

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

STATE OF OKLAHOMA

INTERNATIONAL ASSOCIATION OF )  
FIREFIGHTERS, LOCAL 1628, )  
AFL-CIO/CLC )  
Complainant, )  
v. ) Case No. 00220  
CITY OF SHAWNEE, OKLAHOMA, )  
Respondent. )

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND CEASE AND DESIST ORDER

This matter came on for hearing before the Public Employee Relations Board (PERB or The Board) on the June 6, 1990 on the complainant's unfair labor practice (ULP) charge. The Complainant (Union) appeared by and through its attorney, James R. Moore, and certain of its officers; the Respondent (City) appeared by and through its attorney, Mary Ann Karns, and certain of its officials. The Board received documentary and testimonial evidence; the Board also solicited post-hearing submissions from the parties, the last of which was received from the City on October 31, 1990. The Board is required by 75 O.S. 1981, section 312, to rule individually on Findings of Fact submitted by the parties. The submission of the Complainant is treated as follows:

1. Proposed Findings of Fact 1-11, 13, 14, 15, 16, 17, 18, 19, 20, and 22-27 have been substantially adopted by the Board.

2. Proposed Findings of Fact 12, has been accepted in part and rejected in part by the Board as is reflected in the Findings of Fact set out below.

3. Proposed Findings of Fact 21 and 28 have been accepted by the Board as modified in the Findings of Fact set out below.

The submitted Findings of Fact and Conclusions of Law of the Respondent are treated as follows:

1. Proposed Findings of Fact 1,2,3, and 6 have been substantially adopted by the Board.

2. Proposed Finding of Fact 4 has been accepted as modified in the Findings of Fact set out below.

3. Proposed Findings of Fact 5, 7, and 8 have been rejected by the Board they are found to be unsubstantiated by the evidence and, in part, irrelevant for the purposes of deciding the Weingarten issue.

#### FINDINGS OF FACT

1. The City of Shawnee, Oklahoma (The City) is, and was, at all pertinent times hereto, a municipal corporation, duly organized and existing under the laws of the State of Oklahoma.

2. The International Association of Firefighters, Local 1628, (Local 1628 or the Union) is, and was, at all pertinent times hereto the duly acting labor representative and bargaining agent for all eligible Shawnee Firefighters.

3. The City and the Union are and were at all pertinent times parties to a Collective Bargaining Agreement (CBA) which contained language to the effect that unit members were entitled to have representation in meetings with management should reprimand or other disciplinary action be involved. (TR 119). The CBA, however, significantly predates the 1986 ruling by this Board that a member of a bargaining unit has an independent, statutory right to such union representation, known as a Weingarten right (see Conclusions of Law below). (TR 13).

4. At all pertinent times hereto, Tommy Parrish was an 18 year veteran of the Shawnee Fire Department and a member of the bargaining unit represented by Local 1628.

5. In January, 1990 the City and the Union arbitrated a grievance involving Firefighter Stanley Wells. The issue in that arbitration case was whether or not Wells had been properly disciplined as a result of tardiness. (TR 15-18).

6. In preparation for the Wells arbitration case, Fire Chief Jerry Mankin interviewed Parrish regarding whether or not Parrish was aware of incidents of tardiness which had not resulted in discipline; Parrish advised Chief Mankin that he knew of no other such incidents. (TR 15-18).

7. Prior to the arbitration case, but after Chief Mankin had interviewed Parrish, Stanley Wells asked Parrish to review notes he had taken in the past to determine if he had documented any instances where firefighters had been tardy and were not disciplined. (TR 18-20).

8. Parrish did review his notes and found documentation indicating that firefighters had been tardy in the past without receiving discipline. Parrish then gave those notes to Wells for use by him in the course of his arbitration case. Parrish left town on vacation and did not return until after the arbitration case had been heard. (TR 18-20).

9. On January 22, 1990, on his first shift back after his vacation, Parrish was advised by Battalion Chief Hill and Captain Hatfield that Chief Mankin wanted to see him in the Chief's office on January 29, 1990, with a Union Representative. (TR 21).

10. During his tenure as Chief, Mankin had never before advised a firefighter to come to a meeting with a Union representative (TR 147).

11. Employees of the Shawnee Fire Department generally would interpret a request by the Chief to appear with Union representation to constitute notice of impending discipline. (TR 22, 72).

12. Parrish was concerned that the January 29, 1990 meeting would lead to disciplinary action; he therefore contacted both his local Union president and the Professional Fire Fighters of Oklahoma (PFFO). Both advised him to have a union representative in his meeting with Chief Mankin. (TR 22-23).

13. Parrish made arrangements to have Fred Moore, an IAFF member, represent him at the January 29th meeting with Chief Mankin. Moore did travel to Shawnee from Oklahoma City on the 29th to meet with Parrish and Mankin. (TR 25-27).

14. Although Chief Mankin had never taped a meeting with a firefighter before, he was prepared to tape his meeting with Parrish on January 29th; After excluding Parrish from the meeting, Mankin did in fact tape the resulting meeting with Fred Moore on that date. (City's Exhibit 1, TR 125).

15. During the meeting between Mankin and Fred Moore, Mankin learned that Moore lived in Oklahoma City and that the time necessary for Fred Moore to travel from Oklahoma City was approximately one hour. Chief Mankin also advised Moore that the Chief would not interview Parrish that morning. (City's Exhibit 1, Pages 6-8).

16. After the January 29th meeting with Mankin, Fred Moore thought Chief Mankin intended to discipline Parrish. Moore therefore advised Parrish not to meet with Mankin without a union representative. (TR 29, 94-96, 99).

17. After Fred Moore left Shawnee on January 29th. Chief Mankin requested a meeting with Parrish to take place that evening. Parrish advised Mankin that he would meet with him but only if Parrish were allowed to have union representation at the meeting. Mankin did not reply to the request for union representation. (TR 30-31).

18. On the following day January 30, 1990, Parrish delivered a handwritten note to Chief Mankin (Union Exhibit 2). In the note, Parrish stated that he was not refusing to meet with the Chief but rather was insisting upon the right to have the union representative of his choice present at the meeting with the Chief.

Parrish specifically designated Fred Moore as his chosen representative and offered to meet with the Chief and Fred Moore on January 31, 1990, at 5:00 p.m.. Chief Mankin did not respond to this note. (TR 32, Union Exhibit 2).

19. Chief Mankin's normal office hours are 8:00 a.m. to 5:00 p.m. (TR 149, 158).

20. On January 31, 1990, Chief Mankin called Parrish at 7:00 a.m., the time at which Parrish began his shift, and told Parrish to be at his office immediately for a meeting. (TR 33).

21. Prior to leaving for Mankin's office, Parrish asked another firefighter to call a union representative for him. The firefighter could not call from the station because Chief Mankin had the only line to the fire station tied up. (TR 33-35)

22. Fire Captain Bobby Cranford was called to represent Parrish and arrived at Chief Mankin's office within approximately 20 minutes. (TR 35-36).

23. When Parrish arrived at Chief Mankin's office Chief Mankin locked the door of his office with only Parrish, Parrish's supervisor, and the Chief inside; Chief Mankin proceeded to tape the meeting. (City's Exhibit 1, page 9 and TR 36-37).

24. Parrish asked if he needed union representation and was told by Mankin that he did not. Chief Mankin did not positively state that there would be no disciplinary action taken as a result of the investigatory interview, but he did tell Parrish that no oral reprimand or other disciplinary action was anticipated at that time. (City's Exhibit 1, page 9).

25. During the meeting, Chief Mankin questioned Parrish regarding the assistance he had provided Stanley Wells in his arbitration case. Parrish refused to answer Mankin's questions until Mankin threatened him with disciplinary action if he continued his refusal to answer. (TR 38-40 and City's Exhibit 1, pages 5-17).

26. During the meeting, Bobby Cranford attempted to open the door to Chief Mankin's office but found it locked. When Parrish left Mankin's office he observed Cranford waiting for him. (TR 78-80)

27. One of the purposes of the January 31st meeting was to allow Chief Mankin to determine whether or not Parrish had lied to him about evidence in the Wells' arbitration case. Lying to a superior officer is a violation of the rules and regulations of the Shawnee Fire Department and can result in disciplinary action. (TR 133).

28. Chief Mankin himself admitted that Parrish probably felt the possibility of resulting disciplinary action. (TR 158).

#### CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to 11 O.S. Supp 1986, section 51-104.

2. An analysis of the Oklahoma Fire and Police Arbitration Act (FPAA), in particular, analysis of sections 51-101(A), (B), and 51-102 (6a)(1), "compels the conclusion that those public employees covered by the FPAA are entitled to union representation in

investigatory interviews which they reasonably believe might lead to disciplinary action." Fire Fighters Local 2551 vs. The City of Broken Arrow, PERB Case No. 00104, at page 6.

3. Since October 1986, when Broken Arrow was decided, public employees subject to the FPAA have been afforded the protection of the so called Weingarten right (NLRB vs. J. Weingarten, Inc., 420 US 251, 43 Led.2d 171, 95 S.Ct 959, 1975), and violations of that right constitute a ULP under 11 O.S., section 51-102 (6a)(1).

4. An employee's Weingarten right is violated, and a ULP results when the following occurs:

- a. the employee reasonably believes the interview will result in disciplinary action;
- b. the employee requests union representation;
- c. the employee is denied union representation;
- d. the employer insists that the employee continue with the interview.

(See, e.g. Broken Arrow, Perb Case No. 00104 and Weingarten, 420 US 251.)

5. In an administrative proceeding before the PERB, the complainant has the burden of persuasion by a preponderance of the evidence as to the factual issues raised by its ULP charges. PERB Rule III(Q). See also, Prince Manufacturing Co. United States, 437 F. Supp. 1041 (D.C. Ill. 1977). In this case the complainant has met its burden of proof by establishing the recognized elements of the Weingarten doctrine.

6. The Board is persuaded that Tommy Parish reasonably believed that the January 31, 1990 investigatory interview might result in disciplinary action.

7. Tommy Parrish requested union representation repeatedly before the interview, and repeated his request for union representation in a number of ways during the interview which made in unmistakable to Chief Mankin that Parrish did desire such representation in the interview. (See Findings of Fact 17, 18, & 19)

8. Chief Mankin denied Tommy Parrish union representation in the January 31st interview. (See Findings of Fact 23, 24, & 26)

9. Chief Mankin insisted that Parrish continue the interview after denying Parrish's request for union representation, even to the point of threatening disciplinary action for insubordination if Parrish continued his refusal to answer questions.

10. Weingarten rights, and other rights derived from the FPAA, are personal rights of the individual employee and are not the rights of labor organizations. Broken Arrow, at page 17.

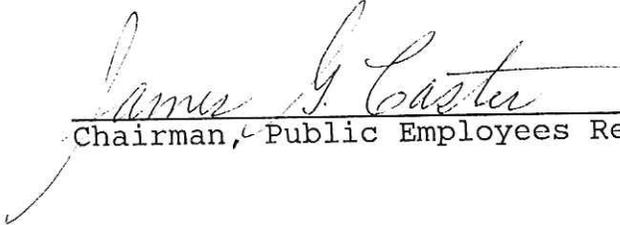
11. The City's contention that the Union in this case has waived the Weingarten rights of its constituent members by the inclusion in the CBA of the provision outline in Finding of Fact No. 4 above is without merit. There is insufficient evidence to indicate a waiver. Such a waiver must be clear and unmistakable. NLRB v. Item Co, 220 F.2d 956 (5th Cir 1955). The Board holds that the evidence presented is wholly insufficient to find clear and unmistakable evidence of waiver. As a result, the Board will not

re-examine the issue of whether a union can, under the FPAA, waive Weingarten rights of individual employees.

12. Refusal to allow an employee to exercise his or her Weingarten rights constitutes a violation of 51-102(6a) (1) and an unfair labor practice for which a remedy may be fashioned by the Board.

the Board therefore finds the City of Shawnee guilty of an unfair labor practice pursuant to 11 O.S., section 51-102 (6a)(1) and finds that a cease and desist order should issue.

Issued this 29<sup>th</sup> day of November, 1990.

  
\_\_\_\_\_  
Chairman, Public Employees Relations Board

CEASE AND DESIST ORDER

The City of Shawnee is hereby ordered, pursuant to 11 O.S., section 51-104b(c), and consonant with the Findings of Fact and Conclusions of Law entered herein, to cease and desist from denying bargaining unit employees the right to union representation during interviews where the unit member reasonably believes such interview may result in disciplinary action and requests union representation. Furthermore, this cease and desist order shall be posted in a prominent location within the Shawnee Fire Department for no less than thirty days after the date of issue.

Dated this 29<sup>th</sup> day of November, 1990

James G. Carter  
CHAIRMAN