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JAN 16 2008

Public Employees Relations Board

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

IN RE: Petition to Decertify IAFF,)
LOCAL 2962, City of Broken Bow) Case No. 12417-D

ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 10th day of January, 2008, on the Objections to Election filed by the International Association of Firefighters, Local 2962 (the "Union" or "Local 2962"), the Motion to Recognize Bargaining Representative filed by the Union, the Motion to Strike IAFF, Local 2962's Motion to Recognize Bargaining Representative filed by the City of Broken Bow, Oklahoma (the "City"), the Motion to Strike all Challenges to Ballots, and to Unseal and Count the Challenged Ballots filed by the City, and the Union's Response to Motion to Strike. The City appeared by and through its attorneys, Frank B. Wolfe, III and D. Kenyon Williams, Jr. The Union appeared by and through its attorney, Everett Bennett.

On October 9, 2007, a Decertification Petition was filed by Ray Butler to decertify the Union. On November 8, 2007, the decertification election was held.

The Union argued that because Butler was the Assistant Fire Chief of the City, he was, therefore, "an administrative assistant" as defined by 11 O.S. 2001 § 51-102(1) and could not be included in the bargaining unit. Because he was not part of the bargaining unit, he could neither file for decertification nor participate in the election. The City argued that it had not designated "an administrative assistant" and asked the Board to strike the challenges to and count the ballots.

By Order dated October 31, 2007, filed in International Association of Firefighters, Local 2962 v. City of Broken Bow, Oklahoma, Case No. 00446, the Board held that the plain meaning of

the statutory language "an administrative assistant" in 11 O.S. 2001 § 51-102(1) is that the fire chief does not have a mandatory duty to designate an administrative assistant. Rather, the fire chief has the prerogative to designate an administrative assistant.

The Board concludes that the City has not designated Butler "an administrative assistant" and, therefore, he is a member of the unit.

After the Board's ruling, at the hearing, the Board's Administrator opened and counted the ballots. The election results were that three firefighters voted for decertification and three firefighters voted against decertification.

The parties are directed to brief the following issues: (i) whether a three to three vote is sufficient to decertify the union, and (ii) whether a free and untrammelled election could have been conducted. The parties are to include in their briefing of the latter issue a factual and legal discussion of all of the unfair labor practices raised by the Union.

Dated: January 16, 2008

Craig W. Hoster

Craig W. Hoster, Chair
Public Employees Relations Board

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

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MAY 8 2008
Public Employees Relations Board

IN RE: PETITION TO DECERTIFY IAFF, LOCAL 2962, CITY OF BROKEN BOW) Case No. 12417-D

ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 10th day of April, 2008. The City/Intervenor appeared by and through its attorneys, Frank B. Wolfe, III and D. Kenyon Williams, Jr. The Complainant International Association of Firefighters, Local 2962 (the "Union" or "Local 2962") appeared by and through its attorney, Steven R. Hickman.

On October 9, 2007, a Petition for Decertification was filed by Ray Butler to decertify the Union. On November 8, 2007, the decertification election was held.

By Order dated January 16, 2008, the parties were directed to brief the issues whether a three to three vote is sufficient to decertify the union and whether a free and untrammeled election could have been conducted. The parties were to include in their briefing of the latter issue a factual and legal discussion of all of the unfair labor practices raised by the Union.

FINDINGS OF FACT

1. The Union was certified in 1985 as a certified bargaining representative. February 12, 1985 Certification of Representative.

2. By letter to the City, the Union, "[a]s a result of a decision by the majority of the members of the bargaining unit represented by International Association of Fire Fighters Local 2952" withdrew "all proposals for a labor agreement to be effective July 1, 1985 through June 30, 1986." June 24, 1985 letter from Fred Moore, State IAFF Representative, to Mark Guthrie, City Manager (Intervenor's Exh. 6).

3. Between its withdrawal of all proposals for a labor agreement and January, 2007, no

requests were made for bargaining by the Union to the City, and no collective bargaining agreement was entered into.

3. On January 3, 2007, Rick Beams, I.A.F.F. District Field Service Representative, filed a Petition for Bargaining Unit Certification with PERB.

4. PERB notified Petitioners that a union had already been certified.

5. On October 9, 2007, a Petition for Decertification was filed.

6. On November 8, 2007, six firefighters, including the Assistant Chief, voted in the decertification election. Three votes were cast against decertification, and three votes, including the Assistant Chief's vote, were challenged. Board's Tally of Ballots.

CONCLUSIONS OF LAW

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

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

3. Federal law may be considered in the construction of the FPAA. *Stone v. Johnson*, 690 P.2d 459, 462 (Okla. 1984).

4. Because no contract was negotiated and the Union did nothing to represent the Fire Fighters of Broken Bow from 1985 through early 2007, the Union was either unable or unwilling to represent the employees. *See White Castle System, Inc.*, 224 N.L.R.B. 1089 (N.L.R.B. 1976) (factors such as that only one grievance was filed in ten years and no union meetings were held create good faith doubt of majority status).

5. The "tie vote" in the decertification election is evidence that whatever majority status the Union had in 1985 was lost between that date and 2007. *See Burns International Security Services, Inc. v. N.L.R.B.*, 567 F.2d 945, 951 (10th Cir. 1977) (poll conducted by employer provided evidence that election should be conducted to determine whether union continued to represent a majority of its employees).

6. The Union abandoned, or was unable to represent, the Broken Bow Fire Department bargaining unit, and the Union that was certified in 1985 as a certified bargaining representative is defunct. *See Hershey Chocolate Corp.*, 121 NLRB 901, 911 (N.L.R.B. 1958) (a representative is defunct if it is unable or unwilling to represent the employees).

7. The 2007 Petition for a certification election is a valid petition. A certification election should be conducted. However, prior to this election, and within twenty (20) days of the date of this order, the Union is allowed to present evidence why a fair and untrammeled election can not be had. *See Texas Petrochemicals Corp. v. N.L.R.B.*, 923 F.2d 398, 406 (5th Cir. 1991) (the most effective means for determining employee sentiment is through a Board sponsored election with its attendant protections).

Dated: 9/8/08

Larry W. Gooch, Member
Public Employees Relations Board

Linda Samuel-Jaha, Member
Public Employees Relations Board

Chair Craig Hoster dissented.

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED
MAY 8 2008
Public Employees Relations Board

IN RE: PETITION TO DECERTIFY IAFF, LOCAL 2962, CITY OF BROKEN BOW) **Case No. 12417-D**

ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 10th day of April, 2008. The City/Intervenor appeared by and through its attorneys, Frank B. Wolfe, III and D. Kenyon Williams, Jr. The Complainant International Association of Firefighters, Local 2962 (the "Union" or "Local 2962") appeared by and through its attorney, Steven R. Hickman.

The City filed a motion seeking sanctions based on the Union's failure to file a signed Final Pre-Hearing Order by the deadline set by the Board of March 24, 2008.

The Board has adopted rules to provide for the orderly administration of the Fire and Police Arbitration Act. OAC 585:2-1-1, *et seq.* These rules are intended to aid in the efficient operation of the Board. Failure of any party to comply with these rules or orders of the Board may result in the Board dismissing a charge or taking other appropriate action. OAC 585:2-3-7.

At the hearing on March 13, 2008, the Board directed the Union to submit a signed Final Pre-Hearing Order to the Board by March 24, 2008. This directive was also set out in a letter dated March 14, 2008, sent by the Board's Administrator to the parties. This matter was set for hearing on April 10, 2008. A timely Final Pre-Hearing Order is necessary for the orderly administration of the Act and the efficient operation of the Board.

Under the provisions of OAC 585:2-5-7(d), the proposed Final Pre-Hearing Order to be submitted by the Complainant, the Union, is to include a final list of witnesses and a final list of exhibits. Failure to timely file such proposed order may result in the dismissal of the unfair labor

practice charge. OAC 585:2-5-7(j). On March 28, 2008, four days after the deadline, the Union filed its (i) Final Pre-Hearing Order, (ii) Witness List, (iii) List of Exhibits, and (iv) Statement of Relevant Facts in Dispute. The Union did not file a motion for extension of time or seek leave to file these documents out of time. *See*, OAC 585:2-5-3(a) (motions for extension of time must be filed before the due date).

The Union failed to comply with the rules and orders of the Board on multiple occasions and sanctions are warranted. The Board, having considered the evidence presented by the Union and by the Intervenor, hereby dismisses the Union's ULP's Nos. 446, 452, 453, 454 and 455.

Dated: May 8, 2008

Craig Hoster, Chair
Public Employees Relations Board

Linda Samuel-Jaha, Member
Public Employees Relations Board

Member Larry Gooch dissented.