

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

AUG 27 2008

Public Employees Relations
Board

CITY OF MUSKOGEE,)
)
 Complainant,)
)
 v.) PERB No. 466
)
 IAFF, LOCAL 57,)
)
 Respondent.)

FINAL ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 14th day of August, 2008, on the Motion for Summary Judgment of the Complainant City of Muskogee (the "City"). The City appeared by and through its attorney, Stephen L. Andrew. Respondent IAFF, LOCAL 57 (the "Union") appeared by and through its attorney, Steven R. Hickman.

The City brought the present action alleging that after a majority of the voters of the City cast their ballots to approve the best, last and final offer of the City, the Union refused to execute the written collective bargaining agreement as required by 11 O.S. 2001, § 51-102(5) in violation of 11 O.S. 2001, § 51-102(6b)(3) .

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 City is an Oklahoma charter municipality whose firefighters are represented by the Union. City's Statement of Undisputed Facts ("Undisputed Fact") 1.
2. When the City and the Union were unable to agree on collective bargaining

agreements for fiscal years 2006-07 and 2007-08, the Union sought interest arbitration in accordance with 11 O.S. 2001 and Supp. 2007, §§ 51-106 through 51-110 of the Oklahoma Fire and Police Arbitration Act. City's Undisputed Fact 2.

3. On August 16, 2007, a three-person board of arbitrators issued a decision in the interest arbitration between the City and the Union. City's Undisputed Fact 3.

4. The City rejected the decision of the arbitration panel and, pursuant to 11 O.S. Supp. 2007, § 51-108(B), submitted the offers which the parties submitted to the arbitration board to the voters of the municipality for their selection in a special election called for that purpose. City's Undisputed Fact 4.

5. The election was held on February 5, 2008. The last best offer of the City received a majority of the votes. City's Undisputed Fact 5.

6. The City presented to the Union a written collective bargaining agreement that incorporated the last best offer of the City. City's Undisputed Fact 6.

7. The Union refused and continues to refuse to execute the written collective bargaining agreement. City's Undisputed Fact 7.

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. 2007, §§ 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. 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).

4. A collective bargaining agreement may be reached in one of three ways. First, it can result from the negotiations of the parties being reduced to a written agreement. 11 O.S. 2001, § 51-105. Second, in the event that the parties are unable to reach an agreement, any and all unresolved issues shall be submitted to arbitration. 11 O.S. 2001, § 51-106. The majority of the arbitration board members shall select one of the two last best offers as the contract of the parties. 11 O.S. Supp. 2007, § 51-108(A)(4). Third, if the city's last best offer is not selected, the city may submit to the voters the offers which the parties gave to the arbitration board. 11 O.S. Supp. 2007, § 51-108(B). The last best offer receiving a majority of the votes of the people shall become the agreement of the parties. 11 O.S. Supp. 2007, § 51-108(C).

5. The municipal employer or its designated representative and the representative of the employees have a mutual obligation to execute a written contract incorporating any agreement of the parties. 11 O.S. 2001, § 51-102(5); *Local 2784, IAFF v. Town of Perry, Oklahoma*, PERB No. 00103 (1986).

6. Because the people voted to accept the City's last best offer, the Union is required to execute the collective bargaining agreement containing that offer. 11 O.S. Supp. 2007, § 51-108(C) and 11 O.S. 2001, § 51-102(5).

7. The Union's refusal to execute the collective bargaining agreement after the completion of the statutory process is a violation of 11 O.S. Supp. 2007, § 51-108(C) and 11 O.S. 2001, § 51-102(5) and constitutes an unfair labor practice. 11 O.S. 2001, § 51-102(6b)(3).

8. "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.*, 1996 OK 23, ¶ 15, 913 P.2d 1311, 1313.

10. Because no substantial controversy exists as to a material fact and the City is entitled to judgment as a matter of law, the motion for summary judgment of the Complainant City of Muskogee should be, and is hereby, GRANTED.

11. The Union has engaged in an unfair labor practice and a cease and desist order is warranted. 11 O.S. 2001, §51-104b(C).

Dated: August 27, 2008



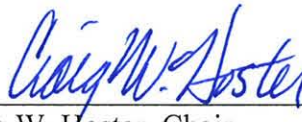
Craig W. Hoster, Chair
Public Employees Relations Board

By unanimous vote. Chair Craig W. Hoster presiding. Members Larry W. Gooch and Linda Samuel-Jaha present and voting.

CEASE AND DESIST ORDER

The Respondent IAFF, LOCAL 57 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 refusing to sign the collective bargaining agreement of the parties that was reached through a vote of the people of Muskogee, Oklahoma, in violation of 11 O.S. 2001, § 51-102(6b)(3).

Dated: August 27, 2008



Craig W. Hoster, Chair
Public Employees Relations Board