

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

LOCAL 176, INTERNATIONAL )  
ASSOCIATION OF FIRE FIGHTERS, )  
AFL-CIO/CLC, )  
Complainant, )  
vs. ) Case No. 00315  
CITY OF TULSA, OKLAHOMA, )  
Respondent. )

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter comes on before the Public Employees Relations Board (the "Board" or "PERB") upon Complainant's allegations of unfair labor practices by the Respondent. The Board heard testimony, received exhibits, heard argument, and received proposed findings of fact and conclusions of law.

The Board accepts Complainant's Proposed Findings of Fact No. 1, 2, 3 in part, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 in part, 16, 17, 18 in part, 19, 20, 21, 22, 23, 24 in part, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 in part, 36, 37, 38, 39, 40, 41, 42 in part, 43, 44, and 45.

The Board rejects Complainant's Proposed Findings of Fact No. 3 in part, 15 in part, 18 in part, 24 in part, 35 in part, and 42 in part.

The Board accepts Respondent's Proposed Findings of Fact No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35, 44, 45, 46, 47, 49, 50 in part, 51 in part, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 64, 65, 66, and 67.

The Board rejects Respondent's Proposed Findings of Fact No. 17, 18, 19, 22, 23, 24,

25, 26, 27, 36, 37, 38, 39, 40, 41, 42, 43, 48, 50 in part, 51 in part, 59, 63, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78.

Whereupon, the Board, being fully apprised of the facts and matters alleged, makes the following Findings of Fact, Conclusions of Law, and Order:

**PROPOSED FINDINGS OF FACT**

1. The Respondent is a municipal corporation under the laws and constitution of the State of Oklahoma and is subject to the Oklahoma Fire and Police Arbitration Act (the "FPAA"), 11 O.S.1991, §§ 51-101, et seq.
2. Complainant is the certified bargaining agent for the eligible firefighters employed by the Respondent.
3. William Geier ("Geier") is a district fire chief of one of five districts in the City of Tulsa Fire Department, a supervisor in that department and a member of the Complainant union. Geier's duties include directing and coordinating activities within a district, responding to and commanding emergency incidents, conducting pre-fire planning, and directing district training and fire prevention activities. Geier was not a member of the bargaining team. At all times relevant to the charges, Geier was acting within the scope of his employment.
4. The Respondent and Complainant have been parties to numerous Collective Bargaining Agreements ("CBAs") over the years which have included provisions dealing with annual leave, training, duty exchange, compensatory time, operating policies, and other terms and conditions of employment. In addition, the parties are also covered by the prevailing rights language of 11 O.S. § 51-111, which incorporates all existing policies, practices and procedures in their CBAs.

## ANNUAL LEAVE AND DUTY EXCHANGE

5. The CBAs for the period affected by this action contain a provision to allow firefighters to exchange work shifts with each other ("duty exchange"). Duty exchange is a benefit to employees allowing them the flexibility to take off work if necessary and have another firefighter work in his or her place.

6. The relevant language of the CBAs does not permit the employer to deny duty exchange "except for cause." The current CBA provides:

Section 23.2 Duty exchange shall first be approved by the employee's commanding officer and/or district fire chief. Duty exchange will only be denied for cause which may include unlike job skills and knowledge, when there is indication that job skills or knowledge is deteriorating due to frequent and/or repeated absence during scheduled training sessions, apparatus, yard or station days, etc.

Section 23.3 Cause for denial of duty exchange shall, when possible, be discussed with the employee prior to denial.

7. The CBAs allowed a denial of duty exchange on an individual basis as a retained management right. The CBAs were silent regarding advance denial of duty exchange for an entire shift, but did permit denial of duty exchange for any reason other than for cause.

8. Annual leave is a contractual benefit which has been provided in the CBAs.

9. Annual leave is and has been granted on the basis of seniority. Annual leave requested in exchange of the employee's annual accrual is known as "excess annual leave." It may be taken at a time mutually agreed by the individual employee and the employer. An individual employee may split annual leave, provided fire department operations are not impeded by such action.

10. Training of firefighters is an almost continuous process in the Tulsa Fire Department.

The CBAs permit the use of duty exchange and annual leave even though training may be scheduled at the same time. During the relevant period the CBA has not permitted the Respondent to deny duty exchange or annual leave to all employees on an entire shift for scheduled training or for any other reason.

11. Conflict arise between the Tulsa Fire Department's training division's ability to furnish training to shift employees due to the different schedules they work. The training division works an 8:00 a.m. to 5:00 p.m. shift Monday through Friday, whereas shift employees work 24 hour shifts which are not on consecutive weekdays. This conflict has existed for many years prior to this action.

12. Because of the conflicting schedules between the training division and shift employees and because employees may be on leave or duty exchange, not all employees receive training at the same time. Sometimes employees who miss training receive it at another time. Sometimes the training division cancels and reschedules training. This situation has always existed in the Tulsa Fire Department.

13. The Tulsa Fire Department is divided into five districts. Each district is divided into three 24 hour shifts. During the relevant period, Geier had management responsibility for all firefighters assigned to his district and shift, known as the District "5-C" shift. That shift had 44 firefighters on it.

14. Geier's responsibilities for management of his shift are set forth in the Administrative Operating Procedures ("AOP") of the Tulsa Fire Department.

15. Because Geier had the authority to supervise and manage the personnel in his district, firefighters were required to obey orders given by him. Geier is within his scope of employment

to give orders regarding the performance of the duties of the firefighters he supervised. Firefighters who disobey Geier's orders could be subject to discipline for insubordination.

16. Geier did not like the duty exchange and the annual leave provisions in the CBAs. He thought they afforded too much leave opportunity. However, Geier received seven weeks of annual leave per year at the time of the hearing. Geier attempted to get on the Respondent's bargaining team in order to change the leave provisions on the CBA, but was not allowed to do so.

17. On August 22, 1991, Geier notified all personnel in his district by memo that it was his policy that no one would be allowed to take annual leave or use duty exchange if training had been scheduled. In the same memo, Geier noted the conflicts between the training division, which resulted in routine cancellation and rescheduling of training by the training division. As a result of the conflicts, Geier notified his personnel that his policy was no longer in effect.

18. On September 19, 1993, Geier issued notification to the personnel in his district regarding CPR training, as follows:

No vacation (day shifts) will be scheduled for any individual on the date of their scheduled training and duty exchange will not be allowed during the hours of scheduled training.

Nothing in the existing CBA permitted Geier to issue a blanket refusal of duty exchange or annual leave for the scheduled training. CPR training was offered frequently, and firefighters could easily find alternatives for receiving training if they missed their scheduled training.

19. After the issuance of the September 19, 1993, order, the Complainant objected to it. It was rescinded by Deputy Chief Vernon Hogue.

20. On June 19, 1994, Geier issued a document to the personnel in his district entitled "1994

Company Drills (C-Platoon)." The document set forth a training schedule. It also notified all personnel that during the training period they would be denied any duty exchange or vacation leave not already scheduled.

21. The Complainant objected to Geier's June 19, 1994, restrictions on vacation leave and duty exchange and filed a grievance over it. On July 20, 1994, the Fire Department withdrew Geier's order.

22. On November 25, 1995, Geier issued a document entitled "Duty Exchange Policy." The policy provided: "The following policy is effective immediately. Personnel may not exchange duty more than three consecutive shifts on the combination of yard days, station days and apparatus days." Additional restrictions which were handwritten on the documents stated: "Pertains to day shift only." The handwritten portion referred to the daytime portion of each 24 hour shift. The restrictions found in the policy did not exist in the CBA.

23. The Complainant objected to Geier's November 25, 1994, order. Fire Chief Tom Baker withdrew the November 25, 1994, order.

24. On September 27, 1995, Geier issued a document which restricted the use of annual leave and duty exchange.

25. After a complaint by the Complainant, Fire Chief Baker rescinded the September and October, 1995, changes made by Geier.

26. The changes attempted by Geier were inconsistent with the provisions of the applicable CBAs.

#### COMPENSATORY TIME

27. Compensatory time is leave in lieu of overtime pay and is covered by the CBAs. The

only restrictions on the use of compensatory time in the CBAs are found at Art. 10.6, which provides:

Section 10.6 The granting of compensatory time off shall be made by the chief of the fire department, or his designee, subject to the provision that the granting of compensatory time off shall be done at such time which will not detrimentally affect the operation of the fire department.

28. The parties have not agreed to any blanket policies restricting the use of compensatory time other than that found in the CBA. As of the date of the hearing in this case, the parties were bargaining those policies but had not reached an agreement.

29. Beginning in March, 1994, and continuing through December, 1994, firefighter Philip Ostrander ("Ostrander") requested to use some of the compensatory time he had accrued. He was denied the use of leave each time. On December 31, 1994, Ostrander was advised by Captain Dennis Morris ("Morris"), who reported to Geier, that there was a District 5 policy which kept Ostrander from taking compensatory time that day. Geier was on leave on December 31, 1994, and did not return until his first shift in January, 1995.

30. Ostrander was told by Morris that the policy prohibited the use of compensatory time if six or more firefighters were on annual leave, if a truck would be taken out of service, or if a firefighter had to be moved from another district to work for the firefighter on leave. Ostrander was told that the compensatory time request could not be made in advance. The Complainant had neither bargained or agreed to such a policy or such restrictions. Ostrander was specifically told regarding his December 31, 1994, request that he could not take compensatory time because the bottle van, used to replenish air bottles, would be unmanned. Manning of the bottle van is a safety issue of concern to the Tulsa Fire Department.

31. The Assistant Chief's log showed instances where trucks were taken out of service to let others, including Chief Donald Grant and Captain K.F. Braswell, take compensatory time off.

32. On December 31, 1994, no fire trucks would have been taken out of service by allowing Ostrander leave.

33. The bottle van is always unstaffed when the firefighters at the bottle van station get a fire alarm. Every available firefighter at the station is required to respond on the fire fighting equipment to the scene and not stay behind at the station with the van. If the van is needed, a fire fighter from another station picks it up and delivers it to the scene.

34. In 1994, Ostrander decided to run for political office. Ostrander discussed with Chief Tom Baker Ostrander's plan to use available leave, including compensatory time, for that purpose. Baker did not object to the plan and placed no restrictions on Ostrander's use of the leave.

35. Geier did not like the fact that Ostrander took off parts of several consecutive shifts on leave. Geier considered Ostrander's use of authorized leave as excessive even though the leave was available by contract.

36. The policy on the denial of compensatory time to Ostrander was not a policy which was in effect at the time the current CBA was executed. Nor was it in effect in other parts of the Tulsa Fire Department. The parties are still negotiating over the compensatory time policy.

#### NANCE TRANSFER

37. Firefighter Jim Nance ("Nance") sought a transfer from District 4 to District 5 in April, 1992. The request went up the chain of command and received approval from each person from whom approval was required.

38. Pursuant to Section 212 of the AOP: "Permanent transfers will be made when the request has been approved by the fire chief."

39. After the transfer approval, Nance had not yet been moved. Nance spoke with Geier, who had placed stipulations on the transfer. Geier asserted that the transfer of Nance would reduce the efficiency of District 5 unless a replacement for Nance could be obtained. Geier stated to several persons that if Nance waited, the transfer would go through. If Nance sought Union assistance, no transfer would be made. Mayor Susan Savage of Tulsa was apprised of the situation in a proposed unfair labor practice complaint submitted to her by the Complainant.

40. Geier was made aware by other personnel that Union assistance could properly be sought by firefighters.

41. Nance was transferred several months after the approval. The preponderance of the evidence is that Geier alone did not cause the delay, but that the delay in the transfer had multiple causes.

#### GEIER'S OPERATING POLICIES

42. Geier issued operation policies outside the scope of bargained terms and conditions of employment contained in the CBAs and AOP.

43. The policies were rescinded by order of Fire Chief Baker.

#### PROPOSED CONCLUSIONS OF LAW

1. The Public Employees Relations Board has jurisdiction over the parties and the subject matter of this administrative action. 11 O.S.1991 § 51-104b.

2. The burden of proof of this administrative action is upon the Complainant, International Association of Firefighters, Local 176, AFL-CIO/CLC

3. This action turns, in general, upon the question of whether the actions of District Fire Chief William Geier constituted action of the City of Tulsa to make unilateral changes to the terms and conditions of employment of the parties under the Collective Bargaining Agreements in questions.

4. Geier is a member of the bargaining unit by statutory mandate. 11 O.S.1991, § 51-102.

#### OPINION

It is beyond question that the style of management of District Chief Geier was offensive and at times antagonistic to the Complainant Union. However, an oddity of the law permits a person's inclusion in the bargaining unit while retaining the responsibilities of management. The ability of that person to bind the City is not lessened. Nevertheless, that person should not be included as a party to this action. Further, the preponderance of the evidence submitted by the parties reflects that when the City of Tulsa became aware of improper orders or conduct of Geier in regard to the Union, the City of Tulsa rectified the misconduct. Although this was not simultaneous with the time of the misconduct, in the whole of this case the evidence does not show that Geier spoke for the City of Tulsa to the extent that the City of Tulsa committed, as a matter of law, unfair labor practices.

By admission of the parties, issues related to limitations on the use of compensatory time are currently being bargained by the parties. As such, the PERB concludes that the Complainant has not met, as a matter of law, its burden of proof in these allegations.

In regard to the allegations related to annual leave and duty exchange, the preponderance of the evidence reflects that Geier made no substantive change of policy to the CBAs in question. Although Geier surely slowed the processes in these areas, the City of Tulsa

maintained control sufficient to prevent the commission of an unfair labor practice.

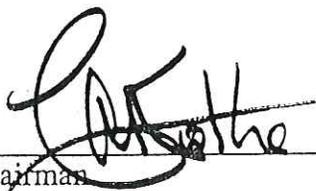
In regard to allegations related to the transfer of firefighter Nance, the preponderance of the evidence reflects that Geier had no authority to prevent Nance's transfer and did not, in fact, do such. Although Geier, again, acted in bad faith, this cannot be attributed to the Respondent so as to result in the commission of an unfair labor practice by the City of Tulsa.

In regard to Geier's operating procedures, the preponderance of the evidence reflects that Geier did not act on behalf of the City of Tulsa so as to commit an unfair labor practice.

By these determinations, the PERB in no wise condones the continuous conduct of District Chief Geier to frustrate the purpose of FPAA. Indeed, future action of the type found in this case, if revisited by the PERB; may well be seen as an Unfair Labor Practice of the City of Tulsa.

**ORDER**

It is therefore the **ORDER** of the PERB that the administrative action of the Complainant is **DISMISSED**.



Chairman  
Public Employees Relations Board

JRJ/jj:PERBOrder.315



go on record. While certainly it is any person's right to disagree with the law or to seek to change it, Geier's actions amounted to little more than childish taunting of the Union while hiding behind the apron of the City of Tulsa. A District Chief of a Fire Department should be more mature and aware of the responsibilities of that position.

Therefore, I dissent.



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Ron Dye  
Member  
Public Employees Relations Board

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