

**BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD**

**STATE OF OKLAHOMA**

|                          |   |                      |
|--------------------------|---|----------------------|
| ALAN TERRY AND SCOTT     | ) |                      |
| MCQUARTERS,              | ) |                      |
| Complainants,            | ) |                      |
| v.                       | ) | PERB Case No. 00397A |
| TULSA FRATERNAL ORDER OF | ) |                      |
| POLICE, LODGE NO. 93,    | ) |                      |
| Respondent.              | ) |                      |

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

On the 17<sup>th</sup> day of July, 2003, this administrative complaint was heard before the Oklahoma Public Employees Relations Board ("Board"). The Complainants, Alan Terry and Scott McQuarters, ("Employees"), appeared pro se. Respondent, Tulsa Fraternal Order of Police, Lodge No. 93 ("Union"), appeared through its attorney of record, Loren Gibson. The Board, having heard the testimony presented by witnesses, received the briefs and exhibits of the parties, considered oral argument and reviewed the proposed findings of fact and conclusions of law submitted by the parties, issues this Final Order.

**Determination of Proposed Findings of Fact**

The Board is required by 75 O.S. 2001, 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 1-11, 14, 15 17, 18 are substantially adopted by the Board. Complainant's proposed findings of fact 12,13, 16, 19, 20, 21, and 22 are rejected by the Board.
2. Respondent's proposed findings of fact 1-5, 7, 21, 28,29, 31, 32, 40-42, 50, 54, 59, and 62 are substantially adopted by the Board. The remaining proposed findings of fact submitted by Respondent are rejected by the Board.

**Findings of Fact**

1. The Fraternal Order of Police, Lodge 93, is the duly recognized and exclusive bargaining agent for members of the City of Tulsa Police Department ("City").
2. Complainants were at all times relevant to this complaint employees of the City and members of the bargaining

unit represented by the Union.

3. On July 15, 2002, the Employees filed the instant unfair labor practice charge alleging violations of 11 O.S. 2001, 51-102(6b)(1) and (3) based upon breach of the Union's duty of fair representation resulting from its failure to bargain collectively or process grievances on behalf of the Employees in good faith with respect to wages and other working conditions.
4. The Employees were at all times relevant to this complaint classified as Community Service Officers ("CSO") and as such were full-time members of the Tulsa Police Department.
5. The Employees did not receive a general increase in wages, in addition to step increases, and did not receive longevity rate increases for seven years prior to July 1, 2002.
6. During this time period, Employees performed certain, but not all, of the functions within the job responsibilities of Tulsa Police Officers designated by the rank of PD-01 ("PD-01s").
7. At all times during this time period, PD-01s earned higher wages than Employees and received wage increases not afforded Employees as a result of collective bargaining agreements ("CBA") negotiated by Union on behalf of its members.
8. Employees have never qualified for promotion to the rank of PD-01 because they lack the educational requirements required by the City.
9. On July 15, 2001, Employees submitted a written complaint to the Chief of Police regarding their performance of certain PD-01 duties without receiving the higher wages paid by the City to officers assigned this rank.
10. On August 22, 2001, Employees requested the Union to file a grievance on their behalf on the issue of being assigned to perform PD-01 duties and not receiving PD-01 wages.
11. On September 10, 2001, the president of the Union denied this request by Employees and refused to file a grievance for the reason that there was no violation of the CBA as a result of the City's assignment of Employees to perform PD-01 duties and refusal to pay them at the PD-01 wage rate.
12. On June 19, 2002, Employees were transferred by the City to Information and Technical Services Division, effective June 30, 2002.
13. On July 23, 2002, the City received a grievance from Employees dated July 19, 2003, complaining that the transfer was out of classification.
14. On July 24, 2003, the grievance was denied by the president of the Union for the reason that it was not filed

within fifteen calendar days as required in the CBA.

15. On July 25, 2003, the City received a response from Employees arguing that the grievance was filed timely based upon filing within a reasonable time after they became aware of the basis for the grievance.

16. On July 29, 2003, the president of the Union reiterated that the grievance was required to be filed within the 15-day time limitation.

17. The Employees failed to establish that the Union's conduct in failing to negotiate wage increases for CSOs through collective bargaining or refusal to process their grievances was arbitrary, discriminatory, or in bad faith.

### Conclusions of Law

1. This matter is governed by provisions of the Fire and Police Arbitration Act, 11 O.S. 2001 and Supp. 2001, 51-101, *et seq.* ("FPAA"), 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. 2001, 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 a bargaining agent, from engaging in any unfair labor practice. 11 O.S. 2001, 51-104b(A).
5. The Employees, in asserting violations of 11 O.S. 2001, 51-102(6b)(1) and (3), have the burden of proving the allegations of unfair labor practice by a preponderance of the evidence. 11 O.S. 2001, 51-104b(C) and OAC 585:1-7-16.
6. "Unfair labor practice" includes any action by the Union interfering with, restraining, intimidating or coercing employees in the exercise of the rights guaranteed by the 11 O.S. 2001, 51-102(6b)(1).
7. "Unfair labor practice" includes refusal by a union to bargain collectively or discuss grievances in good faith with the proper corporate authorities with respect to any issue coming within the purview of the FPAA.
8. A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).
9. The union's duty of fair representation extends both to the negotiation of the collective bargaining agreement and to its enforcement. *Stone v. Johnson*, 690 P.2d 459, 462 (Okla. 1984).

10. A breach by the union of the duty of fair representation constitutes an unfair labor practice. *Anderson v. Midwest City Fraternal Order of Police, Lodge No. 127*, PERB No. 122 (1986), p. 6.

11. Evidence of the input by members of the bargaining unit into the union's collective bargaining positions, or of the accessibility of the exclusive representative to bargaining unit members may be probative of the fulfillment by the union of its duty of fair representation. *Anderson*, p. 13.

12. The duty of fair representation requires the union to represent all members of the bargaining unit on a non-discriminatory basis in all matters relating to collective bargaining. *Anderson*, p. 13.

### ORDER

The Complaint, filed by the Employees on July 15, 2002, includes allegations of breach of the duty of fair representation by the Union based upon its failure to negotiate a general wage increase or longevity rate increase for the Employees, classified as CSOs, for a period of seven years prior to July 1, 2002.

A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). The Employees are understandably suspicious concerning the reasons for the disparity in pay increases received by PD-01s and CSOs. These suspicions, however, do not constitute evidence necessary to support a finding that the Union acted arbitrarily, discriminatorily or in bad faith. The record is devoid of evidence to support their allegation that the disparity in increases in pay for CSOs was the result of arbitrary, discriminatory, or bad faith conduct toward them as members of the collective bargaining unit.

The Employees also alleged a breach of the duty of fair representation based upon the Union's refusal to process two grievances. On July 15, 2001, Employees submitted a written complaint to the Chief of Police regarding their performance of certain PD-01 duties without receiving the higher wages paid by the City to officers assigned this higher rank. The Employees stipulated that there was no difference recognized in the Tulsa Police Department in the job assignments for CSOs or PD-01s. They also stipulated that PD-01s were required to meet educational requirements beyond the requirements for CSOs. The Union argued that the higher wages for the PD-01s were justified by the additional education requirements. The United States Supreme Court has held that examination of a union's performance on behalf of members of the bargaining unit "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining

responsibilities." The Court concluded, "For that reason, the final product of the bargaining process may constitute evidence of a breach of duty only if it can be fairly characterized as so far outside a 'wide range of reasonableness, " that it is wholly 'irrational' or 'arbitrary.'" *Airline Pilots Association International v. O'Neill*, 499 U.S. 65, 78 (2001). This Board has noted that evidence of the input by members of the bargaining unit into the union's collective bargaining positions, or of the accessibility of the exclusive representative to bargaining unit members may be probative of the fulfillment by the union of its duty of fair representation. *Anderson*, p. 13. However, Employees failed to present any evidence to demonstrate that they made any attempt to provide input to the bargaining agent in regard to the issue of wages for CSOs or the assignment of job responsibilities shared with PD-01s. No evidence was presented to indicate what efforts, if any, the Union had made in past years to negotiate wage increases for CSOs. In sum, Employees failed to present evidence to establish that the Union's refusal to process their grievance complaining of the difference in wages between the CSOs and PD-01s was the result of discriminatory, irrational or arbitrary conduct.

A second grievance was filed by Employees complaining of a transfer to Information and Technical Services Division. On June 19, 2002, Employees were transferred by the City to Information and Technical Services Division, effective June 30, 2002. On July 23, 2002, the City received a grievance from Employees dated July 19, 2003, complaining that the transfer was out of classification. On July 24, 2003, the grievance was denied by the president of the Union for the reason that it was not filed within fifteen calendar days as required in the CBA. On July 25, 2003, the City received a response from Employees arguing that the grievance was filed timely based upon filing within a reasonable time after they became aware of the basis for the grievance. On July 29, 2003, the president of the Union reiterated that the grievance was required to be filed within the 15-day time limitation.

Employees failed to present evidence to substantiate their allegation that the Union's denial of their grievance filed more than 15 days after their transfer constituted a breach of the duty of fair representation.

Based upon the evidence and arguments presented by the parties, the Board finds that the Employees have failed to present sufficient evidence of unfair labor practices by the Union as alleged in the complaint filed herein. Accordingly, the Complaint is hereby dismissed.

Original signed by Craig W. Hoster, Chair

Dated November 13, 2003