PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

IN THE MATTER OF:	)	
	)	
FRATERNAL ORDER OF POLICE, OKLAHOMA CITY and LAKE RANGERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 12268
	)	
CITY OF OKLAHOMA CITY, OKLAHOMA,	)	
	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Public Employees Relations Board ("PERB" or the "Board") on December 8, 1986, on the Respondent, City of Oklahoma City, Oklahoma's ("the City") objection to the representation Petition filed by Lodge 123, Fraternal Order of Police ("the Union") on behalf of the Park and Lake Rangers of the City ("the Rangers"). The City appeared by and through Gerald S. Rakes, Assistant Municipal Counselor; the Union and the Rangers appeared by and through their attorney, James R. Moore. The Board took evidence and heard the arguments of counsel. The parties made joint post-hearing evidentiary submissions. The Union and Rangers submitted Proposed Findings of Fact and Conclusions of Law; the City subsequently filed a post-hearing brief.

As the City has recognized, the dispositive issue before the Board is whether the Rangers are police officers within the

definition of 11 O.S. 1981, §§ 51-102(1) and 50-101(6) (See also, the Union's proposed Finding of Fact No. 5). (All statutory references herein are to Title 11 of the Oklahoma statutes, unless otherwise indicated.)

The PERB finds that the Rangers are subject to the Fire and Police Arbitration Act, codified at §§ 51-101 et seq., for the reasons set out hereinbelow.

RULINGS ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board is required by 75 O.S. 1981, § 312, to rule individually on findings of fact submitted by the parties. It appears that the facts are not seriously in dispute between the parties; it is, rather, the legal conclusions to be drawn from those facts that separate the parties. Atlthough the City has suggested in its Brief that the Board should consider facts additional to those submitted on behalf of the Union and Rangers, the City has not challenged specifically any Finding of Fact proposed by the Union and Rangers.

The Union and Ranger's proposed Finding of Facts No. 1 through 5 are not contested by the City and have been adopted by the Board. They describe the parties and the procedural background of this dispute.

Proposed Finding of Fact No. 6(a) through (j) describing the duties of Rangers, in comparison to those of other law enforcement officers, is not challenged by the City and is hereby adopted, except as it may be modified by the Board hereinunder.

The Union's Proposed Finding of Fact No. 7(a) through (d) is erroneously numbered (see page 5 of the Union and Ranger's Proposed Findings of Fact and Conclusions of Law, identifying it as No. 6). The City points out that this Proposed Finding of Fact, which purports to identify the City ordinances pertinent to this dispute, should be supplemented by City Ordinance No. 38-135, which apparently excludes the Lake Atoka Reservoir from the jurisdiction of the Rangers. Although the geographical jurisdiction of the Rangers is not central to the Board's decision, the Union and Ranger's Proposed Finding of Fact renumbered 7(a) through (d) is adopted by the Board, as supplemented by the City.

The Union and Ranger's Proposed Finding of Fact No. 7 (actually No. 8) should be treated as mixed issues of fact and law. The legal significance of the similarity between and among the cited definitions is treated in the Board's 4th Finding of Fact and 2nd Conclusion of Law.

FINDINGS OF FACT

1. The City is and was at all pertinent times, a municipal corporation organized and existing under the laws of the State of Oklahoma.

2. The Union is presently the bargaining agent for a bargaining unit comprised of officers assigned to the Oklahoma City Police Department and the Oklahoma City Department of Airports.

3. The Rangers have been and are now represented by the American Federation of State, County and Municipal Employees for collective

bargaining purposes. The bargaining relationship between the City and the Rangers is presently conducted outside the auspices of the PERB.

4. The Rangers are permanent full-time employees of the City. Rangers, like officers assigned to the Oklahoma City Police Department ("OCPD"), are certified by the Council on Law Enforcement Education and Training ("CLEET") pursuant to 70 O.S. 1981, § 3311, as amended. None of the Rangers are reserve or auxiliary officers, as those terms are defined by law.

5. Rangers are assigned to the City's Department of Parks and Recreation. The supervisory and administrative hierarchy for Rangers is separate and distinct from that for the OCPD. The Rangers are not unique in that regard. (See Finding No. 6, below).

6. Those police officers assigned to the Department of Airports also are separated administratively from the OCPD. The City has participated and acquiesced in collective bargaining, under the FPAA, with the Union as representative for a merged bargaining unit comprising law enforcement officers assigned to both the Airport Department and the OCPD.

7. Subsequent to the completion of the training requirements mandated by 70 O.S.Supp. 1986, § 3311, the Rangers receive specialized training pertaining to their duties. That training is not provided other officers employed by the City.

8. Rangers job responsibilities include:

a. Enforcing State laws and city ordinances;

b. Preserving the public peace and protecting life and property within the limits of their geographic jurisdiction;

c. Enforcing state, city and federal regulations pertinent to their assigned duties;

d. Bearing arms, serving warrants, and making arrests.

9. In 1975 or 1976, when Oklahoma City Police officers walked off the job, Rangers performed the same duties that OCPD officers had previously performed without any change in ordinance authority, commission, oath, or training.

CONCLUSIONS OF LAW

1. The Rangers are "regular" police officers within the meaning of §§ 51-102(1) and 50-101(6). The phrase "the regular police department" in § 50-101(6), distinguishes between regular and reserve municipal officers as described in § 34-101(B). As regular police officers who otherwise meet the requirements of §§ 51-102(1) and 50-101(6), the Rangers are within the ambit of the FPAA. The PERB therefore has jurisdiction over the subject matter and parties in this labor dispute.

2. The PERB agrees with the Union's contention that the use of the term "police department" in the FPAA is not intended to limit the scope of the Legislature's concern about the orderly resolution of labor disputes involving police and firefighters. More specifically, the Board is convinced that the legislature intended that all the provisions of the FPAA would apply to all regular police officers "whose duties are to preserve the public peace, protect life and property," etc. Section 50-101(6). The Con-

clusion is consistent with 70 O.S.Supp. 1986, § 3311, which provides a single certification scheme for all law enforcement officers. See, A.G. Opin. 85-29.

3. The PERB's decision does not impair the City's operational flexibility in determining the administrative structure of its law enforcement services. Cf. § 9-108(4). The organizational structure of police services is relevant in determining the composition of an appropriate bargaining unit. See, §§ 51-103(D). Here, however the Union apparently believes that the Rangers belong in a bargaining unit separate from other police officers. The City has addressed the factors identified in § 51-103(D) as they relate to differences between and among Rangers, airport officers, and OCPD officers, as if the determination of those factors might impact upon the jurisdictional issue of coverage under the FPAA, but not as they might suggest separate versus merged bargaining units. Therefore, the PERB adopts the Union's Proposed Conclusion of Law No. 4, and finds that the Rangers should constitute a separate, self-contained bargaining unit.

OPINION

The following remarks are offered, pursuant to 75 O.S. 1981, § 309(e)(6), to explain further the Findings of Fact and Conclusions of Law reached by the PERB in this matter. The primary question posed in this dispute - whether the FPAA applies only to one "regular" police department as designated by the City - is not without interpretive difficulty. The PERB has taken care to construe together the various interacting parts of the FPAA and other closely related statutes.

The Board is mindful of the rule requiring statutes to be construed, if possible, to give effect to every word, phrase, or sentence. See, e.g., State ex rel. Oklahoma Tax Commission v. Daxon, 607 P.2d 683 (Okl. 1980). It is, therefore, inappropriate to focus too narrowly on one phrase, where that phrase may be susceptible of more than one interpretation.

In that connection, it should be observed that § 51-101(A), in declaring that the public policy of Oklahoma requires that the right to strike should be denied "the permanent members of any paid fire department or police department in any municipality." [emphasis added] Section 51-101(B) goes on to state that it is the public policy of Oklahoma "to accord to the permanent members of any paid fire department or police department all of the rights of labor, other than the right to strike or to engage in any work stoppage or slowdown." [emphasis added]

This, of course, is the balance struck by the Legislature: an absolute ban on strikes in exchange for those traditional rights of labor which do not otherwise contravene the policies of the FPAA. See, Stone v. Johnson, 690 P.2d 459, 462 (Okl. 1984) While the arguments advanced by the parties have understandably focused on the "rights" side of the equation, it is worth asking whether the Legislature intended to exclude the Rangers from the coverage of those parts of the FPAA prohibiting and punishing job actions (e.g., strikes). It seems most likely to the Board that the Legislature took seriously the danger of municipal law enforcement officer strikes and intended to prohibit them without

regard to the vagaries of the administrative description or organization of those services. Including the Rangers within the ambit of the definition of "police officer" fulfills this important public purpose without doing violence to the language of § 50-101(6). The PERB does not believe that the City has the authority to exempt law enforcement officers from the anti-strike prohibitions (and other provisions) of the FPAA through the exercise, pursuant to § 9-108(4), of its administrative power.

ORDER

Having concluded that the petitioning Rangers are within the coverage of the FPAA and that the Rangers constitute a separate bargaining unit, an election shall be conducted pursuant to 11 O.S. 1981, § 51-103 and the Rules of the Board. The parties shall be notified of the election schedule and procedures by letter from the Board.

Gabson Keller

NELSON KELLER, Chairman

5-5-87

Date