

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 547

BY: LONG (Lewis)

AS INTRODUCED

AN ACT RELATING TO CITIES AND TOWNS; AMENDING 11 O.S.

1981, SECTIONS 51-101 AND 51-102, WHICH RELATE TO
FIRE AND POLICE ARBITRATION AND DEFINITIONS;
DENYING CERTAIN MUNICIPAL EMPLOYEES THE RIGHT TO
STRIKE; CONFORMING LANGUAGE; PROHIBITING DISCHARGE
FROM OR DENIAL OF EMPLOYMENT BY MUNICIPALITIES FOR
CERTAIN REASONS; INCLUDING EXPANDING AND MODIFYING
DEFINITIONS; DEFINING TERM; DECLARING PUBLIC
POLICY; EXTENDING AND DENYING CERTAIN RIGHTS TO
CERTAIN MUNICIPAL EMPLOYEES; PROVIDING FOR
RETENTION OF CERTAIN RIGHTS; PROVIDING FOR
DETERMINATION OF VIOLATIONS UPON REQUEST AND
PROVIDING FOR PROCEEDINGS AND PROCEDURES; PROVIDING
FOR APPEAL TO DISTRICT COURT FOR LIMITED PURPOSE;
ESTABLISHING METHOD OF ARBITRATION; DECLARING
LEGISLATIVE INTENT; AUTHORIZING COLLECTIVE
BARGAINING BY MUNICIPAL EMPLOYEES FOR CERTAIN
PURPOSES; PROVIDING FOR PETITIONS FOR DECLARATION
OF BARGAINING AGENT; PROVIDING FOR NOTICE AND
HEARING; PROVIDING FOR ELECTIONS FOR BARGAINING
AGENT; PROVIDING POWERS OF PUBLIC EMPLOYEES

RELATIONS BOARD; LIMITING COLLECTIVE BARGAINING AGENTS WHICH MAY BE ON BALLOT; AUTHORIZING WAIVER OF CERTAIN HEARING ON STIPULATION; STATING FACTORS TO BE CONSIDERED; LIMITING ELECTIONS DURING CERTAIN PERIOD; PROVIDING FOR DETERMINATION OF ELIGIBILITY TO VOTE; REQUIRING CERTIFICATION OF ELECTION; REQUIRING GOOD FAITH BARGAINING; LIMITING TERM OF COLLECTIVE BARGAINING AGREEMENT; PROVIDING FOR COLLECTIVE BARGAINING CONFERENCES; REQUIRING ARBITRATION UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR SELECTION OF ARBITRATORS; PROVIDING FOR ARBITRATION BOARD HEARING; REQUIRING CERTAIN WRITTEN NOTICES; ESTABLISHING POWERS AND DUTIES OF ARBITRATORS; LISTING FACTORS TO BE CONSIDERED BY ARBITRATION BOARD; PROVIDING FOR FEES OF ARBITRATORS; REQUIRING INCLUSION OF CERTAIN TERMS, CONDITIONS AND OTHER MATTERS IN COLLECTIVE BARGAINING AGREEMENTS; REQUIRING CERTAIN NOTICE OF DEMAND FOR COLLECTIVE BARGAINING PRIOR TO CERTAIN TIME; REQUIRING RECOGNITION OF CERTAIN BARGAINING AGENTS UNDER CERTAIN CONDITIONS; REQUIRING RECOGNITION OF CERTAIN AGREEMENTS; PROVIDING FOR PAYROLL DEDUCTIONS FOR CERTAIN DUES; PROVIDING CRIMINAL AND OTHER PENALTIES; AND PROVIDING FOR CODIFICATION.

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

SECTION 1. AMENDATORY 11 O.S. 1981, Section 51-101, is amended to read as follows:

Section 51-101. A. The protection of the public health, safety and welfare demands that the municipal employees, the permanent members of any paid fire department ~~or~~ and the permanent members of any paid police department in any municipality not be accorded the right to strike or engage in any work stoppage or slowdown. This necessary prohibition does not, however, require the denial to such employees of other well-recognized rights of labor such as the right to organize, to be represented by a collective bargaining representative of their choice and the right to bargain collectively concerning wages, hours and other terms and conditions of employment; and such employees shall also have the right to refrain from any and all such activities.

B. It is declared to be the public policy of this state to accord ~~to~~ municipal employees, the permanent members of any paid fire department ~~or~~ and the permanent members of any paid police department in any municipality all of the rights of labor, other than the right to strike or to engage in any work stoppage or slowdown. Nothing in this article shall constitute a grant of the right to strike to firefighters or police officers of any municipality and such strikes are hereby prohibited. Notwithstanding the provisions of any other law, any person holding such a position who, by concerted action with others and without the lawful approval of his superior, wilfully absents himself from his position or abstains in whole or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing or coercing a change in the conditions or compensation, or the rights, privileges or obligations of employment shall be deemed to be on strike but the person, upon request, shall be entitled to a determination as to whether he did violate the provisions of this article. The request shall be filed in writing with the officer or body having the power to remove or discipline such employee within ten (10) days after regular compensation of such employee has ceased

or other discipline has been imposed. In the event of such request, the officer or body shall within ten (10) days after the receipt of such request commence a proceeding for the determination of whether the provisions of this article have been violated by the public employee, in accordance with the law and regulations appropriate to a proceeding to remove the public employee. The proceedings shall be undertaken without unnecessary delay. The decision of the proceeding shall be made within ten (10) days following the conclusion of said hearing. If the employee involved is held to have violated this article and his employment terminated or other discipline imposed, he shall have the right of review to the district court having jurisdiction of the parties, within thirty (30) days from such decision, for determination whether such decision is supported by competent, material and substantial evidence on the whole record. To provide for the exercise of these rights, a method of arbitration of disputes is hereby established.

C. It is declared to be the public policy of the State of Oklahoma that no person shall be discharged from or denied employment ~~as a member of any paid fire department or police department in~~ by any municipality of this state by reason of membership or nonmembership in, or the payment or nonpayment of any dues, fees or other charges to, an organization of such members for collective bargaining purposes as herein contemplated.

D. The establishment of this method of arbitration shall not, however, in any way whatever, be deemed to be a recognition by the state of compulsory arbitration as a superior method of settling labor disputes between employees who possess the right to strike and their employers, but rather shall be deemed to be a recognition solely of the necessity to provide some alternative procedure for settling disputes where employees must, as a matter of public policy, be denied the usual right to strike.

SECTION 2. 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. "Firefighters and police officers" ~~shall mean~~ means 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. "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 firefighters or police officers or municipal employees, 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 municipal employees and 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~~ bargain 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 firefighters or police officers or municipal employees 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 or municipal employee 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.

8. "Municipal employee" means a permanent paid employee of any municipality in this state with a population of at least thirty-five

thousand (35,000) persons, except as otherwise provided in Section 3 of this act. Municipal employee shall not include:

- a. agency, division or department heads and their first assistants;
- b. supervisors of any department;
- c. corporate authorities;
- d. firefighters;
- e. police officers;
- f. municipal judges; and
- g. municipal court clerks.

SECTION 3. 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. It is declared to be the public policy of this state to accord to the permanent municipal employees of any department in any municipality of at least thirty-five (35,000) persons all of the rights of labor, other than the right to strike or to engage in any work stoppage or slowdown; provided, however, any municipality in this state with a population of less than thirty-five thousand (35,000) persons, which on the effective date of this act is represented by a collective bargaining representative, or is involved in collective bargaining, shall continue to retain such rights and continue to recognize the bargaining agent. Nothing in this article shall constitute a grant of the right to strike to any municipal employee and such strikes are hereby prohibited.

B. Unless otherwise provided by law, any person holding such a position who, by concerted action with others and without the lawful approval of a superior, willfully absents himself from his position or abstains in whole or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing or coercing a change in the conditions or compensation, or the rights, privileges or obligations of employment shall be entitled to

a determination of whether or not the provisions of this article were violated. The request shall be filed in writing with the official or body having the power to remove or discipline such employee within ten (10) days after regular compensation of such employee has ceased or other discipline has been imposed. The official or body shall, within ten (10) days after the receipt of a request, commence a proceeding for the determination of whether the provisions of this article have been violated by the municipal employee, in accordance with the law and regulations appropriate to a proceeding to remove the municipal employee. The proceedings shall be undertaken without unnecessary delay. The decision of the proceeding shall be made within ten (10) days following the conclusion of said hearing. If the employee involved is held to have violated this article and employment is terminated or other discipline imposed, the employee shall have the right to appeal to the district court having jurisdiction of the parties, within thirty (30) days from the date a decision is rendered, for determination whether such decision is supported by competent, material and substantial evidence on the whole record.

C. To provide for the exercise of these rights, a method of arbitration of disputes is hereby established. The establishment of this method of arbitration shall not, in any way whatever, be deemed to be a recognition by the state of compulsory arbitration as a superior method of settling labor disputes between employees who possess the right to strike and their employers, but rather shall be deemed to be a recognition solely of the necessity to provide some alternative procedure for settling disputes where employees must, as a matter of public policy, be denied the usual right to strike.

SECTION 4. 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. Municipal employees in any municipality shall have the separate right to bargain collectively with their municipality and to be represented by an exclusive bargaining agent in such collective bargaining with respect to wages, salaries, hours, rates of pay, grievances, working conditions and all other terms and conditions of employment.

B. Whenever, as to regulations that may be prescribed by the Public Employees Relations Board, a petition is filed by:

1. A labor organization alleging that thirty percent (30%) of the municipal employees in a municipality:

- a. wishing to be represented for collective bargaining by an exclusive employee representative, or
- b. asserting that the designated exclusive employee representative is no longer the representative of the majority of employees in the unit; or

2. The employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive municipal employee representative in an appropriate unit; the Board shall investigate the facts alleged therein and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. The Board may also certify a labor organization as an exclusive municipal employee representative if it determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices.

C. Only those labor organizations which have been designated by more than ten percent (10%) of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section shall be construed to prohibit the waiving of hearing by stipulation

for the purpose of a consent election, in conformity with the rules and regulations of the Board.

D. In order to assure municipal employees the fullest freedom in exercising the rights guaranteed by this article, the board shall decide in each case before it in which the issue is raised the unit appropriate for the purposes of collective bargaining, and shall consider such facts as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees.

E. An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. The Board shall determine who is eligible to vote in the election and shall establish rules governing the election. In any election where none of the choices on the ballot receives a majority, but a majority of all votes cast are for representation by some labor organizations, a run-off election shall be conducted. A labor organization which receives the majority of the votes cast in an election shall be certified by the Board as the exclusive municipal employee representative.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-116 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. It shall be the obligation of the municipality, acting through its corporate authorities, to meet at reasonable times and bargain in good faith with the representatives of the municipal employees within ten (10) days after receipt of written notice from said bargaining agent requesting a meeting for collective bargaining purposes. The obligation shall include the duty to cause any collective bargaining agreement resulting from negotiations to be reduced to a written agreement, the term of which shall not exceed three (3) years; provided, any such agreement shall continue from

year to year and be automatically extended for one-year terms unless written notice of request for bargaining is given by either the municipal authorities or the bargaining agent of the municipal employees at least thirty (30) days before the anniversary date of such negotiated agreement. Within ten (10) days of receipt of such notice by the other party, a conference shall be scheduled for the purposes of collective bargaining, and until a new agreement is reached, the currently existing written agreement shall not expire and shall continue in full force and effect.

B. In the event that the bargaining agent and the corporate authorities are unable, within thirty (30) days from and including the date of the first meeting, to reach an agreement on a contract, any and all unresolved issues shall be submitted to arbitration, upon request of either party.

C. Within five (5) days from the date of the request for arbitration referred to in subsection B of this section, the bargaining agent and the corporate authorities shall each select and name one arbitrator and shall immediately thereafter notify each other in writing of the name and address of the person so selected. The two arbitrators so selected and named shall, within five (5) days from and after the expiration of the five-day period hereinabove mentioned agree upon and select a third arbitrator. If, after the expiration of the period, the arbitrators are unable to agree upon the selection of a third arbitrator, the bargaining agent and the corporate authorities shall request the Federal Mediation and Conciliation Service to provide a list of arbitrators of five arbitrators. Within five (5) days after receipt of the list of arbitrators from the Federal Mediation and Conciliation Service, the two arbitrators already selected shall alternately strike the name of one arbitrator from the list of five until one name remains, with the employer making the first strike from said list. The arbitrator, whether selected as a result of an agreement between the

two arbitrators previously selected or selected from the list provided by the federal Mediation and Conciliation Service, shall act as chairman of the arbitration board.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-117 of Title 11, unless there is created a duplication in numbering, reads as follows:

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 of 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. Provided that both the corporate authorities, and the exclusive representative adopt the majority opinion of the arbitrators, the opinion shall constitute an agreement and shall be binding upon the exclusive representative 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 subsection A of Section 4 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-118 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The arbitrators shall conduct the hearings and render their decision upon the basis of a prompt, peaceful and just settlement of all submitted disputes between the municipal employees and the corporate authorities. The factors, among others, to be given weight by the arbitrators in arriving at a decision shall include:

1. Comparison of wage rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the municipal department in question with prevailing wage rates or hourly conditions of employment of skilled employees of the building trades and industry in the local operating area involved:

2. Comparison of wage rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the municipal department in question with wage rates or hourly conditions of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved;

3. Comparison of wage rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the municipal department in question with wage rates or hourly conditions of employment of municipal departments in cities, towns or other political subdivisions of comparable size and economic status both within and without the State of Oklahoma;

4. Interest and welfare of the public and revenues available to the municipality;

5. Comparison of peculiarities of employment in regard to other trades or professions, including specifically:

a. hazards of employment,

- b. physical qualifications,
- c. educational qualification,
- d. mental qualifications, and
- e. job training and skills.

B. Fees and necessary expenses of the arbitrator selected by the bargaining agent and the arbitrator selected by the corporate authorities shall be borne by the exclusive bargaining agent and the corporate authorities respectively. The reasonable fees and necessary expenses of the third arbitrator shall be borne equally by the bargaining agent and corporate authorities.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-119 of Title 11, unless there is created a duplication in numbering, reads as follows:

Any agreement actually negotiated between the bargaining agent and the corporate authorities either before or within thirty (30) days after arbitration shall constitute the collective bargaining contract governing municipal employees in the municipality for the period stated therein; provided, that such period shall not exceed three (3) years. Any collective bargaining agreement negotiated under the terms and provisions of this article shall specifically provide that the municipal employees who are subject to its terms shall have no right to engage in any work stoppage, slowdown or strike, the consideration for such provision being the right to a resolution of disputed questions. All written rules, regulations, fiscal procedures, working conditions, departmental practices and manner of conducting the operation and administration of municipal departments currently in effect on the effective date of any negotiated agreement shall be deemed a part of said agreement unless and except as modified or changed by the specific terms of such agreement. Every such agreement shall contain a clause establishing binding arbitration procedures for the immediate and speedy resolution and determination of any dispute which may arise

involving the interpretation or application of any of the provisions of such agreement or the actions of any of the parties thereunder. In the absence of such negotiated procedure such dispute may be submitted to binding arbitration in accordance with the provisions of Sections 5 through 7 of this act, except that the arbitration board shall be convened within then (10) days after demand therefor by the bargaining agent upon the corporate authority or authorities. In such case the arbitration board's determination shall be final and binding.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-120 of Title 11, unless there is created a duplication in numbering, reads as follows:

When wages, rates of pay or any other matters requiring appropriation of moneys by any municipality are included as matters of collective bargaining conducted under the provisions of this article, it is the obligation of the bargaining agent to serve written notice of request for collective bargaining on the corporate authorities at least one hundred twenty (120) days before the last day on which moneys can be appropriated by the municipality to cover the contract period which is the subject of the collective bargaining procedure.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-121 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Existing Collective Bargaining Units. To preserve the rights of municipalities and exclusive representatives established prior to the effective date of this act, the bargaining units covered by such relationships shall continue to be recognized as appropriate for the purposes of this act.

B. Existing Collective Bargaining Agreements. Nothing in this act shall be construed to annul or modify any collective bargaining agreement entered into between any municipality and any exclusive

representative prior to the effective date of this Act. any collective bargaining agreement entered into between any municipality and any exclusive representative prior to the effective date of this act shall be continued.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-122 of Title 11, unless there is created a duplication in numbering, reads as follows:

Upon certification, the exclusive representative shall be entitled to receive, through payroll deduction, dues from any employee in the bargaining unit who has authorized the municipality, in writing, to withhold and pay over the dues to the exclusive representative. The amount of the dues shall be certified in writing by an official of the exclusive representative. The amount of the dues shall be certified in writing by an official of the exclusive representative and shall not include special assessments, penalties, or fines of any type. The duty of the municipality to honor payroll deductions shall continue until the authorization is revoked in writing by the employee and for so long as the exclusive representative is certified. During the period that a board certification is in effect for a particular bargaining unit, the municipality shall not deduct dues for any other labor organization.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51-123 of Title 11, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any collective bargaining representative or member of a municipal department to strike or engage in any work stoppage; and it shall further be unlawful for any official, executive, administrator, manager, or member of a governing body exercising the authority to fix and determine the salaries, hours of work, and employment conditions of any department of a municipality in this state to fail to bargain in good faith in accordance with the provisions of this article. Any person

convicted of violating the provisions of this article shall be guilty of a misdemeanor punishable by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00) for such offense, and each day during which such violation occurs or continues shall constitute a separate offense. Any such conviction shall be grounds for immediate dismissal from municipal employment, for any person so employed.

SECTION 13. 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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