BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

Public Employees Relations Board
FILED JUL 23 2007

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 176,	)	
Complainant,	)	
v.	)	Case No. 12415
CITY OF TULSA, OKLAHOMA,	)	
Respondent.	)	

ORDER

This matter came on for hearing before the Public Employees Relations Board (the "Board") on the 12th day of July, 2007, on the Motion for Summary Judgment filed by the Respondent City of Tulsa, Oklahoma (the "City"). The City appeared by and through its attorney, Deirdre O. Dexter. The Complainant International Association of Fire fighters, Local 176 (the "Union" or "IAFF, Local 176") appeared by and through its attorney, Steven R. Hickman.

The Union filed a Petition for Unit Clarification. The Union seeks to include in the unit probationary fire fighters. Attached to its Petition is the Union's description of proposed clarification in which the Union describes one of the fire fighters that the Union is attempting to include in the unit, Jared Hannah. The City moved for summary judgment asking that "judgment be entered in its favor finding that probationary fire fighters are not properly included within the bargaining unit of IAFF, Local 176 . . . ."

Based upon the statements filed in support of and in opposition to the motion, the Board finds that there is no substantial controversy as to the following facts or issues:

1. On July 1, 2004, Jared Hannah was hired by the Tulsa Fire Department and began training as a fire fighter. He graduated from the Tulsa Fire Academy and was assigned to a field

position by the Tulsa Fire Department on October 16, 2004. The City terminated his employment on April 19, 2005, 9 and ½ months after he began work. Union's Fact 1 (undisputed).

2. On May 27, 2005, the Union filed a grievance on behalf of Hannah which was pursued to arbitration. At that time the City claimed that Hannah was a probationary fire fighter and not entitled to "cause" for termination. Complainant's Fact 2 (undisputed).

The Board concludes as a matter of law as follows:

1. The PERB "shall decide in each case before it in which the issue is raised the unit appropriate for the purposes of collective bargaining. . . ." 11 O.S. 2001, § 51-103.D.

2. The Fire and Police Arbitration Act (the "FPAA") applies to "permanent members" of a municipal fire department. 11 O.S. 2001, § 51-101.A, B.

3. "Fire fighters" shall mean "the permanent paid members of any fire department . . . in any municipality within the State of Oklahoma but shall not include . . . the chief of the fire department and an administrative assistant." 11 O.S. 2001, § 51-102.1.

4. "[T]he legislature *did not intend probationary [police] officers to stand in the class of permanent members* of the bargaining unit for invocation of grievance arbitration rights." *Fraternal Order of Police, Lodge 108 v. City of Ardmore*, 44 P.3d 569, 573 (Okla. 2002). "Because of their probationary status, officers serving an initial probationary term lack the full panoply of employment rights enjoyed by those who have completed their initial training period." *Id.*

5. Probationary fire fighters do not stand in the class of permanent members for invocation of grievance arbitration rights until the successful completion of initial training.

6. Jared Hannah completed his initial training as a fire fighter when he graduated from the Tulsa Fire Academy.

7. When Jared Hannah completed his initial training, was assigned to a field position on October 16th, 2004, and began performing essential functions of fire suppression, prevention and life safety duties, he became a 'permanent member' of the Tulsa Fire Department.

8. "Summary judgment is appropriate only where it appears that there is no substantial controversy as to any material fact and that one party is entitled to judgment as a matter of law." *Post Oak Oil Co. v. Stack & Barnes, P.C.,* 913 P.2d 1311, 1313 (Okla. 1996).

9. Issues of material fact exist as to which remaining Tulsa fire fighters are "permanent members" of the Tulsa Fire Department and are therefore included in the unit. As a result, the City's motion for summary judgment is denied.

10. If the parties are unable to agree as to which remaining fire fighters are included in the unit given the Board's finding as to Jared Hannah, they may request an evidentiary hearing.

Dated: 7/23/2007

Larry W. Gooch, Member
Public Employees Relations Board

Linda Samuel-Jaha, Member
Public Employees Relations Bo

Chair Craig W. Hoster recused.