

The Petitioner contends the FOP wage and benefit settlement violated a parity agreement in effect between the City and WFFA at the time the FOP contract was signed. By refusing to reopen negotiations with the WFFA concerning wages and benefits the City violated Section 1607(a)(5), of the Act. [1]

On August 16, 2000, the City filed its Answer denying the allegations. On September 5, 2000, the WFFA filed a Response denying the new matter set forth in the City's Answer.

A hearing was held on November 15, 2000, at which the parties presented testimony and documentary evidence in support of their respective positions. Argument was provided in the form of written post-hearing briefs the last of which was received on February 21, 2000. The following discussion and decision result from the record thus compiled.

ISSUE

Did the City violate 19 Del.C. §1607(a)(5), when it refused to reopen negotiations with the WFFA concerning wages and benefits?

PRINCIPAL POSITIONS OF THE PARTIES

WFFA: 1) The wage and benefit parity agreement was memorialized in a signed document dated June 24, 1999, never withdrawn or repudiated by the City and relied upon by the WFFA during the contract ratification process. Consequently, the

[1] §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: (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit. doctrine of promissory estoppel precludes the City from denying the validity of the parity agreement.

2) The omission of the signed parity language from the formal agreement resulted from a mutual mistake of fact;

3) The City's position that the signed parity agreement was not finalized until approved by City Council and signed by the Mayor is misplaced.

4) The City agreed to wage and benefit increases for its police officers which exceeded those negotiated by the WFFA.

City: 1) The WFFA, the party claiming the benefit of the parity agreement, has the burden of proving its existence and terms. The existence of a contract is determined by the parties' objective manifestations of assent. Absent a mutual mistake or fraud, the parties are to be held to the terms of their written contract. The collective bargaining agreement with the WFFA contains neither a provision concerning parity nor a provision requiring the City to reopen the contract prior to its expiration to renegotiate wages and benefits.

2) The WFFA has failed to establish that the letter dated June 24, 1999, created a binding agreement between the parties.

3) In the absence of either fraud or mutual mistake the WFFA is not entitled to a reformation of the collective bargaining agreement.

4) Neither equitable nor promissory estoppel are appropriate based upon the undisputed facts underlying the current dispute.

5) Even assuming, *arguendo*, that the parties' contract included parity, the terms of the City's contract with the FOP do not implicate parity.

DISCUSSION

It is undisputed that the current collective bargaining agreement ratified by the membership of the WFFA, approved by the Wilmington City Council and signed by the Mayor is silent concerning the issue of parity. Consequently, if a binding parity agreement is in force between these parties it arises from the letter dated June 24, 1999, from WFFA President Michael McNulty, to the City's Personnel Director, Mary Dees, which provides:

This letter will act as confirmation for a tentative agreement between the City of Wilmington and Local 1590 Firefighters Association. It is understood that the changes to the current contract are those

that we have worked on at the bargaining table. All other Articles in the contract will remain as is current contract language.

If any other Union receives wages or benefits greater than what Local 1590 bargained for, Local 1590 will receive those greater wages, and benefits. (Parity with other locals)

Upon the signing of the contract the City and the Union will share an equal cost of the printing of the contract. As in the past we will print 200 contracts. Union will keep 175 and give the remainder to the City for future employees.

/s/ Michael McNulty, Sr,
Union President

/s/ Mary M. Dees,
Personnel Director

/s/ John Morgan,
Legal Counsel

The June 24th letter memorializes three (3) agreements between the parties. The letter does not reference “tentative agreements.” The initial paragraph concerns the tentative agreement involving changes to the predecessor collective bargaining agreement. The agreed upon changes are those “worked on at the bargaining table.” All other articles in the predecessor agreement were to remain unchanged. It is undisputed that parity was not “worked on at the bargaining table” and that the predecessor agreement did not contain a parity provision. Consequently, paragraph one (1) does not include the parity issue and has no bearing upon the resolution of the current dispute.

The subject matter set forth in the second and third paragraphs are separate and distinct from the tentative agreement concerning the terms of the successor collective bargaining agreement which is the subject of paragraph one. The letter does not provide that the second and third paragraphs also reflect tentative agreements or are conditional upon the approval of City Council and/or the signature of the Mayor.

Contrary to the City's position, the second paragraph of the letter does not reflect simply a willingness by the City to enter into future negotiations concerning the inclusion of a parity provision into the collective bargaining agreement. It expressly provides that wages and benefits received by any other City union which exceed those received by the WFFA would also be received by the WFFA.

The letter was signed by the WFFA President, the City's Personnel Director and the City's Legal Counsel. The City's Legal Counsel was included at the request of the City, rather than by the Union. The terms of the letter are clear and unambiguous. To argue that the Personnel Director and the City's Legal Counsel were not authorized representatives of the City is disingenuous, at best. The letter was posted in all firehouses. The WFFA was entitled to and did, in fact, rely upon the parity agreement during the ratification process. The parity agreement was discussed at the ratification meeting[s] prior to the vote by the WFFA membership. Both the Union President and Vice-President testified, without contradiction, that absent the parity agreement the tentative agreement would not have been ratified by the WFFA membership.

The PERB has previously observed:

To determine that parity clauses are per se illegal would mean that where multiple bargaining units exist, any given Union would be either unwilling or hesitant, at best, to settle first. Such a situation carries the potential to create protracted and difficult negotiations resulting in uncertainty, unrest and even open hostility between the parties. Clearly, these ends are inconsistent with the declared policy of the State and the primary purpose of the Act.

Parity clauses can, and do, in many instances play an important role in maintaining a positive cooperative bargaining relationship between a public employer and the exclusive representative of its organized employees. Parity provisions, or "me too" clauses as they are frequently called, permit one union to reach agreement

with the employer without fear of criticism or internal strife should another bargaining unit subsequently negotiate a more favorable settlement. Where multiple bargaining units are present, it is unrealistic to believe that settlements reached with one bargaining unit will not be considered by the employer and impact agreements it reaches with other bargaining units concerning the same or similar issues.

Despite the potential for facilitating the settlement of contract negotiations where two or more bargaining units are present, an individual parity agreement may, because it is overly broad and encompassing, effectively restrict and prejudice the ability of an exclusive representative not party to the parity agreement to effectively negotiate on behalf of the bargaining unit members it represents. An employer that enters into such an agreement authorizes the intrusion of one bargaining representative into the collective bargaining process of another. In so doing, the employer's conduct interferes with the ability of the latter to bargain effectively for its members and violates its duty to bargain in good faith. Fraternal Order of Police, Lodge No. 5 v. New Castle County, Del.PERB,ULP Nos. 91-06-064; 91-06-066, I PERB 715, 724-25 (1991).

Such is not the case here. This specific parity agreement is limited to "wages and benefits." Unfortunately, neither term is defined and, therefore, despite the WFFA's reference to selected statutory definitions, capable of varying interpretations.

Because the WFFA was solely responsible for the wording of the June 24th letter, ambiguous terms contained therein are to be construed against the WFFA. According to the testimony of Personnel Director Dees, prior parity agreements between the City and its other union's have traditionally been limited to general salary increases and/or cash bonuses. The FOP members did not receive either a "bonus", or increased benefits within the traditional meaning of that term as used within the labor-

management context, e.g., medical, dental and pension entitlements. Thus, consistent with prior parity agreements negotiated by the City, the June 24th parity agreement insofar as it applies to wages is limited to a general across-the-board salary increase.

Section 16, of the City's contract with the FOP, entitled Classifications and Salaries, provides, in relevant part:

Section 16.1 In light of changing responsibilities resulting from the redeployment of the Wilmington Police Department, specifically retaliating to the adoption of community policing and the continuing implementation of advanced technologies in the day-to-day responsibilities of Police Officers, as well as developments in other local law enforcement agencies, the City will implement the following changes to the Police Salary matrix . . .

Employers and the exclusive representatives of their organized employees must be free to address issues unique to a specific group of employees and to agree upon economic adjustments where appropriate. In addition to the 3% general across-the-board increase negotiated by the City with both the WFFA and FOP additional monies applied to the FOP salary matrix were to address circumstances unique to the FOP. The additional funds were not uniformly applied. To the contrary, their distribution throughout the salary matrix varied both in amount and percent.

CONCLUSIONS OF LAW

The City did not violate 19 Del.C. §1607(a)(5), when it refused to reopen negotiations with the WFFA concerning wages and benefits.

May 7, 2001
(Date)

/s/Charles D. Long
Charles D. Long, Jr.
Executive Director