BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

Public Employees Relations Board
SEP 19 2007

FRATERNAL ORDER OF POLICE LODGE 39,	)	
Complainant,	)	
v.	)	Case No. 00388
CITY OF TULSA, OKLAHOMA,	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

NOW on this 29th day of April, 2003, there comes before the Oklahoma Public Employees Relations Board (the "Board") the above-styled and numbered administrative action. The complainant, Tulsa Fraternal Order of Police Lodge 93 ("Union" or "FOP"), appears through its attorney of record, Loren Gibson. Respondent, City of Tulsa ("City"), is represented by and through its attorney of record, Ellen Hinchee. The parties agreed to waive testimony and requested that the Board render its decision based upon the written briefs and undisputed facts as stated. The Board, having received the briefs and exhibits of the parties and otherwise being fully briefed on the facts and matters alleged, makes the following determination regarding findings of fact and conclusions of law and issues its Final Order.

Findings of Fact

1. The City and the Union entered into a collective bargaining agreement ("CBA") effective July 1, 2000 to June 30, 2001, pursuant to the terms of the Fire and Police Arbitration Act, 11 O.S. 2001, §§ 51-101, *et seq.* ('FPAA").

2. On June 18, 2001, the Union filed a grievance on behalf of its member, Officer Antonia Hill, against the City alleging violations of the CBA. Exhibit "Q", *Respondent City of Tulsa's Response to FOP's Motion for Summary Judgment and Brief in Support* (hereinafter *"City's Response"*).

3. During all times relevant to the instant cause, Bob Jackson was the President of the Union.

4. In conjunction with the grievance cited above, Jackson requested a copy of Tulsa Police Department Internal Affairs file #01-113 (hereinafter the "File") relating to the investigation into the incident which formed the basis of the Union grievance.

5. The information in the File was subsequently released to the media.

6. On July 24, 2001, Tulsa Police Department (hereinafter "TPD") Chief Ron Palmer directed a memorandum to all police personnel advising that Attorney Larry Simmons was authorized by the Chief to investigate the unauthorized public release of the File. Exhibit "1", *FOP Lodge 93's Motion and Brief in Support of Summary Judgment* (hereinafter *"FOP Motion"*).

7. The memo further directed TPD officers to respond truthfully and completely to questions from Simmons relating to the performance of their official duties.

8. On July 25, 2001, Union attorney Loren Gibson advised Simmons in writing that the Union's position was that interviews were not permitted regarding Union activities, particularly in regard to any request that Jackson, as Union president, be subject to questioning regarding his duties as representative of Officer Hill in the grievance. Exhibit "2", *FOP Motion*.

9. On July 25, 2001, Simmons responded that he did not require consent by Gibson to interview police officers, taking the position that the investigation was not related to the representative activities of the Union. Exhibit "3", *FOP Motion*.

10. On July 30, 2001, Gibson responded to Simmons that Jackson would attend any mandatory interview, but would not answer any questions relating to Union activities. Exhibit "4", *FOP Motion*.

11. On August 3, 2001, Simmons responded to Gibson advising that "because of the serious consequences facing him" he wanted Jackson to have the opportunity to decide for himself if he would refuse to answer his questions. Exhibit "6", *FOP Motion*.

12. On September 5, 2001, Jackson was interviewed by Simmons with Gibson as his Union representative.

13. During the interview, Simmons instructed Gibson to "stay off my record" when Gibson repeatedly asked Simmons to clarify his requests. Gibson objected that as a *Weingarten* representative, Simmons could not order him to be silent. Exhibit "7", Transcript of Jackson Interview, *FOP Motion*.

14. Jackson was then ordered by Captain Rod Hummell to answer the questions posed by Simmons, subject to discipline for his refusal to answer. Exhibit "5", *FOP Motion*, pp. 31, 33.

15. Jackson then answered the questions posed by Simmons, denying that he had any knowledge regarding release of the File to the media.

16. In February 2002, Jackson received another Internal Affairs file which was labeled to indicate that the File was confidential and had been released to the Union.

17. The City has begun marking copies of Internal Affairs documents to be produced on watermark paper stating that the document is confidential and identifying the date and person to whom the copy was delivered. Exhibit "B", *City's Response*.

18. Prior to February 2002, copies of Internal Affairs documents received by the Union were stamped "confidential" without identification of the person receiving the document.

19. The City continues to label Internal Affairs files requested and received by the Union, indicating that they are confidential and have been released to the Union. Exhibit "A", *City's Response.*

20. Pursuant to Section 2.22 (Management Rights) of the CBA, the City retains the right to determine property protection measures and to introduce new, improved, or different methods and techniques, or change existing methods and techniques. Exhibit "S", *City's Response.*

21. The Union filed this complaint against the City, citing violations of the FPAA, 11 O.S. 2001, §§ 51-102(6a)(1) and (2), alleging that the City attempted to interfere with, restrain, intimidate, or coerce employees of the Union in the exercise of rights guaranteed by the FPAA and by interfering with the administration of the employee organization or bargaining agent.

22. The Union also cited violations by the City of the FPAA, 11 O.S. 2001 § 51-102(61)(5), for its alleged failure to bargain in good faith on mandatory subjects of bargaining in the implementation of changes in past practice by labeling each page of Internal Affairs files released to the Union as confidential and indicating that the file has been released to the Union.

Conclusions of Law

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001, §§ 51-101, *et seq.*, and the Board has jurisdiction to rule on these unfair labor practice charges.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, §§ 308, *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. "Unfair labor practice" includes, but is not limited to, action by corporate authorities interfering with, restraining, intimidating or coercing employees in the exercise of the rights guaranteed them by the FPAA. 11 O.S. 2001, § 51-102(6a)(1).

5. "Unfair labor practice" includes, but is not limited to, action by corporate authorities dominating or interfering with the formation, existence or administration of any employee organization or bargaining agent. 11 O.S. 2001, § 51-102(61)(2).

6. It is appropriate to consider federal labor law in the construction of the FPAA. *Stone v. Johnson*, 690 P.2d 459, 462 (Okla. 1984).

7. The Union, asserting a violation of 11 O.S. 2001, § 51-102(6), has the burden of proving allegations of unfair labor practice by a preponderance of the evidence. OAC 585:1-7-16.

8. An employee who is called to an interview that he or she reasonably believes could result in discipline is entitled to have a union representative present. *NLRB v. J. Weingarten Co.*, 42 U.S. 251 (1975); *IAFF Local 1628 v. City of Shawnee*, PERB Case No. 220 (1990).

9. A police officer is entitled to meaningful union representation. Attempts by a corporate authority to silence the representative during such interview is an unfair labor practice. *FOP Lodge 114 v. City of Del City*, PERB Case No. 370, at pp. 6-7 (2000).

10. An employee's *Weingarten* right is violated, and an unfair labor practice results when (a) the employee reasonably believes an investigatory interview could result in disciplinary action; (b) the employee requests union representation; (c) the employee is denied union representation; and (d) the employer insists that the employee continue with the interview. *IAFF Local 1628 v. City of Shawnee*, PERB Case No. 220 (1990).

11. If upon a preponderance of the testimony taken the Board is of the opinion that the City has engaged in any unfair labor practice, then the Board shall issue an order requiring that the City cease and desist from engaging in such unfair labor practice. 11 O.S. 2001, § 51-104(b)(C).

12. The Union has presented evidence of an unfair labor practice by the City in that the City violated Jackson's right to meaningful representation when Simmons directed Gibson to remain silent. A police officer is entitled to meaningful union representation and attempts by a corporate authority to silence the representative during the subject interview is an unfair labor practice. *FOP Lodge 114 v. City of Del City*, PERB Case No. 370, at pp. 6-7 (2000).

13. If upon a preponderance of the testimony taken the Board is of the opinion that the City has not engaged in any unfair labor practice, then the Board shall dismiss the complaint. 11 O.S. 2002, § 51-104(b)(C).

14. The act of modifying the method of labeling confidential Internal Affairs files and documents does not interfere with the administration of the employee organization or constitute a unilateral change in terms and conditions of employment.

15. This new and different method of designating an Internal Affairs document "confidential" and identifying the recipient does not change any party's rights or entitlements regarding the document and does not change the legal or contractual status of the document.

16. This new method of labeling Internal Affairs files and documents by the City does not constitute an unfair labor practice.

ORDER

IT IS THEREFORE THE ORDER of the Public Employees Relations Board that the unfair labor practice allegation by the Union charging the City with an unfair labor practice in violation of 11 O.S. 2001, §§ 51-102(6a)(1) and (2) is hereby UPHELD. The City is ordered to CEASE AND DESIST from interfering with the right of Union employees to effective Union representation during an investigatory interview that the employee reasonably believes might result in disciplinary action. The Union, however, failed to prove an unfair labor practice by the City based upon the City's new method of labeling Internal Affairs files, and that complaint is hereby DISMISSED.

Dated: September 17, 2007

Craig W. Hoster, Chair
Public Employees Relations Board