

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

LODGE NO. 103, FRATERNAL ORDER	)	
OF POLICE,	)	
	)	
Charging Party,	)	
	)	
vs.	)	Case No. 00349
	)	
THE CITY OF PONCA CITY, OKLAHOMA,	)	
and named representative, RAYMOND E.	)	
HAMM, CHIEF OF POLICE,	)	
	)	
Respondents.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER

NOW ON this 14<sup>th</sup> day of November, 1997, there comes on before the Oklahoma Public Employees Relations Board (the "Board") the above-styled and -numbered administrative action. The charging party, Lodge No. 103, Fraternal Order of Police ("Union") appears through its president, Earl Watkins, and by and through its attorney of record, Michael H. Thompson. Respondents, City of Ponca City ("City") and Raymond E. Ham ("Ham"), appear through Respondent Ham and by and through their attorney of record, Charles S. Plumb. The Board, having heard the testimony of witnesses, having received exhibits and the briefs of the parties, and otherwise being fully apprised of the facts and matters alleged, makes the following Determination Regarding Proposed Findings of Fact, Findings of Fact, Conclusions of Law, and Order.

**Determination of Proposed Findings of Fact**

1. The parties did not submit Proposed Findings of Fact. However, each party did submit Findings of Fact, identified as such, which the Board will presume to have been submitted

2. The Board accepts the following Proposed Findings of Fact of the Union: Nos. 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19 in part, 20, 21, 22 in part, 23, 24, 25, 27, 28, 29, 31, 32, 33, 34, 35, and 36.
3. The Board rejects the following Proposed Findings of Fact of the Union: Nos. 5, 9, 17, 19 in part, 22 in part, 26 and 30.
4. The Board accepts the following Proposed Findings of Fact of the City: 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, and 33.
5. The Board rejects the following Proposed Findings of Fact of the City: No. 34, and 35.

#### **Findings of Fact**

1. The City is and was, at all times material herein, a political subdivision of the State and a home rule charter city that is subject to the terms and provisions of the Fire and Police Arbitration Act, 51 O.S.1991 and Supp.1996, Sec. 51-101, et seq.
2. Raymond E. Ham is and was at all relevant times the Chief of Police of Ponca City and the Chief Administrative Office responsible for the management of the Police Department's law enforcement officers.
3. The Fraternal Order of Police, Lodge 103 is and was at all relevant time the duly certified and acting labor representative and agent for the Ponca City Police Bargaining Unit.
4. The Union and the City have engaged in collective bargaining since the 1985-1986 contract year.
5. Every collective bargaining agreement between the City and Union has subscribed to the Reserved Rights Doctrine, that except as specifically modified by the collective bargaining

agreement (the "Agreement"), the City possesses the sole right and authority to operate and direct employees in all aspects.

6. The Management Rights article has always expressly given the City the right to determine its policies; the right to plan, direct, control and determine operations; the right to introduce new and improved methods , equipment and materials; and the right to direct the workforce.
7. The purpose of the City's Policies and Procedures Manual is to provide members of the Police Department (the "Department") with administrative interpretation of policy matters of a general nature and further to provide uniform procedures and rules and regulations for handling these matters in a more specific nature. The City has periodically changed policies because of changes in the law, changes in the Agreement, changes in the operations of the City, and to provide ongoing guidelines for officers.
8. Changes to the Policies and Procedures Manual are issued exclusively over the signature of the Chief of Police.
9. The City bargained for and negotiated its right to issue new policies and procedures in the first Agreement in 1985 and has retained that contractual right in subsequent negotiations and Agreements.
10. Policies and procedures must be construed in a manner consistent with the Agreement. In the event of a conflict, the Agreement must prevail.
11. The City is not required to provide the Union with prior notice of changes to policies and procedures.
12. During the period from 1990 to 1991, Ham exercised his authority to make, publish and

enforce changes to the Policies and Procedures Manual.

13. In 1992, Ham exercised his authority to review and revise the entire Policies and Procedures Manual. No objection to the changes were made by the Union.
14. Additional changes to the Policies and Procedures Manual were made by the City in 1993 and 1995.
15. In late 1995 and early 1996, a new review of the Policies and Procedures Manual was undertaken by Ham. At this time, Ham was informed by the then president of the Union of Policy 12.2.2, which authorized the creation of a committee of officers, one captain, one lieutenant, and one officer of the lowest rank, for the review of policies of the Department. This was undertaken.
16. In January 1996, Ham appointed Patrolman Earl Watkins, Patrolman Dale Henshaw, Patrolman Greg Wright, Sergeant Bobby Miller, Lieutenant Clayton Johnson, Captain Jerry Neville, and Captain Daniel Tebow to the policy review committee. Patrolman Watkins, as president of the Union, was asked to provide the name of others who could or should serve on the committee. No names were provided. The officers appointed were members of the Union. Officers Henshaw, Wright and Watkins had participated in Agreement negotiations.
17. The committee was charged with meeting, discussing existing procedures, and suggesting new policies for the Policies and Procedures Manual. This work was reviewed by Ham, who made the final decision on policies. Watkins attended only the first two committee meetings between January 1996 and March 1997.
18. The final review process between the committee and Ham occurred in February and March

1997.

19. Revision of the Policy and Procedure Manual took place contemporaneously with bargaining for the 1997-1998 Agreement between the parties. Collective bargaining began March 10, 1997. The City's negotiation team included Jana Howell, Everett VanHoesen and Captain Johnson. The Union's negotiation team included Earl Watkins, Greg Wright, Dennis Jump, Tom Duroy and Don Dickerson.
20. At the beginning of bargaining for the 1997-1998 Agreement, Watkins requested to see proposed changes to policies and procedures. Howell advised Watkins she would determine the status of the policy review process and obtain a copy of the Policies and Procedures Manual. Howell advised Watkins she did not have a problem with negotiating Department policies.
21. Howell conferred with Ham regarding the amount of time involved in review and amendment of the Policies and Procedures Manual. This was explained in a memorandum by Ham. Ham offered to provide a rough draft of the revisions. Ham took no position regarding negotiating policies in the bargaining process.
22. The final meeting of the committee was March 18, 1997. The committee complied with the Agreement, the Policies and Procedure Manual, and past practices.
23. On March 17, 1997, Watkins stated he should have the exclusive right to appoint members to the committee. Howell and Watkins discussed the methodology for revisions to the Policies and Procedures Manual and provisions of the Agreement to allow the current process.
24. Following this meeting, Watkins requested in a letter dated March 17, 1997, to negotiate

- provisions of the Policies and Procedures Manual directly with Ham. Watkins was invited to attend to final review session of the committee. Watkins did not attend.
25. Regarding the letter of March 17, 1997, Howell inquired if Watkins was attempting to impede bargaining by approaching a person outside the City's bargaining team. Howell asked VanHoesen to review the Agreement, the Policies and Procedures Manual and past practice to determine the authority of the City to revise policies.
  26. Watkins denied trying to impede bargaining. Watkins stated the Union did want to negotiate with Ham. Watkins then stated the Union would take the matter to arbitration. The bargaining session became hostile. Howell decided to adjourn the meeting to reconvene later.
  27. On March 25, 1997, in a letter, Howell expressed to Watkins the City's belief that it acted properly with regard to revisions to the Policies and Procedures Manual. Howell invited Watkins to include in the bargaining sessions any provisions of the Policies and Procedures Manual the Union wished to discuss. Such provisions could be negotiated during the sessions. The City stated it would remain open to discussion of any mandatory subject of bargaining.
  28. Three bargaining session were held after the March 25, 1997, letter. The Union did not raise any issue regarding the policies of the City in any session.
  29. An Agreement for 1997-1998 was signed by the parties on April 28, 1997. The Agreement provided for a payraise and bonus for members of the bargaining unit and the creation of a new position.
  30. Thereafter, Watkins asserted in a letter, dated April 25, 1997, that Ham refused to

negotiate policies.

31. This action followed.

### **Conclusions of Law**

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S.1991 and Supp.1996, Sec. 51-101, et seq., and the Board has jurisdiction herein.
2. The burden of proof in an unfair labor practice action is upon the charging party. 11 O.S.1991, Sec. 51-104b.
3. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act. 75 O.S.1991 and Supp.1996, Sec. 308a et seq.
4. Pursuant to the FPAA, "[a]ll rules, regulations, fiscal procedures, working conditions, department practices and manner of conducting the operation and administration of fire departments and police department currently in effect on the effective date of any negotiated agreement shall be deemed a part of said agreement unless and except as modified and changed by the specific terms of such agreement." 11 O.S. 1991, Sec. 51-111.
5. The obligation to bargain collectively does not "compel either party to agree to a proposal or require the making of a concession." 11 O.S. 1991, Sec. 51-102(5).
6. When applying and interpreting the FPAA, it is appropriate and helpful to consider federal case law on the subject. *I.A.F.F. Local 2551 v. City of Broken Arrow*, PERB Case No. 104.
7. Parties to a labor agreement may reach an agreement which permits the employer to issue policies and make substantive changes concerning terms and conditions of employment

during the term of a collective bargaining agreement without requiring bargaining by the employer on such subjects. *See, N.L.R.B. v. U.S. Postal Service*, 8 F.3d 832 (D.C.Cir. 1993); *United Technologies Corp.* 287 NLRB No. 16 130 LLRM (BNA) 1086 (1987).

An employer does not violate any duty to bargain when it alters subjects such as the reduction of the number of hours, assignment of employees, or a change in the system of progressive discipline when the management rights clause of the collective bargaining agreement negotiated between the employer and the union gives the employer the right to make, issue and enforce such policies or practices. *N.L.R.B. v. U.S. Postal Service*, 8 F.3d 832 (D.C.Cir. 1993); *United Technologies Corp.* 287 NLRB No. 16 130 LLRM (BNA) 1086 (1987).

8. Under the FPAA, an employer's unilateral change in mandatory subjects of bargaining during the term of a contract is "permissible when a management rights clause evidences a grant of permission by the union to unilaterally effect such changes." *I.A.F.F. Local 2171 v. City of Del City*, PERB Case No. 194.
9. The past practices of the parties which evidence a city's exercise of its right to make changes and enforce new policies during the life of an agreement further confirms a city's right under the Act and the agreement to make such changes. *I.A.F.F. Local 176 v. City of Tulsa*, PERB Case No. 207.

### **Discussion**

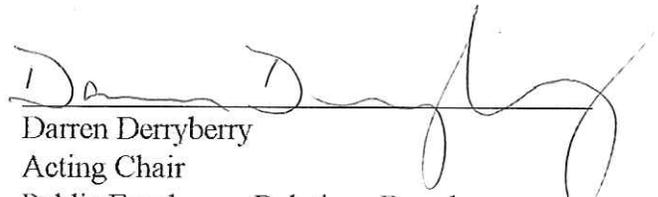
The evidence reflects that the City of Ponca City retained in the collective bargaining agreement between the parties broad areas of management rights. The pattern of practice between the City and the Union reflect that while a varying amount of participation from the Union

occurred at the times the City, through the Chief of Police, effected changes to the Policies and Procedures Manual, this was done outside of the context of the collective bargaining agreement but within the context of the Policies and Procedures Manual itself. It does not violate the FPAA for a union to defer to a municipality the ability to make unilateral changes to mandatory subjects of bargaining. This may include even issues regarding pay.

Here, the Union willingly participated in reviewing and proposing changes to the Policies and Procedures manual for a period in excess of one year. Only at the end did the Union object to the procedures used. Nevertheless, the Union has not met its burden of proof that the Union proposed these questioned issues as subjects of bargaining for the 1997-1998 agreement. Neither has the Union met its burden that the City refused to bargain such subject. The evidence reflects that the City acted in good faith during bargaining for the 1997-1998 agreement. There is no evidence of an unfair labor practice.

### **ORDER**

It is the **ORDER** of the Public Employees Relations Board that the unfair labor practice allegation of the Union is **DENIED**.

  
Darren Derryberry  
Acting Chair  
Public Employees Relations Board

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