

El Reno 00353

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE,)	
LODGE 151,)	
Complainant)	
vs.)	Case No. 00353
CITY OF EL RENO)	
Respondent)	

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND ORDER

NOW ON this 16th day of January, 1998, there comes on before the Oklahoma Public Employees Relations Board the above-styled and -numbered administrative action upon the Motion to Dismiss filed by the Respondent, the City of El Reno. The Board reviewed the briefs of the parties and received oral argument. And the Board, being fully apprised of the facts and matters alleged, makes the following findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The City of El Reno (the "City") and the Fraternal Order of Police (the "FOP") have had a bargaining relationship for many years.
2. Article IV of the collective bargaining agreement (the "CBA") specifies Management Rights and has remained unchanged since approximately 1989.
3. Article IV incorporates the reserved rights doctrine of management rights in the CBA.
4. Article IV, Sec. 1.1 provides that the City has the right to make "[t]he determination of Police Department policy, including the right to manage the affairs of the Police Department[.]"
5. Article IV, sec. 1.2 provides that the City has "[t]he right to assign working hours."
6. Article IV, Sec. 1.3 provides that the City has "[t]he right to establish, modify or change work schedules[.]"
7. Article IV, Sec. 1.4 provides that the City has "[t]he right to assign employees to other duties within the Police Department."
8. Article IV, Sec. 1.5 provides that the City has "[t]he right to direct employees of the Police Department, including the right to...transfer any employee[.]"

9. Article IV, Sec. 1.6 provides that the City has "[t]he right to direct employees of the Police Department, including the right to...transfer any employee[.]"
10. Article IV, Sec. 1.8 provides that the City has the right to determine " [t]he selection, promotion or transfer of employees to supervisory or other managerial or technical positions."
11. Article IV, Sec. 1.9 provides that the City has "[t]he right to organize and reorganize the Police Department in any manner it chooses[.]"
12. Article IV, Sec. 1.11 provides that the City has the right to determine "[t]he scheduling of operations within the Police Department."
13. Article IV, Sec. 1.19 provides that the City has "[t]he right to create new divisions and services within the Police Department."
14. The City created the position of Assistant DARE Officer in June, 1995.
15. When the position was created, the City assigned duties for the position and a work schedule for the position. The position's duties involved teaching school children about the dangers of drugs, assisting the regular DARE Officer in other aspects of the DARE programs, performing related tasks, and performing patrol duties when not performing DARE duties.
16. The officer who was assigned to the Assistant DARE Officer position did not receive any greater pay or benefits.
17. The City created the position of Community Safety Officer in September, 1997.
18. When the position was created, the City assigned duties for the position and a work schedule for the position.
19. The position's duties involved working with local civic organization, neighborhood groups, school groups and other citizens' groups to educate the public about public safety issues, crime prevention techniques and neighborhood problems solving.
20. The officer assigned to the position of Community Safety Officer did not receive any greater pay or benefits.
21. Article XII, Sec. 2 of the CBA at issue provides:

The Employer agrees to establish an Employee Insurance Committee drawing members from the FOP, Firefighters and non-uniformed employees, to help establish the goals of medical and life insurance programs. The Committee shall meet during the month of January to inform the City Manager of any problems or concerns being experienced by employees in regard to medical or life insurance programs. If the City Manager and the City Council seek proposals for the provision of medical and life insurance, the Committee will hear presentations of different insurance programs, rates, and benefits prior to submission to the City Manager and City Council.

22. The Employee Insurance Committee consists of representatives of all departments of the City, including the Police Department.
23. The FOP's representative on the Employee Insurance Committee in 1997 was Tim Smith.
24. The Police Department and the FOP were provided notice of the first meetings of the Employee Insurance Committee in July, 1997, at which alternatives for maintaining insurance within an acceptable cost were discussed.
25. The Employee Insurance Committee voted on and approved recommended changes to medical insurance coverage provided by the City.
26. The role of the Employee Insurance Committee is advisory, and the City retains the right to determine insurance coverage under Article XII, Sec.2 of the CBA

CONCLUSIONS OF LAW

1. This matter is governed by the provisions of the Fire and Police Arbitration Act (the "FPAA"), 11 O.S. 1991 and Supp. 1997, Sec. 51-101, et seq., and the Board has jurisdiction herein.
2. The burden of proof in an unfair labor practice action is upon the charging party. 11 O.S. 1991, Sec. 51-104b.
3. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S.1991 and Supp. 1997, Sec. 308a, et seq.
4. Pursuant to the FPAA, "[a]ll rules, regulations, fiscal procedures, working conditions, departmental practices and manner of conducting the operation and administration of fire departments and police departments currently in effect on the effective date of any negotiated agreement shall be deemed a part of said agreement unless and except as modified and changed by the specific terms of such agreement. 11 O.S.1991, Sec. 51-111.
5. The obligation to bargain collectively does not "compel either party to agree to a proposal or require the making of a concession." 11 O.S.1991, Sec. 51-102(5).
6. When applying and interpreting the FPAA, it is appropriate and helpful to consider federal case law on the subject. *I.A.F.F. Local 2551 v. City of Broken Arrow*, PERB Case No. 104.
7. Parties to a labor agreement may reach an agreement which permits the employer to exercise rights of management and make substantive changes concerning terms and conditions of employment during the term of a collective bargaining agreement without requiring bargaining by the employer on such subject. See, *N.L.R.B. v. U.S. Postal Service*, 8 F.3d 832 (D.C.Cir. 1993); *United Technologies Corp.* 287 NLRB No. 16, 130 LLRM (BNA) 10986 (1987). An employer does not

violate any duty to bargain when it alters subjects such as the reduction in the number of hours, assignment of employees, or a change in the system of progressive discipline when the management rights clause of the collective bargaining agreement negotiated between the employer and the union gives the employer the right to make, issue and enforce such policies or practices. *N.L.R.B. v. U.S. Postal Service*, 8 F.3d 832 (D.C.Cir.1993); *United Technologies Corp.* 287 NLRB No. 16 LLRM (BNA) 1086 (1987).

8. Under the FPAA, an employer's unilateral change in a mandatory subject of bargaining during the term of a contract is "permissible when a management rights clause evidences a grant of permission by the union to unilaterally effect such changes. " *I.A.F.F. Local 2171 v. City of Del City*, PERB Case No. 194.

DISCUSSION

The present issue has received much attention from this Board over the years. Generally, a city has no right to make unilateral changes in any matter which involves a mandatory subject of bargaining. *International Association of Firefighters, Local 2839 v. City of Okmulgee*, PERB Case # 00125. While this duty has not changed, most recently we affirmed that a union may defer to a municipality the ability to make unilateral changes to mandatory subject of bargaining. *Fraternal Order of Police, Lodge 103 v. City of Ponca City*, PERB Case No. 00349 The provisions of the CBA between the parties herein make it clear that Lodge 151 of the Fraternal Order of Police ceded to the City of El Reno its rights of management with regard to the contested changes as to the Assistant DARE Officer, the Community Service Officer and insurance. There was no unfair labor practice for the City to exercise those rights.

ORDER

It is therefore the **ORDER** of the Public Employees Relations Board that the Motion to Dismiss of the City of El Reno is **SUSTAINED**.

Approved as to form:

James R. Moore, Attorney for Complainant
2/20/98

Tony Puckett, Attorney for Respondent
3/1/98

Original signed by Charles A. Kothe, Chair
March 4, 1998