

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

FILED

SEP 17 2010

Public Employees Relations
Board

International Association of Fire Fighters,)
Local 2551,)
)
Complainant,)
)
v.)
)
City of Broken Arrow,)
)
Respondent.)

Case 2009-ULPC-481

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER DISMISSING
UNFAIR LABOR PRACTICE CHARGE**

This matter was heard on August 12, 2010 by the Public Employees Relations Board (the Board or PERB) on the Unfair Labor Practice Charge filed by the International Association of Fire Fighters, Local 2551 (the Union) against the City of Broken Arrow, Oklahoma (the City or Broken Arrow) and Acting-Chief Jarrett (Jarrett)(collectively the parties).¹ The Union appeared through its attorney, Steven R. Hickman. The City appeared by its attorneys, Charles S. Plumb and Sharolyn C. Whiting-Ralston. Testimony was taken, exhibits admitted and statements of counsel heard. The Board now issues its Findings of Fact, Conclusions of Law and Final Order Dismissing Unfair Labor Practice Charge (Final Order)

FINDINGS OF FACT

1. The Union filed an unfair labor practice charge (ULPC), asserting the City, Jarrett and City Manager Dave Wooden acted in violation of 11 OS. 2001 § 51-101(6)(a)(1)(2)(3). The practices asserted to be unfair were:

¹ City Manager, Dave Wooden, was originally named a Respondent; however, the Union dismissed the charge against him.

Acting-Chief Jarrett called the Union Executive Board to meet with him in the Chief's office on an undisclosed subject. In good faith, the E-Board met with him on July 17th, 2009. The Chief directed the Union officers to follow the grievance article and the members of the Broken Arrow Firefighters Rights on representation for members, an internal function of the Bargaining Agent.

In addition, Acting-Chief Jarrett has initiated investigations for incidents that occurred as far back as February 2009 and continued investigations in retaliation for members' vocal support of a recall petition and for signing a recall petition for removal of Union President Frank Charon. This petition was consistent with the Local's Constitution and By-Laws and is likewise an internal matter.

Management's support of former President Frank Charon and the procedure for his removal is unfairly being used to prevent utilization of the Fire Department to conduct Union meetings by the current Union Administration.

Continuation of this conduct by Acting-Chief Jarrett occurs in some form regularly with officers and members of the bargaining unit in an effort to retaliate for exercise of their rights guaranteed under state statute.

The Union advised the City of Broken Arrow of some of these incidents on July 31st and August 18th, 2009 with no resolution.

2. On July 17, 2009 Jarrett attended a meeting with the Union Executive Board. At the meeting Jarrett asked the Union whether it was in compliance with the parties Collective Bargaining Agreement (CBA) and the Broken Arrow Firefighters Bill of Rights. The meeting lasted about ten minutes (Testimony of Jarrett). Such meetings are permitted under the CBA (Testimony of Jarrett).
3. Subsequent to the July 17, 2009 meeting Jarrett initiated investigations of three Broken Arrow Fire Department (BAFD) officers upon receiving complaints or incident reports from

citizens or other officers concerning their conduct on or off duty. BAFD policy I.V. 8 requires the review and investigation of all reported incidents or complaints.

4. There was undisputed testimony by Jarrett at the hearing that there was no intent to discipline any BAFD officer in retaliation for Union activities or because the officer was a member of the Union.
5. There was no credible testimony nor any documents admitted that demonstrated that any of the disciplinary investigations involving the three officers were conducted because of any Union activity by one or more of the officers or any intent to retaliate against any of the three.
6. According to testimony of Jarrett, the disciplinary investigations were conducted according to the CBA, and written policies and procedures of the City.
7. To the extent Jarrett's verbal order concerning the playing of an audio recording relating to the Union president which he memorialized in writing could be considered one of the charges {fn 2}, Jarrett's in person testimony was that his order was limited to areas and times which were properly under his control. To the extent the Union presented testimony it was second or third hand hearsay and did not present a credible dispute to Jarrett's testimony. The factual allegations concerning the audio recording do not support a ULPC.
8. There was no credible testimony by the Union's sole witness nor were there exhibits introduced that demonstrated the City prevented the utilization of fire station premises to conduct Union meetings.²

² In the Final Pre-Trial Order the issue of the Jarrett order concerning the audio recording was listed as a disputed issue of fact, apparently, if proved, to support one of the charges. The order concerning the audio recording was not listed as a charge.

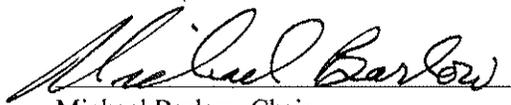
CONCLUSIONS OF LAW

1. This matter is governed by the provisions of the FPPA, 11 O.S. 2001 and Supp 2009., §§ 51-101, et. seq.
2. The Board has jurisdiction over the parties and the subject matter of this charge pursuant to 11 O.S. 2001 § 51-104(b).
3. The hearing and procedures are governed by Article II of the Oklahoma Administrative Procedures Act. 75 O.S. 2001 and Supp. 2009 §§ 308, et. seq.
4. The Union had the burden of proving, by a preponderance of the evidence, that the City committed an unfair labor practice. 11 O.S. 2001 § 104(b); OAC 585: 2-7-12.
5. The Union did not prove, by a preponderance of the evidence, that the City or Jarrett committed an unfair labor practice under 11 O.S. 2001(6)(a)(1)(2) or (3) at the July 17, 2009 meeting between the Union Executive Board and Jarrett.
6. The Union did not prove, by a preponderance of the evidence, that the City or Jarrett committed an unfair labor practice under 11 O.S. 2001(6)(a)(1)(2) or (3) by conducting disciplinary investigations concerning three officers of the BAFD after the receipt of complaints against the officers.
7. The Union did not prove, by a preponderance of the evidence that the City or Jarrett prevented use of fire department premises to conduct Union meetings.
8. The Board concludes that the City and Jarrett acted pursuant to statute, rule, the CBA and policies and procedures in all actions which are the basis for the ULPC and thus finds that neither the City nor Jarrett committed an unfair labor practice against the Union or any member.

FINAL ORDER

The Board, having found that neither the City nor Jarrett committed any unfair labor practices DISMISSES the Unfair Labor Practice Charge with prejudice to refiling.

Dated 9-17-10

A handwritten signature in cursive script that reads "Michael Barlow". The signature is written in black ink and is positioned above the printed name and title.

Michael Barlow, Chair
Public Employee Relations Board