HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 826

By: Holt, Brecheen, Newberry, Simpson, Treat, Bingman and Ford of the Senate

and

Martin (Scott) of the House

COMMITTEE SUBSTITUTE

An Act relating to municipal arbitration; amending 11 O.S. 2001, Sections 51-104, as last amended by Section 1, Chapter 16, O.S.L. 2008, 51-107, 51-108, as amended by Section 1, Chapter 126, O.S.L. 2004 and 51-109 (11 O.S. Supp. 2010, Sections 51-104 and 51-108), which relate to fire fighters and police collective bargaining; modifying membership and terms of office for Public Employees Relations Board; amending arbitration procedures; modifying procedure for selection of third arbitrator; providing for certification and eligibility of certain arbitrators; prohibiting selection of certain persons as third arbitrator; modifying certain notice and procedural 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.

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

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

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

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

B. To accomplish the objectives and to perform the duties prescribed by this article, the Board may subpoena witnesses, issue subpoenas to require the production of books, papers, records, and documents which may be needed as evidence of any matter under inquiry, and administer oaths and affirmations. In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public

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hearings are taking place, upon application by the Board, may issue an order requiring such person to appear before the Board and produce evidence about the matter under investigation. A failure to obey such order may be punished by the court as a contempt.

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

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

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

Section 51-107. A. Within five (5) days from the date of the request for arbitration referred to in Section 51-106 of this title, 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, on the expiration of the period allowed therefor, the arbitrators are unable to agree upon the selection of a third arbitrator, the ~~bargaining agent and the corporate authorities~~ party who requested the arbitration shall request the Federal Mediation and Conciliation Service to provide a list of ~~five (5)~~ seven arbitrators, or if an Oklahoma institution of higher learning or the Oklahoma Bar Association offers a specialized training program as provided for in subsection C of this section, either party may instead request a list of seven arbitrators from the Oklahoma Bar Association. That list shall have preference, unless otherwise agreed to by the bargaining agent and the corporate authorities. If the Oklahoma Bar Association cannot provide at least seven arbitrators, then this option is not available. If the Oklahoma Bar

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Association has more than seven names available, then the seven names to fill a requested list shall be randomly generated, using a blind method of the Oklahoma Bar Association's choosing.

B. Within five (5) days after receipt of the list of seven 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~~ seven names until one name remains, with the ~~employer~~ party who requested the arbitration making the first strike from ~~said~~ the list. The name remaining shall be the person who shall serve and act as the third arbitrator for all purposes of the arbitration. The third 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~~ chair of the arbitration board.

C. If, by January 1, 2013, an Oklahoma institution of higher learning or the Oklahoma Bar Association is offering a specialized training program to train arbitrators for the purpose of serving as the third arbitrator as provided for in subsection A of this section, persons holding such certification shall thereafter be eligible to appear on a list that the parties may request from the Oklahoma Bar Association, as provided for in subsection A of this section. To be eligible for such consideration, the potential

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arbitrator must complete a specialized training program offered by an Oklahoma institution of higher learning or the Oklahoma Bar Association. The program must be limited to persons who are attorneys licensed to practice and reside in the State of Oklahoma, or are Oklahoma administrative law judges. The specialized training program must have included training in arbitration skills, Oklahoma municipal law, Oklahoma municipal finance, Oklahoma municipal labor law, and the provisions of this section. Those persons qualified and successfully completing a specialized arbitrator training program administered by an Oklahoma institution of higher learning or the Oklahoma Bar Association shall notify the Oklahoma Bar Association if they wish to appear on a list of potential arbitrators that the Oklahoma Bar Association shall maintain. Persons that are so trained and have notified the Oklahoma Bar Association shall thereafter be available for inclusion on a list submitted to parties conducting interest arbitrations pursuant to this section. Names on the list shall be distributed to parties pursuant to the procedures in subsection A of this section.

D. Notwithstanding the provisions of this section, no person shall be selected or serve as the third arbitrator of the arbitration board who, within two (2) years of being appointed to the arbitration board or while serving on the arbitration board, shall have served or worked in any capacity for a municipality or a

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labor union or its subordinate affiliates, or shall have received any payment, compensation, or money from a labor union or its subordinate affiliates, or received any compensation from a municipality for services rendered. Any such person shall be disqualified from serving as the third arbitrator in an interest arbitration pursuant to this act. This subsection shall not apply to payment, compensation, or money received by any person who has worked or served in the capacity of a neutral arbitrator in any interest or grievance arbitration.

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

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

2. At least seven (7) days before the date of the hearing the corporate authorities and the bargaining agent shall submit to each

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other and to the arbitration board members a written arbitration statement listing all contract terms which the parties have resolved and all contract issues which are unresolved. Each arbitration statement shall also include a final offer on each unresolved issue. The terms and offers contained in the arbitration statements shall be known collectively as each party's last best offer.

3. 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.

4. Within seven (7) days after the conclusion of the hearing, a majority of the arbitration board members shall select one of the two last best offers as the contract of the parties. The criteria to be used by the board in determining which offer to select shall be limited to paragraphs 1 through ~~5~~ 4 of Section 51-109 of this title. The arbitration board may not modify, add to or delete from the last best offer of either party. Written notice of the

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selection decision shall be mailed or delivered to the bargaining agent and the corporate authorities.

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

C. Upon receiving a request for an election pursuant to the provisions of this section, the clerk shall notify the mayor and governing body of the request by no later than its next regularly scheduled meeting. Within ten (10) days of such notification the municipal authorities shall call for a special election. The election shall be governed by the state laws on special municipal elections. Only residents of the municipality shall be eligible to vote in said election. The ballot shall inform the voters that they must choose either the last best offer of the bargaining agent or

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the last best offer of the corporate authorities. Within ~~twenty (20)~~ ten (10) days of the date of the decision to call for the election, the municipal authorities and the bargaining agent shall agree on a ballot. If no agreement is reached within that time, each party shall present a proposed ballot to the ~~arbitration board~~ chief judge of the district court in which the municipality is principally located. The parties shall present their ballot to the ~~board~~ chief judge no later than ~~seven (7)~~ five (5) days after the aforementioned ~~twenty-day~~ ten-day period. The ~~board~~ chief judge shall consider the proposed ballots and shall select one or the other within ~~seven (7)~~ twenty (20) days of the date of receipt of the parties' proposed ballots. The last best offer receiving a majority of the votes shall become the agreement of the parties.

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

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

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SECTION 4. AMENDATORY 11 O.S. 2001, 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 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 in question with ~~prevailing~~ wage rates or hourly conditions of employment of ~~skilled~~ all other employees of the ~~building trades and industry in the local operating area involved~~ municipality in which the fire department or police department in question is located;

2. Comparison of wage rates, insurance, retirement, other fringe benefits or hourly conditions of employment of the fire department or police 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; provided, such comparisons shall not be made to nonmunicipal employees in unrelated fields;

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

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~~

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

a. revenues or resources the expenditure or use of which is restricted, or committed by ordinance for a purpose stated therein, as defined by Governmental Accounting Standards Board (GASB) pursuant to the Generally

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Accepted Accounting Principles (GAAP), for a purpose other than police and fire salaries and benefits, and

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

COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 04-14-2011 - DO PASS, As Amended and Coauthored.

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