

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1356

BY: STOTTLEMYRE

AS INTRODUCED

AN ACT RELATING TO CITIES AND TOWNS; AMENDING 11 O.S. 1981, SECTION 51-102, WHICH RELATES TO DEFINITIONS; MODIFYING DEFINITION; AMENDING SECTION 1, CHAPTER 148, O.S.L. 1985 (11 O.S. SUPP. 1990, SECTION 51-104B), WHICH RELATES TO UNFAIR LABOR PRACTICES; AUTHORIZING THE PUBLIC EMPLOYEES RELATIONS BOARD TO ORDER CERTAIN REINSTATEMENT OF EMPLOYEES; AMENDING 11 O.S. 1981, SECTION 51-108, AS AMENDED BY SECTION 3, CHAPTER 148, O.S.L. 1985 (11 O.S. SUPP. 1990, SECTION 51-108), WHICH RELATES TO HEARINGS AND OPINIONS OF SUCH BOARD; PROVIDING THE FINDINGS AND RECOMMENDATIONS OF BOARD BE FINAL AND BINDING; PROVIDING FOR POWERS OF THE DISTRICT COURT CONCERNING CERTAIN AWARDS; LIMITING CERTAIN RIGHTS OF REVIEW AND APPEAL; LIMITING THE USE OF CERTAIN BARGAINING PROCEDURES; PROVIDING THE AWARD OF ARBITRATOR BE FINAL AND BINDING; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1981, Section 51-102, is amended to read as follows:

Section 51-102. As used in this article, unless the context requires a different interpretation:

1. "Fire fighters and police officers" shall mean the permanent paid members of any fire department or police department in any municipality within the State of Oklahoma but shall not include the chief of police and an administrative assistant and the chief of the fire department and an administrative assistant. The administrative assistant shall be that person so designated by the chief of the police department. In any police or fire department with less than five (5) fire fighters or police officers, excluding the chief of the department, there shall be no requirement to name an administrative assistant. "Police officers" as used herein shall be those persons as defined in Section 50-101 of this title.

2. "Corporate authorities" means the proper officials, singly or collectively, within any municipality whose duty or duties it is to establish the wages, salaries, rates of pay, hours, working conditions and other terms and conditions of employment of fire fighters or police officers, whether they be the mayor, city manager, town manager, town administrator, city council, town council, director of personnel, personnel board or commission, or by whatever other name the same may be designated, or any combination thereof. It is not the intent of this paragraph that the above-named officials shall in any way be exclusive or limiting.

3. "Strike" shall mean the concerted failure to report for duty, the wilful absence from one's position, unauthorized holidays, sickness unsubstantiated by a physician's statement, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment.

Nothing contained in this article shall be construed to limit, impair or affect the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same does not interfere with the full, faithful and proper performance of the duties of employment.

4. "Bargaining agent" shall mean any lawful association, fraternal organization, labor organization, federation or council having as one of its purposes the improvement of wages, hours and other conditions of employment among employees of fire and police departments.

5. "Collective bargaining" shall mean the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process; to confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder; and to execute a written contract incorporating any agreement reached if requested by either party. Such obligation shall not, however, compel either party to agree to a proposal or require the making of a concession.

6. "Unfair labor practices" for the purpose of this article shall be deemed to include but not be limited to the following acts and conduct:

6a. Action by corporate authorities:

(1) interfering with, restraining, intimidating or coercing employees in the exercise of the rights guaranteed them by this article;

(2) dominating or interfering with the formation, existence or administration of any employee organization or bargaining agent;

(3) interfering in any manner whatsoever with the process of selection by fire fighters or police officers of their respective bargaining agents or attempting to influence, coerce or intimidate individuals in such selection;

(4) discharging or otherwise disciplining or discriminating against a police officer or fire fighter because he has signed or filed any affidavit, petition or complaint or has given any information or testimony under this article or because of his election to be represented by the bargaining agent;

(5) 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 this article; or

(6) instituting or attempting to institute a lockout.

6b. Action by bargaining agent:

(1) interfering with, restraining, intimidating or coercing employees in the exercise of the rights guaranteed them by this article;

(2) interfering with or attempting to coerce the corporate authorities in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances; or

(3) refusing to bargain collectively or discuss grievances in good faith with the proper corporate authorities with respect to any issue coming within the purview of this article.

7. "Board" shall mean the Public Employees Relations Board.

SECTION 2. AMENDATORY Section 1, Chapter 148, O.S.L. 1985 (11 O.S. Supp. 1990, Section 51-104b), is amended to read as follows:

Section 51-104b. A. The Public Employees Relations Board is empowered, as hereinafter provided, to prevent any person, including bargaining agent and corporate authorities, from engaging in any unfair labor practice as defined herein.

B. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board shall have the power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board, at a place therein fixed, not less than five (5) days after the serving of said complaint. The person so complained of shall have the right to file an answer and to appear and give testimony at the time and place fixed in the complaint. In the discretion of the Board, any other person may be allowed to intervene in such proceeding.

C. If upon the preponderance of the testimony taken the Board shall be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and may order the person to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this section. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person served in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the complaint.

D. The Board, or any interested party, shall have the power to petition the district court, wherein the unfair labor practice in

question occurred, for the enforcement of such order and for appropriate temporary relief of restraining order.

SECTION 3. AMENDATORY 11 O.S. 1981, Section 51-108, as amended by Section 3, Chapter 148, O.S.L. 1985 (11 O.S. Supp. 1990, Section 51-108), is amended to read as follows:

Section 51-108. The arbitration board acting through its chairman shall call a hearing to be held within ten (10) days after the date of the appointment of the chairman and shall, acting through its chairman, give at least seven (7) days' notice in writing to each of the other two arbitrators, the bargaining agent and the corporate authorities of the time and place of such hearing. The hearing shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to the issues presented to them for determination. A hearing shall be concluded within twenty (20) days from the time of commencement. Within ten (10) days after the conclusion of the hearing, the arbitrators shall issue a written opinion containing findings and recommendations with respect to the issues presented. A copy of said opinion shall be mailed or otherwise delivered to the bargaining agent and the corporate authorities. ~~The corporate authorities are authorized, but not required, to adopt the majority opinion of the arbitrators and if adopted the agreement shall be binding upon the bargaining agent and the corporate authorities. Provided, however, if the majority opinion of the arbitrators is not adopted, the corporate authorities shall be required to resume the collective bargaining process as provided in Section 51-105 of this title~~ The findings

and recommendations of the arbitration board shall be final and binding on the parties.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-114 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. In any proceeding in the district court concerning a collective bargaining agreement or arbitration, the district court shall award reasonable attorney's fees to the prevailing party as part of the costs of said action.

B. In any proceeding in the district court concerning an order of the Public Employees Relations Board, the district court, in its discretion, may allow reasonable attorney's fees to the prevailing party as part of the costs of said action.

C. This section shall not be construed to enlarge or grant any right of review or appeal not already provided for under existing law.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-115 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The arbitration procedure provided for in Sections 51-107 through 51-111 of Title 11 of the Oklahoma Statutes shall be used at the request of either party in the following situations:

1. Discipline or discharge of a fire fighter or police officer where there is a certified bargaining agent but no existing agreement.

2. To determine violations of subparagraph a of paragraph 6 of Section 51-102 of Title 11 of the Oklahoma Statutes where there is no certified bargaining agent.

B. The arbitrator's award in the foregoing sections shall be final and binding on the parties.

SECTION 6. This act shall become effective July 1, 1991.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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