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Public Employees Relations Board

PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE, LODGE 123, and AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, LOCAL 2406,	)	
Complainants,	)	
vs.	)	Case No. 004-PPC
CITY OF OKLAHOMA CITY, OKLAHOMA,	)	
Respondent.	)	

FINAL ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 14th day of February, 2008, on the Motion for Summary Judgment filed by the Respondent City of Oklahoma City (the "City"). The City appeared by and through its attorney, Suzanne D. Paulson. The Fraternal Order of Police, Lodge 123 ("FOP") and the American Federation of State, County, and Municipal Employees, Local 2406 ("AFSCME") (collectively the "Unions") appeared by and through their attorney, James R. Moore.

The Unions brought the present action alleging that, in April, 2007, the City unilaterally transferred the duties of an AFSCME position (night shift Court Clerk) to an FOP position (Police Officer). The Unions contend that this unilateral change requires officers to assume the Court Clerk's duties, which are not part of the officers' job. The FOP and AFSCME requested an Order directing the City to cease and desist from transferring said duties.

FINDINGS OF FACT

Based upon the statements filed in support of and in opposition to the motion, the Board finds that there is no substantial controversy as to the following facts or issues:

1. On May 18, 2007, and amended on May 21, 2007, the FOP and the AFSCME filed an Unfair Labor Practice/Prohibited Practice Charge (ULP/PPC) alleging that in April, 2007, the City unilaterally transferred duties of an AFSCME position (night shift court clerk) to an FOP position (police officer). Undisputed Fact 1.

2. The Police Operations Manual contains a procedure adopted in January, 1996, for Information Desk personnel to assume full responsibility for bonding on those shifts when a Municipal Court clerk is not working. Undisputed Fact 2.

3. On July 15, 2005, revised Standard Operating Procedures were implemented for the Information Desk Unit stating that Information Desk personnel will maintain control of or assist in after hours bond collection. Undisputed Fact 3.

4. Information Desk personnel includes all employees working at the Information Desk. Undisputed Fact 4.

5. Four (4) Police Service Technician (PST) positions were deleted from the Police Department Budget in FY 2004-2005 and replaced with four (4) uniformed positions. Undisputed Fact 5.

6. Since July 1, 2005, the only employees assigned to the Information Desk have been police officers. Undisputed Fact 6.

7. The Court Administration Department deleted a Customer Service Representative III position from its budget in the fiscal year 2005-2006. Undisputed Fact 7.

8. Until June 30, 2005, a Customer Service Representative III (SCR III) was assigned to the Information Desk at the Police Department between midnight and 7:00 a.m. The CSR III assigned to the Information Desk during the night shift was responsible for all of the same duties assigned to the day shift CSR III, including, but not limited to, maintaining computerized records, processing data and coded information, greeting visitors and serving as an information resource for citizens, reviewing various documents for accuracy, receiving and exchanging money for fees, services, bonds, court costs, licenses, etc., inputting information into various computers systems, reviewing and updating court transactions, and other assigned duties. Undisputed Fact 8.

9. From July 1, 2005, until May 4, 2007, no employees took bonds between midnight and 7:00 a.m. Undisputed Fact 9.

10. On April 20, 2007, the officers assigned to the Information Desk were notified that an employee from the Municipal Court's office would begin training the third shift Information Desk officers to process bond posting. Undisputed Fact 10.

11. Between May 4, 2007 and December 6, 2007, the Information Desk has taken ninety-eight (98) bonds between the hours of midnight and 7:00 a.m. Undisputed Fact 11. This is approximately three (3) bonds per week and each bond normally takes approximately 10 to 15 minutes of the police officer's time.

12. The AFSCME did not file a grievance regarding the transfer of duties of a CSR to a police officer. Undisputed Fact 12.

13. The FOP did not file a grievance regarding the transfer of duties of a CSR to a police officer. Undisputed Fact 13.

CONCLUSIONS OF LAW

The Board concludes as a matter of law as follows:

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001 and Supp. 2007, §§ 51-101, *et seq.*, and the Oklahoma Municipal Employee Collective Bargaining Act, 11 O.S. Supp. 2007, §§ 51-200, *et seq.*, and the Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2001, § 51-104b and 11 O.S. Supp. 2007, § 51-204.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, §§ 308a, *et seq.*

3. The Board is empowered to prevent any person, including corporate authorities, from engaging in any unfair labor practice or prohibited practice. 11 O.S. 2001, § 51-104b(A); 11 O.S. Supp. 2007, § 51-209 (D).

4. Sections 51-102(6a)(5) and 51-208(B)(5) impose on a municipality the duty "to bargain collectively" and "to negotiate collectively", respectively.

5 The Unions, in asserting a violation of 11 O.S. 2001, § 51-102(6a)(5), and 11 O.S. Supp. 2007, § 51-208 (B)(5)[1], has the burden of proving the allegations of unfair labor practice and prohibited practice by a preponderance of the evidence. 11 O.S. 2001, § 51-104b(C) and OAC 585:2-7-12.

6. "All rules, regulations, fiscal procedures, working conditions, departmental practices and manner of conducting the operation and administration of fire departments and police

[1]The Unions originally alleged but subsequently dismissed an allegation of violation of 11 O.S. 2001, § 51-102(6a)(1), and 11 O.S. Supp. 2007, § 51-208 (B)(1).

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 or changed by the specific terms of such agreement." 51 O.S. 2001, § 51-111.

7. Because the City has had in place since 1996, and revised in 2005, a policy requiring Information Desk personnel to take after hours bonds and the FOP has never grieved that policy, that policy is a part of the FOP's collective bargaining agreement. The City is not required to negotiate this policy.

8. Title 11 O.S. Supp. 2007, § 51-209 (A) provides that proceedings against a party alleging a violation of § 51-208 shall be commenced by filing a charge with PERB within six (6) months of the alleged violation. On or about June 30, 2005, the position of SCR III assigned to the Information Desk at the Police Department between midnight and 7:00 a.m. was eliminated. AFSCME's prohibited practice charge alleging improper transfer of the SCR III's duties was filed May 18, 2007, more than six months after June 30, 2005, and is untimely.

9. OAC 585:10-1-4(a)(2) (codified 12-17-91) provided that proceedings against a party alleging an unfair labor practice under the FPAA shall be commenced by filing a written charge with PERB within one (1) year of the alleged violation.[2] Since 1996 and revised in 2005, the City has had a policy in place that officers take bonds at the information desk. FOP's unfair labor charge, filed May 18, 2007, alleging that requiring police officers to take bonds at the Information Desk is a change in working conditions that should have been negotiated is untimely.

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[2]OAC 585:2-5-5 (effective 6-11-07) now provides that the unfair labor practice charge shall be commenced within six (6) months of the alleged violation.

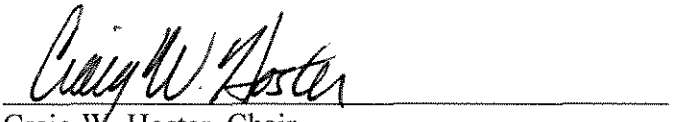
10. Even if requiring officers to take bonds at the Information Desk was a change in working conditions, the work is *de minimis* in nature. *See Macomb Educ. Ass'n v. Illinois Labor Relations Bd.*, 638 N.E.2d 248, 251 (Ill. App. 4 Dist. 1994) (requiring teachers to occasionally sit during their planning periods in the halls of the school and monitor the entrance to determine the authority of those entering the school had a *de minimis* effect on teacher planning periods).

11. "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).

12. 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 is granted.

13. The City has not engaged in either a prohibited practice or an unfair labor practice and a cease and desist order is, therefore, not warranted.

Dated: February 25, 2008



Craig W. Hoster, Chair
Public Employees Relations Board

Member Larry W. Gooch recused.