

**PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA**

FRATERNAL ORDER OF POLICE,)	
LODGE 194,)	
Complainant,)	
)	
vs.)	PERB 12397 P
)	
CITY OF BLANCHARD,)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND FINAL ORDER

NOW on this 11th day of December, 2003, there comes on before the Oklahoma Public Employees Relations Board (the "Board") the above-styled and numbered administrative action. The Complainant, Fraternal Order of Police, Lodge 194 ("Union"), is represented by its attorney of record, Douglas D. Vernier. The City of Blanchard ("City") is represented by its attorney of record, David L. Perryman. On the 13th day of November, 2003, the parties, through counsel, presented oral argument and requested the Board to render its decision. The Board, having received the briefs and exhibits of the parties and otherwise being fully apprized of the facts and matters alleged, makes the following determination regarding findings of fact and conclusions of law and issues its Final Order.

Findings of Fact

1. The Complainant Union filed a Petition for Certification of Representatives for the purpose of collective bargaining on behalf of employees of the Blanchard Police Department on May 15, 2003.
2. The Director of the Public Employees Relations Board ("PERB") notified the parties by letter dated May 15, 2003, that the aforementioned Petition had been received alleging representation of more than 30% of the police officers of the City of Blanchard and requesting an election for certification of the Union as the exclusive employee representative. City's "Exhibit A."
3. By letter dated June 5, 2003, the Respondent City requested a hearing by the PERB on the "composition of the [bargaining unit] prior to the election." The Respondent identified one officer who was purportedly "Non-CLEET certified" and thus, the Respondent contended, was "not eligible to vote on certification." City's "Exhibit B."

4. By letter dated June 5, 2003, the Respondent further requested a hearing on the question of representation pursuant to 11 O.S. 2001, 51-103. City's "Exhibit D."
5. By letter dated June 5, 2003, the Director of the PERB informed the Respondent that she had considered the request for hearing by the PERB Board and that it was denied. The Director further advised the Respondent that it had an appropriate remedy for challenging the ballot of the purported ineligible voter pursuant to OAC 585:15-5-1 (5) and if the challenged ballot is the deciding vote, a hearing before the PERB would be scheduled. City's "Exhibit C."
6. It has been the continuous practice of the Director of PERB to consider and determine questions regarding the conduct of elections pursuant to the Fire and Police Arbitration Act and the rules promulgated by the PERB.
7. On June 12, 2003, the PERB conducted an election and determined that a majority of valid ballots had been cast for the Complainant Union and certified the Union as the exclusive representative for employees of the Blanchard Police Department. The vote was four in favor of the Union as their collective bargaining representative and none opposed. The officer whose vote would have been challenged did not vote. City's "Exhibit H."
8. By letter dated July 10, 2003, the Respondent again requested a hearing on whether a question of representation exists pursuant to 11 O.S. 2001, 51-103. City's "Exhibit M."
9. On July 17, 2003, the PERB heard oral arguments from the parties regarding the Respondent's request for hearing and denied the request.
10. On July 28, 2003, the City filed Respondent's Request for Rehearing, Reopening and Reconsideration.
11. On November 13, 2003, the PERB heard additional oral argument and considered the Respondent's request for rehearing, reopening and reconsideration of the denial of request for hearing on the question of representation.

Conclusions of Law

1. This matter is governed by the provisions of the Fire and Police Arbitration Act ("FPAA"), 11 O.S. 2001, 51-101, et seq., and the Board has jurisdiction to rule on this matter.
2. The hearing and procedures herein are governed by Article II of the Oklahoma Administrative Procedures Act, 75 O.S. 2001, 308, et seq.
3. The Board is empowered to investigate, provide a hearing and decide a question of representation of police

officers by a collective bargaining agent . 11 O.S. 2001, 51-103.

4. When a petition is filed by a labor organization alleging that thirty percent (30%) of the firefighters or police officers in a municipality wish to be represented for collective bargaining by an exclusive employee representative, the PERB shall investigate and if it finds reasonable cause to believe that a question of representation exists, the PERB shall provide for an appropriate hearing and direct an election if it finds that such a question of representation exists. 11 O.S. 2001, 51-103.

5. The Chair of the PERB is authorized to fix the duties of the PERB Director necessary to perform the responsibilities imposed upon the PERB by law. 11 O.S. 2001, 51-104a.

6. The PERB may appoint an administrative employee to conduct representation elections hearings. OAC 585:1-3-1(b).

7. Hearings shall be conducted by the Board unless the Board deems it necessary or desirable to appoint a "hearing officer" to conduct a hearing. The Board may confer on such individual the necessary powers to conduct such hearing and/or any procedural matters related thereto. OAC 585:1-7-1.

8. Construction of an ambiguous or uncertain statute by the agency charged with its administration is entitled to the highest respect from the courts, especially when administrative construction is definitely settled and uniformly applied for a number of years. *Oral Roberts Univ. v. Okla. Tax Comm'n*, 714 P.2d 1013, 1014-1015 (Okla. 1985).

9. Continual construction of a statute by the agency charged to enforce it must be given great weight. *United Airlines, Inc. v. State Bd. of Equalization*, 789 P.2d 1305, 1311 (Okla. 1990).

10. The Respondent was afforded an adequate hearing by the PERB Director in accordance with the FPAÁ and PERB rules.

ORDER

The Fire and Police Arbitration Act ("Act") was created in order to assure to firefighters and police officers of any municipality the fullest freedom in exercising the rights guaranteed by the Act. The Act provides specific procedures for election of a representative to bargain collectively on behalf of the employees. Among these statutory provisions is a mandate that the PERB shall provide for an appropriate hearing on whether a question of representation exists. 11 O.S. 2001, 51-103(B)(2). In response to this mandate, the PERB promulgated rules which authorize the appointment of an administrative employee to conduct representation elections hearings,

OAC 585:1-3-1(b), and authorize appointment of an individual to conduct hearings. OAC 585:1-7-1. The legislature authorized the PERB Chair to fix the duties of the PERB Director necessary to perform the responsibilities imposed upon the PERB by law. 11 O.S. 2001, 51-104a.

Here, the Director of PERB heard the request of the Respondent City based upon the petition filed by the Complainant Union and determined that a question of representation did exist and that a full hearing before the PERB Board was not required. This determination, which was authorized by the Act and by PERB rules, fulfilled the statutory requirement for an investigation and appropriate hearing as delegated to the Director by the PERB Board and the PERB Chair. Accordingly, the election which followed this finding was conducted by the PERB Director and the results were certified as provided by the Act.

It has been the continuous practice of the Director of PERB to consider and determine questions regarding the conduct of elections pursuant to the FPAA and the rules promulgated by the PERB. Continual construction of a statute by the agency charged to enforce it must be given great weight. *United Airlines, Inc. v. State Bd. of Equalization*, 789 P.2d 1305, 1311 (Okla. 1990). The PERB has continually construed the statute and rule relating to the conduct of elections to allow the agency Director to determine whether a question of representation exists and to hear any challenges to that determination. Accordingly, the agency's reasonable interpretation of the statute and the rule promulgated to carry out the statute is entitled to deference. Even assuming any uncertainty in the construction of 11 O.S. 2001, 51-103, interpretation of an ambiguous or uncertain statute by the agency charged with its administration is entitled to the highest respect, especially when administrative construction is definitely settled and uniformly applied for a number of years. *Oral Roberts Univ. v. Okla. Tax Comm'n*, 714 P.2d 1013, 1014-1015 (Okla. 1985).

"It is unlawful for any . . . member of a paid fire department or police department to strike or engage in any work stoppage." 11 O.S. 2001, 51-113. It is the public policy of this state to accord to the permanent members of any paid fire department or police department all the rights of labor - except the right to strike or engage in any work stoppage or slowdown. The PERB has historically attempted, therefore, to conduct prompt elections. The procedure urged by the Respondent in this case could conceivably result in an unreasonable delay in according firefighters and police their statutory right to select a collective bargaining representative while, at the same time, prohibiting their right to strike. The PERB Board normally meets each month, or every other month, and a party aggrieved by a Board decision is entitled, in most cases, to appeal the Board's decision to the district and

appellate courts of our state. Here, the only reason articulated by the City for a Board hearing (other than a general statutory entitlement) was a challenged voter. The City's concern, however, was addressed and resolved by the PERB Director's letter of June 5, 2003. See, City's "Exhibit C."

The Board believes that the legislature intended to give the PERB a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees - similar to the discretion exercised by the NLRB. See, e.g., NLRB v. A.J. Tower Co., 329 U.S. 324 (1946); TRW-United Greenfield Div. v. NLRB, 716 F.2d 1391 (11th Cir. 1983). The Board does not believe that the City's pre-election rights were abused or violated by the actions or inactions of the Director.

IT IS THEREFORE THE ORDER of the Public Employees Relations Board that the Complainant's Request for Rehearing, Reopening and Reconsideration is hereby DENIED.

DATED this 31st day of December, 2003.

Original signed by *Craig W. Hoster*, Chair
Public Employees Relations Board