

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

IN RE: PETITION TO DECERTIFY IAFF,)
LOCAL 2962, CITY OF BROKEN BOW)

Case No. 12417-D

MAY 8 2008
Public Employees Relations
Board

ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 10th day of April, 2008. The City/Intervenor appeared by and through its attorneys, Frank B. Wolfe, III and D. Kenyon Williams, Jr. The Complainant International Association of Firefighters, Local 2962 (the "Union" or "Local 2962") appeared by and through its attorney, Steven R. Hickman.

On October 9, 2007, a Petition for Decertification was filed by Ray Butler to decertify the Union. On November 8, 2007, the decertification election was held.

By Order dated January 16, 2008, the parties were directed to brief the issues whether a three to three vote is sufficient to decertify the union and whether a free and untrammled election could have been conducted. The parties were to include in their briefing of the latter issue a factual and legal discussion of all of the unfair labor practices raised by the Union.

FINDINGS OF FACT

1. The Union was certified in 1985 as a certified bargaining representative. February 12, 1985 Certification of Representative.

2. By letter to the City, the Union, "[a]s a result of a decision by the majority of the members of the bargaining unit represented by International Association of Fire Fighters Local 2952" withdrew "all proposals for a labor agreement to be effective July 1, 1985 through June 30, 1986." June 24, 1985 letter from Fred Moore, State IAFF Representative, to Mark Guthrie, City Manager (Intervenor's Exh. 6).

3. Between its withdrawal of all proposals for a labor agreement and January, 2007, no

requests were made for bargaining by the Union to the City, and no collective bargaining agreement was entered into.

3. On January 3, 2007, Rick Beams, I.A.F.F. District Field Service Representative, filed a Petition for Bargaining Unit Certification with PERB.

4. PERB notified Petitioners that a union had already been certified.

5. On October 9, 2007, a Petition for Decertification was filed.

6. On November 8, 2007, six firefighters, including the Assistant Chief, voted in the decertification election. Three votes were cast against decertification, and three votes, including the Assistant Chief's vote, were challenged. Board's Tally of Ballots.

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. 2007, CC 51-101, *et seq.*, and the Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2001, c 51-104b.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, CC 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. Because no contract was negotiated and the Union did nothing to represent the Fire Fighters of Broken Bow from 1985 through early 2007, the Union was either unable or unwilling to represent the employees. *See White Castle System, Inc.*, 224 N.L.R.B. 1089 (N.L.R.B. 1976) (factors such as that only one grievance was filed in ten years and no union meetings were held create good faith doubt of majority status).

5. The "tie vote" in the decertification election is evidence that whatever majority status the Union had in 1985 was lost between that date and 2007. *See Burns International Security Services, Inc. v. N.L.R.B.*, 567 F.2d 945, 951 (10th Cir. 1977) (poll conducted by employer provided evidence that election should be conducted to determine whether union continued to represent a majority of its employees).

6. The Union abandoned, or was unable to represent, the Broken Bow Fire Department bargaining unit, and the Union that was certified in 1985 as a certified bargaining representative is defunct. *See Hershey Chocolate Corp.*, 121 NLRB 901, 911 (N.L.R.B. 1958) (a representative is defunct if it is unable or unwilling to represent the employees).

7. The 2007 Petition for a certification election is a valid petition. A certification election should be conducted. However, prior to this election, and within twenty (20) days of the date of this order, the Union is allowed to present evidence why a fair and untrammled election can not be had. *See Texas Petrochemicals Corp. v. N.L.R.B.*, 923 F.2d 398, 406 (5th Cir. 1991) (the most effective means for determining employee sentiment is through a Board sponsored election with its attendant protections).

Dated: 9/8/08



Larry W. Gooch, Member
Public Employees Relations Board



Linda Samuel-Jaha, Member
Public Employees Relations Board

Chair Craig Hoster dissented.