

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

LOCAL 3199, INTERNATIONAL,)
ASSOCIATION OF FIREFIGHTER,)
AFL-CIO/CLC,)
Complainant,)
vs.) Case No. 208
CITY OF HUGO, OKLAHOMA,)
Respondent.)

PROPOSED FINDINGS OF FACT, CONCLUSIONS
OF LAW AND OPINION

This matter comes on for hearing before the Public Employees Relations Board (PERB on the Board) on September 8, 1989 on the Complainant's Unfair Labor Practice (ULP) charge. The Complainant appeared by and through James R. Moore and the Respondent appeared by and through Bob Rabon and J.D. McLaughlin.

The Board received documentary and testimonial evidence, including depositions and testimony before the Board. The Board also solicited and received post-hearing submissions (Proposed Findings of Fact and Conclusions of Law and Supporting Briefs) from both parties, the last received by this Board on February 9, 1990.

The Board is required by 75 O.S. 1981, § 312 to rule individually on Findings of Fact submitted by the parties. In this case, the parties have stipulated to most factual issues and have not made formal, individually numbered proposed findings of fact.

Therefore the Board need not enter individual rulings but rather accepts the party's stipulations and supplements the stipulations as necessary with its own findings.

PROPOSED FINDINGS OF FACT

1. On or about February 15, 1989, Local 3199, International Association of Fire Fighters, was certified as the bargaining agent for all employees of the Hugo Fire Department except the fire chief, assistant chiefs and all probationary employees. After certification and after March 3, 1989, the Union and the City through their bargaining representatives met for bargaining several times. And they were unable to arrive at a contract. (Tr. p. 6, Stipulation)

2. On or about July 25, 1989, one of the members of the bargaining unit, Jerry Tucker, was suspended from his employment. And a hearing was held thereon before the Hugo City Council on August 1 under the policies of the City of Hugo. (Tr. p. 6, Stipulation)

3. Jerry Tucker was terminated from his employment by the City of Hugo on August 2, 1989. (Tr. p. 6, Stipulation)

4. On August 4, 1989, the Union filed a charge with this Board claiming that Jerry Tucker was wrongfully terminated under 11 O.S. § 51-103(6)(A)(1) and (6)(A)(4). (Tr. p. 6, 7, Stipulation)

5. An impasse was reached in contract negotiations during September, 1989, and the Union requested that contract negotiations

be submitted to arbitration under the provisions of 11 O.S. § 51-106. (Tr. p. 7, Stipulation)

6. An arbitrator was selected and a hearing finally held thereon September 11, 1989. (Tr. p. 7, Stipulation)

7. The arbitrator hearing this matter has made no recommendations as yet concerning the same. (Tr. p. 7, Stipulation)

8. On September 14, 1989, the Union submitted a grievance to Assistant Chief Kenneth Winship regarding the termination of Jerry Tucker. (Tr. p. 7, Stipulation)

9. On October 5, 1989, the Union requested the City to arbitrate the discharge of Jerry Tucker, which request was denied by the City. (Tr. p. 8, Stipulation)

10. Thereupon, the Union amended its complaint with this Board whereby it sought an order from this Board requiring the City of Hugo to arbitrate Jerry Tucker's discharge. (Tr. p. 8, Stipulation).

11. On March 3, 1989, a handwritten statement was signed by Thomas Pence, fire chief, Kenneth Winship and Maurice Rogan which created a 2-man committee to meet and discuss grievances. This statement was signed again on August 17, 1989, by Thomas Pence, Larry Lee and Kenneth Winship stating that Larry Lee understood the grievance procedure (union Exhibit 1).

PROPOSED CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to 11 O.S. § 51-104(6).

2. In an administrative hearing before the PERB, the complainant has the burden of persuasion by a preponderance of the evidence as to the factual issues raised in its charges. Rule II Q, Rules of the PERB, see also Prince Manufacturing Company v. United States, 437 F.Supp. 1941 (1977). In this case the complainant has failed to meet this burden.

PROPOSED OPINION

The key factor in this case is whether the handwritten Statement between the parties constitutes a collective bargaining agreement so as to trigger the provisions of 11 O.S. § 51-111 relative to compulsory arbitration.

The Board holds that it does not. For the dispute resolution provisions to be invoked, some sort of collective bargaining agreement must be in effect. See e.g., International Association of Fire Fighters Local No. 2359 v. City of Edmond, 619 P.2d 1274. (Okla. App. 1980)

The Board is persuaded that for the purpose of the dispute resolution provisions of 11 O.S. § 51-111, any collective bargaining agreement, to be effective must be entered into by corporate authorities or union representatives with authority to bind the city or union to a collective bargaining agreement. The Board believes that, based upon the evidence in this case, the chief or mayor did not have authority to bind the city to a collective bargaining agreement. The chief and mayor may have authority to bind the city to certain internal policies but the

Board has been unable to ascertain sufficient evidence authority which would demonstrate that a ULP has been committed in this case.

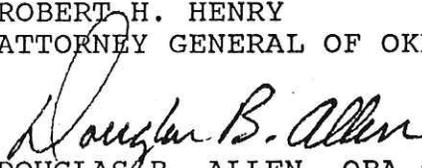
The fact that an agreement is hand-written or even oral is not determinative of the issues involved. NLRB v. Haberman Construction Company, 618 F.2d 288 (5th Cir. 1980). Rather it is more important that those agreeing to a collective bargaining agreement are without authority to actually bind the parties.

There is no persuasive evidence before the board that the agreement was intended by the parties to constitute a collective bargaining agreement of that the signatories had the authority to bind the union or city.

The Board is persuaded that, in this case, the evidence is insufficient to establish an unfair labor practice and the complaint is accordingly dismissed.

Respectfully submitted,

ROBERT H. HENRY
ATTORNEY GENERAL OF OKLAHOMA


DOUGLAS B. ALLEN, OBA #213
ASSISTANT ATTORNEY GENERAL
DEPUTY CHIEF, GENERAL COUNSEL
DIVISION

112 STATE CAPITOL BUILDING
OKLAHOMA CITY, OK 73105
TELEPHONE: (405) 521-3921

