

(Commerce Clearing
Apr. 26, 73

State of Kansas
Before The Public Employee Relations Board

IN THE MATTER OF THE COMPLAINT *
AGAINST EMPLOYER FILED BY *
*
SERVICE EMPLOYEES INTERNATIONAL *
UNION, AFL-CIO, Complainant *
*
vs *
BOARD OF ELLIS COUNTY COMMIS- *
SIONERS, Respondents *
*
* * * * *

PERB's authority to
award damages to
aggrieved party.

CASE NO. CAE 1-1973

Findings Of Fact And Conclusions
Of Law - Order

On the 2nd day of March, 1973 the above captioned case came on for hearing. The complaintant appeared by its representative, Mr. Harry Helser, Field Staff Representative, AFL-CIO. The respondent appeared by its attorney, Mr. Simon Roth, Jr., County Attorney of Ellis County.

The hearing was conducted before Board members Mr. Alan Neelly and Mr. Merle Staats. Board member Mr. Art Veach was present but disqualified himself from any participation in the determination of the dispute.

The case comes before the Public Employee Relations Board upon complaint of Service Employees Local 513, AFL-CIO under date of January 26, 1973 by Mr. Harry Helser, Field Staff Representative, AFL-CIO. The complaint alleges in substance a "prohibited practice" as defined by KSA Supp. 75-4333(b)1 and 3 as follows:

"Since on or before August 1, 1972 the Board of Ellis County Commissioners through its officers and agents has coerced, restrained and interfered, discouraged membership by denying conditions of employment and discriminated against employees for their activity in behalf of Service Employees Union Local 513 AFL-CIO. On December 22, 1972 the employer did deny all the employees one-half day off. On December 12, 1972 the employer suspended three employees, Ralph Kinderknecht, Alexius Walters and Raymond Kuhn, two weeks without pay (later reducing this to a one week suspension without pay). The employer on December 28, 1972 denied all County Road and Bridge Crew one-half day off for President Harry S. Truman's funeral. This activity of the employer has been because of the employees activities for and in behalf of Service Employees Union Local 513 AFL-CIO. The employer has ever since refused to grant these employees the time off and/or loss of pay."

The following is a summary of major procedural and substantive actions taken by the Public Employee Relations Board and the parties in the instant case:

1. Resolution No. 1 of the Board of County Commissioners of Ellis County dated June 19, 1972 electing to bring the county as a public employer under the provisions of the Public Employer-Employee Relations Act.
2. Petition for unit determination filed with the Public Employee Relations Board under date of October 20, 1972 by Local 513.
3. Order of Public Employee Relations Board under date of November 7, 1972 determining the appropriate unit as petitioned for.
4. Order of Public Employee Relations Board under date of November 30, 1972 calling election for employees in appropriate unit. Date for the election set for December 15, 1972.

5. Certification of election results and meet and confer order issued by the Public Employee Relations Board under date of December 26, 1972.
6. Complaint filed with the Public Employee Relations Board January 26, 1973.
7. Answer to complaint by respondent filed February 2, 1973.
8. Amendment to complaint filed by complaintant February 2, 1973.
9. Notice of hearing to parties issued by Public Employee Relations Board under date of February 22, 1973.

Findings Of Fact

Upon report made by the Public Employee Relations Board members at the hearing and upon reviewing the evidence and transcript, the Board finds:

1. That prior to January 8, 1973 the Board of County Commissioners of Ellis County was composed of Mr. Ted Gerber, Mr. Otto Rohleder, and Mr. Nick Ruder. From January 8, 1973 to present time the Board is composed of Mr. Ted Gerber, Mr. Harold J. Kraus and Mr. Eugene Schmeidler.

2. That for at least six years prior to 1972 a Christmas party was authorized and encouraged by the Ellis County Commissioners. The parties held in 1970 and 1971 were held off county property at the local hall.
3. That on November 27, 1972 Mr. Ted Gerber orally authorized a Christmas party to be held in December, 1972 for county employees of the Road & Birdge Crew at the county yard during working hours.
4. That subsequently the employees were notified that the Commissioners would not support or help with the Christmas party as originally approved or as the practice had been in the past, nor could any party be held during working hours.
5. That a group of employees agreed that a party during non-working hours, off county property should be held/notwithstanding the decision of the Commission. Shortly thereafter, employees Alexius Walters and Raymond Kuhn commenced a solicitation campaign visiting various business locations within the county, seeking donation funds for the party. Later employees Ralph Kinderknecht, Freddie Rohr, Donnie Dinkel and Kenny Werth also accompanied Alexius Walters on

his visitations. County vehicles were used and the solicitations occurred during normal working hours.

6. Foreman Bill Weigel knew of the solicitation campaign and recommended that employee Ralph Kinderknecht accompany Alexius Walters on one such trip since Ralph Kinderknecht knew many businessmen in the county. Alexius Walters checked in and out with Foreman Weigel before leaving and upon return.
7. That at various times prior to the occurrences complained of, employees of the Road & Bridge Crew utilized county equipment for other than county business during normal working hours under direction of their supervisors.
8. That on December 8, 1972 employees Alexius Walters, Raymond Kuhn and Ralph Kinderknecht were called before the Board of County Commissioners and suspended without pay for a period of two weeks (later reduced to one week).
9. That Mr. Gerber stated at the December 8, 1972 meeting that due to the trouble between the Commissioners and the men, there would be no Christmas party and that the offer of a local

- business to provide food for the gathering had been rejected by the Board.
10. That the suspended employees were called back to work by Foreman Weigel.
 11. Employee Eddie Frank attempted to speak for the Board of County Commissioners but his statements were clearly understood not to be relied upon. He in no way spoke for the Board.
 12. That employees in the Road & Bridge Crew were not given time off for President Truman's funeral as were all other county employees. The Board of Commissioners voted not to give any compensatory time off for the Truman funeral.
 13. That employees in the Road & Bridge Crew were not given time off for President Johnson's funeral as were all other county employees. The employees were offered a full day off in lieu of the half day off missed for the Johnson funeral. The employees refused to take the day offered because they were given no advance notice. They learned of the day off after reporting to work. Some employees had commenced performing their duties before they were told of the holiday.

14. That subsequent to employee organization efforts, funds derived from the sale of used batteries were no longer allowed to be used to purchase coffee for employee use.

Conclusions Of Law

1. The Public Employee Relations Board has jurisdiction over the parties and the subject matter of the dispute.
2. The complaintant's petition as amended states a claim upon which relief can be granted under the provisions of the Public Employer-Employee Relations Act.
3. The Board of County Commissioners is a continuing body and is bound by actions taken by a predecessor board.
4. Forman Bill Weigel is a "supervisory employee" within the meaning of the Act. Accordingly, his actions, knowledge, lack of action or conduct can be imputed to the public employer. He speaks for and on behalf of the "public employer" regarding the "public employees" involved in this dispute.

His position can be distinguished from that of employee Eddie Frank whose position is non-supervisory and whose actions may not be imputed to the public employer.

4. A review of the entire record in this case discloses a series of actions the net effect of which invidiously interfered with and discouraged membership in an employee organization during a critical stage of the organization process guaranteed under the Act. Clearly the conduct of the public employees subsequently suspended from employment was not wise or advisable under the circumstances. The Public Employee Relations Board does not endorse or condone such conduct. The Board finds, however, that the solicitation was in fact condoned by a responsible supervisory employee. The inference is unavoidable that during previous years the Board of County Commissioners had also relied upon local businesses to help provide for the party and had directly participated in its planning. No action was ever taken by the Board of County Commissioners repudiating or denouncing the approval of the

solicitation given by the supervisory employee in question. Instead, a harsh disciplinary sanction was ordered only for the low ranking public employees involved in the solicitation three days before the scheduled election. Under the circumstances, the Public Employee Relations Board finds this to be in the nature of a reprisal for the new independence shown by the public employees growing out of their organization efforts and was calculated to have a chilling effect on the election scheduled for December 15, 1972. The action of the Board of County Commissioners in regard to the time off granted to all other county employees for President Truman's funeral while partially motivated by business reasons also served as a reminder to the employees that organization would result in treatment different from that afforded other county employees.

Accordingly, it is the opinion of the Public Employee Relations Board that the Board of County Commissioners of Ellis County engaged in a "prohibited practice" as defined at KSA Supp. 75-4333(b) (1) and (3). It is therefore ordered that the Board of Ellis County Commissioners cease and desist from further conduct designed to coerce or

discourage public employee organization. It is further ordered that full restitution of pay be made to the three public employees suspended.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD

Eldon Danenhauer
Eldon Danenhauer, Chairman

Alan Neelly
Alan Neelly, Member

Merle Staats
Merle Staats, Member

Nathan Thatcher
Nathan Thatcher, Member

Arthur Veach, Member (Disqualified)

Date: April 26, 1973