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STATE OF OKLAHOMA

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~~IN THE SUPREME COURT OF THE STATE OF OKLAHOMA~~
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~~CLERK~~

CITY OF NORMAN, OKLAHOMA, a municipal corporation

Plaintiff/Appellant

v.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 2067

Defendant/Appellee

Appealed from District Court of Cleveland County
Case No. CV-2011-48-L
The Honorable Tom A. Lucas

PLAINTIFF'S/APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Fundamentally, this Appeal concerns the rights of Norman's citizens to choose under the Fire and Police Arbitration Act ("FPAA") which offer will become their labor contract with Local 2067 of the International Association of Fire Fighters ("IAFF"), and what information voters will receive in order to make an informed decision. Consistent with the FPAA, Norman's proposed ballot stated the total cost of each party's offer and compared those costs with the last contract. The ballot proposed by the IAFF and upheld by the District Court did not.

When, as here, an Arbitration Board fails to follow the dictates of the FPAA, judicial review is necessary to rectify the error. The expiration of the fiscal year after the City already preserved its right to contest the Arbitration Board's decision does not rob Norman's citizens of deciding which offer will become its contract with the Fire Fighters' Union.

II. THE CITY'S PROPOSED BALLOT STATED THE TOTAL COST OF EACH PARTY'S OFFER AND COMPARED THE COSTS WITH THE LAST CONTRACT – THE IAFF'S PROPOSED BALLOT DID NOT

Norman's proposed ballot stated the total dollar amount of each party's offers and disclosed the difference between each party's 2011 offer and the total dollar amount of the last contract – FYE 2010. (Plaintiff's/Appellant's Brief in Chief at 4-7.) The IAFF argues the ballot should disclose to Norman's voters only information as to three unresolved issues. (Answer Brief of Appellee at 15-19.) The IAFF's

argument employs a tortured manipulation of statutory language. If followed, it denies citizens the right to know the total cost of each offer, the ability to compare each offer with the last contract, and the right to vote on which offer becomes the City's next contract.

The IAFF argues a phrase – “a final offer in each unresolved issue” – found within OKLA. STAT. tit. 11, § 51-108(A)(2) supports its contention the ballot must only address the unresolved issues, rather than the entire offer. (Answer Brief of Appellee at 2, 4, 5, 15, 16.) But its argument ignores the bulk of § 51-108(A)(2), as well as the remainder of the statute controlling the election and the content of the ballot.

The FPAA required Norman and the IAFF to each submit an arbitration statement to the Arbitration Board listing: 1) all contract terms that were resolved; 2) all contract terms that were unresolved; and 3) “[e]ach arbitration statement *shall also include* a final offer on each unresolved issue.” OKLA. STAT. tit. 11, § 51-108(A)(2) (emphasis added). Under the Act, the parties' arbitration statements, including resolved issues and final offers on unresolved issues, were “known collectively as each party's last best offer”. (*Id.*)

When the Arbitration Board selected the IAFF's last best offer, Norman had the right to contest the Arbitration Board's decision and seek an election. In the election, Norman's citizens choose between Norman's and the IAFF's last best offers, with the last best offer receiving the majority of the votes becoming the new contract.

OKLA. STAT. tit. 11, § 51-108(C). The FPAA does not suggest the last best offer voted upon by citizens should only speak to unresolved issues, as advocated by the IAFF.

OKLA. STAT. tit. 11, § 51-108(D) requires the ballot to disclose the *total* dollar amounts of Norman's offer and the IAFF's offer. (*Id.*) The FPAA requires the ballot to include another important piece of information to voters. The ballot must compare the *total* dollar amounts of Norman's offer and the IAFF's offer to the cost of the last contract. (*Id.*) Again, the FPAA does not provide that the comparison of costs between each offer and the last contract only address the unresolved issues. By using the term "*total*" regarding the cost comparisons, the FPAA emphasizes the ballot must disclose the parties' entire offers, rather than only unresolved issues. OKLA. STAT. tit. 11, § 51-108(D).

The IAFF's argument prevents voters from making an informed decision. The parties' last best offers include contract issues which the parties resolved. OKLA. STAT. tit. 11, § 51-108(A)(2). Resolved contract issues can reflect an increase, no change or a decrease in costs, when compared with the last contract. The ballot championed by the IAFF that only addresses unresolved issues, would not disclose to citizens how each of the party's total offers compared with the prior year's contract.

The IAFF admits the cost of the last contract between Norman and the Union exceeded \$12,000,000. (Answer Brief of Appellee at 3.) As a fall-back position, the IAFF criticizes Norman's calculations of the total dollar amount of each party's offer

for FYE 2011 (\$12,248,323.74 and \$12,614,995.11, respectively), and Norman's calculation of the increase of each party's offer compared to the last contract (3.20% and 6.29%, respectively). (See Plaintiff's/Appellant's Brief in Chief at 4-6; Answer Brief of Appellee at 17-18.) The IAFF argues the City's figures are wrong because Norman included all compensation and benefit amounts for budgeted and appropriated positions that would be incurred under each of the last best offers, including such items as medical insurance, longevity and step increases. (*Id.*) ***But that is exactly what the statutory language and purpose of the FPAA requires – a ballot disclosing to voters the total cost of each party's offer compared to the total cost of the last contract.***¹

In a final effort to attack the City's figures, the IAFF falsely claims that Norman and the IAFF stipulated the City's last best offer would result in a reduction of \$330,000 in total compensation compared to the last contract. (Answer Brief of Appellee at 16 and 17.) ***During the interest arbitration hearing, Norman and the IAFF stipulated the difference between the parties' last best offers for FYE 2011 was \$330,000.*** (Response to City's Motion for Summary Judgment at Ex. B, Record at 138.) ***The parties never stipulated how the total dollar amount of each last best***

¹ Incredibly, the IAFF's ballot does not even disclose the total dollar amount of the unresolved issues. Instead, the IAFF's ballot says the total dollar amount of the City's offer on unresolved issues "is a reduction of \$330,000" and the IAFF's offer on the unresolved issues was "zero". (Petition at Ex. 3, p. 3, Rec. at 33.)

*offer compared with Norman's last contract.*² (*Id.*) In fact, Norman's calculations and its proposed ballot follow the stipulation. Subtracting the total dollar amount of the City's last best offer from the total dollar amount of the Union's last best offer (\$12,614,995.11 minus \$12,248,323.74), the exact difference between the parties' last best offers – including all compensation and benefits – is \$366,672. (Plaintiff's/Appellant's Brief in Chief at 4-5.) In contrast, the IAFF ballot violated the parties' \$330,000 stipulation, by incorrectly characterizing the \$330,000 amount to be the difference between the City's offer and the last contract, rather than the difference between the two offers, as stipulated. (Petition at Ex. 3, p. 2.)

True to the FPAA, Norman's proposed ballot disclosed the total dollar amount of both parties' offers, including resolved issues and unresolved issues. Norman's proposed ballot also disclosed the total dollar amount of each party's offers and the difference between each offer and the last contract.

III. THE ARBITRATION BOARD'S SELECTION OF BALLOT LANGUAGE IS SUBJECT TO JUDICIAL REVIEW

The IAFF argues that the Arbitration Board's ballot selection is final and not subject to judicial review. The IAFF has two primary contentions: (1) that the FPAA vested exclusive jurisdiction over the determination of ballot language in the Arbitration Board; and (2) that Norman is merely seeking review because the

² Elsewhere in its briefing, the IAFF admits the \$330,000 stipulation related to the difference between the parties' offers – not the difference between the offers and the last contract (IAFF Response to City's Motion for Summary Judgment at Ex. B, pp. 54-55, Rec. at 138; Answer Brief of Appellee at 3).

Arbitration Board selected the IAFF's ballot. Neither of these points is supported by the facts of this case or longstanding Oklahoma precedent. The Arbitration Board's decisions are circumscribed by the FPAA, and where the Board does not follow the FPAA's requirements, judicial review is not only proper, it is necessary.

An arbitrator only has those powers afforded by the document or rules governing the arbitration. *City of Yukon v. IAFF*, 1990 OK 48, ¶11, 792 P. 2d 1176, 1180. Courts will always review the decisions of arbitrators to ensure that they have complied with the governing statutes. *Asset Acceptance, LLC v. Johnson*, 2011 OK CIV APP 121, ¶ 9, 2011 WL 6938610; *see also Bowles Financial Group, Inc. v. Stifel, Nicolaus & Co., Inc.*, 22 F. 3d 1010 (10th Cir. 1994) (“Although courts have a limited function when called upon to confirm or vacate an arbitration award, such review is necessary to ensure arbitrators comply with statutory requirements.”).

The IAFF muddles this precedent by attempting to factually distinguish cases cited in Norman's Brief-in-Chief, but not challenging the cases' fundamental holdings. No matter the underlying contract or statute, arbitration decisions are subject to judicial review when an arbitrator exceeds his or her authority by failing to abide by the governing laws. *See Midwest City v. Jarrell*, 2001 OK CIV APP 125, ¶ 12, 33 P. 3d 962 (where an arbitrator's decision “clearly d[id] not involve interpretation or application of the CBA and thus exceed[ed] the authority granted”); *Sooner Builders v. Nolan Hatcher Const.*, 2007 OK 50, 164 P. 3d 1063. It is immaterial whether the arbitration takes place pursuant to the FPAA, the Uniform

Arbitration Act, or the provisions of a collective bargaining agreement; an arbitration decision is subject to review by a higher authority to ensure that its result conforms to the governing laws. *See Rollings v. Thermodyne Inds.*, 1996 OK 96, ¶ 11, 910 P. 2d 1030, 1033 (“Although the legislature is permitted to enact legislation to facilitate speedy resolution of differences [through arbitration], that legislation cannot be used to deny access to court.”).

Oklahoma’s Supreme Court has explicitly found that arbitration decisions under the FPAA will be reviewed to ensure compliance with Oklahoma law. *City of Anadarko v. FOP*, 1997 OK 14, ¶ 7, 934 P. 2d 328, 330 (declaring that “neither party is denied access to the court”). This is the case despite the IAFF’s argument, that the FPAA does not explicitly state a mechanism for judicial review. *Id.* In *City of Oklahoma City v. IAFF*, 2011 OK 29, 264 P. 3d 678, the Court delineates when judicial review of an arbitration board’s decision is warranted under the FPAA. In that case, the Arbitration Board struck the last best offer of Norman and chose a ballot that only presented the IAFF’s offer. The Supreme Court reviewed the Arbitration Board’s decision and concluded the Arbitration Board’s actions were contrary to the FPAA, and were therefore void. *Id.* at ¶ 19.

The *Oklahoma City* decision stated that, to allow an Arbitration Board to ignore the strictures of the FPAA, would threaten to make collective bargaining “meaningless” altogether. *Id.* at ¶ 19. In *Oklahoma City*, the chosen ballot was illegal because it did not contain the offers of both the union and the city. Here, the chosen

ballot is illegal because it does not state the total dollar amount of both offers and compare the total dollar amounts to the last contract. The practical result is the same; both ballots represent a failure to follow the FPAA that is subject to judicial review.

IV. THE ARBITRATION BOARD'S SELECTION OF THE IAFF'S OFFER DOES NOT BECOME, BY DEFAULT, NORMAN'S CONTRACT

Rather than proceeding with an election using a legally flawed ballot, Norman appealed the District Court's ruling. By virtue of this pending appeal, Norman did not proceed with an election to decide the FYE 2011 contract. The IAFF encourages the Court to refrain from ruling on whether the Arbitration Board's selection of the IAFF's offer became the "default contract" after the expiration of the fiscal year, contending this legal issue is not a part of the appeal. (Answer Brief of Appellee at 20.) The IAFF's argument is ironic and gives new meaning to the concept of a short memory.

In its Motion to Dismiss filed with the Court, the IAFF argued the Arbitration Board's selection of its offer became final and binding, because no election was held before the fiscal year's conclusion. (Motion to Dismiss at pp. 4-6.) Norman opposed the Motion to Dismiss, and the Court deferred the IAFF's Motion to Dismiss to the decisional stage of the appeal. (6/17/11 Order of the Supreme Court of Oklahoma.) In its Answer Brief, the IAFF re-urges its Motion to Dismiss and devotes a significant portion of its argument to this issue. (Answer Brief of Appellee at 8, 20-23.) The

IAFF's suggestion to the Court that it should now ignore the issue is difficult to understand.

A. Norman Timely Requested an Election to Contest the Arbitration Board's Selection of the IAFF Offer

The IAFF contends the Arbitration Board's selection of the IAFF offer become the new contract by operation of law, because Norman did not timely request for an election as required by OKLA. STAT. tit. 11, § 51-108(B). (Answer Brief of Appellee at p. 20.) The IAFF's assertion is factually incorrect.

When the Arbitration Board selected the IAFF's last best offer, Norman had ten days to file a request for election with Norman's City Clerk. If Norman had failed to file this request with the City Clerk, the Arbitration Board's selection would have become final, and the IAFF's last best offer would become by operation of law the new contract. OKLA. STAT. tit. 11, § 51-108(B). *However, it is undisputed Norman did timely file a request for election with its City Clerk on November 20, 2010.* (Petition at 3, ¶ 9, Rec. at 3; Appellee's Motion to Dismiss filed with the Supreme Court 5/13/11, Affidavit of N. Terhune at Ex. A, p. 1.) The IAFF's Answer Brief admits this fact. (Answer Brief of Appellee at 4.)

The next step to ensuring the Arbitration Board's selection of the IAFF's last best offer did not become the new contract is found at OKLA. STAT. tit. 11, § 51-108(C). Within ten days after filing a request for an election with the City Clerk, municipal authorities must call for a special election. OKLA. STAT. tit. 11, § 51-108(C). *Once again, it is undisputed Norman satisfied this requirement on*

November 30, 2010, as well. (Petition at 3, ¶ 10, Rec. at 3; Appellee's Motion to Dismiss filed 5/13/11, Affidavit of N. Terhune, ¶¶ 5 and 6, Exs. A and B.)

The FPAA only recognizes one circumstance when the Arbitration Board's selection of a union's offer becomes the new contract by operation of law: When a city fails to timely file a request with the City Clerk for an election. OKLA. STAT. tit. 11, § 51-108(B). Here, Norman timely fulfilled its requirement under § 51-108(B) on November 20, 2010 and § 51-108(C) on November 30, 2010, to prevent the Arbitration Board's selection of the IAFF's last best offer from becoming the 2011 contract by default. The IAFF's contention the FPAA requires the City to deliver a resolution to the election board before the end of the fiscal year or face the Arbitration Board's decision becoming the default contract is not found anywhere in the FPAA.

The timeline after the Arbitration Board made its ballot language selection also demonstrates that Norman's subsequent decision not to proceed with the election was proper and should not cause the Arbitration Board's selection of the IAFF offer to become the contract by default under the FPAA.

On January 3, 2011, the Arbitration Board selected the IAFF's legally flawed ballot language. (Petition at 4, ¶ 13, Rec. at 4.) On January 19, 2011, Norman filed its Petition with the District Court challenging the Arbitration Board's ballot decision and asking the Court to decide the issue on an expedited basis. (Petition at 1, Rec. at 1; Plaintiff City of Norman's Motion for Expedited Treatment at. 1-3, Rec. at 82-4.) The IAFF opposed expedited treatment, arguing that discovery and pre-trial motions

should precede any decision by the District Court. (Defendant IAFF's Motion to Dismiss and Response to City's Motion for Expedited Treatment at 3-4, Rec. at 87-8.)

In an April 11, 2011 hearing, the District Court ruled the election should go forward with the legally flawed language requested by the IAFF and approved by the Arbitration Board. (4/15/11 Order, pp. 1-2, Rec. at 289-90.) The next day, Norman's City Council voted to appeal the District Court's decision, rather than going forward with an election using improper ballot language. (Appellee's Motion to Dismiss filed 5/31/11, Affidavit of N. Terhune at ¶ 7.) Going forward with an election using a ballot that was contrary to the FPAA and that could be legally challenged after an election was plainly not prudent.

Next, the IAFF argues the Arbitration Board's selection of the Union's offer should become final by default, because the City failed to bring an original action for a *writ of mandamus*, which would have accelerated the legal process. (Answer Brief of Appellee at 22-23.) However, the cases cited by the IAFF involve original actions for *writs of mandamus* brought against Oklahoma's state-appointed election boards or a District Court Judge. (*Id.*) There is no authority permitting Norman to initiate an original action with the Supreme Court for a *writ of mandamus* against the Arbitration Board and its January 3, 2011 decision to approve the IAFF's incorrect ballot language.

Norman acted promptly to challenge the Arbitration Board's ballot selection in the District Court. On January 19, 2011, Norman filed a Petition with the District

Court and asked the Court for an expedited handling of the issue. (Petition for Declaratory and Equitable Relief at 1, Rec. at 1; Plaintiff City of Norman's Motion for Expedited Treatment at 1-2, Rec. at 82-83.) It was IAFF that attempted to slow the review process, opposing expedited treatment and requesting pretrial discovery and motions, rather than an accelerated decision. (Defendant IAFF's Motion to Dismiss and Response to City's Motion for Expedited Treatment at 3-4, Rec. at 87-88.)

Norman acted swiftly in appealing the District Court's decision. The District Court Order was filed April 15, 2011; Norman filed its Petition in Error on May 9, 2011. (4/15/11 Order at 1-2, Rec. 289-90.)

Finally, the IAFF's "default" argument runs counter to the municipality and its citizens' fundamental right to make this contract decision through voting. Article 10, § 20 of the Oklahoma Constitution mandates that municipalities have the power to determine how to both raise and spend its funds. *See City of Tulsa v. PERB*, 1990 OK 114, ¶ 18, 845 P.2d 872, 877 ("This section, fundamental to the 'home rule' doctrine, allows the municipality to determine how these funds should be spent as long as the expenditure remains within statutory and constitutional boundaries."); *City of Ardmore v. Excise Bd. Of Carter County*, 1932 OK 48. Consistent with this Constitutional principle, the FPAA places the final responsibility for funding the police and fire departments in the hands of city councils and citizens. "Under § 51-108 the city, by it's electorate, has the ultimate decision should the city council

disagree with the arbitrator's choice [of collective bargaining agreement] [T]he ultimate decision resides with either the city council or the people themselves." *FOP v. City of Choctaw*, 1996 OK 78, ¶ 24.

B. This Appeal is Not Moot

The IAFF alleges that this Appeal is moot because it claims an election choosing between the parties' offers can no longer be held. In support, the IAFF cites cases holding that "a contractual obligation made in one fiscal year cannot be subsequently validated in a succeeding fiscal year by the voters" *Wyatt-Doyle & Butler Engineers, Inc. V. City of Eufaula*, 2000 OK 74, ¶ 12, 13 P. 3d 474, 479. However, the IAFF omits the Constitutional provision upon which this line of authority rests. A simple review of this language shows that these cases are easily distinguishable from our own, and that the IAFF has not demonstrated that Norman's requested relief is unavailable.

In the case law cited by the IAFF, the courts generally rule that certain agreements or municipal actions violate Article 10, § 26 of the Oklahoma Constitution. Pursuant to that provision, no city "shall be allowed to become indebted, in any manner, or for any purpose, *in an amount exceeding, in any year, the income and revenue provided for such year*" *Id.* (emphasis added). Therefore, a municipality must fund its annual obligations with the revenues of that same fiscal year. An obligation will be "funded" where there is an appropriation to cover it. *See Wyatt-Doyle*, 2000 OK 74, 13 P. 3d 474. Once appropriated funds are spent, §26's

prohibition against incurring indebtedness is triggered. *Id.* at ¶ 12, 13 P. 3d 474, 479. So long as appropriated funds still exist from which Norman can pay *either* offer, there can be no violation of § 26 as alleged by the IAFF and the cited cases do not apply. The IAFF has not shown an absence of appropriated funds FYE 2011 sufficient to pay either offer.

The IAFF also points to OKLA. STAT. tit. 62, § 310.4 as authority for the proposition that Norman may only use funds for ninety (90) days after the end of the fiscal year. According to this reasoning, even if appropriated funds exist, Norman would not be able to use them to fund an offer since the FYE 2011 ended more than ninety-days ago. Again, however, the IAFF omits an important detail. Section 310.4's provisions only extend to "unencumbered balances." *Id.* An appropriated fund is clearly an *encumbered* balance. *See* OKLA. STAT. tit. 11, § 17-204(3) (defining an appropriation as "an authorization to expend or *encumber* revenues and fund balance of a fund") (emphasis added)).

In essence, then, the IAFF has cited legal authority without demonstrating it applies. Nothing in the record discloses the amount Norman has remaining from its FYE 2011 appropriations. Moreover, the IAFF has not alleged that appropriations for the FYE 2011 were insufficient to cover its offer. As such, this case cannot be dismissed as moot as Norman's requested remedy has not been foreclosed.

V. **THE PUBLIC'S INTERESTS ARE BEST SERVED BY
RULING ON THESE ISSUES**

If the Court determines an election is no longer possible, this Court should nevertheless rule on the merits of this Appeal, as it falls squarely under both exceptions to the mootness doctrine recognized by Oklahoma Courts. *State ex rel. Okla. Firefighters Pension and Retirement System v. City of Spencer*, 2009 OK 73, ¶ 4, 237 P. 3d 125, 129. First, the importance of this issue to the public interest counsels that these issues should be resolved now. Second, this case represents a textbook example of an issue capable of repetition yet evading review. This exception applies when: “(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.* at fn. 18, 237 P. 3d 125, 130.

In *City of Spencer*, the plaintiff had initiated a suit for declaratory relief against the defendant city. Plaintiff sought a ruling that the city’s new fire chief was statutorily precluded from serving in his position as well as from collecting benefits under the pension and retirement system. The trial court denied plaintiff’s requested relief. While the appeal was pending, the fire chief’s employment was terminated. The city then moved to dismiss the appeal, claiming that the controversy was moot. The Court refused, holding that both exceptions to the mootness doctrine were met by

the plaintiff's claims. First, the firefighter pension system was of vital interest to the state. *Id.* at ¶ 5. Second, the plaintiff would likely have to litigate the question again if it was not resolved. *Id.* Therefore, the controversy was not moot and the Supreme Court proceeded to rule on the issues presented in the case.

Similarly, in *Morton v. Adair County Excise Bd.*, 1989 OK 174, 780 P 2d 707, the court found that an appeal was not moot although it could not fashion the remedy that plaintiff desired. There, the defendant city had cut funding for the plaintiff's position while leaving funding intact for other positions. The plaintiff claimed that her position should not have been cut because its existence was mandated by statute. The city argued that the case was moot since, by the time it went up on appeal, the relevant fiscal year's budget had expired. The court found that the case "presents an important public-law question which challenges a governmental action that is capable of repetition, yet evading review." *Id.* at ¶ 10 (citation omitted). Therefore, even though the court could not retroactively allocate funding in an expired budget, the Court could hear the case and rule on the vital issues presented.

Here, we have two issues before this court that warrant review: (1) whether the IAFF's ballot complies with the requirements of the FPAA; and (2) whether an election can be held after the end of the fiscal year and/or under what circumstances such an election is possible. The exceptions to the mootness doctrine should compel the Court to rule on these issues.

Under the FPAA, ballots determine the contractual terms to which a city is bound for one of its most important services, police and fire protection. A decision clarifying the guidelines for such ballots would clearly serve the vital public interest of allowing the citizens to intelligently select the best offer for their city. Moreover, if this issue is not ruled upon, it would fall under the ambit of those issues that are capable of repetition yet evading review. If this case is truly moot, it is very likely that Norman and other cities will once again be faced with the choice of holding a premature election with an illegal ballot or risk not being able to exercise its rights under the FPAA at all. In fact, it would probably become a point of strategy for each party to get the arbitration board to select the most misleading ballot possible with the knowledge that such a decision would not be reviewed. Therefore, this Court should clarify this issue to prevent it from coming up again in the future.

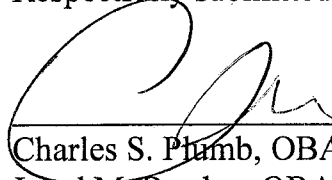
As discussed above, the FPAA gives the final say over a city's collective bargaining agreements to the voters. As such, determining when and how that vote can occur is a fundamental issue of the public interest. Moreover, if this issue is not clarified, municipalities and unions will continue to lack guidance when it comes to their rights and obligations under the FPAA's election provision. This has broad implications. It is not unusual for interest arbitrations to occur near the end of the fiscal year, leaving little, if any, time for an election if the parties fail to come to an agreement. Will all of these cases then become moot? Municipalities and unions deserve a ruling in this case to better define the time frame within which interest

arbitration can occur, and what information the ballot must disclose to voters. Without such a ruling, it is inevitable that the facts of this case will be repeated in Norman or in other municipalities.

VI. CONCLUSION

The District Court erred in granting the IAFF's Motion to Dismiss and denying Norman's Motion for Summary Judgment. This Court should reverse the District Court's decision and remand this matter with instructions that the election proceed using Norman's proposed ballot language.

Respectfully submitted,



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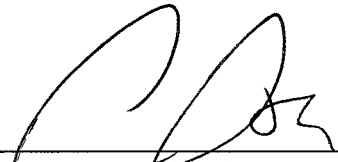
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of February 2012, a copy of the foregoing document was sent by mail, postage pre-paid, to the following:

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