

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

LOCAL 2567, INTERNATIONAL)
ASSOCIATION OF FIRE FIGHTERS,)
)
Complainant,)
)
vs.) PERB Case No. 00211
)
CITY OF JENKS, OKLAHOMA,)
)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, OPINION AND CEASE AND DESIST ORDER

This matter comes on for hearing before the Public Employees Relations Board (PERB or the Board) on January 18, 1990 on the Complainant's Unfair Labor Practice (ULP) charge. The complainant appeared by and through its counsel James R. Moore and Respondent appeared by and through its counsel Francis A. Molenda.

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) from both parties, the last of which was received by this Board on March 20, 1990.

The Board is required by 75 O.S. 1981, § 312 to rule individually on Findings of Fact submitted by the parties. In this case the parties have stipulated to many factual issues which are accepted by the Board. The parties have proposed additional findings which are treated as follows:

1. The Board accepts complainant's proposed findings numbered 1-7.

2. The Board accepts Respondent's proposed findings numbered 1-12.

FINDINGS OF FACT

1. The City of Jenks (City) and Local 2567, International Association of Fire Fighters ("Union") have been parties to collective bargaining agreements between 1978 and the present, with the exception of Fiscal Year 1983-84 (Tr. p.9; Jt. Stip.).

2. The City and the Union are currently parties to a collective bargaining Agreement (Tr., p. 9; Jt. Stip.).

3. The City and the Union were also parties to a collective bargaining agreement for Fiscal Year 1988-89 (Tr., p. 10; Jt. Stip.).

4. The collective bargaining agreement under which the grievance, which is pertinent to this matter, was filed, contains a grievance procedure which ends in final and binding arbitration (Tr. p. 10; Jt. Stip.).

5. On or about December 15, 1988, the Union filed a grievance on behalf of an employee, alleging the City violated the agreement by not providing a step increase for that employee (Tr., p. 10; Jt. Stip.).

6. The City denied said grievance and has subsequently refused to arbitrate the grievance, contending, among other things, that the Union has, through bargaining history, waived its right to bargain concerning step increases, and that the subject of the grievance is not covered by the collective bargaining agreement between the parties (Tr. p. 10; Jt. Stip.).

7. The parties agree that the City is not rejecting the collective bargaining agreement or the grievance arbitration procedure but is refusing to arbitrate this single grievance (Tr., p. 11; Jt. Stip.).

8. The Collective Bargaining Agreements entered into by the parties from 1980-81 to the present each contained a minimum and maximum salary for each classification in the bargaining unit. (Tr. pp. 15-17, 20-22).

9. The collective bargaining agreements between the parties covering the years 1980 through 1983 also contained salary schedules in the form of step procedures or step increases (Tr., p. 12, 16-17, Ex. 1, 2, 3).

10. The agreements in effect from 1984 to present do not contain step procedures or step increase plans (Tr., p. 16; Ex. 4 through 8; Union Exhibit 1).

11. None of the subject Collective Bargaining Agreements, including the 1988-89 Agreement at issue here, contains any description of how an employee is to move from minimum to maximum salary. (Tr. pp. 20-22).

12. The subject Collective Bargaining Agreement does not prohibit movement between minimum and maximum salary. (Tr. p. 29).

13. The salaries of numerous employees of the Jenks Fire Department fall somewhere between the minimum and maximum for their pay classification. (Tr. pp. 25, 27, Union Exhibit 1).

14. The subject grievance, which the City has admittedly refused to arbitrate, raises the issue of how a firefighter is to

move from minimum to maximum salary within a pay classification. (Tr. p. 18, Stipulation #4).

15. According to the Jenks City Manager, the resolution of the issue of movement within the Pay Plan depends on an interpretation of the Agreement and the practice of the parties. (Tr. pp. 18, 28-29).

16. According to the Collective Bargaining Agreement of the parties for FY year 1988-89, grievances which are subject to arbitration include:

Section 3. Any controversy between the employer and the Union or any employee concerning the interpretation, enforcement or application of any provision of this Agreement, concerning any of the terms or conditions of employment contained in this Agreement: (Tr. p. 2, CBA, 1988-89).

17. During the course of bargaining for the 1984-85 collective bargaining agreement, the Union proposed a step increase procedure, but that procedure was negotiated out of the agreement. (Tr., p. 18).

18. Between the '84 - '85 collective bargaining agreement and negotiations for the '88 - 89 agreement, no step increase was in the collective bargaining agreement nor advanced by the Union in negotiations (Tr., p. 19).

19. During the '88 - '89 and '89 - '90 negotiations, the union proposed step increases but relinquished their position, dropping the step increases during the course of bargaining (Tr. p. 19).

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. Oklahoma law (11 O.S. § 51-111) requires that every Collective bargaining agreement contain arbitration procedures for the immediate and speedy resolution of disagreements involving the interpretation or application of the agreement.

3. This case presents an issue of contract interpretation and as such, is a proper subject for arbitration, Voss v. City of Oklahoma City, 618 P.2d 925 (Okla. 1980).

4. The Board finds that the evidence presented is insufficient to support a finding of waiver by the complainant.

OPINION

When interpreting the Fire and Police Arbitration Act (FPAA), Oklahoma Courts have consistently demonstrated an unwillingness to interfere with the arbitration process. In Voss v. City of Oklahoma City, 618 P.2d 925 (Okla. 1980), the Court found that if there is a collective bargaining agreement (CBA) in existence with an arbitration clause broad enough to include the dispute and if there is an allegation that the CBA has been violated, arbitration must be ordered.

In City of Bethany v. Local 2085, IAFF, Case No. 67,842 (Okla. App. August 9, 1988) cert. denied, the Court of Appeals reiterated

the principle of Voss, supra, that where arbitration has been contracted for it constitutes a substantive right.

Respondent cites numerous private sector cases recognizing that refusal to arbitrate is not always an unfair labor practice. The right to arbitration is, however, recognized by both Oklahoma Statutes and Courts as being of particular importance in light of the FPAA's prohibition against strikes by police and fire fighters. See Stone v. Johnson, 690 P.2d 459 (Okla. 1984). The testimony before the Board indicates profound disagreement as to salary ranges in the collective bargaining agreement and advancement, if any, within those ranges. These are matters for an arbitrator, not this Board.

The Board also finds that the respondent failed to meet its burden of proof relative to its affirmative defense of waiver. In Beacon Pierce Dye and Finishing Company, 121 NLRB 953 (1958), the Board required a "clear and unmistakable showing" of a waiver of statutory rights. The Board accepts this requirement and finds that the evidence presented herein is insufficient to support respondents' allegations of waiver.

Under 51 O.S. 102(6)(6a)(5) it is declared an unfair labor practice to refuse to "discuss grievances in good faith with the designated bargaining agent with respect to any issue coming within the purview of this article". The Board finds that the City's refusal to arbitrate, although not entirely unreasonable, does constitute a violation of § 102 and that therefore an appropriate order should issue.

CEASE AND DESIST ORDER

The City of Jenks is hereby ordered, pursuant to 11 O.S. 51-104b(c) and consonant with the Findings of Fact, Conclusions of Law and Opinion herein, to cease and desist from refusing to arbitrate the subject grievance.

Dated this 18th day of April, 1990.


CHAIRMAN

:dg
Firefighter