
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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 BRIEF IN CHIEF

Charles S. Plumb, OBA No. 7194
Jared M. Burden, OBA No. 30026
McAfee & Taft A Professional Corporation
1717 S. Boulder Ave., Suite 900
Tulsa, Oklahoma 74119
Telephone (918) 587-0000
Facsimile (918) 599-9317
charlie.plumb@mcafeetaft.com
jared.burden@mcafeetaft.com

Jeff Harley Bryant, City Attorney, OBA No. 11773
Rick Knighton, Assistant City Attorney, OBA No. 17257
City of Norman
P.O. Box 370, 201 West Gray
Norman, OK 73070
Telephone (405)366-5423
Facsimile (405)366-5425
Jeff.bryant@normanok.gov
Rick.knighton@normanok.gov
Attorneys For The City of Norman

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INTRODUCTION

Oklahoma's Fire and Police Arbitration Act OKLA. STAT. tit. 11, § 51-101 *et seq.* (FPAA) requires a ballot submitted to voters for selecting a new contract between a city and its fire union to disclose the total dollar amount of each proposed offer and to compare the dollar amount of each offer with the cost of the last contract. OKLA. STAT. tit. 11, § 51-108(D). In its Petition for Declaratory and Equitable Relief (Petition), Plaintiff/Appellant City of Norman (Norman) asked the District Court of Cleveland County (District Court) to interpret OKLA. STAT. tit. 11, § 51-108 and reverse the Arbitration Board's selection of ballot language proposed by the International Association of Fire Fighters Local 2067 (IAFF), which did not disclose that information or satisfy the FPAA's ballot requirements. Further, Norman asked the District Court to declare the City's proposed language as compliant with the FPAA and direct Norman to proceed with the election, using the City's proposed ballot language. Instead, the District Court granted the IAFF's Motion to Dismiss and denied Norman's Motion for Summary Judgment, finding:

1. The Arbitration Board's selection of ballot language was final and not subject to judicial review; and
2. The FPAA does not require ballots to disclose information regarding the parties' offers as a whole, but need only reveal dollar amount and comparison information concerning "unresolved issues".

The District Court's decision is contrary to the language and purpose of the FPAA. This Court should reverse the District Court's Order and remand this matter with instructions that the election proceed using Norman's proposed ballot language, which informs voters of the total cost of each party's proposed offer, and compares the cost of those proposals with the cost of the prior contract.

HOW LABOR CONTRACTS ARE SELECTED UNDER THE FPAA

Oklahoma's FPAA sets out the process by which a city reaches a contract with its fire and police unions. A city and union may arrive at a new contract through successful collective bargaining. OKLA. STAT. tit. 11, § 51-103(A). If the parties are unable to reach a contract through collective bargaining, a city and its union submit their proposals for a new contract to a tri-partite Arbitration Board, comprised by an arbitrator selected by the city, an arbitrator selected by the union, and a neutral arbitrator selected from a list provided by the Federal Mediation and Conciliation Service. OKLA. STAT. tit. 11, § 51-107. This step is commonly referred to as "interest arbitration".

In interest arbitration, the city and the union each submit arbitration statements to the Arbitration Board. Each arbitration statement must list "all contract terms which the parties have resolved and all contract issues which are unresolved", including final offers on unresolved issues. OKLA. STAT. tit. 11, § 51-108(A)(2). These arbitration statements containing both resolved issues and final offers on unresolved issues are known as "last best offers". *Id.* After a hearing, a majority of

the Arbitration Board selects either the city's or the union's last best offer as the new contract between the parties. OKLA. STAT. tit. 11, § 51-108(A)(4).

If a majority of the Arbitration Board selects the union's last best offer, the city has a choice to make under the FPAA. If the city accepts the Arbitration Board's decision, the union's last best offer becomes the new contract between the city and the union. *Id.* Alternatively, the city may reject the Arbitration Board's decision, and call for an election by its citizens to vote and choose whether the city's last best offer or the union's last best offer will be the new contract. OKLA. STAT. tit. 11, § 51-108(B).

If the city decides its citizens should select which of the proposals will become the new contract, the election ballot "shall clearly state the total dollar amount of the offer from the corporate authority and the total dollar amount of the offer from the bargaining agent." OKLA. STAT. tit. 11, § 51-108(D). The ballot must also disclose "the percentage of increase or decrease both offers have over or under the last contract of the two parties." OKLA. STAT. tit. 11, § 51-108(D). If a city and a union cannot agree on ballot language, the parties each submit their proposed ballot language to the Arbitration Board, which then chooses the ballot language for the election. OKLA. STAT. tit. 11, § 51-108(C). The last best offer receiving the majority of votes cast in the ensuing election becomes the new contract between a city and a union. *Id.*

SUMMARY OF THE RECORD

REJECTION OF THE ARBITRATION BOARD'S DECISION AND AN ELECTION FOR NORMAN'S CITIZENS

After they were unable to reach a contract for fiscal year 2011 ("FYE 2011") through negotiations, Norman and the IAFF proceeded to interest arbitration. (Petition at 2, ¶ 7, Rec. at 2.) As provided by the FPAA, Norman and the IAFF each submitted their last best offers to the Arbitration Board. (Petition at 2, ¶ 8, Rec. at 2; Defendant IAFF's Motion to Dismiss at 1, Rec. at 85.) After a hearing, the Arbitration Board's neutral arbitrator and the union arbitrator selected the IAFF's last best offer. *Id.*

Thereafter, Norman rejected the Arbitration Board's decision and determined to hold a May 10, 2011 election for its citizens to vote and decide which last best offer would become the City's new contract. (Petition at 3, ¶¶ 9 and 10, Rec. at 3; IAFF's Motion to Dismiss at 1-2, Rec. at 85-86.) When Norman and the IAFF could not agree on the ballot language for the election, the parties each submitted proposed language to the Arbitration Board for selection. (Petition at 4, ¶ 12, Rec. at 12; Defendant's Motion to Dismiss at 1-2, Rec. at 85-86.)

NORMAN'S BALLOT CLEARLY STATED THE INFORMATION REQUIRED BY THE FPAA; THE IAFF'S BALLOT DID NOT

The ballot must "clearly state the total dollar amount" of Norman's and the IAFF's offers for the FYE 2011 contract. To determine the total dollar amount of each FYE 2011 offer, Norman calculated all compensation and benefit amounts that

would be incurred under the City's offer and the union's offer for the positions budgeted and appropriated during FYE 2011. (Petition at Ex. 5, Att. 2, pp. 1-2, ¶¶ 4, 6; Rec. at 44-45; Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment, at Att. 3, p. 1, ¶ 2, Rec. at 251.) Using this calculation, Norman's proposed ballot stated the total dollar amount of the City's and Union's offers for FYE 2011 were \$12,248,323.74 and \$12,614,995.11, respectively. (Petition at Ex. 2, p. 2, Rec. at 13-14.)

For purposes of "total dollar amount", the IAFF took a markedly different approach. The IAFF's proposed ballot only addressed each party's offer as to "unresolved issues", rather than the proposals for the entire FYE 2011 contract. (Petition at Ex. 3, pp. 1-2, Rec. at 17-18.) The IAFF's ballot language stated the total dollar amount of the City's offer "on the unresolved issue" was a reduction of \$330,000, and the total dollar amount of the IAFF's offer "on the unresolved issues" was zero. *Id.*

To calculate the percentage of increase or decrease between each of the party's FYE 2011 offer and the last contract for fiscal year 2010 (FYE 2010) contract, Norman calculated all the compensation and benefit amounts budgeted and appropriated for FYE 2010, which came to \$11,868,079.52. (Petition at Ex. 5, Att. 2, p. 2, ¶¶ 5, 7, Rec. at 45; Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment, at Att. 3, pp. 1-2, ¶ 3 and Rec. at 251-252.) Next, Norman calculated the difference between each party's FYE 2011 offer and the total dollar

amount for FYE 2010. *Id.* To determine the percentage of increase or decrease each offer had over the last contract, these differences between the parties' FYE 2011 offers and the FYE 2010 contract costs were divided by the total dollar amount of the FYE 2010 contract. *Id.* This calculation established that the increase of Norman's and the IAFF's FYE 2011 offers over the cost of the FYE 2010 contract were 3.20% and 6.29%, respectively. *Id.* Those same percentage figures were included with Norman's proposed ballot. (Petition at Ex. 2, pp. 1-2, Rec. at 13-14.)

When it came to the percentage change between each party's FYE 2011 offer and the cost of the FYE 2010 contract, once again the IAFF took a radically different approach. First, the IAFF never claimed to have calculated the costs incurred under the FYE 2010 contract. Next, the IAFF's proposed ballot language only spoke to "the unresolved issues" for addressing the increase or decrease the parties' FYE 2011 offers had over the costs of the FYE 2010 contract. Thus, the IAFF's proposed ballot stated that the City's offer "on the unresolved issues" resulted in a decrease of 2.78%, and the IAFF's offer "on the unresolved issues causes no increase or decrease in the cost of the last contract." (Petition at Ex. 3, pp. 1-2, Rec. at 17-18.)

It is undisputed that the ballot language proposed by the IAFF dealt exclusively with "unresolved issues", rather than the total dollar amount of the offers. (Plaintiff's Supplemental Brief in Support of Motion for Summary Judgment at Att. 3, p. 2, ¶ 4, Rec. at 252.) The IAFF never proposed ballot language identifying the total dollar amount of Norman's offer for an FYE 2011 contract, the total dollar amount of the

IAFF's offer for an FYE 2011 contract, or a comparison between the total dollar amount of each party's FYE 2011 contract offer with the FYE 2010 contract. *Id.*

**THE ARBITRATION BOARD SELECTED
THE IAFF'S LEGALLY FLAWED BALLOT**

Despite the obvious failings of the IAFF'S approach, the neutral arbitrator and the IAFF arbitrator selected the IAFF's proposed ballot language; Norman's arbitrator dissented. (Petition at 4, ¶ 13, Rec. at 4; Defendant's Motion to Dismiss at 2, Rec. at 86.) In her dissent, Norman's arbitrator observed:

"Although acknowledging the Union's proposed language did not state the "total dollar amount of the offers" from the City and Union and did not disclose the "percentage of increase or decrease both offers have over or under the last contract of the two parties", the Neutral Interest Arbitrator and the Union Interest Arbitrator nevertheless selected the Union's proposed ballot language."

(Plaintiff's Motion for Summary Judgment at Att. 5, Rec. at 114.)

Rather than proceeding with a May 10, 2011 election using a legally defective ballot, Norman filed its Petition asking the District Court of Cleveland County (District Court) to interpret OKLA. STAT. tit. 11, §§ 51-108(C) and (D), and declare: 1) that the IAFF's proposed ballot language selected by the Arbitration Board and only addressing unresolved issues, did not comply with the FPAA; and 2) that the Arbitration Board exceeded its authority and jurisdiction by selecting the IAFF proposed ballot and rejecting the City's proposed ballot. (Petition at 6-7, Rec. at 6-7.) The Petition asked the District Court to declare Norman's proposed ballot language complied with the FPAA's requirements. *Id.*

**THE DISTRICT COURT FOUND THE ARBITRATION BOARD'S
DECISION WAS "FINAL" AND LEFT INTACT
THE IAFF'S LEGALLY FLAWED BALLOT**

The IAFF moved to dismiss Norman's Petition, contending Norman's Petition failed to state a claim upon which relief could be granted. (Defendant's Motion to Dismiss at 1-5, Rec. at 85-89.) Subsequently, Norman and the IAFF each filed motions for summary judgment. (Plaintiff's Motion for Summary Judgment at 1-7, Rec. at 90-114; Defendant's Motion for Summary Judgment at 1-11, Rec. at 146-237.)

First, the IAFF contended the Arbitration Board's decision as to the ballot language was final, unappealable and not subject to judicial review. (Defendant's Motion to Dismiss at 2-3, Rec. at 86-87; Defendant's Response to City's Motion for Summary Judgment at 5-7, Rec. at 128-131; Defendant's Motion for Summary Judgment at 7-8, Rec. at 152-153.) Alternatively, the IAFF argued OKLA. STAT. tit. 11, § 51-108(D) should be interpreted to mean that a ballot must only address the unresolved issues that were the subject of the interest arbitration, rather than each party's offer for the new contract, incorporating both resolved and unresolved issues. (Defendant's Response to Motion for Summary Judgment at 5, Rec. at 128; Defendant's Motion for Summary Judgment at 9-10, Rec. at 154-155.)

After permitting 30 days of discovery, the District Court considered the IAFF's Motion to Dismiss and Norman's Motion for Summary Judgment. (Order at 1, Rec. at 289.) In its April 15, 2011 Order, the District Court agreed with both arguments

advanced by the IAFF.¹ First, the District Court agreed with the IAFF's contention the Arbitration Board's selection of its proposed ballot language was not appealable, holding the Arbitration Board's decision was "final". (Order at 1, Rec. at 289.)

Next, because the parties disagreed as to the interpretation, the District Court decided the statute was ambiguous. (Order at 2, Rec. at 290.) The District Court admitted the IAFF's proposed ballot only informed Norman voters about unresolved issues, and not the costs and comparisons of the parties' entire offers. *Id.* However, the District Court held that § 51-108(D) only requires a ballot to disclose to voters the total dollar amount and comparison information regarding unresolved issues, rather than the total dollar amount and comparison of the parties' offers as a whole.² *Id.*

The District Court's ruling the Arbitration Board's decision as to ballot language was final and not subject to judicial review is in error. Likewise, the District Court's holding that ballot language regarding the total dollar amount of offers and a comparison with the last contract should only address and disclose unresolved issues, rather than the entire contract, is contrary to law, logic and public

¹ In its April 15, 2011 Order, the District Court granted the IAFF's Motion to Dismiss and denied Norman's Motion for Summary Judgment. (Order at 1, Rec. at 289.) It is unclear how the District Court granted the IAFF's Motion to Dismiss, yet proceeded with considering and denying Norman's Motion for Summary Judgment. *Id.*

² Although it is uncertain how it would be possible if the ballot did not disclose the total dollar amount of the entire contract, the District Court observed: "*The voters of a municipality may take constructive notice of the resolved issues.*" (Order at 2, Rec. at 290 (*emphasis added.*))

policy. The District Court's Order should be reversed, and the election to determine the new contract should proceed using Norman's proposed ballot language.

ARGUMENT AND AUTHORITIES

STANDARD OF REVIEW

The District Court's April 15, 2011 Order granted the IAFF's Motion to Dismiss Norman's Petition. (Order at 1, Rec. at 289.) The Order also denied Norman's Motion for Summary Judgment. *Id.*

Inasmuch as the District Court's Order dismissing Norman's Petition for declaratory relief addressed issues of law – *i.e.*, whether the Arbitration Board's decision was subject to judicial review and its interpretation of § 51-108(D) – this Court must review the April 15, 2011 Order under a *de novo* standard. *Cherokee Nation v. Nomura*, 2007 OK 40, ¶ 11, 160 P.3d 967, 972. The appeal of the District Court's dismissal of Norman's Petition should include a review of the record. *Cherokee Nation v. Nomura*, 2007 OK 40, ¶ 11, 160 P.3d 967, 972 (citing *City of Chandler v. State ex rel. Dept. of Human Servs.*, 1992 OK 137, 839 P.2d 1352.)

The District Court's dismissal of Norman's Petition for failure to state a claim upon which relief may be granted is subject to *de novo* consideration. *Gay v. Aiken*, 1988 OK 150, ¶ 6 n. 13, 766 P.2d 985, 989 n. 13; *Indiana Natl. Bank v. Oklahoma Dept. of Human Servs.*, 1994 OK 98 at ¶ 2, 880 P.2d at 375. For purposes of considering the District Court's decision to grant the IAFF's Motion to Dismiss, this Court must assume the allegations pled by Norman are true. *Indiana Natl. Bank*,

1994 OK 98 at ¶ 2, 880 P.2d at 375 (citing *Great Plains Federal S & L v. Dabney*, 846 P.2d 1088, 1090 n. 3 (Okla. 1993)). Further, the Court’s review should include a consideration of the exhibits included with Norman’s Petition. *Id.*

Here, the District Court also ruled on Norman’s Motion for Summary Judgment, which turned on legal issues. (Order pp. 1-2, Rec. at 289-290.) Accordingly, the standard of review of the District Court’s Order denying Norman’s Motion for Summary Judgment should likewise be *de novo*. *Bacchus Industries, Inc. v. Arvin Industries, Inc.*, 939 F.2d 887, 891 (10th Cir. 1991); *Carmichael v. Beller*, 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053.

PROPOSITION I

THE DISTRICT COURT ERRED BY HOLDING THE ARBITRATION BOARD’S SELECTION OF BALLOT LANGUAGE WAS FINAL AND NOT SUBJECT TO JUDICIAL REVIEW

Courts have the ability and obligation to review arbitration awards to insure compliance with all applicable laws. *City of Anadarko v. FOP*, 1997 OK 14, ¶ 7, 934 P.2d 328, 330 (“this Court has repeatedly reviewed the statutory collective bargaining process for constitutional compliance.”); *Sooner Builders & Investments, Inc. v. Nolan Hatcher Construction Servs., Inc.*, 2007 OK 50, ¶ 28, 164 P.3d 1063, 1072 (reviewing arbitration decision for compliance with attorney’s fee statute). In cases where an arbitrator or arbitration board displays “manifest disregard of the law[,]” courts have the power to vacate their decisions. ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* 32-5 (6th Ed., ABA 2003). A court’s equitable powers include

the ability to vacate an arbitrator's decision exhibiting a "willful inattention to the governing law." See, *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 932 (10th Cir. 2001).

In *Midwest City v. Jarrell*, 2001 OK CIV APP 125, 33 P.3d 962, the Oklahoma Court of Civil Appeals approved vacating an arbitrator's decision because the arbitrator exceeded his authority granted by both the collective bargaining agreement and the parties to the dispute. Although the court found that the arbitrator's decision regarding the defendant's standing to pursue arbitration on his own was properly decided by the arbitrator, it concluded that the arbitrator exceeded his authority when he went beyond the issue tendered by the parties. *Id.* at ¶ 12, 33 P.3d at 965. The court found this to be inherently unfair and in excess of the authority granted to the arbitrator by both the collective bargaining agreement and the parties to the dispute. *Id.*

In the context of Oklahoma cities and fire and police unions, courts will review decisions by an arbitration board regarding ballot language for compliance with the FPAA. In *Oklahoma City v. IAFF*, 2011 OK 29, 254 P.3d 678, the Arbitration Board approved a ballot that only presented the union's last best offer, despite an explicit provision in the FPAA requiring the presentation of both parties' offers. The Oklahoma Supreme Court noted that "an agency created by statute may exercise only those powers granted and may not expand those powers by its own authority." *Id.* at ¶ 19, 254 P.3d at 683. According to the plain language of the statute, the Arbitration

Board had chosen a ballot prohibited by the FPAA. Therefore, the Arbitration Board exceeded its authority by disregarding the governing law, and the Supreme Court held its decision was void and unenforceable. *Id.*

Here, the District Court agreed with the IAFF and held the Arbitration Board's decision was final and not subject to judicial review. This is plainly wrong. Like *Oklahoma City*, the Arbitration Board in this case chose ballot language that did not comply with the FPAA. This decision clearly falls within a court's power of review and, if the Arbitration Board exceeded its statutory authority, the ballot selection upheld by the District Court must be reversed. To hold otherwise "would be against the plain language and intent of the Fire and Police Arbitration Act and would make collective bargaining meaningless." *City of Oklahoma City*, 2011 OK 29, ¶ 19, 254 P.3d at 683.

PROPOSITION II

THE DISTRICT COURT ERRED WHEN IT HELD BALLOTS SHOULD ONLY DISCLOSE TOTAL DOLLAR AMOUNT AND COMPARISON INFORMATION RELATING TO UNRESOLVED ISSUES

A. The Statutory Language Requires the Ballot to Disclose to Voters Information About the Entire Contract, Rather Than Only Address Unresolved Issues

The FPAA requires Norman and the IAFF to submit offers to the Arbitration Board which list all contract terms – those which have been resolved through negotiations and each party's final offer on unresolved issues. OKLA. STAT. tit. 11, § 51-108(A)(2). Here, a majority of the Arbitration Board selected the IAFF's offer,

which could then become the new contract between Norman and the IAFF. *Id.* at § (A)(4). When the Arbitration Board selected the IAFF's offer and Norman determined to let its citizens decide which offer would become the FYE 2011 contract, Norman citizens had the right to choose between the parties' two competing offers as to all contract provisions – not just the unresolved issues. *Id.* at (A)(C). Indeed, whichever offer a majority of the voters select becomes, by operation of law, the FYE 2011 contract. *Id.*

Beginning with the submission of the competing offers to the Arbitration Board through the election, the FPAA contemplates offers constituting the entire contract and comprised of both resolved and unresolved issues. The FPAA specifies what information must be “clearly state[d]” to voters on the ballot:

1. The “total dollar amount of the offer” from Norman;
2. The “total dollar amount of the offer” from the IAFF; and
3. The “percentage of increase or decrease both offers have over or under the last contract of the two parties.”

OKLA. STAT. tit. 11, § 51-108(D)

This statutory language requires the election ballot to state the total dollar amount of each party's entire contract proposal – both resolved and unresolved issues. Similarly, when the FPAA requires a ballot to disclose the percentage change between each of the party's offers and the prior contract, it means a comparison between each party's proposed contract for FYE 2011 and the total dollar amount of the contract which preceded it – *i.e.*, FYE 2010. The District Court's conclusion the ballot need

only reveal to voters information about unresolved issues is entirely contrary to the plain language of § 51-108.

B. The FPAA's Purpose and Policy Require Ballots to Disclose the Total Dollar Amount and Comparative Information Regarding the Entire Contract

The last step in determining the FYE 2011 contract between Norman and the IAFF is a vote by Norman's citizens. It is the one opportunity for a municipality's citizens to determine which offer becomes their contract with firefighters for the coming year. OKLA. STAT. tit. 11, § 51-108(D).

The FPAA's ballot provision is plainly intended to require a ballot informing voters about the "total dollar amount" of the two competing contract proposals. The requirement that the ballot also disclose to voters the percentage change in costs each FYE 2011 offer would reflect, when compared to the FYE 2010 contract, serves that same purpose-- advising voters about the "price tag" for each proposed FYE 2011 contract and how those proposals compare to the costs incurred by the FYE 2010 contract. If, as the District Court ruled, a ballot need only speak to unresolved issues, citizens are robbed of the ability to make an informed decision, with the total costs of the competing offers disclosed and compared to the expense of the prior contract.

C. Unlike the IAFF, Norman's Ballot Language was Faithful to the Letter and Logic of the FPAA

Norman's proposed ballot language reflected the total dollar amount of each party's FYE 2011 offer. Norman's calculations applied each offer to the Fire Department's budgeted and appropriated positions in order to determine the "price

tag” for each party’s offer. To determine the percentage difference between the competing FYE 2011 offers and the FYE 2010 contract, Norman compared the total dollar amounts of the FYE 2011 offers with the total costs for the FYE 2010 contract.

Thus, Norman’s proposed ballot not only followed the dictates of the statutory language, it also satisfied the FPAA’s objective – to inform voters what each contract proposal will cost them for FYE 2011, and how the proposals’ costs compare with the FYE 2010 costs.

D. The Arbitration Board’s Selection of the IAFF’s Offer Does Not Become Norman’s Contract With the Union by Default

In its Motion to Dismiss Norman’s appeal of the District Court’s decision, the IAFF argued the Arbitration Board’s selection of its offer became, by default, the FYE 2011 contract because Norman did not conduct an election before the end of the fiscal year. This argument fails for a number of reasons.

Under the FPAA, there is only one way in which the Arbitration Board’s decision becomes the new contract between Norman and the IAFF by default. That only occurs if the city fails to timely reject the Arbitration Board’s decision and request an election. OKLA. STAT. tit. 11, §§ 51-108(B) and (C). Here, Norman timely rejected the Arbitration Board’s decision and requested an election for May 10, 2011. Thus, Norman took appropriate steps under the FPAA to prevent the Arbitration Board’s decision becoming a final contract by operation of the statute.

Nor may Norman be criticized for failing to follow through with the May 10, 2011 election under these circumstances. Proceeding with an election using a flawed

ballot would be contrary to the FPAA and create an election result that was void or subject to challenge. The IAFF's "default" argument also runs afoul of unmistakable Oklahoma law establishing that a city and its citizens ultimately control how money will be spent regarding their fire and police departments.

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, 8 P.2d 2. 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 its 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, 933 P.2d 261, 268.

Here Norman disagreed with the choice of the Arbitration Board and requested an election pursuant to the FPAA. The IAFF then proposed a legally flawed ballot which was chosen by the Arbitration Board for use in the election. The District Court refused to correct the Arbitration Board's mistake. The City had a choice: (1) it could proceed with the legally flawed ballot and hold a voidable election; or (2) it could file

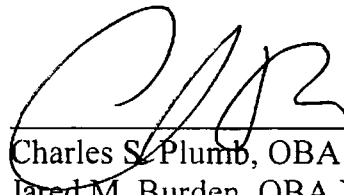
suit in district court to have the ballot thrown out. The City chose the only legal remedy available and filed the action upon which this appeal is based. The IAFF cannot contend Norman has thereby waived its constitutional and statutory rights to have its citizens choose the contract. Rather, it is against Art. 10, § 20's clear policy of "home rule" to allow an Arbitration Board or court to fix the terms of a debt paid by taxes. Therefore, the FYE 2011 contract must be chosen by the people.

Despite the necessity for a contract to be accepted by the city or its citizens, in its Motion to Dismiss the appeal, the IAFF also contended Norman was barred from holding an election because FYE 2011 has ended. In support, the IAFF cited cases applying Art. 10, § 26 of the Oklahoma Constitution. Section 26 clearly prohibits a city from becoming indebted "in any manner, or for any purpose, *to an amount exceeding, in any year, the income and revenue provided for such year* without the assent of three-fifths of the voters thereof" Okla. Const. art. 10, § 26 (emphasis added). For this line of authority to be controlling, the IAFF must show that an election pursuant to the FPAA would create a debt *in excess* of the amount already appropriated and available for the relevant fiscal year. The IAFF has not and cannot make such a showing.

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,



Charles S. Plumb, OBA No. 7194
Jared M. Burden, OBA No. 30026
McAfee & Taft A Professional Corporation
1717 S. Boulder Ave., Suite 900
Tulsa, Oklahoma 74119
Telephone (918) 587-0000
Facsimile (918) 599-9317
charlie.plumb@mcafeetaft.com
jared.burden@mcafeetaft.com

Jeff Harley Bryant, City Attorney, OBA No.
#11773
Rick Knighton, Assistant City Attorney, OBA
No. #17257
City of Norman
P.O. Box 370, 201 West Gray
Norman, OK 73070
Telephone (405)366-5423
Facsimile (405)366-5425
Jeff.bryant@normanok.gov
Rick.knighton@normanok.gov

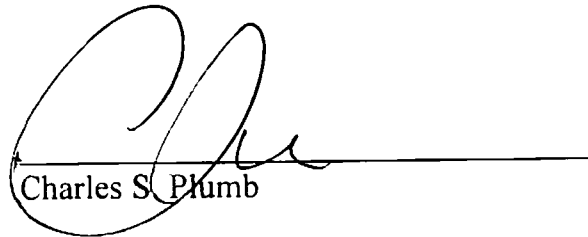
ATTORNEYS FOR THE CITY OF NORMAN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of December 2011, a copy of the foregoing document was sent by mail, postage pre-paid, to the following:

James R. Moore, OBA No. 6343
Timothy J. Synar, OBA No. 20862
MOORE & VERNIER, P.C.
Attorneys at Law
301 N.W. 63rd Street, Suite 550
Oklahoma City, Oklahoma 73116
Telephone: (405) 843-9675
Facsimile: (405) 843-9680

ATTORNEY FOR DEFENDANT IAFF



Charles S. Plumb

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