



Oklahoma Public Employees Relations Board

Minutes of
June 10, 2010
9:00 a.m.
Regular Meeting

Approved 7-08-10

Pursuant to the legal notice required by the Oklahoma Open Meeting Act, including the posting of notice and agenda, required by the terms thereof, the Public Employees Relations Board met at the Agriculture Building, First Floor, 2800 N Lincoln Boulevard, Oklahoma City, 73105.

Call to Order

Chairman Barlow called the meeting to order at 9:01 a.m. and took notice of the Administrative Procedures Act, and assured that the meeting was in compliance with the Open Meeting Act.

Members present were Chairman Barlow, Members Larry Gooch and Max Speegle. Also present were Assistant Attorney General Gretchen Harris, Debbie Tiehen, PERB Administrator, Penny Oleson and Reid McCain, OCU Law Clerks, City Attorneys Chanda Graham, Steve Cousparis, Margaret Love, Charlie Plumb and Richard Mahoney; Union Attorneys Jim Moore, Steve Hickman and Jarrod Leamon.

Board Members and staff introduced themselves. Chairman Barlow introduced the OCU Law Clerks, Penny Oleson and Reid McCain, then stated the agenda for the day's meeting.

Mr. Speegle moved to approve the Minutes of the May 13th Board Meeting, Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

The Board took up agenda item IV., Case No. 00473, Fraternal Order of Police, Lodge 93 v. City of Tulsa.

James Moore appeared as legal counsel for the Union, Mr. Cousparis for the City.

Mr. Moore announced that the City was now in compliance and that the Union would be dropping the charge.

Assistant Attorney General Gretchen Harris asked that Mr. Moore prepare the dismissal and send to Ms. Tiehen for filing.

The Board took up agenda item No. 2009-ULPC-480, the International Association of Fire Fighters v. the City of Tulsa concerning Union's Motion for Summary Judgment.

Mr. Steve Hickman appeared as legal counsel for the Union, Mr. Steve Cousparis for the City.

After oral argument between the parties and questions from the Board, Mr. Gooch moved to enter into executive session, Mr. Speegle seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

(Executive Session)

Chairman Barlow moved to return to open session, Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Chairman Barlow moved to grant summary judgment to the Union stating that the findings of fact is that there are no disputed material facts as to the requirement to arbitrate a contract issue under the collective bargaining agreement. Also, there is a valid contract in place and one party, the Union, has filed a grievance and asked for arbitration and it is also a fact that the City has refused to arbitrate. Our conclusion of law is that it is an unfair labor practice to refuse to arbitrate a contract issue and that under the undisputed material facts, the City has refused to arbitrate. Therefore, it is an unfair labor practice. It is hereby ordered that the City shall cease and desist from its refusal to arbitrate. Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

In regard to the preparation of the order, Ms. Harris informed the parties that the law clerks will be writing this order.

The Board took up agenda item VI., Case No. 2009-PPC-016, International Brotherhood of Electrical Workers, Local 1002 v. City of Stillwater.

Chanda Graham appeared as legal counsel for the City, Jarrod Leamon for the Union.

After oral argument between the parties and questions from the Board, Chairman Barlow moved to enter into executive session, Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

(Executive Session)

Chairman Barlow moved to return to open session, Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Back in open session, Mr. Gooch moved that Case No. 2009-PPC-016 be continued to another board meeting, Chairman Barlow seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Chairman Barlow added that this case presented an interesting legal question and the Board desires to do more legal research in order to follow the intent of the statutes under the Municipal Employee Collective Bargaining Act.

The Board took up agenda item VII, Case No. 2010-ULPC-492, International Association of Fire Fighters, Local 2041 v. City of Chickasha.

Margaret Love appeared as legal counsel for the City, Steven Hickman for the Union.

After oral argument between the parties and questions from the Board, Mr. Speegle moved to enter into executive session, Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

(Executive Session)

Mr. Speegle moved to return to open session, Chairman Barlow seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Back in open session, Mr. Speegle made a motion to deny the Union's Motion for Summary Judgment and to grant the City Motion for Summary Judgment; under the undisputed facts, the action of the City was not an unfair labor practice. Chairman Barlow seconded the motion, the motion passed and the vote was:

Mr. Gooch – nay Mr. Speegle – aye Chairman Barlow – aye

Mr. Gooch explained the reason he voted in the negative for this was that although he concurred to deny the Union its Motion for Summary Judgment, he would also deny the City's Motion for Summary Judgment because the material fact that was in dispute was the material fact of whether there was a "stated" policy of 12-12-12 (fire fighters per shift) as stated on the affidavit that was questionable by the City as the City stated it was "generally" the policy; this would be cause for an evidentiary hearing.

Chairman Barlow informed the parties that an order would be forthcoming.

The Board took up agenda item VIII., Case No. 2010-ULPC-487, the International Association of Fire fighters, Local 2551 v. City of Broken Arrow and Fire Chief Steve Jarrett.

Charles Plumb appeared as legal counsel for the City, Steven Hickman for the Union.

After oral argument between the parties and questions from the Board, Chairman Barlow moved to enter into executive session, Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

(Executive Session)

Mr. Gooch moved to return to open session, Mr. Speegle seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Back in open session, Mr. Gooch moved the Board grant City's Motion for Summary Judgment based on the conclusion that the action of the City may have interfered with the administration of the Union; however, the action was de minimus in nature and did not rise to the level of a bad faith conduct, therefore it is not an unfair labor practice by the employer as it had no impact on the Union Election. Mr. Speegle seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

The Board took up agenda item IX., Case No. 2009-PPC-014, City of Lawton v. American Federation of State, County, and Municipal Employees, Local 3894.

The Board asked Mr. James Moore the status of the summary judgment order in this case.

Mr. Moore wanted clarification from the Board on writing the order and stated that he now understood what the Board wanted after hearing other cases on the day's agenda.

Next, the Board took up agenda item X., Administrator's Report.

Ms. Tiehen reported that the OCU Law Clerks were very helpful and that she put in a request to Professor Michelson of the OCU Externship Program to have help throughout the year.

Ms. Harris explained to the Board the need for a contract between the Attorney General's Office and PERB to retain legal counsel. She explained that there currently is no contract. She also explained that the legislative bill, SB1561 was an omnibus bill that included appropriations for many agencies including the Department of Central Services, but did not show the allotted line-item amount for individual departments like PERB under DCS. The DCS 2011 Appropriation Request for PERB was in the amount of \$200,000.00 that included a budget for legal services from the AG's Office.

Chairman Barlow stated that he and the Administrator had an appointment to speak with Director John Richard with the Department of Central Services to discuss PERB's Budget and DCS's duty to fund the PERB.

Chairman Barlow moved to request changes to the 2010 board meeting dates as the following; change the September 9 Meeting to September 16, the October 7 Meeting to September 30 and have no meetings in October and November. Mr. Speegle seconded the motion and the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Ms. Tiehen reported holding a representation election for the International Association of Fire Fighters (IAFF) in the City of Catoosa and the IAFF won by unanimous vote.

Chairman Barlow moved to issue the complaint in a new case filed 5-28-10; Case No. 2010-ULPC-494, FOP, Lodge 93 v. City of Tulsa, Dewey Bartlett and Terry Simonson. Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

City Attorney Steve Cousparis asked if there was a screening process that would allow the Board not to issue a complaint if there was evidence that could possibly get a charge dismissed.

Ms. Harris responded by informing him that there is no procedure for the Board not to issue a complaint and that parties' may make a motion to dismiss or other preliminary pleading rather than objecting to the issuance.

Mr. Moore added that there were no standards in the statutes that prevent the Board from issuing a complaint.

Mr. Cousparis wanted to distribute documents to the Board regarding a new case filed.

Mr. Speegle made a motion to refuse to accept the offered documents from the City of Tulsa based on the advice from the Assistant Attorney General without prejudice to their rights to submit documents in the pleading process. Chairman Barlow seconded the motion, the motion

passed and the vote was:

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Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Chairman Barlow moved to issue the complaint in a new case filed 6-04-10; Case No. 2010-ULPC-495, FOP, Lodge 123 v. City of Oklahoma City. Mr. Gooch seconded the motion, the motion passed and the vote was:

Mr. Gooch – aye Mr. Speegle – aye Chairman Barlow – aye

Richard Mahoney, Attorney for the City of Oklahoma City asked for clarification on calculation of time to answer an issued complaint.

Ms. Harris responded that the calculation for an answer would be 10 days after receipt of the PERB Letter issuing the complaint.

Ms. Tiehen reported the cases to be heard on July 8; Case No. 2010-ULPC-493, IAFF v. City of Oklahoma City and Case No. 2010-ULPC-482, IAFF v. City of Duncan.

Mr. Gooch informed the members that his term was ending on July 1, 2010.

Ms. Harris asked Ms. Tiehen to alert the Governor's Office regarding Mr. Gooch's term expiration and possibly his reappointment.

Meeting adjourned at 1:38.