BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

IN THE MATTER OF THE REPRESENTATION PETITION OF THE OKMULGEE POLICE OFFICERS' ASSOCIATION	)))	PERB Case No. 12331RM

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing before the Public Employees Relations Board (PERB or the Board) on the 5th day of April, 1995. The City of Okmulgee (hereafter "City") sought to determine whether four probationary employees were eligible to participate in the representation election held on March 22, 1995. The election was to determine whether the Fraternal Order of Police, Lodge 96 (hereafter "Union") was to represent the police officers employed by the City. The City appeared by and through its attorney, Lynn Paul Mattson. Phil Wixon, the Union president, appeared on behalf of the Union.

The Board received documentary and testimonial evidence. The Board also solicited post-hearing submissions (Proposed Findings of Fact, Conclusions of Law, and supporting briefs) from both parties. On May 31, 1995, the City filed a Supplemental Brief. Though given the opportunity, the Union did not file a Supplemental Brief.

The Board is required by 75 O.S. 1981, § 312, to rule individually on Findings of Fact submitted by the parties. The submission of the City is treated as follows:

1. Proposed Findings of Fact Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20 and 21 are substantially adopted by the Board.

2. Proposed Findings of Fact Nos. 17 and 18 are rejected in so far as they are not relevant to this decision.

The Board treats the submission of the Union as follows:

1. Proposed Findings of Fact No. 6, including subparts A, B and C is substantially adopted by the Board.

FINDINGS OF FACT

1. The City of Okmulgee is a charter city. (City's Brief, page 1)

2. Under the City Charter, the city manager has the authority to set probationary periods for city employees. (Tr. 34)

3. Article III, Section 23 of the City Charter gives the City Manager the authority to appoint, supervise and remove officers and employees of the City except as otherwise provided in the City Charter. (City's Brief, page 2)

4. The Okmulgee Police Department is an administrative department under the supervision and control of the City Manager. (City's Brief, page 2)

5. Every person hired by the City of Okmulgee is advised that he or she is a probationary employee for one year. (Tr. 29)

6. The City of Okmulgee Employee Handbook, effective from 1976 until March 14, 1995, provided for a probationary period of

one year for every person appointed to a regular position. (Exhibit 9)

7. The City of Okmulgee Employee Handbook also stated that appointments to permanent positions shall be subject to a probationary period. (Exhibit 9)

8. On March 14, 1995, the City repealed the Personnel Policies and Procedures Handbook.

9. As of the hearing on April 5, 1995, no new Personnel Policies and Procedures Handbook had been approved by the Okmulgee City Counsel.

10. Okmulgee Police Department Rules and Regulations require a one year probationary period for all original appointments. (Exhibit 8)

11. The Okmulgee Police Department has eight distinct grade and pay classifications for police officers, two probationary and six permanent. (Exhibit 7)

12. Until certified by the State of Oklahoma, the Council on Law Enforcement Standards and Training, Okmulgee police officers are paid at an entry-level salary for uncertified, probationary employees. (Tr. 29)

13. Until certified by C.L.E.E.T., probationary officers are in training with the senior officers and staff of the Okmulgee Police Department. (Tr. 30)

14. Once an officer becomes state-certified or upon successful completion of the state police academy, he or she

becomes a certified, probationary employee and receives a pay raise. (Tr. 29)

15. After certification, a certified, probationary officer receives assignments like other officers but continues to be evaluated by his or her staff for potential permanent employment. (Tr. 30)

16. Probationary police officer Gary Morris was hired on July 1, 1994. Morris completed his C.L.E.E.T. training prior to commencing his probationary work for the City of Okmulgee Police Department. (Tr. 28, 43)

17. Probationary police officer Allan Parker was hired August 8, 1994. Parker completed his C.L.E.E.T. training prior to commencing his probationary work for the City of Okmulgee Police Department. (Tr. 28, 42)

18. Probationary police officer Danny J. Owens was hired November 7, 1994. Owens had not attended the State academy or received a C.L.E.E.T certificate as of the date of the representation election. (Tr. 28)

19. Probationary police officer Jason Spradling was hired February 15, 1995. Smith had not attended the State academy or received a C.L.E.E.T certificate as of the date of the representation election. (Tr. 28)

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S. § 51-104 (b).

2. Title 11 O.S.1991, § 51-102(1), provides:

> Firefighters and police officers shall mean the permanent paid members of any fire department or police department in any municipality within the State of Oklahoma but shall not include the chief of police and an administrative assistant . . . The administrative assistant shall be that person 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.

3. Title 11 O.S.1991, § 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.

4. "Permanent employment" is not defined by the FPAA nor by the Police Pension and Retirement Act.

5. "Permanent employment" has been defined by the Supreme Court of Oklahoma as:

> [E]mployment for an indefinite period, which, in the absence of special consideration, may be arbitrarily severed at any time by either party.

Dicks v. Clarence L. Boyd Co., 238 P.2d 315, at 317 (Okla.1951).

6. This question was reviewed by the Board in Fraternal Order of Police, Lodge 123 v. The City of Oklahoma City, Case No.

12303UC. In that case, this Board held that police recruits who have graduated from the Police Academy and who have been certified by C.L.E.E.T. meet all the statutory requirements for membership in the bargaining unit and must be given membership therein. There is no compelling reason at this time for the Board to depart from that holding. Furthermore, there is no compelling reason for the Board to restrict membership to police recruits who have been C.L.E.E.T. certified. All four probationary employees are in essence treated as permanent employees; there is nothing in the record to indicate that their employment status is temporary. Moreover, it cannot be overlooked that the gravamen of the question here is one of representation, i.e. the right to vote. The NLRB, for example, has for decades routinely included probationary employees in the bargaining unit as eligible voters.

ORDER

It is the ORDER of the Public Employees Relations Board that the four probationary officers, Gary Morris, Allan Parker, Danny J. Owens, and Jason Spradling's votes be counted in the representation election.

Chairman

Dated this 31st day of August, 1995.