

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 4,	:	PERB Review of the
Appellant,	:	Arbitrator’s Remand
and	:	Decision
	:	
CITY OF NEWARK, DELAWARE,	:	<u>BIA 02-01-338</u>
Appellee.	:	

Appearances

*Perry F. Goldlust, Esq., Heiman, Aber, Goldlust & Baker, for FOP Lodge 4
Sheldon N. Sandler, Esq., Young, Conaway, Stargatt & Taylor, for City of Newark*

BACKGROUND

The municipality of Newark, Delaware, (“City”) is a public employer within the meaning of §1602(l) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).

Fraternal Order of Police Lodge No. 4 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(g). The FOP is the exclusive bargaining representative of certain uniformed officers of the Newark Police Department, within the meaning of 19 Del.C. §1602(h).

The City and FOP Lodge 4 were parties to a collective bargaining agreement for the period of April 1, 1999, to March 31, 2001. They entered into negotiations for a successor agreement in December, 2000. When they were unable to reach agreement, they requested mediation services from the Public Employment Relations Board (“PERB”) in February, 2001. Mediation did not resolve the outstanding issues and the impasse was referred to PERB’s then

new binding interest arbitration proceedings pursuant to 19 Del.C. §1615. The parties submitted last, best and final offers as required by statute.

A public interest arbitration hearing was conducted on September 14, 2001, before the PERB Executive Director, who found:

Based upon the record created by the parties, consideration of the statutory factors, and weighing of the last, best and final offers in their totality, the FOP has not carried its burden to support its proposal as the more reasonable and necessary, particularly as it relates to Workers' Compensation and the addition of the rank of PFC.

Consequently, based upon the statutory criteria set forth in 19 Del.C. §1615 (each of which was considered in reaching this determination) the last, best and final offer of the City is accepted in its entirety. [Decision of the Interest Arbitrator, January 7, 2002, p. 16].

FOP Lodge 4 requested the full Public Employment Relations Board review the Executive Director's decision, and the Board convened a hearing on April 10, 2002, to consider the Union's request for review. By decision dated May 1, 2002, the Board remanded the matter to the Executive Director with direction to “. . . accept additional evidence and/or argument specifically as to:

- 1) The basis for the respective salary proposals of the parties, including the FOP's proposal to include the additional rank of Patrolman First Class;
- 2) The basis and costs of the City's Flexible Benefits Plan proposal, including the rationale for the reduction in points from 126 to 89.”

The Board also directed the Executive Director to state written findings of facts for each issue.

A third public hearing was held on August 22, 2002 and the Executive Director issued his decision on remand on November 12, 2002, following the receipt of written argument from the parties. That decision included findings of fact and the following holdings:

- I. Comparability: For purposes of this arbitration, based on the information provided by the parties in two hearings, Dover is the only truly comparable police force (of those on which evidence was presented), in terms of relative size, reported crime, budget and

population served. Although it is unusual that a party would present only one other jurisdiction as a comparable, it is also unusual that the other party would present only larger jurisdictions and then compare itself to the average for that group. [Decision @ p. 11].

- II. Salary Proposals: The evidence of record concerning general salary increases for both internal and external comparables supports the City of Newark's proposed increases of 3.25% (2001-02); 3.25% (2002-03), and 3.5% (2003 – 04). [Decision @ p. 12].
- III. Patrol Officer First Class: The evidence presented does not support the conclusion that the addition of the PFC salary rank is necessary to retain police officers. Over the last ten years, the Newark Police Department has lost 37 officers, of which 60% (22 officers) retired, 16% (6 officers) left for employment with other police agencies (Delaware State Police, FBI, IRS), and 25% (9 officers) left due to personal or performance related reasons. Of those officers who left the department, only five left after five or fewer years of service. The average years of service of the 22 retirees over the last ten years was 23.27 years of service. [Decision @ p. 16].
- IV. Flex Point Modification: By decreasing the Flex Point multiplier from 1.05 to .80, the City estimates it will save \$25,000 annually. Over the ten year period used to project increased costs generated by providing the new retiree health benefit, this will result in estimated savings of \$250,000 to the City. This is approximately 36% of the City's projected cost of the benefit for retirees and their spouses over the ten year period.

Even if the City's projections are overstated, the City's offer does not extract the full cost of the retiree benefit from the employees. Under the City's projections, it is still responsible for 64% of its estimated costs. The FOP proposal requires the City to pay the full cost of the retiree's health benefit and 75% of his or her spouse. [Decision @ p. 18].

. . . The record in this case, including the additional evidence and argument presented at the remand hearing support adopting the City of Newark's last, best and final offer in its entirety. [Decision @ p. 19].

The full Board convened a public hearing on December 16, 2002, to consider the remand findings of the Executive Director and to review his decision. Prior to the hearing, the Board received written argument. In addition, the parties were afforded the opportunity to make oral

argument during the hearing. This decision results from the deliberations of the Board based on the record created by the parties.

DECISION

In reaching his decision, it is important to understand that the Executive Director was limited to choosing between the last, best, and final offers of the parties, in their entirety. The statutory language is clear and unequivocal:

The binding interest arbitrator shall make written findings of facts and a 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.* (19 Del.C. §1615(d), emphasis added.)

While any number of alternatives created by cutting and piecing parts of the two offers together may have been reasonable and perhaps acceptable, this was not an option for the Executive Director, nor is it an option available to this Board on review.

The question presented for resolution on appeal is whether the decision of the Executive Director, the Board's designated Interest Arbitrator in this matter, accepting the City of Newark's last, best, final offer in its entirety, is arbitrary, capricious, or otherwise contrary to law.

Binding interest arbitration proceedings are invoked under the Police Officers and Firefighters Relations Act only in the extreme situation where the public employer and the exclusive bargaining representative of the employees are unsuccessful in performing "their mutual obligation to confer and negotiate in good faith with respect to terms and conditions of employment and to execute a written contract", following both direct negotiations and mediated negotiations. 19 Del.C. §1602(e). The binding interest arbitration provisions of the statute provide a finite resolution to such unsuccessful negotiations, and substitute the judgment of an arbitrator for the traditional collective bargaining process. Requiring that the decision thus reached must be the complete final offer of one party or the other assures there will be both a "winner" and a "loser" at the completion of this process.

After reviewing the voluminous record and hearing the multiple arguments of the parties, we conclude that the Executive Director's decision was neither arbitrary, capricious, nor contrary to law. The decision makes findings of fact and addresses each of the statutory criteria set forth in 19 Del.C. §1315(d). The decision reasonably finds the City of Dover to be the one appropriate comparable community based on the record created by the parties, and compares the internal comparability of the parties' offers to the terms and conditions of employment of other Newark employees. The parties did not enter into any stipulations and neither the lawful authority of the City of Newark nor its financial ability to meet the cost of the offers based on existing revenues was in issue.

We further find the Executive Director used reasonable judgment in evaluating the evidence presented based on criteria which are normally considered in binding interest arbitration proceedings in other jurisdictions.

Evaluating the relative proposals of the parties on an issue-by-issue basis does not satisfy the requirements of the law. The offers must be considered in their totality and balanced according to the statutory criteria. This is not an easy nor enviable task in the contentious environment of failed labor negotiations balancing the interests of police officers against the interests and welfare of the public as represented by its municipal government. While it may seem apparent to those of us outside of this relationship that a number of potentially reasonable settlements of the issues is evident, PERB is not empowered to fashion such compromise settlements where the parties choose not to do so themselves.

WHEREFORE, for the reasons set forth above, following review of the complete record in this case, the decision of the Executive Director, acting as the Interest Arbitrator in this matter, is affirmed by a 2 –1 vote of the Board.

/s/Henry E. Kressman
HENRY E. KRESSMAN, CHAIRMAN
Delaware Public Employment Relations Board

/s/R. Robert Currie, Jr.
R. ROBERT CURRIE, JR., MEMBER
Delaware Public Employment Relations Board

/s/Elizabeth D. Maron
ELIZABETH D. MARON, ESQ., MEMBER
Delaware Public Employment Relations Board

Dated: 17 January 2003