

Relations Board (“PERB”) commencing in May, 2019. The mediator ultimately referred this dispute to binding interest arbitration on November 18, 2019, following the unsuccessful conclusion of the third mediation session. Thereafter, the binding interest arbitration process was initiated and each party was directed to submit its last, best, final offer for resolution of the negotiation impasse, consistent with the requirements of 19 Del. C. §1615. The parties’ submissions were received on December 11, 2019.

Following an unsuccessful effort to facilitate a resolution of the negotiations, a binding interest arbitration hearing was convened and a decision was rendered by the arbitrator on May 27, 2020.² The arbitrator determined the City’s last, best, final offer “... to be more reasonable based upon the statutory criteria set forth in 19 Del. C. §1615.” The parties were directed to:

... implement their stipulated mutual agreements and the final offer of the City of Wilmington. All references to the terms of the Agreement should be updated. All other terms of the predecessor agreement shall remain unchanged.³

The IAFF appealed that interest arbitration decision to the Public Employment Relations Board and then to the Court of Chancery of the State of Delaware. The IAFF’s appeal process is ongoing as of the date of this probable cause determination.⁴

On December 1, 2020, the IAFF filed this unfair labor practice charge with the Public Employment Relations Board (“PERB”) alleging the City had violated 19 Del. C. §1607(a)(5), which states:

² *City of Wilmington and IAFF Local 1590*, BIA 19-11-1213, IX PERB 8195 (5/27/20).

³ *Supra* @ p. 8246.

⁴ This probable cause determination, because it involves the application of the binding interest arbitration decision as issued on May 27, 2020, has been held in abeyance pending the final resolution of the IAFF’s appeal. As that process has continued now for nearly two years and the collective bargaining agreement expires on June 30, 2023, this decision is being issued. The decision reached herein does not interfere with the ultimate resolution of the appeal of the binding interest arbitration decision but may provide some finality to the IAFF’s concerns that the City’s wage proposal was not implemented as set forth in its last, best, final offer of December 11, 2019.

- (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, except with respect to a discretionary subject.

The Charge alleges the City violated its duty to bargain in good faith by not including longevity premiums in the base wage rates for firefighters who have 10, 15 or 20 years of service before applying the across-the-board wage rate increases found in Article 16, Classification and Salaries, of the 2019-2023 Agreement.

On or about December 16, 2020, the City filed its Answer to the Charge in which it denied the IAFF's legal conclusions and disputed some of the factual underpinnings of those conclusions. Under New Matter, the City asserts it has complied with the terms of the new collective bargaining agreement as directed by the interest arbitrator, has not unilaterally altered any term or conditions of employment for any firefighter, and that the IAFF has acted with undue delay in raising its allegations.

On or about December 30, 2020, the IAFF filed its Response to the New Matter included in the City's Answer.

This probable cause determination results from a review of the pleadings.

FACTS

The underlying facts are not contested.

The 2012 – 2016 collective bargaining agreement between the City and IAFF Local 1590 included Section 16.4, which stated:

Section 16.4 Longevity Pay. Effective June 30, 2016, a member's salary shall be increased six hundred dollars (\$600) at the start of the member's 10th year of service. Effective June 30, 2016, a member's salary shall be increased twelve hundred dollars (\$1,200) at the start of the member's 15th year of service (an additional \$600). Effective June 30, 2016, a member's salary shall be increased by eighteen hundred dollars (\$1,800) at the start of the member's

20th year of service (an additional \$600). Longevity pay shall be paid to any member who has 10, 15, or 20 years of service as of June 30, 2016. Longevity pay shall be included in salary and be treated as salary for all purposes.

Section 16.4 became effective on the last day of the 2012-2016 collective bargaining agreement. The wage scales included in the 2012-2016 collective bargaining agreement were last increased on June 30, 2016 pursuant to Section 16.1.⁵ Because the parties had been unable to negotiate a successor agreement, there had been no change in the wage rates or general wage increases until implementation of the 2019 – 2023 Agreement.

Section 16.4 remained, unchanged, in the 2019-2023 Agreement which was imposed through the binding interest arbitration process.⁶

The last, best, final offer of the City of Wilmington, which was submitted on December 11, 2019, included specific amendments to Sections 16.1 and 16.2 of the 2012-2016 Agreement, which stated in relevant part:

Section 16.1 The following salary rates will be in effect in the Fire Department for the duration of this Agreement.

**FY20 SALARY TABLE
UNION 1590
EFFECTIVE 7/1/19
2.0%**

PROBATIONARY FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$38,059.25	\$38,659.25	\$39,259.25	\$39,859.25

FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$42,381.43	\$42,981.43	\$43,581.43	\$44,181.43
Step 2	Step 2	\$47,484.68	\$48,084.68	\$48,684.68	\$49,284.68
Step 3	Step 3	\$52,203.70	\$52,803.70	\$53,403.70	\$54,003.70

⁵ Charge Exhibit B, p. 36.

⁶ The new agreement will be referred to herein as the “2019-2023 Agreement”.

Step 4	Step 4	\$58,583.02	\$59,183.02	\$59,783.02	\$60,383.02
Step 5	Step 4	\$58,583.02	\$59,183.02	\$59,783.02	\$60,383.02
Step 6	Step 4	\$58,583.02	\$59,183.02	\$59,783.02	\$60,383.02
Step 7	Step 4	\$58,583.02	\$59,183.02	\$59,783.02	\$60,383.02
Step 8	Step 4	\$58,583.02	\$59,183.02	\$59,783.02	\$60,383.02
Step 9	Step 4	\$58,583.02	\$59,183.02	\$59,783.02	\$60,383.02
Step 10	Step 10	\$59,282.89	\$59,882.89	\$60,482.89	\$61,082.89

SENIOR FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$60,906.55	\$61,506.55	\$62,106.55	\$62,706.55
Step 2	Step 0	\$60,906.55	\$61,506.55	\$62,106.55	\$62,706.55
Step 3	Step 2	\$61,727.09	\$62,327.09	\$62,927.09	\$63,527.09
Step 4	Step 2	\$61,727.09	\$62,327.09	\$62,927.09	\$63,527.09
Step 5	Step 4	\$62,547.66	\$63,147.66	\$63,747.66	\$64,347.66
Step 6	Step 4	\$62,547.66	\$63,147.66	\$63,747.66	\$64,347.66
Step 7	Step 6	\$63,368.22	\$63,968.22	\$64,568.22	\$65,168.22

LIEUTENANT

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$67,128.00	\$67,728.00	\$68,328.00	\$68,928.00
Step 2	Step 0	\$67,128.00	\$67,728.00	\$68,328.00	\$68,928.00
Step 3	Step 2	\$67,948.55	\$68,548.55	\$69,148.55	\$69,748.55
Step 4	Step 2	\$67,948.55	\$68,548.55	\$69,148.55	\$69,748.55
Step 5	Step 4	\$68,769.11	\$69,369.11	\$69,969.11	\$70,569.11
Step 6	Step 4	\$68,769.11	\$69,369.11	\$69,969.11	\$70,569.11
Step 7	Step 6	\$69,589.66	\$70,189.66	\$70,789.66	\$71,389.66

CAPTAIN

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$73,178.27	\$73,778.27	\$74,378.27	\$74,978.27
Step 2	Step 0	\$73,178.27	\$73,778.27	\$74,378.27	\$74,978.27
Step 3	Step 2	\$73,998.81	\$74,598.81	\$75,198.81	\$75,798.81
Step 4	Step 2	\$73,998.81	\$74,598.81	\$75,198.81	\$75,798.81
Step 5	Step 4	\$74,819.37	\$75,419.37	\$76,019.37	\$76,619.37
Step 6	Step 4	\$74,819.37	\$75,419.37	\$76,019.37	\$76,619.37
Step 7	Step 6	\$75,639.93	\$76,239.93	\$76,839.93	\$77,439.93

BATTALION CHIEF

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$87,273.82	\$87,873.82	\$88,473.82	\$89,073.82
Step 2	Step 0	\$87,273.82	\$87,873.82	\$88,473.82	\$89,073.82
Step 3	Step 2	\$88,094.36	\$88,694.36	\$89,294.36	\$89,894.36
Step 4	Step 2	\$88,094.36	\$88,694.36	\$89,294.36	\$89,894.36
Step 5	Step 4	\$88,914.92	\$89,514.92	\$90,114.92	\$90,714.92
Step 6	Step 4	\$88,914.92	\$89,514.92	\$90,114.92	\$90,714.92
Step 7	Step 6	\$89,735.47	\$90,335.47	\$90,935.47	\$91,535.47

**FY21 SALARY TABLE
UNION 1590
EFFECTIVE 7/1/20
2.0% + 16%**

PROBATIONARY FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$45,031.70	\$45,631.70	\$46,231.70	\$46,831.70

FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$50,145.71	\$50,745.71	\$51,345.71	\$51,945.71
Step 2	Step 2	\$56,183.87	\$56,783.87	\$57,383.87	\$57,983.87
Step 3	Step 3	\$61,767.41	\$62,367.41	\$62,967.41	\$63,567.41
Step 4	Step 4	\$69,315.43	\$69,915.43	\$70,515.43	\$71,115.43
Step 5	Step 4	\$69,315.43	\$69,915.43	\$70,515.43	\$71,115.43
Step 6	Step 4	\$69,315.43	\$69,915.43	\$70,515.43	\$71,115.43
Step 7	Step 4	\$69,315.43	\$69,915.43	\$70,515.43	\$71,115.43
Step 8	Step 4	\$69,315.43	\$69,915.43	\$70,515.43	\$71,115.43
Step 9	Step 4	\$69,315.43	\$69,915.43	\$70,515.43	\$71,115.43
Step 10	Step 10	\$70,143.52	\$70,743.52	\$71,343.52	\$71,943.52

SENIOR FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$72,064.63	\$72,664.63	\$73,264.63	\$73,864.63
Step 2	Step 0	\$72,064.63	\$72,664.63	\$73,264.63	\$73,864.63
Step 3	Step 2	\$73,035.49	\$73,635.49	\$74,235.49	\$74,835.49
Step 4	Step 2	\$73,035.49	\$73,635.49	\$74,235.49	\$74,835.49
Step 5	Step 4	\$74,006.39	\$74,606.39	\$75,206.39	\$75,806.39

Step 6	Step 4	\$74,006.39	\$74,606.39	\$75,206.39	\$75,806.39
Step 7	Step 6	\$74,977.28	\$75,577.28	\$76,177.28	\$76,777.28

LIEUTENANT

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$79,425.85	\$80,025.85	\$80,625.85	\$81,225.85
Step 2	Step 0	\$79,425.85	\$80,025.85	\$80,625.85	\$81,225.85
Step 3	Step 2	\$80,396.73	\$80,996.73	\$81,596.73	\$82,196.73
Step 4	Step 2	\$80,396.73	\$80,996.73	\$81,596.73	\$82,196.73
Step 5	Step 4	\$81,367.61	\$81,967.61	\$82,567.61	\$83,167.61
Step 6	Step 4	\$81,367.61	\$81,967.61	\$82,567.61	\$83,167.61
Step 7	Step 6	\$82,338.49	\$82,938.49	\$83,538.49	\$84,138.49

CAPTAIN

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$86,584.53	\$87,184.53	\$87,784.53	\$88,384.53
Step 2	Step 0	\$86,584.53	\$87,184.53	\$87,784.53	\$88,384.53
Step 3	Step 2	\$87,555.40	\$88,155.40	\$88,755.40	\$89,355.40
Step 4	Step 2	\$87,555.40	\$88,155.40	\$88,755.40	\$89,355.40
Step 5	Step 4	\$88,526.28	\$89,126.28	\$89,726.28	\$90,326.28
Step 6	Step 4	\$88,526.28	\$89,126.28	\$89,726.28	\$90,326.28
Step 7	Step 6	\$89,497.17	\$90,097.17	\$90,697.17	\$91,297.17

BATTALION CHIEF

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$103,262.38	\$103,862.38	\$104,462.38	\$105,062.38
Step 2	Step 0	\$103,262.38	\$103,862.38	\$104,462.38	\$105,062.38
Step 3	Step 2	\$104,233.25	\$104,833.25	\$105,433.25	\$106,033.25
Step 4	Step 2	\$104,233.25	\$104,833.25	\$105,433.25	\$106,033.25
Step 5	Step 4	\$105,204.14	\$105,804.14	\$106,404.14	\$107,004.14
Step 6	Step 4	\$105,204.14	\$105,804.14	\$106,404.14	\$107,004.14
Step 7	Step 6	\$106,175.01	\$106,775.01	\$107,375.01	\$107,975.01

**FY22 SALARY TABLE
UNION 1590
EFFECTIVE 7/1/21
2.0%**

PROBATIONARY FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
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Step 1	Step 1	\$45,932.33	\$46,532.33	\$47,132.33	\$47,732.33
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FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$51,148.62	\$51,748.62	\$52,348.62	\$52,948.62
Step 2	Step 2	\$57,307.55	\$57,907.55	\$58,507.55	\$59,107.55
Step 3	Step 3	\$63,002.76	\$63,602.76	\$64,202.76	\$64,802.76
Step 4	Step 4	\$70,701.74	\$71,301.74	\$71,901.74	\$72,501.74
Step 5	Step 4	\$70,701.74	\$71,301.74	\$71,901.74	\$72,501.74
Step 6	Step 4	\$70,701.74	\$71,301.74	\$71,901.74	\$72,501.74
Step 7	Step 4	\$70,701.74	\$71,301.74	\$71,901.74	\$72,501.74
Step 8	Step 4	\$70,701.74	\$71,301.74	\$71,901.74	\$72,501.74
Step 9	Step 4	\$70,701.74	\$71,301.74	\$71,901.74	\$72,501.74
Step 10	Step 10	\$71,546.39	\$72,146.39	\$72,746.39	\$73,346.39

SENIOR FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$73,505.92	\$74,105.92	\$74,705.92	\$75,305.92
Step 2	Step 0	\$73,505.92	\$74,105.92	\$74,705.92	\$75,305.92
Step 3	Step 2	\$74,496.20	\$75,096.20	\$75,696.20	\$76,296.20
Step 4	Step 2	\$74,496.20	\$75,096.20	\$75,696.20	\$76,296.20
Step 5	Step 4	\$75,486.51	\$76,086.51	\$76,686.51	\$77,286.51
Step 6	Step 4	\$75,486.51	\$76,086.51	\$76,686.51	\$77,286.51
Step 7	Step 6	\$76,476.82	\$77,076.82	\$77,676.82	\$78,276.82

LIEUTENANT

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$81,014.36	\$81,614.36	\$82,214.36	\$82,814.36
Step 2	Step 0	\$81,014.36	\$81,614.36	\$82,214.36	\$82,814.36
Step 3	Step 2	\$82,004.66	\$82,604.66	\$83,204.66	\$83,804.66
Step 4	Step 2	\$82,004.66	\$82,604.66	\$83,204.66	\$83,804.66
Step 5	Step 4	\$82,994.96	\$83,594.96	\$84,194.96	\$84,794.96
Step 6	Step 4	\$82,994.96	\$83,594.96	\$84,194.96	\$84,794.96
Step 7	Step 6	\$83,985.26	\$84,585.26	\$85,185.26	\$85,785.26

CAPTAIN

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$88,316.22	\$88,916.22	\$89,516.22	\$90,116.22

Step 2	Step 0	\$88,316.22	\$88,916.22	\$89,516.22	\$90,116.22
Step 3	Step 2	\$89,306.50	\$89,906.50	\$90,506.50	\$91,106.50
Step 4	Step 2	\$89,306.50	\$89,906.50	\$90,506.50	\$91,106.50
Step 5	Step 4	\$90,296.80	\$90,896.80	\$91,496.80	\$92,096.80
Step 6	Step 4	\$90,296.80	\$90,896.80	\$91,496.80	\$92,096.80
Step 7	Step 6	\$91,287.11	\$91,887.11	\$92,487.11	\$93,087.11

BATTALION CHIEF

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$105,327.63	\$105,927.63	\$106,527.63	\$107,127.63
Step 2	Step 0	\$105,327.63	\$105,927.63	\$106,527.63	\$107,127.63
Step 3	Step 2	\$106,317.91	\$106,917.91	\$107,517.91	\$108,117.91
Step 4	Step 2	\$106,317.91	\$106,917.91	\$107,517.91	\$108,117.91
Step 5	Step 4	\$107,308.22	\$107,908.22	\$108,508.22	\$109,108.22
Step 6	Step 4	\$107,308.22	\$107,908.22	\$108,508.22	\$109,108.22
Step 7	Step 6	\$108,298.51	\$108,898.51	\$109,498.51	\$110,098.51

**FY23 SALARY TABLE
UNION 1590
EFFECTIVE 7/1/22
2.0%**

PROBATIONARY FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$46,850.98	\$47,450.98	\$48,050.98	\$48,650.98

FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 1	\$52,171.59	\$52,771.59	\$53,371.59	\$53,971.59
Step 2	Step 2	\$58,453.70	\$59,053.70	\$59,653.70	\$60,253.70
Step 3	Step 3	\$64,262.82	\$64,862.82	\$65,462.82	\$66,062.82
Step 4	Step 4	\$72,115.78	\$72,715.78	\$73,315.78	\$73,915.78
Step 5	Step 4	\$72,115.78	\$72,715.78	\$73,315.78	\$73,915.78
Step 6	Step 4	\$72,115.78	\$72,715.78	\$73,315.78	\$73,915.78
Step 7	Step 4	\$72,115.78	\$72,715.78	\$73,315.78	\$73,915.78
Step 8	Step 4	\$72,115.78	\$72,715.78	\$73,315.78	\$73,915.78
Step 9	Step 4	\$72,115.78	\$72,715.78	\$73,315.78	\$73,915.78
Step 10	Step 10	\$72,977.31	\$73,577.31	\$74,177.31	\$74,777.31

SENIOR FIREFIGHTER

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$74,976.04	\$75,576.04	\$76,176.04	\$76,776.04
Step 2	Step 0	\$74,976.04	\$75,576.04	\$76,176.04	\$76,776.04
Step 3	Step 2	\$75,986.13	\$76,586.13	\$77,186.13	\$77,786.13
Step 4	Step 2	\$75,986.13	\$76,586.13	\$77,186.13	\$77,786.13
Step 5	Step 4	\$76,996.24	\$77,596.24	\$78,196.24	\$78,796.24
Step 6	Step 4	\$76,996.24	\$77,596.24	\$78,196.24	\$78,796.24
Step 7	Step 6	\$78,006.36	\$78,606.36	\$79,206.36	\$79,806.36

LIEUTENANT

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$82,634.65	\$83,234.65	\$83,834.65	\$84,434.65
Step 2	Step 0	\$82,634.65	\$83,234.65	\$83,834.65	\$84,434.65
Step 3	Step 2	\$83,644.75	\$84,244.75	\$84,844.75	\$85,444.75
Step 4	Step 2	\$83,644.75	\$84,244.75	\$84,844.75	\$85,444.75
Step 5	Step 4	\$84,654.86	\$85,254.86	\$85,854.86	\$86,454.86
Step 6	Step 4	\$84,654.86	\$85,254.86	\$85,854.86	\$86,454.86
Step 7	Step 6	\$85,664.96	\$86,264.96	\$86,864.96	\$87,464.96

CAPTAIN

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$90,082.54	\$90,682.54	\$91,282.54	\$91,882.54
Step 2	Step 0	\$90,082.54	\$90,682.54	\$91,282.54	\$91,882.54
Step 3	Step 2	\$91,092.63	\$91,692.63	\$92,292.63	\$92,892.63
Step 4	Step 2	\$91,092.63	\$91,692.63	\$92,292.63	\$92,892.63
Step 5	Step 4	\$92,102.74	\$92,702.74	\$93,302.74	\$93,902.74
Step 6	Step 4	\$92,102.74	\$92,702.74	\$93,302.74	\$93,902.74
Step 7	Step 6	\$93,112.85	\$93,712.85	\$94,312.85	\$94,912.85

BATTALION CHIEF

<u>Munis</u>	<u>Contract</u>	<u>Salary</u>	10 th year – 14 th year <u>Salary</u>	15 th year– 19 th year <u>Salary</u>	20+ years <u>Salary</u>
Step 1	Step 0	\$107,434.18	\$108,034.18	\$108,634.18	\$109,234.18
Step 2	Step 0	\$107,434.18	\$108,034.18	\$108,634.18	\$109,234.18
Step 3	Step 2	\$108,444.27	\$109,044.27	\$109,644.27	\$110,244.27
Step 4	Step 2	\$108,444.27	\$109,044.27	\$109,644.27	\$110,244.27
Step 5	Step 4	\$109,454.39	\$110,054.39	\$110,654.39	\$111,254.39
Step 6	Step 4	\$109,454.39	\$110,054.39	\$110,654.39	\$111,254.39
Step 7	Step 6	\$110,464.48	\$111,064.48	\$111,664.48	\$112,264.48

Section 16.2 The salaries outlined above reflect the following percentage increases:

Effective upon the 7/1/20 implementation of a three (3) platoon system for Fire Suppression, salaries shall reflect a 16% increase.

Salaries effective July 1, ~~2012~~ **2019** reflect a general increase of ~~2~~ **2.0%**

Salaries effective July 1, ~~2013~~ **2020** reflect a general increase of ~~0~~ **2.0%**

Salaries effective July 1, ~~2014~~ **2021** reflect a general increase of ~~1~~ **2.0%**

Salaries effective July 1, 2022 reflect a general increase of 2.0%

Additionally each Employee shall receive a one-time bonus payment of \$1,250 payable on 7/1/20.

~~Salaries effective June 30, 2016 reflect a general increase of 1%. Such increase shall be paid in lieu of shift differential. Shift differential, as provided in Section 11.13, is eliminated effective June 30, 2016.~~

~~The salary increase for FY 13 shall be retroactive to July 1, 2012. The salary increase for FY 15 shall be retroactive to July 1, 2014. The salary increases for FY 13 and 15 will be used to calculate retroactive pay for salary and any other salary related compensation such as overtime, out of class pay, shift differential, etc.~~

The last, best, final offers of each side were exchanged by the Binding Interest Arbitrator on December 12, 2019.

The binding interest arbitration decision was issued on May 27, 2020, which stated:

...[T]he parties are directed to implement their stipulated mutual agreements and the final offer of the City of Wilmington. All references to the terms of the Agreement should be updated. All other terms of the predecessor agreement shall remain unchanged...⁷

The salary tables in the 2019-2023 Agreement appended to the Charge as Exhibit A are identical to the salary table as set forth in Article 16.1 of the City's last, best, final offer. The salary tables were implemented on July 1, 2020.

DISCUSSION

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

(a) Upon review of the Complaint, the Answer and the Response, the Executive

⁷ BIA Decision at p. 8246.

Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board shall decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred...

For purposes of reviewing the pleadings to determine whether probable cause exists to support the Charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, PERB Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

I. The Charge is not untimely

Section 1608(a) of the POFERA provides that “no complaint shall be issued based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board.” The City asserts that this charge was not timely filed because the salary tables which it implemented are identical to those which were included in its last, best, final offer. The City's offer was submitted to PERB and provided to the IAFF on December 12, 2019. When the binding interest arbitration decision was issued on May 27, 2020, directing that the City's offer be implemented, the IAFF had direct and specific knowledge of the salary tables which would be implemented. The City argues the trigger date for the 180-day statute of limitations was May 27, 2020, 187 days prior to the December 1, 2020 filing of this charge.

The salary tables were not, however, implemented until July 1, 2020. With all possible inferences drawn in the IAFF's favor for purposes of reviewing its claim on the pleadings, the

alleged incident giving rise to this charge is the implementation of the salary tables. The new salary tables were applied on July 1, 2020, 153 days prior to the filing of this charge. Consequently, the City's assertion that the Charge was not timely filed is dismissed.

II. Laches does not preclude consideration of the Charge

The City asserts that, because the IAFF received the salary tables in December 2019, it was negligent in not reviewing the salary tables in the City's offer. It argues that to require the City to go back and recalculate all of the wage payments made pursuant to the binding interest arbitration decision simply because the IAFF did not review the City's last, best, final offer carefully "... is the essence of prejudice."⁸

Laches is an equitable doctrine which bars a claim where a lapse of time between the event and the filing of the claim unfairly prejudices the responding party. It is sometimes referred to as an "equitable statute of limitations". Having determined above that this Charge is not barred by operation of the actual 180-day statute of limitations found in the Police Officers and Firefighters Employment Relations Act, the City's request to bar the Charge under the doctrine of laches is denied.

III. Merits

The Charge asserts that the City misapplied Article 16.4⁹ when it created the salary tables for Fiscal Years ("FY") 2020 – 2023 in drafting the 2019 – 2023 Agreement. Specifically, the IAFF claims:

For each new Salary Table, the City calculated the designated Longevity Pay salary rates only by separately adding the discrete Longevity Pay amounts to the annual salary rates for each rank and step, as follows: \$600.00 for years

⁸ Answer to the Charge, New Matter ¶48.

⁹ Article 16.4 was unchanged by the parties in negotiations and/or by the binding interest arbitration decision issued on May 27, 2020, which established the terms of the 2019 – 2022 successor Agreement.

10 – 14; \$1,200.00 for years 15 – 19; and \$1,800.00 for 20+ years.

The City did not calculate the base salary rates set forth in the new Pay Tables, for any rank or step, by including Longevity Pay before applying general salary percentage increases to the preceding effective salary rates. In other words, the City excluded Longevity Pay from every base salary increase provided in each Pay Table in the new Agreement. The City therefore as treated the Longevity Pay as separate from the employees' salaries, and did not include it in the firefighters' salaries for calculating the effect of general salary increases.¹⁰

The Charge alleges that “by failing and refusing to include Longevity Pay in the firefighters' salaries when applying general wage increases, the City failed and refused to treat Longevity Pay as part of the firefighters' salaries”. It also asserts that by failing to do so, “...the City will fail to pay the firefighters all of the wages it is obligated to pay during the term of the New Agreement, and beyond”.¹¹ The City denied the IAFF's claims.

The IAFF bases its claim on the fundamental tenet of collective bargaining that mandatory subjects of bargaining, such as wages, may only be changed through the collective bargaining process. It avers that the City's calculations of the salary tables in the 2019 – 2023 Agreement constitute a unilateral change in the wages because the City failed to apply the annual general wage increases in its offer to the longevity premiums.

Essentially, the IAFF makes a contractual claim that the City has misapplied the language of Section 16.4 in its calculation of the salary tables in the 2019-2023 Agreement. It argues that because Section 16.4 states “Longevity pay shall be included in salary and be treated as salary for all purposes”, the general wage increases for FY 2020 through FY 2023 were required to also be applied to the longevity premiums.¹²

¹⁰ Charge at ¶24 – 26.

¹¹ Charge at ¶35 – 36.

¹² Applying the IAFF's argument, at 10 years of service, for example, the \$600 longevity premium would be increased by 2% in FY 2020; by an additional 18% in FY 2021; and by an additional 2% in both FY

The IAFF incorrectly concludes that the salary tables included in the City's last, best, final offer are irrelevant to consideration of its Charge. The IAFF was on notice that the City's proposal included the annual salaries for firefighters, in each rank and at each salary step, with columns for firefighters with 10 – 14, 15 – 19, and 20+ years of service, for Fiscal Years 2020 through 2023. The salary tables included in the City's last, best, final offer were structured differently from those in the 2012 - 2016 Agreement. For the first time, the salary tables included the longevity premiums; the structural difference from the salary tables in the predecessor agreement was visually apparent. There was no mystery as of December 12, 2019 as to the manner in which the longevity premiums would be applied, if the City's offer was selected by the binding interest arbitrator.

The parties were directed to implement the City's last, best, final offer for the 2019 – 2023 term. Absent a mutual agreement to the contrary, the City could not deviate from the terms of its last, best, final offer in drafting the 2019-2023 collective bargaining agreement.¹³ There is no allegation in this Charge that the City did not implement the salary tables exactly as included in its last, best, final offer.

There has been no unilateral change to the wage or salary structure included in the City's last, best, final offer which was implemented pursuant to the binding interest arbitration decision. The IAFF was not denied its duty to bargain concerning Article 16. The parties were still engaged in the negotiation process for a successor agreement throughout the binding interest arbitration process.

Nothing in this chapter shall be construed to prohibit or otherwise impede a public employer and certified exclusive representative from continuing to

2022 and FY 2023. By this calculation, as of July 1, 2022, the longevity premium for 10 year of service would be approximately \$751.34.

¹³ *DOC v. Unit 9 Coalition and FOP Lodge 10; FOP Lodge 10 v. DOC, BCC*, ULP 19-11-1214 (consolidated), IX PERB 8357 (4/14/21).

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.¹⁴

On remand from the Court of Chancery and by the Public Employment Relations Board, the parties were reminded that the obligation to bargain continued.¹⁵ The IAFF could have re-engaged the City in efforts to negotiate to a mutually acceptable resolution after it had reviewed the City's offer in order to avoid the possible implementation of the salary tables as constructed in the City's last, best, final offer.

The submission of the parties' unsuccessful negotiations, first to mediation, and then to binding interest arbitration is required under the POFERA in order to resolve those negotiations with a collective bargaining agreement, consistent with the purpose of the statute.¹⁶

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.¹⁷

The finite resolution to the negotiations between the IAFF and the City occurred when the binding

¹⁴ 19 Del. C. §1615(g).

¹⁵ IAFF Local 1590 v. City of Wilmington, Chancery Court Order on Appeal, C.A. No. 2020-0765-PAF, IX PERB 8411 (6/28/21); IAFF Local 1590 v. City of Wilmington, Delaware, PERB Decision on Remand from Chancery Court, BIA 19-11-1213 (C.A. 2020-0765-PAF), IX PERB 8435 (8-4-2021).

¹⁶ 19 Del. C. §1615.

¹⁷ *FOP Lodge 4 and City of Newark*, BIA 02-01-338, IV PERB 2789, 2792 (Bd. Review of Arbitrator's Decision on Remand, 1/17/03).

interest arbitration decision was issued.¹⁸

The pleadings are not sufficient to support the conclusion that the City failed or refused to bargain in good faith or that it made a unilateral change to the salary tables which it was directed to implement by the binding interest arbitration decision.

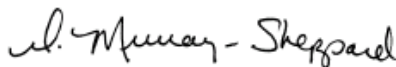
DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings are not sufficient to establish that City of Wilmington may have violated 19 Del. C. §1607 (a)(5), as alleged.

WHEREFORE, this Charge is dismissed and the requested relief is denied.

IT IS SO ORDERED.

DATE: February 14, 2022



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.

¹⁸ Subject to appeal first to the Public Employment Relations Board and then to the Court of Chancery. ¹⁹ Del. C. §1609. As previously stated, processing of the IAFF's appeal of the binding interest arbitration decision continues as of the date of this decision. Should the Arbitrator's decision be reversed, this decision will have no substantive impact on that determination.