

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1590,</b>	:	REQUEST FOR REVIEW OF
	:	THE DECISION OF THE
Appellant,	:	BINDING INTEREST
	:	ARBITRATOR
v.	:	
	:	<b><u>BIA 19-11-1213</u></b>
<b>CITY OF WILMINGTON, DELAWARE,</b>	:	
Appellee.	:	

**INTERIM DECISION ON MOTION TO STAY ARBITRATOR’S DECISION**

**Appearances**

*Aaron M. Shapiro, Esq., Connolly Gallagher, for IAFF Local 1590*

*Scott A. Holt, Esq., and William W. Bowser, Esq., Young Conaway Stargatt & Taylor,  
LLP for the City of Wilmington*

**BACKGROUND**

The International Association of Firefighters, Local 1590 (“IAFF”) is an employee organization within the meaning of 19 *Del. C.* §1602(g). The IAFF is the exclusive bargaining representative of a bargaining unit of Firefighters, Lieutenants, Captains, and Battalion Chiefs of the Wilmington Fire Department (“WFD”). 19 *Del. C.* §1602(h).

The City of Wilmington (“City”) is a public employer within the meaning of 19 *Del. C.* §1602(1) of the Police Officers and Firefighters Employment Relations Act (“POFERA”), 19 *Del. C.* Chapter 16.

The City and the IAFF entered into negotiations in January, 2019 for a successor to their collective bargaining agreement which had a term of July 1, 2012 through June 30, 2016. Unable to resolve the terms of the successor agreement in direct negotiations, the City requested the assistance of a mediator in May, 2019. At the conclusion of the third

and final mediation session, the mediator recommended the dispute proceed to binding interest arbitration pursuant to 19 *Del. C.* §1615. The last, best, final offers of each party were submitted on December 11, 2019.

Thereafter, the PERB's Executive Director (serving as the arbitrator, per 19 *Del. C.* §1615(b)) conducted the binding interest arbitration hearing on February 24 and 25, 2020. Following the close of the hearing, the parties provided written post-hearing submissions. The arbitrator issued her decision on May 27, 2020, finding the last, best, final offer of the City of Wilmington to be more reasonable based upon consideration of the record created by the parties in light of the statutory criteria. The parties were directed to implement their stipulated mutual agreements and the final offer of the City of Wilmington and to notify the Public Employment Relations Board of compliance with the Order within sixty (60) days.

On June 3, 2020, the IAFF submitted a Request for Review and a Stay of the BIA Decision. The IAFF also requested the opportunity to submit written argument in support of its request for review and for stay, as well as the opportunity to make oral argument before the Board.

The Public Employment Relations Board notified the parties that it would expedite consideration of the IAFF's motion to stay and request to file supplemental argument on the request for review. The parties were afforded the opportunity to file limited argument concerning the motion to stay, which were received by the Board on June 10, 2020. A full copy of the record of the proceedings before the arbitrator was provided to the Board.

On June 15, 2020, a quorum of the Board convened a public hearing<sup>1</sup> to consider

<sup>1</sup> In accordance with Governor Carney's March 13, 2020 Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, the hearing was conducted by video

the IAFF's motion to stay implementation of the decision of the binding interest arbitrator and request to file supplemental written argument on its request for review. Each party was provided the opportunity to present oral argument and to respond to questions from the Board. The decision reached herein is based upon consideration of the record, the written submissions, and the oral argument made on June 15, 2020.

### **DISCUSSION**

The standard for issuance of a stay is well established. A request for review does not act as an automatic stay of any action ordered by the decision.<sup>2</sup> A stay is an extraordinary remedy and is only issued where to do so would advance the public interest. The moving party must demonstrate that each of the following elements are present and supports the issuance of a stay:

- 1) There is a likelihood that the appellant will succeed on the merits;
- 2) That immediate, prejudicial and irreparable injury will result to the appellant if the stay is not granted;
- 3) There is no substantial harm to other interested parties if the stay is granted; and
- 4) The public interest supports entry of the stay.<sup>3</sup>

The IAFF asserts it is likely to prevail on the merits in the Board's review of the arbitrator's decision because by adopting the City's last, best, final offer the right to bargain concerning mandatory subjects of bargaining (including hours of work) were effectively eviscerated as the right to change the schedule and define units and tours of duty were left to the discretion of the Chief of Fire. It also argues the decision was based on acceptance

conference, using the Zoom platform. Log-in instructions were provided prior to the hearing and there were 59 persons logged in during the hearing.

<sup>2</sup> Delaware PERB Administrative Memorandum #00-02 (1/24/00).

<sup>3</sup> *Department of Corrections v. Delaware Correctional Officers Association*, C.A. 19115, Master's Report on Appellant's Request for Stay (Del.Ch. 2002).

of a schedule change which was not literally included in the City's offer. The IAFF asserts that firefighters will suffer irreparable harm if their work schedule is changed from a four platoon, 24/72 schedule to a three platoon, 24/48 schedule on July 1, 2020 because the firefighters will be deprived of their right to bargain mandatory subjects of bargaining, that there will be disruptions to their personal and professional lives, and that monetary compensation cannot adequately compensate them for this harm and deprivation, which will be on-going. IAFF further argues that implementation of the City's offer will create disruption and confusion in the workplace if the stay is not granted. The IAFF concludes that the only harm the City will suffer if the stay is not granted will be financial, although it notes that the City has refused to commit to eliminating rolling bypass (an asserted reason to implement the contested 24/48 schedule) even under the modified work schedule. Finally, it concludes that the City has failed to demonstrate that its last, best, final offer is necessary to improve or maintain public safety or to alleviate a demonstrable fiscal hardship.

The City argues that the IAFF has failed to meet the conditions required for this Board to stay the arbitrator's award pending review on the merits. It notes that the binding interest arbitration process is the final step in the collective bargaining process, which is resorted to finalize the terms of a collective bargaining agreement only once all efforts of the parties, including mediation, have proven unsuccessful. The statutory binding interest arbitration process limits the arbitrator to a choice of one of the two last, best, final offers of the parties, in its entirety. The process is intended to force the parties to evaluate their final offers in light of the statutory criteria and is different from the active process of creating and defining offers during negotiations. Based on the statutory framework, the City asserts the IAFF cannot and has not established a likelihood that it will prevail on the

merits of its appeal or that its members will suffer irreparable harm if the 24/48 schedule is implemented on July 1, consistent with the arbitrator's decision. The City notes that the firefighters have been on notice about the City's intent to implement the new schedule if it prevailed in the binding interest arbitration proceeding and that the firefighters have selected their vacation days for July 1 through December 31, 2020, based on the new three-platoon, 24/48 schedule. The firefighters were notified in November 2019 what their work schedules and days off would be as of July 1, 2020. Finally, the City argues a prohibition on implementing the schedule change on July will result in continuation of rolling bypass which deprives the City and its citizens of the deployment of the full complement of firefighting apparatus daily. Staying the award will also adversely affect the health care insurance program (which operates on a fiscal year which begins on July 1), the wage increases for bargaining unit employees, and will continue an exchange day program which has been subject to known abuses.

The IAFF has not met the elements necessary to justify granting the requested stay of the arbitrator's decision. It has not established that the public interest is served nor that firefighters will suffer irreparable harm if the decision is implemented. The City, on the other hand, did establish the implementation of the requested stay would have an adverse impact on the vacation schedule for firefighters and that they have been on notice and preparing for the implementation of the schedule change since at least November of 2019. Consequently, it is unnecessary to evaluate at this time whether there is a likelihood that the IAFF will prevail on the merits of its appeal, because all elements must be met in order to grant a stay.

The Board grants the IAFF's request to provide supplemental written argument in support of its request for review. The argument should be limited to the basis on which the

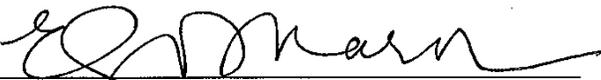
IAFF challenges the arbitrator's decision and should not restate argument made before the arbitrator, as the Board will review the complete record made in the binding interest arbitration proceeding. The City will have the opportunity to file responsive argument.

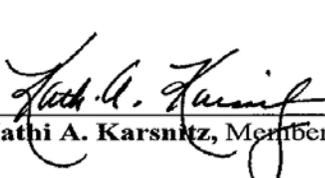
**WHEREFORE**, the IAFF's Motion to Stay Implementation of the Binding Interest Arbitrator's Decision is denied. The Appellant's request to file supplemental argument to support its request for review is granted and should be submitted according to the schedule agreed to at the conclusion of the hearing. The IAFF's opening argument and the City's answering argument should not exceed five (5) pages in length and the IAFF's rebuttal argument, if any, is limited to two (2) pages.

The Board will reconvene on Tuesday, July 28, 2020 to consider the merits of IAFF Local 1590's request for review.

**IT IS SO ORDERED.**

DATE: June 18, 2020

  
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Elizabeth D. Maron, Chairperson

  
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Kathi A. Karsnitz, Member