

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD  
STATE OF OKLAHOMA

**FILED**

MAY 8 2008

Public Employees Relations  
Board

INTERNATIONAL UNION OF POLICE )  
ASSOCIATIONS, LOCAL NO.3, )

Complainant, )

v. )

CITY OF SHAWNEE, WILLIAM )  
MATHIS and JAMES COLLARD, )

Respondents. )

PERB No. 444

**ORDER**

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 13th day of March, 2008, on the Motion for Summary Judgment filed by Respondent James Collard ("Collard"). The International Union of Police Associations, Local No. 3 (the "Union") responded in opposition to the motion. Collard appeared by and through his attorney, Matthew J. Love. The Union appeared by and through its attorney, Douglas D. Vernier.

The Union brought the present action alleging that numerous actions allegedly taken by Police Chief William Mathis constituted unfair labor practices. The Union also alleged that James Collard, City Manager, approved of the challenged actions and that such approval constituted an unfair labor practice committed by Collard in his individual capacity.

**Findings Of Fact**

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. The City of Shawnee is an Oklahoma municipal corporation. It is a charter city which has adopted a council-manager form of government. Respondent's Fact No. 1.

2. At all times relevant, James Collard has been the City Manager of the City of Shawnee. As City Manager, he is the Chief Executive Officer and head of the administrative branch of government. Respondent's Fact No. 2.

3. William Mathis is currently the Chief of Police of the City of Shawnee. He assumed that position on October 1, 2006. Respondent's Fact No. 3.

4. Local No. 3 is the duly recognized and exclusive bargaining agent for full time, permanent members of the City of Shawnee Police Department with the exception of the Police Chief and one designated Administrative Assistant for the purposes of negotiating wages, hours and other conditions of employment. Respondent's Fact No. 4.

5. The acts allegedly taken by Collard were after the acts complained of by the Union as unfair labor practices and in his capacity as City Manager of the City of Shawnee. Respondent's Fact Nos. 10-24; Union's Fact Nos. 1-14.

### **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 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. 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).

4. The Union, in asserting a violation of 11 O.S. 2001, § 51-102(6a), has the

burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. 2001, § 51-104b(C); OAC 585:1-7-16.

5. Because the acts allegedly taken by Collard and complained of by the Union were taken by Collard in his capacity as City Manager of the City of Shawnee, these actions were taken by Collard in his official capacity. See *In re Initiative Petition No. 366*, 2002 OK 21, ¶ 9, 46 P.3d 123. The facts do not establish that Collard committed the alleged unfair labor practices in his individual capacity.

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.

7. Because no substantial controversy exists as to a material fact and James Collard is entitled to judgment as a matter of law, Collard’s motion for summary judgment should be, and is hereby, GRANTED.

### **Opinion**

The Union filed unfair labor practice charges against the City of Shawnee and its Chief of Police, William Mathis, and City Manager, James Collard. Collard filed a motion for summary judgment seeking the dismissal of the charges against him. Thus, the Board must determine under what circumstances an individual can be charged with an unfair labor practice under the Fire and Police Arbitration Act. 11 O.S. 2001, §§ 51-104b and 51-102(2). The Board is empowered to prevent any person from engaging in any unfair labor practice and may issue a cease and desist order. 11 O.S. 2001, § 51-104b.

In *Wilson v. City of Tulsa*, 2004 OK CIV APP 44, 91 P.3d 673, a police officer filed suit against the City of Tulsa and its Chief of Police under the Oklahoma Governmental Tort Claims Act claiming the officer was illegally terminated for refusing to sign a liability waiver before taking a polygraph test. The court determined that if the Chief "was operating within the scope of his employment, he cannot be held personally liable and should not have been named in the lawsuit." 2004 OK CIV APP 44, ¶ 15. Scope of employment was defined as "performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by a competent authority" provided the action does not constitute corruption or fraud and the employee did not act "with malice or in bad faith." *Id.*

Here, there is no indication in the charge that the City Manager acted outside the scope of his employment. Indeed, he did not get involved in the situation until after the occurrence of the facts alleged to constitute the unfair labor practices.

The Board believes that corporate authorities should not be named in an unfair labor practice charge if they are merely discharging their official duties within the scope of their employment. Thus, the Board adopts a standard similar to the one described in *Wilson v. City of Tulsa* to determine when a city manager or other corporate authority should be named in an unfair labor practice charge.

Accordingly, for the above reasons, Collard is dismissed as a respondent in this case.

Dated: May 8, 2008

  
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Craig W. Hoster, Chair  
Public Employees Relations Board