

**BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA**

AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL)
EMPLOYEES LOCAL 2875,)
)
Complainant,)
)
v.)
)
CITY OF NORMAN and JOHN)
BOWMAN,)
)
Respondents.)

PERB No. 2010-PPC-018

FILED
MAY 12 2011
Public Employees Relations
Board

**ORDER GRANTING UNION'S MOTION FOR SUMMARY JUDGMENT IN PART AS
TO RESPONDENT CITY OF NORMAN**

This matter came on for hearing before the Public Employees Relations Board (the "Board") meeting in a Regular Meeting on the 10th day of March, 2011, at 9:00 a.m., in the Oklahoma Department of Agriculture, Agriculture Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, on the following motions: (1) Complainant's Motion for Summary Judgment filed by The American Federation of State, County and Municipal Employees, Local 2875 (the "Complainant" or "AFSCME"), on November 22, 2010; and, (2) Respondents' Motion for Summary Judgment and Brief filed by the City of Norman (sometimes referred to herein individually as the "City") and John Bowman (sometimes referred to herein individually as "Bowman") (the City and Bowman referred to collectively herein as the "Respondents") on November 22, 2010. The Complainant appeared by and through its attorneys James R. Moore and Jarrod A. Leaman. The Respondents appeared by and through their attorney Tony Puckett. No proposed findings of fact were submitted to the Board by either party to these proceedings.

The alleged prohibited practice in this matter occurred on June 25, 2010, with the prohibited practice charge being filed by the Complainant herein on July 13, 2010, alleging that the Respondents violated the Sections 51-208(A), (B)(1), (B)(2) and (B)(5) of the Oklahoma Municipal Employees Collective Bargaining Act ("MECBA"), 11 O.S. 51-200 through 11 O.S. 51-220.

The Board, having reviewed the written motions filed herein and having heard the arguments of counsel and otherwise being fully apprised of this matter, makes the following findings of fact:

FINDINGS OF FACT

It is the finding of the Board by a preponderance of the evidence that there is no substantial controversy as to the following facts or issues:

1. The City is a municipality in the State of Oklahoma, as defined in 11 O.S. § 1-102 with a population in excess of thirty-five (35,000) persons and is a "municipal employer" as that term is defined in 11 O.S. §51-202 (12).

2. AFSCME was recognized as the exclusive bargaining representative of its general employees by the City as the municipal employer on December 31, 2004, as provided in 11 O.S. §51-202(6) and AFSCME is the "exclusive bargaining representative" of the City's general employees as that term is defined in 11 O.S. §51-202(6).

3. The City and AFSCME entered into a collective bargaining agreement (the "CBA") dated October 31, 2008, with an effective date of July 1, 2008, and a termination date of June 30, 2010. Exhibit A, Respondents' Motion for Summary Judgment (CBA Art. 36, Sec. 1(a)).

4. AFSCME has been the collective bargaining agent for the eligible municipal employees of Norman since 1975. Complainant's Undisputed Material Fact No. 1.

5. Henry Baskeyville is employed by the City of Norman. He is an animal welfare officer. Complainant's Undisputed Material Fact No. 2.

6. Mr. Baskeyfield is the elected AFSCME president and has served continuously in that capacity for well over ten years. Complainant's Undisputed Material Fact No. 3.

7. Approximately ten years ago, President Baskeyfield began carrying a cell phone to conduct union business during the workday. That business many times involves necessary contacts with City management employees. This cell phone belongs to AFSCME. Complainant's Undisputed Material Fact No. 4.

8. On April 5, 2006, City issued a memorandum (the "April 5, 2006 Memorandum") encouraging employees to limit personal phone calls to break and meal times. Complainant's Undisputed Fact No. 5.

9. President Baskeyfield uses his cell phone during working hours approximately 20 to 30 minutes per week for AFSCME business, which often includes contact with City management, including Human Resources Director Gala Hicks. Complainant's Undisputed Material Fact No. 6.

10. Prior to June 25, 2010, the City never objected to President Baskeyfield's cell phone use during working hours for union business. Complainant's Undisputed Material Fact No. 7.

11. On June 25, 2010, City issued a memorandum which provided, "effective immediately, you [Baskeyfield] are not to carry that [cellular] telephone with you in the or in the city vehicle during working hours." Complainant's Undisputed Material Fact No. 8.

12. City did not bargain over the changes in Union phone usage included in the June 25, 2010 memorandum, and AFSCME did not waive the City's obligation to bargain over the change in cell phone policy for the union president. Complainant's Undisputed Material Fact No. 9.

13. To date (March 10, 2011), City has never requested bargaining over the union cell

phone. Complainant's Undisputed Material Fact No. 12.

14. President Baskeyfield's cell phone use is an established past practice. Complainant's Undisputed Material Fact No. 13.

15. The parties have been bargaining for a CBA for fiscal year 2010-2011 since January of 2011. In June, 2010, when the changes were made, City and AFSCME were still engaged in collective bargaining for fiscal year 2010-2011. Complainant's Undisputed Material Fact No. 14, in part.

16. John Bowman, a retired Norman police officer, became Supervisor of the Animal Welfare Division of the Norman Police Department in May 2009; Bowman supervises five Animal Welfare Officers. Respondents' Undisputed Fact No. 2.

17. The Animal Welfare Officers in the Animal Welfare Division are in the bargaining unit covered by the AFSCME CBA. Respondents' Undisputed Fact No. 4, in part.

18. Bowman was acting within the scope of his duties as Animal Welfare Supervisor when Bowman issued the June 25, 2010 memo to Baskeyfield. Respondents' Undisputed Fact No. 26, in part.

CONCLUSIONS OF LAW

The Board concludes as a matter of law as follows:

1. This matter is governed by the provisions of the Oklahoma Municipal Employees Collective Bargaining Act ("MECBA"), 11 O.S. 51-200 through 11 O.S. 51-220 and the Board has jurisdiction over the parties and the subject matter of this complaint pursuant to 11 O.S. §§51-202 -51-204, inclusive.

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

in accordance with the provisions of the Oklahoma Open Meeting Act, 25 O.S. §§ 301 et seq.

3. The burden of proof in this matter is a preponderance of the evidence pursuant to OAC 585: 2-7-12.

4. The Board is empowered to prevent any person, including exclusive bargaining representatives and municipal employers, from engaging in any prohibited practice. 11 O.S. §51-208.

5. The Complainant, in asserting a violation(s) of MECBA, 11 O.S. §§ 51-200 et seq., has the burden of proving the allegations of the commission of prohibited practice(s) by a preponderance of the evidence. OAC 585: 2-7-12.

6. "It shall be a prohibited practice for any municipal employer or exclusive bargaining representative to refuse to negotiate in good faith with respect to the scope of negotiations as defined in Section 8 of this act." 11 O.S. §51-208(A).

7. "It shall be a prohibited practice for a municipal employer, its designated representatives, or its supervisors to: (1) Interfere with, restrain or coerce municipal employees in the exercise of rights granted by this act; (2) Dominate or interfere in the administration of any employee organization; ... (5) Refuse to negotiate collectively with representatives of any employee organization which is an exclusive bargaining representative as required in this act;..." 11 O.S. §51-208 (1), (2) and (5).

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.

OPINION

It is the finding of the Board as follows: .

An event(s) alleged to have occurred on a date(s) past or beyond that or those listed by a charging party in its written statement of facts constituting a prohibited practice charge such as that alleged by the Complainant in this case to have occurred on July 13, 2010 (*See* Complainant's Motion for Summary Judgment, alleged Undisputed Facts No. 10, 11 and 14 and Exhibit 4, 7/13/10 Memorandum), was not relevant as to whether or not an event(s) occurred on an earlier date(s) such as that alleged to have occurred in this case on June 25, 2010, and accordingly was not considered by the Public Employees Relations Board as part of this case.

Pursuant to OAC 585: 2-7-12, the Board finds that upon a preponderance of the evidence, that the Complainant has failed to meet its burden of proof as to the Respondent John Bowman and the Respondent John Bowman has not engaged in any prohibited practice.

Because no substantial controversy exists as to a material fact and the Respondent John Bowman is entitled to judgment as a matter of law, the Respondents' motion for summary judgment in part as to Respondent John Bowman should be and is hereby GRANTED and the Complainant's motion for summary judgment in part as to Respondent John Bowman should be and hereby is DENIED.

Further, because no substantial controversy exists as to a material fact and the Complainant is entitled to judgment as a matter of law as to the Respondent City of Norman, the Complainant's motion for summary judgment in part should be and is hereby GRANTED as to the Respondent City of Norman, and the Respondents' motion for summary judgment as to the Respondent City of Norman should be and hereby is DENIED.

CEASE AND DESIST ORDER

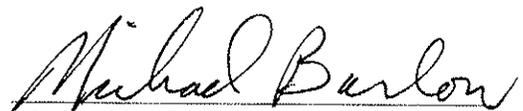
It is ORDERED that the Respondent City of Norman committed a prohibited practice by not

engaging in collective bargaining with the Complainant and the Respondent City of Norman shall be and hereby expressly is prohibited from modifying its April 5, 2006 Memorandum without engaging in collective bargaining with the Complainant.

Because the Complainant's motion for summary judgment was granted in part as to the Respondent City of Norman, it is hereby ORDERED that the Respondent City of Norman shall CEASE AND DESIST from modifying its April 5, 2006 Memorandum without engaging in collective bargaining with the Complainant.

IT IS SO ORDERED.

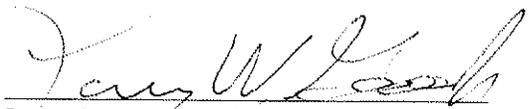
Dated this 12 day of May, 2011.



Michael Barlow, Chairman
Public Employees Relations Board



Max Speegle, Member
Public Employees Relations Board



Larry W. Gooch, Member
Public Employees Relations Board