

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD  
STATE OF OKLAHOMA

**FILED**

SEP 17 2010

Public Employees Relations  
Board

International Association of Fire Fighters, )  
Local No.157 )  
 )  
Complainant, )  
 )  
v. ) Case No. 00479  
 )  
The City of Oklahoma City, )  
 )  
Respondent. )

**FINAL ORDER GRANTING THE CITY OF OKLAHOMA CITY'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING UNFAIR LABOR PRACTICE CHARGE**

This matter was heard by the Public Employees Relations Board (the "Board") on the 11<sup>th</sup> day of February 2010, on the Motion for Summary Judgment filed by the Respondent, City of Oklahoma City, Oklahoma (the "City"). The City appeared by and through its attorney, Suzanne D. Paulson. The Complainant, International Association of Firefighters, Local 157, ("the Union") appeared through its attorney, James R. Moore.

The Union brought this action alleging that the City committed an unfair labor practice by refusing to comply with an arbitrator's award. The issue related to whether the City complied with the award in relation to opportunities available for fire fighter leave. The City argued that it is entitled to judgment as a matter of law on its motion for summary judgment because it complied with the arbitrator's award in that it properly provided opportunities for leave. The Union responded that, because, it contended, leave slots were reduced from two to one, the City had not complied with the arbitrator's award and had committed an unfair labor

practice.

### **FINDINGS OF FACT**

The Board finds that there is no substantial controversy as to the following material facts:

1. The City of Oklahoma City is an Oklahoma municipal corporation that operates a permanent, paid Fire Department. (City's Fact No 1. Admitted by the Union.)
2. The City and the Union negotiated a collective bargaining agreement ("CBA" for FY 2008-2009. (City's Fact No 2, Admitted by the Union)
3. The Oklahoma City Fire Department has Standard Operating Procedures ("SOP") that are considered part of the CBA. (City's Fact No.3, Admitted by the Union)
5. A grievance was filed concerning staffing of Fire Station 35A, claiming the staffing affected leave opportunities, asserting that leave opportunities had been reduced by the City from the opportunity for two fire fighters to be on leave to one fire fighter to be on leave. The grievance was sustained by Major Phil Sipe. He issued a resolve, including the statements that "a. The City shall cease and desist the unilateral implementation of a reduction of the fire department work force at work sites or fire stations that has adversely affected the ability of members of the bargaining unit to use the negotiated leave time benefits provided by the collective bargaining agreement.".... "d. The City...shall rescind previous actions that resulted in the cancellation of properly scheduled and approved leave time of the members of the bargaining unit." (City's Fact Nos. 8 and 9, Admitted by the Union.)
6. A dispute arose concerning whether the City was required to and had complied with the resolution of the grievance.

7. An arbitration was held on April 24, 2009. The arbitrator issued an award on June 30, 2009. (City's Fact No. 14, Admitted by the Union.)

8. The Award of the Arbitrator was (1) Sipe had authority to discuss and submit the answer to the cancellation grievance ...(2) The City shall abide by and enforce the award of Arbitrator Williams. (City's Fact No. 16, Admitted by the Union.)

9. The issue before Arbitrator Williams was "Did OCFD Major Phil Sipe have the contractual authority to sustain or deny the leave cancellation grievance presented to him...? (City's Fact No 15, Admitted by the Union with the additional question, "If so, what is the appropriate remedy?")

10. Shortly after the arbitrator's decision, the staffing for Station 35A was returned to 7 with 5 fire fighters as the minimum. However, a fire fighter went off work due to injury leave.

11. The Union filed an unfair labor practice charge alleging the City had refused to abide by and enforce the award of Arbitrator Williams. (City's Fact No 17, Admitted by the Union.)

12. The SOP set forth what the City could and could not do as part of its management of the Fire Department relating to leave. (City's Exhibit 2, Exhibit 17 to Motion for Summary Judgment.)

13. The City's staffing at Fire Station 35A complied with the SOP and the CBA.

14. The undisputed material facts demonstrate that the City did not commit an unfair labor practice in its method of staffing and leave provided for Fire Station 35A.

15. The City complied with the resolve determined by Major Sipe.

17. As the arbitrator's determination required that the City comply with Major Sipe's resolve and, having found that the City did comply with the resolve as it properly interpreted the

resolve under the CBA and SOP, the City did not commit an unfair labor practice in its staffing of Fire Station 35A subsequent to the arbitrator's award "as station #35A was returned to a staffing level of seven (7) personnel with two (2) leave slots available, one currently utilized for injury leave".

### Conclusions of Law

The Board concludes as a matter of law as follows:

1. The Board has jurisdiction to hear this unfair labor practice charge.
2. "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.
3. In *International Association of Firefighters, AFL-CIO/CLC, Local No. 1969 v, City of Miami, Oklahoma*, PERB Case no. 00153, p. 5, November 15, 1988, this Board ruled that an unfair labor practice charge should be denied where the City of Miami interpreted an arbitrator's award consistent with the CBA. The Board stated the City's duty to carry out an arbitrator's award "is tempered by the common sense limitation that the award be of sufficient clarity that the employer has an understanding of its obligation. (Citation omitted) The Board cannot say, based upon the evidence presented, that the City has failed to implement the award." *Id.* at 6.
4. Because, under the undisputed facts as set forth above, no substantial controversy exists as to a material fact and because, under appropriate authority set out above, the City is entitled to judgment as a matter of law, the City's motion for summary judgment should be and is hereby GRANTED.

**FINAL ORDER**

The City's Motion for Summary Judgment having been granted it is hereby  
ORDERED that the charge of an unfair labor practice by Oklahoma City is hereby DISMISSED.

Dated: 9-17-10

A handwritten signature in black ink, appearing to read "Michael Barlow", written over a horizontal line.

Michael Barlow, Chairman  
Public Employees Relations Board