

FINDINGS OF FACT

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

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

3. In 1988, the City of Duncan attempted to make unilateral changes to the employees' insurance benefits. The Union objected and the City withdrew the attempted change. (Tr. 28, Complainant's Exhibit 1, pgs. 4 & 5).

4. The City and the Union later entered into a new Collective Bargaining Agreement for Fiscal Year 1989-90 which made no changes in insurance premiums. (Tr. 29). Neither party gave notice of intent to bargain a new Collective Bargaining Agreement after the 1989-90 fiscal year. (Tr. 30).

5. On June 25, 1992, all City employees were notified by letter of changes in prescription drug coverage to become effective July 1, 1992. The Union had no advance notice of these changes. (Complainant's Exhibit 1, pg. 5).

6. The Union grieved that change and the parties arbitrated the grievance according to the Collective Bargaining Agreement and Oklahoma law. (Tr. 28).

7. On November 27, 1992, the arbitrator sustained the grievance finding that the City had violated the existing Agreement

with its unilateral change in prescription coverage. The City was directed to return the prescription cards to their original price and conditions of use and to make whole any member adversely affected. (Complainant's Exhibit 1, pg. 17).

8. After unsuccessful attempts to contact the City Attorney regarding the Award, Mr. Curtis, the Union president, along with the Union's vice president, attempted to meet with City Manager Doug Johnson to discuss implementation of the Award. (Tr. 33 & 34).

9. The City Manager told Mr. Curtis to contact their Chief and the City Attorney. No one from the Union attempted to discuss the Award with the City Manager after that. (Tr. 38, 50-51, 69-70).

10. After the meeting with the City Manager, Mr. Curtis attempted to contact the City Attorney, but was unsuccessful in having his phone calls returned. (Tr. 38).

11. On December 21, 1992, the Union filed the unfair labor practice charge that is the subject of this Order. As of the date of the hearing on January 18, 1994, the City still had not complied with the Award. (Tr. 38 & 39).

12. On January 14, 1992, the City counter-claimed alleging that the Union improperly communicated with the City Manager.

13. At the time he became aware of the Arbitrator's Award, the City Manager asked the City's Finance Director, Clyde Shaw, to evaluate the cost of the Award. (Tr. 58).

14. No attempts were made by the City to determine any out of pocket costs to firefighters resulting from the Award. (Tr. 52.).

15. The City Manager is the Chief Executive Officer and has a legal duty to negotiate collective bargaining agreements, make recommendations to the City Council, administer all City contracts and administer all personnel. (Tr. 64 & 65). He also makes recommendations to the City Council regarding compliance with all arbitration awards. (Tr. 66).

16. Since the time of the Award, November 27, 1992, the city has taken no action to comply with the Arbitrator's Award. (Tr. 70).

17. The City's health insurance fund experienced a deficit in excess of \$144,000.00 for Fiscal Year 1992-93. (Tr. 76, 78, 81). According to Clyde Shaw, City Clerk-Treasurer, the only reason the Award was not paid was due to insufficient funds to pay it. (Tr. 79). However, no one with the City had ever determined the cost to comply with the award. (Tr. 87 & 88).

18. The City had a surplus in the General Fund at the end of FY 1992-93 in excess of \$700,000.00. (Tr. 83). The salaries for Duncan firefighters are budgeted and paid from the General Fund. (Tr. 84).

19. The City can transfer money from one fund to another upon the recommendation of the City Manager and approval of the council. (Tr. 85).

20. Even though the City knew it had a surplus in excess of \$700,000.00 in the General Fund in June, 1993, it never complied with the Award. (Tr. 86).

21. The City has never determined the cost of compliance with the award, but, according to the City-Clerk-Treasurer, it would be less than the \$700,000.00 surplus in the City's general fund. (Tr. 88). The entire cost of the insurance program with all benefits for all City employees was \$943,000.00 for FY 92-93. (Tr.89).

22. The insurance program for City employees is self-funded by the City of Duncan. (Tr. 93). The parties' original prescription card plan is no longer in existence; however, the City could still comply with the Award by reimbursing the difference in the cost to the employees. (Tr. 89, 93, 94).

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the issues and the parties in this matter.

2. IAFF Local 2929 is the certified bargaining agent for the eligible firefighters employed by the City of Duncan. Because neither party gave notice of intent to bargain after the 1989-1990 fiscal year, the 1989-1990 collective bargaining agreement was automatically renewed at the beginning of each subsequent fiscal year for consecutive one year terms. 11 O.S. § 51-105. Such renewal is distinct from the Evergreen requirement which keeps the same contract in effect beyond the end of a fiscal year once parties have given notice of intent to bargain. The Board accepts

the arguments of counsel for Complainant that their case is distinguishable from the situation recently struck down in City of Del City v. Fraternal Order of Police, Lodge No. 114, 869 P.2d 309 (Okla.1993).

3. Issues pertaining to prescription cards, a component of the Duncan health insurance program, are mandatory subjects of bargaining. IAFF Local 176 v. City of Tulsa, PERB Case No. 00207.

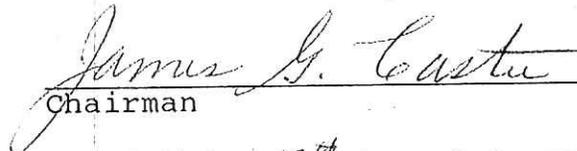
4. The Arbitrator found that the City made unilateral changes in the prescription card benefits without first bargaining those changes, without contractual authorization, and without an agreement with the IAFF, the bargaining agent for the Duncan firefighters. Such conduct constitutes a violation of 11 O.S. § 51-102(6a)(5). IAFF Local 2551 v. City of Broken Arrow, PERB Case No. 00159.

5. This Board will generally defer to arbitration awards where the issues treated therein are contractual in nature. Firefighters Local 2784 v. City of Broken Arrow, PERB No. 00104. The parties to a collective bargaining agreement are required to give an arbitration award final and binding effect. 11 O.S. 51-111 et seq. Failure to comply with an arbitrator's award can constitute an unfair labor practice. Local No. 2567, IAFF v. City of Miami, PERB Case No. 00153. In Miami there was no finding of an unfair labor practice, despite the fact that the City did not implement the award, because the arbitrator's decision was ambiguous and unclear. Here, the award is clear and unambiguous.

6. The IAFF did not commit an unfair labor practice by attempting to discuss the grievance arbitration award with the City Manager. Title 11 § 51-102(6a)(5) requires the parties to discuss grievances in good faith. This duty extends to the discussion of awards resulting from grievance arbitration. The City's conduct in refusing to discuss the Award with the IAFF is an unfair labor practice and constitutes a violation of 11 O.S. 51-102(6a)(5).

CEASE AND DESIST ORDER

The City of Duncan 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 refusing to implement and discuss the arbitrator's award and from making unilateral changes to prescription benefits in the future. This Order shall be posted prominently within the Duncan Fire Department for not less than thirty (30) days.


Chairman

Dated this 19th day of August, 1994.