

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

SEP 17 2010

Public Employees Relations
Board

INTERNATIONAL ASSOCIATION OF)
FIRE FIGHTERS, LOCAL 176)
)
Complainant,)
)
v.) Case 2009-ULPC-480
)
CITY OF TULSA)
)
Respondent.)

**FINAL ORDER GRANTING LOCAL 176'S MOTION FOR SUMMARY JUDGMENT
AND FINAL ORDER TO CEASE AND DESIST**

This matter was heard before the Public Employees Relations Board ("Board") on June 10, 2010 on Motion for Summary Judgment by the International Association of Firefighters, Local 176.

Complainant, International Association of Fire Fighters, Local 176 ("Local 176") appeared by its attorney, Steven R. Hickman. Respondent City of Tulsa, Oklahoma ("Tulsa") appeared by and through its attorney, Steven Cousparis.

Local 176 filed a charge asserting that Tulsa committed an unfair labor practice in failing to arbitrate the issue of the alleged termination of Tim Cooper.

Local 176 moved for Summary Judgment as a matter of law based on prior Board decisions stating "Arbitration of all contractual duties or actions of parties to the contract under the FPAA is mandated to offset the prohibition against strikes by...firefighters" and "[It is] [t]he duty of the City to discuss grievances...in good faith pursuant to 11 O.S. 2001 §51-102(6a)(5)...to provide for final and binding arbitration of employee grievances."

IAFF, Local 2581 v. City of Seminole ("Seminole"), PERB Case No. 390 (2002).

Tulsa responded. Argument was heard by the Board.

FINDINGS OF FACT

Based upon the statements filed in support of and in opposition to the motion, the Board finds that there is no substantial controversy as to the following material facts or issues:

1. Local No. 176 and Tulsa had a collective bargaining agreement ("CBA") in effect for the 2008-2009 fiscal year. (Union's Mot. Summ. J., Affidavit of Miller, Exhibit A).
2. 11 O.S. §51-111 requires every CBA to contain a clause establishing arbitration procedures for the immediate and speedy resolution of any issues. The CBA in effect here contained such a clause.
3. In the instant case, an issue arose concerning the alleged termination of a member of the Local 176.
4. Tulsa refused to take the issue to arbitration.

CONCLUSIONS OF LAW

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001, Supp. 2009, §§ 51-101, et seq. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. Supp 2009, § 51-104b.
2. The hearing and procedures are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, Supp 2009, §§ 308a, et seq.
3. The Board is empowered to prevent any person, including corporate authorities, from engaging in any unfair labor practice. 11 O.S. Supp 2009, § 51-104b (A).

4. "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.

5. In the instant case, the CBA, articles 7.2-7.14, outlines the legally required arbitration process as agreed upon by both parties. It specifically states: "If the grievance is unresolved [after following guidelines set-forth in article 7.1], Union may request in writing within ten (10) calendar days that the grievance be submitted to impartial arbitration." (CBA, Art. 7.2, p. 4).

6. This CBA Article aligns with 11 O.S. §51-106: "...if within 30 days [parties are] unable to reach an agreement...all issues shall be submitted to arbitration, upon request of either party."

7. Refusing to submit an issue or participate in arbitration is a violation of 11 O.S. 2001 §51-102(6a) (5): 6. "Unfair labor practices" for the purpose of this article shall be deemed to include but not be limited to the following acts and conduct: 6a. Action by corporate authorities: (5) refusing to bargain collectively or discuss grievances in good faith with the designated bargaining agent with respect to any issue coming within the purview of this article."

8. Under the articles of the CBA and the statutory provisions of the FPAA, Tulsa's refusal to arbitrate the issue is an unfair labor practice.

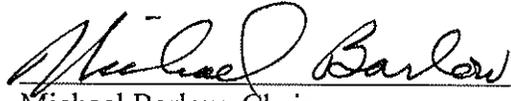
9. Because no substantial controversy exists as to a material fact and Local 176 is entitled to judgment as a matter of law, Local 176's motion for Summary Judgment is hereby, GRANTED.

CEASE AND DESIST ORDER

Because Local 176's Motion for Summary Judgment is GRANTED, it is hereby ORDERED that Tulsa shall cease and desist from the unfair labor practice of refusing to arbitrate the issue of the alleged termination of Tim Cooper; and it is further

ORDERED that Tulsa committed an unfair labor practice in refusing to arbitrate the alleged termination of Tim Cooper.

Dated: 9-17-10



Michael Barlow, Chair
Public Employees Relations Board