

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE,
LODGE 118

Complainant,

-vs-

CITY OF ANADARKO,

Respondent,

No. 00258

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter comes on for decision by the Public Employees Relations Board on Complainant's Unfair Labor Practice (ULP) charge.

The parties hereto, represented by counsel, have stipulated to the facts relevant to a decision in this matter and the Board is thereby relieved of its obligation to rule individually on proposed findings of fact of the parties (74 O.S. § 312) but accepts such stipulations. The parties have duly submitted briefs and the Board finds as follows:

FINDINGS OF FACT

1. Sgt. William L. Spencer ("Spencer") was the chief negotiator for Lodge No. 118, Fraternal Order of Police ("Union" or "FOP"), in negotiations with the City of Anadarko ("City" or "Anadarko"), Oklahoma for the 1986-87 collective bargaining

agreement ("CBA"). Spencer was a member of the unit covered by the 1986-87 CBA.

2. In the negotiations for the 1986-87 CBA, the City's proposal stated that it was the City's exclusive management prerogative to direct employees of the police department, including discharge of police employees, and that such right was not subject to the grievance procedure under the CBA.

3. Spencer and the Union acquiesced to the City's proposal, and agreed to the language proposed by the City in Art. VI, Section 1, and Art. VIII, Section 2, in the 1986-87 CBA. Spencer, the Union and the City were not represented by counsel in the negotiations.

4. Article VI, Management Rights of the 1986-87 CBA between the Union and City provided:

SECTION 1. Except as otherwise specifically provided in this Agreement, the City has the sole and exclusive right to exercise all the rights or functions of management; and the exercise of any such rights or functions shall not be subject to the grievance procedure. Without limiting the generality of the foregoing, as used herein, the term "rights of management" includes:

5. The right to direct Employees of the Police Department, including the right to hire, promote or transfer any Employee and to suspend, demote, discharge or take other disciplinary action against Employees.

5. Article VIII, Grievance Procedure of the 1986-87 CBA provided:

SECTION 2. "Grievance" as used in this Agreement shall be defined as any dispute which may arise involving the interpretation or application of any of the

provisions of this Agreement or the actions of any of the parties thereunder, except that it shall not apply to the exercise of the rights of management as set out in Article VI, Management Rights.

6. Spencer did not in the negotiations for the 1986-87 CBA state any opposition to the City's proposal that it had the exclusive management prerogative to discharge police employees and that such prerogative was not subject to the grievance arbitration procedure in the CBA, nor did Spencer or the Union press the issue in negotiations.

7. The parties did not come to an agreement on a CBA for fiscal year 1987-88.

8. The identical language of Art. VI, §1, and Art. VIII, §2, of the 1986-87 collective bargaining agreement was carried forward in the parties' 1988-89 CBA.

9. Spencer negotiated the 1988-89 CBA for the Union, and did not propose any change in the language of Art. VI, §1, and Art. VIII, §2.

10. On March 18, 1991, Spencer was terminated from the Anadarko Police Department by Anadarko City Manager Nolan Combs.

11. A copy of Spencer's termination letter appears in the record as Exhibit "A".

12. The collective bargaining agreement in effect at the time Spencer was terminated was the 1988-89 CBA, a copy of which appear in the record as Exhibit "B". Spencer was a member of the unit covered by the 1988-89 CBA.

13. The Union filed a grievance over Spencer's termination.

14. The City objected to the grievance on the basis of the language in Art. VI, §1, and Art. VIII, §2.

15. The parties submitted the matter to arbitration, and the case, styled In re: The Matter Between the City of Anadarko and the Fraternal Order of Police Lodge No. 188 (William Spencer Arbitration), FMCS NO. 91-6531, was heard by Presiding Arbitrator Ralph E. Pelhan, Interest Arbitrator for the City Arland Perkins and Interest Arbitrator for the Union Fred Moore ("Arbitration Board").

16. A copy of the unanimous Opinion and Award of the Arbitration Board in the Spencer arbitration appears in the record as Exhibit "C".

17. The Arbitration Board found that Spencer's discharge was not properly before the Arbitration Board for consideration of its merits because the "clear language of the Agreement does not provide for arbitration in this case." Opinion and Award, pp. 6, Exhibit "C".

18. The Arbitration Board also found that:

The City of Anadarko, Oklahoma's City Charter has provided for the creation of an Appeal Board for City Employees. When an Employee believes he/she has been unfairly and/or unjustly suspended or discharged, he/she had the right to appeal that suspension or discharge to the Appeal Board for the City Employees. Under the particular facts, circumstances, and evidence in the case, the Board of Arbitration finds that this avenue of appeal is the proper avenue for the appeal of William Spencer's discharge.

Opinion and Award, pp. 6, Exhibit "C".

19. Anadarko's City Charter, a copy of which is attached as Exhibit "D", provides, in Art. XX at page xix, for an Appeal Board ("Appeal Board"), to which city employees who are discharged by the city manager may appeal their discharges.

20. Under Art. XX, a discharged employee has ten days to file an appeal form with the Mayor of Anadarko. The city council then makes the final decision on the appeal by majority vote for the best interests of the City.

21. On March 25, 1991, Spencer filed an appeal of his discharge to the Appeal Board.

22. A copy of Spencer's appeal appears in the record as Exhibit "E".

23. Spencer's appeal to the Appeal Board has been held in abeyance by agreement of the parties because of related litigation.

24. The City's Code of Ordinances, § 1-72, provides for a Policemen's Board of Review ("Board of Review") for a discharged policeman to obtain review of his discharge by filing within 15 days of his discharge a written statement of objection to his discharge with the Board of Review.

25. A copy of Section 1-72 of the City's Code of Ordinances appears in the record as Exhibit "F".

26. The Board of Review makes the final decision on any appeal filed with the Board of Review.

27. Review of the Board of Review's decision may be taken to the District Court of Caddo County, Oklahoma.

28. The City informed Spencer of his right to file an objection with the Board of Review.

29. Spencer has not filed a statement of objection with the Board of Review.

30. The parties' CBAs for fiscal years 1989-90, 1990-91 and 1991-92 contain language identical to that in Art. VI, §1, and Art. VIII, §2, of the 1988-89 CBA.

31. The Union has not urged any change in the language in Art. VI, §1, Art. VIII, §2, in the parties' CBAs for fiscal years 1989-90, 1990-91- and 1991-92.

32. Pursuant to the Union's request, the 1989-90, 1990-91 and 1991-92 CBAs were all signed on February 3, 1992, after the instant unfair labor practice charge was filed with the Public Employees Relations Board.

CONCLUSIONS OF LAW

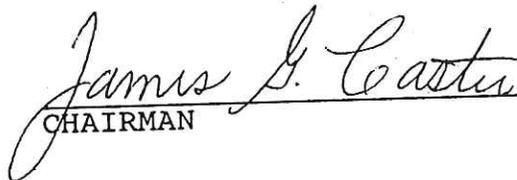
1. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. §51-104(b).

2. While strongly favoring arbitration the PERB has previously stated its willingness to look behind the decision of an arbitrator in cases which seriously misconstrue the rights afforded public employees under the FPAA Local 2171, International Association of Firefighters v. City of Del City, PERB No. 176; Firefighters Local 2784 v. City of Broken Arrow, PERB No. 00104. However, the Board is not required to engage in any particular inquiry but may defer to a decision entered through arbitration.

In this case, which presents many unusual and unique facts, the Board recognizes no compelling reason to and therefore declines to set aside in part or in whole the unanimous decision of the Arbitration Board but defers to the decision. The Board offers no opinion or comment on the wisdom of the decision of the Arbitration Board but rather limits this deferral to the facts of this case.

The Board specifically reaffirms the decision in International Association of Firefighters, AFL-CIO/CLC v. City of Bethany, PERB No. 00155 and limits its decision to the facts of this case. Therefore, this complaint is dismissed.

July 12, 1993


CHAIRMAN