

29, 30, 31, 32, 33, 34, 35, 37, 38 and 39 are substantially adopted by the Board.

2. Proposed Findings of Fact Nos. 11, 12, 19, 27, 28 and 40 are accepted in part and rejected in part.

3. Proposed Findings of Fact No. 36 is rejected in so far as it does not support the allegation set forth.

The Board treats the submission of the Respondent as follows:

1. Proposed Findings of Fact Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, are substantially adopted by the Board.

2. Proposed Findings of Fact Nos. 50, 51 and 54 are accepted in part and rejected in part.

FINDINGS OF FACT

1. The International Association of Firefighters (the Union) is the Bargaining Agent for all firefighters employed by the City of Ardmore (the City) with the exception of the Chief and one administrative assistant.

2. The City of Ardmore 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 herein have been parties to numerous Collective Bargaining Agreements, and during all times material herein were parties to a Collective Bargaining Agreement.

4. Prior to 1990, new hirees (rookies) with the Ardmore Fire Department received no formal training on firefighting; they instead received on the job training. (Tr. 80-81, 100).

5. In 1990, the City began a training program for new hirees in the Ardmore Fire Department. (Tr. 100).

6. In both 1990 and 1991, the City requested Volunteers to teach the Rookie Firemen Training Classes. In 1990 the Volunteers were paid one and one-half Compensatory Time for teaching off-duty; in 1991 they were paid time and one-half in wages. (Tr. 271, 273-275).

7. The Union did not object to the City's instituting this Volunteer Training Program for rookies in either 1990 or 1991. The Union did not raise a complaint with the Fire Chief or the City Manager, nor did it file a grievance until March of 1992. (Tr. 114, 274).

8. The Union made a proposal involving Incentive Pay for Firemen to receive training during contract negotiations which began in March of 1991. (Union's Ex. 2).

9. The City made a counter-proposal. (Union's Ex. 3).

10. The Incentive Pay Issue was then dropped. A new contract was signed on November 13, 1991, and the issue was not included in that contract. (Deposition of Scott Richards, p. 8, 12).

11. Volunteer teaching of the rookie firemen occurred in December of 1991, and there were no contract negotiations going on at that time. (Tr. 275, 276).

12. The parties have negotiated new contracts in 1992 and 1993, and the issue of incentive pay for teaching was not included in them. Nor was it brought to the table by either party. (Tr. 275, 276).

13. Ardmore Firefighters work a 24-hour shift, which is common among firefighters. As part of their shift, Ardmore Firefighters have historically been assigned duties during portions of the 24-hour shift and have periods of "stand-down" time where there are no assigned duties. Stand-down time has been between the hours of 12:00 p.m. and 2:00, and 5:00 p.m. and 7:00 a.m. (Union's Ex. 1, Carnes Award).

14. When Wayne Phelps became Fire Chief, he changed the work schedule and stand-by time of Ardmore Firefighters without bargaining those changes. This action led to a grievance and ultimately an arbitration Award issued by Charles N. Carnes. (Tr. 323-24).

15. In his Award dated December 28, 1990, Mr. Carnes found that the City had breached the contract by making the changes and that the City should not schedule work or training to fall within the 12:00 to 2:00 period established by the old Rules and Regulations. (Union's Ex. 1, Award p. 17-18).

16. Although the City never thereafter bargained any change in the work schedule, it scheduled work and training which fell within the stand down time. (Tr. 282).

17. Chief Phelps admitted to infringing upon the firefighters' stand-down time "seven or eight times" (Tr. 282).

18. Firefighters were sent to do hose testing as part of a regular testing program. Hose testing is an activity which takes a predictable amount of time, given the length of hose and the number of people testing the hose. (Tr. 65, 69, 162, 165, 195).

19. Prior to the Carnes Award, hose testing had started early in the morning and had taken most of the day to complete (Tr. 47). After the Award, firefighters were ordered to begin testing at 2:00 p.m. When Captain Smith inquired about starting earlier, he was told to schedule other duties in the morning. These were duties which could have been performed any other time. (Tr. 47).

20. Because hose testing started in the afternoon and had to be completed before firefighters would return to the station, it was around 6:00 or 6:30 p.m. before the firefighters were finished. (Tr. 53, 162).

21. The Union cites several instances of alleged anti-union animus, for example: the moving of the file cabinet, the physical contact made by the Fire Chief upon the Union President, and the accusation made by the Fire Chief that the Union had been spreading misinformation. The Board finds that certain of these incidents

did occur, as reflected in Findings of Fact Nos. 22, 23, 24, 25 and 26, and will address the impact thereof in its Conclusions of Law.

22. On June 17, 1991, the parties were in the midst of contract negotiations. The firefighters had set up a picket line outside City Hall prior to a regularly scheduled City Commission Meeting and appeared before the Commission through their Union President to air their grievances. (Tr. 289).

23. After the City Commission Meeting, at approximately 8:00 p.m., the Union President, Mr. Ervin, was at the downtown fire station. The Fire Chief, Wayne Phelps, asked Mr. Ervin why he was there and informed him that visiting hours were over. After a brief discussion, Mr. Ervin left the station (Tr. 289, 290).

24. On January 8, 1992, Mr. Phelps wrote a letter to Mr. Ervin informing him of the removal of the Local 1881 file cabinet from the Ardmore Fire station. The file cabinet was moved shortly thereafter. (Tr. 123, Union's Ex. 5).

25. After the cabinet was moved, the Union filed a grievance which was settled by the City Manager. The file cabinet was then moved back to its previous location. (Tr. 131).

26. On January 8, 1992, Mr. Phelps held a shift meeting at which Mr. Ervin alleged Mr. Phelps made remarks that the Union was being given false information. Mr. Ervin also alleged that Mr. Phelps physically pushed him with his arm. (Tr. 134, 136). There is conflicting testimony as to what actually occurred at this

meeting. However, no grievance or complaint was ever filed regarding the incident prior to this hearing.

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). See, e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (1977); Gourley v. Board of Trustees of the South Dakota Retirement System, 289 N.W. 2d 251 (S.D. 1980).

3. The Board finds that the City has failed to comply with the Carnes arbitration award by scheduling activities, specifically hose testing, for members of the bargaining unit which conflict with stand-down time. Such a failure constitutes a violation of 11 O.S. § 51-102 (6a) (5) and an unfair labor practice. Aside from the hose testing issue, the Board finds that all other instances of alleged violations were either required by operating necessity or were de minimis. The Carnes decision does not say that the City may never, under any circumstances, intrude into the firefighter's stand-down time such as in the case of operating necessity. (Carnes Award, p. 13). Scheduling conflicts such as hose testing does, however, violate the findings of the arbitrator,

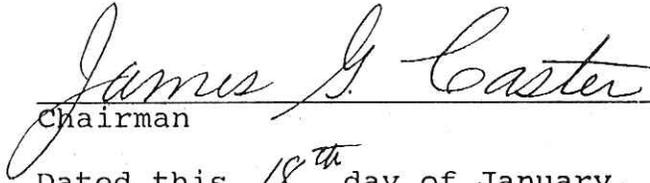
and the Board finds that a Cease and Desist Order should be issued for this.

4. The Board finds that the City did not commit an Unfair Labor Practice when it asked for Volunteers to teach a rookie class without first negotiating with the Union. Teaching class was not mandatory for the firefighters. The process had been in effect since 1991, and the Board is persuaded that the method of soliciting volunteers and compensation therefor was established by past practice between the parties. If the Union desires a change to this practice, it should be resolved at the bargaining table.

5. The Union has not met its burden of establishing anti-union animus on the part of the City. While there is some evidence of personality conflicts, the Board is not sufficiently persuaded by the evidence to make a finding of a pattern of harassment, intimidation, or coercion on the part of the City. However, the Board is concerned that some of the actions of the city have created or could tend to create an environment which cannot be reasonably anticipated to foster good labor relations in the City of Ardmore. The Board cautions the City that subsequent events may augment the information presented to the Board which could produce the impression of anti-union animus. Both parties should strive to create an environment more conducive to labor peace, and both parties are urged to make a concerted effort to amend this behavior in light of this Order to affect that desired goal.

CEASE AND DESIST ORDER

The City of Ardmore 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 scheduling activities that interfere with the firefighters' stand-down time. This Order shall be posted prominently within the Ardmore Fire Department for not less than thirty (30) days.


Chairman

Dated this 18th day of January, 1994.