

PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

In Re: PETITION OF THE)
) NO. 12293 FRM
CITY OF BETHANY, OKLAHOMA,)

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER DISMISSING PETITION

This matter comes on for decision by the Public Employees Relations Board ("PERB" or "the Board") on the Motion to Dismiss and Brief in Support filed by the Respondent, Local 2085, International Association of Firefighters ("Local 2085" or "the Incumbent"). The Petitioner, City of Bethany, has filed a Response and supporting brief. A competing labor organization named in the City's Petition, the Bethany Firefighters Association ("BFA" or "the Challenger"), has not made a written submission on the issues raised in the Motion to Dismiss. Having reviewed the Petition filed by the City, the written submittals of the parties, and taking official notice of other judicial and administrative proceedings as noted below, it is recommended that the Board enter the following Findings of Fact, Conclusions of Law, and Order Dismissing Petition.

PROPOSED FINDINGS OF FACT

1. On February 1, 1989, the City of Bethany filed a representation petition pursuant to 11 O.S. 1981, § 51-103(B)(2) (all statutory references hereinafter are to Title 11 unless otherwise noted) alleging that "one or more labor

organizations has presented to it a claim to be recognized as the exclusive employee representative." Idem.

2. The competing labor organizations are Local 2085, presently certified by PERB as the bargaining agent for Bethany firefighters, and the BFA.

3. These same labor organizations are involved in a representation contest presently pending before the Board in Case No. 12282FF.

4. Any further proceedings by PERB in Case No. 12282F are stayed pursuant to a Stipulation entered into by the competing labor organizations in Supreme Court Case No. 71,068, styled Fred Moore, IAFF Local 2085 v. The Honorable Joe R. Cannon.

5. The Supreme Court order referred to in Proposed Finding of Fact No. 4 also recognizes the continuing efficacy of a temporary restraining order, prohibiting bargaining between the City and Local 2085, entered by the District Court for Oklahoma County in litigation between and among these same parties in Case No. CJ-88-4481, styled Howard Cavins, Bethany Firefighters Assn. v. PERB.

PROPOSED CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and the subject matter of this unit certification petition.

2. The Board may take official notice of judicial and administrative actions of other proceedings involving the same parties. 75 O.S. 1981, §§ 309(e)(3) and (g). The Board

takes official notice of the proceedings in PERB Case No. 12282FF, Case No. CJ-88-4481 in the District Court of Oklahoma County, Oklahoma, and Case No. 71,068 in the Supreme Court of the State of Oklahoma.

3. The Board concludes that the City is precluded from bargaining with Local 2085 by virtue of the Peremptory Writ of Mandamus and Temporary Restraining Order (TRO) entered by the District Court in Case No. CJ-88-4481. Failure by the City to bargain with Local 2085 for so long as the TRO is effective cannot be an unfair labor practice.

4. The City's duty to bargain in good faith extends only to the "designated bargaining agent." Section 51-102(6a)(5). The "designated" bargaining agent is the exclusive bargaining agent certified by the Board for purposes of identifying the labor organization with which a municipal employer must bargain. Section 51-103(E). The Board-certified exclusive representative at this time is Local 2085.

5. Bargaining with individuals or organizations other than the exclusive representative is an unfair labor practice under §§ 51-102(6a)(1), (2), (3), and (5).

6. Local 2085 and the BFA are precluded, by virtue of the Stipulation in Supreme Court Case No. 71,068, from participating in representation proceedings before this Board.

7. Permitting certification proceedings to go forward simply because a new petition has been filed, when the competing labor organizations are barred from participating in election proceedings brought by virtue of the earlier petition, would place the Board in the position of furthering indirectly that which may not lawfully be done directly.

8. The Board's inability to conduct a representation election at this time is the direct result of the actions, in parallel judicial proceedings, of the BFA and Local 2085 rather than an unwillingness by the Board to perform its statutory duties to resolve the issues in this dispute.

Respectfully submitted,



NED BASTOW
ASSISTANT ATTORNEY GENERAL
CHIEF, GENERAL COUNSEL DIVISION
COUNSEL to the PUBLIC
EMPLOYEES RELATIONS BOARD

:ds