

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

SEP 17 2010

Public Employees Relations
Board

AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL)
EMPLOYEES, LOCAL 1180)
(Administrative Techs (ATs) and)
Office Techs OTs),)
)
Complainant) Case No. M1410
)
v.)
)
THE CITY OF TULSA,)
)
Respondent.)

FINAL ORDER ON UNIT CLARIFICATION

INTRODUCTION

This matter was heard by the Public Employees Relations Board (the Board) on December 9, 2009. This matter consisted of a determination whether specific employees are included in a particular bargaining unit of non-uniformed employees who work for the City of Tulsa(Tulsa) as Administrative or Office Techs (ATs and OTs) represented by the American Federation of State, County and Municipal Employees, Local 1180, (AFSCME) Tulsa was represented by Tony G. Puckett. AFSCME was represented by Sue Wycoff.

On December 9, 2009, the Board heard the issue whether certain employees presented by AFSCME to be in the unit are properly included in light of objection to their inclusion by Tulsa. This argument followed extensive briefing, a hearing on April 9, 2009 and a previous order of this Board dated May 26, 2009 of which this Board takes judicial notice.

At the time of this hearing AFSCME and Tulsa had agreed there were twelve (12) disputed AT positions which will be addressed in this Order on Unit Clarification.

The Board consisted of Michael Barlow, Chairman, Larry Gooch, member, and Max Speegle, member. The Board, being apprised of the prior Order of May 26, 2009, having reviewed the pleadings and documents and factual evidence, heard the arguments of the parties as to the legal standard previously articulated by the Board in *AFSCME v. City of Lawton, PERB, Case No. M1400 (Lawton)* and being fully advised, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT ON UNIT CLARIFICATION

1. Tulsa and the AFSCME agreed that a certain OT employee was not a member of the unit. The twelve (12) ATs who remain disputed are the subjects of this Order. Two other employees are addressed in the Order of May 26, 2009.

2. As to the 12 employees that remained in dispute, the parties cited *Lawton* for the propositions that an employee will be excluded from the unit only if he or she is a “supervisor” or “acts in a confidential capacity to an individual who formulates or executes policy in the area of labor relations.”

3. The evidence demonstrated that employees Weller, O’Neal and Tiger act in a supervisory capacity and effectuate policy in the area of labor relations and are excluded from the unit. See *Lawton*.

4. There was insufficient factual evidence that positions under Weller, O’Neal and Tiger acted in a confidential capacity. The duties as payroll clerks did not satisfy the requirements for designation as an employee acting in a confidential capacity. See *Lawton*.

5. Challenged employees under supervisors Price, Reel and Driscoll or Coles (Driscoll and Coles having occupied the same position) were not acting in a confidential capacity to an individual who formulates or effectuates policy in the area of labor relations and thus are

members of the unit. See *Lawton*.

CONCLUSIONS OF LAW ON UNIT CLARIFICATION

1. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2009 §§ 51-200 et. seq.

2. Tulsa has the burden of showing that a disputed employee is a supervisor or acts in a confidential capacity to an individual who formulates or effectuates policy in the area of labor relations and thus is exempt as a confidential employee pursuant to 11 O.S. 2009 §51-203. See *Lawton*.

3. To the extent the Board's interpretation of the factors to be considered in determining confidential capacity is inconsistent with the language of the case quoted in *Lawton, U. S. Dept. Of Labor Washington. D.C. and AFGE Local 12, AFL-CIO*, 59 FLRA 853, 855 (2004) this board's interpretation is controlling over any inconsistent interpretation of the case cited in *Lawton*. Specifically, it is this Board's interpretation that the factors are to be considered individually, given appropriate weight and the absence of one or more factors does not preclude the determination that an employee is acting in a confidential capacity to decision makers.

4. Of the twelve disputed employees, Tulsa met its burden of proof that the disputed employees are exempt only as to supervisors Weller, O'Neal and Tiger under the authority and test of *Lawton*.

5. The Board concludes that the other nine (9) disputed employees as identified by AFSCME and Tulsa are not employees acting in a confidential capacity and are members of the collective bargaining unit, AFSCME, Local 1180.

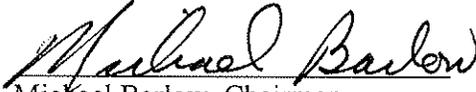
ORDER

Based on the above Findings of Fact and Conclusions of Law it is hereby

ORDERED that the nine (9) disputed employees as those employees were identified by AFSCME and Tulsa are members of the collective bargaining unit; and it is further

ORDERED that supervisors Weller, O'Neal and Tiger are exempt from membership in the collective bargaining unit, AFSCME, Local 1180.

Dated: 9-17-10


Michael Barlow, Chairman
Public Employees Relations Board