

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

LOCAL 2095, INTERNATIONAL)
ASSOCIATION OF FIREFIGHTERS)
)
Complainant,)
)
v.)
)
CITY OF STILLWATER, OKLAHOMA)
)
Respondent.)

Case No. 00434

FINAL ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 12th day of October, 2006, on the Motion for Summary Judgment filed by the Respondent the City of Stillwater, Oklahoma (the "City"). The City appeared by and through its attorney, Paul A. Ross. The Complainant International Association of Firefighters, Local 2095 (the "Union" or "IAFF, Local 2095") appeared by and through its attorney, Frank W. Frasier.

The Union brought the present action alleging that a disciplinary action against two union members, Dale Parrish, Captain, and Gary Stanton, Battalion Chief, constituted an unfair labor practice under 11 O.S. § 51-102(6a)(1), (2), and (5) of the Fire and Police Arbitration Act, 11 O.S. §§ 51-101 et seq. (the "FPAA"). According to the Charge, these officers were unfairly undisciplined by Assistant Chief Rex Mott on or about February 13, 2006.

Based upon the statements filed in support of and in opposition to the motion, the Board finds that there is no substantial controversy as to the following facts or issues:

1. In February, 2006, after incurring an on-the-job injury and being released to return to duty, Firefighter David McGuire was scheduled by the City to take a Functional Capacity

Examination ("FCE"). Undisputed Fact 1.

2. In February, 2006, McGuire's immediate supervisor was Captain Dale Parrish, while Parrish's immediate supervisor was Battalion Chief Gary Stanton. Undisputed Fact 3.

3. McGuire had conversations with Parrish and Stanton about taking the exam. Both questioned the propriety of the City requiring McGuire to take the exam but neither told McGuire not to take the exam. Undisputed Facts 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13.

4. McGuire did not take the exam. Undisputed Fact 15.

5. Subsequently, Assistant Chief Rex Mott concluded, after meeting with Stanton, Parrish and McGuire, that Stanton and Parrish had directed McGuire to disobey an order by implying to him that the FCE scheduled for February 8, 2006, was not improper or not required. Undisputed Facts 16, 17.

6. Pursuant to the Collective Bargaining Agreement ("CBA") between the Union and City (the "CBA"), Stanton and Parrish submitted grievances disputing the discipline. In said grievances, both Stanton and Parrish denied that they had instructed McGuire to disobey an order. Undisputed Fact 18.

7. In reviewing the grievances, Fire Chief Mullikin met with Stanton, Parrish and McGuire to discuss their contentions in the grievances. Mullikin sustained the grievances of Parrish and Stanton and directed that the written warnings be removed from their personnel files. Undisputed Facts 19, 20.

8. Five days after the rescinding of the written warnings, the Union filed the present Charge. The Charge relates only to the discipline of Parrish and Stanton by Mott. Undisputed Facts 21, 22.

The Board concludes as a matter of law as follows:

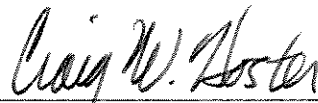
1. The alleged unfair labor practice involved only a single instance and was not accompanied by repeated instances of alleged misconduct that might have had a chilling effect on proper interaction among Union members.

2. The City rectified its action quickly and completely by removing the written warnings from the personnel files of Stanton and Parrish. *See Local 176, International Association of Fire Fighters, AFL-CIO/CLC v. City of Tulsa, Oklahoma*, PERB 315 (6-14-1996) (that city rectified misconduct when it became aware of improper orders or conduct of district fire chief was a factor that the Board considered in finding no unfair labor practice).

3. Under the circumstances, the decision of Assistant Chief Rex Mott to discipline Captain Dale Parrish and Battalion Chief Gary Stanton did not rise to the level of an unfair labor practice under 11 O.S. § 51-102 (6a)(1), (2), and (5) of the FPAA.

Based upon the aforementioned facts to which no genuine issue exists, the Court finds that the City is entitled to judgment as a matter on the Unfair Labor Practice Charge filed by the Union.

Dated: December 14, 2006



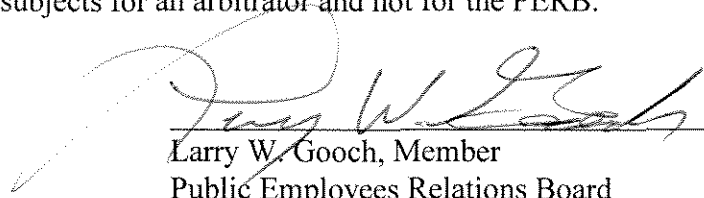
Craig W. Hoster, Chair
Public Employees Relations Board

Concurring – Larry W. Gooch

I agree with the Board's decision but for different reasons. The use of discipline for the purpose of discouraging members from using the contract grievance procedure constitutes an unfair

labor practice regardless of whether the grievance is resolved. Here, however, the Union did not establish that anti-Union animus was a factor in the City's actions.

The Union asserted that management did not perform a proper investigation prior to issuing the discipline. Matters of "just cause", such as whether a rule was violated, whether a rule applies, whether a rule is enforced without discrimination, whether there was proper investigation, are all contract matters and are proper subjects for an arbitrator and not for the PERB.



Larry W. Gooch, Member
Public Employees Relations Board