

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,	:	BOARD DECISION ON
LOCAL 1590,	:	REMAND FROM CHANCERY
Appellant,	:	COURT
	:	C.A. No. 2020-0765-PAF
v.	:	
	:	<u>BIA 19-11-1213</u>
CITY OF WILMINGTON, DELAWARE,	:	
Appellee.	:	

DECISION ON CHANCERY COURT REMAND

Appearances

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

*Lauren E.M. Russell, 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(l).

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 their negotiations through either mediation or facilitation, the on-

going dispute was submitted to binding interest arbitration. The Binding Interest Arbitrator issued a decision on May 27, 2020,¹ finding the last, best, final offer of the City to be the more reasonable offer under 19 Del. C. §1615. The IAFF appealed that decision to this Board which affirmed the Arbitrator by decision issued on September 1, 2020.²

Thereafter, the IAFF appealed the Board's decision to the Court of Chancery, pursuant to 19 Del. C. §1608. The Court issued its Order on June 28, 2021,³ reversing the Board's decision affirming the Arbitrator's decision because the Court found error in the manner in which the Binding Interest Arbitrator analyzed the City's last, best, final offer. It remanded the dispute to the Board for further proceedings.

The Board convened a public hearing on July 21, 2021, at which time it considered the Court's Order and received argument from the parties. This decision results from the Board's review of the Order and the record below, as well as consideration of the arguments and motions of the parties.

DISCUSSION

By letter dated July 9, 2021, the IAFF petitioned the Board to "immediately direct the reinstatement of the *status quo* between the Union and the City for the terms and conditions (including hours of work and work schedules) for the Firefighters' employment affected by the City's LBFO (last, best, final offer), that existed before the imposition and

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). <https://perb.delaware.gov/wp-content/uploads/sites/127/2020/05/1213-BIA-Decision-CoW-IAFF-5-27-20.pdf>

² *International Association of Firefighters, Local 1590 and City of Wilmington*, PERB Decision on Review, BIA 19-11-1213, IX PERB 8283 (9/1/20). <https://perb.delaware.gov/wp-content/uploads/sites/127/2020/09/1213-BIA-Bd.-Decision-on-Review-IAFF-Local-1590-v-CoW-9-1-2020-Binder-1.pdf>

³ *IAFF Local 1590 v. City of Wilmington*, Order on Appeal, C.A. No. 2020-0765-PAF, IX PERB 8411 (6/28/21). <https://perb.delaware.gov/wp-content/uploads/sites/127/2021/07/2020-0765-Order-of-reversal-and-remand-6-28-21-website.pdf>

effective date(s) of the BIA (binding interest arbitration) award, pending further proceedings on remand.” The City requested the Board deny the IAFF’s request, concluding “... to revert to the *status quo* as it existed on June 30, 2020 would create chaos, upend the parties’ relationship, and cause harm to all involved.”

At the July 21, 2021 hearing, the IAFF amended its request. It then requested this Board to direct the selection of the IAFF’s last, best, final offer be implemented. It asserted

The Court concluded clearly and plainly that there was no authority to select the City’s last, best, final offer and that the inherent structure of the City’s last, best, final offer rendered it incapable of an objective analysis and selection. ⁴ *TR*. p. 7.

The City opposed the IAFF’s conclusions asserting it was attempting to relitigate issues it had previously presented to the binding interest Arbitrator, to this Board on appeal, and then to the Court of Chancery. It concluded the Court did not mandate the conclusion argued by the IAFF and instead, made that intention clear in Footnote 48 of its Order:

For the avoidance of doubt, this Order shall not be construed to limit the ability of the parties, the binding interest arbitrator, or the PERB on remand to engage in further proceedings in conformity with the POFERA and Delaware law.

The Vice Chancellor’s Order is straightforward and clear. There is nothing in the Court’s Order which as a matter of law requires this Board, or the Binding Interest Arbitrator, to reverse the decision implementing the City’s last, best, final offer. Nor does the Order direct the Board to implement the IAFF’s last, best, final offer without further consideration.

The Court remanded the parties’ dispute for further proceedings with direction to reconsider the relative merits of the offers, construing the City’s offer according to the specific language of that offer, rather than based upon the evidence it presented as to its

⁴ Transcript (“TR”) of the Board’s July 21, 2021 hearing, p. 7

intent in operationalizing that language. The Court noted that the City's offer to change the hours of work was not limited to creating a 24–48-hour shift but reserved to the Chief of Fire the discretion to determine and establish a work schedule. Rather, it stated the City's offer "... provided for a 'platoon system' and 'any shift schedule' that could be freely established and changed at the Chief of Fire's sole discretion."⁵

The Court concluded the Arbitrator "... erred by performing her statutory analysis only on the unwritten 'essence' of the City's LBFO."⁶ It clarified that the Arbitrator "... was not permitted to modify the City's LBFO or add terms based on the work schedule that the City's consultant's researched or that the City represented that it would implement, because that was not the work schedule reduced to writing in the City's LBFO."⁷

Consistent with the clear direction of the Court, the IAFF's motion to reinstate either the *status quo* or its last, best, final offer is denied. The Board remands this matter to the Executive Director, acting as its designated binding interest arbitrator pursuant to 19 Del. C. §1615(b), to reconsider the last, best, final offers of the parties based on the clear and specific language of those offers.

The last, best, final offers of the parties have not changed since they were submitted for consideration on December 11, 2019. The parties have had ample opportunity to create a record and to submit argument based on the relative merits of their offers and infirmity of the opposing offer under the requirements of 19 Del. C. §1615. The decision on remand should be expedited in order not to further prolong the dispute between these parties.

The parties are reminded of the specific statutory mandate found under the binding

⁵ Order ¶11, p. 8429.

⁶ Order ¶9, p. 8427.

⁷ Order ¶10, p. 8428.

interest arbitration provisions of the POFERA:

Nothing in this chapter shall be construed to prohibit or otherwise impede a public employer and certified exclusive representative from continuing to bargain in good faith over terms and conditions of employment or from using the services of a mediator at any time during the conduct of collective bargaining. If at any point in the impasse proceedings invoked under this chapter, the parties are able to conclude their labor dispute with a voluntarily reached agreement, the Board shall be so notified, and all impasse resolution proceedings shall be forthwith terminated.⁸

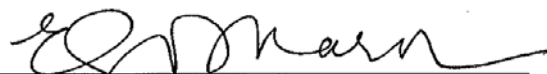
The parties are encouraged to engage in settlement efforts in order to resolve this dispute.

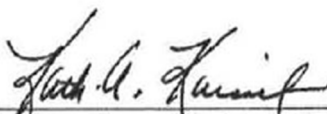
DECISION

The Board remands to the Binding Interest Arbitrator for reconsideration consistent the Court's direction.

WHEREFORE, the Executive Director, acting as the appointed Interest Arbitrator in this matter, is directed to reconsider the last, best, final offers of the parties and to render a decision consistent with the Court's direction for reconsideration.

IT IS SO ORDERED.


Elizabeth D. Maron, Chairperson


Kathi Karsnitz, Member


Gregory T. Chambers, Member

Dated: August 4, 2021

⁸ 19 Del. C. §1615(g).