

**BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA**

INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL 2581,)	
AFL/CIO-CLC)	
Complainant,)	
v.)	PERB Case No. 00390
)	
CITY OF SEMINOLE, OKLAHOMA)	
Respondent.)	

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

On August 21, 2002, this administrative complaint was heard before the Oklahoma Public Employees Relations Board (“Board”). The Complainant, International Association of Firefighters, Local 2581, AFL/CIO-CLC, (“Union”), appeared through its attorney of record, Patrick Hunt. Respondent, City of Seminole (“City”), appeared through its attorney of record, Tony G. Puckett. The Board heard testimony, received briefs and exhibits from the parties, considered oral argument, reviewed the proposed findings of fact and conclusions of law submitted by the parties, and now issues this Final Order.

Determination of Proposed Findings of Fact

The Board is required by 75 O.S. 1991, § 312 to rule individually on Findings of Fact submitted by the parties. The submissions of the parties are treated as follows:

1. Complainant’s proposed findings of fact 1-7 are adopted by the Board as set forth below.
2. Respondent’s proposed findings of fact 1, 3-6, 8-11, 13, and 15-18 are adopted by the Board as set forth below. Respondent’s proposed findings of fact 2, is rejected as unnecessary to determination of this complaint. Respondent’s proposed finding of fact 7 is accepted in part and denied in part as to conclusions of law. Respondent’s proposed findings of fact 12 and

14 are rejected as they state conclusions of law.

Findings of Fact

1. Local 2581 is the collective bargaining agent for the firefighters in the City of Seminole.
2. Pursuant to the Fire and Police Arbitration Act (FPAA), the Union signed a collective bargaining agreement (CBA) with the City of Seminole for Fiscal Year 2001-2002.
3. Article XXII, Section 4 of the CBA provided in relevant part, "The Employer shall provide the above coverage through: the bargaining unit's insurance group, and meet or be equivalent to that set forth in Section 5."
4. Article XXII, Section 5 of the CBA provided, "Medical: P.F.F.O Policy or a policy equivalent that is agreed upon by both parties. Vision: \$120.00 a year per person (no deduct.) Dental: \$1,000.00 a year per person \$50 Deductible per person \$1200.00 Lifetime for orthodontic (children under 19). Life: \$40,000.00 for employee, \$10,000.00 for spouse, \$5,000 for child."
5. The health insurer retained by the City was the Oklahoma Municipal Employee Benefit Trust (OMEBT), of which the City was a member.
6. As a member city of OMEBT, Seminole paid insurance premiums to OMEBT for health insurance coverage for employees.
7. The purpose of the premiums paid to OMEBT was to provide for payment of employee insurance claims and purchase reinsurance for excess claims.
8. The City of Seminole was not self-insured for employee health insurance.
9. After the signing of the CBA, some of the health insurance claims submitted to OMEBT by firefighters were not paid. (Testimony of Steve Saxon, Seminole City Manager)

10. On or about February 2, 2001, the IAFF filed a grievance with the City alleging a violation of CBA provisions Article XXII Sections 1-6, and requested that the City pay all outstanding health care claims for members of the Bargaining Unit.
11. The City denied the grievance on or about February 7, 2001.
12. The City argued that the grievance did not present an arbitrable issue and later refused to strike a list of arbitrators.

Conclusions of Law

1. This matter is governed by provisions of the FPAA, 11 O.S. 1991 and Supp. 2000, § 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. 1991 and Supp. 2000, § 308, *et seq.*
3. It is appropriate to consider federal labor law in the construction of the FPAA. *Stone v. Johnson*, 690 P.2d 459, 462 (Okla. 1984).
4. The Board is empowered to prevent any person, including corporate authorities, from engaging in any unfair labor practice. 11 O.S. 1991, § 51-104b(A).
5. The Union, in asserting a violation of 11 O.S. 1991, § 51-102(6), has the burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. 1991, § 51-104b(C) and OAC 585:1-77-16.
6. "Unfair labor practice" includes any action by the City refusing to bargain collectively or discuss grievances in good faith with the designated bargaining agent with respect to any issue coming within the purview of the FPAA. 11 O.S. 1991 and Supp. 2000, § 51-102(6a)(5).

7. Arbitration of all contractual duties or actions of parties to the contract under the FPAA is mandated to offset the prohibition against strikes by police officers and firefighters. *City of Bethany v. Public Employees Relations Board*, 1995 OK 99, 904 P.2d 604, 609-10.
8. In a dispute concerning contract interpretation, the parties are entitled to an immediate and speedy resolution by required arbitration. *City of Bethany v. Public Employees Relations Board*, 1995 OK 99, 904 P.2d 604, 609-10.
9. Doubts regarding arbitrability are to be resolved in favor of arbitration. *City of Muskogee v. Martin*, 1990 OK 70, 796 P.2d 337.
10. Any question regarding interpretation of a CBA are the sole province of an arbitrator as provided by the FPAA. *Taylor v. Johnson*, 706 P.2d 896 (Okla. 1985).
11. The duty of the City to discuss grievances with the designated bargaining agent in good faith pursuant to 11 O.S. §51-102(6a)(5) requires the City to fully comply with the statutory and contractual duty to provide for final and binding arbitration of employee grievances. *International Association of Firefighters, AFL-CIO/CLC, Local No. 1969 v. City of Miami*, PERB Case No. 00153 (1988).
12. The City's refusal to arbitrate constitutes a violation of 11 O.S. §51-102 and an order to cease and desist from unfair labor practice should issue from this Board.

Discussion

The unfair labor practice alleged by the union in this complaint is founded upon the failure of the City to engage in arbitration of the union's grievance involving interpretation of the contract provision regarding payment of employee health insurance claims. The City argues that the Union presents no evidence of an actual dispute regarding the interpretation or application of a provision

of the CBA which would constitute a failure by the City to bargain in good faith resulting in an unfair labor practice in violation of the FPAA. The undisputed evidence presented supports the allegation of the Union that the City did refuse to arbitrate the grievance, which constitutes an unfair labor practice in violation of 11 O.S. §51-102.

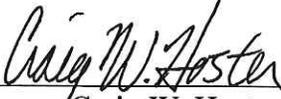
As the Supreme Court stated in *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960):

The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values which those who are not a part of the plant environment may be quite unaware.

Id. at 568 (footnotes omitted).

ORDER

IT IS THE ORDER of the Public Employees Relations Board that the unfair labor practice allegation of the Union is **UPHELD**. The City of Seminole is hereby ordered, pursuant to 11 O.S. 1991, §51-104b(C), and consonant with the Findings of Fact, Conclusions of Law, and Opinion entered herein, to CEASE and DESIST from refusing to arbitrate the grievance of the Union.



Craig W. Hoster, Chair

Dated this 2nd day of October, 2002