



arbitration. The Union responded that the Board should schedule this case for hearing on the unilateral change/waiver of bargaining issue and restate the proper standard by which said waivers should be judged.

The issue of whether the Union waived the City's duty to bargain and, therefore, the management rights clause prevails is often an issue in municipal labor arbitration in Oklahoma, and the Board has previously stated that the Union's waiver of the City's duty to bargain in such a case must be "clear and unmistakable". *FOP, Lodge 125 v. City of Guymon*, PERB Case No. 329 (1996), p. 4 (citing *IAFF Local 2567 v. City of Jenks*, PERB Case No. 211 (1990)). The Board also addressed the elements required to make a "past practice" binding on the parties in *FOP, Lodge 127 v. City of Midwest City*, PERB Case No. 375 (2001). No reason now exists for the Board to reconsider or modify these standards. The Board is, however, authorized to clarify these standards if the need arises. *See*, OAC 585:2-3-9.

The NLRB and this Board have invoked pre-arbitration deferral in previous cases. *See*, *Collyer Insulated Wire*, 192 NLRB 837 (1971); *IAFF, Local 1628 v. City of Shawnee*, PERB Case No. 443 (2007); *FOP v. City of Midwest City*, PERB Case No. 214 (1990). The NLRB and this Board have also utilized post-arbitration deferral. *See*, *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955); *City of Ardmore v. FOP, Lodge 108*, PERB Case No. 379 (2001); *Int'l Fire Fighters Ass'n, AFL-CLO, Local 1882 v. City of Lawton*, PERB Case No. 107 (1988); *Fire Fighters Local 2551 v. City of Broken Arrow*, PERB Case No. 104 (1986). The Board's deferral policy provides that this Board will withhold making a final determination on an unfair labor practice charge when a grievance involving the same issue can be processed under the grievance/arbitration provisions of the applicable contract. This policy represents the Board's attempt to reconcile its statutory duty to prevent unfair labor practices with labor policy favoring dispute resolution through the parties'

contractual grievance procedure. While the charge is deferred, the Board may monitor the processing of the grievance and, under certain circumstances, may resume processing the charge.

The Board, having reviewed the motion and Complainant's response and having heard the arguments of the parties and being fully advised, finds that Respondent's Motion to Dismiss should be and is hereby DENIED, that Respondent's Motion for Pre-Arbitration Deferral should be and is hereby GRANTED, and that Complainant's Application for Extension of Discovery Deadline should be and is hereby GRANTED. The Board retains jurisdiction to adjudicate any remaining issues. No scheduling order will be entered at this time.

Dated: February 24, 2009



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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.