

SHORT TITLE: Authorizing collective bargaining for municipal employees; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 145

By: Leftwich

AS INTRODUCED

An Act relating to collective bargaining; amending 11 O.S. 1991, Sections 51-101, 51-102, 51-103, 51-105, 51-109, 51-110, 51-111 and 51-113, which relate to fire and police arbitration; prohibiting municipal employees from striking; specifying certain labor rights for municipal employees; modifying and expanding definitions; authorizing collective bargaining for municipal employees; requiring arbitration board's decision be binding; providing for penalty; authorizing municipalities and exclusive representatives to continue certain relationship; prohibiting certain construction; providing for continuation of certain agreements; authorizing exclusive representative to receive certain dues through payroll deduction; requiring the amount of dues be certified in writing by certain official; prohibiting certain fines from being included in dues; authorizing continuation of certain payroll deduction unless revoked in writing; prohibiting deduction of dues under certain circumstances; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 1991, 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, 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 or municipal employees 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~~ the superior, is willfully ~~absents himself~~ absent from ~~his~~ the 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 person violated 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 is terminated or other discipline imposed, ~~he~~ the employee 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~~ or municipal department 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. 1991, 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~~ means the concerted failure to report for duty, the willful 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.~~ "Employee organization" means the organization that exists for the purpose, in whole or in part, of dealing with the public employer concerning wages, hours and other terms and conditions of employment, including the settlement of grievances;

5. "Exclusive representative" means the employee organization, which as a result of certification by a board, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit. The term "exclusive representative" and the terms "exclusive collective bargaining agent", "exclusive municipal employee representative" and "exclusive employee representative" shall all have the same meaning for purposes of this act and these are used interchangeably in this act;

~~5.~~ 6. "Collective bargaining" shall mean the performance of the mutual obligation of the municipal employer or ~~his~~ the designated representatives of the municipal employer 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.~~ 7. "Unfair labor practices" for the purpose of this article shall be deemed to include but not be limited to the following acts and conduct:

~~6~~ a. 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~~ firefighter or municipal employee ~~because he that~~ has signed or filed any affidavit, petition or complaint or has given any information or testimony under this article or ~~because of his election~~ for electing 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.

- 6 b. Action by bargaining agent:
- (1) interfering with, restraining, intimidating or coercing employees in the exercise of the rights guaranteed them by this article~~7~~,
 - (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~~7~~ 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~~;

~~7~~ 8. "Board" shall mean the Public Employees Relations Board; and

9. "Municipal employee" means a permanent paid employee of any municipality in this state with a population of at least twenty-five thousand (25,000) persons, and shall also include a permanent paid employee of any municipality which, on the effective date of this act, has recognized or is engaged in collective bargaining with a representative of its employees, in which case, such municipality shall continue to recognize the representative of its employees and such employee shall continue to be accorded the rights of municipal employees pursuant to this act, without regard to the population of the municipality that employs them. Municipal employees shall not include:

- a. agency, division or department heads and their first assistant,
- b. firefighters,
- c. police officers, or
- d. municipal judges.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 51-103, is amended to read as follows:

Section 51-103. A. Firefighters, ~~and~~ police officers and municipal employees in any municipality shall have the separate right to bargain collectively with their municipality and to be represented by a 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, conformable to regulations that may be prescribed by the Public Employees Relations Board, herein created, a petition is filed by:

1. A labor organization alleging that thirty percent (30%) of the firefighters ~~or~~, police officers or municipal employees in an appropriate unit in a municipality:

- a. wish to be represented for collective bargaining by an exclusive employee representative, or
- b. assert 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 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 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 to firefighters ~~and~~, police officers ~~of any municipality~~ and 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 factors 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 organization, 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 employee representative.

SECTION 4. AMENDATORY 11 O.S. 1991, Section 51-105, is amended to read as follows:

Section 51-105. It shall be the obligation of the municipality, acting through its corporate authorities, to meet at reasonable times and ~~confer~~ bargain in good faith with the representatives of the firefighters ~~or~~, police officers or 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 one (1) year; 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 firefighters ~~or~~, police officers or 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.

SECTION 5. AMENDATORY 11 O.S. 1991, Section 51-109, is amended to read as follows:

Section 51-109. 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 firefighters ~~or~~, police officers or 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 fire department ~~or~~, police department or 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 fire department ~~or~~, police department or 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 fire department ~~or~~, police department or municipal department in question with wage rates or hourly conditions of employment of fire departments ~~or~~, police departments or 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; or

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

- a. hazards of employment,
- b. physical qualifications,
- c. educational qualifications,
- d. mental qualifications, and
- e. job training and skills.

SECTION 6. AMENDATORY 11 O.S. 1991, Section 51-110, is amended to read as follows:

Section 51-110. 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 bargaining agent and the corporate authorities respectively. The reasonable fees and necessary expenses of the third arbitrator shall be borne equally by the exclusive bargaining agent and corporate authorities.

SECTION 7. AMENDATORY 11 O.S. 1991, Section 51-111, is amended to read as follows:

Section 51-111. 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 firefighters ~~or~~, police

officers or municipal employees in the municipality for the period stated therein; provided that such period shall not exceed one (1) year. Any collective bargaining agreement negotiated under the terms and provisions of this article shall specifically provide that the firefighters ~~or~~, police officers or 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 rules, ~~regulations~~, fiscal procedures, working conditions, departmental practices and manner of conducting the operation and administration of fire departments ~~and~~, police departments or 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 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 arbitration in accordance with the provisions of Sections 51-107 through 51-110 of this title, except that the arbitration board shall be convened within ten (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 8. AMENDATORY 11 O.S. 1991, Section 51-113, is amended to read as follows:

Section 51-113. It shall be unlawful for any collective bargaining representative or member of a paid fire department ~~or~~, police department or 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 paid fire ~~or~~, police or municipal department of a municipality in this state to fail to bargain in good faith in accordance with the provisions of this article. Any person or persons guilty of violating the provisions of this article shall be ~~fined~~ guilty of a misdemeanor punishable by a fine 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, and any such conviction shall be grounds for immediate dismissal from public employment, for any persons so employed.

SECTION 9. 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. 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. 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 10. 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:

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 remit the dues to 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 as 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 11. This act shall become effective November 1, 1995.

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