

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

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

DECISION ON THE MERITS OF THE REQUEST FOR REVIEW

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) of the Police Officers and Firefighters Employment Relations Act (“POFERA”). 19 Del. C. Chapter 16. 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).

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 either through direct

negotiations or with the assistance of a PERB appointed mediator, their negotiations were submitted for resolution through the statutory binding interest arbitration process set forth in §1615 of the POFERA. Each party submitted its last, best, final offer for resolution on December 11, 2019.

The PERB Executive Director conducted two days of hearings on February 24 and 25, 2020. Following the close of the hearing, the parties provided written post-hearing submissions. The arbitrator issued her decision (“BIA 1213 Decision”) on May 27, 2020, finding the last, best, final offer of the City of Wilmington to be more reasonable.¹ 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 (“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 to consider

¹ *City of Wilmington and International Association of Firefighters, Local 1590*, Decision of the Binding Interest Arbitrator, BIA 19-11-1213, IX PERB 8195 (5/27/20).

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.² On June 18, 2020, the Board, based on its consideration of the record before it, issued its decision denying the IAFF's request to stay the implementation of the binding interest arbitration award and granting the parties the opportunity to file supplemental argument on the merits of the request for review.

Written argument on the merits was submitted by the parties, culminating with the receipt of the IAFF's rebuttal argument on July 20, 2020. The full Board convened in public sessions via video conference on July 28, 2020 to consider the merits of the IAFF's request for review. Each party was provided the opportunity to orally summarize its position and to respond to the Board's questions. This decision results from the Board's consideration of the complete record and the arguments of the parties.

DISCUSSION

The scope of the Public Employment Relations Board's review is limited to the record created by the parties. Its standard of review is whether the decision of the binding interest arbitrator is arbitrary, capricious, unsupported by the facts in the record, or contrary to law. Following its deliberations, the Board must vote to either uphold or overturn the decision, or it may choose to remand it to the arbitrator for further action.

After review of the extensive record created before the arbitrator and consideration of the parties' arguments, the Board unanimously affirms the arbitrator's decision for the reasons that follow.

² 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 conference, using the Zoom platform. Log-in instructions were provided to the parties and members of the public prior to the hearing.

The IAFF asserts the arbitrator’s decision “... does not meet the requirements of 19 *Del. C.* §1615(d) ... because it requires the addition of terms to the City’s final offer that are not part of the offer, in order to conform to the POFERA.” Specifically, it argues the City’s final offer did not explicitly propose to change the firefighters’ work schedule from the 4-platoon, 24 hours on/72 hours off schedule that the fire suppression division had been working since 2006 to a 3-platoon, 24 hours on/48 hours off schedule. The IAFF objected to the City’s reservation of the exclusive authority to establish hours of work and work schedules to the discretion of the Chief of Fire. The IAFF asserts this discretionary reservation deprives it of the statutory right to negotiate mandatory subjects of bargaining.³ In choosing the City’s offer, the IAFF asserts the arbitrator “substituted her own interpretation and description of the terms proposed by the City ... by disregarding the plain language of the City’s proposals, and recasting and analyzing them as proposing a fixed schedule with no changes to the other existing terms.”⁴

The binding interest arbitrator is statutorily constrained to make “... written findings of fact and 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.” *FOP Lodge 10 and State Dept. of Correction*, BIA 07-02-552, VI PERB 4023, 4024 (2008, PERB Decision on Review). The purpose of the binding interest arbitration process is to bring finality to negotiations where the parties have been unable to mutually do so. The binding interest arbitration decision establishes the terms of the resulting collective bargaining agreement for the limited term of that

³ The POFERA requires public employers and unions certified to represent their employees to “... confer and negotiate in good faith with respect to terms and conditions of employment.” §1602(e). Terms and conditions of employment are defined to mean “...matters concerning or related to wages, salaries, hours, grievance procedures and working conditions...” §1602(n).

⁴ IAFF Opening Brief in Support of Request for Review, p. 3.

agreement. The IAFF will have the opportunity to renegotiate the provisions of the collective bargaining agreement it finds objectionable at the successor negotiations.

The arbitrator's decision references and reviews extensive evidence proffered by the City to support its choice of the 24/48 schedule from among many options. The decision states:

The IAFF has a legitimate concern, however, that the language of the City's proposal appears to provide broad discretion to the Chief to change "... the platoon system for fire suppression members ... and any shift schedule" at his discretion during the term of the agreement. There is no question, based on this record, the City proposes to move to a three platoon system and implement a 24-48 schedule on July 1, 2020. This change is the essence of City's last, best, final offer. The City should be mindful, however, that it has a continuing obligation to negotiate concerning terms and conditions of employment, which includes hours and working conditions. To the extent the Chief should decide to exercise his discretion to unilaterally change the platoon or shift structure during the term of this agreement, the City may find itself in violation of its statutory obligations if it does not negotiate the impact of such change on the terms and conditions of employment of bargaining unit members with the IAFF. *BIA 1213 Decision p. 8232*

Contrary to the IAFF's argument on appeal, the decision explicitly recognizes the preservation of the union's right and the City's obligation to negotiate modifications to terms and conditions of employment, including hours and working conditions. The arbitrator made this distinction clear.

It is absolutely true that a change in the manner in which the employer organizes its workforce (i.e., defines and deploys a platoon structure and schedules work to be performed) impacts the working conditions of employees. When a matter of inherent managerial policy⁵ impacts upon terms and conditions of

⁵ "Because the issues of organizational structure, staffing levels, and selection and direction of personnel are explicitly reserved to the discretion of the public employer by §1605, the platoon structure and shifts, as established by Article 17.1 of these parties' 2012-2016 collective bargaining agreement are permissive subjects of bargaining under the POFERA. Consequently, the City cannot be compelled to negotiate with respect to the retention of or changes to §17.1 of the predecessor collective bargaining agreement." *City of Wilmington & IAFF Local 1590*, Decision on Request for Declaratory Statement, DS 19-10-1207, IX PERB 8147, (10/9/19).

employment, the employer is required by law to negotiate concerning that impact. *BIA 1213 Decision p.8221.*

Platoon and shift structures are matters of inherent managerial policy and should not be confused with hours of work, compensation and working conditions, which are mandatory subjects of bargaining. It is the impact of changes to the platoon and shift structure on mandatory subjects of bargaining which must be negotiated by the employer. The arbitrator's choice of the City's offer makes this distinction clear and does not disenfranchise or otherwise interfere with the statutory rights of the IAFF or its members.

The IAFF also asserts that the arbitrator's decision is arbitrary, capricious and without basis in the record, arguing the City failed to establish that either its annual level of overtime expenditures and/or the 4-platoon, 24/72 schedule are "unsustainable". The IAFF's assertion that there was a lack of evidence to support the City's need to move to a 3-platoon system is without basis in fact. The extensive record in this case contains significant documentary and testimonial evidence concerning the detrimental impact of the 4-platoon system on the finances and effectiveness of the City and its fire suppression operations. The IAFF repeatedly and unequivocally agreed with the City that the continuation of rolling bypass⁶ has had and would continue to have a negative effect on the fire department. The existing level of overtime expenditure is directly limited by the use of rolling bypass. By removing one of the eight fire apparatus from service on days when the firefighters available to work falls below 29 on a shift, the overtime expenditure is limited. *BIA 1213 Decision, p. 8199.*

The arbitrator included in her decision the City's matrix which compares the need

⁶ "Rolling bypass is the process of closing a single engine company, removing that engine from service for the day and reassigning the firefighters on the idled engine to other engine companies for the day. The designated engine company to be bypassed is rotated among the City's fire districts and no individual engine company is idled on consecutive days." *BIA 1213 Decision, p. 8199.*

for overtime under the current 4-platoon 24/72 schedule (both with and without implementing rolling bypass) with the overtime required under the 3-platoon, 24/48 schedule. *BIA 1213 Decision, p. 8228*. Without implementing rolling bypass, the 24/72 schedule requires 2,140 tours (24 hours/tour) of annual overtime; implementing rolling bypass at previous levels reduced the annual overtime requirement by approximately two-thirds to 680 tours. Moving to the 3-platoon 24/48 schedule requires an estimated 196 tours of overtime annually, without the need to implement rolling bypass, i.e. less than ten percent of the overtime requirement (without rolling bypass) under the 4-platoon system.

The decision rendered by the arbitrator is neither arbitrary nor capricious. She engaged in a thorough review of the evidence presented by the parties and fairly evaluated it against the statutory criteria, and accorded each factor due weight.

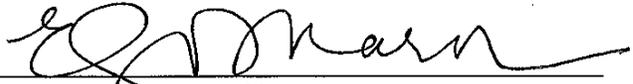
DECISION

After reviewing the record and considering the arguments of the parties, the Board unanimously affirms the decision of the Binding Interest Arbitrator accepting the last, best, final offer of the City of Wilmington as the more reasonable, based upon the criteria set forth in 19 *Del. C.* §1615.

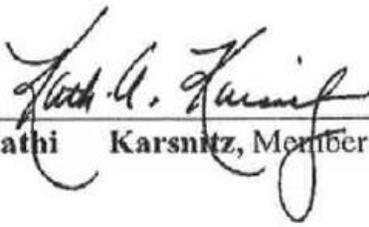
WHEREFORE, the parties are directed to immediately implement all tentative agreements and proposals as set forth in the City of Wilmington's last, best and final offer and to notify the Public Employment Relations Board promptly of its compliance with this decision and order.

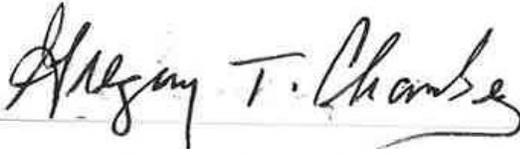
IT IS SO ORDERED.

DATE: September 1, 2020



Elizabeth D. Maron, Chairperson


Kathi Karsnitz, Member


Gregory T. Chambers, Member