

FILED

JUL 10 2014

Public Employees  
Relations Board

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

IAFF, LOCAL 3483,	)	
	)	
Complainant,	)	
	)	
v.	)	PERB No. 2013-ULPC-527
	)	
CITY OF COWETA,	)	
	)	
Respondent.	)	

**ORDER GRANTING UNION'S COUNTER MOTION FOR SUMMARY JUDGMENT  
AND ORDER TO CEASE AND DESIST**

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 February, 2014, at 9:30 a.m., in the Oklahoma Department of Agriculture, Agriculture, Food and Forestry Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, on the following motions:

- (1) City of Coweta Motion for Summary Judgment and Brief in Support Thereof filed on September 6, 2013, by the City of Coweta, Oklahoma (the "Respondent" or "City"); and
- (2) Complainant's response to the Motion for Summary Judgment, deemed by the Board without objection by either party, to be a cross Motion for Summary Judgment by the International Association of Firefighters, Local 3483 (the "Complainant" or "IAFF").

The Complainant appeared by and through its attorney Steven R. Hickman, Frasier, Frasier & Hickman, LLP, Tulsa, Oklahoma. The Respondent appeared by and through its Attorney David L. Weatherford, Birmingham, Morley, Weatherford & Priore, P.A., Tulsa, Oklahoma.

Complainant filed an Unfair Labor Practice Charge on April 22, 2013 (the "Charge"), and alleged, among other things that, on April 15, 2013, the Complainant filed a grievance with

the Respondent concerning a unilateral change in working conditions to an established past practice. The Complainant alleged that on April 17, 2013, the Respondent through its Fire Chief issued direct orders in writing to the IAFF President and an IAFF member to submit sworn affidavits in order for the Fire Chief to evaluate the merits of the previously-filed grievance. The Complainant further alleged that no provision of the Fire and Police Arbitration Act or the collective bargaining agreement between the parties requires the Union to submit sworn affidavits to support its position on any filed grievance.

Complainant alleges the actions by the Respondent constitute unfair labor practices in violation of Section(s) 51-102(6a)(1), 51-102(6a)(2) and 51-102(6a)(5) of Oklahoma's Fire and Police Arbitration law, 11 O.S.2011 & Supp.2013, §51-101 through 11 O.S.2011 & Supp.2013 §51-113 et seq. (sometimes referred to herein as the "FPAA").

On May 16, 2013, the City filed its Answer to the ULP alleging: (1) employees of the City were requested to submit written statements concerning allegations made in regard to a grievance filed by those employees, all in an effort to determine whether there was any merit to the alleged grievance; (2) such request was within its management rights, was not a violation of the parties' collective bargaining agreement or any past practice, and does not constitute an unfair labor practice; and, (3) requesting evidence in support of a grievance, in an effort to determine whether the grievance is valid, does not constitute a violation of 11 O.S.2011, §51-102.6a(1), §51-102.6a(2) or §51-102.6a(5), and instead is within the authority of the City to investigate grievances.

On September 6, 2013, the City filed its Motion for Summary Judgment and Brief in Support Thereof denying it committed any violation of the FPAA and further alleging it is within the contractual and legal right of the City to fully investigate grievances. In support of its Motion

for Summary Judgment, the City submitted five facts it asserted were undisputed, four of which were taken from the attached Affidavit of the Coweta Fire Chief Hal Bumgarner (Exhibit 1) and one of which was based upon the language of the collective bargaining agreement between the IAFF and the City (Exhibit 2).

On September 27, 2013, the IAFF filed its Response to Motion for Summary Judgment in opposition to the City's Motion for Summary Judgment and Brief in Support Thereof that included a Statement of Material Facts in Dispute that disputed all five (5) facts that the City had asserted to be undisputed.

During the hearing, the IAFF through its attorney conceded there was no substantial controversy as to any material fact and one party was entitled to judgment as a matter of law. When the Respondent through its attorney was questioned during the hearing as to any response to or the presence of any disputed facts in the Complainant's cross Motion for Summary Judgment, the Respondent's attorney responded it made sense to treat the Complainant's Response to Motion for Summary Judgment as a counter Motion for Summary Judgment.

The Board, having reviewed the written Motion for Summary Judgment and cross Motion for Summary Judgment, having heard the arguments of counsel, having engaged in questioning 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 by a preponderance of the testimony taken, that there is no substantial controversy as to the following facts or issues:

1. The City of Coweta is, and was at all times material herein, a municipal corporation duly organized and existing under the laws of the State of Oklahoma.

2. The IAFF is a certified bargaining representative pursuant to the Fire and Police Arbitration Act for fire fighters employed by the City of Coweta.

3. The IAFF and City of Coweta entered into a Collective Bargaining Agreement (“CBA”) which was in full force and effect during the grievance in question. The CBA contained specific provisions governing the rights and obligations of the parties in the event of a grievance.

4. There is no requirement in the CBA for the Union or any employee to submit sworn affidavits to the City or Fire Chief in connection with their investigation of a grievance.

5. On or about April 15, 2013, the IAFF filed a grievance alleging the City had violated a “past practice” within the Fire Department by refusing a request by an employee (Brody Morris) to conduct church services at his church where he served as minister, while on duty as a paid fire fighter. (Respondent’s Undisputed Fact No. 1).

6. Although the grievance alleged a past practice of allowing such conduct by Mr. Morris, the Fire Chief was unable to locate any past record of allowing Mr. Morris to perform his other employment while also being paid as a fire fighter. (Respondent’s Undisputed Fact No. 2).

7. The Fire Chief, through a written order, directed IAFF Local President Woodward and Grievant Morris to submit affidavits in support of the alleged grievance, in order to fully investigate the grievance, as the City Administration had done on at least two other separate occasions. (Respondent’s Undisputed Fact No. 3, modified).

8. No adverse employment action was taken against Mr. Morris. (Respondent’s Undisputed Fact No. 4, modified).

#### **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 & Supp.2013, §§ 51-101 et seq. and the Board has jurisdiction over the parties and the subject matter of this complaint 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 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 burden of proof in this matter is a preponderance of the testimony taken pursuant to 11 O.S.2011, §51-104b (C) and OAC 585: 2-7-12.

4. 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).

5. The Complainant, in asserting a violation of 11 O.S.2011, §§ 51-101 et seq., has the burden of proving the allegations of an unfair labor practice by a preponderance of the testimony taken pursuant to 11 O.S.2011, §51-104b (C) and OAC 585: 2-7-12.

6. "Summary Judgment is appropriate only where it appears that there is no substantial controversy as to any material fact and that one party is entitled to judgment as a matter of law." *Post Oak Oil Co. v. Stack & Barnes, P.C.*, 1996 OK 23, ¶ 15, 913 P. 2d 1311, 1313.

### OPINION

The sole issue in this case is whether, under the terms of the specific CBA between the parties, the City of Coweta's Fire Chief is permitted to direct the IAFF Local President and an IAFF member to submit written affidavits as part of the Fire Chief's investigation into a pending grievance. On the record of this case, the Board finds he cannot.

The legality and scope of post-grievance interviews is generally a contractual matter to be determined by the parties in establishing a grievance procedure. *See Cook Paint and Varnish*

*Co.*, 448 F. 2d 712, 722 (D.C. Cir. 1981) (“[t]he structure of a grievance-arbitration process is a matter of contract to be determined by the parties.”). It is certainly the City’s right to fully investigate grievances and an employee’s duty to cooperate in that investigation. *Id.* at 717 (“[a]n employee must furnish information to an employer during an investigation of alleged employee misconduct.”). An employer such as the City of Coweta can compel its employees to submit to questioning concerning employee misconduct “when the employer’s inquiry is still in the investigatory stage and no final disciplinary action has been taken.” *Id.* at 717-718. But such right is not without limitation, with the principal limitation being the interviews cannot be coercive. It is the Board’s judgment that absent a contractual right to require sworn affidavits from the Union and its members to submit sworn, written affidavits in support of a grievance, it was an unfair labor practice to direct the submission of sworn affidavits.

Our decision is limited to the City’s right to require sworn affidavits from Union members in connection with the City’s *post*-grievance investigation when the parties’ CBA does not require or allow for such affidavits. If the parties intended to require sworn affidavits in connection with grievances, they could have provided for it in the CBA. They did not. Certainly, it is not an unfair labor practice to *request* an affidavit in the course of the investigation of a grievance, but *directing* or otherwise *compelling* the signing of sworn affidavits without a provision in the CBA for the same is coercive and not permissible under 11 O.S.2011, §51-102(6a)(1).

Therefore, it is the finding of the Board as follows:

Pursuant to 11 O.S.2011, §51-104b and OAC 585: 2-7-12, the Board finds upon a preponderance of the testimony taken, that the Complainant has met its burden of proof on 11 O.S.2011, §51-102(6a)(1) and the Respondent through its Fire Chief has engaged in an unfair

labor practice by compelling the submission of sworn Affidavits in support of a previously-filed grievance through issuance of direct orders in writing to the IAFF President and an IAFF member in order for the Fire Chief to evaluate the merits of the previously-filed grievance. The Board finds that the Complainant has not met its burden of proof with regard to 11 O.S.2011, §51-102(6a)(2) and (5).

Because no substantial controversy exists as to a material fact and the Complainant is entitled to judgment as a matter of law as to the issue of the compelled submission of sworn Affidavits in support of a previously-filed grievance, the Complainant's counter Motion for Summary Judgment should be and hereby is GRANTED and the City of Coweta's Motion for Summary Judgment and Brief in Support Thereof should be and hereby is DENIED.

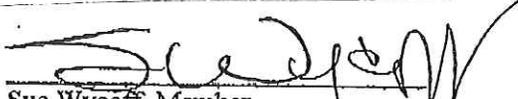
**CEASE AND DESIST ORDER**

It is ORDERED that the Respondent shall cease and desist from engaging in the unfair labor practice of issuing any written orders or otherwise compelling the submission of sworn affidavits from members of the IAFF in support of any previously-filed grievance.

IT IS SO ORDERED.

Dated this 10<sup>th</sup> day of July, 2014.

  
Robert McCampbell, Chairman  
Public Employees Relations Board

  
Sue Wycoff, Member  
Public Employees Relations Board



Greg Buckley, Member  
Public Employees Relations Board



Jessica Perry, Member  
Public Employees Relations Board



Gary Chilton, Member  
Public Employees Relations Board