BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED
AUG 27 2008
Public Employees Relations Board

CHRISTOPHER HUDGENS,	)	
	)	
Complainant,	)	
	)	
v.	)	PERB No. 467
	)	
CITY OF NICOMA PARK, OKLAHOMA,	)	
	)	
Respondent.	)	

FINAL ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 14th day of August, 2008, on cross Motions for Summary Judgment. Complainant Christopher Hudgens appeared by and through his attorney, Loren Gibson. Respondent City of Nicoma Park, Oklahoma (the "City") appeared by and through its attorney, Matthew John Love.

The Complainant brought the present action alleging that "the City's use of confidential internal communications made by a union member to his union president while seeking union assistance in pursuing a grievance against the City as the basis of investigatory interrogation and ultimately the November 28, 2007 termination of Lt. Chris Hudgens" constituted an unfair labor practice.

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

1. The City of Nicoma Park is an Oklahoma municipal corporation. It is a Charter City which has adopted a Strong Mayor form of government. City's Material Fact Not in Controversy ("Undisputed Fact") 1.

2. Prior to his termination, Hudgens was a police officer with the City of Nicoma Park Police Department holding the rank of Sergeant. City's Undisputed Fact 4.[1]

3. Eric Crews is a police officer with the City of Nicoma Park Police Department holding the rank of Lieutenant. City's Undisputed Fact 5.

4. The Fraternal Order of Police, Lodge 153 is a combined Lodge (i.e. representing more than one department), and is the duly recognized and exclusive bargaining agent for full time, permanent members of the City of Nicoma Park Police Department with the exception of the Police Chief and one designated Administrative Assistant. City's Undisputed Fact 6.

5. During the relevant time period, John Greene was a Corporal with the City of Spencer Police Department and was the President of Lodge 153. City's Undisputed Fact 7.

6. On or about April 25, 2007, Hudgens sought Union assistance from Greene regarding an incident involving his supervising officer, Lt. Crews. Hudgens's Undisputed Factual History ("Undisputed Fact") 1, 2.

7. Corporal Greene, on his own initiative, prepared and sent a letter to Chief Tim Williams. The letter detailed a conversation between Greene and Hudgens, and stated, in part:

> [Hudgens] advised me that he felt he was in a hostile work environment and that if Lt. Crews didn't back off him that he would kill Lt. Crews. He then advised me that Lt. Crews was bigger than him and that Lt. Crews carries a gun. He advised me that he wouldn't fight Lt. Crews that he would shoot him.

City's Undisputed Fact 8; *see also* Hudgens's Undisputed Fact 4.[2]

8. Corporal Greene's letter also advised Chief Williams:

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[1] Hudgens held the rank of Lieutenant prior to his termination. At the time of his conversation with Corporal Greene (see ¶ 6 *infra*), he held the rank of Sergeant.

[2] Hudgens expressly denied the accuracy of Greene's report; however, solely for the purposes of the pending summary judgment motions, Hudgens "presumed" the accuracy of the facts as reported by Greene.

> This issue is of great concern to me and the lodge due to this involving two lodge members and threats of great bodily harm or death from one member towards another. This lodge is not able to correct this issue without the department's assistance therefore we ask that this issue be dealt with and corrective measures be taken.

City's Undisputed Fact 9.

9. On July 12, 2007, Chief Williams notified Hudgens, in writing, of the initiation of an administrative investigation into allegations that Hudgens may have engaged in conduct in violation of various provisions of the Manual of Policy and Procedures of the Nicoma Park Police Department. The notice contained nine allegations of possible misconduct. One of the allegations contained in the Chief's notice to Hudgens was an allegation that "Corporal J. Green [sic] reported that on April 25, 2007 you advised him that if, in your opinion, Lt. Crews did not 'back off,' that you intended to kill Lt. Crews i.e. that you would shoot him." City's Undisputed Fact 10.

10. Hudgens was interviewed on September 17, 2007, regarding the nine allegations. When questioned about the veracity of the specific allegation made by Corporal Greene in his letter – i.e. that Hudgens had threatened to kill Lt. Crews – Hudgens was advised by his legal counsel not to answer. Hudgens followed counsel's advice and refused to either confirm or deny making the alleged death threat. City's Undisputed Fact 11.

11. The City concluded its investigation into Hudgens conduct and, on November 27, 2007, informed Hudgens of the results. Five of the nine allegations against Hudgens were found to be sustained in full. Two additional allegations were found to be sustained in part. As it related to the allegations against Hudgens made by Corporal Greene, the Chief found the charge to be sustained. The Chief reported:

> You refused to respond to this allegation upon the advice of counsel. Therefore, in reaching my conclusion, I have considered the unsolicited written statement by Corporal J. Greene. Since you

> refuse to respond to this allegation, I have taken the statements of Corporal Greene at face value. I also noted that these statements were similar to those reported by several members of this Department, as well as Charlene Kilmer.[3]

City's Undisputed Fact 12.

12. Based on the findings of the internal investigation, Chief Williams recommended that Hudgens's employment be terminated. Mayor James Pumphrey concurred with this recommendation, and Hudgens's employment was terminated. City's Undisputed Fact 13.

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 Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2001, § 51-104b.

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. 11 O.S. 2001, § 51-104b(A).

4. Hudgens had an expectation of confidentiality in his conversations with Union President Greene about Union matters. *See Cook Paint and Varnish Company*, 258 N.L.R.B. 1230, 1232 (1981) (company's interview of union steward about conversations between employee and union steward may not pry into protected union activities and interfere with employee's exercise of his Section 7 rights).

5. There was no evidence the City sought the information from the Union regarding alleged death threats made by Hudgens. The City, therefore, did not violate expectations of confidentiality between Hudgens and his Union representative.

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[3] Charlene Kilmer is an individual who made several allegations of misconduct against Hudgens.

6. Corporal Greene reported to the City that Hudgens had made an alleged death threat against Lieutenant Eric Crews, another police officer employed by the City. Findings of Fact 7. The actions of the City in investigating and questioning Hudgens after it was informed of this alleged death threat were reasonable.

7. The City did not threaten Hudgens with disciplinary action if he refused to disclose the confidential communications. The City, likewise, did not threaten disciplinary action if Hudgens failed to confirm or deny the alleged death threat.

8. The City committed no unfair labor practice in violation of 11 O.S. 2001, §§ 102(6a)(1), (2), (3) and (4).

9. Whether just cause existed, pursuant to Article 7(e) of the Collective Bargaining Agreement of the parties, for the City's termination of Hudgens's employment will be determined in arbitration.[4]

10. "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.,* 1996 OK 23, ¶ 15, 913 P.2d 1311, 1313..

11. Because no substantial controversy exists as to a material fact and the City is entitled to judgment as a matter of law, the motion for summary judgment of the Respondent City of Nicoma Park, Oklahoma, should be, and is hereby, GRANTED, and the motion for summary judgment of Complainant Christopher Hudgens should be, and is hereby, DENIED.

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[4] The parties advised during the hearing that a grievance has been filed by Hudgens and the Union concerning the termination. The Board here recognizes the confidentiality of the discussion between Hudgens and Greene within the scope of the employee-union relationship, determines on the record before us today that the City's actions do not constitute an unfair labor practice, and leaves the determination of "just cause" for the termination to the grievance arbitration process.

Dated: August 27, 2008

Craig W. Hoster, Chair
Public Employees Relations Board

By unanimous vote. Chair Craig W. Hoster presiding. Members Larry W. Gooch and Linda Samuel-Jaha present and voting.