

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE,	:	
LODGE 4,	:	Binding Interest
	:	Arbitration
and	:	
	:	<u>BIA 02-01-338</u>
CITY OF NEWARK.	:	

Decision on Motion to Supplement Record

The remand hearing in the binding interest arbitration proceedings involving the City of Newark (“City”) and Fraternal Order of Police Lodge No. 4 (“FOP”), was held on Thursday, August 22, 2002, pursuant to the order of the full Public Employment Relations Board (“PERB”). In RE: FOP Lodge 4 and City of Newark, BIA 02-01-338, IV PERB 2627 (2002). The Arbitrator was directed by the PERB to accept additional evidence and/or argument as to “... the basis and cost of the City’s Flexible Benefit Plan proposal, including the rationale for reduction in the points from 126 to 89.” Both documentary and testimonial evidence were presented on this point during the hearing.

On September 5, 2002, the City moved to supplement the record with “its insurance company’s proposal for premiums for the coming year.” The document the City sought to place into evidence is dated August 21, 2002, and it indicates it was received by William Hutchins, the City’s insurance consultant, on August 25, 2002. Mr. Hutchins testified on behalf of the City at the August 22, 2002, remand hearing.

On September 6, 2002, the FOP filed its objection to allowing the City to supplement the record. The FOP argued the Arbitrator precluded the introduction of evidence during the remand hearing which related to events which occurred after the original September, 2001 interest arbitration hearing date. Specifically, the FOP argued:

The Arbitrator ruled that evidence that occurred after the hearing date was inadmissible. The City is well aware of the cut-off date and yet has attached the inadmissible evidence to the Motion in order to expose the Arbitrator to information that should not and could not be considered. For these reasons, the information now being sought to be admitted should also be rejected and an attorney's fee be awarded for the cost of responding to this frivolous attempt to prejudice the record.

The City responded to the FOP's opposition on September 11, 2002, arguing that the evidence was not available at the time the exhibits were required to be submitted nor at the time of the August 22, 2002, hearing. The City argues that the information concerning projected premium increases is both relevant and crucial information which it is in the public interest to include in the record to be considered by the Arbitrator.

Discussion

The Arbitrator's decision of January 7, 2002, was based upon the last, best, and final offers tendered by the parties prior to the original hearing on September 14, 2001. The Board convened on April 10, 2002, upon the City's Request for Review of the Arbitrator's award, and voted to remand this matter back to the Arbitrator. The Board did not issue a decision either affirming or overturning the Arbitrator's decision, but rather requested the parties provide additional evidence and/or argument concerning the basis for their respective last, best, and final offers of September, 14, 2001, concerning their salary and benefit proposals.

During the course of the remand hearing, the Arbitrator excluded evidence derived from sources that were not available until after the original September 14, 2001, hearing date. The issue in question was the basis for the offers at the time that they were made, not what subsequently available information might either support or undercut those positions.

The information which the City now seeks to include in the record, by its admission, "was not available at the time the hearing exhibits were submitted, nor at the time of the hearing

itself,” referring to the August 22, 2002, remand hearing. Clearly this information could not have served as the basis for an offer relating to benefits made nearly a year prior to that date.

DECISION

For the reasons discussed above, the City’s Motion to Supplement the Record is denied.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.
CHARLES D. LONG, JR., EXECUTIVE DIRECTOR
DEL. PUBLIC EMPLOYMENT RELATIONS BD.

DATED: 30 September 2002