

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1369

By: Kidd

COMMITTEE SUBSTITUTE

[cities and towns - fire and police arbitration -
codification - effective date]

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

SECTION 1. AMENDATORY 11 O.S. 2011, 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. "~~Fire-fighters~~ Firefighters and police officers" shall mean
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.

1 2. "Corporate authorities" means the proper officials, singly
2 or collectively, within any municipality whose duty or duties it is
3 to establish the wages, salaries, rates of pay, hours, working
4 conditions and other terms and conditions of employment of ~~fire~~
5 ~~fighters~~ firefighters or police officers, whether they be the mayor,
6 city manager, town manager, town administrator, city council, town
7 council, director of personnel, personnel board or commission, or by
8 whatever other name the same may be designated, or any combination
9 thereof. It is not the intent of this paragraph that the above-
10 named officials shall in any way be exclusive or limiting.

11 3. "Strike" shall mean the concerted failure to report for
12 duty, the willful absence from one's position, unauthorized
13 holidays, sickness unsubstantiated by a physician's statement, the
14 stoppage of work, or the abstinence in whole or in part from the
15 full, faithful and proper performance of the duties of employment,
16 for the purpose of inducing, influencing or coercing a change in the
17 conditions, compensation, rights, privileges or obligations of
18 employment. Nothing contained in this article shall be construed to
19 limit, impair or affect the right of any public employee to the
20 expression or communication of a view, grievance, complaint or
21 opinion on any matter related to the conditions or compensation of
22 public employment or their betterment, so long as the same does not
23 interfere with the full, faithful and proper performance of the
24 duties of employment.

1 4. "Bargaining agent" shall mean any lawful association,
2 fraternal organization, labor organization, federation or council
3 having as one of its purposes the improvement of wages, hours and
4 other conditions of employment among employees of fire and police
5 departments.

6 5. "Collective bargaining" shall mean the performance of the
7 mutual obligation of the municipal employer or his or her designated
8 representatives and the representative of the employees to meet at
9 reasonable times, including meetings appropriately related to the
10 budget-making process; to confer in good faith with respect to
11 wages, hours and other conditions of employment, or the negotiation
12 of an agreement, or any question arising thereunder; and to execute
13 a written contract incorporating any agreement reached if requested
14 by either party. Such obligation shall not, however, compel either
15 party to agree to a proposal or require the making of a concession.

16 6. "Unfair labor practices" for the purpose of this article
17 shall be deemed to include but not be limited to the following acts
18 and conduct:

19 ~~6a.~~

20 a. Action by corporate authorities:

- 21 (1) interfering with, restraining, intimidating or
22 coercing employees in the exercise of the rights
23 guaranteed them by this article;

- 1 (2) dominating or interfering with the formation,
2 existence or administration of any employee
3 organization or bargaining agent;
4 (3) interfering in any manner whatsoever with the
5 process of selection by ~~fire fighters~~
6 firefighters or police officers of their
7 respective bargaining agents or attempting to
8 influence, coerce or intimidate individuals in
9 such selection;
10 (4) discharging or otherwise disciplining or
11 discriminating against a police officer or ~~fire~~
12 ~~fighter~~ firefighters because he or she has signed
13 or filed any affidavit, petition or complaint or
14 has given any information or testimony under this
15 article or because of his or her election to be
16 represented by the bargaining agent;
17 (5) refusing to bargain collectively or discuss
18 grievances in good faith with the designated
19 bargaining agent with respect to any issue coming
20 within the purview of this article; or
21 (6) instituting or attempting to institute a lockout.

22 ~~6b.~~

23 b. Action by bargaining agent:
24

- 1 (1) interfering with, restraining, intimidating or
2 coercing employees in the exercise of the rights
3 guaranteed them by this article;
- 4 (2) interfering with or attempting to coerce the
5 corporate authorities in the selection of their
6 representatives for the purposes of collective
7 bargaining or the adjustment of grievances; or
- 8 (3) refusing to bargain collectively or discuss
9 grievances in good faith with the proper
10 corporate authorities with respect to any issue
11 coming within the purview of this article.

12 7. "Arbitration Board" shall mean the ~~Public Employees~~
13 ~~Relations Board~~ arbitration board appointed as herein provided.

14 8. "Labor Board" shall mean the Labor Commissioner and his or
15 her designees.

16 SECTION 2. AMENDATORY 11 O.S. 2011, Section 51-103, is
17 amended to read as follows:

18 Section 51-103. A. Firefighters and police officers in any
19 municipality shall have the separate right to bargain collectively
20 with their municipality and to be represented by a bargaining agent
21 in such collective bargaining with respect to wages, salaries,
22 hours, rates of pay, grievances, working conditions and all other
23 terms and conditions of employment.

1 B. Whenever, conformable to regulations that may be prescribed
2 by the ~~Public Employees Relations Board~~ Oklahoma Department of
3 Labor, ~~herein created, a petition is filed by a claim is presented~~
4 to a municipality, that:

5 1. ~~A a~~ a labor organization ~~alleging~~ alleges that thirty percent
6 (30%) of the firefighters or police officers in a municipality:

7 a. ~~wish~~

8 1. Wish to be represented for collective bargaining by an
9 exclusive employee representative; or

10 b. ~~assert~~

11 2. Assert that the designated exclusive employee
12 representative is no longer the representative of the
13 majority of employees in the unit; ~~or,~~

14 2. ~~The employer alleging that one or more labor organizations~~
15 ~~has presented to it a claim to be recognized as the exclusive~~
16 ~~employee representative in an appropriate unit;~~
17 the Labor Board shall ~~investigate the facts alleged therein and if~~
18 ~~it has reasonable cause to believe that a question of representation~~
19 ~~exists, it shall provide for an appropriate hearing upon due notice.~~
20 If the Labor Board finds upon the record of such hearing that such a
21 question of representation exists, it shall direct an election by
22 secret ballot and shall certify the results thereof. The Labor
23 Board may also certify a labor organization as an exclusive employee
24 representative if it determines that a free and untrammelled

1 election cannot be conducted because of the employer's unfair labor
2 practices.

3 C. Only those labor organizations which have been designated by
4 more than ten percent (10%) of the employees in the unit found to be
5 appropriate shall be placed on the ballot. Nothing in this section
6 shall be construed to prohibit the waiving of hearing by stipulation
7 for the purpose of a consent election, in conformity with the rules
8 and regulations of the Board.

9 D. In order to assure to firefighters and police officers of
10 any municipality the fullest freedom in exercising the rights
11 guaranteed by this article, the Labor Board shall decide in each
12 case before it in which the issue is raised the unit appropriate for
13 the purposes of collective bargaining, and shall consider such
14 factors as community of interest, wages, hours and other working
15 conditions of the employees involved, the history of collective
16 bargaining, and the desires of the employees.

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

1 receives the majority of the votes cast in an election shall be
2 certified by the Board as the exclusive employee representative.

3 SECTION 3. AMENDATORY 11 O.S. 2011, Section 51-104, as
4 last amended by Section 7, Chapter 15, O.S.L. 2013 (11 O.S. Supp.
5 2017, Section 51-104), is amended to read as follows:

6 Section 51-104. A. ~~There is hereby re-created, to continue~~
7 ~~until July 1, 2016, in accordance with the provisions of the~~
8 ~~Oklahoma Sunset Law, the Public Employees Relations Board, which~~
9 ~~shall be composed of five (5) members to be appointed or selected as~~
10 ~~follows:~~

11 ~~1. One appointed by the Governor shall be an impartial~~
12 ~~appointment and designated as Chairman;~~

13 ~~2. Two appointed by the President Pro Tempore of the State~~
14 ~~Senate, one of whom shall be an impartial appointment and one of~~
15 ~~whom shall be a representative from the labor industry chosen from a~~
16 ~~list of four nominees to be submitted jointly by an Oklahoma~~
17 ~~organization the primary purpose of which is to provide services to~~
18 ~~members who are municipal police officers, which shall provide two~~
19 ~~nominees, and by an Oklahoma organization the primary purpose of~~
20 ~~which is to provide services to members who are municipal~~
21 ~~firefighters, which shall provide two nominees; and~~

22 ~~3. Two appointed by the Speaker of the Oklahoma House of~~
23 ~~Representatives, one of whom shall be an impartial appointment and~~
24 ~~one of whom shall be a representative of a municipality to be~~

1 ~~selected from a list of four nominees submitted by a statewide~~
2 ~~organization the membership of which consists primarily of~~
3 ~~incorporated cities and towns within Oklahoma.~~

4 ~~B. The Chairman shall be appointed for a term of five (5)~~
5 ~~years, commencing from July 1, 1972. The other members shall be~~
6 ~~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 three (3) years. No member shall serve on the Board for more~~
9 ~~than two terms. No impartial member appointed by either the~~
10 ~~President Pro Tempore of the Oklahoma State Senate or by the Speaker~~
11 ~~of the Oklahoma House of Representatives shall, within two (2) years~~
12 ~~of being appointed to the Board or while serving on the Board, have~~
13 ~~served or worked in a capacity as an advocate, be a member or~~
14 ~~receive compensation from a labor union group association or its~~
15 ~~subordinate affiliates or have served or worked in a capacity as an~~
16 ~~advocate, appointed or elected official of or received compensation~~
17 ~~from a municipality or municipalities.~~

18 ~~C. Three members of the Board shall constitute a quorum. Any~~
19 ~~individual chosen to fill a vacancy on the Board shall be appointed~~
20 ~~only for the unexpired term. The Chairman and members of the Board~~
21 ~~shall not receive a salary but shall receive compensation in lieu of~~
22 ~~expenses in the amount of Fifty Dollars (\$50.00) per day for any~~
23 ~~meeting or the conduct of official duties, whether acting singly or~~
24 ~~collectively.~~

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

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

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

SECTION 4. AMENDATORY 11 O.S. 2011, Section 51-104b, is amended to read as follows:

Section 51-104b. A. ~~The Public Employees Relations~~ Arbitration Board is empowered, as hereinafter provided, to prevent any person, including bargaining agent and corporate authorities, from engaging in any unfair labor practice as defined herein.

B. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Arbitration Board shall have the power to ~~issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board, at a place therein fixed, not less than five (5) days after the serving of said complaint. The person so complained of shall have the right to file an answer and to appear and give testimony at the time and place fixed in the complaint. In the discretion of the Board, any other person may be allowed to intervene in such proceeding~~ set the matter for hearing, take evidence and decide the questions presented.

1 C. If upon the preponderance of the testimony taken the
2 Arbitration Board shall be of the opinion that the person named in
3 the complaint has engaged in or is engaging in any such unfair labor
4 practice, then the Arbitration Board shall state its findings of
5 fact and shall issue and cause to be served on such person an order
6 requiring such person to cease and desist from such unfair labor
7 practice. Such order may further require such person to make
8 reports from time to time showing the extent to which it has
9 complied with the order. If upon the preponderance of the testimony
10 taken the Board shall not be of the opinion that the person served
11 in the complaint has engaged in or is engaging in any such unfair
12 labor practice, then the Board shall state its findings of fact and
13 shall issue an order dismissing the complaint.

14 D. The Arbitration Board, or any interested party, shall have
15 the power to petition the district court, wherein the unfair labor
16 practice in question occurred, for the enforcement of such order and
17 for appropriate temporary relief of restraining order.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 51-107a of Title 11, unless
20 there is created a duplication in numbering, reads as follows:

21 A. Whenever an employer or bargaining agent claims that an
22 unfair labor practice has been committed by the other, it shall
23 notify the other in writing, within six (6) months of the commission
24 of the alleged practice. Within ten (10) calendar or business days

1 of such notification, each party shall select and name one
2 arbitrator and shall immediately thereafter notify each other in
3 writing of the name and address of the person selected. The two
4 arbitrators selected and named shall, within five (5) calendar or
5 business days from and after the expiration of the ten-day period
6 hereinabove mentioned, agree upon and select a third arbitrator.
7 If, on the expiration of the period allowed therefor, the
8 arbitrators are unable to agree upon the selection of a third
9 arbitrator, the bargaining agent and the corporate authorities shall
10 request the Federal Mediation and Conciliation Service to provide a
11 list of five arbitrators.

12 B. Within ten (10) calendar or business days after receipt of
13 the list of arbitrators from the Federal Mediation and Conciliation
14 Service, the two arbitrators already selected shall alternately
15 strike the name of one arbitrator from the list of five until one
16 name remains, with the party claiming an unfair labor practice has
17 been committed making the first strike from the list. The third
18 arbitrator, whether selected as a result of an agreement between the
19 two arbitrators previously selected or selected from the list
20 provided by the Federal Mediation and Conciliation Service, shall
21 act as chair of the Arbitration Board. The chair of the Arbitration
22 Board shall schedule a hearing, take evidence and render a decision
23 based thereon. Decisions of the former Public Employees Relations
24

1 Board and of the National Labor Relations Board may be considered
2 persuasive on the issues provided.

3 SECTION 6. AMENDATORY 11 O.S. 2011, Section 51-110, is
4 amended to read as follows:

5 Section 51-110. Fees and necessary expenses of the arbitrator
6 selected by the bargaining agent and the arbitrator selected by the
7 corporate authorities shall be borne by the bargaining agent and the
8 corporate authorities respectively. The reasonable fees and
9 necessary expenses of the third arbitrator shall be borne equally by
10 the bargaining agent and corporate authorities. This provision
11 applies for interest arbitration, grievance arbitration and
12 consideration of alleged unfair labor practices.

13 SECTION 7. REPEALER 11 O.S. 2011, Section 51-104a, as
14 amended by Section 51, Chapter 304, O.S.L. 2012 (11 O.S. Supp. 2017,
15 Section 51-104a), is hereby repealed.

16 SECTION 8. This act shall become effective November 1, 2018.

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