

TUTTLE 12367 P

**PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA**

IN RE: CERTIFICATION
PETITION OF FOP LODGE 135

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Case No. 12367 P

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

This matter came before the Public Employees Relations Board of the State of Oklahoma on October 26, 2000. All Board members were present. After the presentation of the evidence and argument in open session, the Board deliberated in closed session. The Board returned to open session and decided this case by majority vote on the same day.

David Perryman, attorney at law, appeared for the City of Tuttle. James Moore and Douglas Vernier, attorneys at law, appeared for the Fraternal Order of Police, Lodge No. 135. Jim Ingram was present as the representative of the FOP. No representative appeared for the City. All attorneys and the representative left the Board meeting before the Board decided this case.

The sole issue presented in this case is whether notice of certain police employees' request for an election to determine whether the FOP would serve as their collective bargaining agent, pursuant to 11 O.S. 1991, §51-103 was properly served on the City. The City has moved to quash the election, claiming notice was not given to the proper city officers. The FOP opposed the motion, claiming that notice given to the City of Tuttle's city manager was sufficient.

The testimony of Margaret Cox, secretary to the Board, and the admissions made by the City of Tuttle show that there is no reasonable dispute as to any material fact in this case:

The Board, using the name and address provided by the FOP, sent the then-city manager of the City of Tuttle notice on August 1, 2000, that an apparently sufficient number of its police employees had requested an election for the purpose of determining its bargaining agent for collective bargaining. Notice was not sent by the Board to the mayor or city clerk of the City of Tuttle. According to the return mail receipt, the city manager received the notice August 2, 2000. FOP Exhibit 6. The city manager returned a letter to the Board on August 3, 2000,

indicating that the City did not wish to contest the holding of the election. FOP Exhibit 7. Tuttle has a council-manager form of government. FOP Exhibit 2.

The city manager, on behalf of the City, and Jim Ingram, serving as the representative for the FOP, met with a Board representative for a pre-election conference. The election was held in the Tuttle City Council Chambers on August 14, 2000. As a result of that election, the FOP was certified as the collective bargaining agent for the City's police employees. FOP Exhibit 9. The Board sent notice of the election results to the City, and the City, including the mayor, received that notice September 1, 2000. FOP Exhibit 9.. The City filed its motion to quash on September 12, 2000.

The City's attorney told the Board that the City Council and city manager were on poor terms because the city manager had been notified that he was about to be removed from office unless he moved into the city limits, but no testimonial or documentary evidence of such a relationship was presented at the hearing of this case.

Findings of Fact

1. The Board sent notice of a petition by City of Tuttle police employees for an election to determine a bargaining agent for purposes of collective bargaining to the city manager of the City of Tuttle August 1, 2000, and that notice was received by the city manager.
2. On August 3, 2000, the city manager informed the Board that the City did not wish to contest the holding of the election.
3. The city manager and a representative of the Fraternal Order of Police, Lodge 135, met with a Board representative on August 14, 2000 for the purpose of conducting a pre-election conference.
4. On August 14, 2000, the Board conducted an election in the City Council Chambers of the City of Tuttle for the purpose of determining whether the police employees would choose a collective bargaining agent.
5. On September 1, 2000, the City of Tuttle, including the mayor, received notice that the election had been conducted and the FOP had been chosen as collective bargaining agent for the City's police employees.
6. The City filed its motion to quash the results of the election on September 12, 2000.

Conclusions of Law

- 1. The Board has jurisdiction of this matter. 11 O.S. 1991, § 51-103, 51-104.
- 2. Service upon a city is controlled by 11 O.S. 1991, § 22-103, which provides:

Any notice or process affecting a municipality shall be served upon the municipal clerk, or in his or her absence then upon a deputy municipal clerk or upon the mayor.

- 3. Service of process is not subject to invalidation for every departure from the method described by statute.

When service departs from the strict requirements of the statute, service will be invalidated if the departure deprived a party of its fundamental right to notice. *Shamblin v. Beasley*. 967 P.2d 1200, 1209 (Okla. 1998).

- 4. The city manager is the chief executive officer of the City of Tuttle and head of the administrative branch of government. 11 O.S. 1991, § 10-113.

- 5. The city manager is responsible for the hiring, firing, supervision, and control of city employees such as police employees. 11 O.S. 1991, § 10-113 (1) and (2).

- 6. The city manager is responsible for keeping the City Council informed about the budget and financial needs and condition of the City. 11 O.S. 1991, § 1-113 (3), (4) and (5).

- 7. Providing notice of an election to determine whether employees might choose a collective bargaining agent to the city manager did not deprive the City of Tuttle of its fundamental right to notice.

Order

Premises considered, by a vote of 2 to 1, the motion to quash of the City of Tuttle is DENIED.

Memorialized this 15th day of February, 2001.

(Signed)
Philip W. Anderson,
Board Member

(Signed)
Larry W. Gooch,
Board Member

DISSENTING:

(Signed)
Craig W. Hoster, Chair