

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEAMSTERS LOCAL 326,	:	
	:	
Appellant,	:	PERB DECISION ON REQUEST
	:	FOR REVIEW OF ORDER TO
and	:	STAY
	:	<hr/>
CITY OF MILFORD, DELAWARE,	:	BIA 16-02-1032
	:	
Appellee.	:	

Appearances

Jeffrey M. Weiner, Esq., for Teamsters Local 326
Gary L. Simpler, Esq., Shawe & Rosenthal, LLP, for the City of Milford

BACKGROUND

The City of Milford, Delaware (City) is a public employer within the meaning of §1302(l) of the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (1985).

Teamsters Local 326 (Union) is an employee organization within the meaning of 19 Del.C. §1602(g). It has been the exclusive bargaining representative of a unit of City of Milford police officers at and below the rank of Sergeant since February 19, 2014, within the meaning of 19 Del.C. §1602(h).

The City and the Union have been engaged in negotiations for their initial collective bargaining agreement since May, 2014. During their prolonged negotiations, the terms of the

July 1, 2011 – June 30, 2014 agreement (which was negotiated by the predecessor to the Union) have been maintained.

A tentative agreement was reached by the parties on or about September 17, 2014 which was subject to ratification by the Union membership and approval by the City Council. The tentative agreement was ratified by the Union membership in October, 2014. At some point thereafter, and prior to January 26, 2015, the City Council voted to reject the tentative agreement.

In March 2015, the Union filed a Motion to Waive Mediation and Proceed to Binding Interest Arbitration. The Motion was denied by the Executive Director of the Public Employment Relations Board (PERB), who then appointed a mediator. A single mediation session was conducted in May, 2015. It did not result in a negotiated resolution to the negotiations.

On or about April 2, 2015, the Union filed an unfair labor practice charge alleging the City had violated its statutory obligations by failing or refusing to negotiate in good faith and by refusing to reduce an agreement reached as a result of collective bargaining to writing and to sign it.¹ A decision was issued by the Executive Director on January 26, 2016², finding the City did not violated its obligation to reduce and sign an agreement because the explicit precondition of the City Council's approval of any final agreement was not met. Consequently, no enforceable agreement came into effect as a result of the Union's unilateral ratification. The Executive Director also found the City had violated its duty to bargain in good faith under the POFERA by sending agents to the negotiating table with apparent, but no actual, authority to negotiate concerning terms and conditions of employment. The City was directed to cease and desist from engaging in conduct in violation of its statutory obligations and to immediately return to the

¹ 19 Del.C. §1607(a)(5) and (a)(7)

² *General Teamsters Local 326 v. City of Milford*, ULP 15-04-995, IX PERB 6647 (2016).

bargaining table to negotiate in good faith.

The Union requested the full Public Employment Relations Board review the Executive Director's remedy, arguing the only appropriate remedy for the City's failure to negotiate in good faith was to impose the terms of the tentative agreement. The Board declined to modify the Executive Director's remedy, finding the Union was admittedly on notice that any tentative agreement reached during the course of negotiations required City Council approval before it could be finalized and implemented. It directed the City to comply with the order set forth in the Executive Director's decision.³

Thereafter, the Union appealed this decision to the Delaware Court of Chancery, pursuant to 19 Del.C. §1609(a). At the time of this proceeding, that appeal is pending before the Court.

On February 12, 2016, the City and the Union met for a single, unsuccessful negotiation session.

By letter dated February 22, 2016, the Union petitioned for binding interest arbitration, pursuant to 19 Del.C. §1615. The parties were instructed by the Executive Director to submit information concerning any tentative agreements reached, progress made during mediation, and their last, best, final offers by March 9, 2016, for consideration. That date was subsequently extended to March 28, 2016, at which time the parties submitted the requested information.

The City of Milford filed a written objection to the initiation of binding interest arbitration until the unfair labor practice charge was finally resolved. The Union opposed the City's objection. The Executive Director postponed consideration of the City's requested stay until the full Board's decision on the unfair labor practice determination was issued.

On May 4, 2016, the Executive Director advised the parties she was staying the

³ *General Teamsters Local 326 v. City of Milford*, ULP 15-04-995, IX PERB 6709, (PERB Decision on Review, 2016).

implementation of binding interest arbitration, stating:

Teamsters Local 326 requested that it be found, on appeal, that an enforceable agreement was created when the members of Local 326 ratified the terms of the tentative agreement negotiated by the City's authorized representatives. Should the Court grant the union's request, the binding interest arbitration process would be unnecessary. Stated another way, were the interest arbitration petition to be processed contemporaneously with the appeal, the results of that process would be superfluous should the Court find that a binding agreement came into effect in early 2015.

Understanding that the purpose of binding interest arbitration is to expeditiously resolve bargaining impasses where good faith collective bargaining has failed to result in a mutually acceptable agreement, the pendency of an appeal which could make that proceeding unnecessary and could result in conflicting decisions does not support a finding that the initiation of binding interest arbitration is appropriate and in the public interest at this time.

For this reason, the initiation of binding interest arbitration is stayed pending resolution of the Teamsters' appeal of its unfair labor practice charge.... The parties are reminded that nothing prohibits or impedes them from continuing to negotiate in good faith or from engaging in impasse resolution processes which facilitate the conclusion of negotiations by agreement. 19 Del.C. §1615(g). This particular impasse appears to be ripe for good faith efforts to resolve the outstanding issues through negotiations rather than litigation. That would require the parties to engage with each other directly.... I again offer the services of this office, should the parties be willing to engage in an effort to facilitate resolution of the outstanding issues in these negotiations.

On May 10, 2016, the Union filed a request for review by the full Board of the Executive Director's stay of binding interest arbitration. The City filed its response in opposition to the request on June 2, 2016.

On June 15, 2016, the full Board met in public session to consider the Union's request for review. A copy of the Executive Director's letter and the submissions of the parties were provided to each member of the Board. The parties were provided the opportunity to present oral argument and to respond to questions from the Board during the public hearing. The

decision rendered herein is based upon consideration of the record and the arguments presented to the Board.

DISCUSSION

The Union's assertion that, absent consent of the parties, binding interest arbitration should proceed in all cases on an expedited basis is directly contrary to the express statutory requirement. 19 Del.C. §1615(a) requires, the Executive Director⁴, prior to initiating the process, to first make a determination as to whether, "...a good faith effort has been made by both parties to resolve their labor dispute through negotiations and mediation and as to whether the initiation of binding interest arbitration would be appropriate and in the public interest..." The Executive Director made her determination that the initiation of binding interest arbitration is not appropriate and in the public interest while an appeal of a unfair labor practice decision is pending, which, if successful, will impose a collective bargaining agreement upon these parties.

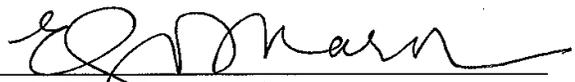
The Board finds the Executive Director's decision to be reasonable, logical and consistent with the statutory mandate.

DECISION

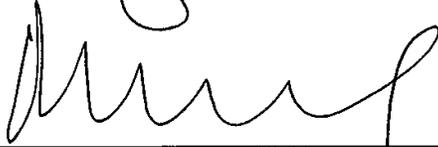
For the reasons set forth herein, the Board accepts the Executive Director's determination that the initiation of binding interest arbitration is not appropriate and in the public interest at this time. Her decision to stay further proceedings until resolution of the Union's appeal of the unfair labor practice determination is consistent with the statutory mandate of 19 Del.C. §1615(a).

⁴ The Board has delegated its authority for processing binding interest arbitration proceedings to the Executive Director, pursuant to 19 Del.C. §1606, which specifically incorporates 14 Del.C. §4006(f).

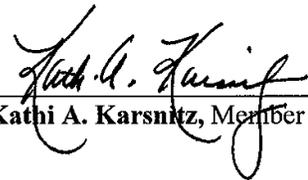
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

Dated: **July 7, 2016**