

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 826

By: Holt of the Senate

and

6 Martin (Scott) of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to municipal arbitration; amending 11
12 O.S. 2001, Sections 51-104, as last amended by
13 Section 1, Chapter 16, O.S.L. 2008, 51-107, 51-108,
14 as amended by Section 1, Chapter 126, O.S.L. 2004 and
15 51-109 (11 O.S. Supp. 2010, Sections 51-104 and 51-
16 108), which relate to fire fighters and police
17 collective bargaining; modifying membership and terms
18 of office for Public Employees Relations Board;
19 amending arbitration procedures; modifying procedure
20 for selection of third arbitrator; providing for
21 certification and eligibility of certain arbitrators;
22 prohibiting selection of certain persons as third
23 arbitrator; modifying certain notice and procedural
24 processes for arbitration; providing for hearing and
presentation of evidence; stating time periods for
commencement of hearing and reporting opinions;
modifying procedure if no agreement is reached; and
modifying factors to be considered by arbitrators.

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

2 SECTION 1. AMENDATORY 11 O.S. 2001, Section 51-104, as
3 last amended by Section 1, Chapter 16, O.S.L. 2008 (11 O.S. Supp.
4 2010, Section 51-104), is amended to read as follows:

5 Section 51-104. A. There is hereby re-created, to continue
6 until July 1, ~~2012~~ 2016, in accordance with the provisions of the
7 Oklahoma Sunset Law, ~~Section 3901 et seq. of Title 74,~~ the Public
8 Employees Relations Board, which shall be composed of ~~three (3)~~ five
9 (5) members: one appointed by the Governor, one of whom shall be an
10 impartial appointment and designated as ~~Chairman~~ chair, two
11 appointed by the President Pro Tempore of the Senate, one of whom
12 shall be a representative from the labor industry, and one of whom
13 shall be an impartial representative from a community with a
14 population of less than thirty-five thousand (35,000) persons, and
15 two appointed by the Speaker of the House of Representatives, one of
16 whom shall be a representative of a municipality, and one of whom
17 shall be an impartial representative from a community with a
18 population of more than thirty-five thousand (35,000) persons. The
19 Chairman shall be appointed for a term of five (5) years, commencing
20 from July 1, 1972. The other Prior to July 1, 2011, members shall
21 be appointed for terms of one (1) and three (3) years, respectively,
22 from July 1, 1972, but their successors shall be appointed for terms
23 of five (5) years. Two Members appointed after July 1, 2011, shall
24 be appointed for terms of three (3) years. After July 1, 2011,

1 members shall not serve more than two consecutive terms; provided,
2 however, any unexpired term that a member is appointed for shall not
3 apply to this limit. Present members of the Board shall continue to
4 serve the remainders of their terms. A member shall serve until a
5 successor is appointed and qualified. No member within two (2)
6 years of being appointed to the Board or while serving on the Board
7 shall have served or worked in a capacity as an advocate, be a
8 member of or receive payment, compensation, or money from a labor
9 union group association or its subordinate affiliates or
10 municipality. Three members of the Board shall constitute a quorum.
11 Any individual chosen to fill a vacancy on the Board shall be
12 appointed only for the unexpired term. The ~~Chairman~~ chair and
13 members of the Board shall not receive a salary but shall receive
14 compensation in lieu of expenses in the amount of Fifty Dollars
15 (\$50.00) per day for any meeting or the conduct of official duties,
16 whether acting singly or collectively.

17 B. To accomplish the objectives and to perform the duties
18 prescribed by this article, the Board may subpoena witnesses, issue
19 subpoenas to require the production of books, papers, records, and
20 documents which may be needed as evidence of any matter under
21 inquiry, and administer oaths and affirmations. In cases of neglect
22 or refusal to obey a subpoena issued to any person, the district
23 court of the county in which the investigations or the public
24 hearings are taking place, upon application by the Board, may issue

1 an order requiring such person to appear before the Board and
2 produce evidence about the matter under investigation. A failure to
3 obey such order may be punished by the court as a contempt.

4 C. Any subpoena, notice of hearing, or other process or notice
5 of the Board issued under the provisions of this article may be
6 served personally, by registered mail, or by leaving a copy at the
7 principal office of the person required to be served. A return made
8 and verified by the individual making such service and setting forth
9 the manner of such service is proof of service, and a returned post
10 office receipt, when registered or certified mail is used, is proof
11 of service.

12 D. The Board shall adopt, promulgate, amend, or rescind such
13 rules as it deems necessary to carry out the provisions of this
14 article. Public hearings shall be held by the Board on any proposed
15 rule of general applicability designed to implement, interpret, or
16 prescribe policy, procedure or practice requirements under the
17 provisions of this article and on any proposed change to such
18 existing rule. Reasonable notice shall be given prior to such
19 hearings, which shall include the time, place, and nature of such
20 hearing and the terms or substance of the proposed rule or the
21 changes to such rule.

22 SECTION 2. AMENDATORY 11 O.S. 2001, Section 51-107, is
23 amended to read as follows:

24

1 Section 51-107. A. Within five (5) days from the date of the
2 request for arbitration referred to in Section 51-106 of this title,
3 the bargaining agent and the corporate authorities shall each select
4 and name one arbitrator and shall immediately thereafter notify each
5 other in writing of the name and address of the person so selected.
6 The two arbitrators so selected and named shall, within five (5)
7 days from and after the expiration of the five-day period
8 hereinabove mentioned, agree upon and select a third arbitrator.
9 If, on the expiration of the period allowed therefor, the
10 arbitrators are unable to agree upon the selection of a third
11 arbitrator, ~~the bargaining agent and the corporate authorities~~ party
12 who requested the arbitration shall request the Federal Mediation
13 and Conciliation Service to provide a list of ~~five (5)~~ seven
14 arbitrators, or if an Oklahoma institution of higher learning or the
15 Oklahoma Bar Association offers a specialized training program as
16 provided for in subsection C of this section, either party may
17 instead request a list of seven arbitrators from the Oklahoma Bar
18 Association. That list shall have preference, unless otherwise
19 agreed to by the bargaining agent and the corporate authorities. If
20 the Oklahoma Bar Association cannot provide at least seven
21 arbitrators, then this option is not available. If the Oklahoma Bar
22 Association has more than seven names available, then the seven
23 names to fill a requested list shall be randomly generated, using a
24 blind method of the Oklahoma Bar Association's choosing.

1 B. Within five (5) days after receipt of the list of seven
2 ~~arbitrators from the Federal Mediation and Conciliation Service, the~~
3 ~~two arbitrators already selected shall alternately strike the name~~
4 ~~of one arbitrator from the list of five seven names until one name~~
5 ~~remains, with the ~~employer~~ party who requested the arbitration~~
6 ~~making the first strike from ~~said~~ the list. The name remaining~~
7 ~~shall be the person who shall serve and act as the third arbitrator~~
8 ~~for all purposes of the arbitration. The third arbitrator, ~~whether~~~~
9 ~~selected as a result of an agreement between the two arbitrators~~
10 ~~previously selected or selected from the list provided by the~~
11 ~~Federal Mediation and Conciliation Service, shall act as chairman~~
12 ~~chair of the arbitration board.~~

13 C. If, by January 1, 2013, an Oklahoma institution of higher
14 learning or the Oklahoma Bar Association is offering a specialized
15 training program to train arbitrators for the purpose of serving as
16 the third arbitrator as provided for in subsection A of this
17 section, persons holding such certification shall thereafter be
18 eligible to appear on a list that the parties may request from the
19 Oklahoma Bar Association, as provided for in subsection A of this
20 section. To be eligible for such consideration, the potential
21 arbitrator must complete a specialized training program offered by
22 an Oklahoma institution of higher learning or the Oklahoma Bar
23 Association. The program must be limited to persons who are
24 attorneys licensed to practice and reside in the State of Oklahoma,

1 or are Oklahoma administrative law judges. The specialized training
2 program must have included training in arbitration skills, Oklahoma
3 municipal law, Oklahoma municipal finance, Oklahoma municipal labor
4 law, and the provisions of this section. Those persons qualified
5 and successfully completing a specialized arbitrator training
6 program administered by an Oklahoma institution of higher learning
7 or the Oklahoma Bar Association shall notify the Oklahoma Bar
8 Association if they wish to appear on a list of potential
9 arbitrators that the Oklahoma Bar Association shall maintain.
10 Persons that are so trained and have notified the Oklahoma Bar
11 Association shall thereafter be available for inclusion on a list
12 submitted to parties conducting interest arbitrations pursuant to
13 this section. Names on the list shall be distributed to parties
14 pursuant to the procedures in subsection A of this section.

15 D. Notwithstanding the provisions of this section, no person
16 shall be selected or serve as the third arbitrator of the
17 arbitration board who, within two (2) years of being appointed to
18 the arbitration board or while serving on the arbitration board,
19 shall have served or worked in any capacity for a municipality or a
20 labor union or its subordinate affiliates, or shall have received
21 any payment, compensation, or money from a labor union or its
22 subordinate affiliates, or received any compensation from a
23 municipality for services rendered. Any such person shall be
24 disqualified from serving as the third arbitrator in an interest

1 arbitration pursuant to this act. This subsection shall not apply
2 to payment, compensation, or money received by any person who has
3 worked or served in the capacity of a neutral arbitrator in any
4 interest or grievance arbitration.

5 SECTION 3. AMENDATORY 11 O.S. 2001, Section 51-108, as
6 amended by Section 1, Chapter 126, O.S.L. 2004 (11 O.S. Supp. 2010,
7 Section 51-108) is amended to read as follows:

8 Section 51-108. A. 1. The arbitration board acting through
9 its chair shall ~~call a hearing to be held~~ within ten (10) days after
10 the date of the appointment of the chair set a date for the
11 commencement of the hearing, which date shall be not less than
12 forty-five (45) days and not more than ninety (90) days thereafter,
13 and shall, acting through its chair, give ~~at least seven (7) days'~~
14 notice in writing within three (3) days to each of the other two
15 arbitrators, the bargaining agent and the corporate authorities of
16 the time and place of such hearing.

17 2. At least seven (7) days before the date of the hearing the
18 corporate authorities and the bargaining agent shall submit to each
19 other and to the arbitration board members a written arbitration
20 statement listing all contract terms which the parties have resolved
21 and all contract issues which are unresolved. Each arbitration
22 statement shall also include a final offer on each unresolved issue.
23 The terms and offers contained in the arbitration statements shall
24 be known collectively as each party's last best offer.

1 3. The hearing shall be informal and the rules of evidence
2 prevailing in judicial proceedings shall not be binding. Any and
3 all documentary evidence and other data deemed relevant by the
4 arbitrators may be received in evidence. The arbitrators shall have
5 the power to administer oaths and to require by subpoena the
6 attendance and testimony of witnesses, the production of books,
7 records, and other evidence relative or pertinent to the issues
8 presented to them for determination. A hearing shall be concluded
9 within twenty (20) days from the time of commencement.

10 4. Within seven (7) days after the conclusion of the hearing, a
11 majority of the arbitration board members shall select one of the
12 two last best offers as the contract of the parties. The criteria
13 to be used by the board in determining which offer to select shall
14 be limited to paragraphs 1 through ~~5~~ 4 of Section 51-109 of this
15 title. The arbitration board may not modify, add to or delete from
16 the last best offer of either party. Written notice of the
17 selection decision shall be mailed or delivered to the bargaining
18 agent and the corporate authorities.

19 B. If the ~~city's~~ municipality's last best offer is not selected
20 by the arbitration board, that party may submit the offers which the
21 parties submitted to the arbitration board to the voters of the
22 municipality for their selection by requesting a special election
23 for that purpose. The request for an election must be filed by the
24 chief administrative officer of the municipality with the clerk of

1 the municipality within ten (10) days of the date of the written
2 decision of the arbitration board. Written notice of the filing of
3 the request shall be given to the bargaining agent. If a request
4 for an election is not filed in a timely manner, the board's
5 selection decision shall be final, and the last best offer it
6 selected shall constitute the agreement of the parties.

7 C. Upon receiving a request for an election pursuant to the
8 provisions of this section, the clerk shall notify the mayor and
9 governing body of the request by no later than its next regularly
10 scheduled meeting. Within ten (10) days of such notification the
11 municipal authorities shall call for a special election. The
12 election shall be governed by the state laws on special municipal
13 elections. Only residents of the municipality shall be eligible to
14 vote in said election. The ballot shall inform the voters that they
15 must choose either the last best offer of the bargaining agent or
16 the last best offer of the corporate authorities. Within ~~twenty~~
17 ~~(20)~~ ten (10) days of the date of the decision to call for the
18 election, the municipal authorities and the bargaining agent shall
19 agree on a ballot. If no agreement is reached within that time,
20 each party shall present a proposed ballot to the ~~arbitration board~~
21 chief judge of the district court in which the municipality is
22 principally located. The parties shall present their ballot to the
23 ~~board~~ chief judge no later than ~~seven (7)~~ five (5) days after the
24 aforementioned ~~twenty-day~~ ten-day period. The ~~board~~ chief judge

1 shall consider the proposed ballots and shall select one or the
2 other within ~~seven (7)~~ twenty (20) days of the date of receipt of
3 the parties' proposed ballots. The last best offer receiving a
4 majority of the votes shall become the agreement of the parties.

5 D. Concerning issues relating to money, ~~such~~ the ballot shall
6 clearly state the total dollar amount of the offer from the
7 corporate authority and the total dollar amount of the offer from
8 the bargaining agent. ~~Such~~ The ballot shall also disclose the
9 percentage of increase or decrease both offers have over or under
10 the last contract of the two parties.

11 E. Agreements which are reached as a result of selection by the
12 arbitration board or by election shall be effective on the first day
13 of the fiscal year involved regardless of the date of the final
14 selection.

15 SECTION 4. AMENDATORY 11 O.S. 2001, Section 51-109, is
16 amended to read as follows:

17 Section 51-109. The arbitrators shall conduct the hearings and
18 render their decision upon the basis of a prompt, peaceful and just
19 settlement of all submitted disputes between the firefighters or
20 police officers and the corporate authorities. The factors, ~~among~~
21 ~~others,~~ to be given weight by the arbitrators in arriving at a
22 decision shall include:

23 1. Comparison of wage rates, insurance, retirement, other
24 fringe benefits or hourly conditions of employment of the fire

1 department or police department in question with ~~prevailing~~ wage
2 rates or hourly conditions of employment of ~~skilled~~ all other
3 employees of the ~~building trades and industry in the local operating~~
4 ~~area involved~~ municipality in which the fire department or police
5 department in question is located;

6 2. Comparison of wage rates, insurance, retirement, other
7 fringe benefits or hourly conditions of employment of the fire
8 department or police department in question with wage rates or
9 hourly conditions of employment maintained for the same or similar
10 work of employees exhibiting like or similar skills under the same
11 or similar working conditions in the local operating area involved;
12 provided, such comparisons shall not be made to nonmunicipal
13 employees in unrelated fields;

14 3. Comparison of wage rates, insurance, retirement, other
15 fringe benefits or hourly conditions of employment of the fire
16 department or police department in question with wage rates or
17 hourly conditions of employment of fire departments or police
18 departments in cities, towns or other political subdivisions of
19 comparable size and economic status both within and without the
20 State of Oklahoma; and

21 4. Interest and welfare of the public and revenues available to
22 the municipality; ~~or~~

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

- 1 a. ~~hazards of employment,~~
- 2 b. ~~physical qualifications,~~
- 3 c. ~~educational qualifications,~~
- 4 d. ~~mental qualifications, and~~
- 5 e. ~~job training and skills~~

6 however, the arbitrators shall not consider any of the following
7 types of revenues to be revenues available to the municipality:

- 8 a. revenues or resources the expenditure or use of which
9 is restricted, or committed by ordinance for a purpose
10 stated therein, as defined by Governmental Accounting
11 Standards Board (GASB) pursuant to the Generally
12 Accepted Accounting Principles (GAAP), for a purpose
13 other than police and fire salaries and benefits, and
- 14 b. any reserve of unassigned revenues or a portion of
15 recurring revenues, or a combination thereof, created
16 by the corporate authority that complies with the
17 Government Finance Officers Association (GFOA)
18 guidelines, or subsequent amendments thereto, for the
19 establishment of such a reserve.

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