



Oklahoma Public Employees Relations Board
Minutes of
January 12, 2012
2800 N. Lincoln, Agriculture Bldg, First Floor Board Room
9:00 a.m.
Regular Meeting

Approved March 8, 2012

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, Commissioner's Board Room, 2800 N Lincoln Boulevard, Oklahoma City, 73105.

Call to Order

Chairman Barlow called the meeting to order at 9:00 a.m., took notice of the Administrative Procedures Act and announced that the meeting was in compliance with the Open Meeting Act.

Members present were Chairman Barlow, Members Larry Gooch and Max Speegle, Debbie Tiehen, PERB Administrator, and Bryan Neal, Assistant Attorney General. Also present were Union Attorney Jarrod Leaman and City Attorney Todd Court.

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

Mr. Gooch moved to approve the Minutes of the December 8, 2011 Board Meeting, Chairman Barlow 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. 2011-ULPC-505, the International Union of Police Associations, AFL-CIO, Local 24 v. the City of Lawton concerning the approval of the written Order Granting City's Motion for Summary Judgment. Chairman Barlow moved to approve the order, 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. 2011-ULPC-509, the IAFF, Local 176 v. City of Tulsa concerning the approval of the written order. Chairman Barlow moved to approve the written order, 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 V, the rulemaking process to remove references to the Municipal Employee Collective Bargaining Act due to its repeal pursuant to House Bill 1593, Sections 1 and 2, effective November 1, 2011.

Mr. Speegle moved to begin the rulemaking process, Chairman Barlow 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, PERB Case No. 2011-ULPC-503, the FOP, Lodge 122 v. the City of Norman concerning City's Motion to Strike Complainant's Exhibit J and Portions of Formby and Keene's Affidavits and both parties' Motions for Summary Judgment.

The Board called for appearances; Todd Court appeared for the City of Norman, Jarrod Leaman for the FOP.

Chairman Barlow explained that, for the record, during the last board meeting, the parties had agreed and the Board responded by continuing this case until today's board meeting. The continuance disposed of the FOP's Motion to Strike City's Motion to Strike Complainant's Exhibit J and Portions of Formby and Keene's Affidavits (filed December 7) by affording the FOP time to respond to the City's Motion to Strike; the FOP has since filed a written response herein to City's Motion to Strike.

After this announcement, the Board proceeded with City's Motion to Strike Complainant's Exhibit J and Portions of Formby and Keene's Affidavits.

After oral argument concerning City's Motion to Strike and questions from the Board, the Board decided to continue on with oral argument concerning City's Motion for Summary Judgment and FOP's Motion for Summary Judgment.

After oral argument and questions from the Board regarding the summary judgments, Mr. Gooch moved to enter 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)

Back in open session by unanimous vote, Mr. Speegle explained that the issue was "what constitutes a polygraph exam?" Referring to a 2006 PERB Case (PERB Case No. 432, FOP v. City of Oklahoma City), he asked the parties if there was a Union Representative present when there was a discussion concerning the relevant questions to be asked during the polygraph exam.

Mr. Court answered he was not certain, but thought the questions were not asked at this time.

Mr. Leaman answered that there was a recording of a pre-meeting before the polygraph exam and that none of the questions to be asked during the polygraph exam were discussed.

Mr. Speegle explained that there were pre-approved questions discussed in the Oklahoma City Case and that it didn't appear this was done in this case. Mr. Gooch added that there should be pre-approved relevant questions discussed before the polygraph in the presence of a Union Representative.

Mr. Gooch moved to GRANT the FOP's Motion for Summary Judgment based on a previous PERB case involving the FOP and City of Oklahoma City (PERB Case No. 432). Chairman Barlow seconded the motion, the motion passed and the vote was:

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

Mr. Speegle explained that he voted yes on the basis that the Oklahoma City Case did allow a Union Representative to be excluded during the polygraph exam, but "it goes further to provide that if the only relevant questions asked during the polygraph test have been discussed with the Union Representative prior to the test."

Chairman Barlow agreed, but added that the questions before the polygraph didn't necessarily need to be "approved", but "asked" during the presence of the employee having the opportunity to have a Union Representative with him at the time the relevant question was disclosed to the employee.

Mr. Court asked if the Union Rep can invoke the Weingarten Right and can also act as counsel too? He explained that it would be a change in law from the Broken Arrow Case PERB ruled on in the past.

Mr. Neal informed the Board that it was not made a part of City's motion to rule upon.

Mr. Speegle answered that having a Union Representative present on behalf of the employee was sufficient enough evidence that he was invoking his Weingarten Right through his *action* of having his attorney present.

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)

Back in open session by unanimous vote, Mr. Speegle moved that the pending Motion to Strike be DENIED, Chairman Barlow seconded the motion, the motion passed and the vote was:

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

Chairman Barlow thanked Mr. Court and Mr. Leaman for their skill in presenting the case.

Mr. Speegle asked if the Administrator would like to collect the member's copies of the documents filed in the case as certain documents were filed under seal; she collected the copies to store under seal at the PERB Office.

The Administrator discussed the status report of recent case activity and Chairman Barlow announced the next board meeting scheduled February 9, 2012 at the Agriculture, Food & Forestry Building, 2800 North Lincoln Boulevard, First Floor Boardroom beginning at 9:00 a.m.

The meeting was adjourned by unanimous vote at 11:33 a.m.