

cation of any collective bargaining agreement it negotiates nor does the collective bargaining agreement between Lodge #127 and the City of Midwest City.

4. That Lodge #127 does not, as a matter of practice and procedure, permit non-members of the union, including Anderson, to vote on contract ratification.

5. That there was no allegation in the Complaint, or evidence offered at the hearing, that Lodge #127 has denied non-union members any contractual rights it has negotiated on behalf of all members of the bargaining unit.

6. That Lodge #127 historically has provided a mix of formal and informal procedures for soliciting the views of bargaining unit members with respect to collective bargaining issues. Although the testimony was in some dispute as to the type, quality, and significance of bargaining unit member input into the union's collective bargaining positions, there is no evidence that non-union members were treated differently from union members in any regard except for withholding from the former the right to vote on ratification of the collective bargaining agreement.

7. That non-union members, including Complainant, were allowed to participate as fully as they wished in the discussion of proposed contract terms at two open meetings held by Lodge #127 for that purpose.

8. That the Lodge #127 had in past years circulated a written survey soliciting bargaining unit member input into its bargaining goals. Although this practice was discontinued two years ago, other means, including the two open meetings referred to in Paragraph 7 above, were available both to union members and non-members to make their views on collective bargaining issues known to the union leadership.

CONCLUSIONS OF LAW

The PERB reaches the following conclusions of law:

... of the bargaining unit have no

2. That non-union members have no right to participate in contract ratification votes unless a specific provision to the contrary appears in the bargaining agent's Constitution and/or By-laws, or provision therefore is made in the collective bargaining agreement itself.

3. That Lodge #127 has not breached its duty of fair representation by excluding non-union members from contract ratification votes.

4. That the conduct of Lodge #127, challenged herein by Complainant, does not constitute an unfair labor practice.

DISCUSSION

The gravamen of Anderson's Complaint is that the denial by Local #127 of contract ratification voting privileges to non-union members violates the union's duty of fair representation, which, of course, applies to all members of the bargaining unit, whether they are members of the union or not. Complainant urges the PERB to base its analysis and ruling on Federal decisions construing the National Labor Relations Act, as amended. 24 U.S.C. § 151 et seq. (See the post-hearing Memorandum submitted by Complainant, page 3).

The Oklahoma Supreme Court, while occasionally noting the difference between private and public section labor law, see e.g. Midwest City v. Cravens, 532 P.2d 829, (Okla. 1976), has not been reluctant to apply Federal law, when analogous issues are involved, in resolving first impression public section labor law issues in Oklahoma. See Maule v. Independent School District No. 9, 714 P.2d 198, 201 (Okla. 1985). Stone v. Johnson, 690 P.2d 459, 462 (Okla. 1984). In fact, in the Stone case, our Supreme Court explicitly recognized the long-recognized federal labor law doctrine of the duty of fair representation. The union's duty in this regard extends both to negotiation of the collective bargaining agreement and to its enforcement. Stone, *supra* at p. 462.

is recited accurately by

"the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct."

There is no question that a breach of this duty by the union constitutes an unfair labor practice.

As Complainant suggests, Oklahoma law tracks closely Federal law in defining as an unfair labor practice:

"interfering with, restraining, intimidating or coercing employees in the exercise of rights guaranteed them by this article;" [Fire and Police Arbitration] 11 O.S.1981, § 51-102(6b) (1). (Compare 29 U.S.C. § 158(b) (1)(A).

The dispositive issue for decision by the Board is whether the Police and Firefighters Arbitration Act confers upon all members of the bargaining unit, without regard to membership in the union recognized as the exclusive bargaining agent, the right to vote on the ratification of collective bargaining agreements negotiated by the union. We hold, in accord with the overwhelming weight of authority from other jurisdictions, that it does not.

The provision of the Oklahoma Act repeatedly cited by Complainant in support of his position is one according to all members of the bargaining unit "all of the rights of labor" except the right to strike. 51 O.S.1981, § 51-101(B). This phrase appears as an expression of public policy and does nothing more, or less, than indicate the intention of the Legislature to recognize the large body of labor law from other jurisdictions affording employees collective bargaining rights, and to extend those rights, where applicable, to Oklahoma public employees. It is not suggested, nor could it be asserted seriously, that this phrase contains a specific grant of the right to vote on contract ratification asserted here by Complainant. A full analysis of the impact of this language in § 51-101(B) is, of course, beyond the scope of this opinion.

vote on contract ratification matters, absent a specific grant of that right either by the union's constitution or by-laws, or by the terms of the collective bargaining agreement itself. See De Boles v. Trans World Airlines, Inc., 552 F.2d 1105, 1018 (3rd Cir. 1977); Goclowski v. Penn Central Transportation Co. 545 F. Supp. 337, 345 (W.D. Pa 1982); Leary v. Western Union Telegraph Company, 570 F. Supp.1384, 1386 (S.D. N.Y. 1983); Christopher v. Safeway Stores, Inc., 644 F.2d 467, 470 (5th Cir. 1981); Afro-American Police League v. Fraternal Order of Police Chicago Lodge No. 7, 553 F.Supp. 664, 668 (N.D. Ill. 1982). In fact, as most of these cases point out, union members have no independent contract ratification rights under federal law, whether statutory, constitutional, or at federal common law.

None of this is to say that the federal courts have not been solicitous of the rights of non-union members of bargaining units. It is clear, for example, that the exclusive bargaining agent may not simply ignore the interests of non-union members, substituting the union members' personal preferences for those of the entire bargaining unit, in negotiating a collective bargaining agreement. See Branch 6000, National Association of Letter Carriers v. National Labor Relations Board, 593 F.2d 808, 813 (D.C. Cir. 1979). The Branch 6000, court noted, however, that non-union employees may be excluded from the formulation of the bargaining unit's position on issues as long as those delegated the responsibility for bargaining function as representatives for all the employees. Branch 6000, supra at p. 811. The Branch 6000 court also noted that:

" [T]he bargaining representative is not required to carry out the wishes of non-union employees; it suffices that he is available to ascertain them and take them into account." [Emphasis added] Id at 812-813.

The Federal authority cited by Complainant is not persuasive. International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America, Local No. 310 v. Nation-

507 F.2d 1176 (D.C. Cir. 1978) involved

ing unit members excluded from the vote in that case. of one of the unions, were sufficiently numerous to have defeated the proposed contract had they been permitted to vote on ratification. Id. at 1182. Additionally, the Court found evidence that the exclusion was motivated by actual hostility and discriminatory animus by the two AFL-CIO unions toward the excluded Teamsters Union members. It is readily apparent that the court's holding in that case is limited to its unique facts, as is evidenced by later cases from the same circuit. Branch 6000, supra. See also American Postal Workers Union AFL-CIO Headquarters Local 6885 v. American Postal Workers Union, AFL-CIO, 665 F.2d 1096, 1103 (D.C.Cir. 1981) (holding, inter alia, that a parent union's refusal to submit a collective bargaining agreement to the plaintiff local for ratification, while giving other constituent locals the right to ratify, was violative of federal labor law). The other federal decision cited by Complainant, United Retail Workers Union, Local 881 v. National Labor Relations Board, 774 F.2d 752 (7th Cir. 1985) is simply inapplicable to the issue involved in this case because it deals with the voting rights of non-union members in a contemplated merger of two unions, rather than with the right to vote on contract ratification. In any event, the case has been overruled by the United States Supreme Court in National Labor Relations Board v. Financial Institution Employees of America, 54 L.W. 4203 (1986).

We also have reviewed case law involving public sector decisions by various state courts and note that they are in accord with the result we reach here. For example, in Wald v. Nassau Chapter Civil Service Employees Ass'n Inc., County of Nassau, 340 N.Y.S. 2d 451 (1973) the appellate court considered the contract ratification right of non-union members. The Wald Court's decision that no such right exists was based in part on inferences drawn from a statute requiring notice to members by unions submitting contracts for ratification votes. The Court went beyond the statute, however, finding "justifiable moral

[The union] performs a service for its members, yet its financial support comes only from its own members. This is a curious inversion of the old refrain 'no taxation without representation'. This is representation without taxation.

"The non-union unit members are not without remedy either. [Citation omitted], public employees have the right to both join or refrain from joining any employee organization they may join the union and work within it, or they may remain outside the union, and individually or collectively with others of common persuasion, challenge the representation status of [the union]. . ." Id at 454

This issue is also treated with similar result in Daigle v. Jefferson Parish School Board, 345 So 2d 583 (La. App. 1977), and in Pennsylvania Labor Relations Board v. Eastern Lancaster County Education Association, [but cf. National Education Assoc. of Shawnee Mission, Inc. v. Board of Educ., 512 P.2d 426 (Kan. 1973)]. The Pennsylvania Court quotes from Branch 6000, supra, and goes on as follows:

"in the instant case there is no allegation that the amendment at issue affects non-union employees differently from union members. Here both union and non-union employees were notified of the ratification meeting. Here both union and non-union employees were present at the meeting and were invited to ask questions and express their views. There is no indication that union members were instructed to vote only their own preferences to disregard the interests of their non-union fellows. We will not presume that the interests of non-union employees were disregarded. On the contrary, '[t]he general presumption is that the union's representative obligation has been performed in good faith.' Branch 6000, supra at 812." [Emphasis added] Pennsylvania Labor Relations Board, supra at 309.

The PERB has reached no conclusion of law with respect to employee "input" into the collective bargaining decisions of the exclusive representative because none is necessary to decide the question before the PERB. Suffice it to say that evidence in this regard may be relevant to the union's exercise of its duty of fair representation of all bargaining unit members. In this case, the evidence offered was wholly insufficient to show any disparate impact of bargained contract terms, flowing from the exclusion of non-union members from ratification; likewise, there

time to attempt to establish an all-encompassing standard for the exercise of the duty of fair representation in the negotiation of a collective bargaining agreement deeming it wiser to approach each case on its own facts.

CONCLUSION

The duty of fair representation has been recognized by the Oklahoma Supreme Court and undoubtedly requires public employee unions to represent all members of the bargaining unit on a non-discriminatory basis in all matters relating to collective bargaining. This duty does not include, however, allowing non-union members the right to vote on contract ratification matters unless there is a provision in the union's constitution or by-laws, or in the collective bargaining agreement itself granting non-union members that right. The matter of bargaining unit member's input into the union's collective bargaining positions, or of the accessibility of the exclusive representative to bargaining unit members is not susceptible of precise formulation nor is such a formulation necessary to support the conclusion reached herein. Evidence of such input, or the lack thereof, may be probative of the fulfillment by the union of its duty of fair representation. The Complaint is herewith dismissed.

Signed at Oklahoma City, Oklahoma
on the 26th day of August, 1986

On behalf of
Public Employees Relations Board

Donald L. Copelin
Donald L. Copelin, Acting Chairman