

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

SEP 17 2010

Public Employees Relations
Board

AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL)
EMPLOYEES, LOCAL 1180)
(Information Technology and)
Information Systems Unit)

Case No. 2009-PPC-013M and
Case No. M1414

Complainant,)

v.)

THE CITY OF TULSA,)

Respondent.)

ORDER ON UNIT CLARIFICATION AND PROHIBITED PRACTICE CHARGE

INTRODUCTION

This matter was heard by the Public Employees Relations Board (the Board) on October 9, 2009 and November 6, 2009. This matter consisted of a determination whether specific employees are included in a particular bargaining unit of non-uniformed employees who work for the City of Tulsa (Tulsa) in the Information Technology/ Information Systems ("IT/IS") Department, represented by the American Federation of State, County and Municipal Employees, Local 1180, (AFSCME). The second question was whether Tulsa committed an prohibited practice by failing to honor a memorandum of understanding concerning the furloughing of certain employees. Tulsa was represented by Gerald Bender. AFSCME was represented by Sue Wycoff.

On October 9, 2009 the Board heard evidence on the issue whether certain employees presented by AFSCME to be in the unit are properly included in light of objection to their inclusion by Tulsa. Tulsa presented live witnesses; AFSCME presented affidavits. The Board then asked the parties to brief the issues who is a confidential employee as defined in §51-201 of

the Oklahoma Municipal Employee Collective Bargaining Act. 11 O.S. Supp 2009 §§ 51-200 et seq. (OMECBA) and whether affidavits should be admitted in the evidentiary hearing. Both parties filed briefs and argument was heard on November 6, 2009. At the argument Tulsa agreed that the affidavits were admissible; thus, that issue was rendered moot.

Because a vacancy existed on the Board at the time of the October evidentiary hearing, the Board consisted of Michael Barlow, Chairman and Larry Gooch, member, for the hearing. The Board, having heard the evidence, read the proffered affidavits, reviewed the documents, heard the arguments of the parties as to the legal standard previously articulated by the Board in *AFSCME v. City of Lawton, PERB, Case No. M1400 (Lawton)* and being fully advised, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT ON UNIT CLARIFICATION

1. A list of employees whose membership in the unit was contested was provided by Tulsa.
2. Tulsa and the AFSCME were able to agree that certain employees were not members of the unit and certain employees were members of the unit. The names were announced at the hearing and confirmed prior to submission of the matter to the Board. It is only those employees who are subject to this Order.
3. As to the employees that remained in dispute, the parties cited *Lawton*, agreeing that the disputed employee must meet the four factor test set out in *Lawton* that the employee “acts in a confidential capacity.” The testimony of Tulsa witnesses and documents submitted did not demonstrate that the disputed employees met the four factors set out in *Lawton* to demonstrate that they acted in a confidential capacity.
4. Testimony of Tulsa witnesses that the disputed employees had “access” to confidential

material because they performed technical work or entered information into or provided reports from the computer system is not sufficient to demonstrate that an employee is acting in a confidential capacity. See *Lawton*.

5. One employee, Mr. Thomas, was specifically presented by Tulsa as confidential. Because employees Mr. Baxter and Ms. Nichols are included in the unit, the Board finds Mr. Thomas is also included in the collective bargaining unit.

CONCLUSIONS OF LAW ON UNIT CLARIFICATION

1. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 2009 §§ 51-200 et. seq.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001 and Supp 2009 §§ 308a, et seq.

3. AFSCME has the burden of establishing that an individual is a municipal employee who could be a member of the bargaining unit, unless that employee is exempt pursuant to 11 O.S. Supp 2009 §51-203. Tulsa has the burden of establishing that a disputed employee is exempt pursuant to 11 O.S. 2009 §51-203. See *Lawton*.

4. Tulsa has not met its burden of proof that the disputed employees are exempt under the authority and test of *Lawton*.

5. The Board concludes that the agreed disputed employees and Mr. Thomas are members of the collective bargaining unit AFSCME, Local 1180.

INFORMAL DISPOSITION OF PROHIBITED PRACTICE CHARGE

AFSCME had charged Tulsa with a prohibited practice because it furloughed certain employees who were disputed members of the IT/IS unit. Counsel for AFSCME and counsel for Tulsa announced to the Board after the ruling on unit clarification that they had reached an

agreement on the prohibited practice charge and would memorialize that agreement in a separate Agreement pursuant to the Rules of the Board for informal disposition of a prohibited practice charge which would include the withdrawal of the prohibited practice charge by AFSCME.

ORDER

Based on the above Findings of Fact and Conclusions of Law and proposed Informal Disposition of Prohibited Practice Charge it is hereby

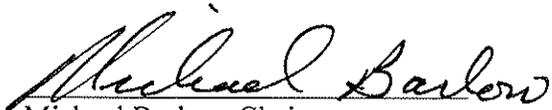
ORDERED that the disputed employees as those employees were agreed to by AFSCME and Tulsa are members of the collective bargaining unit of IT and IS employees; and it is further

ORDERED that Mr. Thomas is a member of the collective bargaining unit of IT and IS employees, and it is further

ORDERED that the prohibited practice charge is resolved by Informal Disposition as provided by the Rules of the Board, and it is further

ORDERED that counsel for AFSCME shall prepare the agreed Informal Disposition from the form provided by the Administrator of the Board, obtain Tulsa's signature and file the Informal Disposition within 10 (ten) calendar days from the date of this Order.

Dated: 9-17-10


Michael Barlow, Chairman
Public Employees Relations Board