

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD  
STATE OF OKLAHOMA

**FILED**

DEC 12 2007

Public Employees Relations  
Board

INTERNATIONAL ASSOCIATION )  
OF FIREFIGHTERS, LOCAL NO. 2374, )  
AFL-CIO/CLC, )  
 )  
Complainant, )  
 )  
v. )  
 )  
CITY OF WARR ACRES, OKLAHOMA, )  
 )  
Respondent. )

Case No. 00449

**FINAL ORDER**

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 11th day of October, 2007, on the Motion for Summary Judgment filed by the Respondent City of Warr Acres, Oklahoma (the "City"). The City appeared by and through its attorney, Margaret McMorrow-Love. The Complainant International Association of Firefighters, Local 2374 (the "Union" or "Local 2374") appeared by and through its attorney, Steven R. Hickman.

The Union brought this action alleging that the City violated 11 O.S. 2001 § 51-102(6)(6a)(5) of the Fire and Police Arbitration Act, 11 O.S. 2001 & Supp. 2007 §§ 51-101 *et seq.* (the "FPAA"). The City argued that it is entitled to judgment as a matter of law on its motion for summary judgment because the unfair labor practice charge does not assert any matter involving a grievance. The Union argued in its response that the City's motion for summary judgment should be denied because the City's unilateral action in presenting a modified collective bargaining agreement to the City Council and then approving it is a violation of the FPAA.

### Findings of Fact

The Board finds that there is no substantial controversy as to the following material facts:

1. The City of Warr Acres is an Oklahoma municipal corporation. It is a charter city which has adopted a mayor-council form of government. Undisputed Fact No. 1.
2. The City Charter grants to the City the power to perform certain functions, including the right to enter into contracts. Undisputed Fact No. 2.
3. Article 2, Section 2-4 of the City Charter states that, except as otherwise specifically provided, all powers of the City are vested in the City Council. This includes the power of the City Council to enter into contracts. Undisputed Fact No. 3.
4. The City of Warr Acres operates on a fiscal year from July 1 through June 30 of each year. Undisputed Fact No. 4.
5. Local 2374 is the duly recognized and exclusive bargaining agent for full time, permanent members of the Warr Acres Fire Department with the exception of the Fire Chief and one designated Administrative Assistant. Undisputed Fact No. 5.
6. For several years, the City has entered into collective bargaining agreements ("CBA") with Local 2374 pursuant to the FPAA, including a CBA for FY 2005-2006. Undisputed Fact No. 6.
7. On March 1, 2006, the City received notice of Local 2374's intent to bargain collectively for a CBA for FY 2006-2007, including bargaining on matters requiring the appropriations of monies. Undisputed Fact No. 7.
8. A dispute arose between the City and Local 2374 as to the obligation of the City to negotiate on money terms for a CBA for FY 2006-2007, based upon the City's assertion that Local 2374 had failed to give timely notice in compliance with 11 O.S. § 51-112. Undisputed Fact No. 8.

9. Local 2374 filed an unfair labor practice charge before this Board, Case No. 00439, regarding the City's position that it was not required to bargain on monetary issues for a CBA for FY 2006-2007. Undisputed Fact No. 9.

10. The City of Warr Acres filed a Motion for Summary Judgment in Case No. 00439. Undisputed Fact No. 10.

11. While the ULP was pending, the President of Local 2374 called Mayor Tardibono suggesting that, in order to reach an agreement on a contract for FY 2006-2007, the City and Local 2374 agree to "rollover" the substantive terms and conditions of the expired CBA of FY 2005-2006 as the CBA for 2006-2007. Undisputed Fact No. 11.

12. After the hearing on the City's Motion for Summary Judgment, but prior to an order being entered by this Board, a draft CBA was submitted to the City for consideration by the City's labor attorney, Tony Puckett. Undisputed Fact No. 12.

13. By Order dated March 3, 2005, this Board held in Case No. 00439:

Pursuant to 11 O.S. 2001 § 51-102(6)(6a)(5), the evidence must establish a refusal to bargain collectively in good faith before the Board can find an unfair labor practice. Based on the record before the Board, the evidence is insufficient to find such a refusal ...

Undisputed Fact No. 13.

14. Pursuant to the Oklahoma Open Meeting Act, an agenda was posted for the regular March 6, 2007, meeting of the City Council of the City of Warr Acres. Proposed Agenda Item No. 32 stated:

Discussion and action on approval of the contract for FY 2006-2007 with the IAFF, Local 2374 and the City of Warr Acres, including discussion and action on entering into executive session as allowed under 25 O.S. Supp. 307(b)(2). Discussing negotiations concerning employees and representatives of employee groups.

Undisputed Fact No. 14.

15. At the regular March 6, 2007, meeting of the City Council, the following motion was made, seconded and passed:

Motion by Street, seconded by Martinez to approve the IAFF 2006-2007 contract as presented by the IAFF, less and except requirement that the City Attorney sign as to legality. Poll vote: Alexander yea, Johnson yea, Nelson yea, Gossman yea, Martinez yea, Street yea, Shapiro yea, Olson yea and Tardibono yea.

Undisputed Fact No. 15.

16. Other than changing the dates to reflect a CBA for FY 2006-2007, the only alleged "difference" between the CBA for 2005-2006 and the CBA for 2006-2007 is on the last page of the document, below the signature of the City by the Mayor and attested by the City Clerk, and below the signature of Local 2374 by its President and attested by its Secretary/Treasurer, and consists of a change from "approved as to legality and form ... " to "approved as to form ... " by the City Attorney.

Undisputed Fact No. 16.

17. After the adoption of the CBA for FY 2006-2007 by the City, it has not received any grievances asserting that any member of the bargaining unit has not received all wages, compensations or other individual benefits to which that member was entitled under the terms and conditions of the CBA for FY 2006-2007. Each individual member of Local 2374 has received the benefits to which he/she has been entitled under the CBA for 2006-2007. Undisputed Fact No. 17.

#### **Conclusions of Law**

The Board concludes as a matter of law as follows:

1. At 11 O.S. 2001 § 51-102(5) the term "collective bargaining" is defined as follows:

Collective bargaining' shall mean the performance of the mutual obligation of the municipal employer . . . and the representative of the employees . . . to confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any questions arising thereunder; and to execute a written contract incorporating any agreement reached if requested by either party.

2. In *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 147, 178, 92 S.Ct. 383 (1971), the Supreme Court held that the list of topics for mandatory bargaining is limited to "issues that settle an aspect of the relationship between the employer and the employees."

3. Under Oklahoma law, the only entity which may legally bind the City to a contract is the City Council. *City of Muskogee v. Senter*, 1939 OK 375, 96 P.2d 534; City of Warr Acres City Charter, Articles 1 and 2. Therefore, the City Attorney has no authority to bind the City to a CBA and his signature is not required by statute or charter to be on any contract.

4. Deletion by the City from page 33 of the proposed CBA for FY 2006-2007 the phrase "and legality" on the signature line of the City Attorney, which signature occurs after the signatures of the City and Local 2374, had no impact upon the relationship between the City and Local 2374 and is not a substantive condition of employment within the meaning of the FPAA on which there is a mandatory duty to bargain in good faith. The change on the signature page does not affect whether the provisions of the CBA are legal and binding.

5. "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.

6. Because no substantial controversy exists as to a material fact and the City is entitled to judgment as a matter of law, the City's motion for summary judgment should be and is hereby granted.

Dated: December 10, 2007

  
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Craig W. Hoster, Chair  
Public Employees Relations Board