

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

Public Employees Relations Board

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, LOCAL 3199,)

FILED

APR 09 2007

Complainant,)

v.)

Case No. 00440

CITY OF HUGO, OKLAHOMA, a)
municipal corporation,)

Respondent.)

ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 22nd day of February, 2007, on the Motion for Summary Judgment filed by the Respondent City of Hugo, Oklahoma (the "City"). The City appeared by and through its attorney, Sue E. Buck. The Complainant International Association of Firefighters, Local 3199 (the "Union" or "IAFF, Local 3199") appeared by and through its attorney, James Frasier.

The Union brought this action alleging that the City made unilateral changes in mandatory subjects of bargaining in violation of 11 O.S. 2001 § 51-102 6a(1)(5) of the Fire and Police Arbitration Act, 11 O.S. 2001 & Supp. 2006 §§ 51-101 *et seq.* (the "FPAA"). The City argued in its motion that it is entitled to judgment as a matter of law on the Union's Unfair Labor Practice charge because the Evergreen Clause as it appears in the FPAA is unconstitutional; because no expenditure may be incurred or made by any officer of employee which exceeds the fund balance for any fund and because the management rights clause and past practices allow unilateral changes in mandatory subjects of bargaining. The Union responded that the City is not authorized to take the unilateral

action it did in this case and that the changes effected by the City were mandatory subjects of bargaining, but no bargaining was held.

“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). Substantial controversy does exist as to whether the City of Hugo acted in good faith in its dealing with the Union. Questions involving determinations of good faith which involve intent and motive ordinarily are not resolvable on a motion for summary judgment. *David A. Bramble, Inc. v. Thomas*, 914 A.2d 136, 149 (Md. 2007); *Decibel Credit Union v. Pueblo Bank & Trust Co.*, 996 P.2d 784, 787 (Colo. Ct. App. 2000); *see also Post Oak Oil Co.*, 913 P.2d at 1314 (genuine issues of material fact precluding summary judgment for attorney in legal malpractice action existed as to whether attorney acted in good faith). Because substantial controversy exists as to a material fact, the City is not entitled to judgment as a matter of law, and the City’s motion for summary judgment is denied.

Dated: April 9, 2007



Craig W. Hoster, Chair
Public Employees Relations Board