

OWASSO 00314

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

I.A.F.F. LOCAL 2789,)	
Complainant,)	
vs.)	Case No. 00314
CITY OF OWASSO,)	
Respondent)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER OF THE PERB**

THIS MATTER came on for hearing before the Public Employees Relations Board ("PERB" or the "Board") on the 9th day of June, 1995, on Complainant's charges of Unfair Labor Practice ("ULP"). Complainant appeared by and through its attorney of record, Mark W. Schilling. Respondent appeared through its attorney of record, Ronald D. Cates.

The Board received documentary and testimonial evidence as well as exhibits. The Board also solicited post-hearing submissions of proposed Findings of Fact, Conclusions of Law and briefs in support.

During the pendency of this administrative action, Charles Kothe replaced Dr. James Caster as the Chairman of the Public Employees Relations Board. Pursuant to 75 O.S. Supp. 1994, § 311, Chairman Kothe participated in this matter having read the record herein and being fully apprised of the facts and law at issue.

The Board is required by 75 O.S. Supp. 1994, § 312 and its rules to rule individually on Findings of Fact submitted by the parties. The submitted Proposed Findings of Fact of the Complainant are treated as follows:

1. Proposed Findings of Fact Nos. 1, 2, 3,4, 5, 6, 7 (in part), 8, 9, 10 (in part), 11, 12, 13, 14, 15, 16, 17, and 23 are substantially adopted by the Board.
2. Proposed Findings of Fact 7 (in part) and 10 (in part) are rejected.
3. Proposed Findings of Fact 18, 19, 20, 21, and 22 recite the history of this administrative appeal, and it is unnecessary either to adopt or reject them.

The submitted Proposed Findings of Fact of the Respondent are treated as follows:

1. Proposed Findings of Fact 1, 2, 3,4, 5, 6, 7, 8, 9, 10, 11, and 12 are substantially adopted by the Board.

FINDINGS OF FACT

1. Local No. 2789, International Association of Fire Fighters (the "Union") is the exclusive bargaining agent for all

- employees of the Owasso Fire Department, except the Chief, one designated administrative assistant, civilian employees and probationary employees.
2. The City of Owasso ("Owasso"), Oklahoma is an Oklahoma Chartered municipality, having a Council-Manager form of government.
 3. The City Council of Owasso, comprised of locally elected officials is, under the Charter of Owasso, the body which must collectively approve and enter into contracts related to Owasso.
 4. The City Council of Owasso possesses the duty to establish by contract the wages, salaries, hours, working conditions and other terms and conditions of employment of fire fighters within the municipality and by reason thereof Owasso constitutes the corporate authority as defined under 11 O.S. 1991, § 51-102.
 5. Prior to the 21st day of June, 1994, Owasso, by and through its authorized representatives, and the Union, by and through its authorized representatives, held meetings and conferred for purposes of establishing a Collective Bargaining Agreement (the "Agreement") between Owasso and the Union for fiscal year 1995.
 6. The authorized representatives of the Union were Lowell Thompson, Dan Salts and Mike Hulken.
 7. The authorized representatives of Owasso were Rodney Ray and Ron Cates.
 8. During negotiations for the FY-95 Agreement, the Union had concerns over settling with Owasso early, only to have the Fraternal Order of Police (the "FOP") hold out and receive more in terms of a wage increase.
 9. These concerns were expressed to Rodney Ray by the Union's representatives.
 10. To some certain extent, which remains the crux of the controversy between the parties, a statement was made by Rodney Ray and which was understood by the Union that if the FOP were to receive a raise in excess of the raise received by the Union the Union would receive the same raise as the FOP.
 11. The statement by Rodney Ray was heard by Dan Salts and Lowell Thompson. A similar statement was reiterated by Rodney Ray to Mike Sole and other fire fighters.
 12. The Union's authorized representative related the statement by Rodney Ray to the union membership and based on the statement recommended the FY-95 Agreement to the membership.
 13. The union membership voted to approve the FY-95 Agreement.
 14. On June 21, 1994, Owasso and the Union entered into the Agreement pertaining to hours, compensation, conditions of employment and other things for a term beginning July 1, 1994, and ending June 30, 1995.
 15. In December, 1994, subsequent to impasse, mediation impasse and interest arbitration, the FOP's Last Best Offer was

adopted by the selected arbitrator in a matter unrelated to the Union. The Last Best Offer contained as a part thereof compensation increases in the range of 20% to 25%, which was in excess of the amount anticipated by Owasso as well as in excess of the compensation package agreed upon between Owasso and the Union.

16. After Owasso adopted an agreement with the FOP, in December 1994, Mike Sole approached Rodney Ray specifically to discuss Owasso's commitment to give the Union the difference between the pay increase in the FY-95 Agreement and that given to the FOP.

17. Rodney Ray advised Mike Sole to send a letter to the Council to request the reopening of wage negotiations for the FY-95 Agreement.

18. Mike Sole mailed a letter with that request dated December 25, 1994.

19. Owasso received that letter on December 28, 1994.

20. The Agreement did not contain any provision requiring either party to reopen negotiations for purposes of renegotiating any article contained in the Agreement.

21. The request to reopen negotiations was placed on an agenda for City Council consideration.

22. At a regular meeting of the City Council, Rodney Ray apprised the City Council of the request of the Union to reopen the Agreement for purposes of renegotiating the compensation article. Rodney Ray further expressed his support of the request.

23. The City Council, following executive session, voted to refuse the request of the Union.

CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. 1991, § 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 factual issues raised in its Unfair Labor Practice ("ULP") charge. 11 O.S. 1991, § 51-104b(C). See, e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (1977); Gourley v. Board of Trustees of the south Dakota Retirement System, 289 N.W.2d 251 (S.D.1980).

3. The Fire and Police Arbitration Act, 11 O.S. 1991, §§ 51-101, et seq., imposes upon a municipal corporation the duty to bargain with absolute good faith. Stone v. Johnson, 690 P.2d 459 (Okla.1984).

4. It is not disputed that following bargaining, a collective bargaining agreement was entered into by both Owasso and the Union which specified a pay raise less than that received by members of the FOP. The collective bargaining agreement was

in writing.

5. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument. 154 O.S. 1991, § 137.
6. The parole evidence rule is substantive law in Oklahoma. Snow v. Winn, 607 P.2d 678 (Okla.1980).
7. The Board must view the duty to bargain in good faith in conjunction with the parole evidence rule so as to give effect to each, if possible.
8. The Board finds that as a matter of law, the Complainant Union has not met its burden of proof that the conduct of the City of Owasso constituted an unfair labor practice. Despite that statements were made by Owasso which influenced the Union into signing the Agreement for FY-95, it is significant that nothing related to the FOP contract was placed in the Union's Agreement with Owasso. The Board presumes both parties herein were well represented by counsel. It follows that both parties were aware of the parole evidence rule, which is a basic rule of contract law deeply ingrained in the law of this state. The Board must conclude that the Union signed the Agreement with its eyes open and knowledgeable of the consequences of not reducing anything of import to writing.
9. This case involved close questions of fact to the point that slight variations of the matters presented to the Board could change the outcome.

ORDER

Consonant with the Findings of Fact and Conclusions of Law herein, it is therefore ORDERED by the Board that the Unfair Labor Practice complaint of the Union is dismissed.

Original signed by *Darren Derryberry*, Acting Chairman