

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

JUN 10 2009

Public Employees Relations
Board

CITY OF LAWTON,)
)
Complainant,)
)
vs.) Case No. 469-PPC
)
IAFF, LOCAL 1882,)
)
Respondent.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION AND
CEASE AND DESIST ORDER**

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 9th day of April, 2009 on the Motion for Summary Judgment filed by Respondent International Association of Fire Fighters, Local 1882 (the "Union"), and on the Cross-Motion for Summary Judgment filed by Complainant City of Lawton (the "City"). The Union appeared by and through its attorney, Steven R. Hickman. The City appeared by and through its attorney, Tony Puckett.

The City brought the present action alleging that the Union circumvented the bargaining representatives appointed by the City by delivering its proposal for a collective bargaining agreement directly to the City Council members. The City further contends that the Union's action constitutes impermissible direct dealing. The Union contends that delivery of the subject letter to the City was within the rights of the Union acting for its members as citizens of the City of Lawton. The Board, having read the parties' briefs and exhibits, having heard the statements of counsel and being fully advised in the premises, now issues its final order in accordance with OAC 585:2-7-15.

Findings of Fact

Based upon the statements filed in support of the City's motion and the statements filed by the Union in support of its motion,¹ the Board finds that there is no substantial controversy as to the following facts:

1. The Union is the certified bargaining representative for fire fighters of the City of Lawton. Respondent's Fact No. 1.

2. In January 2008, the Union sent notification to the City that it wished to bargain the terms of the collective bargaining agreement for the fiscal year 2008-2009. Complainant's Fact No. 1.

3. The City Council subsequently appointed the City's negotiating team to negotiate a contract with the Union's representatives. The members of the negotiation team appointed by the City Council were Jim Scholes, Dwayne Burk and Tim Wilson. The Union recognized that it had an obligation to negotiate the contract with the negotiating team appointed by the City. Complainant's Fact No. 2.

4. In February 2008, the City's designated representatives met with the Union's negotiating team and began negotiations. At the meeting, the City and the Union entered into an agreement to abide by certain Ground Rules for the continued negotiations of the collective bargaining agreement ("CBA"). The purpose of the Ground Rules was to establish rules between the Union and the City to follow in order to negotiate for a contract in good faith. The Union understood that it was agreeing to abide by the Ground Rules in order to conduct negotiations for the contract. Complainant's Fact No. 3.

¹ All the "Undisputed Material Facts" submitted by both parties are substantially adopted by the Board.

5. Pursuant to Ground Rule No. 3, the parties agreed that "negotiations shall be conducted only between the negotiation committee for the Union which consists of Pete Martin, Dale Nobis, Robby Bay and Bruce Kizarr... and for the City: Jim Scholes, Dwayne Burk and Tim Wilson. ..." Pursuant to paragraph 4 of the Ground Rules, the contact person for the City was Jim Scholes, and the contact person for the Union was Pete Martin, the Union President. Complainant's Fact No. 4.

6. Between February and June, 2008, the City met with the Union's bargaining representatives on several occasions to negotiate with the Union over the terms of the CBA for fiscal year 2008-2009. Respondent's Fact No. 2.

7. The City's negotiating team and the Union's negotiating team conducted bargaining sessions in an effort to reach an agreement. Prior to the Union sending its letter and contract proposal directly to the City Council, the parties reached certain tentative agreements over various matters of the contract, but had not agreed to a complete contract. Complainant's Fact No. 5.

8. On June 17, 2008, the Union delivered a letter addressed to the City Council members by placing the letter in each City Council member's mailbox. The letter states in pertinent part:

The Firefighters Union would still like to reach an accord with the city and would therefore like to present the Lawton City Council with this proposal with the hopes of reaching a mutual agreement. Because of the time constraints placed on both sides by the expected June 27th results of the Lawton Police Arbitration it is imperative that an agreement be reached as soon as possible.

Respondent's Fact No. 3; Complainant's Fact No. 6.

9. The Union wrote the letter and attached its proposal in an effort to enter into an agreement directly with the City Council. The letter was written by Pete Martin, the Union President, on behalf of the Union. Complainant's Fact No. 7.

10. The Union did not send the letter to the City's negotiating team or the City Manager. The Union did not inform the City's designated representatives or the City Manager that it intended to send the letter to the City Council. Complainant's Fact No. 8.

11. The City complains that this letter to its city council members was "circumventing and interfering" with the bargaining process and was "impermissible direct dealing, bad faith bargaining and interference" with the City's bargaining representatives. Respondent's Fact No. 4.

Conclusions of Law

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. §§ 51-101, et seq., and the Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. § 51-104b.

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

3. Summary judgment is appropriate where there is no substantial controversy as to any material fact and 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.

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

5. In an administrative proceeding before the PERB, the charging party has the burden of proof by a preponderance of the evidence as to the factual issues raised in its unfair labor practice charge. 11 O.S. § 51-104b(C); OAC 585:2-7-12.

6. The charging party has established that the Union, through the letter of June 17, 2008 to the members of the City Council, did bypass the City's bargaining representatives on matters subject to collective bargaining and did improperly deal directly with the City Council members in violation of 11 O.S. § 51-102 (6b)(3).

7. The Union's Motion for Summary Judgment is denied and the City's Cross-Motion for Summary Judgment is granted.

8. The Board concludes that the Union's circumvention of the City's designated bargaining representative on matters subject to bargaining does rise to the level of bad faith bargaining in violation of 11 O.S. § 51-102(6b)(3) warranting this Board's issuance of a cease and desist order.

Opinion

The Unfair Labor Practice Charge filed by the City contends that the last paragraph of the Union President's letter² of the Union's President delivered to the members of the City Council circumvented and interfered with the City's bargaining representatives and was an attempt to negotiate directly with the members of the City Council. The City alleges that this action by the Union constitutes impermissible direct dealing, bad faith bargaining and interference with the City's appointed bargaining

² The final paragraph of the Union's letter is quoted at Finding of Fact No. 8, *infra*.

representatives and are unfair labor practices in violation of FPAA, specifically 11 O.S. § 51-102(6b)(2) and (3).³

The Union argues that the delivery of the letter is a protected activity under *IAFF, Local 2095 v. City of Stillwater*, PERB Case No. 225 (1992), and is also protected under 11 O.S. § 22-101.1 and the Oklahoma and United States Constitutions.

The Board first considers *Stillwater*. In *Stillwater*, this Board held that an employer may lawfully communicate directly with members of a bargaining unit in the following circumstances:

- a) to communicate the status of negotiations;
- b) to explain positions previously advanced by the employer to the union, either at the bargaining table or in connection with the disposition of a grievance;
- c) to refute inflammatory charges openly made by the union;
- d) to criticize bargaining strategy and certain related tactics of the union leadership which were the asserted reason for an inability to reach an agreement;
- e) to explain positions taken by the parties during the course of a grievance solution.

The City concedes that the bulk of the letter is consistent with the parameters established in *Stillwater* and, thus, is protected communication from the Union to the members of the City Council. The City, however, argues that the final paragraph of the letter steps over the boundary articulated in *Stillwater*. We agree.

³ The Board does not address the City's arguments that the letter violated the written Ground Rules of the parties or that the letter interfered with the selection of the City's representatives for the purposes of collective bargaining in violation of 51 O.S. § 51-102(6b)(2). Instead, the Board resolves the charge on the basis of the "direct dealing" allegation. Additionally, the Board questions whether there is sufficient evidence of "interfering" with the City's selection of representatives to warrant summary judgment on this issue.

This Board determined in *IAFF, Local 2067 v. City of Norman*, PERB Case No. 424 (2006), that city management engaged in impermissible direct dealing when it communicated directly with union members regarding potential cost savings while collective bargaining negotiations were ongoing.⁴ The Board held in *Norman* that this attempt by the employer to bypass the bargaining representative in conducting contract negotiations constituted improper direct dealing. The same rationale and result apply in this case. Here, the Union bypassed the City's bargaining representatives and directly communicated its proposal to the City Council in an attempt to reach agreement.

The Board next considers other defenses raised by the Union. The Union asserts that 11 O.S. § 22-101.1 allows municipal employees "to attend and express their views at city council meetings" and, therefore, the letter is permissible communication. The Board addressed this issue in *City of Okmulgee v. IAFF, Local 2829*, PERB Case No. 267 (1994), acknowledging that employees are permitted to appear and speak at city council meetings; however, the scope of appropriate statements by a party participating in collective bargaining is determined by PERB's decision in *Stillwater*. As stated above, the final paragraph of the Union's letter extended beyond the *Stillwater* safe harbor by attempting to negotiate a collective bargaining agreement directly with the City Council. The Union's constitutional arguments are also unavailing under the circumstances presented here.

The final paragraph of the Union's letter delivered to the members of the City Council constitutes direct dealing with the City Council in an attempt to reach an

⁴ The duty to bargain in good faith to reach agreement permeates and extends through the entire process. *FOP Local 265 v. City of Choctaw*, 1996 OK 78, ¶ 10, 933 P.2d 261, 265; *IAFF Local 2479 v. City of Ponca City*, PERB Case No. 377 (2002) (dissent).

agreement and constitutes bad faith bargaining, resulting in an unfair labor practice under the FPAA.

Dated: June 10, 2009.



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

International Association of Fire Fighters, Local 1882, 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 bargaining in bad faith by circumventing the designated bargaining representatives of the City of Lawton and dealing directly with the members of the City of Lawton's City Council, in violation of 11 O.S § 51-102(6b)(3).

Dated: June 10, 2009



Craig W. Hoster, Chair
Public Employees Relations Board