

PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

INTERNATIONAL ASSOCIATION)	
OF FIREFIGHTERS, LOCAL 2383)	
)	
Complainant,)	
)	
vs.)	Case # 00400
)	
CITY OF COWETA,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER**

NOW on this 27th day of January, 2003, there comes before the Oklahoma Public Employees Relations Board (the "Board") the above-styled and numbered administrative action. The Complainant, International Association of Firefighters Local 3483 (Union), is represented by its attorney of record, James R. Moore. The City of Coweta ("City") is represented by its attorney of record, David L. Weatherford. The parties agreed to waive testimony and requested that the Board render its decision based upon the written briefs and undisputed facts, which are included below in the Findings of Fact 1-12. The Board, having received the briefs and exhibits of the parties and otherwise being fully briefed on the facts and matters alleged, makes the following determination regarding findings of fact and conclusions of law and issues its Final Order.

Findings of Fact

1. The Union and the City were, at all times relevant to this cause, parties to a collective bargaining agreement ("CBA") pursuant to the authority of the Oklahoma Fire and Police Arbitration Act ("FPAA").
2. Steven Whitlock is the City Manager and the Chief Executive Officer of the City of Coweta, Oklahoma.
3. The CBA contains a grievance and arbitration procedure to be used to resolve disputes regarding the interpretation and application of terms of the CBA or the actions of the parties pursuant thereto.
4. A dispute arose between the parties regarding a disciplinary action against Firefighter Mike Medlock. Discipline is a subject covered by the CBA.
5. The Union filed a grievance in regard to said dispute.
6. The grievance procedure contains several steps with time limits between the steps and the last step is binding arbitration

between the parties.

7. The parties were unable to resolve the dispute by using the steps outlined in the grievance procedure.

8. At the end of that procedure, the Union notified the City, through City Manager Steven Whitlock, that it would submit the dispute to arbitration pursuant to the CBA grievance procedure and state law.

9. The City informed the Union that the City would not arbitrate the grievance with the Union because the grievance was untimely filed.

10. The time limits for processing a grievance are governed by the terms of the CBA.

11. A dispute over the time limits for processing a grievance is an issue arising from interpretation or application of the CBA.

12. In its amended charge of unfair labor practice, the Union alleged that the City and the City Manager committed an unfair labor practice by refusing to arbitrate the grievance.

Conclusions of Law

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001, 51-101, et seq., and the Board has jurisdiction to rule on this unfair labor practice charge.

2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, 308, et seq.

3. The Board is empowered to prevent any person, including municipalities, from engaging in any unfair labor practice. 11 O.S. 2001, 51-104b(A).

4. "Unfair labor practice" includes, but is not limited to, refusal by the City to bargain collectively or discuss grievances in good faith with the designated bargaining agent with respect to any issue coming within the purview of this statutory provision. 11 O.S. 2001, 51-102(6a)(5).

5. A dispute arising from the interpretation or application of the binding collective bargaining agreement shall be subject to immediate and speedy resolution by arbitration. 11 O.S. 2001, 51-111.

6. The Union, in asserting a violation of 11 O.S. 2001, 51-102(6), has the burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. 2001, 51-104b(C) and OAC 585:1-7-16.

7. The City committed an unfair labor practice by refusing to arbitrate the grievance, including the issue of the timeliness of the grievance, filed by the Union. 11 O.S. 2001, 51-102(6a)(5).

8. When, upon a preponderance of evidence, the Board finds that the City named in the complaint has engaged in an unfair labor practice, the Board shall issue an order to the City to cease and desist from the unfair labor practice. 11 O.S. 2001, 51-104b(C).

Opinion

This unfair labor practice complaint is based upon the City's refusal to submit to arbitration the grievance, including the issue of timeliness of the grievance, filed by the Union.

The dispute between the parties arose over interpretation of the clause in the CBA related to the processing of grievances. The City refused to submit the grievance to arbitration based upon its interpretation of the CBA. The Union disputed that interpretation of the CBA, maintaining that the grievance was filed in a timely manner according to the terms of the contract.

The FPAA requires that every CBA contain a clause which establishes arbitration procedures for the immediate and speedy resolution of any dispute involving interpretation of the agreement between the parties. 11 O.S. 2001, 51-111. This Board has ruled that it is an unfair labor practice to refuse to arbitrate a contractual issue. International Association of Firefighters, Local 2581 v. City of Seminole, PERB Case No. 00390 (2002). The Oklahoma Supreme Court has affirmed that arbitration is required to resolve *any* dispute arising from the interpretation or application of *any* provision of the binding collective bargaining agreement. *City of Bethany v. Public Employees Relations Board*, 1995 OK 99, 904 P.2d 604, 609. "Doubts regarding the arbitrability of disputes will be resolved in favor of arbitration." *City of Muskogee v. Martin*, 1990 OK 70, 796 P.2d 337,343. We conclude that the timeliness of the grievance is a procedural matter for the arbitrator, not this Board, to decide. *See, Howsam v. Dean Witter Reynolds, Inc.*, ___ U.S. ___, 123 S.Ct. 588, 154 L.Ed.2d 491 (2002).

Based upon the foregoing, this Board finds that the City committed an unfair labor practice by refusing to submit to arbitration the issue of the timeliness of the grievance filed by the Union in violation of 11 O.S. 2001, 51-102(6a)(5).

Order

IT IS THEREFORE THE ORDER of the Public Employees Relations Board that the unfair labor practice allegation by the Union charging the City with an unfair labor practice in violation of 11 O.S. 2001, 51-102(6a)(5) is hereby UPHELD. The City is ordered to CEASE and DESIST from engaging in such unfair labor practice by refusal to submit said grievance to arbitration.

Original signed by Craig W. Hoster, Chair