

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE,)
)
 Complainant,)
)
 vs.) **Case NO. 00328**
)
 CITY OF BROKEN ARROW,)
)
 Respondent.)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

NOW ON this 27th day of September, 1996, there comes on for determination the above-styled and numbered administrative action. Charles Ellis sits herein as pro tem Chairman of the Board in the stead of Charles Kothe, who is recused in this matter. This matter was submitted to the Board upon written briefs of the parties, it being stipulated by the parties that dispositive issues are subject to the Board's determination thereby. The Board concurs. And the Board, having read the briefs of the parties, having reviewed all exhibits and pleadings, and otherwise being fully apprised of the facts and law herein, makes the following Findings of Fact, Conclusions of Law and Order. In addition, the parties submitted proposed Findings of Fact, upon which the Board makes the following determination:

The Board hereby accepts Complainant's Proposed Findings of Fact Nos. 1, 2, 4, 5, 6, 7, 8, 9 in part, 10, 11, 12, 13, 15, and 16.

The Board hereby rejects Complainant's Proposed Findings of Fact Nos. 3, 9 in part, and 14.

The Board hereby accepts Respondent's Proposed Findings of Fact Nos. 1, 2, 3, 4, 5, 7, 8,

9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26.

The Board hereby rejects Respondent's Proposed Findings of Fact Nos. 6, 12 and 19.

FINDINGS OF FACT

1. On or about January 23, 1995, Rich Shea, as President of the Fraternal Order of Police ("FOP"), sent a request for negotiations to the City of Broken Arrow's (the "City") Manager, John Vinson. In that letter, the FOP noted that it would be requesting negotiation on, among other things, items requiring the appropriation of monies.

2. On or about February 8, 1995, Bill Fultz, as President of the FOP, sent a letter to Vinson making a similar demand for bargaining.

3. On February 13, 1995, Russell Gale, Human Resources Manager for the City, sent a letter to Fultz advising that the City was ready to bargain "at any time." This letter provides:

As to your request that FOP representatives be allowed appropriate participation in the budget making process, please make sure the proposed budget is scheduled to be transmitted to the City Council on May 8, 1995. In previous years the City Manager has held information meetings with union representatives and Employee Advisory Committee members to address the budget proposal soon after the City Council has received. Therefore, you may anticipate that meeting will be scheduled the week of May 8th.

Please contact me at your convenience so we may schedule our first meeting.

4. On or about March 30, 1996, the City and the FOP began discussing a renewed Collective Bargaining Agreement ("CBA") for FY 95-96. The City acted through its representative, Russell Gale. The FOP acted through its bargaining team.

5. On or about April 13, 1995, the parties executed Ground Rules for Negotiations. Therein, the parties agreed to arbitrate according to statute upon impasse.

6. On May 2, 1995, the Notice and Agenda of the Meeting of the City Council was posted concerning the scheduled May 11, 1995, meeting. The purpose of the meeting was stated as: "[t]o hold a work session on the FY1995-96 Fiscal Year Budget." That meeting occurred on May 11, 1996. The public hearing on the budget was scheduled for June 5, 1995.

7. At early negotiation meetings between the parties, when the FOP attempted to discuss wages, the FOP was advised by Gale that the City preferred to reserve monetary issues until the budget had been finalized. At the May 11, 1995, meeting, the City made a slide presentation and stated what the City's budget was to be. This presentation was later presented to the City Council, which adopted the budget. At no time did the FOP have meaningful participation in the formulation of the budget.

8. The issue of compensation was negotiated at each of approximately seven bargaining sessions since the FOP made its first proposal. However, the parties were unable to agree on the effective date of a pay increase. The FOP asserted that if agreement could not be reached, the FOP would declare impasse as of September 12, 1995. The City offered to continue to bargain unresolved issues. No compromise was reached and impasse was declared on September 12, 1995.

9. F.X. Quinn was selected as the FMCS Neutral Arbitrator by the parties. On October 9, 1995, the City sent its written statement to the interest arbitrator and to the FOP's legal counsel. The City asserted therein its belief that 11 O.S.Supp.1995, Sec. 51-108, is unconstitutional. On October 11, 1995, the FOP sent its written arbitration statement to the interest arbitrator and to the City's legal counsel.

10. On October 18, 1995, the Interest Arbitration commenced. The FOP proffered its

attorney, Jim Polan, as its interest arbitrator, with the case to be presented by another attorney in Polan's firm. The City raised the issue of the propriety of such placement on the arbitration panel. The City asserts it did not request the proceeding to be adjourned. Rich Shea was offered by the FOP as a substitute, which offer was rejected by the City.

11. Quinn adjourned the interest arbitration until the issue as to membership on the panel could be resolved.

12. On November 12, 1995, interest arbitration resumed. Steve Cain sat as arbitrator for the FOP. The City asserted at the hearing that it did not seek any delay in discussing wage issues until after the City adopted a budget. There was no other significant issue to arise during arbitration. On December 8, 1995, the Arbitration Award issued, adopting the FOP's last, best offer.

13. Title 11 O.S.Supp.1995, Sec. 51-108, remained in force and effect during all times pertinent to this administrative action.

14. The City continued to assert the unconstitutionality of Sec. 51-108. To this end, it instituted action in the District Court of Tulsa County to seek judicial decree. The parties continued to negotiate issues between them, and the City's action was dismissed with prejudice.

15. Within ten (10) days of the Arbitration Award, the City did not call for a special election to put the last, best offers of the parties to a vote of the people. The City "rejected" the Arbitration Award.

CONCLUSIONS OF LAW

1. The Public Employees Relations Board has jurisdiction over the parties and subject matter of this administrative action. 11 O.S.1991, Sec. 51-104b.

2. The burden of proof in this administrative action is upon the Complainant by preponderance of the evidence. Id.

3. The failure of a party to comply with and, as necessary, implement governing law in effect at the time action should be taken is an unfair labor practice. 11 O.S.1991, Sec. 51-106. The City committed an unfair labor practice by failing either to accept the Arbitration Award or submit it to a vote of the people.

OPINION

It is fundamental to the operation of government that governmental bodies comply with the law regardless of the perceived propriety of the law. In this administrative action, it is not necessary that the City of Broken Arrow agree with the current reading of 11 O.S.Supp.1995, Sec. 51-108. The City has no independent authority to alter state law. As such, the City was bound, for good or bad, to comply with the provisions of Section 51-108 unless relieved of that duty by the Courts or the Legislature. We must conclude that the City's refusal to comply with Section 51-108 in this action was an unfair labor practice. However, nothing in this opinion should be construed to imply any remedy other than as stated in the Fire and Police Arbitration Act.

We likewise note that the Oklahoma Supreme Court, on July 9, 1996, upheld the constitutionality of Sec. 51-108. Fraternal Order of Police, Lodge 165, v. City of Choctaw, _____ P.2d _____, 67 O.B.A.J. 2235 (Okla.1996).

As to other issues raised by the Complainant, in regard to the assertion that the City improperly challenged the FOP's nomination to the arbitration panel and the delay in negotiation, the Board finds no per se violation of the Fire and Police Arbitration Act. 11 O.S.1991 and

Supp.1995, Sec. 51-101, et seq. Further, from the facts presented the Board determines that the FOP has not met its burden of persuasion that the City committed an unfair labor practice in this matter.

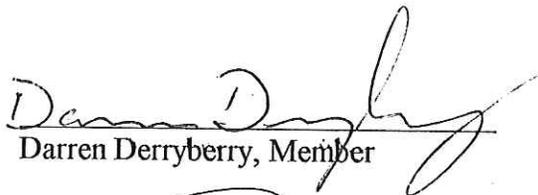
As to the Complainant's allegation that the City improperly demanded that the FOP submit lists of comparable cities prior to negotiating on the issue of a pay raise, this matter was submitted to the Board upon briefs and the parties are directly opposed in their version of what transpired in this issue. Again, the Board finds no per se violation of the Fire and Police Arbitration Act. As to an unfair labor practice, from the facts presented the FOP has not met its burden of proof, and so this must fail.

ORDER

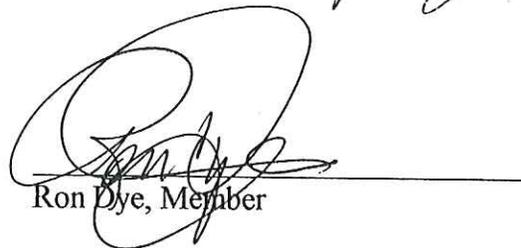
It is therefore the **ORDER** of the Board that the City of Broken Arrow shall immediately cease and desist from taking any action which does not properly and fully comply with and implement as appropriate all provisions of 11 O.S. Supp. 1995, Sec. 51-108.



Charles Ellis, Chairman
Public Employees Relations Board



Darren Derryberry, Member



Ron Dye, Member