

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

CITY OF LAWTON, Oklahoma,	)	
	)	
Complainant,	)	
	)	
v.	)	PERB No. 2009-PPC-014
	)	
AMERICAN FEDERATION OF STATE,	)	
COUNTY, AND MUNICIPAL	)	
EMPLOYEES, LOCAL 3894,	)	
	)	
Respondent.	)	

**FINAL ORDER GRANTING SUMMARY JUDGMENT**

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 8<sup>th</sup> day of April, 2010, on the Prohibited Practice Charge (PPC) of Complainant City of Lawton, Oklahoma ("City"). The City appeared by and through its attorney, Timothy E. Wilson. The Respondent American Federation of State, County and Municipal Employees, Local 3894 ("Union" or "AFSCME"), appeared by and through its attorney, James R. Moore.

The specific matters before the Board at this time are the cross motions for summary judgment filed by each party. The Board received briefs from the parties, heard argument and finds as follows:

**FINDINGS OF FACT**

1. AFSCME, Local 3894 and the City of Lawton ("City") were parties to a Collective Bargaining Agreement for Fiscal Year 2008-2009.
2. The parties' FY 2008-2009 CBA contained a Management Rights clause.
3. In April 2009, the parties began bargaining for a new contract for FY 2009-2010.
4. No Ground Rules were agreed to during the FY 2009-2010 negotiation sessions.

5. For FY 2009-2010 collective bargaining, proposals were made by both parties to change management rights from the prior contract. The parties' original offers on management rights were similar to those in the last agreement with the exception of changes regarding a just cause standard and changes in policies. AFSCME made a counter proposal on management rights as late as August 27, 2009 that was similar to the prior agreement with the exception of the additional just cause language.

6. On July 30, 2009, AFSCME President Al Barber became aware of a decision in *American Federation of State, County and Municipal Employees v. City of Edmond*, FMCS No. 080513-56087-8, issued June 30, 2009, which was at the time the first and only interpretation in any forum of Management Rights as regulated by the Municipal Employees Collective Bargaining Act (MECBA"), 11 O.S. §51-200 *et seq.*

7. President Barber gave a copy of the *Edmond* decision to Lawton City Manager Larry Mitchell on July 30, 2009.

8. The AFSCME bargaining team eventually met sometime after submitting its August 27, 2009 proposal on management rights to consider a change in the proposal. At the meeting, the bargaining team reviewed the *Edmond* decision and authorized AFSCME Chief Negotiator Zach Ramsey to withdraw its August 27, 2009 proposal and substitute it with management rights identical to MECBA, Section 51-205, as interpreted in the *Edmond* Award.

9. At the next bargaining session, on October 1, 2009, AFSCME presented the City a revised management rights article identical to the *Edmond* Award and the MECBA, Section 51-205.

10. The change in AFSCME's proposal was based on the *Edmond* Award interpreting the statute.

11. On October 9, November 4 and November 5, 2009, the parties participated in voluntary mediation to attempt settlement of some of the open articles. The management rights proposals were not addressed during this mediation, nor were several other unresolved articles.

12. AFSCME asserted its reason for withdrawing its prior proposal on management rights: at the time the first and only interpretation of Management Rights, as defined by the Municipal Employees Collective Bargaining Act, had been issued in *Edmond* and AFSCME based its October 1, 2009 management rights proposal on that interpretation.

13. City filed a Prohibited Practice Charge alleging illegal regressive bargaining by the Union. City alleged that when the Union withdrew the article on which the parties had been bargaining and substituted one that had most of the prior proposal deleted, that constituted regressive bargaining in violation of the MECBA.

#### CONCLUSIONS OF LAW

The Board finds:

1. The Union's October 1, 2009 management rights proposal was a regressive proposal, but it was done in good faith as a result of a significant change of circumstances. The change in circumstances was the issuance of the *Edmond* decision during bargaining.

2. The Union's Management Rights proposal did not frustrate the collective bargaining process.

3. The Union did not violate any provision of the MECBA with the October 1, 2009 change in its management rights proposal.

4. Summary judgment is GRANTED to the Respondent Union and the City's Prohibited Practice Charge is hereby DISMISSED.

Dated: 9-27-10

A handwritten signature in cursive script that reads "Michael Barlow". The signature is written in black ink and is positioned above a horizontal line.

Michael Barlow, Chairman  
Public Employees Relations Board