

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD  
STATE OF OKLAHOMA

**FILED**

JUN 17 2009

Public Employees Relations  
Board

FOP LODGE 122, )  
)  
Complainant, )  
)  
vs. ) Case No. 00478 )  
)  
CITY OF NORMAN, OKLAHOMA )  
)  
Respondent. )

**ORDER**

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 11<sup>th</sup> day of June, 2009 on the Motion to Dismiss filed by Respondent City of Norman, Oklahoma (the City"). The City appeared by and through its attorney, Tony G. Puckett. The Fraternal Order of Police, Lodge 122 (the "Union") appeared by and through its attorney, Douglas D. Vernier.

The Union brought the present Unfair Labor Practice Charge on May 8, 2009, alleging "City has failed and refused to comply with a grievance arbitration Award dated April 28, 2009, reinstating Officer John Terry."

The City moved to dismiss the Unfair Labor Practice Charge on the grounds that the Union failed to state a claim on which relief can be granted. See, 12 O.S. § 2012(B)(6); OAC 585:2-7-3(a). The City, in its Motion to Dismiss, presented matters outside the Charge and the Union, in its response, requested that such matters be excluded from the Board's consideration.

If, on a motion to dismiss for failure of an unfair labor practice charge to state a claim upon which relief can be granted, matters outside the charge are presented to the Board, the Board may either (i) exclude such matters, or (ii) treat the motion as one for

summary judgment. 12 O.S. § 2012; OAC 585:2-7-3(a). In this case, the Board elects to exclude the matters outside the charge and consider the motion as a motion to dismiss for failure to state a claim upon which relief can be granted.

The failure to comply with a final and binding arbitration award can constitute an unfair labor practice. *IAFF, Local 2929 v. City of Duncan*, PERB No. 00282 (1994). Section 51-104b of the Fire and Police Arbitration Act ("FPAA") empowers the Board to prevent any person from engaging in any unfair labor practice. Here, the Unfair Labor Practice Charge filed by the Union alleges a potential violation of FPAA and thus, states a claim upon which relief can be granted by the Board.

The Board finds that the City's Motion to Dismiss should be, and is hereby, DENIED.

Dated: June 17, 2009

  
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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.