STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1590, Appellant,	:	**PERB Review of Executive Director's Decision**
v.	:	
CITY OF WILMINGTON, DELAWARE, Appellee.	:	**ULP No. 20-12-1253**

Appearances

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

Lauren E.M. Russell, Esq., Young Conaway Stargatt & Taylor, LLP, for City of Wilmington

BACKGROUND

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

The International Association of Firefighters, Local 1590 ("IAFF Local 1590") is an employee organization within the meaning of 19 Del. C. §1602(g). It is the exclusive representative of the bargaining unit of City of Wilmington Fire Department employees in the ranks of Firefighter through Battalion Chief, within the meaning of 19 Del. C. §1602(h).

On December 1, 2020, IAFF Local 1590 filed an unfair labor practice charge with the Public Employment Relations Board ("PERB") alleging the City had engaged in conduct in violation of 19 Del. C. §1607 (a)(5). On December 16, 2020, the City filed its Answer to the Charge which included New Matter. On December 30, 2020, IAFF Local 1590 filed its Response denying the new matter set forth in the State's Answer.

On February 14, 2022, the Executive Director issued a decision on the pleadings,[1] consistent with PERB Rule 5.6(a), in which she found the Charge failed to establish a sufficient factual or legal basis to support the conclusion that there was probable cause to believe the alleged unfair labor practice may have occurred. The Charge was therefore dismissed.

On February 18, 2022, IAFF Local 1590 requested review of the Executive Director's decision by the full Public Employment Relations Board. The City responded in writing to the IAFF's request for review on March 2, 2022.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A hearing was convened on March 16, 2022, at which time the full Board met in public session to hear and consider the IAFF's request for review. The parties were provided the opportunity to present oral argument and to answer questions from the Board.

The decision reached herein is based upon consideration of the record and the arguments presented by the parties.

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 facts in this case are not in dispute. IAFF Local 1590 and the City of

[1] *IAFF Local 1590 v. City of Wilmington*, ULP 20-12-1253, IX PERB 8573 (2/14/22).

Wilmington were parties to a collective bargaining agreement with a term of 2012 through 2016 and are parties to a successor agreement with a term of 2019 – 2023, each of which contain Section 16.4, which states:

> 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.

This provision is identical in both agreements.

IAFF Local 1590 charged that the City violated its duty to bargain in good faith and instituted a unilateral change in a mandatory subject of bargaining by "failing and refusing to include Longevity Pay in the firefighters' salaries when applying general wage increases" and by failing to "pay the firefighters all of the wages it is obligated to pay during the terms of the new Agreement and beyond."[2]

A unilateral change in the status quo of a mandatory subject of bargaining constitutes a per se violation of the duty to bargain. *AFSCME Council 81 v. Delaware Dept. of Transportation*, ULP 95-01-111, II PERB 1279, 1290 (1995); affirmed by full PERB, II PERB 1201 (1995); *CWA Local 13101 v. Kent County Levy Court*, ULP 14-08-971, VIII PERB 6321, 6326 (2014). *AFSCME 218 v. Christina School District*, ULP 15-03-994, IX PERB 7031, 7036 (2018). [3] In one of its earliest decisions, PERB held:

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[2] Charge, ¶35 – ¶37.

[3] Prior PERB rulings issued under the Public School Employment Relations Act, 14 Del. C. Chapter 40 (1982, 1989) and/or the Police Officers and Firefighters Employment Relations Act, 19 Del. C. Chapter 16 (1986), are controlling to the extent that the relevant provisions of those (continued) statutes are identical to those of the Public Employment Relations Act, 19 Del. C.

> While a collective bargaining agreement is in existence, its terms serve to preserve the relationship between the parties and govern the operations and functions of the school system. Thereafter, to permit one party to unilaterally impose a change in the existing terms and conditions of employment without prior negotiation, at least to the point of impasse, would be to permit that party to acquire unfair tactical advantage effectively prohibiting the establishment of terms and conditions of employment through bilateral negotiation. [4]

Unilateral disruptions of the status quo have been held to violate the duty to bargain in good faith because they frustrate the statutory objective of establishing terms and conditions of employment through the collective bargaining process. The status quo of a mandatory subject of bargaining is subject to change only through the collective bargaining process. *New Castle County Vo-Tech Education Assn. v. Bd. of Education*, ULP 88-05-025, I PERB 257, 259 (1988); *Christina Education Assn., Inc. v. Bd. of Education*, ULP 88-09-026, I PERB 359, 366 (1988).

The IAFF argued in its pleadings that the City failed and refused to negotiate with respect to longevity premiums provided to bargaining unit employees at 10, 15, and 20 years of service. In its request for review, IAFF Local 1590 modified its prior argument to assert the Executive Director erred as a matter of law because the decision permits the City to refuse to bargain with the IAFF over the application of terms of Section 16.4. It argues,

> The Executive Director's decision allows the City to ignore the express terms in Article 16.4 that cover mandatory subjects, allows the City to ignore its statutory collective bargaining obligations without consequence, and, by application, allows a binding arbitration decision to modify continuing negotiated terms for mandatory subjects that were not modified or otherwise changed by the arbitration proceedings. Each of these aspects are contrary

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Chapter 13 (1994). AFSCME, District Council 81 v. State of Delaware, Department of Transportation, Division of Highways, ULP No. 95-01-111, II PERB 1279 (1995)

[4] *Appoquinimink Education Assn. v. Bd. of Education*, ULP 1-2-84A, I PERB 23, 29 (1984).

to law. [5]

The Executive Director determined that, even when considered in a light most favorable to IAFF Local 1590, the pleadings were not sufficient to establish that the City unilaterally modified a mandatory subject of bargaining or violated 19 Del. C. §1607 (a)(5), as alleged. She held, "Essentially, the IAFF makes a contractual claim that the City has misapplied the language of Section 16.4 in its calculation of salary tables in the 2019-2023 Agreement." She further held there has been no unilateral change to the wage or salary structure by application of Section 16.4.

In order to find a violation of the duty to bargain in good faith, the Charging Party must establish both that there was a unilateral change in the status quo and that the change affected a mandatory subject of bargaining.[6] In this case, the pleadings do not establish that there was a change in the application of Section 16.4, only that that IAFF Local 1590 believes Section 16.4 could or might have been differently implemented. Simply put, that is the essence of a grievance as defined by the parties in Section 4.1 of their collective bargaining agreement.

Section 1601(2) of the POFERA obligates public employers and certified bargaining representatives, "…to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations." Those negotiated terms remain in full force and effect during the term of the negotiated agreement, unless or until they are modified by the mutual agreement of the parties. The POFERA also

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[5] IAFF Local 1590 Request for Review of Executive Director's Decision, ¶14, February 18, 2022.

[6] *Fraternal Order of Police Lodge No. 1 v. City of Wilmington,* ULP 89-08-040, I PERB 449 (1989), citing *Collyer Insulated Wire*, NLRB, 129 NLRB 837 (1971); *FOP Lodge 1 v. City of Wilmington*, ULP 10-11-773, VII PERB 4935 (2011).

mandates the parties "…shall negotiate written grievance procedures by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement; such grievance procedures shall be included in any agreement entered into between the public employer and the exclusive bargaining representative." 19 Del. C. §1613(c).

While IAFF Local 1590 may disagree with the manner in which the City interpreted and/or applied Section 16.4, that is a matter subject to the parties' negotiated grievance procedure.

DECISION

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director that the Charge fails to establish a sufficient factual or legal basis on which it might be concluded that there is probable cause to believe that the City may have violated 19 Del. C. §1607(a)(5) in its application and/or interpretation of the negotiated longevity pay provision of the 2019-2023 collective bargaining agreement.

Wherefore, the decision is affirmed and the appeal is denied.

IT IS SO ORDERED.

DATE: April 1, 2022

Elizabeth D. Maron, Chairperson

Kathi Karsnitz, Member

Gregory T. Chambers, Member