

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

CITY OF OKMULGEE, OKLAHOMA,)
)
 Complainant,)
)
v.) Case No. 00267
)
INTERNATIONAL ASSOCIATION)
OF FIRE FIGHTERS, LOCAL 2839,)
)
 Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW,

AND CEASE AND DESIST ORDER

This matter came on for hearing before the Public Employees Relations Board (PERB or the Board) on the 22nd day of September, 1992 on Complainant's Unfair Labor Practice (ULP) Charge. The Complainant appeared by and through its attorney, James R. Polan. The Respondent appeared by and through its attorney, James R. Moore.

The Board received documentary and testimonial evidence. The Board also solicited post-hearing submissions (Proposed Findings of Fact, Conclusions of Law, and supporting briefs) from both parties.

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

1. Respondent's Proposed Findings of Fact Nos. 1, 2, 3, 5, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 are substantially adopted by the Board.

2. Respondent's Proposed Findings of Fact Nos. 4, 6, 7, 8, 9 and 13 are accepted in part as modified herein.

The submission of the Complainant is treated as follows:

1. Complainant's Proposed Findings of Fact Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 are substantially adopted by the Board.

2. Complainant's Proposed Findings of Fact No. 10 is accepted in part as modified herein.

FINDINGS OF FACT

1. The Complainant, the City of Okmulgee (the City) is and was at all times material herein a municipal corporation duly authorized and existing under the laws of the State of Oklahoma.

2. The Respondent, International Association of Firefighters, Local 2839, (IAFF) is and was at all times material herein the duly certified and acting labor representative and bargaining agent for certain employees of the Okmulgee Fire Department.

3. Fiscal Year 1991-92 contract negotiations resulted in interest arbitration as to issues left unresolved through bargaining. City Council members rejected the interest arbitration recommendations at its February, 1992 meeting. (Tr. 94, 105). Ultimately, the Union did not received a wage increase for FY 1991-92 even though the arbitration panel had recommended a five percent increase. (Tr. 94, 107).

4. IAFF gave notice of its intent to bargain a collective bargaining agreement for Fiscal Year 1992-93 in early 1992. The parties had their first meeting in February, 1992. (Tr. 31, 32).

5. The City's chief negotiator during this case was William Tackett. Mr. Tackett had participated in collective bargaining in the past, but this was the first year he had been directly involved in negotiations. (Tr. 61, 63).

6. When bargaining began for FY 1992-93, IAFF advised the City that it would request arbitration at the earliest time permitted by the statute in order to resolve any issues left unresolved in bargaining. (Tr. 108)

7. After the initial February, 1992 scheduling conference, the following collective bargaining sessions were held regarding the 1992-93 contract:

March 2, 1992
March 9, 1992
March 23, 1992
April 1, 1992
May 27, 1992
June 5, 1992

(U. Ex. 1)

8. During bargaining for FY 1992-93 the parties resolved the following contract provisions:

Article I	-Purpose of Agreement
Article II	-Authority and Term
Article III	-Recognition
Article IV	-Management Rights and Responsibilities
Article VI	-Successors and Assigns
Article VII	-Mutual Responsibility to Avoid Discrimination
Article VIII	-Prohibition of Strikes
Article X	-Grievance Procedure
Article XI	-Personnel Files
Article XII	-Personnel Reduction
Article XIII	-Bargaining Unit Rights and Security

Article XXIV -Joint Safety and Health Committee
Article XXV -Savings Clause

(U. Ex. 1)

9. The City did not respond to IAFF's economic proposals and made no counter offers on those proposals during bargaining for FY 1992-93 through April 1, 1992. (Tr. 128).

10. On April 1, 1992, the IAFF notified the City of its request to submit unresolved issues to interest arbitration pursuant to 11 O.S. § 51-106. (Tr. 108-113). At the time the Union made its request, more than 30 days had elapsed since the March, 1992, date of the parties' first meeting regarding FY 1992-93 bargaining.

11. On May 15, 1992, the IAFF alleged Unfair Labor Practices against the City to include:

1. The City's refusal to negotiate economic subjects;
2. The City's indicated refusal to participate in interest arbitration;
3. The list of issues that had been resolved in collective bargaining to that point for FY 1992-93;
4. The issues which remained unresolved and which were subject to arbitration pursuant to 11 O.S. § 51-106; and
5. A notification of the IAFF's intent to continue bargaining with the City for FY 1992-93, even though request for arbitration had been made.

12. The City understood that the Union intended to continue collective bargaining after the request for arbitration was made and that the request was made to avoid problems with retroactivity as had existed the prior year. The City did continue to negotiate for FY 1992-93 with the Union as late as June, 1992. (Tr. 66, 108).

13. The department heads in the City submit their proposed budgets to the City Manager in April and May as an ongoing process.

(Tr. 82). A considerable amount of work has already gone into the Fire Department budget by the Fire Department before it goes to the Manager on April 15th. (Tr. 83).

14. In its letter of April 13, 1992, the IAFF notified the City of the name and address of its interest arbitrator as is required by statute. (U. Ex. 1). The City, through William Tackett, its chief negotiator, received the Union's letter. (Tr. 63).

15. After receipt of the Union's letter on April 13, which confirmed the Union's request for arbitration made on April 1, 1992, the City did not name an interest arbitrator and instead forwarded the request to legal counsel who filed an unfair labor practice charge against the IAFF the next day. (Charge, PERB Case No. 00267, Tr. 266).

16. In its unfair labor practice charge, the City asked the Board to prohibit the IAFF from participating in arbitration as required by 11 O.S. § 51-107. (Charge, PERB Case No. 00267).

17. The City did not name an interest arbitrator as required by 11 O.S. § 51-107. The City's failure to name an interest arbitrator as required by statute delayed arbitration past the beginning of the fiscal year. This was a problem the IAFF had specifically sought to avoid with its request for arbitration. (Tr. 110-13). Because of the delay, the retroactivity of pay increases for FY 1992-93 became an issue once again between the parties, even though it was not an issue in negotiations. (Tr. 113).

18. The IAFF had made the earliest request for arbitration possible under the statute in order to avoid any problem with retroactivity. (Tr. 119, 124-26). That issue had caused the City Council to reject arbitration awards in the past. (Tr. 95, 117, 118). The Union intended to continue negotiations after it made its arbitration request and did so. (Tr. 66, 108). The City understood the Union's intent to continue negotiations after the request was made. (U. Ex. 1; Tr. 97, 119, 127).

19. The reason given at the time by the City for its refusal to name an arbitrator and to participate in the arbitration panel selection process was that it did not have budget figures available as of April 13, 1992. (Tr. 68).

20. The City expected to have its budget information available in late April or early May, 1992. (Tr. 70). The City had until April 18th to notify the Union of the name of its arbitrator. (U. Ex. 1; Tr. 70). The City had adequate time prior to the arbitration date to compile the necessary budget information. (Tr. 70).

21. The City could have named its interest arbitrator as required by law and set an arbitration date after the time it had its budget information available. (Tr. 70). The City never explored that issue with the Union. (Tr. 70).

22. The City later stated that it refused to name an interest arbitrator because it did not think the IAFF "impasse" was valid. (Tr. 75). Nothing in the Fire and Police Arbitration Act requires

an "impasse" before a request for arbitration can be made. 11 O.S. § 51-106.

23. The IAFF complied with all statutory prerequisites prior to requesting arbitration for FY 1992-93.

24. When the City Council considered the FY 1991-92 arbitration award at its February, 1992, meeting, no representative of the Union was permitted to address the Council.

25. Prior to speaking to the Council on March 10, 1992, Mr. Kolakowski consulted with both his supervisor, the Fire Chief, and the Mayor. Neither objected to his appearing before the Council and giving his prepared comments. (Tr. 101, 103, 104, 113, 114, 129). Kolakowski was on duty at the time, but offered to take leave and change out of his uniform. His chief told him it would not be necessary. (Tr. 91-92).

26. In October of 1992, the Union ran a series of advertisements in the "Okmulgee Daily Times" newspaper.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. Section 51-104 (b).

2. In an administrative proceeding before the PERB, the charging party has the burden of persuasion by a preponderance of the evidence as to factual issues raised in its Unfair Labor Practice (ULP) charge. 11 O.S. Supp. 1990, Section 51-104 (6) (C).

See, e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (1977); Gourley v. Board of Trustees of the South Dakota Retirement System, 289 N.W. 2d 251 (S.D. 1980).

3. Arbitration under 11 O.S. § 51-106 et seq. is part of the statutory dispute resolution mechanism. The statute does not require an "impasse" or require that the City have formulated a budget before either party can invoke the arbitration provisions of § 51-106. The only condition to invoking the arbitration provisions of this section is that a minimum of 30 days elapse from the date of the first meeting of the parties for purposes of bargaining.

4. Arbitration under 11 O.S. § 51-106 is an integral part of the statutory collective bargaining process. IAFF v. City of Tulsa, PERB Case No. 00126. In this case the IAFF complied with all conditions of the statute prior to requesting arbitration. The City was required by the statute to respond with the name and address of its interest arbitrator no later than April 18, 1992. The City's failure to so respond and its failure to participate in interest arbitration in a timely manner constitutes a violation of 11 O.S. § 51-102 (6a) (5). Likewise, the IAFF did not commit an Unfair Labor Practice by requesting interest arbitration more than 30 days after initiating collective bargaining for FY 1992-93.

5. 11 O.S. § 51-101(D) requires the City to allow the Union appropriate participation in the budget making process. In this case the City's refusal to discuss economic issues until its budget

was ready constitutes an Unfair Labor Practice pursuant to 11 O.S. § 51-102 (6a) (5).

6. Pursuant to 11 O.S. § 22-101.1, employees are permitted to appear and speak at city council meetings. The Board has previously determined the scope of appropriate statements by a party participating in collective bargaining. IAFF Local 2095 v. City of Stillwater, PERB Case No. 00225 (1991). The statement of Mr. Kolakowski before the City Council on March 10, 1992, is within the scope of permissible communications under Stillwater. The appearance of Mr. Kolakowski and his reading of a prepared statement do not constitute an Unfair Labor Practice. The advertisements placed by the Union in the Okmulgee newspaper are also within the scope of permissible communications and expression. Stillwater and do not amount to an Unfair Labor Practice.

7. In light of this Board's holding, repetition of similar conduct by the City may result in a pattern and practice of failure to bargain in good faith.

CEASE AND DESIST ORDER

The City of Okmulgee is hereby ordered, pursuant to 11 O.S. § 51-104b (c) and consonant with the Findings of Fact and Conclusions of Law entered herein, to cease and desist from its practice of bargaining in bad faith by refusing to negotiate economic subjects, refusing to participate in interest arbitration, and otherwise acting to interfere with or restrain the bargaining process. This Order shall be posted prominently within the Okmulgee Fire Department for not less than thirty (30) days.

James G. Easter
Chairman
Dated this 14th day of February, 1994.