

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1590,	:	BOARD REVIEW OF BIA
	:	DECISION ON REMAND
Appellant,	:	FROM CHANCERY 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 City of Wilmington Fire Department. 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 in November 2019. The Binding Interest Arbitrator (“Arbitrator”) issued a decision on May 27, 2020, finding the City’s last, best, final offer to be the more reasonable offer under 19 *Del. C.* §1615.¹ The IAFF appealed that decision to the Public Employment Relations Board (“Board”) which affirmed the Arbitrator 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, reversing the Board’s decision affirming the Arbitrator’s decision.³ The Court found that in choosing the City’s last, best, final offer, the Arbitrator impermissibly engrafted terms not expressly stated in the City’s 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 remanded the binding interest arbitration decision to the Arbitrator to “reconsider the last, best, final offers of the parties and to render a decision consistent with the Court’s direction for reconsideration.”⁴ Consistent with the direction of the Court, the Board encouraged the parties to again engage in settlement efforts to resolve the dispute.

By letter dated November 8, 2021, the parties advised the Arbitrator that, despite

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 v. 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 *International Association of Firefighters, 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>

⁴ *International Association of Firefighters, Local 1590 v. City of Wilmington*, Board Decision on Remand from Chancery Court, C.A. No 2020-0765-PAF, BIA 19-11-1213, IX PERB 8435 (8/4/21). [19-11-1213 BIA Board Decision on Remand IAFF 1590 v. CoW \(delaware.gov\)](https://perb.delaware.gov/wp-content/uploads/sites/127/2021/08/19-11-1213-BIA-Board-Decision-on-Remand-IAFF-1590-v-CoW-8-4-21.pdf)

discussions and the exchange of proposals, they had been unable to resolve the impasse or to find a prospective path toward resolution. The Arbitrator issued her decision on remand on November 17, 2021, finding the City’s last, best, final offer the more reasonable under the criteria set forth in 19 *Del. C.* §1615.⁵

The IAFF again requested review of the Arbitrator’s decision to this Board. Following resolution of an intervening motion by the IAFF to include the transcript of the March 9, 2021 oral argument before the Court, the full Board convened on April 26, 2022, to consider the merits of the IAFF’s request for review of the Arbitrator’s decision on remand. The Board was provided with the full record below, including written argument submitted by the parties. It also heard oral argument at the hearing. This decision results from the April 26, 2022 hearing.

DISCUSSION

The Court’s remand order states:

The Executive Director erred by performing her statutory analysis only on the unwritten “essence” of the City’s LBFO. The POFERA makes clear that the plain language of a collective bargaining agreement is meaningful. The purpose of the POFERA is “to promote harmonious and cooperative relationships between public employers and their employees, employed as police officers and firefighters, and to protect the public by assuring the orderly and uninterrupted operations and functions of public safety services.” 19 *Del. C.* §1601. To achieve this objective, the POFERA “[o]bligat[es] public employers and organizations of police officers and firefighters ... 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.” *Id.* (emphasis added). Similarly, the POFERA’s definition of “collective bargaining” includes the performance of the parties’ obligation “to execute a written contract incorporating any agreements reached.” *Id.* §1602(e). These provisions of the POFERA emphasize the importance

⁵ *International Association of Firefighters, Local 1590 v. City of Wilmington*, Interest Arbitrator’s Decision on Remand from Chancery Court, C.A. No 2020-0765-PAF, BIA 19-11-1213, IX PERB 8513 (11/17/21) [2021 BIA 1213 Interest Arbitrator's Decision on Remand from Chancery Court \(delaware.gov\)](https://www.bia.delaware.gov/2021-BIA-1213-Interest-Arbitrator-s-Decision-on-Remand-from-Chancery-Court-delaware.gov/).

of the express, written terms of the collective bargaining agreement.⁶

The Court specifically found that the Arbitrator did not consider the “actual terms of the [City’s] LBFO,” concluding:

... the Executive Director was not permitted to modify the City’s LBFO or add terms based on the work schedule that the City’s consultants 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. Nor could the Executive Director comply with the POFERA by assessing the costs and benefits of the City’s LBFO based on a non-binding illustrative application.⁷

The IAFF characterized the Court’s remand as directing the Arbitrator to not “take an analysis presented by a consultant, adopt an evaluation structure based on that analysis, and then make a selection on a preferred schedule when there was no concrete connection between the consultant’s analysis and the actual terms” of the City’s last, best, final offer.⁸ The IAFF is mistaken in its conclusion that the decision on remand is “essentially a rehash and repackaging of the initial decision and analytical process.” The Arbitrator reviewed the City’s December 11, 2019 last, best, final offer consistent with the Court’s direction to consider the “actual terms” of the offer, and without any consideration of the work schedule that the City represented that it would implement.⁹

The City’s offer states at Article 17.1:

- (1) **Effective 7/1/20, all Fire Suppression members of the Fire Department shall work a three (3) ~~four (4)~~ platoon system and a shift as determined and established by the Chief of Fire.**

Effective upon implementation of a three (3) platoon system, additional hours off (“Kelly Days”) shall be scheduled to reduce the annual hours to 2496...

⁶ Chancery Court Order ¶9 @ p. 8427.

⁷ Chancery Court Order ¶10 @ p. 8428.

⁸ Transcript of PERB Hearing on Appeal of Remand Decision, p. 3 (April 26, 2022).

⁹ Chancery Court Order ¶10 @ p. 8428.

The Arbitrator found the City's offer to be "clear and unequivocal" in that it required the Fire Suppression Division to be reconfigured from a four platoon system to a three platoon system effective July 1, 2020. The City's offer also states that firefighters in the Suppression Division shall be limited to 2496 regularly scheduled hours annually, which would be accomplished by including Kelly Days¹⁰ in the schedule. Its express proposal did not provide for unfettered discretion in the *number of hours* to be scheduled, nor did it increase the number of hours to be worked annually by more than a third as the IAFF argued.

The Arbitrator also limited her review to the costs and benefits of the City's offer, exclusive of the illustrative change in Section 4 of the City's offer to move to a 24-48 schedule. The graph included in the decision simply describes the history of the four platoon, 24-72 shift structure which existed at the time of negotiations, based on average daily leave estimates based on 2018. The graph evidences the magnitude of the problems with staffing and maintaining full coverage under the existing four platoon structure with the authorized strength in the suppression division, the context in which the City's last, best, final offer was developed.

The purpose of the binding interest arbitration process is to resolve the terms of a collective bargaining agreement for the period of its duration. By focusing on a single issue, the IAFF attempts to overturn the entire interest arbitration decision which is broader than this single issue. The Arbitrator was required to consider the totality of each side's offer and to make a decision based upon the statutory criteria¹¹ in order to provide "a final and

¹⁰ Kelly Days are scheduled days off built into firefighter schedules in order to maintain regularly scheduled hours below the Fair Labor Standards Act threshold beyond which public safety employees are required to be paid overtime. Testimony established the Wilmington Fire Department used Kelly Days in the past for this purpose prior to 2006.

¹¹ 19 *Del. C.* §1615.

binding resolution of an impasse arising out of collective bargaining.”¹²

The IAFF has often repeated its argument that the retention of discretion to the Chief of Fire to determine the deployment of firefighters is contrary to law. It argues that if the City were to exercise its discretion, it would result in a violation of its duty to bargain in good faith under the law. Because, the IAFF concludes, the only way the City can avoid violating the statute is by not exercising its contractual discretion, the proposal must, therefore, be contrary to law. This is conflated reasoning, at best. Neither this Board nor the Court found the City’s offer to be contrary to law.

The parties had the ability and opportunity to bargain over the actual nature and substance of hours of work and work schedules. There were many creative ways these parties might have resolved their shared interest in reducing or eliminating rolling by-pass. The fact that their negotiations, which included mediation and subsequent direct negotiation efforts, did not result in an agreement is proof that the statutory binding interest arbitration process is necessary to protect the public interest by resolving lengthy and unproductive negotiations. In this case, the Arbitrator performed her statutory responsibilities and reviewed the record again based on the Court’s remand directives. The IAFF’s speculative assertions as to how the City might make changes under the terms of the imposed collective bargaining agreement do not negate the process or the outcome.

Contractual language does not and cannot deprive employees of their rights to bargain terms and conditions of employment through their exclusive bargaining representative under the statute. Neither can a contractual provision negate a public employer’s duty to bargain under Delaware’s public sector collective bargaining laws. The contractual reservation of discretion to the Chief of Fire does not deprive any firefighter of

¹² 19 *Del. C.* §1602(2).

his or her rights to join or assist the IAFF or to negotiate or grieve through the IAFF or to engage in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection or to be represented by the IAFF without discrimination.¹³

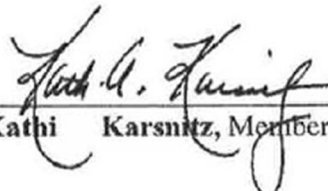
For these reasons, the Board finds the Arbitrator's decision on remand is not arbitrary or capricious, nor is it contrary to law.

DECISION

After reviewing the extensive record created in this case, considering the arguments of the parties, and the remand directive of the Court, the Board unanimously affirms the decision of the Arbitrator on remand to accept the last, best, final offer of the City of Wilmington as the more reasonable offer to resolve the negotiating impasse between the City of Wilmington and IAFF Local 1590, based upon the criteria set forth in 19 *Del. C.* §1615.

IT IS SO ORDERED.


Elizabeth D. Maron, Chairperson


Kathi Karsnitz, Member


Gregory T. Chambers, Member

DATED: May 25, 2022

¹³ 19 *Del. C.* §1603.