

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

**FRATERNAL ORDER OF POLICE,
LODGE NO. 4,**

Petitioner - Appellant,

v.

CITY OF NEWARK,

Respondent - Appellee.

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BIA 02-01-338

DECISION ON APPELLEE’S MOTION TO STAY THE ARBITRATOR’S AWARD

The Interest Arbitrator’s decision of January 7, 2002 requires that the parties certify compliance with the decision not later than February 7, 2002.

On January 25, 2002, FOP Lodge No. 4 (“FOP”) filed an appeal of the Arbitrator’s decision to the State Public Employment Relations Board.

On January 28, 2002, the City of Newark (“City”) filed a Motion to Stay the Arbitrator’s decision pending the outcome of the appeal.

Citing Cheltenham Twp. Police Ass’n v. Cheltenham Twp., 20 Penn. Public Employee Reporter (LRP) §20, 158:1989 PPER (LRP LEXUS 117 (1989)), the City maintains that the award is not final until all steps of the appeal procedure are exhausted. Furthermore, it argues that if the Arbitrator’s Award is implemented prior to the resolution of the appeal and the award is subsequently reversed chaos would result.

On January 30, 2002, the FOP filed a Response opposing the City’s Motion. The FOP argues that the City has failed to establish good cause for its Motion. The FOP contends the modifications required if the Award is reversed would not be difficult and would certainly not result in chaos.

DISCUSSION

19 Del.C. Chapter 16, Police Officers' and Firefighters Employment Relations Act, at subsection 1606, incorporates by reference 14 Del.C. §4006, Public Employment Relations Board, which provides in relevant part:

- (f) The Board shall appoint an Executive Director who shall be the chief administrative officer. . . In addition to the performance of administrative duties, the Board may delegate to the Executive Director authority with respect to, but not limited to, bargaining unit determination and representation proceedings, unfair labor practice proceedings, mediation of labor disputes, fact-finding and arbitration proceedings. Such delegation shall not limit a party's right to appeal to the Board. . . .

The City has failed to show good cause necessary to support its Motion. The FOP's wage offer exceeds the City's in all instances. The City's Workers' Compensation offer maintains the status quo and does not require the City to make any changes in its current practice. The City's proposed changes to the Benefit Flex Plan imposes new costs on bargaining unit members which could be readily calculated and reimbursed should the Arbitrator's Award be reversed. The City's Retiree Health Care offer differs from the FOP's in that it limits the number of years retirees are eligible for the benefit and imposes some additional costs, which could also be reimbursed by the City should the Award be reversed. Consequently, the contention that implementation of the Arbitrator's Award would not result in "chaos" should the Arbitrator's Award be reversed, is simply unsupported.

By agreement of the parties, the contract terms are retroactively effective on April 1, 2001. There is no good cause to delay the implementation of the Award in this case until exhaustion of the appeal process.

The City's reliance upon Cheltenham Twp. Police Association v. Cheltenham Twp. is misplaced. The Pennsylvania statute provides for issue by issue binding interest arbitration. In Cheltenham, the Pennsylvania Labor Board directed the Township to implement only those portions of the Arbitrator's Award not at issue in the appeal.

The Delaware Police Officers' and Firefighters' Employment Relations Act provides for last, best, final offer binding interest arbitration, constraining the Interest Arbitrator in the first instance, and the Board on appeal, to accept either the offer of the City or of the FOP in its totality. Bifurcation of implementation is not an option, as it was in the Cheltenham case. In the instant matter, the last, best, final offer of the City was selected by the arbitrator and all of the included issues are raised in the appeal.

WHEREFORE, the City's motion to stay the Arbitrator's Award pending review is denied.

DATED: 1 February 2002

/s/Charles D. Long, Jr.
CHARLES D. LONG, JR., Executive Director
Delaware Public Employment Relations Bd.