

agreement between the City and the former bargaining unit representative¹ which expired, by its terms, on June 30, 2014. The parties entered into negotiations for a successor agreement in May, 2014. The terms of the predecessor agreement have remained in effect for all times relevant to the processing of this charge.

On April 2, 2015, the Union filed an unfair labor practice charge with the Delaware Public Employment Relations Board (PERB) alleging conduct by the City in violation of 19 Del.C. Sections 1607 (a)(5) and (a)(7).² The City filed its Answer and New Matter on or about April 14, 2015, denying the material allegations contained in the Charge. On April 23, 2015, the Union filed its Response to New Matter essentially denying the allegations therein.

A probable cause determination was issued on May 22, 2015. Thereafter, a hearing was held on June 16, 2015, after which the parties submitted written argument. The decision of the Executive Director was issued on January 26, 2016, in which she found:

- The City, through its bargaining team, gave clear and timely notice to the Union's bargaining team that City Council approval was required to effectuate a final agreement on the terms and conditions of a successor collective bargaining agreement.
- The City and the Union reached a comprehensive tentative agreement on all terms of the successor agreement, which

¹ This bargaining unit was previously represented by Fraternal Order of Police Lodge 2. On February 19, 2014, the bargaining unit decertified FOP Lodge 2 and General Teamsters Local 326 was certified as the exclusive representative of the unit.

² §1607 (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.
- (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

was subsequently ratified by the Union's membership.

- Thereafter, the City Council rejected the tentative agreement.
- Because the City Council did not approve the tentative agreement, the required precondition was not met (i.e., the approval of City Council) and no enforceable contract was created by the exclusive ratification of the Union's membership. Consequently, the City did not violate its statutory duty to reduce an agreement reached as a result of collective bargaining to writing and did not unlawfully refuse to sign the agreement. The charge that the City had violated 19 Del.C. §1607(a)(7) was dismissed.
- The City failed to bargain in good faith when it sent agents into negotiations with apparent, but no actual, authority to negotiate concerning wages and other terms and conditions of employment, and when it repudiated the entire tentative agreement reached at the bargaining table and directed its team to engage in regressive negotiations. By these actions, the City violated its obligation to bargain in good faith and 19 Del.C. §1607(a)(5).³

The Executive Director ordered the City to cease and desist from engaging in conduct in violation of its statutory duties and directed it to promptly send a fully authorized negotiating team to the bargaining table for good faith negotiations of a successor agreement. The City was directed to notify the Public Employment Relations Board within thirty (30) days of the date of the decision of all steps taken to comply with the order.

On February 2, 2016, the Union requested review of the Executive Director's decision by the full Public Employment Relations Board. On February 10, 2016, the City filed a response to the Union's request for review. The Board hearing was scheduled for February 17, 2016, but rescheduled to March 16, 2016, at the request of the City (and without objection from the Union).

A copy of the complete record in this matter was provided to each member of the

³ *Teamsters Local 326 v. City of Milford, Delaware*, ULP 15-04-995, IX PERB 6647, 6666 (2016).

Public Employment Relations Board. A public hearing was convened on March 16, 2016, at which time the full Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and the arguments presented to the Board.

DISCUSSION

The Board's scope of review is limited to the record created by the parties and consideration of whether the Executive Director's decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to affirm, overturn, or remand the decision to the Executive Director for further action.

The Executive Director's finding that the City failed to bargain in good faith is not the subject of this request for review. The issue on review is whether the terms of the parties' tentative agreement should be imposed, despite the City Council's rejection of that agreement. The Union argues the only effective remedy for the City's failure to bargain in good faith is to impose the tentative agreement reached by the parties during the course of negotiations.

The Union argued that although it is undisputed that the parties discussed and were aware that any final agreement was conditioned on approval by City Council, that fact alone is not sufficient to prevent the creation of a binding agreement through negotiations with the City's authorized representatives. It asserted the Executive Director failed to place sufficient weight on the fact that the City Manager is a direct employee of the City Council and is not an independently elected or appointed member of an

executive branch of City government. It noted that there were no changes in the composition of the City Council, nor was there any extraordinary loss of revenue or the incurring of any unanticipated substantial expenses during the period of time between the reaching of the tentative agreement and City Council's rejection of that agreement. Consequently, the Union argued, when viewed in its totality, the City team had authority to bind the Council and the consequence of any mistake made by the City's team should not be borne by the Union.

The Union argued the only viable remedy for the City's flagrant violation of its duty to bargain in good faith by sending representatives to the bargaining table who did not have requisite authority, is to direct that the tentative agreement be implemented. The simple direction to cease and desist from bargaining in bad faith and to return to the bargaining table, the Union argues is no more than a "slap on the wrist" which provides no relief to the bargaining unit and contravenes the purposes of the POFERA.

The Board is requested, on review, to modify the Executive Director's decision by imposing the tentative agreement reached by the parties at the bargaining table to remedy the City's violation of its good faith obligations under the POFERA. The Board declines to do so.

The Union was admittedly on notice that any tentative agreements reached during the course of negotiations had to be approved by City Council before they could be finalized and implemented. City Council has exclusive responsibility for expending the City's funds. Discussions occurred between these parties at the negotiating table concerning the need for City Council to affirmatively act to identify and/or secure funds necessary to implement the economic terms of the tentative agreement. The Union knew or reasonably should have known that City Council's approval of the tentative agreement

was more than simply *pro forma*.

The fact that approval of the tentative agreement would require City Council to have access to additional revenues was a known condition to both parties. Whether there was a realistic possibility or a probability that additional revenue would be generated is irrelevant; it is the fact that the Union was aware that implementing the agreement would require additional legislative action by the Council. Under these circumstances, the Board cannot conclude that an inchoate agreement came into existence when only the Union ratified the tentative agreement.

The Board acknowledges the very slippery slope created under the unique circumstances of this case, and is aware that its order to return to bargaining with a mandate that the City send a fully authorized team to negotiate in good faith, appears to be a “slap on the wrist” for the City. It should not be construed as such. The Board is also sympathetic to the Union’s argument that had it been clear from the beginning that the scope of the economic negotiations was limited, much time could have been saved and the negotiations might have been more focused.

For these reasons, examining the totality of the underlying unique circumstances in this case, the Board affirms the decision of the Executive Director.

DECISION

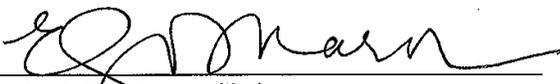
After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director finding that no binding agreement came into effect at the time the tentative agreement was ratified by the Union membership.

The Board also affirms the decision of the Executive Director finding the City

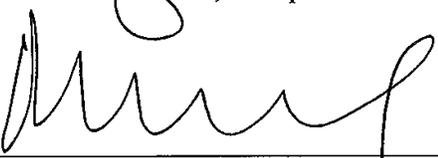
violated its obligation to bargain in good faith by sending a negotiating team to the bargaining table which had no actual authority to engage in comprehensive negotiations and to enter into any agreement on behalf of the City Council. By sending a team of designated representatives into negotiations which engaged in this conduct with no actual authority to act on behalf of the City Council, the City violated 19 Del.C. §1607(a)(5).

Wherefore, the City is directed to comply with the order as set forth in the decision of the Executive Director.

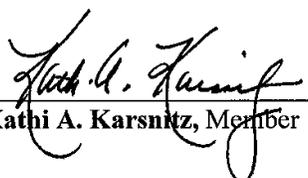
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATE: April 1, 2016