

of fact, the first of which is rejected by the Board, the second adopted. The Board accepts the findings of fact of the City Nos. 1, 3, 4, 7, 9, 10, 12, 14, 16, 17, 19, 25, 26. The Board rejects Respondent's proposed findings of fact numbered 2, 8, and in part 18. The Board finds that those paragraphs numbered 11, 15, 20-24 present mixed issues of law and fact and where relevant, will be addressed herein below.

Although the Board accepts the stipulations of the parties as true and accepts certain of the proposed findings of fact as true as noted above, the Board adopts only those portions thereof deemed relevant and supplements them with its findings based upon the testimony presented to the Board as follows:

1. The City of Mustang and the Mustang Fraternal Order of Police, Lodge 163 are parties to a collective bargaining agreement. [Joint Stipulation (J.S.) No. 1].
2. The City of Mustang and the Mustang Board of Education informally agreed over a period of years that the city would furnish security at football games held in Mustang. (J.S. No. 2).
3. The informal agreement traditionally provided that the security for the games would be provided by off-duty police officers and that the school board would directly pay such officers for their services. (J.S. No. 3. Hearing transcript (Tr.) p. 17, lns 4-21, p. 261, lns 1-14).
4. The informal agreement was beneficial to all parties, providing trained, competent officers for security to the school, extra income for the officers and relieving the city, at least in part, of the responsibility to assign on-duty officers to the games. (Tr. pp. 177-178).

5. For a number of years, prior to September 5, 1986, police officers volunteered to provide security at the football games. (Tr. 17).
6. Prior to the 1986-87 football season the usual number of security officers requested was two. (J.S. No. 7).
7. In August, 1986, the school board requested of the city that the number of security personnel for football games be increased to six. (J.S. No. 8).
8. Major Thompson, Deputy Chief of the Mustang Police Department, posted a notice at the police station soliciting six volunteers to provide security for the September 5 football game. (J.S. No. 9).
9. Among others, two of those volunteering for the September 5th game were not covered by the FOP agreement, one a certified police officer and one a trained jailor, neither a commissioned police officer. (J.S. No. 10).
10. On or about Saturday, August 30, 1986, the Mustang FOP met and determined that they would not volunteer for work at the football game for the reason that they objected to unqualified personnel being included in the roster of those volunteering to work as security officers at the game. (J.S. No. 11, Tr. pp 20-22).
11. The decision of the Mustang FOP was conveyed to city officials late on September 4, 1986 or early on September 5, 1986. (J.S. No. 12).
12. On September 5, 1986, Officer James Davis met with Chief of Police Ken McNair and told him that the officers would not work the game. (J.S. No. 14).
13. David Cockrell and James Davis met with Major Thompson and informed him that the FOP members had voted not to volunteer for the game on Sept. 5, 1986 (Tr. p. 23 lines 14-25 p. 24 lines 1-7).

14. Major Thompson informed Officers Jim Davis and David Cockrell that if they did not work the game, they would be denied the opportunity to participate in any future off-duty assignments. (Tr. p. 23, lines 19-25, p.24 lines 1-15, p. 25, lines 20-25, p. 74, lines 13-25, p. 290, lines 22-25.
15. On or about Friday, September 5, 1986, after 3 p.m., the City Manager, through the Chief of Police, assigned police officers for duty at the football game to be held that same date. (Tr. p. 23, lines 19-25, p.24 lines 1-15, p. 25, lines 20-25, p. 74, lines 13-25, p. 290, lines 22-25. (J.S. No. 15).
16. Following the football game, on or after September 8, 1986, several police officers filed grievances relating to the football game incident. (J.S. No. 16).
17. The Chief of Police met with all grievants. Grievances filed by officers Glenn Foran, Monty James, and James Davis, were pursued to the City Manager level according to the provisions of the FOP agreement and subsequently denied. None of the grievance were taken to arbitration. (J.S. Nos. 17, 18).

CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to 11 O.S.Supp. 1986, § 51-104b.

2. In an administrative proceeding before the PERB, the charging party has the burden of persuasion by a preponderance of the evidence as to the factual issues raised in its ULP charge.

11 O.S.Supp.1986, § 51-1046(C). See, e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (D.C. Ill. 1977); Gourley v. Board of Trustees of the South Dakota Retirement System, 289 N.W.2d 251 (S.D. 1980). In this case, the Union failed to demon-

strate that the city refused or failed to process its grievances

in good faith or commit any other unfair labor practices except as specified in paragraph 3 below.

3. The Union has demonstrated adequately that members of the Union were threatened and subjected to various coercive statements in response to their exercise of rights under the Act, those threats being that the employees involved would be denied any future off-duty work traditionally available to the employees through the City. Those threats and coercive statements constitute an unfair labor practice violation of 11 O.S. Supp. 1985, § 51-102 (6a)(1).

OPINION

This opinion is offered, pursuant to 75 O.S. 1981, § 309(e)(6) to explain further the conclusions of law reached by the PERB in this matter. As stated above, the Union has failed to persuade the Board that sufficient facts exist to sustain an unfair labor practice (ULP) charge with the exception of the charge that threats and coercive statements made by the City during the course of this matter constituted an unfair labor practice. Due to their failure of proof, this opinion will discuss only that charge adequately supported by salient facts.

The type of conduct which constitutes coercion under § 51-102(6a)(1) presents an issue of first impression for the PERB. The Oklahoma Supreme Court has expressed its willingness to enlist federal decisional law construing the National Labor Relations Act when interpreting parallel Oklahoma statutes. See, e.g., Stone v. Johnson, 690 P.2d 459, 462 (Okla. 1984).

The language of 11 O.S.1986, §§ 51-102(6a)(1) defining interference, intimidation and coercion as an unfair labor practice tracks closely the language of 29 U.S.C.S. § 158(a)(1).

Under the National Labor Relations Act in particular 29 U.S.C.S. § 158(a)(1), threats and coercive comments which reasonably tend to interfere with or restrain employees in the exercise of their rights under the Act constitute an unfair labor practice. Hanes Hosiery Inc., 219 NLRB 338 (1975). The test is not whether the attempt to intimidate, interfere or coerce succeeded or failed, but that the conduct was such that it tends to interfere with the free exercise of those rights; DeQueen General Hospital v. NLRB, 744 F.2d 612, 614 (8th Cir. 1984).

Concerning the state of mind of the person who uttered the threat, courts have variously held that the state of mind is irrelevant, NLRB v. Litho Press of San Antonio, 512 F.2d 73, 76 (5th Cir. 1975); that an anti-union motive is a relevant consideration Tri-State Truck Services, Inc. v. NLRB, 616 F.2d 65, 69 (3rd Cir. 1980) and finally, that some conduct may be so inherently destructive of rights under the NLRA that no proof of anti-union motivation is required Vesuvius Crucible Co. v. NLRB, 668 F.2d 162, 169 (3rd Cir. 1983).

The Board is of the opinion the appropriate basis for decision in this case is that the state of mind of the person uttering the threat is relevant; on occasion however, the threats may be so inherently destructive that no proof of motivation is

required. (The Board makes no such finding in this case). In any event, the keystone of establishing an unfair labor practice is that the threat tends to interfere with rights protected under the Act. The Board is of the further opinion that the success or failure of the threats to actually intimidate or coerce is not a prerequisite to establishing an unfair labor practice.

In this case, Major Thompson knew that the officers were acting on behalf of the members of the FOP and further was aware that the Union had voted to refuse to act as volunteers at the football game. (See Finding of Fact No. 13). This knowledge is sufficient under the standard described in Tri-State Truck Service, to establish the requisite coercive intent. The threats made by Major Thompson were aimed at intimidating and coercing FOP members to "volunteer" to work the game by threatening to deny them further off-duty employment opportunities traditionally available to police officers through the Department. (See Finding of Fact Nos. 3, 14).

That off-duty security at football games was not part of the officers normal duty does not free the statements of Major Thompson from coverage under the Act. Such off-duty assignments were traditionally available to officers over a long period of time and its omission from the collective agreement does not remove such matters from the legitimate sphere of concern of the FOP nor from the cognizance of the Board. Lima Register Company, 260 NLRB No. 171, 1295 (1982).

The Board is persuaded that the threats made by Major Thompson were intended to interfere with or coerce the union. The Board also is convinced that the evidence shows that the effect of the threats tended to interfere with the free exercise by employees of their rights under the FPAA and thus constitutes an unfair labor practice pursuant to 11 O.S. 1985, §§ 51-102 (6a)(1).

CEASE AND DESIST ORDER

The City of Mustang is hereby ordered, pursuant to 11 O.S. Supp. 1986, § 51-104b(C) and consonant with the findings of fact, conclusions of law, and opinion entered herein, to cease and desist from the date of this order hence forward from threatening, intimidating and otherwise coercing complainant or members thereof, from acting in concert, or otherwise exercising their rights under the Act.

The City is further directed to report to the PERB, within thirty (30) days from the date of this Order, the steps it has taken to prevent a re-occurrence of the conduct found unlawful hereinabove.

Signed this 27 day of October, 1987.



CHAIRMAN

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213-03-L