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OCT 13 2011

Public Employees Relations Board

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

GAVIN LITTLEJOHN (for Fraternal Order of Police, Lodge 208),	)	
Complainant,	)	
v.	)	PERB No. 2011-RC-12432PD
TOWN OF DIBBLE,	)	
Respondent.	)	

ORDER GRANTING PETITION FOR CERTIFICATION OF REPRESENTATION

This matter came on for hearing before the Public Employees Relations Board (the "Board") meeting in a Regular Meeting on the 11th day of August, 2011, at 9:00 a.m., in the Oklahoma Department of Agriculture, Food and Forestry, Agriculture Building, First Floor Board Room, 2800 N. Lincoln Boulevard, Oklahoma City, Oklahoma, on the following matters: (1) Complainant's Petition for Certification of Representation filed by Gavin Littlejohn (for the Fraternal Order of Police, Lodge 208) (the "Complainant") on June 23, 2011 (the "Petition"); and, (2) Town's Response to Petition, Objection to Allegation of Number of Employees within the Unit; Request that the Board Reconsider the Issues Raised in the *Kiefer* Decision and Enter a Determination that a One Member Unit is Insufficient to Merit Recognition and Certification by the Board and Brief in Support thereof filed by the Town of Dibble, Oklahoma (the "Respondent" or "Town"), on July 11, 2011 (the "Response"). The Complainant, an employee in the bargaining unit, appeared pro se. The Respondent appeared by and through its Attorney David L. Perryman, Chickasha, Oklahoma. No proposed findings of fact were submitted to the Board by either party to these proceedings.

The Petition alleges that the Complainant seeks certification of union representation through the Fraternal Order of Police, Lodge 208 (the "Union"), as the designated bargaining agent for all permanent paid members of the Town's Police Department, excluding one Chief and one designated Administrative Assistant, with two (2) employees (police officers) in the unit and that thirty percent (30%) of the employees (police officers) wish to be represented for collective bargaining by an exclusive employee representative. The Petition was accompanied by copies of two (2) dated Show of Interest Cards that show the address and were each signed by the employee (police officer) expressing an intent to be represented by the Union indicating that the Petition has the support of thirty percent (30%) or more of the employees (police officers) in the bargaining unit.

The Board, having reviewed the Petition and attachments thereto, the Response filed herein and the various exhibits admitted into evidence herein and having heard witness testimony and the arguments of counsel and otherwise being fully apprised of this matter, makes the following findings of fact:

FINDINGS OF FACT

It is the finding of the Board by a preponderance of the evidence that the following facts exist:

1. The Complainant is, and was at all times material herein, a police officer and employee in the bargaining unit.

2. The Town is, and was at all times material herein, a municipal corporation duly organized and existing under the laws of the State of Oklahoma.

3. The Petition was filed by the Complainant as a police officer and employee in the bargaining unit. The Petition contained the name and address of all other parties proper to this

proceeding including those of the Town and the President of the Town Board of Trustees and other relevant facts, including, but not limited to, an allegation that there were two (2) employees in the bargaining unit excluding one Chief and one designated Administrative Assistant.

4. The Petition was accompanied by copies of two (2) dated Show of Interest Cards that show the address of and were each signed by the employee (police officer) expressing an intent to be represented by the Union indicating that the Petition has the support of thirty percent (30%) or more of the employees (police officers) in the bargaining unit.

5. On June 23, 2011, the date the Petition was filed herein, the permanent paid members of Town's Police Department consisted of a Chief of Police and two other police officers for a total of three (3) police officers.

6. The Respondent admitted in Section 2 of its Response that " there is only one (1) member of the Police Department of the Town of Dibble who is eligible for membership in a unit".

7. The Petition was accompanied by two (2) dated Show of Interest Cards that show the address and were each signed by the employee (police officer) expressing an intent to be represented by the Union evidencing the fact that the Petition has the support of thirty percent (30%) or more of the employees (police officers) in the bargaining unit.

8. Dibble Chief of Police Walt Thompson testified that Dibble Police Officer Billy J. Scott, who holds the rank of Captain, was the second in command in the Town's Police Department in the Chief's absence.

9. Dibble Police Officer Billy J. Scott testified that he was appointed to the rank of Captain and the office of Assistant Chief of Police in the Town's Police Department by Dibble

Chief of Police Walt Thompson as evidenced by a letter from Dibble Chief of Police Walt Thompson that has been placed in his personnel file. Dibble Police Officer Billy J. Scott produced business cards bearing the logo of the Town's Police Department and stating that he is the Assistant Chief of Police as evidence of his service as the Town's Assistant Chief of Police, one of which cards was admitted into evidence.

10. The Town has adopted formal written Policies and Procedures for the Town's Police Department, a portion of which were admitted into evidence, including Chapter 101, Administrative Standard, Management and Organizational Structure, Section IV entitled "Assistant Chief of Police", which states in pertinent part: "The Assistant Chief of Police is the Administrative Assistant to the Chief of Police".

11. Based upon the facts in this particular case, the Assistant Chief of Police , who is the Administrative Assistant to the Chief of Police in the Town's Police Department, is ineligible for membership in the bargaining unit of the Town's Police Department.

12. The bargaining unit for the Town's Police Department consists of one (1) permanent paid police officer who is the Complainant herein.

CONCLUSIONS OF LAW

The Board concludes as a matter of law as follows:

1. This matter is governed by the provisions of the Fire and Police Arbitration law, 11 O.S. 2001, §§ 51-101 et seq. and the Board has jurisdiction over the parties and the subject matter of this certification action pursuant to 11 O.S. §51-103.

2. The hearing and procedures herein are governed by Article II of the Administrative Procedures Act, 75 O.S. §§ 308a et seq. and the meeting was convened and conducted in

accordance with the provisions of the Oklahoma Open Meeting Act, 25 O.S. §§ 301 et seq.

3. The burden of proof in this matter is a preponderance of the evidence pursuant to OAC 585: 2-7-12.

4. The Respondent, by objecting to the Petition for certification of representation, has the burden of proving its allegations by a preponderance of the evidence. OAC 585: 2-7-12.

5. To be approved by the Board, a petition for certification of representation, pursuant to OAC 585: 35-3-1(b), shall contain the following:

> (1) A statement as to whether the petition is filed by a bargaining agent, by a corporate authority, or by an employee in the bargaining unit;
>
> (2) The name and address of all other parties proper to the proceeding; and
>
> (3) Any other relevant fact or facts.

6. "Police officers" are defined in the Fire and Police Arbitration law, 11 O.S. § 51 -102(1) as permanent paid members of a police department in any municipality within the State of Oklahoma,

> but shall not include a chief of police 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 [11 O.S. § 50-101 et seq.] .

7. It is the public policy of the State of Oklahoma through enactment of the Fire and Police Arbitration law, 11 O.S. §§ 51-101 et seq. , to accord the rights of labor to the permanent members of any paid police department or fire department. Fire and Police Arbitration law, 11

O.S. 2001, § 51-101(B).

8. Police officers and firefighters, as defined in the Fire and Police Arbitration law, 11 O.S. § 51-102(1), in any municipality have the right to bargain collectively with their municipality and to be represented by a bargaining agent. 11 O.S. 2001, § 51-103(A).

9. The Board, consistent with the holding of the Board previously in *In re: Certification Petition of Fraternal Order of Police, Lodge 133, City of Keifer, Oklahoma,* PERB Case No. 12398P dated October 8, 2004, will recognize and certify a one-person bargaining unit provided the person is a permanent paid member of a police or fire department.

OPINION

It is the finding of the Board as follows:

Once faced with a certification petition, the Town of Dibble is allowed but not required to exclude a Chief and administrative assistant from the unit to be petitioned for and further for all intents and purposes, an administrative assistant has been designated in this particular case. Further, the Board reaffirms its *Keifer* decision and recognizes a single-employee unit because that employee is prohibited from striking under 11 O.S. §51-101(B) and should be protected from concerted activities.

Pursuant to OAC 585: 2-7-12, the Board finds that upon a preponderance of the evidence, that the Respondent has failed to meet its burden of proof in its objection to the granting of the Petition and the Petition of the Complainant should be and hereby is GRANTED and the Response of the Complainant should be and hereby is DENIED. It is hereby ordered that an election be had in the Dibble Police Department pursuant to the requirements of 11 O.S. §51-103.

Dated this 13 day of October, 2011.

Michael Barlow, Chairman
Public Employees Relations Board

C. Max Speegle, Member
Public Employees Relations Board

Larry W. Gooch, Member
Public Employees Relations Board