

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

**FILED**

MAY 12 2011

Public Employees Relations  
Board

INTERNATIONAL ASSOCIATION )  
OF FIRE FIGHTERS, LOCAL 2284 )  
 )  
Complainant/Counter- )  
Respondent, )  
 )  
v. )  
 )  
CITY OF McALESTER, )  
 )  
Respondent/Counter- )  
Complainant. )

PERB No. 2010-ULPC-497  
PERB No. 2010-ULPC-497CC

**ORDER DENYING TWO COMPETING UNFAIR LABOR PRACTICE CHARGES**

This matter came on for hearing before the Public Employees Relations Board (the "Board") meeting in a Regular Meeting on the 14<sup>th</sup> day of April, 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 unfair labor practice charges: (1) Unfair Labor Practice Charge Case No. 2010-ULPC-497 (the "Charge") filed by International Association of Fire Fighters, Local 2284, as the Complainant (the "IAFF") on December 10, 2010, against the Respondent City of McAlester (the "City" or "McAlester"); and (2) Unfair Labor Practice Charge Case No. 2010-ULPC-497CC (the "Counter-Charge") filed by the Respondent City of McAlester, as the Counter-Complainant against the Counter-Respondent IAFF on December 22, 2010. The Complainant IAFF appeared by and through its attorney Steven R. Hickman. The Respondent City appeared by and through its attorney Charles S. Plumb.

The Charge alleges that the City committed an unfair labor practice by failing to collectively

bargain in good faith with the IAFF in connection with negotiations for new contract terms for fiscal year 2010-2011 as required by the Oklahoma Fire and Police Arbitration Act, 11 O.S. §§ 51-102 and 51-106. The Counter-Charge alleges that the IAFF committed an unfair labor practice by failing to collectively bargain in good faith with the City in connection with negotiations for new contract terms for fiscal year 2010-2011 as required by 11 O.S. §§ 51-102(2), 51-102(6b)(3) and 51-108 (the Charge and the Counter-Charge are herein collectively referred to as the "ULPs").

Pursuant to PERB Rule OAC 585: 2-7-14(8) and following the April 14, 2011, Regular Meeting of the Board at which the full evidentiary hearing in this matter was conducted and concluded, the IAFF filed its Re-filed Statement of Disputed Facts on April 29, 2011, and the City filed its Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) on April 29, 2011.

### **FINDINGS OF FACT**

The Board, having reviewed the written briefs filed herein, having held a full evidentiary hearing herein with live testimony from sworn witnesses and having heard the arguments of counsel and otherwise being fully apprised of this matter, makes the following findings of fact:

It is the finding of the Board by a preponderance of the testimony taken and 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 "corporate authorities" as that term is defined in 11 O.S. §51-102 (2).

2. IAFF is the certified bargaining representative for firefighters of McAlester. IAFF timely notified McAlester of its intent to negotiate new contract terms for Fiscal Year (FY) 2010-2011.

Final Pre-Hearing Order Stipulated Facts 1 and 2; City's Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) No. 1, in part.

3. As the certified bargaining representative for firefighters of McAlester, the IAFF is a "bargaining agent" as that term is defined in 11 O.S. §51-102 (4).

4. McAlester's fiscal year ends on June 30. As of March 1, 2010, the IAFF and McAlester had been unable to reach agreement on a 2009-10 collective bargaining agreement ("CBA"). Prior to March, neither party had engaged in any discussion regarding a 2010-11 CBA. ([Testimony of] P. Stasiak, R. Beams, M. Love.) City's Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) No. 3.

5. IAFF and McAlester met on March 3, 2010 to continue their efforts to reach agreement on a 2009-10 CBA. The IAFF's negotiating team included six members, with Rick Beams acting as the lead negotiator. Pete Stasiak, City Manager, and Margaret McMorrow-Love represented the City, with Love acting as the lead negotiator on behalf of McAlester. At the March 3, 2010 meeting, after discussing the 2009-10 CBA, the IAFF presented its first proposal for a 2010-11 CBA. (IAFF Ex. 2.) Because the parties had not yet reached agreement on 2009-10 CBA and because many of the IAFF's 2010-11 proposals were premised on a 2009-10 agreement, IAFF and McAlester agreed the parties would focus on reaching agreement on 2009-10 CBA, before discussing the 2010-11 CBA. ([Testimony of] P. Stasiak, R. Beams, M. Love, IAFF Ex. 2.) City's Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) No. 4.

6. The parties first met for negotiations on March 3, 2010. IAFF made proposals at that meeting, but McAlester did not; another meeting was scheduled for April 4, 2010. Final Pre-Hearing Order Stipulated Fact 3.

7. The April meeting was cancelled due to illness. Final Pre-Hearing Order Stipulated

Fact 4.

8. On April 5, 2010, IAFF invoked interest arbitration. Final Pre-Hearing Order Stipulated Fact 5.

9. No additional "face-to-face" meetings were scheduled for negotiation until November, 2010. The November 12, 2010 face-to-face meeting was cancelled. Final Pre-Hearing Order Stipulated Fact 6.

10. On December 2, 2010, McAlester sent a proposal to IAFF. Final Pre-Hearing Order Stipulated Fact 7.

11. To the limited extent that the City's Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) were listed above as findings of fact, the City's Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) are accepted as follows: No. 1 (in part), 3 and 4. All other items listed in the City's Re-filed Statement of Disputed Facts (labeled as Proposed Statement of Facts) are expressly rejected as are all items listed in Complainant/Counter-Respondent's Re-filed Statement of Disputed Facts.

### **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 Law, 11 O.S. §§ 51-101 et seq. and the Board has jurisdiction over the parties and the subject matter of the Charge and the Counter-Charge pursuant to 11 O.S. §51-104b.

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 was 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 testimony taken pursuant to 11 O.S. §51-104b (C) and a preponderance of the evidence pursuant to OAC 585: 2-7-12.

4. The Board is empowered to prevent any person, including bargaining agents and corporate authorities, from engaging in any unfair labor practice. 11 O.S. §51-104b (A).

5. The IAFF as a Complainant, in asserting a violation of 11 O.S. §§ 51-101 et seq., has the burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. §51-104b (C) and OAC 585: 2-7-12.

6. The City as a Counter-Complainant, in asserting a violation of 11 O.S. §§ 51-101 et seq., has the burden of proving the allegations of unfair labor practice in the form of a counter-charge by a preponderance of the evidence. 11 O.S. §51-104b (C) and OAC 585: 2-7-12.

7. In determining if a party has met its statutory duty to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603, 1984 WL 36775 (NLRB 1984), *Fraternal Order of Police, Lodge 122 v. City of Norman*, PERB Case No. 421, Conclusion of Law ¶ 10.

8. The term "collective bargaining" as used in the Fire and Police Arbitration Law, 11 O.S. §§ 51-101 et seq., is defined in 11 O.S. §51-102(5) as follows:

"Collective bargaining" shall mean the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process; to confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question

arising thereunder; and to execute a written contract incorporating any agreement reached if requested by either party. Such obligation shall not, however, compel either party to agree to a proposal or require the making of a concession.

9. The term “collective bargaining” as used in the Fire and Police Arbitration Law, 11 O.S. §§ 51-101 et seq., is defined in 11 O.S. §51-102(5) in pertinent part as follows:

**“Collective bargaining” shall mean the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process...”** (emphasis added).

As the definition of “collective bargaining” in 11 O.S. §51-102(5) includes the plural versions of the words “time” and “meeting”, the term “collective bargaining” as used in the Fire and Police Arbitration Law, 11 O.S. §§ 51-101 et seq., means in part the performance of the mutual obligation of the parties to meet at multiple times and to hold multiple meetings, not to meet only one time and hold only one meeting.

### **OPINION**

It is the finding of the Board as follows:

The mutual obligation of the parties is to meet at multiple times and to hold multiple meetings as required as “collective bargaining” under 11 O.S. §51-102(5).

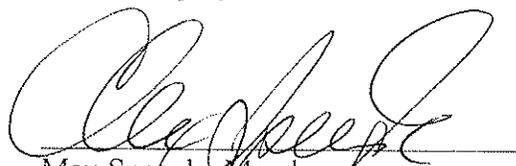
Title 11, Oklahoma Statutes, Section 51-102 (5) requires that a plurality of meetings be held before arbitration is invoked. The parties have both failed in the duty to bargain in good faith

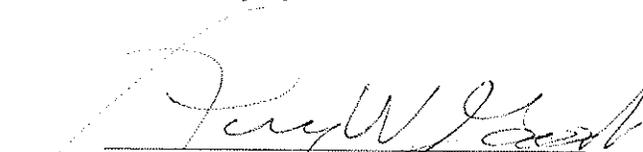
and have technically failed to follow the statute (11 O.S. §51-102(5)) in that only one meeting was held before invoking the arbitration process. Both ULPs are denied and the parties are back in their positions on March 3, 2010.

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