

BEFORE THE OKLAHOMA PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

RE: CERTIFICATION PETITION)
OF THE BETHANY FIRE FIGHTERS) Case No. 12282FF
ASSOCIATION.)

PROPOSED INTERIM ORDER STAYING
FURTHER PROCEEDINGS ON DECERTIFICATION PETITION

1. This matter came on for hearing before the duly appointed, undersigned Hearing Officer on the 11th day of April, 1988, on International Association of Firefighters AFL-CIO/CLC, Local 2085's (hereinafter "the Incumbent") alternative Motion to Dismiss or Stay Proceedings. The Incumbent appeared by and through its attorney of record, Mr. James R. Moore; Bethany Professional Firefighters Association (hereinafter "the Challenger") appears by and through its attorney of record, Mr. Fred Vaughan. The Hearing Officer, having reviewed the briefs filed by the parties; having heard oral argument and the representations of counsel; and, further, having considered certain other related matters as set out in numbered paragraphs 1, 2, and 3 hereinbelow, concludes that the Public Employees Relations Board (hereinafter "PERB" or "the Board") should enter an order holding in abeyance further proceedings in this matter for a period of 120 days from and after April 20, 1988. The basis for the Hearing Officer's Proposed Order is as follows:

1. The instant decertification Petition was filed on January 25, 1988. Prior to that time, the Incumbent had filed two (2) unfair labor practice (ULP) charges, presently

pending before the Board, alleging that the City of Bethany had violated the Fire and Police Arbitration Act, codified at 11 O.S. 1981, §§ 51.101 et seq., as amended (hereinafter referred to as "FPAA" or "the Act"; all statutory references hereafter are to the Act unless otherwise noted). The parties have stipulated and agreed that the Board may consider the status of the pleadings in these two (2) pending cases in ruling on the instant Motion.

2. PERB Case No. 00155, Fraternal Order of Police Lodge 161 and International Association of Firefighters AFL-CIO/CLC, local 2085 v. City of Bethany, involves a charge that the City has violated § 51-102(6a)(5) by its alleged insistence on non-mandatory subjects of bargaining as a condition of reaching an overall collective bargaining agreement. The City has filed an Answer denying the allegations and raising several affirmative defenses.

3. PERB Case No. 00165, International Association of Firefighters, AFL-CIO/CLC, local 2085 v. City of Bethany, involves a charge that the city has violated § 51-102(6a)(5) by unilaterally changing terms and conditions of employment that would otherwise be mandatory subjects of collective bargaining. The City of Bethany has filed an Answer and Counterclaim in which some of the allegations are admitted, others are denied, and several affirmative defenses, and a counterclaim, are advanced.

4. The Board finds that it has the discretion to schedule a certification or decertification election at a time, and in a manner, that will advance all the policies, goals, and purposes of the Act. That discretion includes the authority to hold a requested election in abeyance pending the resolution of unfair labor practice charges which are arguably relevant to the incumbent union's ability to carry out its duties as the exclusive bargaining agent. This doctrine is most commonly referred to as the "blocking charge rule" and has been utilized by the National Labor Relations Board for over 50 years. See, generally, Morris, The Developing Labor Law, BNA, 1982, Ch. 10(C). This doctrine has also been employed by regulatory boards comparable to the Board in the states of Florida, California, and Michigan. The federal courts, and the regulatory boards of those states indicated, all have statutory provisions which require the regulatory board to conduct a representation election upon a showing of interest. The Board finds that it has sufficient statutory discretion to apply the blocking charge rule where it is necessary to do so to fully affect the purposes and policies of the FPAA.

5. The parties stipulate and the Board finds that the Incumbent has timely filed a notice of request for collective bargaining on the City of Bethany, pursuant to § 51-112, to initiate, and has initiated, bargaining for the 1988-89 Fiscal year. The Board is informed by the Challenger that it

served a similar notice upon the City on or about Friday, April 8, 1988, which notice would not be timely served under § 51-112. The Board takes official notice that in another matter pending before it, PERB Case No. DJ-88-3, the City of Bethany has asked for a declaratory ruling stating that it is not obligated to bargain with a union which has not made a timely request for bargaining pursuant to § 51-112. So, in addition to the other reasons set forth herein, the Board should find that there is a serious potential for the disruption of the collective bargaining rights of all members of the bargaining unit should the election not be held in abeyance.

6. The Board has the statutory authority pursuant to § 51-103(B)(2), to certify a labor organization as the exclusive representative if it determines that a free and untrammelled election cannot be conducted because of an employer's unfair labor practice charges. Implied in that authority, the Board believes, is the discretion to hold an election in abeyance based on plausible allegations of unfair labor practices. In PERB cases No. 00155 and 00165, the allegations, of unilateral changes by the employer of mandatory terms and conditions of collective bargaining, and of bargaining to impasse on non-mandatory topics, both of which allege violations of 51-102.6(a)(5), would almost certainly impair the Incumbent's ability to serve the members of the bargaining unit, and would thus render improbable, if

proved, the prospect of a "free and untrammelled election." The Board notes that the allegations of ULPs are serious, that they have not been subject to a Motion to Dismiss by the City of Bethany, and that in one instance, Case No. 00165, the City has admitted that the unilateral change took place but denies that it is unfair labor practice. In short, the Board should find that the ULP charges are not frivolous complaints. None of this is to suggest or conclude that the City of Bethany has committed unfair labor practices. The City has every right, and will have the opportunity, to defend those charges in the pending ULP cases. In the present case, no further investigation of the alleged ULP is possible without danger to the right of the City, a non-party in this action, to defend itself fully in the two pending ULP actions.

7. Finally, the Hearing Officer believes that the rights of the employees to choose their bargaining representative is an important right which should not be limited unnecessarily. In this connection, it should be noted that the legislature has already limited that right by the imposition of a "certification bar," which precludes certification elections when an election has been held within the preceding twelve months. Section 51-103(E). In this case, the limitation imposed by the proposed application of the "blocking charge rule" is much less severe, for 120 days, and recognizes the right of the Challenger to renew its

decertification petition at the end of the 120-day period, after the other, equally important policies implicated by the FPAA are served.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ned Bastow".

NED BASTOW, OBA #10026
ASSISTANT ATTORNEY GENERAL
CHIEF, GENERAL COUNSEL DIVISION
HEARING OFFICER FOR THE "PERB"

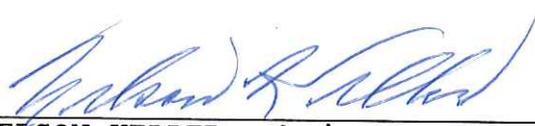
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STATE OF OKLAHOMA

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ASSOCIATION.)

INTERIM ORDER STAYING
FURTHER PROCEEDINGS ON DECERTIFICATION PETITION

The Public Employees' Relations Board, having reviewed the Proposed Order submitted by the duly-appointed Hearing Officer, having provided the parties an opportunity to be heard with respect thereto, finds that the same should be and is hereby adopted and approved, and that further proceedings on the decertification petition are hereby stayed and held in abeyance for ⁹⁰~~120~~ days from and after the 20th day of April, 1988.


NELSON KELLER, Chairman
Public Employees' Relations
Board

4/20/88

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BEFORE THE OKLAHOMA PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

RE: CERTIFICATION PETITION
OF THE BETHANY FIRE FIGHTERS
ASSOCIATION.

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Case No. **12282FF**

O R D E R

NOW on this 18th day of May, 1988, this matter comes on for hearing on the motion of the Bethany Fire Fighters Association to amend its Petition on file herein in the above styled and numbered case and the Board upon due consideration and being fully advised in the premises finds that said Motion should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the board that the Motion of the Bethany Fire Fighters Association to amend its Petition on file herein be and the same as hereby sustained and the following paragraph is hereby made a part of said Petition as follows:

Paragraph 1-RC is amended to include the following language
"that the designated exclusive employee representative is no longer
the representative of the majority of employees in the unit."



CHAIRMAN OF THE BOARD

BEFORE THE OKLAHOMA PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

RE: CERTIFICATION PETITION)
OF THE BETHANY FIRE) Case No. 12282 FF
FIGHTERS ASSOCIATION)

ORDER

A M E N D E D

Pursuant to Judge Cannon's order, a hearing has been scheduled for Wednesday, May 18, 1988, at 10:30 a.m., at the offices of the Public Employees Relations Board, 1140 N.W. 63rd Street, Suite 430, Oklahoma City; for the purpose of determining whether the Board has reasonable cause to believe that a question of representation exists in the above-captioned matter. A pre-hearing conference will be held at the office of the Attorney General at the State Capitol on Friday, May 16, 1988 at 8:30 a.m., at which time witness and exhibit lists will be exchanged; and any other pre-hearing matters will be considered. If the City of Bethany wishes to participate as a party, it should so indicate at the pre-hearing conference.

May 11, 1988
Date

Nelson Keller /mc
Nelson Keller, Chairman

BEFORE THE OKLAHOMA PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

REGARDS CERTIFICATION PETITION)
OF THE BETHANY FIRE FIREFIGHTERS) Case No. 12282 FF
ASSOCIATION,)

ORDER

On the 17th day of January, 1990, the Board was presented with the issue of whether a run-off election is authorized in the Bethany Firefighter's Election held on October 10, 1989. The vote of October 13th was 9 for the Local 2085, 1 for the Bethany Firefighters Association and 10 for no representation. The resolution of this question turns upon an interpretation of PERB Rule VII(a)(10) and 11 O.S. § 51-103(e). Based upon the arguments of counsel and the briefs filed herein the Board finds as follows:

1. 11 O.S. § 51-103(e) describes a set of circumstances in which the Board is required to conduct a run-off election. Section 51-103(e) is not exhaustive; there is no indication that it was intended to describe the only circumstances where a run-off election is appropriate. Section 51-103(e) requires a run-off when competing labor organizations receive a majority of all votes

cast. The Section does not forbid run-offs in circumstances where no majority is achieved by these contestants as in this case nor does the Statute forbid the Board from promulgating rules to meet circumstances in which a run-off is necessary to insure that the will of the employees is given effect.

2. PERB Rule No. VII(a)(10) describes another set of circumstances in which the Board is required to conduct a run-off election; it describes the rare circumstances presented in this case where none of three choice has received a majority but § 51-103(e) will not apply because there has been a tie between all votes cast for representation and all those cast for non-representation.
3. Where, as in this case, the circumstances do not meet ~~to~~ those described in § 51-103(e), a run-off election will still be required if

the circumstances match those described in PERB Rule VII(a)(10). The Board is persuaded that the combination of § 51-103(e) and Rule VII(a)(10) embody the policy of this Board favoring elections to determine the will of the employees and best expresses the overall purposes of the Fire and Police Arbitration Act.

Therefore, in this case, the Board orders that a run-off election between local 2085 and no representative be conducted forthwith.



CHAIRMAN

DATED: January 18, 1990
:dg
Fire.ord

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STATE OF OKLAHOMA

IN RE: CERTIFICATION PETITION)
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ASSOCIATION.)

O R D E R

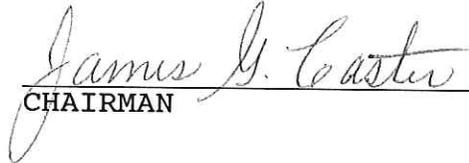
On the 26th day of February, 1990, the Board conducted a hearing for the purpose of ruling on two motions filed pursuant to PERB rule VII(A)(9) objecting to the conduct by the Board of the run-off election in the above-captioned case. One motion was filed herein by the city of Bethany and the other by the Bethany Police Officer's Association. The City of Bethany appeared by and through counsel Mr. David Davis. The incumbent union, International Association of Fire Fighters, Local 2085, appeared by and through counsel Mr. Jim Moore. The Bethany Police officers' Association made no appearance.

The Board having reviewed the pleadings and upon hearing the arguments of counsel, finds as follows:

1. That there have been no objections to the conduct of the election by the Board as contemplated by Rule VI(A)(9).

2. That the objections go rather to the legal issues involved in the original decision of the Board to conduct a run-off election which issues are currently on appeal before the District Court of Oklahoma County (Case No. CJ-90-1346). The Board

therefore finds that it is without jurisdiction while this case is pending before the Courts and the motions are accordingly denied.



CHAIRMAN

:dg
Bethany.ord