BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD
STATE OF OKLAHOMA

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| TWIN CITIES FRATERNAL ORDER OF POLICE LODGE NO. 135, Petitioner, | ) | |
| vs. | ) | Case No. 12310PD |
| CITY OF BLANCHARD, Respondent. | ) | |

FINDINGS OF FACT AND CONCLUSION OF LAW

This matter came on for hearing before the Public Employees Relations Board (PERB or the Board) on June 26, 1992, on the petition of the Twin Cities F.O.P. Lodge No. 135 for unit clarification for the purposes of conducting on election pursuant to 11 O.S. 51-103. The petitioner appeared by and through its attorney James R. Moore and the Respondent appeared by and through its attorney David L. Perryman. The Board received documentary and testimonial evidence; the Board also solicited and received post-hearing submissions (Proposed Findings of Fact, Conclusions of Law and supporting briefs) from the parties, the last of which was received on September 4, 1992.

The Board is required by 75 O.S. 1991 312, to rule individually on Findings of Fact submitted by the parties. The submittal of the Complainant is treated as follows:

The Board substantially adopts proposed findings 1, 2, 3, 5, 8 and 11.

The Board accepts in part, rejects in part 4, 6, 7, 9 and 10.

The submittal of the Respondent is treated as follows:

The Board substantially adopts proposed findings 1, 2, 3, 4, 7, 8, 9 and 10.

The Board rejects proposed findings 18, 20, 21, 22, and 24.

The Board accepts in part and rejects in part findings 6, 11, 13, 14, and 19.

The Board rejects as unnecessary to its decision findings 5, 12, 15, 16, 17, and 23.

## FINDINGS OF FACT

1. On April 15, 1992, the Twin Cities F.O.P. Lodge No. 135 (the FOP) filed its Petition for Certification of Representation wherein it sought to be certified as the bargaining agent for the following employees of the City:

> "All permanent paid members of the Blanchard Police Department excluding only the Chief and one designated administrative assistant." (PERB Record 12310PD)

2. By letter dated April 16, 1992, the Board advised the City Manager of the City of Blanchard (City) that:

> "The City of Blanchard is required. . .to furnish to the Board. . .an alphabetical list of names, addresses, departments and job titles of all employees within the proposed bargaining unit as shown by the petition filed by the FOP. . . .(PERB Record 12310PD)

3. The City submitted to the PERB a list of all employees in the City of Blanchard Police Department. (PERB Record 12310PD)

4. The list of Police Department employees submitted by the City included all employees of the Department including those categorized by the City as active police officers, dispatchers, programmers, a data entry secretary, the acting Chief of Police and the appointed administrative assistant. (PERB Record 12310PD)

5. Charles E. Haygood was the designated administrative assistant. (Tr. 69, Lines 12-17)

6. The Blanchard Police Department functions with a combination of "street" or field officers whose duties are primarily in patrol; dispatchers whose duties are in communications; and a third group which has done both. The field officers and some who have done both, are commissioned by the City to function as police officers and certified by the Commission on Law Enforcement Education and Training (CLEET) as law enforcement officers. An employee may serve as a police officer without first being certified by CLEET as long as he or she seeks such certification within one year of assuming police officer duties. (Tr. pg. 20-21)

7. As former Blanchard Acting Police Chief Jack Ellington testified, the Blanchard Police Department is a small department and it was necessary to maintain flexibility of assignments within that Department. (Tr. pg. 13, Line 6)

8. Some employees were commissioned only as dispatchers/jailers and were never given any enforcement

authority. The FOP has not sought to represent those employees. (Tr. pg. 49, Line 9)

9. Other employees have served solely as field officers. Originally, Roger Blackshere was hired in the capacity of a field officer by R. W. Smith, the former Police Chief. At the time Blackshere was hired in that position, he had already been certified by CLEET and had prior police employment in Oklahoma. He was commissioned as a Blanchard Police Officer and retained that commission at the time of the petition and the hearing in this case. (Tr. pp. 12, 46)

10. According to Ellington, Blackshere was authorized to perform any and all police duties at any time, regardless of his current assignment. (Tr. pg. 19)

11. Blackshere was hired as a full-time field officer and later during his employment had medical problems causing him to take a leave of absence. (Tr. pp. 57-58) After he returned to work he was "rehired" and placed in a light duty job in the communications unit. As his health improved he was returned to the field on a periodic basis from approximately January, 1992, to fill the vacancy created by the inactive status of Ron Jackson. Throughout this period, Blackshere retained his police officer commission from the City. (Tr. pp. 15-18). At such times as Roger Blackshere was not performing police officer duties he served as a dispatcher. (Tr. 74-77)

12. At the beginning of FOP organizational efforts in March 1992 in Blanchard the city had six commissioned police officers

on its force: Jack Ellington, Ron Jackson, William Crawford, Roger Blackshere, Terry Alexander & Chuck Haygood. (Tr. pg. 9, Lines 2-7). All six were full time officers except Ron Jackson who had suffered a heart attack and was (and remained at the time of the hearing) on medical leave. (Tr. 9)

13. Ron Jackson remained on inactive status from the date of his 1991 health problems until his position was subject of a City Reduction in Force (RIF) on June 19, 1992 (Tr. 23, Lines 17-22). Both officers Alexander and Blackshere have served as both dispatchers and patrol officers with the city's police department. (Tr. 11, 12) All officers serving the city as dispatchers or patrol officers historically retained their status as commissioned officers with full authority to carry a weapon, serve warrants, and make arrests. (pg. 13)

14. The City Manager testified that Blackshere was one of the more experienced officers on the force and was moved to dispatch in order to make "other long-term arrangements". Those long-term arrangements were the assignment of Terry Alexander to take Blackshere's shift. Alexander had previously only been a dispatcher. (Tr. pp. 90-91, 22)

15. As both former chief Ellington and Smith testified, it was necessary to maintain flexibility in the Blanchard department and be able to have some police officers who could be assigned to both the street and dispatch. (Tr. pg. 23)

16. Terry Alexander was hired in 1991 as a dispatcher and classified as such. (Tr. 78) Alexander's assignments also

fluctuated as a direct result of the Manager's changes in Blackshere's assignments. When Blackshere was reassigned to communications, Alexander was assigned to take his field duties to assist in filling the vacancy of Ron Jackson. Alexander had never served as an officer before but was commissioned to do so in 1991. He is scheduled to begin CLEET certification in October, 1992, according to the City Manager. (Tr. pg. 79)

17. At the time of the hearing, the city employed other dispatchers (4) who are not full time commissioned police officers. Alexander is a commissioned police officer and the city intends to use him on occasion as a patrol officer in addition to his duties as a dispatcher. (Tr. pg. 85)

CONCLUSIONS OF LAW

1. The Public Employees Relations Board has jurisdiction over the parties in the subject matter of this labor dispute pursuant to 11 O.S. Supp. 1986 51-104.

2. Unit clarification actions are primarily questions of fact. In an administrative proceeding before the PERB, the complainant has the burden of persuasion by a preponderance of the evidence as to the factual issues raised. Rule III.Q. Rules of the PERB. See also, Prince Manufacturing Company v. United States, 437 F. Supp. 1041 (D.C. Ill. 1977). In this case the Board finds that the evidence supports the following conclusion: that Terry Alexander and Roger Blackshere are properly included in the bargaining unit pursuant to 11 O.S. 51-102(1) and 11 O.S. 50-101(6).

3. That pursuant to 11 O.S. 51-102(1) and 11 O.S. 50-101(6) any full time employee of the police department who holds a commission, expressed or implied, as a police officer who is or may be assigned by the City to perform the duties listed in Section 50-101(6) of Title 11 is properly included in the bargaining unit.

DISCUSSION

The Board has previously determined the parameters for inclusion of an employee in a bargaining unit. In Fraternal Order of Police, Lodge No. 173 v. City of Yukon, PERB Case No. 12281UC this Board stated:

> The Fire and Police Arbitration Act 11 O.S. 51-101 et seq. provides that police officers "shall be those persons as defined in Section 50-101. Section 51-101(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 same in the execution of such duties;

The evidence in this case indicates that the potential members of the unit at the time of the hearing were as follows:

Greg Hanson - Chief of Police

Charles Haygood - Police Officer, Designated Admin. Ass't.

Jackie Ellington - Police Officer

Terry Alexander - Full time employee - currently alternating duties as police officer and dispatcher

Roger A. Blackshere - Full time employee recently a police officer, but assigned to dispatch at time of the hearing.

It is clear that the FPAA excludes both Chief Hanson and Officer Haygood from the unit. It is equally clear that Officer Ellington is included in the unit. It remains therefore to determine the status of Terry Alexander and Roger Blackshere.

Terry Alexander - Officer Alexander is currently serving in both capacities of dispatcher and police officer. He is a commissioned officer of the city capable of fulfilling the duties of police officer at any time and in fact the evidence was clear that this frequently occurs. As a full-time employee of the police department, a commissioned officer and currently performing the duties of a police officer the Board finds that officer Alexander is properly included in the bargaining unit pursuant to 11 O.S. 51-102(1) and 11 O.S. 50-101(6).

Roger Blackshere - Blackshere is currently serving exclusively as a dispatcher within the police department. Although Officer Blackshere was formerly assigned regular patrol duties the Board normally will not look beyond his current duties absent an allegation of transfer motivated by anti-union bias. As stated in the Yukon case, supra

> For the purposes of unit clarification the Board is constrained to examine the facts as they exist at the time of the filing.... The Board will look to past duties of an employee only upon an allegation that the City has altered an employee's duties based upon anti-union motivation.

However, unlike Yukon, this case presents a situation where a full time employee holds a commission as a police officer but has been assigned as a dispatcher. It is clear that the city may elect at any time to assign the officer to field duty. The Board is mindful that a small police department needs to maintain flexibility and control of the organization of its police department. But the Board is equally mindful that officers, due to injuries received in the line of duty or staffing needs, are often assigned to non-field operations such as administrative work or as D.A.R.E. officers. To hold today that, for example, an officer injured in the line of duty or assigned to D.A.R.E. is ineligible to belong to a bargaining unit is an unreasonable extension of the Yukon doctrine. Although a city may exercise its right to organize its department, assignment of an employee at the time of the hearing is not conclusive as to the status of that employee relative to inclusion in the bargaining unit.

The Board holds today that where a full time employee of the department is commissioned as a police officer by the city, the Board considers such commission to satisfy the requirements of 11 O.S. 51-102(1). If the city elects to employ the person in areas outside field work for organization purposes it may do so but such action does not have the additional effect of removing the officer from the unit. The Board is persuaded that should natural disaster, escape, or even another vacancy occur (as in this case) a city could, and in all probability would, draw upon those officers in non-field positions to assist in law

enforcement duties outside their current position. To assume that these individuals would then move in and out of the unit, changing their status daily or even hourly is an absurd extension of the Yukon test this Board will not endorse.

ORDER

The Public Employees Relations Board hereby orders that a representative election be held forthwith in keeping with the decision herein.

Signed this 28th day of September, 1992.

James G. Castro
Chairman