

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

FILED

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, LOCAL 2041,)
)
Complainant,)
)
v.)
)
CITY OF CHICKASHA,)
)
Respondent.)

SEP 17 2010
Public Employees Relations
Board

Case No. 2010-ULPC-492

**FINAL ORDER DENYING MOTION FOR SUMMARY JUDGMENT OF THE
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2041 AND
GRANTING CROSS MOTION FOR SUMMARY JUDGMENT OF THE CITY OF
CHICKASHA**

On June 10, 2010, the Public Employee Relations Board (“PERB”) heard arguments for Summary Judgment from the Complainant, International Association of Firefighters, Local 2041 (“Local 2041”) and a Cross Motion for Summary Judgment by the Respondent, City of Chickasha (“Chickasha”). Local 2041 appeared by and through its attorney, Steven R. Hickman. The City appeared by and through its attorney, Margaret McMorrow-Love.

Local 2047 brought this action alleging that Chickasha committed an unfair labor practice when it acted unilaterally in refusing to fill a vacancy in the Chickasha Fire Department that was created through the promotion of a firefighter to driver. Local 2041 alleges that this unilateral act was in violation of 11 O.S. 2001 § 51-102(6)(a)(5)¹ and 11 O.S.2001 § 51-111 of the Fire and Police Arbitration Act , 11 O.S. 2001 and Supp 2009 §§ 51-101 *et seq.* (the “FPAA”). It provides, in relevant part:

¹ 11 O.S. 2001 51-102(6a)(5)- Unfair labor practices shall be deemed to include, but not limited to, 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.

All...working conditions, departmental practices and manner of conducting the operation and administration of the fire departments...currently in effect on the effective date of any negotiated agreement shall be deemed a part of said agreement unless and except as modified or changed by the specific terms of such agreement.

11 O.S. 2001 § 51-111.

Local 2041 argues that it is entitled to judgment as a matter of law because Chickasha does not dispute the fact that it has refused to hire another fire fighter. Moreover, the Local 2041 alleges that, as a matter of law, Chickasha should be compelled by PERB to fill the vacancy.

In its Cross Motion for Summary Judgment, Chickasha admits that it did not fill the vacancy in the fire department but states that it is not bound to fill the position under the terms of the then existing Collective Bargaining Agreement (“CBA”). Because there is no disputed fact that Chickasha did not fill the position, Chickasha moves the PERB to grant Summary Judgment in its favor as a matter of law pursuant to 12 O.S. 2001 Rule 13.

Findings of Fact

Based upon the pleadings, documents and affidavits filed in support of the motions and argument heard by the PERB, there is no substantial controversy as to the following material facts:

1. Chickasha is, and was at all pertinent times, a municipal corporation, duly organized and existing under the laws of the State of Oklahoma.
2. IAFF, Local 2041 is the certified bargaining representative for certain fire fighters of the City of Chickasha Fire Department.
3. For many years, Chickasha and Local 2041 have entered into CBA’s pursuant to the FPAA, including a CBA for FY 2009-10.

4. In addition to the CBA, Standard Operating Guidelines (SOGs) exist for the Chickasha Fire Department.
5. In 2000, the newly appointed Fire Chief established a committee to review the SOGs and to make recommendations for changes, deletions, or additions. The then President of Local 2041, currently Chief Gibson, was a member of the Committee, along with other bargaining unit members from each of the three crews.
6. The final version of the SOGs was approved by the City Manager and Local 2041. The updated SOGs included Section 1 "Deployment and Response", which states in relevant part that "the minimum staffing standard for the department is a ten (10) person crew." Section 1 of the SOG has remained unchanged since January of 2003.
7. In the Fall of 2009, Driver Jeff Hughes resigned. Following his resignation, Daniel Teel was promoted to Driver from the rank of Fire Fighter.
8. By the Fall of 2009, Chickasha was experiencing a decline in anticipated revenues collected upon which the budget for FY 2009-10 had been based. As a result, the Chickasha City Manager implemented a temporary hiring freeze, which restricted the fire department personnel to thirty-five (35). Consequently, the City Manager did not authorize the Fire Chief to hire a new probationary Fire Fighter after Teel was promoted.
9. The Chickasha Fire Department does not have a stated policy establishing minimum department staffing.
10. On February 16, 2010, Local 2041 filed its unfair labor practice charge asserting that Chickasha failed to negotiate changes to the terms and conditions under Article 7 of the CBA and the past practices/prevailing rights under Article 24 of the CBA by reducing the fire department personnel from thirty-six (36) firefighters to thirty-five (35) firefighters.

11. In response to the City's Motion for Summary Judgment, Local 2041 filed an affidavit stating that a staffing level of 36 had been maintained. However, the affidavit was not notarized.

Conclusions of Law

As a matter of law, PERB concludes the following:

1. This matter is governed by the provisions of the FPAA, 11 O.S. 2001 Supp. 2009, §§ 51-101, et seq., and the PERB 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 and Supp. 2009, §§ 308a, et seq.
3. "Summary judgment is appropriate only where there is no substantial controversy as to any material fact and 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.
4. Local 2041 proffered an affidavit, which had not been properly notarized, stating that the Department had a past practice of maintaining thirty-six (36); even though the PERB may accept affidavits on motions for summary judgment, this unnotarized affidavit does not create a substantial controversy as to whether a staffing level of 36 was an unequivocal practice of Chickasha.
5. In FOP, *Lodge No. 193 v. City of Nichols Hills*, PERB 1988-ULPC-00160, the PERB held that for a past practice to be binding on the parties, it must be (1) unequivocal, (2) clearly enunciated and acted upon, and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by the parties.

6. Where Chickasha exercised its right, under the management rights clause of the CBA, to reduce the number of hours and assignment of employees, it does not violate any duty to bargain collectively. *City of Tulsa v. FOP, Lodge 92*, 393 F.3d 1096 (10th Cir. 2004).
7. The PERB concludes that where Chickasha did not have an express provision regarding department staffing, insufficient factual evidence of a “past practice” or “prevailing practice” which could be binding on Chickasha was provided, as a matter of law, the Union did not meet its burden in proving that Chickasha changed a mandatory subject of bargaining or commit an unfair labor practice in the matter regarding department staffing.
8. Local 2041’s Motion for Summary Judgment is DENIED and Chickasha’s Cross Motion for Summary Judgment is GRANTED.

FINAL ORDER

Because Chickasha’s Cross Motion for Summary Judgment is GRANTED, it is hereby

ORDERED that the unfair labor practice charge is DISMISSED.

Dated: 9-17-10



Michael Barlow, Chair
Public Employees Relations Board