be mandatory subjects of bargaining because they provide a negotiated economic benefit to employees which constitute compensation for work performed and are, therefore, conditions of an individual's employment.

The payment of an annual cash stipend which is equal to a number of hours and entitled "vacation holiday pay" (emphasis added), clearly constitutes compensation and a matter "concerning or related to wages and salaries". It is a mandatory subject of bargaining.

The inquiry then turns to whether the City has instituted a unilateral change to the status quo of this mandatory subject of bargaining by failing or refusing to continue to make the annual VHP payment after the June 30, 2012 expiration of the parties' collective bargaining agreement. Where the parties are bound by a valid collective bargaining agreement, contractual language which is clear and unambiguous on its face effectively establishes the status quo. *Local 1590, IAFF v. City of Wilmington, ULP No. 89-06-037, I PERB 413 (1989)*.

In this case, the contractual provision concerning §6.6 of the parties' expired agreement is clear and unambiguous and establishes the status quo. Section 6.6 of the CBA expressly creates an obligation to pay the VHP only in calendar years 2011 and 2012.

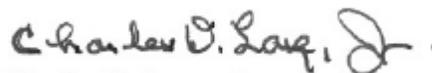
The parties' agreement expired on June 30, 2012, and contains no continuing obligation to pay or right to expect payment of the VHP after calendar year 2012. The payment of the VHP was clearly and unequivocally limited to calendar years 2011 and 2012. The City is correct, therefore, that any obligation that it pay the VHP in 2013 did not and could not exist under the terms of the collective bargaining agreement.

DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings do not support a finding of probable cause to believe that a violation of 19 Del.C. Section 1607(a)(1), (a)(5) and or (a)(6) may have occurred.

WHEREFORE, the Charge is hereby dismissed.

Dated: February 26, 2014



CHARLES D. LONG, JR.
Hearing Officer
Del. Public Employment Relations Board.