



Oklahoma Public Employees Relations Board

Minutes of
July 8, 2010
9:00 a.m.
Regular Meeting

Approved 8/12/10

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 9:08 a.m.; he 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 Attorney Richard Mahoney, Union Attorney Kevin Hill and Court Reporter Terri White.

Board Members and staff introduced themselves, Chairman Barlow stated the agenda for the day's meeting.

Mr. Gooch moved to approve the Minutes of the June 10, 2010 Board Meeting, 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 IV., Case No. 2010-ULPC-493, International Association of Fire Fighters, Local 157 v. City of Oklahoma City concerning City's Motion To Dismiss.

Kevin Hill appeared as legal counsel for the Union, Mr. Mahoney for the City.

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 enter into 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, Ms. Harris asked if either party had a copy of the Arbitrator's Motion to Strike City's Last Best Offer that was referenced in the ULP Charge; she added that if a court considers a document that is outside the pleadings filed, the court has the ability to turn a motion to dismiss into a motion for summary judgment if that is what the Board decides to do.

Mr. Hill had a copy of the motion to strike and submitted it to the Board.

After further questions from the Board, Mr. Gooch moved to return to 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

The Board took a five minute break.

Returning from the break, Mr. Speegle made a motion to deny the City's Motion to Dismiss; the ULP filed by the Union alleges, in effect, two conducts and the first conduct is the failure to bargain in good faith by changing the language done in negotiating and the bar date under the OAC 585:2-5-5 provides for six (6) months statute of limitations on that which has run and would serve as a bar to a remedy involving that conduct. However, the ULP also alleged that the respondent is engaged in an attempt to bring the last best offer (LBO) to the vote of the citizens of Oklahoma City and, according to both counsel, that date has not yet run on the six month statute. Therefore, the ULP filed would not be barred under 585:2-5-5. Mr. Gooch seconded the motion, the motion passed and the vote was:

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

Mr. Gooch added that he concurred for a different reason than his colleagues; he saw it as a continuing violation rather than because of different events through the process.

Chairman Barlow explained he voted aye and saw it as two separate conducts; conduct two was the attempt to bring the last best offer to the citizens as a new starting date which was agreed to by the attorneys as February; therefore, the six month period has not expired and agreed that the motion to dismiss should be denied.

Mr. Mahoney asked for a clarification; "can I interpret, of the two conducts, the failure to bargain in good faith is no longer an issue and are we now talking about attempting to bring an election on an illegal offer the remaining part of the charge?"

Mr. Speegle answered that he didn't believe the Board ruled that way. He explained that the Board ruled that the motion to dismiss was denied.

Ms. Harris added that the order denying the motion to dismiss will be prepared by the PERB Office.

The Board took up agenda item V., Administrator's Report of recent case activity.

Ms. Tiehen reported the updated status of cases that had been withdrawn and dismissed. The dismissed cases included Cases No. 00473, Fraternal Order of Police (FOP), Lodge 93 v. City of Tulsa on 6-14-10, No. 2010-ULPC-491, FOP v. City of Tulsa & Dewey Bartlett on 6-14-10, No. 2010-ULPC-483, International Association of Fire Fighters (IAFF) v. City of McAlester on 7-01-10, No. 2010-ULPC-485, IAFF v. City of McAlester on 7-01-10, and No. 2010-ULPC-482, IAFF v. City of Duncan on 7-06-10.

Ms. Harris brought questions to the Board concerning the procedure for dismissal of cases. She

was of the opinion that parties should request dismissal of charges from the Board by motions to dismiss and the Board should decide to administratively close the case. She read a rule from the National Labor Relations Board (NLRB) concerning dismissals of cases as well as PERB Rule 585: 30-1-6, stating that any unfair labor practice case or prohibited practice case commenced with the Board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.

She suggested placing the dismissal procedure as an agenda item on the August 12, 2010 Board Meeting for further discussion and possible action. She added that a short informal letter be sent to the representatives who come before the Board to inform them that the dismissal procedure will be discussed at the August 12 Board Meeting.

After a short discussion on future procedures of dismissals, Chairman Barlow moved to accept the dismissals of cases 00473, 491, 483, 485 and 482. 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 VI., discussion of prepared orders and outstanding orders of cases that have been heard by the Board over the last year.

Ms. Harris reported that most of the orders that are pending will be ready for the Board's approval before the August Board Meeting.

The Board took up agenda item VII. concerning requested contract for legal counsel with the Attorney General's Office.

Chairman Barlow reported meeting with DCS Director Richard who told him he understood the importance of PERB to have legal counsel and was going to call Gay Tudor, General Counsel for the A.G.'s Office, and discuss a contract for legal counsel and would let the Chairman know the result of the conversation.

Chairman Barlow announced the next board meeting would be August 12 at the Agriculture Building and the case to be deliberated, Case 2009-ULPC-481 and a possible order prepared in Case 2009-PPC-016 for the Board's consideration.

Ms. Harris informed the Board that the State Supreme Court had recently heard an appeal, Case No. 107477, City of Stillwater v. International Association of Fire Fighters, Local 2095. The Supreme Court had reversed and remanded the District Court's decision to grant summary judgment to the Union and to deny the City's petition to vacate the arbitration decision. She asked the administrator to circulate the decision to the board members.

Chairman Barlow moved to adjourn the meeting, Mr. Gooch seconded the motion, the motion passed and the vote was:

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

Meeting adjourned at 11:13.