

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

Public Employees Relations Board

APR 09 2007

FRATERNAL ORDER OF POLICE)
LODGE 145,)
)
Complainant,)
)
v.)
)
CITY OF WARR ACRES, OKLAHOMA,)
)
Respondent.)

Case No. 00438

ORDER

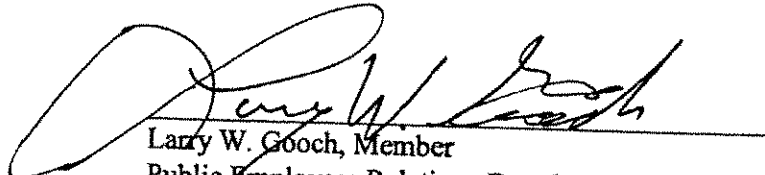
This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 22nd day of February, 2007, on the Motion to Compel filed by the Complainant Fraternal Order of Police Lodge 145 (the "Union") and the Motion to Quash to Quash filed by the City of Warr Acres, Oklahoma (the "City"). The Union appeared by and through its attorney, Chanda R. Graham. The City appeared by and through its attorney, Robert M. Jernigan.

The Union brought this action alleging that the City engaged in a violation of 11 O.S. 2001 § 51-102 (6a)(1), (3) and (5) of the Fire and Police Arbitration Act, 11 O.S. 2001 & Supp. 2006 §§ 51-101 *et seq.* (the "FPAA"). The Union filed its motion to compel the City to produce certain executive session minutes of the Warr Acres City Council pursuant to a Subpoena Duces Tecum issued by the Board on December 12, 2006. The City moved to quash the subpoena because it was improperly issued and because, pursuant to the Oklahoma Open Records Act, the documents sought to be produced are confidential and not subject to disclosure or discovery. The Union responded in opposition to this objection.

The City's Motion to Quash the subpoena is granted at this time. The Union's Motion to Compel is denied without prejudice. The parties are directed to proceed with discovery and to

hearing. At the hearing, if the Board determines that the minutes of the executive session of the Warr Acres City Council are needed, the Board will reissue the subpoena and the City can then assert that the minutes are legally privileged.

Dated: 4/9/07



Larry W. Gooch, Member
Public Employees Relations Board

Chair Hoster concurring:

The record reveals a tortured procedural history in the issuance and service of the subject Subpoena Duces Tecum and I agree that the City's Motion to Quash should be granted, for procedural and substantive reasons.


The Subpoena Duces Tecum seeks the minutes of an executive session of the Warr Acres City Council and requires an examination of the Oklahoma Open Meeting Act, 51 O.S. §§ 24A.1, *et seq.* The Act applies to the City Council and provides that the meetings of public bodies must be open to the public with certain limited exceptions.

A public body may hold on an executive session, closed to the public, for the purpose of “[d]iscussing negotiations concerning employees and representatives of employee groups.” 25 O.S. § 307(B)(2). Such discussions during executive session are “confidential” under the Act. 51 O.S. § 24A.5(1).

While information from an executive session may not be absolutely privileged, I consider it somewhat akin to attorney work product, which is generally not discoverable. Certainly, there may be exceptional circumstances where confidential executive session minutes are discoverable but no such circumstances have been presented here. And there is no reason why the mere filing of an

unfair labor practice charge should remove the confidential privilege from the minutes and open them to public access.

PERB gives effect to the "rules of privilege recognized by law." OAC 585:1-7-8(c). The Oklahoma legislature has designed executive session minutes confidential and we must do likewise.



Craig W. Hoster, Chair