

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

**FILED**

AUG 08 2013

Public Employees Relations  
Board

CITY OF WARR ACRES, OKLAHOMA,	)	
	)	
Complainant,	)	
	)	
	)	PERB No. 2013-ULPC-526
v.	)	
	)	
INTERNATIONAL ASSOCIATION OF	)	
FIRE FIGHTERS, LOCAL 2374,	)	
	)	
Respondent.	)	

**ORDER DENYING UNION'S MOTION TO DISMISS**

This matter came on for hearing before the Public Employees Relations Board (the "Board") meeting in a Regular Meeting on the 13<sup>th</sup> day of June, 2013 at 9:30 a.m., in the Oklahoma Department of Agriculture, Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, on the following written motion(s): Motion to Dismiss filed by the Respondent, the International Association of Fire Fighters, Local 2374 (the "Respondent" or "Union"), on May 14, 2013 (the "Motion to Dismiss"). The City of Warr Acres, Oklahoma, as the Complainant herein (the "Complainant" or "City"), appeared by and through its attorney Matthew John Love, Law Offices of Margaret McMorrow-Love, Oklahoma City, Oklahoma. The Respondent appeared by and through its attorney James R. Moore, James R. Moore & Associates, P.C., Oklahoma City, Oklahoma. Neither party hereto submitted any proposed findings of fact. Further, neither party hereto submitted any documents or any sworn affidavits in support of their respective positions.

The alleged Unfair Labor Practice charge (the "ULP") in this matter was filed by the Complainant on April 10, 2013, alleging that on January 7, 2013, the Respondent

Respondent denied the Mayor's request for information regarding certain allegations by the Respondent against the Fire Chief for the Warr Acres Fire Department, including but not limited to, the allegation that the Chief was engaging in aggressive behavior towards the fire fighters that creates a hostile working environment and that the Fire Chief engaged in a blatant violation of 11 O.S.2011, §51-102 (6a)(1). Further, the City alleges the Union's refusal to provide the City with any information to substantiate its allegations against the Fire Chief violates Section 51-102(6)(6b)(3) of the Fire and Police Arbitration law, 11 O.S.2011, § 51-101 to 51-113.

In its Motion to Dismiss, the Union alleges that the ULP fails to state a claim on which relief can be granted, that the ULP on its face fails to meet the statutory definition of an unfair labor practice, that it never filed a grievance against any of the Chief's actions and that it never alleged a violation of the collective bargaining agreement. Further, the Union alleges that while there at best may have been a misunderstanding at one time, there is not even a dispute that exists anymore as the matter between the Fire Chief and the fire fighters has been resolved to the Union's satisfaction.

The Board, having reviewed the written Unfair Labor Practice charge filed herein as aforesaid on April 10, 2013, the Respondent's written Motion to Dismiss filed herein on May 14, 2013, the Complainant's written Response to Motion to Dismiss filed herein on June 3, 2013, and having heard the arguments of counsel and otherwise being fully apprised of this matter, makes the following findings of fact:

#### **FINDINGS OF FACT**

It is the finding of the Board that:

1. The City is, and was at all times material herein, a municipal corporation duly

organized existing under the laws of the State of Oklahoma.

2. The City is a charter city that has adopted a Mayor-Council form of government under which the Mayor serves as the Chief Executive Officer and head of the administrative branch of its municipal government.

3. The Union is, and was at all times material herein, the bargaining agent for certain employees of the City's Fire Department.

4. The Union admits in the second paragraph of page one of its Motion to Dismiss that at one time it complained to management about the Fire Chief, that its representative(s) met with the Fire Chief, that its disagreement with the Fire Chief was settled and that thereafter the Union considered the matter resolved.

#### **CONCLUSIONS OF LAW**

The Board concludes as a matter of law 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 pursuant to 11 O.S.2011, § 51-104b.

2. The hearing and procedures herein are governed by Article II of the Administrative Procedures Act, 75 O.S.2011, § 308a et seq. and the Board's Rules at OAC 585:2-1-1 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 Board is empowered to prevent any person, including bargaining agents and corporate authorities, from engaging in any unfair labor practice. 11 O.S.2011, § 51-104b (A).

4. Under the provisions of its Rules at OAC 585: 2-7-3, the Board recognizes all motions permitted under the Oklahoma Pleading Code, 11 O.S.2011, § 2001 et seq., including, but not limited to, motions to dismiss. OAC 585: 2-7-3.

5. “The function of a motion to dismiss is to test the law of the claims, not the facts supporting them. *Zaharias v. Gammill*, 1992 OK 149, 844 P. 2d 137, 138. In assessing the sufficiency of a petition, the general rule is that a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle her to relief. *Id.* The question, on a motion to dismiss, is whether taking all of plaintiff’s allegations as true, she is precluded from recovering as a matter of law. *Patel v. OMH Medical Center, Inc.*, 1999 OK 33 ¶ 43, 987 P. 2d 1185, 1202, reh. den., cert. den. 528 U.S. 1188, 120 S.Ct. 1242, 146 L.Ed.2d 100. The appropriate question in testing the sufficiency of the allegations in the complaint which is subject to a motion to dismiss is whether relief is possible under any set of facts that could be established consistent with the allegations. *Boren v. Thompson & Associates*, 2000 OK 3 ¶ 25, 999 P.2d 438, 447.” *Estate of Hicks v. Urban East, Inc.*, 92 P. 3d 88, 90 (Okla. 2004).

6. When reviewing a motion to dismiss, “...the burden to show the legal insufficiency of the petition, is on the party moving for dismissal...” *Indiana National Bank v. Department of Human Services*, 880 P. 2d 371, 375 (Okla. 1994).

#### **OPINION**

It is the finding of the Board as follows:

The Board, based upon its review of the ULP, the Motion to Dismiss and the Response to the Motion to Dismiss, finds that the City's ULP claim is a legally cognizable claim for which relief may be granted. Respondent does not show, beyond any doubt, that the Complainant can prove no set of facts for which relief may be granted and has not met its burden to show the legal insufficiency of the unfair labor practice charge. Therefore, the International Association of Firefighters, Local 2374's Motion to Dismiss should be and hereby is DENIED.

Dated this 8 day of August, 2013.

  
Robert McCampbell, Chairman  
Public Employees Relations Board

  
Greg Buckley, Member  
Public Employees Relations Board

 DISSENT  
Sue Wycoff, Member  
Public Employees Relations Board

  
Jessica Perry, Member  
Public Employees Relations Board