

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, LOCAL 2962,)
)
Complainant,)
)
v.)
)
CITY OF BROKEN BOW, OKLAHOMA,)
)
Respondent.)

Public Employees Relations Board

FILED

OCT 31 2007

Case No. 00446

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 Partial Summary Judgment filed by the Respondent City of Broken Bow, Oklahoma (the "City"), regarding designated administrative assistant. The City 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.

The Union brought this action alleging that the City "unilaterally without the benefit of negotiation instituted a number of changes in working conditions in retaliation for the members exercising their rights guarantee by statute" in violation of 11 O.S. 2001 § 51-102(6)(6a)(1), (2), (3) and (5) and 11 O.S. 2001 § 51-111 of the Fire and Police Arbitration Act, 11 O.S. 2001 & Supp. 2007 §§ 51-101 *et seq.* (the "FPAA"). The City argued in its motion that it is entitled to judgment as a matter of law on its motion for partial summary judgment because 11 O.S. 2001 § 51-102(1) does not create a mandatory duty requiring the fire chief to designate an administrative assistant who will thereby be excluded from the collective bargaining unit. The Union argued in its response that the

City's motion for partial summary judgment should be denied because the City has a mandatory duty to designate a person not in the bargaining unit to be the administrative assistant.

The issue before the Board is an issue of law. Therefore, the Board concludes as a matter of law as follows:

1. Title 11 O.S. 2001 § 51-102(1) provides:

"Fire fighters and police officers" shall mean the permanent paid members of any fire department or police department in any municipality within the State of Oklahoma but shall not include the chief of police and an administrative assistant and the chief of the fire department and an administrative assistant.

2. "The primary goal of statutory construction is to ascertain and follow the intention of the Legislature." *City of Tulsa v. State ex rel. Public Employees Relations Board*, 1998 OK 92, ¶14, 967 P.2d 1214 (citations omitted). "Generally, that intent is ascertained from the whole legislative act in light of its general purpose and object." *Id.* "Further, the plain meaning of statutory language is conclusive except in the rare case in which literal construction will produce a result demonstrably at odds with the intention of the Legislature." *Id.*

3. The plain meaning of the statutory language "an administrative assistant" is that the fire chief does not have a mandatory duty to designate an administrative assistant. Rather, the fire chief has the prerogative to designate an administrative assistant. If the fire chief had the duty to designate an administrative assistant, the Legislature would have specifically directed him to do so and the reference in § 51-102(1) would be to "the administrative assistant".

4. If the chief does designate an "administrative assistant" pursuant to § 51-102(1), that person shall be a permanent paid member of the fire department. 11 O.S. 2001 § 51-102(1). That person's view regarding union representation is not a factor that the chief needs to consider in his

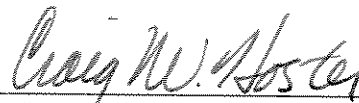
designation.

5. The purpose of specifically excluding only the chief of police and an administrative assistant from the definition of "fire fighter" is to limit the number of firefighters that can be excluded from the bargaining unit. *See Stone v. Johnson*, 1984 OK 76, 690 P.2d 459, 460-61 (the definitions of firefighters and policemen were changed to include all permanent members of the departments except the department chiefs and one administrative assistant in each department to be designated by the department chief).

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.*, 913 P.2d 1311, 1313 (Okla. 1996).

7. Because the City is entitled to judgment as a matter of law, the City's motion for partial summary judgment that 11 O.S. 2001 § 51-102(1) does not create a mandatory duty requiring the fire chief to designate an administrative assistant should be and is hereby granted.

Dated: October 31, 2007



Craig W. Hoster, Chair
Public Employees Relations Board