

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE,)	
LODGE NO. 131,)	
)	
Complainant,)	
)	
vs.)	Case No. 00158
)	
CITY OF MOORE, OKLAHOMA,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, OPINION AND CEASE AND DESIST ORDER

This matter comes on for decision before the Public Employees Relations Board (PERB or the Board), upon Complainant's unfair labor practice charge. The parties hereto have stipulated to certain facts and submitted their case to the Board upon briefs, waiving hearing of this matter by the Board. The Board has received initial briefs from counsel, has received, through its hearing examiner, oral arguments from the parties and a post argument brief from counsel for the Complainant. The Board has not received a timely post argument brief from counsel for Respondent as requested by the hearing examiner.

FINDINGS OF FACT

1. The Fraternal Order of Police, Lodge #131 (FOP) entered into an agreement with the City of Moore, Oklahoma (City), effective July 1, 1985 through June 30, 1987. This

agreement between the parties concerns wages, hours and other conditions of employment.

2. Article X of this agreement is titled "Management and Lodge Conference". This article provides that three representatives of each party shall meet quarterly for the purpose of discussing problems of interest to either party. The intent of these meetings is to assure a regular face to face session for clarification of points of concern with regard to operations and morale. Both parties hope that new ideas for improvement of the department and enhancement of its public image will result from these sessions.

3. In October, 1986, the FOP and the City held a conference pursuant to Article X of the agreement. The parties discussed a problem of rotating shifts for the officers in the patrol division of the Moore Police Department.

4. An agreement was reached with a new policy being established by the chief to allow bidding for fixed shifts in the patrol division based upon seniority of service within a rank. Each shift would be rotated effective January 1 and July 1 of each year. An individual in the patrol division would be allowed to bid and work the same shift two consecutive times before becoming ineligible for that shift for six months.

5. A fixed shift within the patrol division of the Moore Police Department, effective January 1, 1987, was

established as individuals bid for these shifts based upon seniority of service within a rank.

6. On June 19, 1987, A. T. Doran, Vice President of the FOP wrote Moore Police Chief Richard Mills a letter inquiring about the bidding for the fixed shifts effective July 1, 1987.

7. On June 26, 1987, Moore City Manager Robert W. Swanagon wrote Chief Mills an office memo delaying implementation of the shift selection policy until August 1, 1987. The City Manager indicated he hoped to discuss this policy with the FOP during the next Management/Lodge Conference.

8. A new patrol schedule was established effective August 2, 1987, without any bidding according to seniority of service with a rank by the patrol officers of the Moore Police Department.

9. On August 18, 1987, the FOP filed a complaint with PERB alleging the City violated Sections 51-102(5), 51-102(6a), 51-105 and 51-111 of the Fire and Police Arbitration Act.

10. On September 11, 1987, the City filed a response with PERB to the complaint of the FOP, seeking dismissal of the complaint and denying jurisdiction of the PERB.

11. On October 19, 1987, the City and the FOP participated in an interest arbitration before Elmer D. Kincaid, Richard Mildren and Harold Pumford. One of the stipulated open issues was "fixed shifts vs. rotating shifts", the

parties having been unsuccessful throughout the course of negotiations for the 1987-88 labor agreement in resolving this issue. The award from the panel of arbitration has not been received.

CONCLUSIONS OF LAW

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

2. The City's unilateral change in the process of fixing shifts of police officers constitutes an unfair labor practice under the Fire and Police Arbitration Act (FPAA) in that shift assignments fall within the definition of "conditions of employment of § 51-102(5) and are thus mandatory topics of bargaining; NLRB v. Katz, 369 U.S. 736 (1962); and that failure to bargain on mandatory topics of bargaining constitutes an unfair labor practice. Production Plated Plastics, Inc., 254 NLRB 560 (1981).

OPINION

The Fire and Police Arbitration Act, 11 O.S., §§ 51-101, et seq., in particular Section 51-102(6)(6a)(5), defines an unfair labor practice as follows:

(5) Refusing to bargain collectively or discuss grievances in good faith with the designated bargaining agent with respect to any issue coming under the purview of this article.

11 O.S., § 51-102(5) states:

5. Collective bargaining shall mean the performance of the mutual obligation of

the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process; to confer in good faith with respect to wages, hours and other conditions of employment. . .

The PERB has previously held that changes in public employees work schedules are mandatory topics of bargaining. (See e.g., PERB No. 00125 and PERB No. 00130). Although the PERB as an administrative agency, is not bound by principles of stare decisis, it has not altered its view that work schedules are mandatory topics of bargaining.

In this case, the City and Union, pursuant to Article X of the Collective Bargaining Agreement, met and agreed to alter the then-current method of shift assignments. This oral agreement was, in fact, instituted for a period of six months. Subsequently, the City unilaterally revoked this agreement without negotiation.

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). As a general rule, it is clear that collective bargaining arguments need not be in writing. Certified Corporation v. Hawaii Teamsters and Allied Worker Local 996, IBT, 597 F.2d 1269 (9th Cir. 1979); See also, 11 O.S. § 51-102(5). In addition, a written collective bargaining agreement may be modified, supplemented or amended by an oral

agreement. Sanderson v. Ford Motor Co., 483 F.2d 102 (5th Cir. 1973) 83 BNA LRRM 2859, 84 BNA L.R.R.M 2976, 71 CCH LC ¶ 13818; Waton v. International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America, 399 F.2d 875 (5th Cir. 1968); See also, 15 O.S. § 134. Generally, an oral supplement to a collective bargaining agreement is valid unless prohibited by a state statute requiring certain contracts to be in writing. United Shoe Workers of America, CIO v. LeDanne Footwear, Inc., 83 F.Supp. 714 (D.C. Mass. 1949). In this case, the oral modification of the collective bargaining agreement, which by its terms was effective through June 30, 1987, occurred in October, 1986. Such an oral modification does not run afoul of 15 O.S. § 136, (Statute of Frauds).

Disputes arising out of contractual obligations created by the agreements of the parties are best left to the dispute resolution provisions of the agreement and the Board will entertain deferral to ongoing arbitration. See, e.g., NLRB v. M & M Oldsmobile, Inc., 377 F.2d 712 (2nd Cir. 1967).

On occasion, however, acts which may give rise to contractual disputes also implicate statutory duties imposed upon the parties by law. The FPAA clearly provides in Section 51-102(6)(6a)(5) that the refusal to bargain in good faith is an unfair labor practice and further in Section 51-102(5), that bargaining includes the obligation to "confer in good faith with respect to wages, hours and other conditions of

employment. . . ." The Board is persuaded that changes in shift assignments clearly falls within the definition of "hours and other conditions of employment" contained in Section 51-102(5).

Matters relating to hours and conditions of employment are clearly mandatory topics of negotiation; NLRB v. Katz, 369 U.S. 736 (1962). Unilateral changes in mandatory subjects of bargaining constitute an unfair labor practice; Production Plated Plastics, Inc., 254 NLRB 560 (1981). Police officers and fire fighters have, by statute [11 O.S., § 51-101(B)], been denied the economic weapon of a strike or work stoppage. In return, the public employer must exercise the utmost good faith and bargain with its employees' representative on all matters affecting wages, hours and other conditions of employment. The FPAA does not require that either the public employee or employer agree to any particular demand regarding these topics; only that such topics be negotiated in good faith. A unilateral change of hours or other conditions of employment, as in this case, constitutes an unfair labor practice as defined in 11 O.S., § 51-102(6)(6a)(5), and is therefore, subject to the power of the Board to enter its cease and desist order.

CEASE AND DESIST ORDER

The City of Moore is hereby ordered, pursuant to 11 O.S. § 51-104b(c) and consonant with the Findings of Fact, Conclusions of Law and Opinion entered herein to cease and desist from changing, unilaterally, terms and conditions of employment including shift assignments.

Dated this 15th day of November, 1988.

Acting Donald L. Copelin
CHAIRMAN

dp:Moore-PE.RB