BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD

STATE OF OKLAHOMA

FRATERNAL ORDER OF POLICE, LODGE 123,	)	
Petitioner,	)	
vs.	)	Case No. 12303UC
THE CITY OF OKLAHOMA CITY,	)	
Respondent.	)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

THERE COMES on for review before the Oklahoma Public Employees Relations Board ("PERB" or "Board") the above-styled and numbered cause of action. The Petitioner, the Fraternal Order of Police, appeared by and through its attorney of record, James Moore. The respondent, the City of Oklahoma City, appeared by and through its attorney of record, Richard E. Mahoney. Parties have waived hearing and have submitted to the Board Stipulations of Facts, briefs, and supplements to the record. No proposed findings of fact were submitted to the Board. Pursuant to 75 O.S.1991, §312, the Board is required to rule individually upon proposed findings of fact. Since none were submitted, this is unnecessary.

The Board, having reviewed arguments of the parties, and otherwise being fully apprised of this matter, makes findings of facts and conclusions of law as follow:

FINDINGS OF FACT

1. The City of Oklahoma City (the "City") is a charter city. (Respondent's Answer Brief, page 6.)

2. A permanent employee of the City is defined by the personnel policy of the City as:

> "one for which a continuing future need is expected for an indefinite period of time and for which incumbent employees are consistently required to work the full[,] regularly scheduled work day ... and work week ... established for the department of division."

(Personnel Policies of the City of Oklahoma City, §210.01.)

3. The parties to this action, the Fraternal Order of Police, Lodge 123 ("FOP") and the City, have engaged in collective bargaining pursuant to the terms of the Fire and Police Arbitration Act ("FPAA") for more than sixteen (16) years. (Stipulation of Fact #1.)

4. The original certification document defining the bargaining unit which was issued by the Board to the parties has been lost over the years. (Stipulation of Fact #2.)

5. During their bargaining history, the parties have generally excluded police officer recruits from the coverage of the collective bargaining agreements, except for the single issue of entry level pay. Police officer recruits have been considered as probationary employees under the terms of the collective bargaining agreement between the parties and have been excluded from the unit on that basis. (Stipulation of Fact #3.)

6. When a police officer recruit is hired by the City, he or she applies for membership in the Oklahoma Police Pension and Retirement System, effective upon the date of employment. If the Oklahoma Police Pension and Retirement Board determines

the recruit meets the eligibility requirements set forth in Title 11 O.S. 1991, §50-112A, the recruit becomes a member of the pension system upon the date of employment. (Stipulation of Fact #4.)

7. After an Oklahoma City police recruit is hired, he or she attends an eighteen week police academy sponsored by the City. The Oklahoma City Police Academy is approved by the Oklahoma Council on Law Enforcement, Education and Training (CLEET), as a training academy for peace officers. A recruit is on full-time, paid status as an employee of the City while he or she attends the Police Academy. Police recruits are probationary employees upon hiring and remain on probationary status for a period of one (1) year after graduation from the Police Academy. (Stipulation of Fact #5.)

8. After completion of the Police Academy and after a recruit has successfully passed a mandatory examination for peace officer certification, CLEET certifies the recruit as a peace officer. (Stipulation of Fact #6.)

9. After completion of the Police Academy and certification by CLEET, recruits become sworn full-time officers of the police department of the City, whose duties are to preserve the public peace, protect life and property, prevent crime, serve warrants, enforce all laws of the state, and municipal ordinances, and they are authorized to bear arms, while on duty, in the execution of such duties. (Stipulation of Fact #7.)

10. After graduation from the Police Academy and certification by CLEET, the recruits are assigned to continued training in the field under the supervision of a field training officer ("FTO program"). The FTO program takes approximately five (5) months after graduation from the Police Academy. (Stipulation of Fact #8.)

11. After completion of the FTO program, the recruit remains on probationary status, with full police responsibility, for approximately seven months. Approximately two months prior to completion of the probationary period, the recruit's performance is reviewed by a probationary review board. If the recruit's performance is reviewed as not satisfactory, the recruit is assigned additional training or discharged from employment. After successful completion of probation, the recruit becomes a member of the bargaining unit. (Stipulation of Fact #9.)

12. The Oklahoma City Police Department Operations Manual, approved by the City Council on June 14, 1988, and incorporated into the collective bargaining agreement between the FOP and the City provides:

126.45 Probation

A newly hired non-sworn employee shall be on probation for a period of six months from the date of hire. A newly hired sworn employee shall be on probation for one year from the date of graduation from the academy. The probationary period of these employees may be extended at any time during the original period of employment. Employees whose original probation has not been completed at the time a new probation is imposed or whose original probation is extended will be required to sign an agreement accepting the probation as a condition of continued employment.

Employees who have completed the original probationary period may be placed on probation for a period not exceeding one year for cause.

The effect of disciplinary probation will be the same as the original probationary period in that an employee on disciplinary probation may be dismissed for violating the terms of the probation at any time during the probationary period. However, employees on disciplinary probation may grieve their dismissal where newly hired probationary employees may not.

The employee will be notified, in writing, of the reasons for and duration of the probation or extended probation. All probation or extended probations must be approved by the Chief of Police.

Section 485.20 provides:

A police recruit is on probation and continues to be for one year from the date of graduation from the Police Academy.

A. Probationary employees do not have tenure and may be terminated without cause at any time during the probationary period.

B. Probationary employees may not grieve disciplinary action or dismissal.

(Stipulation of Fact #10.)

13. The City's probationary period for police recruits compares as follows with other Oklahoma cities that operate a police training academy:

a. The city of Tulsa has a one year probationary period, from the date of hire;
b. The City of Lawton has a one year probationary period, from the date of graduation from the academy;
c. The City of Norman has a one year probationary period, from the date of hire;
d. The City of Midwest City has an eighteen month probationary period, from the date of hire. Probationary police recruits are covered by the collective bargaining agreement in Midwest City after twelve (12) months from the date of hire.

(Stipulation of Fact #11.)

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties and subject matter of this complaint pursuant to 11 O.S.1991, §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 as Section 50-101 of this title.

(Emphasis added.)

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). The definition in §210.01 of the Personnel Policies of the City of Oklahoma City is not inconsistent with this definition.

6. Recruits are hired for an indefinite period and may be

terminated by the City at any time. These recruits are hired by the City; sent to an eighteen week academy; upon graduation and certification, they spend five months in field training; and spend an additional seven months on probation. this is apparently done with the intent by the City to train and retain them as police officers. Near the end of the probationary period, recruits are evaluated by the Police Department, at which time they are either taken off probation, kept on probation for additional training, or terminated. While this is done, and while the recruits are on probation, their status is nonetheless consistent with the Supreme Court's definition of permanent employment. Indeed, there is no indication that recruit employment is temporary.

7. The parties have stipulated that upon graduation from the Police Academy and certification by CLEET, recruits meet all other requirements of 11 O.S. 1991, §§ 51-102(1) and 50-101(6). Therefore, because they are permanent employees of the City upon graduation from the academy and certification by CLEET, recruits at that time meet all statutory requirements for membership in the bargaining unit and so must be given membership therein. 11 O.S. 1991, § 51-103.

8. This Board has previously ruled that probationary employees are not eligible to vote as members of the bargaining unit. (See: Fraternal Order of Police, Mayes County, Lodge 116, v. City of Pryor, Case number 12269P.) To the extent that ruling is inconsistent with this ruling, the former is overturned.

ORDER

It is the ORDER of the Public Employees Relations Board that the petition in the above styled and numbered cause shall be, and hereby is, GRANTED.

Done this 1st day of April, 1993.

James G. Castle

Chairman

JRJ/jj:OKCPERB.fof