

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

International Association of)	
Firefighters, AFL-CIO/CLC,)	
Local 3199,)	
)	
Complainant,)	
)	
v.)	Case No. 00208X
)	
City of Hugo, Oklahoma,)	
)	
Respondent.)	

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

This matter came on for hearing before the Public Employees Relations Board ("PERB" or "the Board"), on August 15, 1990, October 4, 1990, and October 23, 1990. The City of Hugo ("City") appeared by and through its attorneys Bob Rabon and J.D. McLaughlin. The International Association of Firefighters, AFL-CIO/CLC, Local 3199 ("Local") appeared by and through its attorney, James R. Moore. The parties participated in a full evidentiary hearing before the PERB and have submitted proposed findings of fact and conclusions of law as well as arguments and authorities contained in their briefs, the last of which was received by this Board on December 10, 1990.

FINDINGS OF FACT

When proposed Findings of Fact are solicited, the PERB is required to rule on these individually. 75 O.S. 1981, § 312. The proposed Findings of Fact of the Charging Party are treated as follows:

- 1) The Complainant's proposed Findings of Fact numbered 1-6, 8-9, 11, 13-15, 18-20, 23-28 are adopted by the PERB.
- 2) The Complainant's proposed Findings of Fact numbered 7, 10, 12, 16-17, 21-22 are accepted in part and rejected in part by the PERB.

The proposed Findings of Fact of the Respondent are treated as follows:

- 1) The Respondent's proposed Findings of Fact numbered 1-4, 7, 15, 23, 25 are adopted by the PERB.
- 2) The Respondent's proposed Findings of Fact numbered 5-6 and 8-14, 16-22, 24, 26-27 are rejected either in whole or in part by the PERB.

Based upon the record before the PERB and upon the rulings listed herein above, the PERB finds as follows:

1. The City of Hugo is, and was at all times pertinent hereto, a municipality of the State of Oklahoma, with an aldermanic form of government duly organized and existing pursuant to the laws of the State of Oklahoma. (Tr. 118).

2. International Association of Firefighters, Local No. 3199, (Union) became the duly certified and acting labor

representative and bargaining agent for Hugo firefighters on February 15, 1989.

3. The City of Hugo has contracted with the Choctaw County Ambulance Authority to operate ambulances in Choctaw County, a service performed with the Hugo Fire Department. This additional service accounts for approximately one-half of the number of employees in the Hugo Fire Department and the contract was to expire in May, 1990. (Tr. 113, 426).

4. In November, 1988, discussions began regarding the economics of continuing the operation of the ambulance under contract with the Choctaw County Ambulance Authority. (Tr. 370, 371, 395 and 396).

5. In December, 1988, Hugo firefighters met to discuss forming a union. (Tr. 168, 193). Fire Chief Tom Pence (Pence) opposed the union and made several statements to Hugo firefighters regarding the consequences of unionization:

a. That the City Council and the Mayor were angry with the firefighters for forming a union and that union members would be looking for other jobs as a result of unionization. (Tr. 171, 174, 194).

b. That Pence intended to get rid of the ambulance service, layoff firefighters, and that Jerry Tucker and the Union would go with the ambulance service. (Tr. 43, 235-237).

- c. That the City would go to an all-volunteer fire department and that all of the union firefighters would lose their jobs. (Tr. 45).
- d. That the "trouble makers" (union officers) would be sorry and that they could get ready to look for another job. (Tr. 47).
- e. That there would be repercussions in the department in that the Mayor and City Council would get rid of those forming the union, including Jerry Tucker. (Tr. 153-155).
- f. That the City would break the ambulance contract because of the union and in order to break the union. Further, that firefighters would lose jobs as a result of the terminated ambulance contract and that Pence would be the one to decide who lost their job. (Tr. 159, 169, 194, 195, 237, 246).
- g. That the employees who formed the union were "trouble makers" and would be terminated. (Tr. 196, 246).
- h. That the firefighters were in trouble because they were unionizing. (Tr. 206).
- i. That the union was detrimental to the organization and that firefighters would be making a mistake by organizing the union. (Tr. 245).

6. Mike Gallagher, a Hugo City Council member, told several firefighters that the City would use the ambulance contract negotiations to break the union. (Tr. 242, 488-489).

7. On January 4, 1989, Hugo firefighters voted to form a union [International Association of Fire Fighters (IAFF)]. Jerry Tucker (Tucker) was one of the leaders of the effort to organize the union and was the Local's first President. (Tr. 37).

8. The International Association of FireFighters Local No. 3199 (IAFF) was certified by this Board as the collective bargaining agent for the eligible Hugo firefighters on February 15, 1989. (Tr. 38). Shortly thereafter, the union gave notice of collective bargaining and began negotiating with the City. The parties reached their first collective bargaining agreement in December, 1989.

9. Tucker had been employed as a firefighter with the City of Hugo for more than nine years at the time of his termination on August 2, 1989. Tucker had never received any prior disciplinary actions during his tenure with the department. (Tr. 12).

10. Tucker is the only firefighter to have been terminated by the City of Hugo in at least 15 years. (Tr. 295).

11. Tucker was a certified Emergency Medical Technician (EMT) and was one of eight Level I instructors among the 21 firefighters in the department. (Tr. 20). Tucker had attended Instructors School in the spring of 1988 for the Hugo Fire Department. (Tr. 115).

12. Pence had been the Fire Chief for approximately 1 and 1/2 years when he terminated Tucker. (Tr. 423). The two had worked together in the department for over 9 years without problem. (Tr. 21).

13. After Pence became Fire Chief and before union activities began, Pence had offered Tucker a promotion to Captain. Tucker had previously been appointed to be a "lead-off" man, or the officer in charge when the Captain was gone. In September, 1988, Pence asked 7 firefighters to become instructors in Level I Fire Safety Instruction Courses offered by OSU Tech. One officer, W.B. Gamblin, declined to go and received no disciplinary action for his refusal. Obtaining instructor certification was a voluntary activity. Tucker was not compensated for attending the Level I Fire Safety training. The training was conducted during off duty hours. Tucker was promised additional pay by Pence to achieve certification but the additional compensation was never received. (Tr. 20-22, 24-25, 27, 30, 36-37, 61, 299-301, 455-457).

14. The Fire Safety courses taught by instructors are not a requirement of any agency and were not a job requirement of Hugo Fire Department firefighters. Of the 10 courses available only 2 had been taught in the Hugo Fire Department in the previous 2 years. After the union was certified Assistant Fire Chief Kenneth Winship (Winship) and Pence decided to increase the training load so that there would be a course taught or some training occur every month. (Tr. 29, 293, 295).

15. On July 10, Tucker was told by Pence that he must teach 10 fire safety classes in 10 months. Tucker was the only instructor who was told that he would have to teach 10 classes in 10 months. No one had ever previously been assigned to teach 10 courses in 10 months. (Tr. 71-74, 150, 304).

16. Preparation for teaching a course took a great deal of time, both on and off duty. Hugo has 2 fire stations and each instructor had to teach each course at each station for a total of approximately 24 hours class time per course. (Tr. 31, 34).

17. Before teaching a course the Fire Department was required to send a notice, called a Form 9, to OSU Tech. Form 9 was to be signed by any certified instructor in the department and the Fire Chief, Pence, prior to the beginning of class. It was not necessary for the instructor of the course to sign Form 9. (Tr. 31, 35, 297-299, 487).

18. According to Assistant Chief Winship, who was also the department's training supervisor, being an instructor was not a job requirement for Hugo firefighters. Being an instructor was voluntary duty and Tucker had the option of resigning his status as a certified instructor. If Tucker had resigned, the department would not have asked him to teach any courses and he would not have been disciplined for refusal to teach. If Tucker had told the department he did not want to teach before his assignment to teach in August, 1989, he would not have had to teach the class. (Tr. 299, 301).

19. Tucker was discharged for allegedly refusing on July 25, 1989, to teach a class he was assigned to teach in August, 1989. (Union Ex. 6).

20. After certification of the IAFF as the bargaining agent, the City made numerous unilateral changes in mandatory topics of bargaining within the Fire Department. The changes were made in policies and procedures which had been in effect for many years. (Tr, 56, 59). Those changes included:

- a. On March 3, 1989, Pence eliminated exchange of time between firefighters who substitute for one another. (Tr. 47, 55-59).
- b. Pence advised fire supervisors to write up firefighters for anything they could and to stay on their backs. Captain Rogan told Tucker that such policy was implemented because of the union. (Tr. 50, 60, 331).
- c. Pence prohibited firefighters from talking about the union while on duty. (Tr. 49).
- d. On April 27, 1989, Pence changed the compensatory time policy in the department. (Tr. 59).
- e. On July 16th, Pence changed the normal policy for Sunday work by requiring Tucker and another firefighter to check fire plugs in residential areas on Sunday. The union complained to the City Attorney of the change in working

conditions. Pence called Tucker the next day to rescind the Sunday work policy. (Tr. 66-69, 72).

21. During the conversation on July 17 between Pence and Tucker regarding Sunday work, Pence told Tucker he was going to have to teach all 10 fire safety courses, one per month, take off 2 months, then start over again. Tucker advised Pence that he thought that was punishment for his union activities. Tucker requested that Pence put his order to teach all the courses in writing but Pence refused. (Tr. 74, 76).

22. On March 6th, Tucker completed teaching his first course after his certification as an instructor. The same day Tucker was demoted from his lead-off position. (Tr. 60, 63).

23. Pence removed Tucker's duties for rural fire collections, hazardous material inspections, residential inspections, and department inventory. Those duties were taken away by Pence on January 5, 1989, the day after Tucker was elected the first President of IAFF Local 3199. (Tr. 39-40, 303).

24. After Pence told Tucker he would have to teach 10 classes in 10 months, Tucker told Pence he wanted a meeting with the Mayor and Pence to discuss the policy. (Tr. 76-79).

25. On July 10, Tucker told Winship he (Tucker) would teach the next class Winship scheduled. (Tr. 287).

26. The Mayor is the Chief Executive Officer of the City of Hugo. (Tr. 399).

27. In his meeting with the Mayor on July 21, Tucker asked the Mayor to resolve the problem of how many classes Tucker was to teach. The Mayor agreed to look into the problem and get back with Tucker. (Tr. 80, 388, 399).

28. The Mayor did not look into the matter or get back to Tucker even though the Mayor met with Pence the next day to discuss suspending Tucker for refusing to teach the class. The Mayor did not look into the problem even after Tucker's suspension. (Tr. 389, 400-404).

29. Tucker left his meeting with the Mayor with the understanding that the Mayor would get back to him on the instruction problem. On July 22, Assistant Chief Winship demanded that Tucker sign a Form 9 to teach the class in August. Tucker told Winship he was waiting for an answer from the Mayor on the instruction problem. Winship or another instructor could have signed the Form 9, thus giving the Mayor, Pence, and Tucker an opportunity to work out the problem on instruction. (Tr. 81-84, 299-301).

30. On July 25, Pence called Tucker into his office and had in the office a "Corrective Interview" form. After the union organized, Pence went to a seminar on disciplining employees and had obtained the form at the seminar. Pence had only used the form this one time. (Tr. 86-89, 468).

31. At the July 25 meeting Pence knew Tucker was still waiting for the Mayor's answer and told Tucker that the Corrective Interview form was the Mayor's answer. (Tr. 87).

32. During the meeting on July 25, Tucker agreed to abide by the terms of the Corrective Interview even though he felt them to be unfair. Tucker understood that he had until July 31 to either mail the Form 9 or receive more severe discipline. A review of his compliance was set for August 3. (Tr. 88-91, 283-284).

33. Immediately after the meeting on July 25, Pence noted that Tucker had again refused to teach the course and that Tucker was to be suspended for insubordination. After the meeting on July 25, Tucker went to the City Clerk's Office and appealed his suspension to the City Council. No mention was made of termination until the next day, July 26, when Tucker received a letter to that effect. That letter was Tucker's first notice that the Chief was considering termination. Termination was indicated as being for the same reason as the Corrective Interview and the suspension. (Tr. 97-98, Union Ex. 6, 7, 10).

34. On July 29 Tucker delivered to Pence the signed Form 9 along with a letter of explanation. Even though Tucker had complied with Pence's directives prior to the July 31 date given for compliance, Pence refused to sign the Form 9. This meant that the form could not be sent in and Tucker could not teach the class. (Tr. 101-102, Union Ex. 8, 9).

35. Tucker appeared at a City Council meeting on August 1, 1989, to appeal his suspension. At the City Council meeting Tucker advised the Council that he had complied with Pence's directions on July 29, 1989. The Council rejected his appeal and the next day he was terminated from his employment. (Tr. 103).

CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and the subject matter of their dispute pursuant to 11 O.S. § 51-104(6) and 75 O.S. 1981, §§ 309 et seq.

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 by its ULP charges. Rule III Q, Rules of the PERB. See also, Prince Manufacturing Company v. United States, 437 F. Supp. 1041 (D.C. 1(1) 1977). In this case, the Charging Party has met this burden.

3. Jerry Tucker is a person entitled to the coverage and protection of the FPAA, specifically 11 O.S. § 51-102(6)(a).

4. Jerry Tucker engaged in activities which are protected under the FPAA.

5. Jerry Tucker's involvement in activities protected by the FPAA was a substantial motivating factor in the decision to terminate his employment. See, Hall v. O'Keefe, 617 P.2d 196 (Okla. 1980).

6. The City's termination of Jerry Tucker violates 11 O.S. § 51-102(6)(a)(1), (6)(a)(3) and (6)(a)(4).

7. A majority of the Board also concludes that a cease and desist order should issue requiring the City to cease and desist from its unfair labor practice of termination of Jerry Tucker by

reinstating Mr. Tucker forthwith, with credit for lost time, at a rate of pay, and with fringe benefits he would have been entitled to had the City of Hugo not wrongfully discharged him.

Board Member Charles Ellis, concurring in part and dissenting in part with the following separate opinion:

I concur with the findings and conclusions of the Board, but I dissent as to the extent of the remedy ordered on the grounds that the authority of the Board does not extend beyond ordering the City of Hugo to reinstate Mr. Tucker to employment with the Hugo Fire Department.

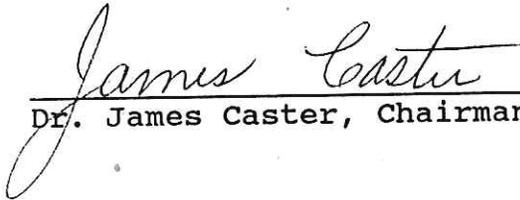


Dr. James Caster, Chairman of the Board

CEASE AND DESIST ORDER

The City of Hugo is hereby ordered, pursuant to 11 O.S. §51-104b (c), and consonant with the Findings of Fact and Conclusions of Law entered herein, to cease and desist from its unfair labor practice of termination of Jerry Tucker by reinstating Mr. Tucker, forthwith, with credit for lost time, at a rate of pay, and with fringe benefits he would have been entitled to had the City not wrongfully discharged him. Furthermore, this Cease and Desist Order shall be posted in a prominent location within the Hugo Fire Department for no less than thirty days after the date of issue.

Dated this 19th day of March, 1991



Dr. James Caster, Chairman of the Board