

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, AFL-CIO/CLC,)
LOCAL NO. 1969,)
Complainant,)
vs.) Case No. 00153
CITY OF MIAMI, OKLAHOMA,)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND OPINION

This matter came on for hearing before the Public Employees Relations Board (PERB or the Board) on October 21, 1987, on the Complainant's Unfair Labor Practice (ULP) charge. The Complainant appeared by and through its attorney, James R. Moore, the Respondent appeared by and through its attorney Stephen L. Andrew. The Board received documentary and testimonial evidence; the Board also solicited and received post hearing submissions (Proposed Findings of Fact, Conclusions of Law and supporting briefs) from both parties.

The Board is required by 75 O.S. 1981, § 312, to rule individually on Findings of Fact by the parties.

The submittal of the Complainant is treated as follows:

1. Proposed Findings 1-4, 6, 7, 8, 9, 11, 13, 15 have been substantially adopted by the Board.
2. Proposed Findings 5, 12, and 14 have been accepted in part and rejected in part by the Board as is reflected in the Findings of Fact set out herein below.
3. Proposed Finding No. 10 is rejected by the Board.

The submittal of the Respondent is treated as follows:

1. Proposed Findings 1-9 have been substantially adopted by the Board as well as being essentially the same as the proposals of the complainant.
2. Proposed Findings 10, 11, 14 have been substantially adopted by the Board.
3. Proposed Findings No. 12 and 13 are rejected by the Board.

FINDINGS OF FACTS

1. The City of Miami (City) 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 Firefighters, Local 1969 (Union), is and was at all pertinent times the duly elected and acting labor representative and bargaining agent for all Miami Firefighters except probationary employees, the Fire Chief, and the Chief's designated administrative assistant.

3. The parties hereto entered into a written labor agreement which was in effect until its expiration date of June 30, 1986. (Joint Exhibit #1). Said agreement continued

in effect subsequent to its expiration date due to the operation of 11 O.S. § 51-105.

5. The parties have engaged in collective bargaining for a successor agreement for Fiscal Year 1987-1988. The parties have declared impasse and invoked the statutory impasse resolution procedures calling for interest arbitration although said procedures had not been exhausted at the time of the Board's hearing in this matter.

6. At the time the collective bargaining agreement in effect was executed, there were in effect in the department rules and regulations governing the conduct of employees and the operations of the department which had been adopted by the City in 1980.

7. On July 21, 1986, the City by and through its City Council adopted by resolution a new set of rules and regulations for the government of the Miami Fire Department to replace the rules and regulations in effect at the time the collective bargaining agreement was executed (Tr. 70). The City gave no notice to the Union of an intent to negotiate said rules and regulations nor were they adopted pursuant to collective bargaining (Tr. 18-19).

8. Throughout the period of the collective bargaining agreement, when changes were made to the Fire Department rules and regulations, as required by the collective agreement, copies of the written changes were given to employees in the bargaining unit.

9. The Union subsequently filed a grievance alleging that the implementation of the 1986 Rules and Regulations violated the terms of the collective bargaining agreement wherever they conflicted with the existing rules and regulations (Tr. 20).

10. The Union's grievance was processed through the contractual grievance procedure and terminated in final and binding arbitration before Don J. Harr (Joint Exhibit #4).

11. The arbitrator found, in an opinion dated May 26, 1987, as follows:

There is nothing in the language of Article X of the agreement, supra, that prohibits the City from unilaterally promulgating rules and regulations for the operation of the City's Fire Department, so long as such rules and regulations are not in conflict with the terms of the collective bargaining agreement. . .

The stated relief requested by the Union is:

To rescind the provisions of the rules and regulations for the government of the Miami Fire Department that are in conflict with the adopted rules and regulations and the collective bargaining agreement, retroactive to July 21, 1986.

The requested relief will be granted. The City is directed to rescind all provisions of the rules and regulations for government of the Fire Department, adopted on July 21, 1986, which are in conflict with the collective bargaining agreement. . .(Joint Exhibit #4)

12. The Collective Bargaining Agreement (Joint Exhibit #1) contains the following applicable provisions:

ARTICLE V

MANAGEMENT RIGHTS

The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibilities. All the power and authority which the City has not officially abridged, delegated, or modified by this agreement is retained by the City. Management officials of the City retain the rights, in accordance with applicable laws and regulations of Oklahoma State statutes, Oklahoma State laws and federal laws.

ARTICLE VI

PREVAILING RIGHTS

All rules, regulations, fiscal procedures, working conditions, departmental practices and manner of conducting the operation and administration of the Fire Department currently in effect on the effective date of this Agreement shall be deemed a part of said Agreement, unless and except as modified or changed by the specific terms of this Agreement.

ARTICLE X

RULES AND REGULATIONS

Section 1. The Union agrees that it and the employees will abide by reasonable City rules and regulations which may be set forth for the safety and general welfare of the employees, and for the successful and efficient operation of the City's Fire Department. Such rules and regulations shall not be in conflict with the terms of this Agreement.

Section 2. The City shall furnish to the employees copies of all rules as well as changes and additions to such rules.

13. The Union met with representatives of the City including Fire Chief William Cooper and the City's Attorney Stephen Andrew on July 21, 1987 to attempt to implement the arbitrator's award (Tr. 25-26, 36, 43).

14. Fire Chief William D. Cooper was the author of the 1986 Rules and Regulations. Mr. Cooper had advised Mr. Andrew prior to the July 21, 1987 meeting that differences existed between the two sets of Rules and Regulations (Tr. 79-82).

15. At the July 21, 1987 meeting, the City, by and through its representatives Fire Chief William Cooper and Attorney Stephen Andrew, maintained that it was the Union's responsibility to identify each and every difference between the two sets of Rules and Regulations and that if the Union could not do that, no changes would be made (Tr. 72).

16. As of the date of the hearing before the Board, no action had been taken by the City to implement the arbitrator's award (Tr. 20, 28, 31, 47).

17. On August 5, 1987, the parties met for the purpose of engaging in Collective Bargaining on a successor contract for Fiscal Year 1987-88. During negotiations the City proposed that the 1986 Rules and Regulations which were the subject of the arbitration decision be now accepted by the Union as part of the 1987-88 Collective Bargaining Agreement (Tr. 61, 67).

CONCLUSIONS OF LAW

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

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 failed to meet this burden.

3. The arbitrator's decision is unclear and internally inconsistent and therefore the Board cannot find with certainty that the City has violated its duty to implement the decision.

DECISION

In this case the Board is presented with two divergent views of the arbitrator's decision. On the one hand the Union maintains that the decision requires the City to repeal all rules promulgated in 1986 which differ in any way with the 1980 rules and the collective bargaining agreement. The City, on the other hand, maintains that the arbitrator's decision recognizes the City's authority to promulgate new rules and only requires that they rescind those rules, if any, which conflict with the collective bargaining agreement.

The Union is before the Board seeking a declaration that the City by failing to implement the decision of the arbitrator has committed an unfair labor practice pursuant to 11 O.S. § 51-102(6a)(5).

As pointed out in Complainants' brief many jurisdictions have found that failure to comply with an arbitration award may constitute an unfair labor practice. (See, e.g., Clatsop Community College Faculty Ass'n v. Clatsop Community College, Case No. UP-139-185, 8 National Public Employment Reporter (NPER) OR-17050 (Oregon Employment Relations Board, ERB, June 24, 1986); See also, Brief of Complainant pp. 10-13 and citations therein). This Board recognizes that there are circumstances under which a failure to comply with an arbitrator's decision could constitute an unfair labor practice under the Fire & Police Arbitration Act (FPAA).

Arbitration is favored by this Board and by the Oklahoma courts as a method to resolve labor disputes. See Garner v. City of Tulsa, 651 P.2d 1325 (Okla. 1982); Voss v. City of Oklahoma City, 618 P.2d 925 (Okla. 1980); City of Midwest City v. Harris, 561 P.2d 1357 (Okla. 1977). This Board will generally defer to arbitration awards where the issues treated therein are contractual in nature (See Firefighters Local 2784 v. City of Broken Arrow, PERB No. 00104). In Broken Arrow the Board stated:

Deferral as to the arbitrator's determination of contractual issues is consistent with, and fosters, the statutory policies supporting grievance arbitration. See §§ 51-102(6a)(5) and 51-111. Deferral is especially appropriate where it encourages the parties to utilize speedy, mutually agreed procedures for resolving disputes between the parties. See Hayford and Wood, "Deferral to Grievance Arbitration in Unfair Labor Practice Matters: The Public Sector Treatment", 32 Labor L.J. 679, 680-681 (October, 1981).

In this case, it appears that the central conflict between the parties revolves around several related points:

- 1) Did the arbitrator require the City to rescind all rules and regulations promulgated in 1986 which conflict with the 1980 rules and the collective bargaining agreement?
- 2) Did the arbitrator require the City to rescind the rules promulgated in 1986 only to the extent that they conflict with the collective bargaining agreement?
- 3) If the answer to (2) is yes, which rules conflict with the collective bargaining agreement?

The arbitrator's award states that:

There is nothing in the language of Article X of the agreement, supra, that prohibits the City from unilaterally promulgating Rules and Regulations for the operation of the City's Fire Department, so long as such Rules and Regulations are not in conflict with the terms of the Collective Bargaining Agreement. . .

The stated relief requested by the Union is:

To rescind the provisions of the Rules and Regulations for the government of the Miami Fire Department that are in conflict with the adopted Rules and Regulations and the collective bargaining agreement, retroactive to July 21, 1986.

The requested relief will be granted. The City is directed to rescind all provisions of the rules and regulations for government of the Fire Department, adopted on July 21, 1986, which are in conflict with the collective bargaining agreement. . .

On the one hand, the arbitrator grants the Union's prayer for relief (that all 1986 rules in conflict with the 1980 and the collective bargaining agreement be rescinded); but on the other hand, he states that there is nothing in Article X of the agreement which prohibits the City from adopting new rules so long as they are in conformance with the collective bargaining agreement. The arbitrator does not specify where the new rules conflict with the collective bargaining agreement.

With the benefit of hindsight it is clear that the decision leaves much to the imagination as to exactly which rules are to be rescinded. Th arbitrator's decision is so unclear that this Board cannot reasonably find that the City has refused to carry out the decision of the arbitrator.

The City is under an obligation to carry out an award resulting from binding grievance arbitration. However, this duty is tempered by the common sense limitation that the award be of sufficient clarity that the employer has an understanding of its obligations. See United Mine Workers of

America Dist. No. 5 v. Consolidation Coal Co., 666 F.2d 806, 809-810 (3rd Cir. 1981). The Board cannot say based upon the evidence presented that the City has failed to implement the award.

In this case the arbitrator examined contractual, not statutory, issues and deferral thereto is proper by the Board. Deferral to arbitration normally includes deferral to the entire arbitration process. Under the provisions of the National Labor Relations Act, appeals from arbitrator awards are allowed to federal courts under 29 U.S.C. § 185. Oklahoma has no comparable provision in the FPAA. (It should be noted that the Uniform Arbitration Act, 15 O.S. §§ 801, et seq., is inapplicable to collective bargaining agreements. 15 O.S. § 802). Oklahoma courts are of course granted general jurisdiction of contractual disputes. (Okla. Const. Art. 7, 20 O.S. §§ 1, et seq.). The PERB is persuaded that, absent statutory authority, it may not act as a board of appeal of arbitration decisions regarding contractual issues or interpret, clarify or remand the award to the arbitrator for clarification. This function, not being granted to the Board by statute, if it exists, is based upon rules of common law arbitration. See LaVale Plaza, Inc. v. R. S. Noonan, Inc., 378 F.2d 569 (3rd Cir. 1967), and must necessarily be reserved to the district courts of this state.

The Board finds, therefore, that the Complainants by their evidence have failed to persuade the Board that the

Respondent has committed an unfair labor practice. The Board is persuaded that the arbitrator's award is so ambiguous and internally inconsistent that the Respondent is unable to comply with the decision and the Board will not find failure to comply to constitute an unfair labor practice. Complainant's action herein is therefore dismissed. The Board encourages the parties to submit the issue to the arbitrator for clarification of his award.

Dated this 15 day of Nov, 1988.

Donald L. Copelin
CHAIRMAN

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