

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1369

By: Kidd

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5
6 AS INTRODUCED

7 An Act relating to cities and towns; amending 11 O.S.
8 2011, Section 51-102; which relates to fire and
9 police arbitration; modifying definition; amending 11
10 O.S. 2011, Section 51-103, which relates to fire and
11 police arbitration; clarifying regulatory authority;
12 amending 11 O.S. 2011, Section 51-104b, which relates
13 to prevention of unfair labor practice; clarifying
14 authority to prevent bargaining agents from engaging
15 in any unfair labor practice; establishing procedures
16 for claims of unfair labor practice from employers or
17 bargaining agents; amending 11 O.S. 2011, Section 51-
18 110, which relates to fees and necessary expenses of
19 arbitrators; clarifying application of certain
20 provision; repealing 11 O.S. 2011, Sections 51-104,
21 as last amended by Section 7, Chapter 15, O.S.L. 2013
22 and 51-104a, as amended by Section 51, Chapter 304,
23 O.S.L. 2012 (11 O.S. Supp. 2017, Sections 51-104 and
24 51-104a), which relate to the re-creation and duties
of the Public Employees Relations Board; providing
for codification; and providing an 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 1. "Fire fighters and police officers" shall mean the permanent
2 paid members of any fire department or police department in any
3 municipality within the State of Oklahoma but shall not include the
4 chief of police and an administrative assistant and the chief of the
5 fire department and an administrative assistant. The administrative
6 assistant shall be that person so designated by the chief of the
7 police department. "Police officers" as used herein shall be those
8 persons as defined in Section 50-101 of this title.

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

19 3. "Strike" shall mean the concerted failure to report for
20 duty, the willful absence from one's position, unauthorized
21 holidays, sickness unsubstantiated by a physician's statement, the
22 stoppage of work, or the abstinence in whole or in part from the
23 full, faithful and proper performance of the duties of employment,
24 for the purpose of inducing, influencing or coercing a change in the

1 conditions, compensation, rights, privileges or obligations of
2 employment. Nothing contained in this article shall be construed to
3 limit, impair or affect the right of any public employee to the
4 expression or communication of a view, grievance, complaint or
5 opinion on any matter related to the conditions or compensation of
6 public employment or their betterment, so long as the same does not
7 interfere with the full, faithful and proper performance of the
8 duties of employment.

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

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

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

4 6a. Action by corporate authorities:

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

1 bargaining agent with respect to any issue coming
2 within the purview of this article; or

3 (6) instituting or attempting to institute a lockout.

4 6b. Action by bargaining agent:

5 (1) interfering with, restraining, intimidating or
6 coercing employees in the exercise of the rights
7 guaranteed them by this article;

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

12 (3) refusing to bargain collectively or discuss
13 grievances in good faith with the proper
14 corporate authorities with respect to any issue
15 coming within the purview of this article.

16 7. "Board" shall mean the ~~Public Employees Relations Board~~
17 Arbitration Board appointed as herein provided.

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

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

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

7 1. A labor organization ~~alleging~~ alleges that thirty percent
8 (30%) of the firefighters or police officers in a municipality:

9 a. wish to be represented for collective bargaining by an
10 exclusive employee representative, or

11 b. 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 A Board shall investigate the facts alleged therein and if it~~
18 ~~has reasonable cause to believe that a question of representation~~
19 ~~exists, it~~ be appointed by the municipality and labor organization,
20 under the procedure set forth in Section 51-107a of this title and
21 the Board shall provide for an appropriate hearing upon due notice.

22 If the Board finds upon the record of such hearing that such a
23 question of representation exists, it shall direct an election by
24 secret ballot and shall certify the results thereof. The Board may

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

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

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

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

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

5 SECTION 3. AMENDATORY 11 O.S. 2011, Section 51-104b, is
6 amended to read as follows:

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

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

22 C. If upon the preponderance of the testimony taken the Board
23 shall be of the opinion that the person named in the complaint has
24 engaged in or is engaging in any such unfair labor practice, then

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

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

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 51-107a of Title 11, unless
17 there is created a duplication in numbering, reads as follows:

18 A. Whenever an employer or bargaining agent claims that an
19 unfair labor practice has been committed by the other, it shall
20 notify the other in writing, within six (6) months of the commission
21 of the alleged practice. Within ten (10) days of such notification
22 each party shall each select and name one arbitrator and shall
23 immediately thereafter notify each other in writing of the name and
24 address of the person so selected. The two arbitrators so selected

1 and named shall, within five (5) days from and after the expiration
2 of the ten-day period hereinabove mentioned, agree upon and select a
3 third arbitrator. If, on the expiration of the period allowed
4 therefor, the arbitrators are unable to agree upon the selection of
5 a third arbitrator, the bargaining agent and the corporate
6 authorities shall request the Federal Mediation and Conciliation
7 Service to provide a list of five arbitrators.

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

22 SECTION 5. AMENDATORY 11 O.S. 2011, Section 51-110, is
23 amended to read as follows:

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1 Section 51-110. Fees and necessary expenses of the arbitrator
2 selected by the bargaining agent and the arbitrator selected by the
3 corporate authorities shall be borne by the bargaining agent and the
4 corporate authorities respectively. The reasonable fees and
5 necessary expenses of the third arbitrator shall be borne equally by
6 the bargaining agent and corporate authorities. This provision
7 applies for interest arbitration, grievance arbitration,
8 consideration of alleged unfair labor practices, and for
9 certification, decertification, election or determination of the
10 bargaining representative.

11 SECTION 6. REPEALER 11 O.S. 2011, Section 51-104, as
12 last amended by Section 7, Chapter 15, O.S.L. 2013 (11 O.S. Supp.
13 2017, Section 51-104), is hereby repealed.

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

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

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