

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL 2067,)	
)	
Complainant,)	
)	
v.)	Case No. 00424
)	
CITY OF NORMAN, OKLAHOMA)	
)	
Respondent.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND CEASE AND DESIST ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 13th day of October, 2005, on the Unfair Labor Practice (ULP) Charge of Complainant International Association of Firefighters, Local 2067 (the "Union" or "IAFF, Local 2067"). The Union appeared by and through its attorney, James Patrick Hunt. The Respondent City of Norman, Oklahoma, (the "City") appeared by and through its attorney, Tony G. Puckett.

The Board received documentary and testimonial evidence. The Board also solicited post-hearing submissions (Proposed Findings of Fact, Conclusions of Law, and supporting briefs) from both parties. The Board is required by 75 O.S. 2001, § 312, to rule individually on Findings of Fact submitted by the parties. The submission of the Union is treated as follows:

1. Proposed Findings of Fact Nos. 1-3, 6, 8-9, 11 are substantially adopted by the Board.
2. Proposed Findings of Fact No. 10 is accepted in part as modified herein and rejected in part.
3. Proposed Findings of Fact Nos. 4-5, 7 are rejected as unnecessary to this Board's decision or as duplicative of other Proposed Findings of Fact.

The submission of the City is treated as follows:

1. Proposed Findings of Fact Nos. 1, 2, 4, 8, 72-76, 78-79, 90-93, 101-103, 105, 107-108, 110-118, 123-127, 130-135, 137, 146-148, 155, 157-158, 175-176, 191-195, 197-198, 200-203, 205, 216, 227 are substantially adopted by the Board.
2. Proposed Findings of Fact No. 151 is accepted in part as modified herein and rejected in part.
3. Proposed Findings of Fact Nos. 3, 5-7, 9-71, 77, 80-89, 94-100, 104, 106, 109, 119-122, 128-129, 136, 138-145, 149-150, 152-154, 156, 159-174, 177-190, 196, 199, 204, 206-215, 217-226, 228-267 are rejected as unnecessary to this Board's decision or as duplicative of other Proposed Findings of Fact.

FINDINGS OF FACT

1. On January 12, 2004, Harold "Andy" Anderson, who was then city manager of the City, issued a memorandum to all of the City's department heads. Union's Ex. 7. The memorandum was entitled "The Budget Problem" and it read, in relevant part:

The bottom line is the \$2,357,000.00 budget deficit is now projected to be \$4,346,572. We have serious problems and need to make this up in this and next year's budget. The actions which may be required include a hard freeze on replacing positions, very limited travel, lay offs, (furloughs, salary freezes, etc.).

I have now discussed this situation with the City Council and you, the Department Heads. I would now like you to discuss this with your employees. I would prefer doing this to their reading about it in the paper. Please hold meetings with as many employees as you can today and tomorrow to discuss these issues with them. I am interested in their input and their solutions to the problem.

Id.

2. The Union is the exclusive bargaining agent for the firefighters employed by the City.

3. On January 15, 2004, an article appeared on the front page of the Norman Transcript, with the title, "City expecting layoffs soon." Transcript of Hearing Held on October 13, 2005 ("Tr.") 15, Union's Ex. 16. In that article, the Norman City Manager said that layoffs "could occur in the near future." Tr. 15-16. At the time that the article was released, IAFF Local 2067 had begun contract negotiations with the City. Tr. 16.

4. Sometime after the City Manager issued the memorandum of January 12, 2004, Fire Chief Johnny Vaughn held the meetings with the firefighters. Tr. 39. According to Chief Vaughn, the City conducted these meetings before January 30, 2004. Tr. 153.

5. At one of the meetings one of the firefighters suggested taking Truck 2 out of service. As Chief Vaughn testified, the firefighter said, "I would rather see Truck 2 taken out of service than see layoffs." Tr. 175.

6. Butch Crawford is the President of IAFF Local 2067. At the meeting at which Mr. Crawford was present, Mr. Crawford told Chief Vaughn that he did not feel that it was appropriate to discuss these matters directly with the firefighters and that such discussions should be with the union representatives. Tr. 40. Chief Vaughn responded that he was doing what he was told to do. *Id.*

7. Under the Agreement between the City of Norman, Oklahoma and the International Association of Fire Fighters - Local No. 2067, Fiscal Year Ending 2004 (the "CBA"), the City reserved all rights and responsibilities of an employer, unless such are modified by specific terms of the CBA. CBA, Art. 2, §§ 1 and 2, Union's Ex. 1. The City also retained the right "[t]o maintain the efficiency of government operations entrusted" to the City and "[t]o determine the methods, means and personnel by which such operations are to be conducted." CBA, Art. 2, §3, Union's Ex.

1.

8. The CBA provides: "The decision on whether or not overtime or call back is required shall be at the discretion of the Supervisor in charge at the Fire Captain level or above." CBA, Art. 14, §4, Union's Ex. 1.

9. The CBA also provides: "All rights, privileges, work rules, regulations, policies and procedures of the Fire Department which are not included in this Agreement shall remain in full force unless and except as modified or changed by the specific terms of this Agreement, or by mutual agreement of the parties during the term of this Agreement." CBA, Art. 6, §2, Union's Ex. 1.

CONCLUSIONS OF LAW

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001 and Supp. 2005, §§ 51-101, *et seq.*, and the Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2001, § 51-104b.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, §§ 308a, *et seq.*

3. Federal law may be considered in the construction of the FPAA. *Stone v. Johnson*, 690 P.2d 459, 462 (Okla. 1984).

4. The Board is empowered to prevent any person, including corporate authorities, from engaging in any unfair labor practice. 11 O.S. 2001, § 51-104b(A).

5. The Union, in asserting a violation of 11 O.S. 2001, § 51-102(6), has the burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. 2001, § 51-104b(C) and OAC 585:1-7-16.

6. "The fundamental inquiry in a direct dealing case is whether the employer has chosen

‘to deal with the Union through the employees, rather than with the employees through the Union.’” *Facet Enterprises, Inc. v. N.L.R.B.*, 907 F.2d 963, 969 (10th Cir. 1990) (quoting *NLRB v. Pratt & Whitney Air Craft Div.*, 789 F.2d 121, 134 (2d Cir. 1986)).

7. An attempt by the employer to bypass the bargaining representative in conducting contract negotiation constitutes improper direct dealing. *Facet Enterprises, Inc.*, 907 F.2d at 969; see also *N.L.R.B. v. Pratt & Whitney Air Craft Div., United Technologies Corp.*, 789 F.2d 121, 134 (2nd Cir. 1986) (efforts to bypass the union are considered direct dealing).

8. Direct dealing is identifiable in two ways: the employer’s communications themselves can provide a basis for finding an unfair labor practice; additionally, the challenged communications can be viewed within a pattern of other unfair labor practices which, when examined in its totality, reveal direct dealing. *Pratt & Whitney Air Craft Div.*, 789 F.2d at 134-35.

9. An employer does have the right under the first amendment to communicate with its employees. *Facet Enterprises, Inc.*, 907 F.2d at 969.

10. An employer’s right to communicate with its employees cannot outweigh the equal rights of the employees to associate freely. “And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.” *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969).

11. “Attempts to coerce the employees, or to portray the employer rather than the union as the workers’ true protector, remove such speech from the penumbra of protection and may constitute an unfair labor practice.” *Pratt & Whitney Air Craft Div.*, 789 F.2d at 134.

12. The Union has met its burden of establishing that after the collective bargaining process had begun the City Manager issued a memorandum threatening layoffs unless cuts were made and gave statements to the local newspaper threatening layoffs. In this environment, Chief Vaughn, pursuant to the City Manager's directive, held meetings with the firefighters seeking "suggestions" on how money could be saved in order to avoid layoffs. At one of the meetings one of the firefighters suggested taking Truck 2 out of service. As Chief Vaughn testified, the firefighter said, "I would rather see Truck 2 taken out of service than see layoffs." Tr. 175.

13. The actions of the City did not constitute the exercise by it of its right to communicate with its employees falling under the protection for the First Amendment. Attempts at getting the employees' ideas regarding cost saving measures may be legitimate attempts to communicate. However, when such attempts take place during the collective bargaining process and are combined with the threat of layoffs, such actions constitute "interfering with, restraining, intimidating or coercing employees in the exercise of the rights guaranteed them" by Article 51 of the Oklahoma Statutes in violation of 11 O.S. 2001, § 51-102 (6a)(1).

14. The holding of meetings during the collective bargaining process seeking "suggestions" on how money could be saved in order to avoid layoffs creates the potential of the discussion of topics subject to collective bargaining. These topics could include matters specifically covered by the CBA as well as changes to policies and procedures already in force. The holding of these meetings constitutes "refusing to bargain collectively . . . in good faith with the designated bargaining agent with respect to any issue coming within the purview of" Article 51 of the Oklahoma Statutes in violation of 11 O.S. 2001, § 51-102 (6a)(5). See *N.L.R.B. v. M.A. Harrison Mfg. Co., Inc.*, 682 F.2d 580, 582 (6th Cir. 1982) (direct solicitation of employee views on company insurance

plan bypassed union and constituted unfair labor practice).

15. Suggestions on how money could be saved should be solicited by the City through consultation with the Union when collective bargaining is in process. CBA, Art. 6, § 1, Union's Ex.

1. When such suggestions are requested by the City, the furtherance of the public good imposes on the union the duty to solicit such suggestions from its members aggressively and in good faith.

16. Pursuant to 11 O.S. 2001, § 51-104b, the Board finds that upon the preponderance of the testimony taken, the City has engaged in an unfair labor practice and a cease and desist order is warranted.

Dated: February 16, 2006



Craig W. Hoster, Chair
Public Employees Relations Board

CEASE AND DESIST ORDER

The City of Norman, Oklahoma, is hereby ordered, pursuant to 11 O.S. 2001, §51-104b(C) and consonant with the Findings of Fact and Conclusions of Law entered herein, to cease and desist from bargaining in bad faith by circumventing the International Association of Firefighters, Local 2067, the designated bargaining agent of the Norman Fire Department, in violation of 11 O.S. 2001, § 51-102(6a)(1) and § 51-102(6a)(5).

Dated: February 16, 2006



Craig W. Hoster, Chair
Public Employees Relations Board