IN THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

LOCAL 2784, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS Charging Party, vs. TOWN OF PERRY, OKLAHOMA Respondent.	)	Case No. 00103

FINDINGS OF FACT, CONCLUSION OF LAW, AND OPINION

This matter came on for hearing before the Public Employees Relations Board ("PERB" or "the Board") on the 21st day of May, 1986, on the Charging Party's unfair labor practice ("ULP") charge. The Charging Party, Local 2784, International Association of Fire Fighters (hereinafter "Local 2784" or "the Union") appeared by and through certain of its officers and Tom Riddle, Labor Consultant; the Town of Perry ("City") appeared by and through certain of its officers and its attorney, Jim Lindsey. The Board hear the testimony of witnesses and the arguments of counsel for the parties.

Since the hearing, the Board has been informed that the City is now represented by Bryce Kennedy of Enid, Oklahoma.

Two issues have been presented for determination by the PERB:

> 1) Is the City required under the Fire and Police Arbitration Act ("FPAA" or "the Act"), codified at 11 O.S. 1981, §§ 51-101 *et seq*, as amended, to execute a written, bilateral, mutually enforceable contract upon the completion of collective negotiations with the Union?

2) If the first question is answered in the affirmative, have the parties reached an agreement sufficient to trigger the duty to execute a written contract?

FINDINGS OF FACT

1. The Town of Perry, Oklahoma , is, and was at all pertinent times, a municipal corporation, duly organized and existing under the laws of the State of Oklahoma.

2. International Association of Fire Fighters, Local 2784, is, and was at all pertinent times, the duly elected and acting labor representative and bargaining agent for all Perry fire fighters except probationary employees, the Fire Chief, and the Chief's designated aide.

3. The City and the Union commenced bargaining for a collective bargaining agreement for the 1986-1987 fiscal year in March, 1986. (Hearing Transcript ["HT"], p.14, lns. 22-24; testimony of Pete Tell.)

4. Several collective bargaining negotiations sessions were held between representatives of the City and the Union. HT, p.14, lns. 22-24; p.41, lns. 19-21.

5. Conflicting testimony was offered as to whether tentative agreement had been reached between the parties on all issues. HT, p.32, lns. 22-25 (testimony of Pete Tell, president of the Union, which suggests that agreement was reached.) Compare, HT, p.35, lns. 19-22 (testimony of Max Adams, Mayor of Perry, stating that agreement was not reached.) The Union offered insufficient evidence to demonstrate that an agreement had been reached on all outstanding issues between the parties. (See Conclusions of Law, paragraph 4.)

6. The City has informed the Union that it "prefers" not to register its assent to a collective bargaining agreement via a duly executed bilateral contract but, rather, proposes to adopt a municipal ordinance incorporating the relevant terms when agreement is reached. HT, p.20, lns. 4-7; p.41, ln.25-p.42, ln. 3.

CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and the subject matter of this dispute pursuant to 11 O.S. Supp. 1985, § 11-104b.

2. The City's obligation to bargain in good faith, as defined by 11 O.S. Supp. 1981, § 51-102(5), includes the obligation to execute a written contract, on request, embodying an oral collective bargaining agreement reached between an employer and its employees' bargaining representative. The failure to execute such a contract violates 51 O.S. 1981, § 51-102(6a)(5).

3. The term "agreement" as used in 11 O.S. 1981, § 51-102(5) presumes that the parties have arrived at a mutual understanding on all of the matters in negotiation, and it presumes that an employer and a bargaining agent will "reach an agreement on a contract" as envisioned by §51-106 only when they are in accord on all of its terms.

4. In an administrative proceeding before the PERB, the charging Party has the burden of persuasion as to the factual issues raised in its ULP charge. See e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (D.C. Ill. 1977); Gourley v. Board of Trustees of the South Dakota Retirement System, 289 N.W.2d 251

(S.D. 1980). In this case, the Union has failed to demonstrate that an agreement, as defined in paragraph 3 above, was reached between the parties.

5. Because the PERB finds that no collective bargaining agreement was, in fact, reached between the parties, it finds that the City's duty to execute a written contract had not been triggered and that, therefore, the City cannot be found to have committed a ULP.

OPINION

A brief discussion of the PERB's findings and conclusions is in order.

Although there is no finding that a ULP was committed in this case, the PERB takes this opportunity to express the view, incorporated in Conclusions of Law, paragraphs 2, 3, and 5, that good faith bargaining requires the execution of a written bilateral contract when agreement is reached at the request of either party. (11 O.S. 1981, § 51-102(5)). The language in that section stating that neither party can be compelled to agree to a proposal or to make a concession, urged on the Board by counsel for the City, in support of its position that a contract is not required, is simply not relevant to the duty to enter into a contract. The language relied upon by the City simply provides that, during the course of bargaining, neither party can be forced to agree to a particular proposal or to make a concession. The conclusion to be drawn from this proviso is that failure to reach agreement is not per se a ULP. However, once agreement is reached, the failure to express that agreement in a written contract is a ULP.

At the hearing, the City suggested that it is sufficient, in lieu of executing a written contract, to simply adopt a municipal ordinance incorporating the terms bargained by the parties. Ordinances, which ". . .may be repealed, altered or amended as the governing body ordains. . .", 11 O.S. 1981, § 14-101, do not meet the clear mandate of § 51-102(5) for a written contract.

The PERB's decision in this case is rooted in the statutory language of the FPAA and does not depend on the adoption of case law principles from other jurisdictions. The Board notes, however, that the Supreme Court of the State of Rhode Island has reached the same result, via a similar analysis, in construing an identical statutory bargaining scheme. Local 1363, International Association of Fire Fighters, AFL-CIOv. DiPrete, 239 A.2d 716, 718 (R.I. 1968).

The Oklahoma Supreme Court has expressed its willingness to enlist federal decisional law construing the National Labor Relations Act, 29 U.S.C. §§ 159-169, in interpreting parallel Oklahoma statutes. See, e.g., Stone v. Johnson, 690 P.2d 459, 461 (Okl. 1984). Here, the language of 11 O.S. 1981, § 51-102(5) imposing the duty to execute a written contract tracks closely the language of 29 U.S.C. § 158(d). The federal courts construe § 158(d) to require a written bilateral contract embracing the agreement reached by the parties. Refusal to include bargained terms in such a contract is a ULP. National Labor Relations Board v. Electra-Food Machinery, Inc., 621 F.2d 956, 958 (9th Cir 1900) citing N.L.R.B. v. Strong, 393 U.S. 357, 361 (1961) and H.J. Heinz Co. v. N.L.R.B, 311 U.S. 514, 523-526 (1941).

CONCLUSION

Although the City has a clear statutory duty of execute a written contract with the Union, that duty is triggered only at the conclusion of bargaining. The burden of proof to demonstrate that agreement has been reached is on the Union; that burden has not been met. If the parties are at impasse over some issues, the impasse arbitration mechanisms of the Act, esp. §§ 51-106 through 51-110, are available to them. A finding that a ULP has been committed and the issuance of a cease and desist order would be permature. The Complaint is therefore dismissed.

Donald L. Copelin
ACTING CHAIRMAN

Signed at Oklahoma City, Oklahoma
on the 30th day of October, 1986

On behalf of
Public Employees Relations Board

Donald L. Copelin
DONALD L. COPELIN, ACTING CHAIRMAN