

PUBLIC EMPLOYEES RELATIONS BOARD  
STATE OF OKLAHOMA

Public Employees Relations Board

FRATERNAL ORDER OF POLICE,) )  
LODGE 93, )

Complainant, )

vs. )

CITY OF TULSA, OKLAHOMA, )

Respondent. )

Case No. 431

FILED

OCT 18 2007

**FINAL ORDER**

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 12th day of April, 2007, on the Motion for Summary Judgment filed by the Complainant the Fraternal Order of Police, Lodge 93 (the "Union"). The Union appeared by and through its attorney, Douglas D. Vernier. The City appeared by and through its attorney, David R. Ross.

The Union brought the present action alleging that the City failed and refused to discuss grievances in good faith with the Union involving disciplinary action taken against Tulsa Police Officer Greg Poindexter. The Union alleged that the City settled those grievances directly with Poindexter and without any discussion with the Union or attempt to discuss the grievances in good faith with the Union.

Based upon the statements filed in support of and in opposition to the motion, the Board finds that there is no substantial controversy as to the following facts or issues:

1. The Union is the duly recognized and lawful bargaining agent of the City of Tulsa police officers. Union's Undisputed Fact No. 1.

2. The City and the Union are parties to a Collective Bargaining Agreement ("CBA") which contains a grievance and arbitration provision for resolution of workplace disputes and disputes over interpretation and application of the parties' CBA. Union's Undisputed Fact No. 2.

3. On or about June 24 and July 9, 2004, the Union filed grievances over disciplinary action administered against Poindexter, asserting the City's suspension and demotion of Poindexter was in violation of the parties' CBA. Union's Undisputed Fact 3.

4. The City did not meet with and discuss these grievances with the Union. Union's Disputed Facts 4 and 8 and City's Responses thereto.

The Board concludes as a matter of law as follows:

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001 and Supp. 2005, §§ 51-101, *et seq.*, and the Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2001, § 51-104b.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, §§ 308a, *et seq.*

3. Federal law may be considered in the construction of the FPAA. *Stone v. Johnson*, 690 P.2d 459, 462 (Okla. 1984).

4. The Board is empowered to prevent any person, including corporate authorities, from engaging in any unfair labor practice. 11 O.S. 2001, § 51-104b(A).

5. The Union, in asserting a violation of 11 O.S. 2001, § 51-102(6), has the burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. 2001, § 51-104b(C) and OAC 585:1-7-16.

6. Section 51-102(6a) (5) imposes on a municipality the duty to “discuss grievances in good faith with the designated bargaining agent . . . .”

7. “The fundamental inquiry in a direct dealing case is whether the employer has chosen ‘to deal with the Union through the employees, rather than with the employees through the Union.’” *Facet Enterprises, Inc. v. N.L.R.B.*, 907 F.2d 963, 969 (10<sup>th</sup> Cir. 1990) (quoting *NLRB v. Pratt & Whitney Air Craft Div.*, 789 F.2d 121, 134 (2d Cir. 1986)).

8. Once a bargaining unit selects its bargaining representative, the employer must bargain in good faith with that representative alone. *Id.* (citing *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678, 683-84 (1944)).

9. Adjusting or attempting to adjust union grievances with individual employees rather than the designated bargaining agent violates the duty to discuss grievances in good faith with the bargaining agent. *United States Postal Service and American Postal Workers Union*, 281 NLRB 1015 (1986).

10. The Consent Decree entered in *Johnson v. City of Tulsa, Oklahoma*, Case No. 94-CV-39-TCK-FHM (N.D. Okla. July 9, 2007) does not supplant the procedures and rights guaranteed to the Union by the FPAA. *Johnson v. City of Tulsa, Oklahoma*, Case No. 94-CV-39-TCK-FHM (N.D. Okla. July 9, 2007). The City was obligated to involve the Union in the settlement of Poindexter’s grievances. *Id.*

11. The subject of the City’s communications and settlement with Poindexter in *Johnson* involved his grievances. The City engaged in direct dealing by failing to engage in discussions with the Union regarding these grievances. In so doing, the City violated 11 O.S. § 51-102(6a)(5).

12. "Summary judgment is appropriate only where it appears that there is no substantial controversy as to any material fact and that one party is entitled to judgment as a matter of law." *Post Oak Oil Co. v. Stack & Barnes, P.C.*, 913 P.2d 1311, 1313 (Okla. 1996).

13. Because no substantial controversy exists as to a material fact and the Union is entitled to judgment as a matter of law, the Union's motion for summary judgment is granted.

14. The City has engaged in an unfair labor practice and a cease and desist order is warranted.

Dated: October 16, 2007

  
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Craig W. Hoster, Chair  
Public Employees Relations Board

CEASE AND DESIST ORDER

The City of Tulsa, Oklahoma, is hereby ordered, pursuant to 11 O.S. 2001, § 51-104b(C) and consonant with the Findings of Fact and Conclusions of Law entered herein, to cease and desist from engaging in direct dealing by failing to discuss grievances in good faith with Fraternal Order of Police, Lodge 93, the duly recognized and lawful bargaining agent of the City of Tulsa police officers, in violation of 11 O.S. § 51-102(6a)(5).

Dated: October 16, 2007

  
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Craig W. Hoster, Chair  
Public Employees Relations Board