BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

THE CITY OF COWETA, OKLAHOMA, Petitioner, v. THE FRATERNAL ORDER OF POLICE, LODGE NO. 192, Respondent.	)	Case No. 12276 PR-A

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION AND ORDER

This matter was heard by the Public Employees Relations Board (PERB or the Board) on August 28, 1989, on the Petitioner's Unit Clarification Application. The Petitioner appeared by and through its counsel Francis Molenda and certain of its employees and a former employee. The Respondent appeared by and through counsel George McCaffrey. 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 the parties.

The Board is required by 75 O.S. 1981, § 312 to rule individually on Findings of Fact submitted by the parties. The Board adopts substantially Petitioner's proposed findings of fact numbered 1 through 23 with the exception of proposed finding No. 7 which is rejected as repetitive. The Board adopts substantially Respondent's proposed findings which appear in Respondent's pleadings as unnumbered paragraphs 1, 2, 7, 8, 10, 11, 12, 13, 14, 15 and 17. The Board rejects those findings which appear in

paragraphs 3, 4, 5, 6, 9 and 16 as unnecessary for a fair and accurate decision in this case.

PROPOSED FINDINGS OF FACT

1. On July 7, 1987, the Fraternal Order of Police, Lodge No. 192 ("FOP"), filed its Representation Petition wherein it sought to be certified as the Bargaining Agent for the following unit:

> All permanent paid members of the Coweta Police Department excluding only the Chief.

(Tr. p.15; Joint Stipulation)

2. Following an election conducted on Friday, August 14, 1987, PERB issued a Certification of the FOP declaring the collective bargaining unit to be all permanent paid full-time employees of the Coweta Police Department excluding only the Chief and one designated assistant. (Tr. p.16; Joint Stipulation)

3. The City of Coweta (City) did not file objections to the elections or appeal PERB's Certification. (Tr. pp.16-17; Joint Stipulation)

4. The City did file a Petition to Revoke PERB's Certification on April 27, 1988. (Tr. p.17; Joint Stipulation)

5. On June 13, 1989, PERB adopted the proposed Findings of Fact, Conclusions of Law, Discussion and Order of its duly-appointed Hearing Officer, dismissing the City's Petition to Revoke Certification; however, said dismissal was subject to allowing the City to amend the Petition to Revoke. (Tr. p.18; Joint Stipulation)

6. On June 20, 1989, the City filed its Amended Petition seeking to clarify the unit by excluding dispatchers from the collective bargaining unit claiming dispatchers as such are not officers and are properly excluded from the unit. (Tr. p.18; Joint Stipulation)

7. The current employees in the classification of dispatcher are Andrew Brown, Kim Taylor, Colleen Craig and Franklin Walker. (Tr. pp.7, 8, 9)

8. Each dispatcher in Coweta is issued an I.D. card which states on its face the words "police officer". (FOP Exhibits 2 and 3)

9. The dispatchers do not serve warrants nor have they been authorized to bear arms, however they have on occasion been referred to as "arresting officer". (Tr. p.12; Joint Stipulation FOP Exhibit 3)

10. The dispatchers do not wear the same uniforms as police officers. (Tr. p.12; Joint Stipulation)

11. The dispatchers do wear the same badges as police officers except that one badge contains the words "dispatcher" and the other, "patrolman". (Tr. p.12; Joint Stipulation)

12. The dispatchers do have the same basic benefits including pension, health insurance and longevity as police officers. (Tr. p.13; Joint Stipulation)

13. Dispatchers are paid a lower rate of pay than police officers. (Tr. p.13; Joint Stipulation)

14. Dispatchers do not have the same job duties as police officers. Dispatchers' duties consist of the following:

a. Maintaining written and typed logs.

b. Dispatching for police, fire, 911 and ambulance services.

c. Receiving calls from City Hall, Library, Planning Commission, Water Department and Sewer Department.

d. Monitoring weather.

e. Monitoring alarms.

f. Receiving calls for animal control.

g. Receiving bonds.

h. Taking citizen complaints.

i. Civil defense dispatching.

j. Giving general citizens information.

k. Keeping records.

l. Doing filing and doing general typing.

(Tr. pp.13-14; Joint Stipulation)

15. Dispatchers are not furnished City cars for their use. (Tr. p.15; Joint Stipulation)

16. Police officers take the patrol cars home if they live within City limits. (Tr. p.15; Joint Stipulation)

17. The FOP did not present any witnesses at the hearing; however, through their counsel, an offer of proof was made with regard to the duties of one of the dispatchers, Andrew Brown. (Tr. p.19)

18. Based upon the FOP's offer of proof, Mr. Brown has never carried a gun in connection with his duties. (Tr. p.22) Mr. Brown has never been CLEET certified. (Tr. p.22) Mr. Brown participated in a manhunt along with "everybody in that part of the country" several years ago. (Tr. p.22)

19. During the course of a year, the City of Coweta Jail houses, at most, ten to 15 prisoners. (Tr. p.47) The City of Coweta Jail is a 12-hour holding facility. (Tr. p.47)

20. On the occasions in which Mr. Brown might have been on duty at the same time that a prisoner was in the City of Coweta Jail, Brown observed the prisoner once an hour and ordered meals for him from a restaurant. (Tr. p.21)

21. On one occasion in February, 1988, Mr. Brown, at the direction of former Chief of Police Keeler, placed an intoxicated person in jail. (Tr. pp.21,22)

22. Mr. Brown has assisted in searches, booking, taking photographs and computer checks with the OSBI and FBI. (Tr. 2), 39-40; 43)

23. Dispatchers do not go out on patrol or track down criminals. (Tr. p.48)

24. Dispatchers are trained on the Oklahoma Law Enforcement Telecommunications System ("OLETS"). It is a system for running vehicle checks to check driver licenses, etc. (Tr. pp.47,48) Dispatchers are required to be OLETS certified; police officers are not. (Tr. p. 48)

25. One dispatcher, Kim L. Smith, is CLEET certified but is not allowed to carry a gun. (FOP Exhibit 6)

PROPOSED CONCLUSIONS OF LAW

1. The PERB has jurisdiction over the parties and subject matter of this dispute pursuant to the Fire and Police Arbitration Act (FPAA), 11 O.S. § 51-101 et seq., and the rules of the Board.

2. In an administrative proceeding before the PERB, the petitioner has the burden of persuasion by a preponderance of the evidence as to the factual issues raised by its petition. See, e.g., Prince Manufacturing Co. v. United States, 437 F.Supp. 1041 (D.C. Ill. 1977). In this case the city has met its burden of proof that the dispatchers currently included in the bargaining unit are not police officers as defined by the FPAA and therefore are properly excluded from the collective bargaining unit.

PROPOSED OPINION

Dispatchers, as such, are not normally included in a bargaining unit. See, Fraternal Order of Police, Mayes County, Lodge No. 116 v. City of Pryor, Oklahoma, Case No. 12269-P. However, evidence may be presented to the Board to demonstrate on a case-by-case basis why certain employees designated as "dispatchers" should be included in the unit. To be included in the unit the "dispatcher" must satisfy the definition of a police officer found in Oklahoma Law.

In Fraternal Order of Police Lodge No. 173 v. City of Yukon, PERB Case Nos. 00164, 12281-UC this Board Stated: "In order to be

included within the bargaining unit [the applicant] must meet the definition of 'officer' in the Fire and Police Arbitration Act, 11 O.S. 1981, §§ 51-101, et seq., (FPAA or the "Act"). Section 51-102(1) of the Act provides that police officers "shall be those persons as defined in Section 50-101."

Section 50-101(6) provides:

> 'Officer' means any duly appointed and sworn full time officer of the regular police department of a municipality whose duties are to preserve the public peace, protect life and property, prevent crime, serve warrants, enforce all laws and municipal ordinances of this state, and any political subdivision thereof, and who is authorized to bear arms in the execution of such duties;

The Board finds that based upon the evidence presented that the dispatchers in this case do not meet the definition of "police officer" as set out in Section 50-101(6). Although dispatchers perform an exceptionally important function in any police department, an employee must satisfy the definition as stated in § 50-101(6) to be included within the bargaining unit under the FPAA. It is entirely possible that other dispatchers in other cities perform additional duties which would satisfy the provisions of § 50-101(6), however, such is not currently the case in Coweta.

The Board has before it no evidence that dispatchers in Coweta are authorized to serve warrants, enforce all the laws of the state and ordinances of the municipality or authorized to carry firearms in the execution of these duties. The rare function of duties normally performed by regular police officers is insufficient to require inclusion of dispatchers in the bargaining unit. The Board

is persuaded that the great weight of evidence in this case compels a decision that the dispatchers in Coweta do not meet the requirements of the FPAA and as such they are properly excluded from the bargaining unit.

PROPOSED ORDER

The Board orders that the Coweta dispatchers should be and are hereby ordered removed from the collective bargaining unit.

Dated this 26th day of October, 1989.

Respectfully submitted,

Douglas B. Allen

DOUGLAS B. ALLEN, OBA #213
ASSISTANT ATTORNEY GENERAL
COUNSEL TO THE PUBLIC EMPLOYEES
RELATIONS BOARD

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 1989, a true and correct copy of the foregoing was mailed to Francis Molenda, 900 Oneoak Plaza, Tulsa, OK 74103, counsel for Petitioner and George J. McCaffrey, 245 Century Center, Oklahoma City, OK 73102, counsel for Respondent.

Douglas B. Allen

DOUGLAS B. ALLEN

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COWETA.brf

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ADOPTION OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION AND ORDER

The Public Employees Relations Board ("PERB") having reviewed the record herein, as well as the Proposed Findings of Fact, Conclusions of Law, Opinion and Order submitted by counsel, finds that the same should be and are hereby affirmed and adopted as the PERB's final Order.

Dated this 28th day of November, 1989.

James G. Coates
CHAIRMAN

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Coweta.ff