

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

IN THE MATTER OF:)
) Perb Case No. 12285-P
PETITION OF CLINTON POLICE)
OFFICERS ASSOCIATION)

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

This matter comes on for hearing before the Public Employees Relations Board (PERB or the Board) on July 29, 1988, upon the Petition of the Clinton Police Officers Association (Association), seeking an amendment of the certification issued in PERB Case No. 12225-P wherein the Fraternal Order of Police Lodge #130 (FOP) was recognized by the Board as the certified bargaining agent for the Clinton Police Officers. The Association appeared by and through its attorney, Nathan G. Graham and the FOP appeared by and through its attorney, James Moore. The Board received documentary and testimonial evidence; the Board also solicited and received post hearing submissions (Proposed Findings of Fact, Conclusions of Law and supporting Briefs) from both parties.

The Board is required by 75 O.S. 1981, § 312 to rule individually on Findings of Fact submitted by the parties. The submissions of the FOP (Proposed Findings 1-5) are accepted by the Board.

Because the Petitioner did not submit Proposed Findings of Fact, the PERB need make no comparable rulings; the Association did however include a "Statement of Facts" in its Brief. Such assertions, where material and when at odds with the assertions of the FOP will be addressed hereinbelow.

FINDINGS OF FACT

1. FOP Lodge #130 is the certified bargaining agent for the eligible police officers employed by the City of Clinton Police Department.

2. The first and only collective bargaining agreement executed by the FOP and the City covered fiscal year 1986-1987 and had a termination date of June 30, 1987 (Tr. 4, Joint Stipulation).

3. For FY 1987-1988, the parties made only administrative changes in their practices and agreed to continue the terms of the FY 1986-87 agreement for FY 1987-88 (Tr. 5, Joint Stipulation). By operation of 11 O.S. § 51-105 and the agreement and practice of the parties, the FY 1986-87 agreement remains in effect (Tr. 25-26).

4. FOP gave timely written notice on March 2, 1988, to the City of its intent to negotiate a new agreement for FY 1988-89 and has been and still is, engaged in collective bargaining with the City for a successor agreement (Tr. 5, Joint Stipulation).

5. That the subject Decertification Petition was filed on April 8, 1988, subsequent to the FOP's written Notice of Intent to Bargain for FY 1988-89 (Tr. 5, Joint Stipulation).

6. The Decertification Petition claimed 10 of 19 employees (a figure in excess of 30% of those eligible to participate in an election) had authorized withdrawal of recognition of FOP #130 as the exclusive bargaining agent (Tr. 5, Joint Stipulation).

7. The PERB has proposed new rules governing the date within which a representation petition could not be filed. These rules known as the "contract bar doctrine" provide as follows:

1. During the one year period following the date of certification, decertification or non-certification subsequent to a valid representation election.

2. Whenever a collective bargaining agreement exists, provided such agreement is written and executed by the parties to it. This contract bar shall not apply to a representation election in a unit clarification case.

3. Decertification elections. Petitions for decertification which are filed with the Board not less than 240 days prior to the stated expiration date of any otherwise valid collective bargaining agreement shall be processed by the Board notwithstanding the provisions of VI E(2), and any election ordered by the Board pursuant to § 51-103, shall be conducted not more than 180 nor less than 150 days prior to the expiration of the collective bargaining agreement.

As of the date of this Order, the above rules have not been finally adopted.

CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to 11 O.S. § 51-103.

2. The Board finds that its choice to adopt the contract bar by promulgation of a general administrative rule rather than by individual litigation lies within its discretion as an administrative agency. See, S.E.C. v. Chenery Corp., 332 U.S. 194, 67 S. Ct. 1575, 91 L.Ed. 1995 (1947). The Board has initiated the process, pursuant to the Administrative Procedures Act, 75 O.S. §§ 301, et seq. (APA) of adopting a "contract bar" rule (See Finding of Fact #7). In his Brief, counsel for the FOP skillfully explains the justification for the rule and urges the rule's adoption in this case. However, the Board is persuaded that, as a matter of policy, it will not circumvent the APA process, once begun, by imposing the rule upon the Petitioners prior to the rule taking effect under the APA.

3. The Board is persuaded that the Petitioners have satisfied the statutory requirements of 11 O.S. § 51-103 and that therefore an election should be conducted by this Board to determine if the FOP shall continue as the certified representative of the Clinton Police Officers pursuant to the provisions of the Fire and Police Arbitration Act, 51 O.S. §§ 51-101, et seq.

O R D E R

The Secretary of the Board is directed to conduct an election pursuant to the Petition filed by the Clinton Police Officers Association within thirty (30) days of the date of this decision.

Dated this 21 day of September, 1988.



CHAIRMAN

dp.Clinton.POA