

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

CITY OF OKMULGEE, )  
 )  
 Complainant, )  
 )  
 vs. ) Case No. 195  
 )  
 LOCAL 2839, International )  
 Association of Firefighters, )  
 )  
 Respondent. )

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing before the Public Employees Relations Board (PERB or the Board) on the 11th day of October, 1989, on the Complainant's unfair labor practice (ULP) charge brought pursuant to the Fire and Police Arbitration Act (FPAA) 11 O.S. § 51-101 et seq. This matter also came on for hearing upon Respondent's Motion for Reconsideration on June 26, 1990.

The Complainant appeared at the original hearing by and through its attorney, Lynn Paul Mattson and the Respondent appeared by and through its attorney James R. Moore. Upon rehearing, Complainant appeared not and Respondent appeared by and through Mr. Moore. The Board received documentary and testimonial evidence. The Board also solicited and received post-hearing submissions, (Proposed Findings of Fact, Conclusions of Law and supporting briefs), the last of which was received by this Board on December 19, 1989. The Board has also received and reviewed Proposed Findings of Fact, Conclusions of Law and Opinion prepared by counsel to the Board and complainant's objections thereto filed on

March 5, 1990. The Board rejects, in part, the proposed order prepared by counsel and enters the following:

The Board is required by 75 O.S. 1981, § 312, to rule individually on Findings of Fact submitted by the parties. The submission by the complainant is treated as follows:

1. The Board accepts proposed Findings numbered 1 and 2.
2. The Board accepts, in part, the statements of fact contained in proposed findings numbered 3, 5, and 6.
3. The Board rejects proposed finding numbered 4 as being unnecessary to the decision in this case.
4. The Board rejects proposed findings numbered 7 and 8.

Due to the fact that the respondent did not individually assert findings of fact, the Board need not make comparable rulings relative to the submissions of Respondent.

Upon reconsideration, the Board declines to amend its Findings of Fact but does amend its Conclusions of Law and vacates its earlier Cease and Desist Order.

#### FINDINGS OF FACT

1. The City and the Union met approximately five times between February, 1988 and May, 1988, for the purpose of bargaining to reach a collective bargaining agreement (CBA). (Tr. p. 29)
2. The parties eventually reached a new CBA which was executed on June 23, 1988. (Exhibit 4).

3. During negotiations on this agreement there was an ongoing dispute between the City and Union concerning the manner and method of overtime compensation (Tr. p. 29.)

4. Attached to the agreement (as an addendum) was a letter to Dave Harris, City Manager, from Jack Kolokowski, President of Local 2839, stating that the existing overtime policy of Okmulgee was in conformity with the CBA, and as long as said policy was in conformance with the FLSA and the CBA, the union would not pursue any grievances relative thereto. (Exhibit 5)

5. Specifically, the Union agreed to a City proposal which essentially nullified an earlier arbitration award issued in December, 1987, and which expressly clarified the City's proposed method of overtime calculation. This Agreement was memorialized by a contemporaneous letter of June 25, 1988, see, Exhibit B. That letter reads inter alia:

- a. The City's expressly stated method of overtime payment was both in compliance with the law and acceptable;
- b. That in light of the foregoing, the Union specifically agreed it would not attempt to grieve or litigate that policy, so long as the policy remains in compliance with the Fair Labor Standards Act and the CBA.

6. On August 2, 1988, the union filed a grievance requesting the city abide by the labor agreement and pay overtime at a rate of time and a half (Exhibit 7, Tr. 36).

7. On August 22, 1988, the union filed a second grievance requesting that the bargaining unit be allowed the right to elect

compensatory time in lieu of money for any overtime hours accumulated during the term of the contract (Exhibit 8, Tr. 36).

8. The City, through its Fire Chief and City Manager subsequently denied the grievances. (Exhibit 9A, Exhibit 10)

9. The grievance of August 2, 1988, appears to question, not the proper amount of overtime paid, but testimony indicated that the union merely disputed the method of calculation of overtime and the language used to describe such method on the paycheck stub. (Tr. P. 88)

10. On September 8, 1988, the union withdrew both grievances from arbitration. (Exhibit 11)

11. At no time pertinent hereto did the City alter, adjust or change in any manner the method of calculating overtime provided for in the CBA. (Tr. pp. 34, 36).

#### CONCLUSIONS OF LAW

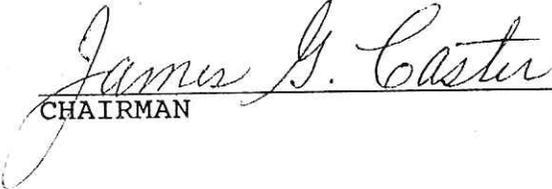
1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to 11 O.S. § 51-104(6).

2. In an administrative hearing before the PERB, the charging party has the burden of persuasion by a preponderance of the evidence as to the factual issues carried by its ULP charges. Rule III Q., Rules of the PERB, see also, Prince Manufacturing Company v. United States, 437 F. Supp. 1941 (1977). In this case complainant has met this burden subject to the following conclusions.

3. The Board strongly favors resort to contractual dispute resolution procedures and this decision is strictly limited to this case.

4. A technical violation of 11 O.S. § 102(6)(6a)(3) has been committed, however, such does not rise to the level of bad faith warranting this Board's imposition of a cease and desist order and therefore the Board declines to issue such an order.

DATED this 11<sup>th</sup> day of July, 1990.

  
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CHAIRMAN

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