

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

**FILED**

SEP 17 2010

Public Employees Relations  
Board

INTERNATIONAL ASSOCIATION )  
OF FIREFIGHTERS, LOCAL 157, )  
 )  
Complainant, )  
 )  
v. )  
 )  
CITY OF OKLAHOMA CITY, )  
 )  
Respondent. )

Case No. 2010-ULPC-493

**ORDER DENYING MOTION TO DISMISS BY CITY OF OKLAHOMA CITY**

On July 8, 2010, the Public Employee Relations Board (“PERB”) heard arguments on the Motion to Dismiss filed by the City of Oklahoma City (“Oklahoma City”) against the International Association of Fire Fighters, Local 157 (“Local 157”). Oklahoma City appeared through its attorney, Richard E. Mahoney. Local 157 appeared by through its attorney, Kevin E. Hill.

**BACKGROUND**

On March 4, 2010 Local 157 filed an Unfair labor Practice Charge (“ULP”) against Oklahoma City alleging that Oklahoma City failed to collectively bargain when it presented an illegal last best offer to arbitration on August 12, 2009. Local 157 asserted that the last best offer was illegal because it contained language in it that had not been previously discussed. On August 19, 2009 Local 157 moved that the arbitrator strike the language. The arbitrator struck the language on September 4, 2009 holding that the language was an illegal last best offer because it had not been previously discussed.

Local 157 additionally asserts that Oklahoma City is currently attempting to bring their last best offer to a vote of the people in violation of 11 O.S. Supp 2009 § 51-108(B)<sup>1</sup>. Local 157 asserts that action of attempting to bring the last best offer to a vote of the people is a ULP.

In response to Local 157's ULP charge, Oklahoma City filed a Motion to Dismiss under 12 O.S. Supp. 2009 § 2012(B)(6). Oklahoma City asserted that Local 157 filed a claim for which no relief may be granted because the ULP charge was barred by the statute of limitations under OAC § 585:2-5-5, which states in relevant part:

Proceedings against a party alleging an unfair labor practice under the FPAA.... shall be commenced by filing a written charge with the PERB *within six (6) months of the alleged violation, or knowledge thereof*, and causing a copy of the charge to be served upon the accused party by certified mail, return receipt.

### DECISION

Even if the ULP allegations are taken as true, Oklahoma City asserts that the PERB is unable to grant relief because (1) the violation occurred on August 12, 2009 when Oklahoma City presented their last best offer, which contained language that had not previously been discussed. (2) In the alternative that Local 157 had "knowledge thereof" by August 19, 2009 when Local 157 moved to strike the language. If either one of these dates was the date of the violation, Oklahoma City contends that the six month statute of limitations would bar any claim for relief that was not filed by either February 12, 2009 or February 19, 2009. The ULP was filed on March 4, 2010.

The standard for the granting of a Motion to Dismiss is well known:

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<sup>1</sup> 11 O.S.Supp. 2009 § 51-108(B)- If the City's last best offer is not selected by the arbitration board, that party may submit the offers which the parties submitted to the arbitration board to the voters of the municipality for their selection by requesting a special election for that purpose.

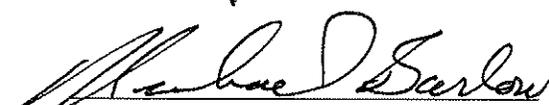
Under 12 O.S. [Supp 2009] § 2012(B)(6), a motion to dismiss cannot be sustained unless the plaintiff can show no set of facts to support a claim for relief. A pleading must not be dismissed for failure to state a legally cognizable claim unless the allegations indicate beyond any doubt that the litigant can prove no set of facts which would entitle him to relief.

*Fanning v. Brown*, 85 P.3d 841 (Okla. 2004).

Moreover, “the burden to show the legal insufficiency of the petition is on the party moving for dismissal and a motion made under 12 O.S. [Supp 2009] § 2012(B)(6) must separately state each omission or defect in the petition.” *Id.* at 844.

In the instant matter, the City of Oklahoma City has failed to demonstrate that no substantial factual controversy exists whether it is committing an *ongoing* unfair labor practice in attempting to bring its last best offer to a vote of people under 11 O.S. Supp. 2009 § 51-108(B)<sup>2</sup>. Because Oklahoma City has not addressed the issue, it has not met its burden on a motion to dismiss. Where Oklahoma City has not met its burden, Local 157’s continuing ULP claim is a legally cognizable claim for which relief may be granted. Oklahoma City does not state, beyond any doubt, that Local 157 can prove no set of facts for which relief may be granted. Oklahoma City’s motion to dismiss is hereby DENIED.

Dated: 9-17-10

  
Michael Barlow, Chairman  
Public Employees Relations Board

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<sup>2</sup> See pg 2, fn 1