

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1369

By: Kidd of the Senate

and

Jordan of the House

8
9
10 COMMITTEE SUBSTITUTE

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

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14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 11 O.S. 2011, Section 51-102, is
17 amended to read as follows:

18 Section 51-102. As used in this article, unless the context
19 requires a different interpretation:

20 1. "~~Fire-fighters~~ Firefighters and police officers" shall mean
21 the permanent paid members of any fire department or police
22 department in any municipality within the State of Oklahoma but
23 shall not include the chief of police and an administrative
24 assistant and the chief of the fire department and an administrative

1 assistant. The administrative assistant shall be that person so
2 designated by the chief of the police department. "Police officers"
3 as used herein shall be those persons as defined in Section 50-101
4 of this title-;

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

15 3. "Strike" shall mean the concerted failure to report for
16 duty, the willful absence from one's position, unauthorized
17 holidays, sickness unsubstantiated by a physician's statement, the
18 stoppage of work, or the abstinence in whole or in part from the
19 full, faithful and proper performance of the duties of employment,
20 for the purpose of inducing, influencing or coercing a change in the
21 conditions, compensation, rights, privileges or obligations of
22 employment. Nothing contained in this article shall be construed to
23 limit, impair or affect the right of any public employee to the
24 expression or communication of a view, grievance, complaint or

1 opinion on any matter related to the conditions or compensation of
2 public employment or their betterment, so long as the same does not
3 interfere with the full, faithful and proper performance of the
4 duties of employment-;

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

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

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

23 ~~6a.~~

24 a. Action by corporate authorities:

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

1 ~~6b.~~

2 b. Action by bargaining agent:

3 (1) interfering with, restraining, intimidating or
4 coercing employees in the exercise of the rights
5 guaranteed them by this article~~+~~;

6 (2) interfering with or attempting to coerce the
7 corporate authorities in the selection of their
8 representatives for the purposes of collective
9 bargaining or the adjustment of grievances~~+~~; or

10 (3) refusing to bargain collectively or discuss
11 grievances in good faith with the proper
12 corporate authorities with respect to any issue
13 coming within the purview of this article~~+~~; and

14 7. "~~Board~~ Administrative Hearing Panel" shall mean the ~~Public~~
15 ~~Employees Relations Board~~ panel appointed as herein provided.

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 were previously approved by the Public Employees Relations Board,
3 ~~herein created, a petition is filed by~~ a claim is presented to a
4 municipality, that:

5 1. ~~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 representative
12 is no longer the representative of the majority of employees in the
13 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 ~~Board~~ Administrative Hearing Panel shall ~~investigate the facts~~
18 ~~alleged therein and if it has reasonable cause to believe that a~~
19 ~~question of representation exists, it shall provide for an~~
20 appropriate hearing upon due notice. If the ~~Board~~ Administrative
21 Hearing Panel finds upon the record of such hearing that such a
22 question of representation exists, it shall direct an election by
23 secret ballot and shall certify the results thereof. The ~~Board~~
24 Administrative Hearing Panel may also certify a labor organization

1 as an exclusive employee representative if it determines that a free
2 and untrammelled election cannot be conducted because of the
3 employer's unfair labor practices.

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

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

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

1 some labor organization, a run-off election shall be conducted. A
2 labor organization which receives the majority of the votes cast in
3 an election shall be certified by the Board as the exclusive
4 employee representative.

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

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

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

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

1 ~~3. Two appointed by the Speaker of the Oklahoma House of~~
2 ~~Representatives, one of whom shall be an impartial appointment and~~
3 ~~one of whom shall be a representative of a municipality to be~~
4 ~~selected from a list of four nominees submitted by a statewide~~
5 ~~organization the membership of which consists primarily of~~
6 ~~incorporated cities and towns within Oklahoma.~~

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

21 ~~C. Three members of the Board shall constitute a quorum. Any~~
22 ~~individual chosen to fill a vacancy on the Board shall be appointed~~
23 ~~only for the unexpired term. The Chairman and members of the Board~~
24 ~~shall not receive a salary but shall receive compensation in lieu of~~

1 ~~expenses in the amount of Fifty Dollars (\$50.00) per day for any~~
2 ~~meeting or the conduct of official duties, whether acting singly or~~
3 ~~collectively.~~

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

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

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

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

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

18 B. Whenever it is charged that any person has engaged in or is
19 engaging in any such unfair labor practice, the ~~Board~~ Administrative
20 Hearing Panel shall have the power to ~~issue and cause to be served~~
21 ~~upon such person a complaint stating the charges in that respect,~~
22 ~~and containing a notice of hearing before the Board, at a place~~
23 ~~therein fixed, not less than five (5) days after the serving of said~~
24 ~~complaint. The person so complained of shall have the right to file~~

1 ~~an answer and to appear and give testimony at the time and place~~
2 ~~fixed in the complaint. In the discretion of the Board, any other~~
3 ~~person may be allowed to intervene in such proceeding~~ set the matter
4 for hearing, take evidence and decide the questions presented.

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

19 D. The ~~Board~~ Administrative Hearing Panel, or any interested
20 party, shall have the power to petition the district court, wherein
21 the unfair labor practice in question occurred, for the enforcement
22 of such order and for appropriate temporary relief of restraining
23 order.

1 SECTION 5. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 51-107a of Title 11, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Whenever an employer or bargaining agent claims that an
5 unfair labor practice has been committed by the other, it shall
6 notify the other in writing, within six (6) months of the commission
7 of the alleged practice. Within ten (10) calendar or business days
8 of such notification, each party shall select and name two
9 arbitrators and shall immediately thereafter notify each other in
10 writing of the name and address of the persons selected. The four
11 arbitrators selected and named shall, within five (5) calendar or
12 business days from and after the expiration of the ten-day period
13 hereinabove mentioned, agree upon and select a fifth arbitrator.
14 If, on the expiration of the period allowed therefor, the
15 arbitrators are unable to agree upon the selection of a fifth
16 arbitrator, the bargaining agent and the corporate authorities shall
17 request the Federal Mediation and Conciliation Service to provide a
18 list of five arbitrators. The list of arbitrators will be from the
19 region in which Oklahoma is located; however, if the Federal
20 Mediation and Conciliation Service no longer groups Oklahoma in a
21 specific region, the parties shall use a nonregional panel of
22 arbitrators from the Federal Mediation and Conciliation Service.

23 B. Within ten (10) calendar or business days after receipt of
24 the list of arbitrators from the Federal Mediation and Conciliation

1 Service, the two arbitrators already selected shall alternately
2 strike the name of one arbitrator from the list of five until one
3 name remains, with the party claiming an unfair labor practice has
4 been committed making the first strike from the list. The third
5 arbitrator, whether selected as a result of an agreement between the
6 two arbitrators previously selected or selected from the list
7 provided by the Federal Mediation and Conciliation Service, shall
8 act as chair of the Arbitration Board. The chair of the Arbitration
9 Board shall schedule a hearing, take evidence and render a decision
10 based thereon. Decisions of the former Public Employees Relations
11 Board and of the National Labor Relations Board may be considered
12 persuasive on the issues provided.

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

15 Section 51-110. Fees and necessary expenses of the arbitrator
16 selected by the bargaining agent and the arbitrator selected by the
17 corporate authorities shall be borne by the bargaining agent and the
18 corporate authorities respectively. The reasonable fees and
19 necessary expenses of the third arbitrator shall be borne equally by
20 the bargaining agent and corporate authorities. This provision
21 applies for interest arbitration and consideration of alleged unfair
22 labor practices claims.
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1 SECTION 7. REPEALER 11 O.S. 2011, Section 51-104a, as
2 amended by Section 51, Chapter 304, O.S.L. 2012 (11 O.S. Supp. 2017,
3 Section 51-104a), is hereby repealed.

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

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6 COMMITTEE REPORT BY: COMMITTEE ON COUNTY AND MUNICIPAL GOVERNMENT,
7 dated 04/11/2018 - DO PASS, As Amended.
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