

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

International Association of)
Firefighters, Local 2721)
(Bartlesville, Oklahoma))
AFL-CIO/CLC)
Charging Party,)
vs.) Case No. 000142-X
City of Bartlesville,)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
OPINION AND CEASE & DESIST ORDER

This matter comes on for hearing on the 22nd day of February, 1988, before the Public Employees Relations Board ("PERB") ("the Board") upon the complainant's Unfair Labor Practice ("ULP") charge. The Charging Party appeared by and through its attorney Alan Synar and the Respondent appeared by and through its attorney, Kevin Ikenberry.

Based upon the evidence presented at such hearing and the briefs submitted by counsel, the PERB has reached certain Findings of Fact and Conclusions of Law, as set out hereinbelow. Because this is an issue of substantial statewide interest, the PERB has included a discussion of the relevant legal issues and supporting rationale for its decision.

Rulings on Proposed Findings of Fact

When proposed Findings of Fact are solicited, the PERB is required to rule on them individually. 75 O.S.1981, § 312.

The submittal of the Charging Party is treated as follows:

1. Proposed Findings 1-9 and that Finding numbered 10, with the exception of the final sentence thereof have been substantially adopted by the PERB.
2. Proposed Finding 11 and the last sentence of number 10 are rejected by the PERB as being conclusions of law.

Because the Respondent City did not submit Proposed Findings of Fact, the PERB need make no comparable rulings: the City did however include a "Statement of the Case" in its brief. The "Statement of the Case" cannot be addressed individually because the asserted facts are not asserted individually. It can be said that none of the facts asserted by the City have been rejected by the PERB. Such assertions, when material and when at odds with the assertions of the Charging Party, will be addressed in the body of the opinion.

Findings of Fact

1. City of Bartlesville is a municipal corporation created pursuant to and under the Constitution and laws of the State of Oklahoma.
2. International Association of Fire Fighters, Local 2721 ("IAFF 2721"), is the duly authorized bargaining agent of the City of Bartlesville, Oklahoma.
3. The IAFF 2721 and Bartlesville entered into a collective bargaining agreement for fiscal year 1985-86.
4. Pursuant to Article III, Section 2, the agreement

became effective July 1, 1985, and remained in full force and effect until June 30, 1986.

5. On or about August 28, 1985, IAFF 2721 filed a grievance with Bartlesville alleging a violation of the agreement. This grievance regarded manning procedure, specifically the change in the minimum manning from 18 to 16 between the hours of 23:01 to 07:59, requiring the men hired back on overtime to go home at 23:00.

6. The operative facts which form the basis for the grievance filed by IAFF 2721 occurred while the agreement was in full force and effect.

7. Bartlesville has not arbitrated the grievance and notified IAFF 2721 by letter that it would not arbitrate this grievance.

8. IAFF 2721 filed an Unfair Labor Practice charge No. 00142 with the Public Employees Relations Board on October 9, 1986.

9. Subsequent thereto and pursuant to agreement, PERB Case No. 00142 was bifurcated and IAFF 2721 filed PERB Case No. 00142-X relative to this matter on January 22, 1987.

10. On or about December 22, 1987, the parties entered into a collective bargaining agreement settling all grievance and lawsuits between the parties, but which specifically reserved the matter currently before the PERB in PERB Case No. 00142-X.

Conclusions of Law

1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to 11 O.S.Supp. 1986, § 51-104b.

2. In an administrative hearing before the PERB, the Charging Party has the burden of persuasion by a preponderance of the evidence as to the factual issues raised by its ULP charge. 11 O.S.Supp. 1986, § 51-104(c). See, e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (1977); Gourley v. Board of Trustees of the South Dakota Retirement System, 289 N.W. 2d 251 (S.D. 1980). In this case the charging party has met this duty.

3. Respondent's refusal to arbitrate the grievance which is the subject matter of this suit constitutes an unfair labor practice as defined in 11 O.S. § 51-102(6)(6a)(5).

Opinion

The issue presented to this Board is whether the City's refusal, after the expiration of a collective agreement, to discuss a grievance which arose during the term of said agreement constituted an unfair labor practice under the Fire and Police Arbitration Act (FPAA), 11 O.S. §§ 51-101, et seq. The provisions of 11 O.S. § 51-102(6a)(5) define an unfair labor practice, in part:

- (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. . .

Section 51-111 of the FPAA provides in part:

. . . Every such agreement shall contain a clause establishing arbitration proceedings for the immediate and speedy dissolution and determination of any dispute which may arise involving the interpretation or application of any of the provisions of such agreement or the actions of any of the parties thereunder. In the absence of such negotiated procedure such dispute may be submitted to arbitration in accordance with the provisions of Section 51-107 through 51-110 of the title. . .

It appears clear, therefore, that the philosophy of the FPAA is to encourage arbitration of grievances by requiring inclusion of arbitration procedures in the collective agreement.

Where grievances arise under a collective bargaining agreement the duty to arbitrate such grievances does not end upon expiration of the agreement. See Nolde Bros., Inc. v. Bakery & Confections Workers Union, 430 U.S. 243, 97 S.Ct. 1067, 51 L.Ed.2d 300 (1977); See also, Federated Metals Corp. v. United Steel Workers, 648 F.2d 856 (CA 3, 1981), cert. denied, 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed.2d 474 (1981).

Violation of this duty, for the reason that the contract has expired, amounts to a refusal to discuss grievances in good faith and therefore constitutes an unfair labor practice as defined in Section 51-102(6)(a)(5). The PERB is persuaded that notwithstanding the City's evidence of other motives, the primary motivating factor in the City's refusal to arbitrate was the fact that the collective agreement had

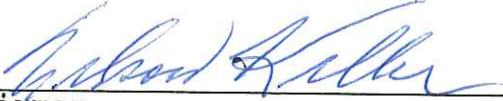
expired. Based upon the record, therefore, the PERB finds that the City's actions constitute an unfair labor practice.

The PERB notes that both parties have agreed on the record that they are prepared to arbitrate this grievance. The PERB would normally reserve judgment and defer to arbitration. However, it is apparent from the record that the parties failed to cooperate to resolve the grievance by arbitration. The PERB, therefore, in light of the factual setting of this case, will not reserve judgment in the interest of moving this matter forward to speedy resolution.

The PERB has one remaining issue before it in this case. The charging party has alleged that it is entitled to attorneys fees. The PERB reserves judgment on this issue but notes that it is unaware of any legal theory which would allow it to grant attorneys fees to the Charging Party. It is the opinion of the PERB that under Oklahoma law, which follows the "American Rule", a party is not entitled to attorney's fees unless specifically authorized by agreement or statute. Garner v. City of Tulsa, 651 P.2d 1325 (Okla. 1982). The PERB notes that the Respondent has thoroughly briefed this issue, but in the interest of fairness will allow the Charging Party an opportunity to brief the issue prior to rendering its decision. The Charging Party is required to submit a brief together with authority supporting its position within ten (10) days of the date of this order.

Failure to file said brief within the time stated will result in an order dismissing the claim for attorneys fees and costs.

Dated this 10th day of March, 1988.



Chairman

CEASE AND DESIST ORDER

The City of Bartlesville is herewith ordered to cease and desist from the date of this Order from refusing to arbitrate the grievance which is the subject matter of this dispute. The City and the Union are required to strike arbitrators within ten (10) days of the date of this Order and to proceed to arbitration.

Dated this 10th day of March, 1988.



Chairman

dp:da:PerbFFCL.IAF

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O R D E R

Pursuant to the Order of the Board dated the 10th day of March, 1988 and pursuant to representations by counsel for the Charging Party that the application for attorneys fees will not be pursued, the Charging Party's request for attorney's fees in this action is denied.

Dated this 30th day of May, 1988.


CHAIRMAN

DA.dp.Bartlesv.OR