

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

FILED

AUG 12 2016

Public Employees
Relations Board

CITY OF McALESTER,)	
)	
Complainant,)	
)	
v.)	PERB No. 2015-ULPC-552
)	
IAFF, LOCAL 2284,)	
)	
Respondent.)	

**ORDER DENYING IAFF LOCAL 2284 MOTION TO
DISMISS UNFAIR LABOR PRACTICE CHARGE**

This matter came on for hearing before the Public Employees Relations Board (the “Board”) in a Regular Meeting on the 14th day of April, 2016, at 9:30 a.m., with a quorum of four members present, in the Oklahoma Department of Agriculture, Agriculture, Food and Forestry Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, on the Respondent’s Motion for Judgment on the Pleadings filed on March 1, 2016 (the “Motion for Judgment on the Pleadings”), by the International Association of Firefighters, Local 2284 (the “Respondent” or “IAFF”).

The City of McAlester, Oklahoma (the “Complainant” or “City”), appeared by and through its Attorney Charles S. Plumb, McAfee & Taft, P.C., Tulsa, Oklahoma. The Respondent appeared by and through its Attorney Steven R. Hickman, Frasier, Frasier & Hickman, LLP, Tulsa, Oklahoma.

The Complainant filed an Unfair Labor Practice Charge on November 12, 2015 (the “Charge”), alleging the IAFF had committed unfair labor practices and violated the Fire and Police Arbitration Act on multiple occasions involving multiple grievances and arbitrations during July 2015 through November 2015, and alleging the violations include, but are not

limited to: (a) delaying, refusing and/or interfering with the discussion and processing of pending grievances and arbitrations and thereby preventing disputes to be determined and resolved; (b) delaying, refusing and/or interfering with the selection of arbitrators; and (c) delaying, refusing and/or interfering with the scheduling of arbitration hearings. The Complainant claims the actions by the Respondent constitute an unfair labor practice in violation of Section 51-102 (6b)(3) of Oklahoma's Fire and Police Arbitration law, 11 O.S. §51-101 through 11 O.S. §51-113 (sometimes referred to herein as the Oklahoma Fire and Police Arbitration Act or the "FPAA").

The Respondent filed its Answer to the Charge on November 25, 2015 (the "Answer"), alleging as follows: (a) denied generally and specifically, all allegations contained in the Charge; (b) the Charge fails to state a claim upon which relief can be granted; and (c) the Board lacks jurisdiction over the claims brought.

Respondent filed a Motion for Judgment on the Pleadings asserting the Complainant's Unfair Labor Charge failed to state a claim upon which relief can be granted and should be dismissed. Respondent's motion claimed the gist of the Charge is "...that the Union [IAFF] has filed grievances that are in various stages of the grievance process and/or the arbitration process and the Union has not moved as quickly as the City would like to resolution." The IAFF noted "...it should be considered that all of the grievances are those filed by the Union [IAFF]; none of them are grievances brought forth by the City." Respondent argued the issues raised by Complainant as to whether Union was proceeding in good faith in compliance with 11 OKLA. STAT. § 51-102(6(b)(3) was for the arbitrator to decide, not the Board.

PRELIMINARY MATTERS

At the suggestion of the Board during the motion hearing, the Complainant and the Respondent agreed the Respondent's Motion for Judgment on the Pleadings filed herein should be converted to a Motion to Dismiss the Charge for failure to state a claim upon which relief can be granted (hereinafter called the "Motion to Dismiss"), to which conversion the Board agreed.

SUBSTANCE

The Board concludes as follows:

1. This matter is governed by the provisions of the Fire and Police Arbitration law, 11 O.S.2011, §§ 51-101 et seq. and the Board has jurisdiction over the parties and the subject matter of this Charge and all motions related thereto pursuant to 11 O.S. 2011, §51-104b.
2. The motion hearing and procedures herein are governed by Article II of the Administrative Procedures Act, 75 O.S.2011, §§ 308a et seq. and the meeting was convened and conducted in accordance with the provisions of the Oklahoma Open Meeting Act, 25 O.S. 2011, §§ 301 et seq.
3. The Fire and Police Arbitration law, 11 O.S.2011, § 51-102 (6) defines "unfair labor practices" to include, but not be limited to, action as further defined in 11 O.S.2011, § 51-102 (6b)(3), by a bargaining agent refusing to bargain collectively or discuss grievances in good faith with the proper corporate authorities with respect to any issue coming within the purview of the Fire and Police Arbitration law, 11 O.S.2011, §§ 51-101 et seq.
4. Under the provisions of 11 O.S.2011, § 51-111, there is a duty for a bargaining agent to bargain collectively or discuss grievances in good faith with the proper corporate authorities with respect to any issue coming within the purview of the Fire and Police Arbitration law, 11 O.S.2011, §§ 51-101 et seq.

5. The provisions of the Fire and Police Arbitration law, 11 O.S.2011, § 51-102(6a)(5) applicable to corporate authorities and §51-102-(6b)(3) applicable to bargaining agents, show that the Legislature has imposed a duty on both sides to proceed to bargain collectively or discuss grievances in good faith.

PROCEDURE

Under the provisions of 11 O.S.2011, §51-104b (A) and (C), the Board has jurisdiction to prevent any person, including the bargaining agent and corporate authorities, from engaging in any unfair labor practice defined in the Fire and Police Arbitration law, 11 O.S.2011, §§ 51-101 et seq.

CONCLUSION

It is the finding of the Board as follows:

- A. The Board makes no judgment on the facts or the merits of this Charge.
- B. The Board finds and orders it has jurisdiction over the charge and that Complainant has stated a claim against Respondent for engaging in unfair labor practices prohibited under the FPAA.
- C. The Respondent's Motion to Dismiss the Charge for failure to state a claim upon which relief can be granted, is hereby DENIED.

IT IS SO ORDERED.

Dated this 12 day of August, 2016.


Robert McCampbell, Chairman
Public Employees Relations Board