

**BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD  
STATE OF OKLAHOMA**

IAFF, LOCAL 2284,	)	
	)	
Complainant,	)	
	)	
v.	)	PERB No. 2014-ULPC-543
	)	
CITY OF McALESTER,	)	
	)	
Respondent.	)	

**ORDER GRANTING CITY’S MOTION FOR SUMMARY JUDGMENT**

This matter came on for hearing before the Public Employees Relations Board (the “Board”) in a Regular Meeting on the 14<sup>th</sup> day of May, 2015, at 9:30 a.m., in the Oklahoma Department of Agriculture, Agriculture, Food and Forestry Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, on the Respondent’s Motion for Summary Judgment and Brief in Support filed on April 8, 2015 (the “Motion for Summary Judgment”), by the City of McAlester, Oklahoma (the “Respondent” or “City”).

The International Association of Firefighters, Local 2284 (the “Complainant” or “IAFF”) appeared by and through its attorney Steven R. Hickman, Frasier, Frasier & Hickman, LLP, Tulsa, Oklahoma. The Respondent appeared by and through its Attorney Charles S. Plumb, McAfee & Taft, P.C., Tulsa, Oklahoma.

Complainant filed an Unfair Labor Practice Charge on October 28, 2014 (the “Charge”), and alleged, among other things, in or about May, 2014, the Complainant became aware of Fire Chief Brett Brewer direct dealing with individual members of the IAFF by offering them a conversion of holidays to annual leave to avoid their loss of leave when the City decided to not pay for unused holidays from 2013. The Complainant alleges the actions by the Respondent constitute an unfair labor practice in violation of Section 51-102(6a)(2) of Oklahoma’s Fire and

Police Arbitration law, 11 O.S. §51-101 through 11 O.S. §51-113 (sometimes referred to herein as the Oklahoma Fire and Police Arbitration Act or the "FPAA").

On November 4, 2014, the City filed its Answer denying: (1) it engaged in any unlawful direct dealing; (2) each and every other allegation contained in Unfair Labor Practice Charge No. 543; and, (3) it violated in any fashion the Oklahoma Fire and Police Arbitration Act. In its Answer, the City alleged the following affirmative defenses: (1) Unfair Labor Practice Charge No. 543 fails to state a claim upon which relief may be granted; and (2) the allegations contained in Unfair Labor Practice Charge No. 543 are untimely and/or time barred.

In support of its Motion for Summary Judgment, the City submitted four (4) paragraphs of statements of facts it asserted were undisputed. The first statement is based upon various provisions of the collective bargaining agreement between the IAFF and the City which grants the following: (1) thirteen days of holiday bank time to employees on January 1 of each year, (2) holidays must be scheduled and used during the calendar year, and (3) unused holiday bank time is forfeited after December 31. The only exceptions are instances when the Fire Chief determines an individual cannot take holiday bank time before the end of the calendar year due to work demands. In those cases, holiday bank time not used before the end of the calendar year must be used within the first three months of the following calendar year. If the Fire Chief determines the work demands prevented the use of carryover holiday bank time during the first quarter of the succeeding year, then the unused holiday bank time is paid out after March 30.

The second statement is based in part upon the unfair labor practice charge of direct dealing as well as being based in part upon the deposition of IAFF President Mike Caniglia in which he admitted the IAFF has not reviewed any personnel records or leave documents despite

its allegation holiday bank time was converted to annual leave involving Fire Fighter Jared Weeks.

The third statement, in part, denied holiday bank time was converted to annual leave for Fire Fighter Jared Weeks and, in part, (based on the deposition of McAlester City Manager Pete Stasiak), asserted Fire Chief Brewer informed the Shift Commanders the fire fighters could, on a one time basis, request unused holiday bank time be substituted for annual leave absences taken in 2013.

The fourth and final statement, (based upon the leave request form of Fire Fighter Jared Weeks), asserted several facts, namely: (1) Fire Fighter Jared Weeks used annual leave on three days in May and three days in November, 2013; (2) as he was concerned that he might lose carryover holiday bank time, Fire Fighter Jared Weeks requested his May and November 2013 annual leave absences be reclassified as holiday bank time absences on February 14, 2014; and, (3) such request was approved by Fire Chief Brett Brewer on February 17, 2014.

On April 30, 2015, the IAFF filed a document entitled "Union's Response to Motion for Summary Judgment" (the "IAFF Response") in opposition to the Motion for Summary Judgment which included a "Statement of Material Facts in Dispute" consisting of six (6) paragraphs which purport to dispute all four (4) paragraphs of statements of fact asserted by the City to be undisputed, and includes additional facts and legal arguments. The first statement in dispute basically alleges the current Collective Bargaining Agreement between the IAFF and the City (the "CBA") provides holidays are to be used during the calendar year except where the leave cannot be taken during the calendar year, in which case the leave can be carried over into the next year's first quarter at which time the leave is then forfeited unless the Fire Chief determines work demands prohibited its use, in which case the leave is paid out in cash. Continuing, the

IAFF claims, notwithstanding the CBA's language, the past practice has been to routinely payout the unused holidays in cash after the first quarter of the following calendar year. The second statement in dispute alleges no CBA language exists for trading unused holiday time about to expire for annual leave previously used. The third statement in dispute alleges Fire Fighter Weeks asked for and was permitted to take holiday leave about to expire and trade it for annual leave previously taken the prior year because the Fire Chief said he could. The fourth statement in dispute alleges trading expiring leave for already-used annual leave so as to replenish the annual leave bank was a matter outside of the CBA, was not a regular practice and was a one-time offer by the Fire Chief to certain employees. The fifth statement in dispute alleges no negotiations with the IAFF were involved in the one-time offer, the IAFF was not told about it and the Fire Chief spread the word out directly to the employees who asked him directly for the benefit. The sixth and final statement in dispute alleges the IAFF President Mike Caniglia lost his expiring holiday leave while Fire Fighter Jared Weeks had his annual leave bank replenished in an amount equal to his expiring holiday leave.

#### **PRELIMINARY MATTERS**

The City, through its Attorney, moved to admit into the record a document labeled as "Agreement International Association of Firefighters Local 2284 and City of McAlester July 1, 2014-June 30, 2015" consisting of seven pages of selected excerpts of the CBA the City represented to be the relevant contractual provisions on holiday bank time and annual leave. There being no objection, the Board admitted the City's seven page document into the record.

The Board, having reviewed the written motion filed herein and the IAFF's Response filed herein, having reviewed the affidavits and deposition excerpts submitted by counsel, having

heard the arguments of counsel, having engaged in questioning of counsel and otherwise being fully apprised of this matter, makes the following findings of fact:

#### **FINDINGS OF FACT**

It is the finding of the Board that there is no substantial controversy as to the following facts or issues:

1. The City of McAlester is, and was at all times material herein, a municipal corporation duly organized and existing under the laws of the State of Oklahoma.
2. The IAFF is a certified bargaining representative pursuant to the Fire and Police Arbitration law for fire fighters employed by the City of McAlester.
3. The IAFF and City of McAlester entered into a CBA which was in full force and effect during all times material herein.
4. Testimony taken in this matter consisted of excerpts of sworn depositions of IAFF President Mike Caniglia on March 12, 2015, and from McAlester City Manager Pete Stasiak on March 12, 2015.
5. There was no testimony or other evidence presented that the City attempted to negotiate changes to the CBA directly with an individual employee.
6. There was no testimony or other evidence presented which indicates any grievance was filed in this matter by an individual employee or the IAFF.
7. There was no testimony or other evidence presented to indicate any attempt by the City to settle any grievance directly with an individual employee in this matter in circumvention of the IAFF.
8. The CBA between the IAFF and the City grants thirteen days of holiday bank time to employees on January 1 of each year (CBA Art. 17, §1, at p.27), holidays must be scheduled and

used during the calendar year (CBA Art. 17, §5, at p. 28), and unused holiday bank time is forfeited after December 31 (CBA Art. 17, §5, at p. 28). The only exceptions are instances when the Fire Chief determines an individual cannot take holiday bank time before the end of the calendar year due to work demands (CBA Art. 17, §5, at p. 28). In those cases, holiday bank time not used before the end of the calendar year must be used within the first three months of the following calendar year (CBA Art. 17, §5, p. 28). If the Fire Chief determines the work demands prevented the use of carryover holiday bank time during the first quarter of the succeeding year, then the unused holiday bank time is paid out after March 30 (CBA Art. 17, §5, p. 28). Respondent's Undisputed Fact No. 1 (modified).

9. The IAFF's Charge is based on its accusation that members of the bargaining unit were offered a conversion of holiday bank time to annual leave which involved Fire Fighter Jared Weeks, however the IAFF admits through its President it has not reviewed any personnel records or leave documents (Excerpts of Mike Caniglia March 12, 2015, deposition pp. 7, 10). Respondent's Undisputed Fact No. 2 (modified).

10. Fire Chief Brett Brewer informed the Shift Commanders that firefighters could, on a one time basis, request that unused holiday bank time be substituted for annual leave absences taken in 2013 (Excerpts of Pete Stasiak March 12, 2015, deposition pp. 9-11). Respondent's Undisputed Fact No. 3 (modified).

11. During 2013, Fire Fighter Jared Weeks used annual leave for May 23, 26, 29 and November 22, 25, and 28. Because he was concerned he might lose carryover holiday bank time, on February 14, 2014, Fire Fighter Jared Weeks requested that these May and November 2013 annual leave absences be reclassified as holiday bank time absences. (Request by Fire Fighter Jared Weeks dated February 13, 2014). Fire Chief Brett Brewer approved Fire Fighter Jared

Weeks' reclassification request on February 17, 2014. Respondent's Undisputed Fact No. 4 (modified).

12. During oral argument, counsel for both parties stipulated that the material facts in the case were not in dispute.

### 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 law, 11 O.S.2011, §§ 51-101 et seq. and the Board has jurisdiction over the parties and the subject matter of this complaint pursuant to 11 O.S. 2011, §51-104b.

2. The hearing and procedures herein are governed by Article II of the Administrative Procedures Act, 75 O.S.2011, §§ 308a et seq. and the meeting was convened and conducted in accordance with the provisions of the Oklahoma Open Meeting Act, 25 O.S. 2011, §§ 301 et seq.

3. The Board is empowered to prevent any person, including bargaining agents and corporate authorities, from engaging in any unfair labor practice. 11 O.S.2011, §51-104b (A).

4. The Complainant, in asserting a violation of 11 O.S.2011, §§ 51-101 et seq., has the burden of proving the allegations of an unfair labor practice by a preponderance of the testimony taken pursuant to 11 O.S. 2011, §51-104b (C) and OAC 585: 2-7-12.

5. "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.

6. "The fundamental inquiry in a direct dealing case is whether the employer has chosen 'to deal with the Union through the employees, rather than with the employees through the Union.'" *Facet Enterprises, Inc. v. N.L.R.B.*, 907 F. 2d 963, 969 (10<sup>th</sup> Cir. 1990) (quoting *NLRB*

*v. Pratt & Whitney Air Craft Div.*, 789 F. 2d 121, 134 (2<sup>nd</sup> Cir. 1986)), *FOP, Lodge 93 v. City of Tulsa*, PERB Case No. 431.

7. Direct dealing involves employers attempting to settle a grievance directly with an individual employee. *FOP, Lodge 93 v. City of Tulsa*, PERB Case No. 431. Alternatively, direct dealing concerns situations when an employer attempts to negotiate changes to a collective bargaining agreement directly with an individual employee in circumvention of the union. *IAFF Local 2095 v. City of Stillwater*, PERB Case No. 225.

### OPINION

In this case, no grievance was ever filed and no attempt was made to settle a non-existing grievance directly with an individual employee. Further, while a collective bargaining agreement did exist between the City and the IAFF in this case, the City made no attempt to circumvent the IAFF to negotiate changes to the collective bargaining directly with an individual employee. Accordingly, the City did not engage in any direct dealing that is prohibited in the Fire and Police Arbitration law, 11 O.S.2011, §§ 51-101 et seq.

Therefore, it is the finding of the Board as follows:

Pursuant to 11 O.S.2011, § 51-104b and OAC 585: 2-7-12, the Board finds the Complainant, has not met its burden of proof of showing by preponderance of the evidence that the Respondent through its Fire Chief has engaged in an unfair labor practice of direct dealing with employees by reclassifying six 2013 absences from annual leave to holiday bank time at the request of several fire fighters.

Because no substantial controversy exists as to any material fact and the City is entitled to judgment as a matter of law solely as to the issue of the direct dealing with employees by reclassifying six 2013 absences from annual leave to holiday bank time at the request of several

fire fighters, the City of McAlester's Motion for Summary Judgment and Brief in Support  
Thereof should be and hereby is GRANTED.

IT IS SO ORDERED.

Dated this 10 day of September, 2015.



Robert McCampbell, Chairman  
Public Employees Relations Board

#### CERTIFICATE OF MAILING

This is to certify that on this 11<sup>th</sup> day of September, 2015, a copy of the Board's Order  
was sent by First-Class U.S. Mail with postage pre-paid to the following:

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