

FILED

MAY 29 2013

Public Employees Relations
Board

**BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA**

INTERNATIONAL ASSOCIATION)	
OF FIRE FIGHTERS, LOCAL 176,)	
)	
Complainant,)	
)	
v.)	PERB No. 2012-ULPC-523
)	
THE CITY OF TULSA,)	
)	
Respondent.)	

**AMENDED ORDER GRANTING REQUEST FOR DISMISSAL OF
UNFAIR LABOR PRACTICE CHARGES**

This matter came on for hearing before the Public Employees Relations Board (the "Board") meeting in a Special Meeting called on the 29th day of May, 2013, at 11:00 a.m., in the Oklahoma Department of Agriculture, Food and Forestry, Agriculture Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, to consider amending the Board's written Order Granting Request for Dismissal of Unfair Labor Practice Charges in this case previously issued and filed herein on April 2, 2013 (the "Original Order"), to include written findings of fact and conclusions of law, which Original Order granted the written motion entitled "The City of Tulsa's Request for Dismissal of Charges" filed herein by the City of Tulsa (the "Respondent") on October 10, 2012 (the "Motion"), which Motion sought dismissal of the Unfair Labor Practice Charge filed herein on September 27, 2012 (the "ULP"), by the International Association of Firefighters, Local 176 (the "Complainant").

This matter originally came on for hearing on the Motion before the Board meeting in a Regular Meeting on the 14th day of March, 2013, in the Oklahoma Department of Agriculture, Food and Forestry, Agriculture Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma

City, Oklahoma.

The Complainant appeared in the regular meeting on the 14th day of March, 2013, by and through its attorney Steven R. Hickman, Frasier, Frasier & Hickman, Tulsa, Oklahoma, as did the Respondent by and through its Assistant City Attorney Jason T. Seay.

The Board, having reviewed the written motion filed herein, the written response thereto filed herein on October 29, 2012, the reply brief in support of the motion filed herein on December 18, 2012, and having heard the arguments of counsel and otherwise being fully apprised of this matter, hereby determines as follows:

FINDINGS OF FACT

It is the finding of the Board by a preponderance of the evidence that:

1. The Respondent is, and was at all times material herein, a municipal corporation duly organized and existing under the laws of the State of Oklahoma.
2. The Complainant is, and was at all times material herein, the sole exclusive bargaining agent for certain employees of the Respondent's fire department.
3. The Board (with one (1) vacant member position) held a Special Meeting on May 29, 2013, with a quorum present consisting of three (3) members, in which meeting it held a hearing.
4. The Respondent and the Complainant signed a Collective Bargaining Agreement on September 16, 2011 (the "Collective Bargaining Agreement"), with a retroactive date of July 1, 2011.
5. According to the ULP filed herein by the Complainant on September 27, 2012, the Complainant filed a grievance on October 31, 2011 (the "Grievance"), with the Respondent alleging that on October 14, 2011, the Complainant became aware that members who were employed with the Respondent on July 1, 2011 but retired before the Collective Bargaining Agreement was signed

on September 16, 2011, would not receive the benefits that were retroactive to July 1, 2011.

6. On September 27, 2012, the Complainant filed the ULP with the Board herein alleging that the Respondent refused to hear the Grievance as required by the Collective Bargaining Agreement.

7. On October 10, 2012, the Respondent filed the Motion in which it asserted, among other things, that the Complainant does not represent retirees who were not employed by the Respondent at the time the Collective Bargaining Agreement was signed and that it rightfully declined to entertain the Grievance.

CONCLUSIONS OF LAW

The Board concludes as a matter of law as follows:

1. Pursuant to 11 O.S.Supp.2012, §51-104 effective November 1, 2012, the Board is composed of five (5) members, three (3) of whom being present "... shall constitute a quorum."

2. The Board has personal jurisdiction over the Complainant and the Respondent and the subject matter of the unfair labor practice charge pursuant to 11 O.S.2011, §51-104b.

3. The burden of proof in this matter is a preponderance of the evidence pursuant to OAC 585: 2-7-12.

4. The hearing and procedures herein are governed by Article II of the Administrative Procedures Act, 75 O.S.2011, § 308a et seq. and the Board's Rules at OAC 585: 2-1-1 et seq. and the meeting was convened with a quorum present consisting of three (3) board members and the meeting was conducted in accordance with the provisions of the Oklahoma Open Meeting Act, 25 O.S.2011, § 301 et seq.

5. Under the provisions of its Rules at OAC 585: 2-7-3, the Board recognizes all motions permitted under the Oklahoma Pleading Code, 11 O.S.2011, § 2001 et seq., including, but not limited to, motions to dismiss. OAC 585: 2-7-3.

6. The Board's Rules at OAC 585:2-5-5 provides in pertinent part as follows "[p]roceedings against a party alleging an unfair labor practice under the FPAA [11 O.S.2011, §51-101 to 51-113] shall be commenced by filing a written charge with the PERB [Board] within six (6) months of the alleged violation, or knowledge thereof...".

7. The term "Fire fighters" is defined in 11 O.S. 2011, §51-102(1) to mean "...the permanent paid members of any fire department...in any municipality within the State of Oklahoma but shall not include...the chief of the fire department and an administrative assistant".

8. In the case of *Felkins v. Oklahoma Firefighters Pension and Retirement System*, 116 P. 3d 195, 196 (Okla. Civ. App. 2005), the Oklahoma Court of Civil Appeals, Division No. 3, determined that in order for retirement benefits to become payable to a firefighter that was vested in a right to receive retirement benefits and who was eligible to retire, the firefighter "...would have to terminate his employment and make written demand for payment. 11 O.S. §49-106(A)."

Opinion

It is the finding of the Board as follows:

1. The ULP was filed by the Complainant on September 27, 2012, alleging that the Complainant became aware or had knowledge in October 2011 that certain of its members who retired after July1, 2011, but before the Collective Bargaining Agreement was signed, would not receive the benefits that were retroactive to July 1, 2011. September 27, 2012, is a date well beyond six (6) months after October 2011. Accordingly, the ULP was not timely filed herein by the Complainant.

2. The term "Fire fighters" is defined in 11 O.S. 2011, §51-102(1) and does not include anyone other than "...the permanent paid members of any fire department...in any municipality within the State of Oklahoma but shall not include...the chief of the fire department and an administrative

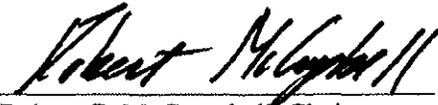
assistant". Under the holding in the case of *Felkins v. Oklahoma Firefighters Pension and Retirement System*, 116 P. 3d 195, 196 (Okla. Civ. App. 2005), in order for retirement benefits to become payable to a fire fighter that was vested in a right to receive retirement benefits and who was eligible to retire, a fire fighter from any municipal fire department must first terminate his or her employment from the fire department and make a written demand for payment. Upon such termination of employment and upon making such demand for payment, a fire fighter becomes a retiree. Such a retiree no longer meets the statutory definition of the term "Fire fighter" and is no longer a member of a bargaining unit for the purposes of collective bargaining.

3. The Respondent did not commit an unfair labor practice by refusing to discuss in good faith with the designated bargaining agent an issue not coming within the purview of the Fire and Police Arbitration Law, 11 O.S. §51-101 to 51-113, namely that fire fighters who retired before a collective bargaining agreement was signed became retirees who no longer met the definition of the term "Fire fighters" within the meaning of 11 O.S. 2011, §51-102(1), regardless of any retroactive provision of any collective bargaining agreement that may be signed subsequently.

The Motion filed herein by the Respondent should be and hereby is hereby GRANTED and the Board's Original Order filed herein on April 2, 2013, is hereby AMENDED to include the foregoing Findings of Fact, Conclusions of Law and Opinion herein.

The Motion filed herein by the Respondent should be and hereby is hereby GRANTED.

Dated this 29 day of May, 2013.


Robert G. McCampbell, Chairman
Public Employees Relations Board