

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE,
LODGE 125,

Complainant,

vs.

THE CITY OF GUYMON,

Respondent.

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Case No. 000329

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 allegation of unfair labor practices by the Respondent. The Board received briefs and written argument of the parties, there being no facts in dispute herein. The Board accepts the Joint Stipulations of the Parties Nos. 1 through 20.

FINDINGS OF FACT

1. The City of Guymon (the "City") is a municipal corporation organized and existing pursuant to the laws of the State of Oklahoma. It has a council-manager form of government. (Stipulation #1)
2. Since August of 1994, the Fraternal Order of Police, Lodge 125, ("Lodge 125") has been the certified bargaining agent for all police officers of the City except for the police chief and his administrative assistant. (Stipulation #2)
3. The first collective bargaining agreement between the City and Lodge 125 was executed in February of 1995. (Stipulation #3. Joint exhibit "A.")
4. During the course of the negotiations for that collective bargaining agreement, Lodge 125

submitted a proposal for inclusion in the contract designed to govern the means and methods of promotions within the police department. Lodge 125 subsequently withdrew that proposal.

(Stipulation #4)

5. The City and Lodge 125 entered into a new collective bargaining agreement for FY 1995-1996. (Stipulation #5. Joint exhibit "B.")

6. During the course of the negotiations for the current collective bargaining agreement, Lodge 125 again submitted a specific proposal for inclusion in the contract designed to govern the means and methods of promotions within the police department. Lodge 125 subsequently withdrew that proposal. (Stipulation #6)

7. Prior to 1995, the position of lieutenant in the City of Guymon Police Department existed but had remained vacant for 5 years. The job description and duties of lieutenant were contained in the department policies at the time the 1995-1996 Collective Bargaining Agreement was executed. (Stipulation #7. Joint exhibit "C.")

8. Lodge 125 requested that the City consider filling the vacant lieutenant's slot. (Stipulation #8)

9. In June of 1995, Police Chief Wadley ("Wadley") solicited applications for the position of lieutenant. Wadley selected Garret Helton from among the candidates interested in a promotion. Wadley made the selection based on the criteria he felt appropriate for the position. Wadley assigned the salary to this position exercising his own independent judgment. (Stipulation #9)

10. Lodge 125 did not object to the filling of that position and the assignment of duties, responsibilities, salary and benefits by Wadley. (Stipulation #10)

11. Lodge 125 had expressed to Wadley the desire of its members to have more training.
(Stipulation #11)

12. In July of 1995, Wadley made the determination to create the position of corporal in the Guymon Police Department. Prior to that time, the corporal's position did not exist in the department. (Stipulation #12)

13. Two corporals positions were created. They are currently held by Justin Earls and Rick Franks. The positions were created and duties and pay assigned to the positions without the express agreement of Lodge 125. (Stipulation #13)

14. On October 10, 1995, Officer Dan Mathews filed an Officer's Complaint asserting that the creating and filling of the corporals slot and the assignment of pay and duties to those positions without negotiating with the Union violated the collective bargaining agreement. (Stipulation #14. Joint exhibit "D.")

15. Wadley responded to the complaint on October 11, 1995, stating that the actions were authorized pursuant to the Management Rights and Responsibilities section of the collective bargaining agreement, Article 4, Section 3. (Stipulation #15. Joint exhibit "E.")

16. Lodge 125's grievance committee submitted a grievance in writing to Wadley pursuant to Article 8 of the collective bargaining agreement. (Stipulation #16. Joint exhibit "E.")

17. Wadley responded to the grievance on November 3, 1995. (Stipulation #17. Joint exhibit "G.")

18. Lodge 125 did not pursue the grievance to the next stage of a hearing before the City Manager as authorized by Article 8, Section 4, of the collective bargaining agreement. (Stipulation #18)

19. Lodge 125 filed this unfair labor practice charge on December 26, 1995. (Stipulation #19)
20. The City of Guymon has responded to the charge. (Stipulation #20)

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, Fraternal Order of Police, Lodge 125.
3. The following subjects have been bargained by the parties in the past and are considered by the Board to be mandatory subjects of bargaining: promotions, wages, benefits, hours of work, work schedules, job descriptions, promotions and job duties. Neither party may make unilateral changes or implementations in those subjects without first bargaining according to the Fire and Police Arbitration Act, 11 O.S.1991 and Supp.1995, §§ 51-101, et seq. (the "FPAA"). Failure to bargain before making changes in these subjects is a violation of 11 O.S. § 51-102(6a)(5).
4. Pursuant to the collective bargaining agreement, the City had only the authority to create a new rank and new position of corporal in the police department without first bargaining the creation of the rank and position with Lodge 125. The collective bargaining agreement did not give the City the authority to determine job duties, job description, promotional procedures, hours of work, wages, benefits or any other term or condition of employment for corporals unilaterally. The City did determine the foregoing terms and conditions without bargaining them with Lodge 125.

5. Lodge 125 has met its burden of persuasion that the City failed to bargain in good faith in violation of the FPAA. The City has not shown by a preponderance of the evidence that Lodge 125 clearly and unmistakably waived the duty to bargain over mandatory issues in this case.

OPINION

It is clear to the Board that the City went beyond merely creating a new rank and new position within the City's police department. The City's actions ventured into areas of mandatory bargaining; that is, the determination of job duties, job description, pay and benefits. The collective bargaining agreement between the parties allowed the City to retain the right to

"determine the table of organization of the Police Department, including the right to organize and reorganize the Police Department and the determination of job classifications and ranks based upon duties assigned."

See, e.g. Exhibit B, Art. 4, § 4. This provision, on its face, refers to the determination of what job classifications and ranks will be utilized by the City. It does not state that the City may determine job duties but only to create classifications and ranks to be based upon the duties assigned and which, by previous order of this Board, must be bargained by the parties. There is no indication that Local 125 acceded to the City any subject of mandatory bargaining. The reading of Art. 4, § 3, is distinct from a another possible reading in which the City's position would be clearly expressed, such as to "organize and reorganize the Police Department and determine of job classifications, ranks and duties assigned." We are bound to its present reading.

The City asserts Local 125 waived bargaining in these areas. We take note that the standard of proof for waiver is a high one. The party who asserts waiver must establish it in

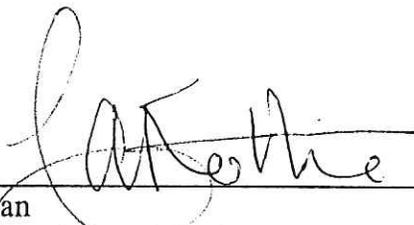
"clear and unmistakable" terms. IAFF Local 2567 v. City of Jenks, PERB Case No. 211. This is supported by National Labor Relations Board determinations. See, In Press Company, 121 NLRB 976 (1958). In this matter, the only evidence that Local 125 waived bargaining on mandatory subjects is that it withdrew two proposals on promotions and that Local 125 did not contest the filling of the vacant lieutenant position at the police department. We determine that no waiver occurred.

Furthermore, in regard to the vacant lieutenant position, it is uncontested that the position of lieutenant had been created by the police department prior to the certification of the bargaining unit. It was merely unfilled at the discretion of the police department. To the contrary, the position of corporal had no precedent. While the determination of whether to create such a position is a right of management, the City must limit its action to comply with the duty to bargain set forth in 11 O.S.1991 § 51-111. We likewise take a plain reading of the provisions of the collective bargaining agreement, Article 4, Section 3. This expressed that it relates to organizational aspects of the police department and does not venture into areas of mandatory bargaining.

ORDER

It is the determination of the Public Employees Relations Board that the City of Guymon committed an unfair labor practice in its failure to bargain mandatory subjects of bargaining in its creation and filling of the position of corporal at the City. 11 O.S.1991, § 51-102(6a)(5). It is therefore **ORDERED** that the City of Guymon shall cease and desist from any action contrary to its duty to engage in mandatory bargaining as required by 11 O.S.1991, § 51-111.

Done this 9th day of August, 1996.

A handwritten signature in cursive script, appearing to read "L. A. ...", written over a horizontal line.

Chairman
Public Employees Relations Board

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