

1 ENGROSSED SENATE  
2 BILL NO. 826

By: Holt of the Senate

3 and

4 Martin (Scott) of the House

5  
6  
7 [ municipal arbitration - selection of arbitrator -  
8 Chief Judge to select ballot ]  
9

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

11 SECTION 1. AMENDATORY 11 O.S. 2001, Section 51-104, as  
12 last amended by Section 1, Chapter 16, O.S.L. 2008 (11 O.S. Supp.  
13 2010, Section 51-104), is amended to read as follows:

14 Section 51-104. A. There is hereby re-created, to continue until  
15 July 1, ~~2012~~ 2016, in accordance with the provisions of the Oklahoma  
16 Sunset Law, ~~Section 3901 et seq. of Title 74,~~ the Public Employees  
17 Relations Board, which shall be composed of ~~three (3)~~ five (5)  
18 members: one appointed by the Governor, one of whom shall be an  
19 impartial appointment and designated as ~~Chairman~~ chair, two  
20 appointed by the President Pro Tempore of the Senate, one of whom  
21 shall be a representative from the labor industry, and one of whom  
22 shall be an impartial representative from a community with a  
23 population of less than thirty-five thousand (35,000) persons, and  
24 two appointed by the Speaker of the House of Representatives, one of

1 whom shall be a representative of a municipality, and one of whom  
2 shall be an impartial representative from a community with a  
3 population of more than thirty-five thousand (35,000) persons. ~~The~~  
4 ~~Chairman shall be appointed for a term of five (5) years, commencing~~  
5 ~~from July 1, 1972.~~ Prior to July 1, 2011, members shall  
6 be appointed for terms of one (1) and three (3) years, respectively,  
7 from July 1, 1972, but their successors shall be appointed for terms  
8 of five (5) years. ~~Two~~ Members appointed after July 1, 2011, shall  
9 be appointed for terms of three (3) years. After July 1, 2011,  
10 members shall not serve more than two consecutive terms; provided,  
11 however, any unexpired term that a member is appointed shall not  
12 apply to this limit. Present members of the Board shall continue to  
13 serve the remainders of their terms. A member shall serve until a  
14 successor is appointed and qualified. No member within two (2)  
15 years of being appointed to the Board or while serving on the Board  
16 shall have served or worked in a capacity as an advocate, be a  
17 member or receive payment, compensation, or money from a labor union  
18 group association or its subordinate affiliates or municipality.  
19 Three (3) members of the Board shall constitute a quorum. Any  
20 individual chosen to fill a vacancy on the Board shall be appointed  
21 only for the unexpired term. The ~~Chairman~~ chair and members of the  
22 Board shall not receive a salary but shall receive compensation in  
23 lieu of expenses in the amount of Fifty Dollars (\$50.00) per day for  
24

1 any meeting or the conduct of official duties, whether acting singly  
2 or collectively.

3 B. To accomplish the objectives and to perform the duties  
4 prescribed by this article, the Board may subpoena witnesses, issue  
5 subpoenas to require the production of books, papers, records, and  
6 documents which may be needed as evidence of any matter under  
7 inquiry, and administer oaths and affirmations. In cases of neglect  
8 or refusal to obey a subpoena issued to any person, the district  
9 court of the county in which the investigations or the public  
10 hearings are taking place, upon application by the Board, may issue  
11 an order requiring such person to appear before the Board and  
12 produce evidence about the matter under investigation. A failure to  
13 obey such order may be punished by the court as a contempt.

14 C. Any subpoena, notice of hearing, or other process or notice  
15 of the Board issued under the provisions of this article may be  
16 served personally, by registered mail, or by leaving a copy at the  
17 principal office of the person required to be served. A return made  
18 and verified by the individual making such service and setting forth  
19 the manner of such service is proof of service, and a returned post  
20 office receipt, when registered or certified mail is used, is proof  
21 of service.

22 D. The Board shall adopt, promulgate, amend, or rescind such  
23 rules as it deems necessary to carry out the provisions of this  
24 article. Public hearings shall be held by the Board on any proposed

1 rule of general applicability designed to implement, interpret, or  
2 prescribe policy, procedure or practice requirements under the  
3 provisions of this article and on any proposed change to such  
4 existing rule. Reasonable notice shall be given prior to such  
5 hearings, which shall include the time, place, and nature of such  
6 hearing and the terms or substance of the proposed rule or the  
7 changes to such rule.

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

10 Section 51-107. A. Within five (5) days from the date of the  
11 request for arbitration referred to in Section 51-106 of this title,  
12 the bargaining agent and the corporate authorities shall each select  
13 and name one arbitrator and shall immediately thereafter notify each  
14 other in writing of the name and address of the person so selected.  
15 The two arbitrators so selected and named shall, within five (5)  
16 days from and after the expiration of the five-day period  
17 hereinabove mentioned, agree upon and select a third arbitrator.  
18 If, on the expiration of the period allowed therefor, the  
19 arbitrators are unable to agree upon the selection of a third  
20 arbitrator, ~~the bargaining agent and the corporate authorities~~ party  
21 who requested the arbitration shall request the Federal Mediation  
22 and Conciliation Service to provide a list of ~~five (5)~~ seven (7)  
23 arbitrators, or when the Supreme Court has established a specialized  
24 training program as provided for in subsection C of this section,

1 the party who requested the arbitration shall have the option of  
2 requesting a list of seven (7) arbitrators from the Supreme Court or  
3 the Federal Mediation and Conciliation Service.

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

16 C. The Administrative Director of the Courts is hereby  
17 authorized to promulgate rules for the establishment of labor law  
18 arbitration training programs by January 1, 2013, subject to the  
19 approval of the Supreme Court. The Administrative Director of the  
20 Courts shall administer and supervise the arbitration training  
21 programs which may be established by any accredited law school  
22 within this state to provide specialized training to persons who are  
23 attorneys licensed to practice law and reside in the State of  
24 Oklahoma or are administrative law judges on issues related to

1 arbitration skills, labor law, and Oklahoma municipal law, including  
2 but not limited to Oklahoma municipal finance law. Those persons  
3 qualified and successfully completing an arbitration training  
4 program approved by the Supreme Court shall receive a certificate  
5 from the Supreme Court that certifies the person has received such  
6 specialized arbitration training. Persons holding specialized  
7 training certificates under this subsection shall thereafter be  
8 available for inclusion on a list submitted to parties conducting  
9 interest arbitrations pursuant to this section.

10 D. Notwithstanding the provision of this section, no person  
11 shall be selected or serve as the third arbitrator of the  
12 arbitration board who, within two (2) years of being appointed to  
13 the arbitration board or while serving on the arbitration board,  
14 shall have served or worked in any capacity for a municipality or a  
15 labor union or its subordinate affiliates, or shall have received  
16 any payment, compensation, or money from a labor union or its  
17 subordinate affiliates, or received any compensation from a  
18 municipality for services rendered. Any such person shall be  
19 disqualified from serving as the third arbitrator in an interest  
20 arbitration pursuant to this act. This subsection shall not apply  
21 to payment, compensation, or money received by any person who has  
22 worked or served in the capacity of a neutral arbitrator in any  
23 interest or grievance arbitration.

24

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

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

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

21 3. The hearing shall be informal and the rules of evidence  
22 prevailing in judicial proceedings shall not be binding. Any and  
23 all documentary evidence and other data deemed relevant by the  
24 arbitrators may be received in evidence. The arbitrators shall have

1 the power to administer oaths and to require by subpoena the  
2 attendance and testimony of witnesses, the production of books,  
3 records, and other evidence relative or pertinent to the issues  
4 presented to them for determination. A hearing shall be concluded  
5 within twenty (20) days from the time of commencement.

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

15 B. If the ~~city's~~ municipality's last best offer is not selected  
16 by the arbitration board, that party may submit the offers which the  
17 parties submitted to the arbitration board to the voters of the  
18 municipality for their selection by requesting a special election  
19 for that purpose. The request for an election must be filed by the  
20 chief administrative officer of the municipality with the clerk of  
21 the municipality within ten (10) days of the date of the written  
22 decision of the arbitration board. Written notice of the filing of  
23 the request shall be given to the bargaining agent. If a request  
24 for an election is not filed in a timely manner, the board's

1 selection decision shall be final, and the last best offer it  
2 selected shall constitute the agreement of the parties.

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

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

7 E. Agreements which are reached as a result of selection by the  
8 arbitration board or by election shall be effective on the first day  
9 of the fiscal year involved regardless of the date of the final  
10 selection.

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

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

19 1. Comparison of wage rates, insurance, retirement, other  
20 fringe benefits or hourly conditions of employment of the fire  
21 department or police department in question with ~~prevailing~~ wage  
22 rates or hourly conditions of employment of ~~skilled~~ all other  
23 employees of the ~~building trades and industry in the local operating~~  
24

1 ~~area involved~~ municipality in which the fire department or police  
2 department in question is located;

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

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

18 4. Interest and welfare of the public and revenues available to  
19 the municipality; ~~or~~

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

- 22 a. ~~hazards of employment,~~
- 23 b. ~~physical qualifications,~~
- 24 c. ~~educational qualifications,~~

1           ~~d. mental qualifications, and~~

2           ~~e. job training and skills~~

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

5           a. revenues or resources the expenditure or use of which  
6           is restricted, or committed by ordinance for a purpose  
7           stated therein, as defined by Governmental Accounting  
8           Standards Board (GASB) pursuant to the Generally  
9           Accepted Accounting Principles (GAAP), for a purpose  
10           other than police and fire salaries and benefits, and

11           b. any reserve of unassigned revenues or a portion of  
12           recurring revenues, or a combination thereof, created  
13           by the corporate authority that complies with the  
14           Government Finance Officers Association (GFOA)  
15           guidelines, or subsequent amendments thereto, for the  
16           establishment of such a reserve.

