

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 1,	:	Board Review of the Binding
	:	Interest Arbitrator’s Decision
and	:	
	:	
CITY OF WILMINGTON, DELAWARE.	:	<u>BIA 14-12-985</u>
	:	

APPEARANCES

Jeffrey M. Weiner, Esq., for Fraternal Order of Police Lodge 1

David H. Williams, Esq., Morris James LLP, for City of Wilmington

BACKGROUND

The City of Wilmington, Delaware, (“City”) is a public employer within the meaning §1602(p) of the Police Officers and Firefighters Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986).

The Fraternal Order of Police, Lodge 1 (“FOP #1”) is an employee organization within the meaning of §1602(g) of the POFERA. FOP #1 was certified in June, 1969, to represent a bargaining unit of “All City of Wilmington Police Officers below the rank of Captain.” DOL Case 54. FOP #1 is the exclusive bargaining representative of that unit within the meaning of 1602(h) of the POFERA.

On December 3, 2014, FOP #1 requested the Public Employment Relations Board (PERB) authorize binding interest arbitration for the on-going negotiations between these parties. The impasse was certified to binding interest arbitration on February 10, 2015.

The parties entered into a facilitation process in an unsuccessful effort to resolve their differences. Thereafter, the Executive Director advised the parties Ralph H. Colflesh, Esq., would serve as the designated binding interest arbitrator. A hearing was conducted by Arbitrator Colflesh on May 19 and May 21, 2015. By agreement of the parties, closing written arguments were submitted to the arbitrator by the parties, with simultaneous opening argument received on August 7, 2015 and simultaneous responsive argument received on September 9, 2015.

The Decision of the Binding Interest Arbitrator was issued on October 13, 2015. The Arbitrator accepted the last, best, final offer of FOP #1 in its entirety, pursuant to the mandate of 19 Del.C. 1615(d). The parties were advised that the decision of the arbitrator “shall become an order of the Board within 5 business days after it has been served on the parties.” 19 Del.C. 1615(e).

The City filed a Request for Review of the Arbitrator’s decision by the full Board, on October 19, 2015. FOP #1 filed a memorandum in opposition to the City’s Request for Review on October 28, 2015.

The full Board met on November 18, 2015 to consider the arguments of the parties on review. A copy of the complete record below as well as the argument on appeal was provided to and reviewed by each Board member.

DISCUSSION

The scope of the Board’s review is limited to the record created by the parties. Its standard of review is whether the decision of the binding interest arbitrator is arbitrary, capricious, unsupported by the facts in the record, or contrary to law. Following its deliberations, the Board must vote to either uphold or overturn the decision, or it may

choose to remand it to the Executive Director for further action.

After review of the record and consideration of the arguments of the parties, the Board unanimously affirms the Arbitrator's decision for the reasons that follow.

The Binding Interest Arbitrator is statutorily constrained to make "...written findings of facts and decision for the resolution of the dispute; provided, however, that the decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in its entirety ..." *FOP Lodge 10 and State Dept. of Correction*, BIA 07-02-552, Board Decision on Review, VI PERB 4023, 4024 (2008); 19 Del.C. §1615.

The City argues the Arbitrator erred as a matter of law by not considering the duration of the agreement as a relevant and weighty consideration in his decision. It asserts that although the Arbitrator accurately set forth the City's argument and the relevant case law in the portion of the decision subtitled "Analysis of the City's LBFO and Arguments," he failed to specifically address it in the opinion or conclusions portions of the Decision.

The fact that the arbitrator did not find the City's proposed additional year of the agreement proposed to be of sufficient persuasive weight as to lead to the selection of the City's offer does not result in a finding on review that the decision is contrary to law. The statute specifically requires the arbitrator to give "due weight to each relevant factor" in making his determination. In his decision, the arbitrator specifically considered the 2% across the board increase proposed by the City for the fiscal year to begin July 1, 2015:¹

... The City's proposed 2% salary increase effective July 1, 2015 would help [*to address the growth in the cost of living*], but it would do nothing to offset the increase in cost of living for the preceding four years. In addition, as shown above, the City's [*last, best, final offer*] would increase employee shares of the health insurance premium effective July 1, 2015 and by converting the contribution to a percentage amount, would guarantee increases to the bargaining unit in the future. *FOP Lodge 1 and*

¹ FOP #1's offer terminated on June 30, 2015

City of Wilmington, Decision of the Binding Interest Arbitrator, BIA No. 14-12-985, IX PERB 6599, 6622 (2015).

The Board notes the relative difference in the duration of the two offers is short. The lengthy period of time in which these parties mutually chose not to negotiate to a successor agreement is a fair consideration in evaluating the impact of a one year difference in the offers of the parties.

The City argued the arbitrator erred in considering New Castle County police as the only relevant comparable for the Wilmington police. The record establishes that the Wilmington police and New Castle County police are now cross-sworn and may be expected, at times, to perform their respective duties in either jurisdiction. It is difficult to imagine more direct comparability. The arbitrator acknowledged that New Castle County is larger and more affluent than the City (which lies within the County), but noted in the recent binding interest arbitration proceeding between these parties involving the bargaining unit of WPD Captains and Inspectors, the City agreed that New Castle County Police force was a useful comparator. The Board finds no error in the arbitrator's decision on this issue, nor is his decision unsupported by the record, arbitrary or capricious.

Similarly, the Board does not find error in the arbitrator's consideration of retiree healthcare costs. The underfunded liability for retiree healthcare is an on-going problem which the City, admittedly, has attempted to begin to address, in part. As has been noted, because FOP #1's offer was accepted, the parties are obligated under the POFERA to immediately engage in negotiations for a successor to this imposed agreement, which expired June 30, 2015. The cost of retiree healthcare is a shared current and on-going future problem for these parties. To the extent that monies must be expended to fund retiree healthcare costs (as those provision in the collective bargaining agreement currently dictate),

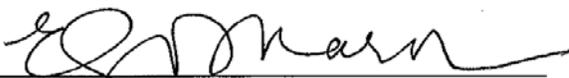
those monies will be unavailable for distribution for other purposes of immediate interest to current bargaining unit officers. The Board encourages these parties to enter into good faith efforts to address this issue with eyes turned directly to the long-term future.

DECISION

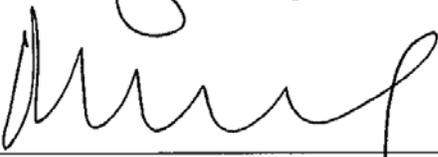
After reviewing the record and considering the arguments of the parties, the Board, unanimously affirms the decision of the Binding Interest Arbitrator accepting the last, best, final offer of FOP #1 as the more reasonable, based upon the criteria set forth in 19 Del.C. §1615.

WHEREFORE, the parties are directed to immediately implement all tentative agreements and proposals as set forth in FOP #1's last, best, final offer. The City is directed to notify the Public Employment Relations Board promptly of its compliance with this decision and Order.

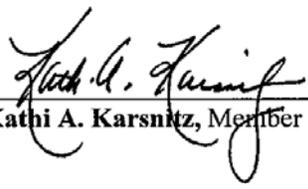
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

Date: December 21, 2015