



Brad Henry
Governor

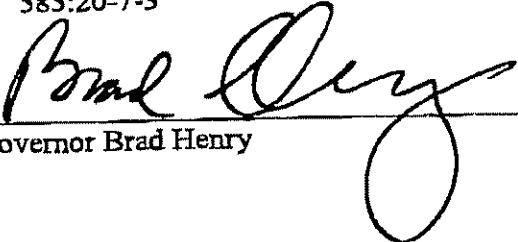
**NOTIFICATION FROM GOVERNOR BRAD HENRY
REGARDING SUBMITTED AGENCY RULES**

On October 14, 2004, the Public Employees Relations Board pursuant to its legal authority to adopt rules found at 11 O.S. § 51-101 et seq.; 75 O.S. § 302 et. adopted rules through emergency rulemaking.

On October 25, 2004 the rules and all necessary documentation required by Section 253 of Title 75 of the Oklahoma Statutes were submitted to the Office of the Governor for approval or disapproval.

On December 7th, 2004, I hereby approve the following rules submitted:

- | | |
|------------|------------|
| 585:20-1 | 585:20-5-2 |
| 585:20-1-1 | 585:20-5-3 |
| 585:20-1-2 | 585:20-7 |
| 585:20-3 | 585:20-7-1 |
| 585:20-5 | 585:20-7-2 |
| 585:20-5-1 | 585:20-7-3 |


Governor Brad Henry

Attest:


Secretary of State

CRAIG W. HOSTER
CHAIR

LARRY W. GOOCH
MEMBER

LINDA SAMUEL-JAHA
MEMBER

MARGARET O. COX
DIRECTOR



BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
PUBLIC EMPLOYEES RELATIONS BOARD

November 30th, 2004

Stephen Cortes
Office of the Governor
State Capitol, Room 212
Oklahoma City, Oklahoma 73105

Re: Adoption of Emergency Rules for the Oklahoma Municipal
Employees Collective Bargaining Act

Dear Mr. Cortes;

Please be advised that on Wednesday, November 24th, 2004, at it's Regular Meeting, the Public Employees Relations Board voted to withdraw the following emergency rule under SUBCHAPTER 3. PROCEDURES:

585: 20-3-1. Impasse arbitration

In the event of an impasse in negotiations, if the parties are unable to jointly agree on an arbitrator, they shall request from the Board a list of seven (7) arbitrators as provided in 11 O.S. §51-214. The Board shall request a list of seven (7) arbitrators from the Region of the Federal Mediation and Conciliation Service (FMCS) covering Oklahoma and shall provide that list to the parties. The parties will jointly pay to PERB the cost of obtaining such a list. The cost will be an amount not greater than twice the amount charged by the FMCS.

Your help in this matter is greatly appreciated.

Sincerely,

Debbie Tiehen
Executive Secretary

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD**RULEMAKING ACTION:**

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions [NEW]
585:20-1-1 Purpose [NEW]
585:20-1-2 Matters Not Covered [NEW]
Subchapter 3. Procedures [NEW]
585:20-3-1 Impasse Arbitration [NEW]
Subchapter 5. Prohibited Practice Charges [NEW]
585:20-5-1 Process [NEW]
585:20-5-2 Complaint [NEW]
585:20-5-3 Answer [NEW]
Subchapter 7. Representation Petitions [NEW]
585:20-7-1 Petition for election [NEW]
585:20-7-2 Petition for representation without an election [NEW]
585:20-7-3 Determination of collective bargaining unit [NEW]

AUTHORITY:

Public Employees Relations Board; 11 O.S. § 51-101 et seq.; 75 OS. § 302 et seq.

DATES:**Adoption:**

October 14, 2004

Effective:

Immediately upon Governor's approval

Expiration

Effective through July 14, 2005 unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Senate Bill 1529 enacted a new section of law entitled the "Oklahoma Municipal Employee collective Bargaining Act" and made the Act effective November 1, 2004. These Emergency Rules have been adopted by the Public Employees Relations Board as specifically mandated by the Legislature by Section 5 of Senate Bill 1529 (11 O.S. Supp 2004, Section 51-204(4)) as deemed necessary to carry out the purposes of the Act. Since the Act becomes effective November 1, 2004, a compelling public interest requires the promulgation of these emergency rules to carry out and promote the purpose and intent of the Act. The promulgation of these Emergency Rules will further the compelling public interest as set forth in Senate Bill 1529 by setting forth the methods by which municipal employees have the right to organize and choose representatives for the purpose of collective bargaining.

ANALYSIS:

Pursuant to the direction and authority detailed in the Municipal Employees Collective Bargaining Act, specifically 11 O.S. § 51-204(4), the Public Employees Relations Board, in cooperation with representatives of public employee organizations and representatives of municipal employers, have proposed emergency rules necessary to carry out the purposes of the Municipal Employees Collective Bargaining Act. The newly proposed emergency rules do the following:

1. In Rule OAC 585:20-1-1, the Board states that the rules are intended to serve as an aid to the efficient operation of the Public Employees Relations Board in the orderly administration of the Municipal Employees Collective Bargaining Act.

2. In Rule OAC 585:20-1-2, the Board specifically states that matters not covered in these rules will be handled as provided in the permanent rules implementing the Fire and Police Arbitration Act.

3. In Rule OAC 585:20-3-1, the Board sets forth the procedure for selecting an arbitrator if an impasse in negotiations occurs between the parties.

4. In Rule OAC 585:20-5-1, the Board states that a prohibited practice charge under the Municipal Employees Collective Bargaining Act will be handled in the same manner by the Public Employees Relations Board as an unfair labor practice charge is handled under the Fire and Police Arbitration Act.

5. In Rule OAC 585:20-5-2, the Board states that a complaint is untimely if filed more than six (6) months after the alleged prohibited practice, which is consistent with the provisions of the Municipal Employees Collective Bargaining Act.

6. In Rule OAC 585:20-5-3, the Board states that the respondent will file a written answer to a prohibited practice complaint within ten (10) days, which is consistent with the time limitation set forth in the Municipal Employees Collective Bargaining Act.

7. In Rule OAC 585:20-7-1, the Board establishes who may request a representative or de-certification election and further sets forth the contents which should be contained in the petition for election.

8. In Rule OAC 585:20-7-2, the Board sets forth who may file a petition for representation without election and the matters which should be in the petition. The rule also sets forth the process which should be followed for a petition for representation without an election and how the Board will certify the representation. The rule further sets forth the manner in which the Board will handle a bargaining unit dispute.

9. In Rule OAC 585:20-7-3, the Board describes how it will make a determination of the collective bargaining unit and sets forth relevant factors to be considered in making the determination. These factors are also contained in the Municipal Employees Collective Bargaining Act.

CONTACT PERSON:

Debbie Tichen, (405) 522.6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

585:20-1-1. Purpose

The rules of this chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act 75 O.S., Section 250 et seq; and are intended as aids to the efficient operation of the Public Employees Relations Board, to the orderly administration of the Municipal Employees Collective Bargaining Act (The Act) and to provide meaningful avenues for realizing and enforcing statutory rights and obligation of certain public employees, public employee organizations, and the municipal employers of this state.

585: 20-1-2. Matters not covered

Matters not specifically covered by these Rules will be handled as provided in the permanent rules implementing the Fire and Police Arbitration Act (FPAA), found at OAC 585: 1-1-1 et seq. If there is a conflict between the provisions of these rules and the provisions of OAC 585: 1-1-1 et seq., the provisions of these rules will prevail and control.

SUBCHAPTER 3. PROCEDURES**585: 20-3-1. Impasse arbitration**

In the event of an impasse in negotiations, if the parties are unable to jointly agree on an arbitrator, they shall request from the Board a list of seven (7) arbitrators as provided in 11 O.S. §51-214. The Board shall request a list of seven (7) arbitrators from the Region of the Federal Mediation and Conciliation Service (FMCS) covering Oklahoma and shall provide that list to the parties. The parties will jointly pay to PERB the cost of obtaining such a list. The cost will be an amount not greater than twice the amount charged by the FMCS.

SUBCHAPTER 5. PROHIBITED PRACTICE CHARGES**585: 20-5-1. Process**

Except when a different procedure is required by the Municipal Employees Collective Bargaining Act or these rules, a prohibited practice charge will be handled in the same manner as an unfair labor practice charge is handled under the provisions of OAC 585:1-1-1 et seq.

585: 20-5-2. Complaint

A complaint shall be deemed untimely and shall be dismissed if filed with the Board more than six (6) months following the alleged prohibited practice.

585: 20-5-3. Answer

A respondent shall file a written answer, or other responsive pleading permitted by these rules, to a prohibited practice complaint within ten (10) days after service of the complaint.

**SUBCHAPTER 7. CERTIFICATION CASES;
REPRESENTATION PETITIONS****585: 20-7-1. Petition for election**

(a) **Who may file.** A representation or decertification petition may be filed with the Board by:

- (1) An employee or employee organization alleging that thirty percent (30%) of the non-fire and police municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by an employee representative; or
- (2) An employee organization alleging that fifty percent (50%) of the municipal employees in an appropriate bargaining unit assert that the designated exclusive bargaining representative no longer represents a majority of the municipal employees in the unit.

(b) **Contents of petition.**

(1) **For certification.** A petition for certification shall contain those things required by Section 585:15-3-1(b)(1) & (b)(2) of the permanent rules implementing the FPAA.

(2) **For decertification.** A petition for decertification shall contain a description of the bargaining unit subject to the petition and a statement that a majority of the employees within the claimed bargaining unit do not want to be represented by the exclusive bargaining representative or seek certification of a different employee organization and have sufficient authorization cards or other evidence to substantiate it.

585: 20-7-2. Petition for representation without an election

(a) **Who may file.** A petition for representation without an election may be filed with the Board by an employee organization alleging that a majority of the municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by the employee organization.

(b) **Contents of petition.** A petition shall contain the following:

- (1) The name and affiliation of the employee organization.
- (2) The name and address of the municipal employer.
- (3) A description of the bargaining unit the petitioner claims to be appropriate and a statement that the petitioner is authorized to represent a majority of the employees within the claimed unit and has sufficient authorization cards or other evidence to substantiate it.
- (4) The names and addresses of any other exclusive representative employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit.
- (5) The number of employees in the alleged appropriate unit.

(6) Any other relevant fact or facts.

(c) Process.

(1) Within two (2) business days of receiving a petition for representation without an election, the Board shall direct the municipal employer to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or to distribute copies of a notice in the usual manner for distribution. The municipal employer must post the notice in accordance with Board's direction within two (2) days of receiving such direction.

(2) The notice shall advise affected employees about the employee organization's petition for representation without an election.

(3) The notice shall be posted for ten (10) days.

(d) Certification and disposition.

(1) If the Board does not receive a claim for representation accompanied by a thirty percent (30%) showing of interest from a rival employee organization within fifteen (15) calendar days of the filing of the initial petition, it shall issue a certification of representation upon validating that a majority of employees in an appropriate bargaining unit have authorized the employee organization to represent them for purposes of collective bargaining.

(2) If the Board receives a valid claim for representation by a rival employee organization within the fifteen (15) day period, it shall consider the initial petition for representation without an election as a petition for a representation election.

(e) Bargaining unit disputes.

(1) If the petition and the municipal employer agree on the organizational structure of the appropriate unit but disagree as to which employees are included in the appropriate unit based on the duties of the individual employe(s) (such as, but not limited to, supervisory, confidential, or management official designations), the Board shall first determine if the dispute affects the employee organization's majority status. If such dispute does not affect the petitioner's majority status, the Board shall issue a certification without an election and subsequently hold a hearing to determine if the challenged employees are included in the appropriate unit.

(2) If the bargaining unit dispute affects the employee organization's majority status, the Board shall make a determination of the appropriate bargaining unit and subsequently determine majority status.

585: 20-7-3. Determination of collective bargaining unit

The Board shall decide in each case before it in which the issue is raised, the unit appropriate for the purpose of collective bargaining. The Board shall consider, along with other relevant factors, the desires of the employees, the community of interest including the existence of clearly identifiable crafts among employees, wages, hours, and other working conditions, the effect of over-fragmentation, the administrative structure of the municipal employer, the recommendation of the parties and the history of collective bargaining.