

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, LOCAL 2095)

Complainant,)

vs.)

CITY OF STILLWATER,)

Respondent.)

CASE NO. 00225

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

This matter came on for hearing before the Public Employees Relations Board (PERB or the Board) on the 25th day of June, 1991 on Complainant's Unfair Labor Practice (ULP) Charge. The Complainant appeared by and through its attorney, James Moore. The Respondent appeared by and through its attorney, Peter Van Dyke.

The Board received documentary and testimonial evidence. The Board also solicited and received post-hearing submissions (Proposed Findings of Fact, Conclusions of Law, and supporting briefs) from both parties.

The Board is required by 75 O.S. 1981, §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 Nos. 1, 2, 4, 5, 7, 14-17, 28, and 29 are substantially adopted by the Board.

2. Proposed Findings of Fact Nos. 6, 12, 18-21, 23, 24, 26, 27, and 30, are accepted in part as modified herein and rejected in part.

3. Proposed Findings of Fact Nos. 3, 8-11, 13, 22, 25, and 31 are rejected as unnecessary to this Board's decision or as duplicative of other Proposed Findings of Fact.

The Board treats the submission of the Respondent as follows:

1. Proposed Findings of Fact Nos. 1, 2, 5, 11, 12, 14, 16, 18, 21-23, 28, 31, are substantially adopted by the Board.

2. Proposed Findings of Fact Nos. 10, 13, 15, 20, 24, and 30, are accepted in part, as modified, and rejected in part.

3. Proposed Findings of Fact Nos. 3, 4, 6, 7, 8, 9, 19, 27, 29, 32-40 and 43 are rejected as unnecessary for this Board's decision or as duplicative of other Proposed Findings of Fact.

4. Proposed Findings of Fact Nos. 17, 41, 42, and 44 are rejected because they require Conclusions of Law rather than Findings of Fact.

4. Proposed Findings of Fact Nos. 25 and 26 are rejected.

FINDINGS OF FACT

1) The Complainant, the International Association of Firefighters, Local 2095, (the Union) is, and was at all times material herein, the duly certified and acting labor representative and bargaining agent for certain employees of the Stillwater Fire Department.

2) The City of Stillwater (the City) is, and was at all times material herein, a municipal corporation duly organized and existing under the laws of the State of Oklahoma.

3) The parties had a Collective Bargaining Agreement (CBA) in effect during Fiscal Year 1988-89. Article 9, Section 1 of that CBA (Union Exhibit-H) provided:

The City of Stillwater will provide major medical coverage to include a double indemnity \$10,000 Life Insurance Policy and a \$10,000 accidental death and dismemberment insurance benefit. Additionally the employer agrees to pay dependent premiums for those full time employees desiring family medical coverage.

4) During collective bargaining for the FY 1989-90, the parties negotiated changes to the insurance article. Article 9, Section 1 of the FY 1989-90 CBA (Union Exhibit-I) then provided:

The City of Stillwater shall provide major medical coverage to include a double indemnity \$10,000 Life Insurance Policy and a \$10,000 accidental death and dismemberment insurance benefit. The City shall pay the cost of the insurance premium for the member and dependents for 1989-90. Insurance coverage shall not be changed from that in effect on July 1, 1988 without the Union having an opportunity to meet and confer on those changes. Each member is to be furnished a copy of the insurance plan.

5) Prior to FY 1989-90, the firefighters participated in the same health insurance plan as all other City employees (TR 83), and the City's obligation to pay insurance premiums had not previously been defined in reference to a particular fiscal year (Union Exhibit-H).

6) The City and the Union interpreted the requirements of Article 9, Section 1 of the FY 1989-90 CBA differently. Pursuant

to its interpretation of the requirements of that Article, the City implemented changes in employee insurance effective July 1, 1989 (TR 60; 70).

7) The Union filed a grievance on September 22, 1989 contesting those changes to employee insurance (Union Exhibit-A).

8) The parties processed the grievance according to the procedure established in the CBA and set it for arbitration on April 30, 1990.

9) The only issues scheduled for arbitration arose out of the language which was new to Article 9, Section 1, of the FY 1989-90 CBA.

10) In February, 1990, the parties began bargaining for a FY 1990-91 CBA (TR 27), but the subject of insurance was not discussed at the bargaining table before April 30, 1990, due to the pending grievance arbitration (TR 38, 83). Collective bargaining for FY 1990-91 was ongoing as of April 30, 1990 (Tr 37).

11) The Union President, James Bradley (TR 16) and City representative Paul Corley, the City's personnel director, attempted to settle the grievance.

12) On April 24 or 25, 1990, prior to the grievance arbitration scheduled for April 30, 1990, the City Manager offered the Union a settlement on the grievance. Under that proposed settlement, the firefighters would receive the benefits to which they contended they were entitled under the disputed 1989-90 insurance article, for the balance of the fiscal year. Commencing July 1, 1990, the language in the insurance article would be

changed back to the undisputed language contained in the 1988-89 CBA, and the firefighters would be covered under the same insurance plan as all other City employees (Union Exhibit-B, TR 71-72, 83-85).

13) Based upon what the City Manager had interpreted as a favorable reaction from the Union leadership (TR 85) the City Manager believed the Union would accept the proposed settlement.

14) On April 26, 1990, the Union rejected the City Manager's proposed settlement after a vote of its members. The City was advised of the rejection on April 27, 1990 (TR 73).

15) Upon being advised that the Union had rejected his settlement offer, the City Manager drafted a letter to the Union President (Union Exhibit-D) informing him that the City would not contest the grievance, but that "the City's obligation to pay for firefighters and dependent coverage will end on June 30, 1990." The letter went on to say that "Current projections are that any firefighter who desires to continue his and his dependents' coverage after June 30 will need to make arrangements with either the City or the Houck Agency to pay the projected cost of approximately \$300 per month." (Union Exhibit-D, TR. 28, 30).

16) The Union President was also contacted by phone, informed of the City's position, and told to pick up the letter (outlined above, Union Exhibit-D) which accurately outlined the City's position as had been explained to him. (TR 30-31, 112-115, Union Exhibit-D).

17) Also on April 27, 1990, the City Manager drafted and mailed a letter to all Stillwater firefighters (Union Exhibit-C). That letter, which was the first letter that the City Manager had ever written directly to the firefighters in his eight years as City Manager, accurately summarized the course of grievance negotiations and informed the firefighters that the City considered itself free of the obligation to pay health insurance premiums after FY 1989-90 and that, therefore, firefighters might be required to pay the approximately \$300 per month to maintain that insurance. A copy of the letter which the City Manager had mailed to the Union President (see Finding of Fact No. 15, above) was attached to the letter mailed to the firefighters.

18) Neither the letter to the Union President (Union Exhibit-D) or the letter to the firefighters (Union Exhibit-C) was couched in explicitly threatening terms, but events attendant to collective bargaining suggested an implicit threat.

19) On April 30, 1990, the day set for arbitration of the grievance on the City's FY 1989-90 insurance changes, the City conceded to the Union's position, leaving resolution of the insurance issue for contract negotiations (TR 93). The City also restored the insurance benefits which had been reduced through the FY 1989-90 changes (Tr 35-36, Union Exhibit-E) but continued to assert its position that it was not obligated to continue paying firefighter health insurance premiums after June 30, 1990 (Union Exhibit-E).

20) During the collective bargaining which had been ongoing since February of 1990, the Union regularly informed its members of matters discussed in bargaining (TR 40). Prior to April 27, 1990, Union officers had not informed union membership of any contract proposals to eliminate insurance premiums for FY 1990-91 because the City had never previously presented such a contract proposal to the Union (TR 40); nor was the Union able to research and discuss the City's proposal as it normally did (TR 43) before responding.

21) The City Manager had no reason to believe that the Union would not fully inform firefighters of contract negotiations on health insurance for the next fiscal year (TR 91-98, 100).

22) On May 3, 1990, the City Manager mailed a memorandum to all City employees other than firefighters to assure them that "the City has no plans to stop paying premiums for all employees with the possible exception of firefighters," and that "what happens in the Fire Department will depend upon negotiations which are underway." (Union Exhibit-E).

23) Collective Bargaining continued after the City Manager's letters (TR 109). The first time that the City made a contract proposal on eliminating health insurance premiums was on May, 9, 1990 (City Exhibit-1, Tr 37, 56, 84-85, 110-111).

CONCLUSIONS OF LAW

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

2) In an administrative proceeding before the PERB, the charging party has the burden of persuasion by a preponderance of the evidence as to factual issues raised in its Unfair Labor Practice (ULP) charge. 11 O.S. Supp. 1990, §51-104(6)(C).

3) In this case, the charging party has established that the City of Stillwater, through the City Manager's letter of April 27th, 1990 to the members of the Stillwater Fire Department, did bypass the certified bargaining agent on matters subject to bargaining and did improperly deal directly with members of the bargaining unit in violation of 11 O.S. §51-102(6a)(5).

4) The National Labor Relations Board has held that an employer may lawfully communicate directly with members of a bargaining unit in the following circumstances:

- (a) to communicate information on the status of negotiations;
- (b) to explain positions previously advanced by the employer to the Union, either at the bargaining table or in connection with the disposition of a grievance;
- (c) to refute inflammatory charges openly made by the Union;

(d) to criticize bargaining strategy and certain related tactics of the Union leadership which were the asserted reason for an inability to reach an agreement;

(e) to explain positions taken by the parties during the course of a grievance resolution.

(emphasis added) Proctor & Gamble Mfg. Co., 160 NLRB 334 (1966); Safeway Trails, Inc., 233 NLRB 1078 (1977).

5) This Board finds that City of Stillwater had not communicated its collective bargaining position in regard to insurance premiums to the Union leadership before the City Manager's April 27th letter to the Union President, a letter which was followed almost immediately by a letter from the City Manager communicating that position to the Union membership directly. The communication of a collective bargaining position, directly to the union membership, mailed only hours after the Union leadership has received word of that position for the first time, constitutes a clear circumvention of the designated bargaining agent.

6) The Board finds that this circumvention of the designated bargaining agent on matters subject to, and in this case central to, bargaining, does rise to the level of bad faith bargaining in violation of §51-102(6a)(5) warranting this Board's imposition of a cease and desist order.

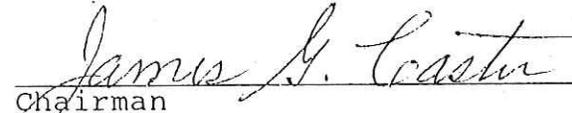
(7) In addition, the Board finds that the charging party has met its burden of establishing that the City of Stillwater acted to interfere with, restrain, intimidate and coerce Union members in the exercise of their rights in violation of 11 O.S. §51-

102(6a)(1). Although the Board finds that neither the City Manager's letter to the Union President nor his letter to the Union membership (Union Exhibits D and C) was explicitly threatening, those communications were an attempt to, and did in fact, circumvent the designated bargaining agent on an emotionally charged and critical subject of bargaining, the subject of health insurance. Further, the City's direct declaration of its bargaining position to the bargaining unit members on the subject of health insurance, in circumvention of the designated bargaining agent, came on the heels of the Union's rejection of a settlement offer which the City Manager thought would and should be accepted. Given the subject of these communications, their timing, and the fact that they were in circumvention of the designated bargaining agent, the Board finds that the City did thereby act to interfere with, restrain, intimidate, and coerce the members of the bargaining unit in violation of §51-102(6a)(1) and that a cease and desist order is warranted.

Dated this 8th day of February, 1992
Samuel G. Easter
CHAIRMAN

CEASE AND DESIST ORDER

The City of Stillwater is hereby ordered, pursuant to 11 O.S. §51-104b (c) and consonant with the Findings of Fact and Conclusions of Law entered herein, to cease and desist from bargaining in bad faith by circumventing the International Association of Firefighters, Local 2095, the designated bargaining agent of the Stillwater firefighters, and thereby acting to interfere with, restrain, intimidate or coerce the members of the Stillwater Fire Department, in violation of 11 O.S. §51-102(6a)(5) and §51-102(6a)(1). This Order shall be posted prominently within the Stillwater Fire Department for not less than thirty (30) days.


Chairman

Dated this 8th day of February, 1992